

**CONTRACT BETWEEN THE CITY OF SEATTLE
AND WASHINGTON WASTE SYSTEMS, INC.
FOR THE TRANSPORTATION AND DISPOSAL OF WASTE**

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**CONTRACT BETWEEN THE CITY OF SEATTLE
AND WASHINGTON WASTE SYSTEMS, INC.
FOR THE TRANSPORTATION AND DISPOSAL OF WASTE**

THIS CONTRACT is entered into by and between THE CITY OF SEATTLE, a municipal corporation of the State of Washington (hereafter "City"), and WASHINGTON WASTE SYSTEMS, INC. (hereafter "Contractor") for the purposes of accomplishing the transportation and disposal of nonrecycled residential and nonresidential Waste. The obligations of the Contractor are guaranteed by WASTE MANAGEMENT INC. (hereafter "Guarantor") in an accompanying Guarantee Agreement.

The parties, in consideration of the promises contained herein, agree as follows:

A. GENERAL PROVISIONS

Section 1. Purpose and Intent of Contract. The purpose of this Contract is to provide transportation and disposal services for the City's Waste destined for a general purpose landfill, including the design, construction and use of the Primary Landfill and all necessary facilities. It is the intent and policy of the City to recycle as much of its Waste as is technically and practically feasible. It is the intent of the parties that all Waste not recycled during the term of this Contract be disposed of in the manner provided for herein.

Section 10. Length of Contract. This Contract shall enter into force and effect upon its execution and remain in effect until midnight, March 31, 2028; provided, however, that the City may terminate this Contract at its option without cause on either of the following dates: March 31, 2001 or March 31, 2014, by providing the Contractor with written notice at least six months prior to the applicable termination date.

Section 20. Commencement Date; Phasing. The Contractor shall be prepared to receive the City's Waste at the Receiving Facility commencing April 1, 1991 (the "commencement date"). The commencement of operations will be phased in the following manner:

April 1, 1991:	Waste Management of Seattle Transfer Station Waste
April 15, 1991:	City South Transfer Station Waste
May 1, 1991:	Other non-residential Waste
May 15, 1991:	City North Transfer Station Waste

Section 25. Definitions. The definitions of key terms used in this Contract are arranged by functional categories.

Parties and Entities:

- (a) "City" means the City of Seattle.
- (b) "Engineering Director" means the Director of the Engineering Department for the City of Seattle, or the Director of any successor agency.
- (c) "SWU" means the Director of the Solid Waste Utility for the City of Seattle or her/his authorized representative, or the Director of any successor agency.
- (d) "Contractor" means Washington Waste Systems, Inc., a Washington corporation.
- (e) "Guarantor" means Waste Management, Inc., a Delaware corporation.
- (f) "Partner" means a county, municipal corporation or other entity located in King, Snohomish or Pierce counties with the authority to direct the flow of waste to the Contractor's Receiving Facility or to another facility designated by the Contractor in or near the Partner's jurisdiction.

Types of Waste:

- (g) "Waste" or "City's Waste" means all residential and nonresidential solid waste generated within the City, excluding Unacceptable Waste, Special Waste, Construction, Demolition and Landclearing Waste and materials destined for Recycling. The City's Waste includes all such Waste, regardless of which private or public entity collects or transports the Waste. In addition, Waste shall include all Waste remaining after Recycling.
- (h) "Special Waste" means contaminated soils, asbestos and other waste specified by the Contractor in the Special Waste Management Plan included in the Operations Plan as requiring special handling or disposal procedures. Special Waste does not include Unacceptable Waste.
- (i) "Contaminated Soils" means soils removed during the cleanup of a remedial action site, or a dangerous waste site closure or other cleanup efforts and actions which contain harmful substances but are not designated dangerous wastes. Contaminated Soils may include excavated soils surrounding underground storage tanks, vector wastes (street and sewer cleanings), and soil excavated from property underlying industrial activities.
- (j) "Asbestos" means the asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, anthophyllite, and actinolite-tremolite.

(k) "Asbestos-containing waste material" means any waste that contains Asbestos. This term includes Asbestos waste from control devices, contaminated clothing, Asbestos waste material, materials used to enclose the work area during an Asbestos project, and bags or containers that previously contained Asbestos.

(l) "Construction, Demolition and Land Clearing Waste" or "CDL Waste" means waste comprised primarily of the following materials:

(i) Construction Waste: waste from building Construction such as scraps of wood, concrete, drywall, masonry, roofing, siding, structural metal, wire, fiberglass insulation, other building materials, plastics, styrofoam, twine, baling and strapping materials, cans and buckets, and other packaging materials and containers.

(ii) Demolition Waste: largely inert waste, resulting from the demolition or razing of buildings, roads and other man-made structures such as concrete, wood and masonry, composition roofing and roofing paper, steel, and minor amounts of metal. Plaster (i.e., sheet rock or plaster board) or any other material, other than wood, that is likely to produce gases or leachate during its decomposition process and Asbestos wastes are not considered to be demolition waste.

(iii) Landclearing Waste: natural vegetation and minerals from clearing and grubbing land for development such as stumps, brush, blackberry vines, tree branches, tree bark, mud, dirt, sod and rocks.

(m) "Unacceptable Waste" means all waste not authorized for disposal at the Landfill by those governmental entities having jurisdiction or any waste the disposal of which would constitute a violation of any governmental requirement pertaining to the environment, health or safety. Unacceptable Waste includes any waste that is now or hereafter defined by federal law or by the disposal jurisdiction as radioactive, dangerous, hazardous or extremely hazardous waste; and vehicle tires in excess of those permitted to be disposed of by the laws of the disposal jurisdiction.

Facilities and Services:

(n) "Public Transfer Stations" means the City's South Transfer station at 2nd Ave. South and South Kenyon, the North Transfer Station at North 34th Street and Carr Place North, and such other transfer stations that the City may operate in the future for handling the City's Waste.

(o) "Private Transfer Stations" means the transfer station owned and operated by Waste Management of Seattle at 7155 West Marginal Way S.W., and such other transfer stations or facilities

that a private entity may operate at present and in the future for handling the City's Waste.

(p) "Receiving Facility" means the Primary Receiving Facility and the Backup Receiving Facility unless the context indicates specific reference to the Primary or Backup Receiving Facility.

(q) "Primary Receiving Facility" means the waste loading facility operated by the Contractor at the Argo Yard (Union Pacific) or such other location designated by the Contractor and meeting the requirements of Sections 75 and 200 of this Contract.

(r) "Special Waste Receiving Facility" means the facility or facilities for the delivery and handling of Special Waste, including small and large loads, prior to its transportation and disposal, as designated by the Contractor in the Special Waste Management Plan. The location of the Special Waste Receiving Facility may be different than the location of the Receiving Facility.

(s) "Backup Receiving Facility" means Terminal 18 (Port of Seattle) or such other location designated by the Contractor and meeting the requirements of Sections 75 and 220 of this Contract.

(t) "Transportation Services" means the Primary Transportation Services and Backup Transportation Services unless the context indicates specific reference to the Primary or Backup Transportation Services.

(u) "Primary Transportation Services" means the transportation by rail of the City's Waste from the Receiving Facility to the Landfill.

(v) "Backup Transportation Services" means the transportation by rail, truck or other conveyance of the City's Waste from the Receiving Facility to the Landfill. The trucks shall not drive in or through the Columbia River Gorge National Scenic Area.

(w) "Landfill" means the Primary Landfill, Eastern Washington Landfill and the Back-up Landfill unless the context indicates specific reference to the Primary, Eastern Washington or the Back-up Landfill.

(x) "Primary Landfill" means the Columbia Ridge Landfill and Recycling Center owned and operated by Oregon Waste Systems, Inc. in Gilliam County, Oregon, or the Eastern Washington Landfill after it becomes operational, if the City exercises the option contained in Section 430 of this Contract.

(y) "Eastern Washington Landfill" means the Landfill to be developed by the Contractor in a Washington county east of the Cascade Mountains in accordance with the requirements of

Section 430 of this Contract.

(z) "Backup Landfill" means Module 20 in the Columbia Ridge Landfill and Recycling Center in Gilliam County, Oregon, developed as a separate and self-sufficient back-up facility for the City, or such other landfill that is hereafter designated by the mutual consent of the parties. If the City elects to utilize the Eastern Washington Landfill, the Columbia Ridge Landfill and Recycling Center shall become the Backup Landfill after commencement of delivery of the City's Waste to the Eastern Washington Landfill.

Other Terms:

(aa) "Flow Control" means the authority of the City or a Partner to direct property owners and occupants of premises and other persons within the City or Partner's jurisdiction to use the solid waste disposal system in the manner provided by City or Partner ordinance.

(bb) "Operating Specifications" means the detailed description of the Contractor's transportation and disposal services that is attached and incorporated as a part of this Contract.

(cc) "Operations Plan" means the plan developed and periodically updated by the Contractor to implement the transportation and disposal services in this Contract in accordance with the requirements of Sections 70, 75 and 80 of this Contract.

(dd) "Recycle" or "Recycling" means transforming or remanufacturing waste materials into usable or marketable materials for use other than incineration (including incineration for energy recovery) or other methods of disposal.

Section 30. City Responsibilities. The SWU, acting under the supervision of the Engineering Director, will administer this Contract for and on behalf of the City. Subject to the provisions of Section 30(d):

(a) The City shall exercise Flow Control to direct all of the City's Waste to the Receiving Facility. The City's effective exercise of Flow Control over the Waste is critical to the performance of this Contract. The City agrees to exercise due diligence and take actions necessary to accomplish effective Flow Control. Such measures to be taken by the City include, but are not limited to, the following:

(i) Adopt a comprehensive Flow Control ordinance to direct all Waste to the Contractor's Receiving Facility and Landfill.

(ii) Establish a system of substantial penalties for failure to comply with the City's Flow Control requirements.

(iii) Seek the cooperation of nearby counties and cities in achieving the City's Flow Control objectives when there is an identified problem.

(iv) Pursue appropriate legal actions to obtain compliance with the City's Flow Control requirements in order to reimburse the Contractor out of payments and penalties recovered for tons diverted from the Receiving Facility, less the amounts owed to the City for its services and for the costs of bringing the legal action.

(v) Employ a Contract enforcement officer whose duties will include, among other things, ensuring that Waste is delivered to the Contractor's Receiving Facility and Landfill.

(vi) Authorize Contractor, by ordinance, on its own behalf or as the City's agent, to make a claim and bring suit directly against any person who violates the City's Flow Control ordinances and authorize recovery of an amount per ton, using the provisions of Sections 500, 520 and 530 of this Contract, for each ton not actually delivered to the Receiving Facility and recovery of amounts owed to the City for its services plus recovery of Contractor's costs, including witness fees and attorney fees, in detecting such diversion and in prosecuting the claim and suit for the violation. The City shall cooperate with the Contractor in pursuing such claim and suit.

(b) Notwithstanding the above, the City may, with the approval of the Contractor, divert a minimum amount of Waste for short periods of time for experimental purposes.

(c) The City is also responsible for furnishing all skill, labor, equipment, materials, supplies and services required to perform its obligations under this Contract; for transporting the City's residential waste to the Receiving Facility; for billing commercial haulers for Waste delivered to the Receiving Facility; for loading, marking and tracking containers as provided in Section 110; for providing annual updates of tonnage projections; for exercising due diligence in preventing Unacceptable Waste from being delivered to the Receiving Facility; for making payment to the Contractor in accordance with Part F of this Contract; for securing all governmental permits and licenses and regulatory approvals required for its own operations; and for complying with applicable federal, state and local laws and regulations.

(d) The City is not responsible for performance where an event beyond its reasonable control necessarily and unavoidably prevents performance of this Contract. Such events include: riots, wars, civil disturbances, insurrections, acts of terrorism, epidemics, landslides, volcanic eruptions,

earthquakes, lightning, floods, washouts, explosions, fires, condemnation, labor strikes (at facilities other than its own), lockouts by third parties, judicial injunctions or restraining orders and federal, state and local government orders that are not subject to reasonable cure by the City. If the City is unable to perform its obligations under this Contract as the result of the occurrence of any such event, then the obligations of the City and the Contractor are suspended during such period. The City shall exercise due diligence to resume performance as soon as practicable.

Section 40. Contractor Responsibilities.

(a) Subject to the provisions of Section 40(b), the Contractor is responsible for furnishing all skill, labor, equipment, materials, supplies, and utility services necessary to perform all services required by this Contract; for supplying the containers, Receiving Facility, Transportation Services, Landfill, and other property required by this Contract; for all actions and activities of its subcontractors or participants in its joint venture and of its own officers and employees; for supplying all records and information required by this Contract; for securing all governmental permits and licenses and required regulatory approvals (including those of general City ordinance); for paying all applicable taxes; and for complying with applicable federal, state and local laws and regulations.

(b) The Contractor is not responsible for performance where an event beyond its reasonable control makes both the primary and back-up systems unavailable, and necessarily and unavoidably prevents performance of this Contract. Such events include: riots, wars, civil disturbances, insurrections, acts of terrorism, epidemics, landslides, volcanic eruptions, earthquakes, lightning, floods, washouts, explosions, fires, condemnation, labor strikes (at facilities other than its own), lockouts by third parties, judicial injunctions or restraining orders and federal, state and local government orders that are not subject to reasonable cure by Contractor. If the Contractor is unable to perform its obligations under this Contract as the result of the occurrence of any such event, then the obligations of the Contractor and the City are suspended during such period. The Contractor shall exercise due diligence to resume performance as soon as practicable; provided, however, that if the Contractor is unable to perform for six months, then the City at its option may terminate this Contract.

Section 45. Contractor Representations and Warranties. For the purpose of inducing the City to enter into this Contract and engaging Contractor to perform the obligations and receive the payments provided for herein, Contractor represents and warrants to the City as follows:

(a) Organization and Qualification. The Contractor is duly

incorporated, validly existing and in good standing under the laws of the state of Washington, and has all requisite corporate power and authority to enter into and to perform its obligations under this Contract.

(b) Authority.

(i) The Contractor has the authority to execute this Contract, to make the representations and warranties set forth in it and to perform the obligations of Contractor under this Contract in accordance with its terms.

(ii) This Contract constitutes a valid and legally binding and enforceable obligation of Contractor.

(iii) Neither the execution of this Contract nor its performance by Contractor will conflict with or result in the breach of any instrument, restriction, covenant, agreement or other undertaking to which Contractor is a party or by which Contractor is bound, and does not violate or conflict with the Articles of Incorporation, or other charter documents or By-Laws of Contractor.

(iv) This Contract has been executed by all the officers of Contractor whose execution is required, and this Contract is valid and enforceable with respect to the obligations of Contractor to perform in accordance with its terms and conditions.

(c) Government Authorizations and Consents. The Contractor has or will obtain prior to the commencement date such licenses, permits and other authorizations from federal, state and other governmental authorities, as are necessary for the performance of its obligations under this Contract, and no other consent, approval or authorization of or declaration, registration or filing with any governmental or regulatory body is required to be obtained or made by Contractor as a prerequisite to its execution of this Contract or its performance of its obligations contemplated hereby.

(d) Compliance With Laws. The Contractor has received no notice that it is in violation of any applicable law, ordinance or regulation the consequence of which will or may materially affect Contractor's ability to perform its obligations under this Contract. The Contractor is not subject to any order or judgment of any court, tribunal or governmental agency which materially and adversely affects its operations or assets in the states of Washington or Oregon, or its ability to perform its obligations under this Contract.

(e) Accuracy of Information. None of the representations or warranties in this Contract, and none of the documents, statements, certificates or schedules furnished or to be furnished by Contractor pursuant hereto or in connection with the

performance of the obligations contemplated under this Contract, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements of fact contained therein not misleading.

(f) Independent Examination. In accepting these responsibilities, the Contractor represents and affirms that it has made its own examination of all conditions, facilities and properties affecting the performance of this Contract and of the quantity and expense of labor, equipment, material needed, and of applicable taxes, permits, and laws.

Section 50. City Representations and Warranties. For the purpose of inducing the Contractor to enter into this Contract and engaging Contractor to perform its obligations, the City represents and warrants to the Contractor as follows:

(a) Organization and Qualification. The City is a municipal corporation and has all requisite corporate power and authority to enter into and to perform its obligations under this Contract.

(b) Authority.

(i) The City has the authority to execute this Contract, to make the representations and warranties set forth in it and to perform the obligations of the City under this Contract in accordance with its terms.

(ii) This Contract constitutes a valid and legally binding and enforceable obligation of the City.

(iii) Neither the execution of this Contract nor its performance by the City will conflict with or result in the breach of any instrument, restriction, covenant, agreement or other undertaking to which the City is a party or by which the City is bound, and does not violate or conflict with the City's Charter or ordinances of the City.

(iv) This Contract has been executed by all the officers of the City whose execution is required, and this Contract is valid and enforceable with respect to the obligations of the City to perform in accordance with its terms and conditions.

(c) Government Authorizations and Consents. The City has such licenses, permits and other authorizations from federal, state and other governmental authorities, as are necessary for the performance of its obligations under this Contract, and no consent, approval or authorization of or declaration, registration or filing with any governmental or regulatory body is required to be obtained or made by the City as a prerequisite to its execution of this Contract or its performance of its

obligations contemplated hereby.

(d) Compliance With Laws. The City has received no notice that it is in violation of any applicable law, ordinance or regulation the consequence of which will or may materially affect the City's ability to perform its obligations under this Contract. The City is not subject to any order or judgment of any court, tribunal or governmental agency which materially and adversely affects its operations or its ability to perform its obligations under this Contract.

(e) Accuracy of Information. None of the representations or warranties in this Contract, and none of the documents, statements, certificates or schedules furnished or to be furnished by the City pursuant hereto or in connection with the performance of the obligations contemplated under this Contract, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements of fact contained therein not misleading.

Section 60. Ownership. All transportation equipment (including containers, rail cars, container moving equipment at the Receiving Facility, and any other equipment necessary for the receipt, transport, and unloading of the City's Waste) and all Landfill facilities and Landfill equipment required for performance of this Contract shall be owned, leased or contracted for by the Contractor.

Section 70. Operations Plan. By January 1, 1991, and updated regularly thereafter, the Contractor shall submit to the SWU a written plan developed by Contractor, in consultation with SWU, to ensure the efficient and timely implementation of this Contract, referred to as the "Operations Plan".

Work on this Operations Plan shall commence no later than one week after the date this Contract is executed and shall continue through commencement and ongoing performance of operations. Regular meetings between Contractor and SWU shall be required in the development of the Operations Plan. The frequency of these meetings will be mutually determined by the parties.

(a) The Operations Plan shall include a schedule and description of activities and procedures for:

(i) Designing and installing electronic systems used to record and communicate information about containers and their contents for the benefit of the Contractor and the City.

(ii) Coordinating the container information system with SWU's commercial billing system.

(iii) Pickup and delivery of containers at the Receiving Facility, including any container inspection

responsibilities.

(iv) Handling complaints or disputes about billing and service for which the Contractor or the City is responsible.

(v) Maintenance of Contractor-supplied equipment.

(vi) Assurance of a sufficient number of containers.

(vii) Computing turnaround times at the Receiving Facility and at the Public and Private Transfer Stations.

(viii) Carrying out all other obligations of the Contractor described in the Operating Specifications.

(b) The Operations Plan shall include current copies of the Contractor's:

(i) Operations Manual for the Primary Landfill;

(ii) Closure and Post-Closure Care Plan;

(iii) Primary Landfill operating permit;

(iv) Inventory of equipment required by Section 80;

(v) Special Waste Management Plan; and

(vi) Module 20 Development and Operations Plan.

Section 75. Coordination; Implementation.

(a) Following commencement of operations, representatives of the City and the Contractor shall meet on a monthly basis (or more or less frequently as the parties agree) to review and discuss day-to-day operations pursuant to the Operations Plan. Annually, on the anniversary of the commencement date, the Contractor shall submit to the SWU in writing a current version of the Operations Plan.

(b) The Contractor shall notify the SWU in writing of any change proposed to be made in the Operations Plan at least one week prior to the implementation of any such change. City approval of any change made by the Contractor in the Operations Plan shall be required when:

(i) The change would result in any increase in the amounts payable to the Contractor pursuant to this Contract;

(ii) The change would materially affect the cost, scope or type of the operations required at the Public and Private Transfer Stations and in the transportation of Waste to the Receiving Facility; or

(iii) There is a change in location of the Landfill or the Receiving Facility.

(c) Those changes in the Operations Plan requiring City approval may be approved by written order of the City so long as the change is within the general scope and intent of the Contract. Such change in work requiring City approval shall not commence unless and until agreement has been reached and a written order has been signed by both the City and the Contractor.

Section 80. Inventory of Equipment. By March 1, 1991, the Contractor shall provide the SWU an inventory showing all equipment to be used for performing work under this Contract, including each container, chassis, rail car, container lift truck at both the Receiving Facility and the unloading facility, and each hydraulic tipper (type, capacity, approximate age). Such inventory shall be a component of the Operations Plan. The Contractor shall attach to such inventory a copy of each Contract, lease, or other document that encumbers or limits the Contractor's interests in such property. The Contractor may change equipment from time to time and shall within one week of each such change revise the inventory and the attachments thereto. The Contractor shall maintain equipment during the performance of work under this Contract at least equal in operating capability to that described in the inventory.

Section 85. Contractor's Office. The Contractor shall maintain an office with telephone service and such staff as needed to address complaints and to coordinate with the SWU. The Contractor's office will be equipped with a "FAX," electronic data interchange (EDI), or other comparable technology, to facilitate the exchange of documents between the Contractor and the City. Office hours shall be 8:00 a.m. to 5:00 p.m., Monday through Friday, except holidays. The SWU may require that the Contractor be open for additional hours when necessary for particular events or circumstances. Contractor shall provide a contact person at all times except Christmas, New Year's, and Thanksgiving Days.

Section 90. Transfer of Title to Waste. Transfer of title to acceptable Waste from the City to the Contractor shall occur at the point in time when the Contractor assumes physical control of such waste at the Receiving Facility, i.e., when the Contractor lifts the container from the chassis of the transfer vehicle. The Contractor shall identify and segregate Unacceptable Waste at the Landfill. Title to Unacceptable Waste does not transfer to the Contractor.

B. CONTAINERS

Section 100. Containers.

(a) The Contractor shall supply and maintain at all times throughout the term of the Contract a sufficient number of containers to accommodate the shipment of the City's Waste. This requirement shall include a sufficient number of containers for loading at the Public and Private Transfer Stations, storage of loaded containers at the Receiving Facility, and shipment of the containers to and from the Landfill. The Contractor shall also provide a sufficient number of containers to ensure 20-minute turnaround of each transfer vehicle as described in the Operating Specifications.

(b) The containers shall be capable of carrying loads up to 32 tons and be constructed and sealed so as to prevent leakage of solid or liquid waste during storage and transport.

(c) The Contractor shall sweep and/or wash each container, both internally and externally, as frequently as necessary to avoid public nuisance.

Section 110. City Responsibilities for Containers. The City has these functions with regard to loading, marking and tracking containers:

(a) At the Public Transfer Stations, the City shall load each container with a minimum of 25 tons of compacted Waste, seal it with a cargo security seal, and prepare a bill of lading, which it will then send to the Receiving Facility via "FAX," electronic data interchange (EDI), or a similar means. The City will then dispatch the container on a transfer vehicle to be delivered to the Receiving Facility.

(b) The City shall allow the Contractor access to the Public Transfer Stations to spot monitor the loading process. The City shall spot monitor the loading process at the Private Transfer Stations.

(c) Each container shall be held by the Public or Private Transfer Station for a maximum of 24 hours, except that the hours between 8:00 p.m. Friday and 6:00 a.m. Monday shall not count against the maximum time any container may be held. If the City or one of the Private Transfer Stations holds a container longer than 24 hours, the City shall pay to the Contractor a rent of \$1.50 per hour for the additional time the container is held.

(d) The City shall use reasonable care in the handling of containers and shall be responsible for repair or replacement of containers if the City damages or destroys a container through its own negligence. The Contractor is responsible for ordinary

wear and tear of the containers.

(e) The City shall bill commercial haulers for service and shall direct them to load, mark, seal, and deliver containers in a manner consistent with the provisions of subsections (a), (b), (c) and (d) above.

Section 120. Contractor Responsibilities for Billing System. The Contractor shall provide an electronic billing and container tracking system as described in the Operating Specifications. By March 1, 1991, the Contractor shall supply to the City three personal computer units and modems to use in tracking containers and recording the weight and origin of each full container for the purpose of proper billing. The City shall be responsible for the maintenance and replacement of such computer equipment. The Contractor shall also provide to City personnel training required to properly operate such system. The Contractor shall ensure that the system developed for these purposes will be compatible with SWU's commercial billing system.

C. RECEIVING FACILITY

Section 200. Receiving Facility. The Contractor shall provide capacity at and access to the Receiving Facility for delivery and receipt of the City's Waste. The Receiving Facility shall meet the following requirements:

(a) Subject to the provisions of Section 75(b) above, the facility shall be located in the City or within three miles of the City boundaries;

(b) The facility shall have capacity to store the number of containers necessary to ensure that upon the delivery of each full container an empty container can be carried back to the transfer station;

(c) The facility shall be open to vehicles hauling containers from the Public and Private Transfer Stations for the period required by SWU, up to 24 hours daily, except the facility may be closed on Thanksgiving Day, Christmas Day and New Years Day.

The Contractor's Receiving Facility services pursuant to this Contract are described in the Operating Specifications.

Section 210. Contractor Responsibilities at the Receiving Facility. The Contractor shall provide the skill, labor, equipment, materials and supplies at the Receiving Facility necessary to unload transfer vehicles, to load containers onto the rail cars or other means of conveyance, and to provide an empty container to each departing transfer vehicle. The Contractor may also provide other Waste-handling services at the

Receiving Facility such as compaction and processing of Waste. The Contractor shall process a bill of lading from each incoming transfer vehicle, record the source of the Waste (i.e., designated Public or Private Transfer Station), and bill the City monthly for all Waste received at the facility. The Contractor shall operate the Receiving Facility in compliance with all applicable laws, regulations, and permits.

Section 220. Back-up Receiving Facility.

(a) In the event the Primary Receiving Facility is unable to receive Waste for any reason (including the occurrence of an event described in Section 40(b) at the Primary Receiving Facility, or to enable the Contractor to achieve short-term operational and environmental benefits at the Primary Receiving Facility), the Contractor shall provide access to the Back-up Receiving Facility and shall provide the services enumerated in Section 210 at the Back-up Receiving Facility at no additional cost to the City until service is restored at the Primary Receiving Facility.

(b) In the event of an emergency which, in the reasonable opinion of the Contractor, requires immediate use of the Back-up Receiving Facility, the Contractor shall utilize the Back-up Receiving Facility and notify the SWU orally and subsequently in writing of the reasons for and the anticipated duration of such emergency use. Such emergency use of the Back-up Receiving Facility shall be deemed approved by the City unless the City responds in writing, within 72 hours of receipt of the Contractor's written notice, indicating that consent is denied by the City.

D. TRANSPORTATION SERVICES

Section 300. General Scope of Transportation Services.

(a) The Contractor shall provide transportation from the Receiving Facility to the Landfill for all of the City's Waste. The Contractor shall supply, operate, maintain, repair, and replace the containers, chassis, and rolling stock, or other means of conveyance, as necessary, to ensure sealed and litter-free transportation of the City's Waste to the Landfill. Except for supplying the containers, the Contractor shall have no responsibility for the means of conveying Waste from the Public or Private Transfer stations to the Receiving Facility. The Contractor's Transportation Services are described in the Operating Specifications.

(b) Subject to the provisions of Section 40(b), nothing in this Contract shall relieve the Contractor from providing an operational transportation system that will move Waste from the Receiving Facility to the Landfill in conformity with all

applicable local, state, and federal laws and regulations.

(c) In the event of a labor dispute affecting rail operations, the rail transportation of the City's Waste shall be accomplished using a priority train, which shall be operated by railroad management personnel.

Section 310. Contractor Responsibilities for Transportation. The Contractor shall haul all loaded containers delivered to the Receiving Facility to the unloading facility at the Landfill and haul empty containers from the unloading facility back to the Receiving Facility in the manner described in the Operating Specifications. The schedule for hauling shall be sufficiently frequent to avoid a public nuisance at the Receiving Facility. The Contractor shall not haul the City's Waste by truck through the Columbia River Gorge National Scenic Area.

Section 320. Back-up Transportation. In the event the Contractor is unable to transport Waste for any reason using the Primary Transportation Services, the Contractor shall provide Back-up Transportation Services and shall provide the services enumerated in Section 310 at no additional cost to the City until service is restored in the Primary Transportation Services.

Section 330. Backhaul.

(a) The Contractor is entitled to use the containers for the transportation of other commodities and products, on all or part of the rail trip from the Receiving Facility to the Landfill or from the Landfill to the Receiving Facility, with the exception of food products intended for human consumption, commodities and products which are radioactive, dangerous, hazardous or extremely hazardous, unless approved in writing by the Engineering Director.

(b) If the Contractor uses the containers for such transportation, the Contractor shall pay to the City an amount equal to fifty percent (50%) of the net revenue paid the Contractor for such transportation of commodities and products multiplied by a fraction equal to the proportion that City Waste bears to the tonnage of waste being transported by the City and Partners combined.

E. LANDFILL SERVICES

Section 400. General Scope of Landfill Services. The Contractor shall design, construct and provide capacity at the Primary Landfill for all of the City's Waste and provide for the design, construction and use of all necessary facilities at the site. The Contractor shall operate, maintain and close the Landfill according to the terms of this Contract and the description of the Contractor's disposal services set forth in the Operating Specifications. Subject to the provisions of Section 40(b), nothing in this Contract shall relieve the Contractor from providing capacity in an operational Landfill in conformity with all applicable local, state, and federal laws and regulations.

Section 410. Contractor Responsibilities at the Unloading Facility. At the Landfill, the Contractor shall provide the skill, labor, equipment, material and supplies to unload the containers from the rail car or other means of conveyance and to transport them to and unload them at the Landfill face. The unloading facility and operations shall be consistent with all applicable laws, regulations, and permits.

Section 420. Back-up Landfill.

(a) In the event the Primary Landfill is unable to receive Waste for any reason (including the occurrence of an event described in Section 40(b) at the Primary Landfill or to enable the Contractor to achieve short-term operational and environmental benefits at the Primary Landfill), the Contractor shall provide access to the Back-up Landfill at no additional cost to the City until service is restored at the Primary Landfill. The Back-up Landfill shall be employed for the disposal of the City's Waste only with the City's prior approval. All provisions of this Contract shall apply at the Back-up Landfill as well as at the Primary Landfill except that the capacity of such facility shall be limited as described in the Operating Specifications.

(b) In the event of an emergency which, in the reasonable opinion of the Contractor, requires immediate use of the Back-up Landfill, the Contractor shall utilize the Back-up Landfill and notify the SWU orally and subsequently in writing of the reasons for and the anticipated duration of such emergency use. Such emergency use of the Back-up Landfill shall be deemed approved by the City unless the City responds in writing within 72 hours of receipt of the Contractor's written notice indicating that consent is denied by the City.

Section 430. Eastern Washington Landfill Option.

(a) The City shall have the option, subject to the provisions below, to dispose of the City's Waste at the Eastern Washington Landfill commencing on January 2, 1995.

(b) The Contractor shall do the following by December 31, 1993:

(i) Cause the project Final Environmental Impact Statement (EIS) for transportation and disposal at the Eastern Washington Landfill to be completed and issued;

(ii) Obtain from the applicable jurisdictions the required land use permits (excluding the health district operating certificate and building and grading permits) for the Eastern Washington Landfill; and

(iii) Notify the City in writing of the completion of the tasks in subsection (i) and (ii) above and of the reasonable and necessary costs incurred by the Contractor for such tasks, including the cost of design, preparation of the EIS, and legal and consultant fees (hereafter the "Contractor's Development Costs").

(c) The City, within 120 days of receipt of written notification from the Contractor as provided in subsection (b)(iii) above, shall elect whether to transport and dispose of its Waste at the Eastern Washington Landfill. If the City fails to notify the Contractor in writing of its election within the 120-day time period, the City will be deemed to have rejected the option to use the Eastern Washington Landfill.

(d) If the City elects to transport and dispose of its Waste at the Eastern Washington Landfill, the Contractor shall construct the Eastern Washington Landfill to meet the requirements of Section 440 of this Contract. The Eastern Washington Landfill shall be ready for receipt of City Waste by January 2, 1995. The base prices for transportation and disposal at the Eastern Washington Landfill are set forth in Section 500(a).

(e) If, at any time prior to the Contractor providing written notice to the City pursuant to subsection (b)(iii) above, the City notifies the Contractor in writing of its decision to reject the Eastern Washington Landfill option, the City shall be responsible for only that portion of the Contractor's Development Costs incurred prior to the receipt of notice by the Contractor of the City's rejection of the option.

(f) If, the City rejects the Eastern Washington Landfill option, the City shall:

(i) Continue to pay the base prices for transportation and disposal specified in Section 500(a) for the Primary Landfill; and

(ii) Pay the Contractor's Development Costs, or that portion incurred prior to the City's rejection pursuant to subsection (e) above, in an amount not to exceed \$3.5 million; provided, that in either event, the City's payment shall be reduced by an amount equal to the ratio of the tons of Waste actually disposed of at the Eastern Washington Landfill by other entities divided by the City's tons actually disposed of at the Primary Landfill during the four year period following January 2, 1995.

(g) The City's payment of its share of the Contractor's Development Costs shall be made by monthly installment in the following manner:

(i) Thirty days following the City's rejection of the Eastern Washington Landfill option, the Contractor shall provide the City with a statement, supported by invoices and other documents necessary to show the Contractor's Development Costs, together with the Contractor's estimate of the pro-rata reduction in such costs to which the City will be entitled as a result of commitments from other entities to dispose of Waste at the Eastern Washington Landfill prior to January 2, 1999;

(ii) The City shall commence payment on January 2 of the year following such rejection with monthly payments equal to the City's share of the Contractor's Development Costs estimated by the Contractor to be owed by the City, divided by the number of months from such starting payment date until January 2, 1999;

(iii) If, at any time during the period of the City's payment pursuant to this Section, the Contractor's estimate of the pro-rata reductions in costs paid by the City changes, the Contractor shall notify the City (including a description of the reasons for such change) and the City shall adjust its future monthly payments accordingly (increased or decreased) starting January 2 of the year following such notification by the Contractor;

(iv) On March 2, 1999, the Contractor shall provide the City with a final accounting showing the amount of the Contractor's Development Costs owed by the City pursuant to this Section, including the actual tons of the City's Waste delivered to the Landfill, the actual tons of Waste delivered to the Eastern Washington Landfill by other entities, and the amounts paid by the City to the Contractor;

(v) If the final accounting shows that the City has paid more than its obligated pro-rata share, the City shall be entitled to a reduction in each of its next nine monthly payments made pursuant to Section 500 of the Contract equal to the total amount of the City's overpayment divided by nine;

(vi) If the final accounting shows that the City has

paid less than its obligated pro-rata share, the City shall pay the additional amount owed by adding an amount to each of its next nine monthly payments made pursuant to Section 500 of the Contract equal to the total balance owed by the City divided by nine.

(h) Any dispute over the amount owed by the City pursuant to subsection (f)(ii) above shall be submitted to binding arbitration in accordance with the provisions of Section 930 of this Contract.

(i) If the Contractor does not or is unable to provide an Eastern Washington Landfill meeting the standards of Section 440 of this Contract and available for commencement of services on January 2, 1995, the Contractor shall pay the City liquidated damages in accordance with the provisions of Section 860(e) below so long as the Eastern Washington Landfill is unavailable.

Section 440. Environmental, Closure and Other Requirements. The following environmental, closure and other requirements shall apply to the disposal of Waste:

(a) The Contractor shall design, construct and provide Landfill capacity at the Landfill that meets, at a minimum, the requirements of Washington State's minimum functional standards for Landfills in non-arid regions. In addition, the Contractor shall monitor the vadose zone for leachate in addition to groundwater monitoring, and the Contractor shall provide a plan to care for the Landfill for 30 years post-closure, instead of the undefined limit in the minimum functional standards. The Contractor shall not commingle the City's Waste with ash residue waste from incineration.

(b) The Contractor shall meet all applicable federal, state and local operator certification requirements throughout the term of this Contract.

(c) The Contractor shall close the Landfill and perform post-closure care as described in the Operating Specifications. In consideration for the price paid by the City for the high standards of environmental design and for post-closure care, the City will not be a party to post-closure care. The Contractor and the Guarantor, through its Guarantee, shall bear full financial responsibility for closure and post-closure care, and shall defend, indemnify and save harmless the City from closure and post-closure responsibilities.

(d) The Contractor shall provide the City assurance that adequate financial resources are available for closure and post-closure care during the life of the Contract and for 30 years post-closure. The form and amount of such assurance shall be determined as follows:

(i) In its Closure and Post-closure Care Plan, the Contractor shall estimate the maximum area of the Landfill that would require closure during the current Landfill operating permit. The Contractor shall estimate the reasonable costs of closure and post-closure care for such area.

(ii) To provide the City assurance that adequate financial resources are available for closure and post-closure care of the area already closed and the maximum area of the Landfill that would require closure during the current Landfill operating permit, the Contractor shall provide one of the following:

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

The assurance shall be in a form and issued by an institution approved by the City. The assurance instrument shall state that its purpose is to provide funds to complete closure and perform post-closure care pursuant to the Closure and Post-closure Care Plan. The assurance shall be renewed whenever the Landfill permit is renewed or reissued and the Closure and Post-closure Care Plan is revised.

(e) As an alternative to providing one of the forms of assurance described in subsection 440(d)(ii), the Contractor may provide a guarantee that closure and post-closure care will be completed according to its Closure and Post-closure Care Plan and operating permit if Contractor satisfies the financial criteria in either of the subsections below:

(i) The Contractor must demonstrate that the Guarantor has all of the following:

1) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; or a ratio of current assets to current liabilities greater than 1.5.

2) Net working capital and tangible net worth each at least six times the sum of the estimated closure and post-closure costs.

3) Assets in the United States amounting to at least 90 percent of its total assets or at least six times the sum of the estimated closure and post-closure costs.

(ii) Alternatively, the Contractor must demonstrate

that the Guarantor has all of the following:

1) A current rating of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Bbb as issued by Moody's.

2) Tangible net worth at least six times the sum of the estimated closure and post-closure costs.

3) Assets in the United States amounting to at least 90 percent of its total assets or at least six times the sum of the estimated closure and post-closure costs.

(f) The Contractor shall submit to the City copies of all documents applicable to Contractor's Landfill submitted to or received from any federal, state or local environmental agencies, including annual reports, operation plans, closure and postclosure plans, results of groundwater and vadose zone monitoring and inspection reports.

Section 450. Unacceptable Waste. Waste delivered to the Receiving Facility shall be in compliance with all applicable federal, state, and local environmental health laws, rules, or regulations. The Contractor shall provide and maintain at all times a Waste Screening Program at the Landfill, as described in the Operating Specifications, to identify and segregate Unacceptable Waste. Upon notice from the Contractor of any violation of this provision, the City shall take immediate steps to remedy such violation to the reasonable satisfaction of the Contractor and/or receiving jurisdiction, which steps may include, without limitation, removing the Unacceptable Waste or disposing of it at an approved facility or directing the Contractor to dispose of the Unacceptable Waste at an approved facility owned by Waste Management, Inc. or Waste Management of North America, Inc. The price for this service, when performed by the Contractor, shall be set by a rate schedule filed with the Engineering Director by the Contractor. Rates shall be reasonable and may be changed from time to time by the Contractor to reflect cost increases or decreases. The Engineering Director may disapprove a rate deemed unreasonable within thirty days of Contractor filing such rate schedule. In the event of such disapproval, the Engineering Director shall identify and approve an alternative facility for disposal of Unacceptable Waste by the City, and direct the Contractor to arrange for the transportation of the Unacceptable Waste to the approved facility for disposal.

The Contractor shall bill the City for the costs of following the City's directions.

F. PAYMENT

Section 500. Payment. The City shall pay the Contractor monthly for performance of this Contract an amount derived by computing the amounts in subsections (a) and (b) below (all figures shown in 1989 dollars):

(a) Base Price. The following base amount per ton for each ton of Waste delivered to the Receiving Facility (subject to the annual adjustment in Section 520):

<u>Tons</u>	<u>Base Price (Per Ton)</u> <u>(1989 Dollars)</u>	
	<u>Columbia</u> <u>Ridge</u>	<u>E. Wash</u>
Less than 450,000 tons per year	\$36.67	\$34.40
450,000 tons per year or more	\$35.90	\$31.38
525,000 tons per year or more	\$35.65	\$31.19
600,000 tons per year or more	\$35.40	\$30.99
800,000 tons per year or more	\$35.15	\$30.79
1,000,000 tons per year or more	\$34.90	\$30.59

For purposes of determining the City's base price per ton on the above schedule, the tonnage shall include the total tonnage of City Waste and Partner waste (as described in Section 510 below), if any, actually delivered to the Contractor in a calendar year.

For example, if the total tonnage of waste delivered in a particular calendar year by the City alone or with a Partner is 575,000 tons, the price to the City for each ton of City Waste delivered in that year shall be \$35.65 at the Columbia Ridge Landfill and Recycling Center or \$31.19 at the Eastern Washington Landfill (1989 Dollars). The monthly base price to the City shall be based on the forecast of the expected City and Partner waste tonnage made in accordance with Section 515. The Contractor shall bill the City for 25 tons for any container delivered with less than 25 tons.

(b) Other Payments. This Contract also contains the following provisions that may result in payment obligations by one of the parties in addition to the scheduled payment obligations described in subsection (a):

(i) recovery of payments for violation of the City's Flow Control Ordinance, Section 30(a);

(ii) rental for containers held longer than 24 hours, Section 110(c);

(iii) repair or replacement of containers damaged by negligence, Section 110(d);

(iv) revenue from rail backhaul, Section 330(b);

(v) payment of Contractor's Development Costs for Eastern Washington Landfill, Section 430(f);

(vi) costs for handling Unacceptable Waste, Section 450;

(vii) cost increases that are subject to pass-through to the City, Section 530;

(viii) costs for handling Special Waste, Section 610(b); and

(ix) liquidated damages, Section 860.

Section 510. Partnership Option.

(a) The Contractor or the City may contract with a Partner for the purpose of transporting and disposing of waste with the Contractor.

(b) In order for Partner waste volumes to be counted for purposes of determining the City's base price in Section 500, the Partner must:

(i) execute a transportation and disposal contract with Contractor within eight years of execution of this Contract; and

(ii) the Partner contract must be for a term of five years or more of service for transportation and disposal of waste with Contractor, using the same Transportation Services and Landfill as the City.

(c) The Contractor may negotiate, respond to requests for proposal or invitations to bid, and contract with a Partner for transportation and disposal services which use the same Transportation Services and Landfill as the City. In the event that the base price per ton contracted for by the Partner is less than the applicable base price per ton specified in Section 500(a) above for the City, the applicable base price paid by the City shall be reduced by an amount equal to fifty percent (50%) of the price difference. This adjustment shall be in addition to any change in the base price resulting from increased tonnage pursuant to the schedule in Section 500(a).

Section 515. Forecast of Waste Tonnage.

(a) On or before March 31, 1991, and on or before each March 31 thereafter during the term of this Contract, the SWU shall prepare and transmit to the Contractor a forecast of the City's Waste expected to be delivered to the Receiving Facility in such calendar year together with the City's basis for such forecast.

(b) On or before March 31, 1991, and on or before each March 31 thereafter during the term of this Contract, the Contractor shall prepare and transmit to the SWU a forecast of the Partner waste expected to be delivered to the Contractor in such calendar year together with the Contractor's basis for such forecast.

(c) For purposes of computing the total tonnage of waste and setting the City's estimated monthly base price in Section 500(a), the waste forecasts in subsections (a) and (b) shall be updated quarterly by the City and Contractor. The estimated monthly base price shall be recomputed quarterly and payment of such price shall commence on April 1, 1991, and recomputed each quarter thereafter during the term of this Contract.

(d) In the event that the total tonnage of City Waste and Partner waste actually delivered to the Contractor in any quarter falls in a different base price category in Section 500(a) than the forecasted tonnage, the Contractor shall recompute the base price owed by the City for such calendar year. If the City has overpaid, the Contractor shall credit the City for such overpayment in the invoices submitted to the City in the following quarter. If the City has underpaid, the Contractor shall add and collect such underpayments from the City through the invoices submitted to the City in the following quarter.

Section 520. Annual CPI Adjustments in Base Prices.

(a) The base prices for the first year of services under this Contract will be determined by converting the dollar amounts in Section 500(a) (shown in 1989 dollars) to the corresponding value for such first year (i.e., 1991) using the CPI adjustment described in subsection (c) below.

(b) After the first year of service, the SWU will annually adjust each of the base prices in Section 500(a) using the CPI adjustment described in subsection (c) below.

(c) The CPI adjustment (increase or decrease) shall be made annually to the base prices, effective April 1 of each year, by multiplying the base prices in the immediately preceding year by 100 percent (for Columbia Ridge Landfill) or 90 percent (for Eastern Washington Landfill) of the change in the "Consumer Price Index" (CPI) computed by the United States Department of Labor, Bureau of Labor Statistics, for the Seattle-Tacoma Metropolitan Area for Urban Wage Earners and Clerical Workers, or a successor

index produced by the United States. If the U.S. ceases to publish such an index for the Seattle-Tacoma area, then its index for the Puget Sound Region or the State of Washington shall be used, and if such indices are not available, a similar index proposed by another governmental agency shall be used.

Section 530. City and Contractor Responsibilities for Cost Increases.

(a) All wage increases, benefits or added costs resulting from changes in technology, labor practices, availability of equipment, and other business risks, except for changes in law, that may affect the performance of this Contract shall be to the Contractor's advantage or expense respectively. Added costs resulting from "change in law" shall be addressed as provided in this Section.

(b) The term "change in law" means any new or revised law, statute, rule, regulation and ordinance enacted by a federal, state or local government affecting the disposal or directed to the transportation of solid waste, but not affecting or directed to businesses generally, which becomes effective after the execution of this Contract.

(c) The City shall pay one hundred percent (100%) of Contractor's reasonable, actual increased costs of performing this Contract when such increased costs are directly attributable to changes in law by the federal government, the City, and local governments along the Contractor's designated transportation routes that increase the cost of Contractor's performance of this Contract or the performance of its subcontractors, employees, or agents.

(d) The City shall pay ninety-four percent (94%) and the Contractor shall pay six percent (6%) of Contractor's reasonable, actual increased costs of performing this Contract when such increased costs are directly attributable to changes in law by the State of Washington that increase the cost of Contractor's performance of this Contract or the performance of its subcontractors, employees, or agents; provided, however, that the Contractor's share of such increased costs in any year shall be limited to an amount equal to fifty cents (\$.50) per ton of the City's Waste tonnage delivered to the Receiving Facility in that year (with such fifty cent cap being increased on April 1st of each year following commencement of operations by an amount equal to forty-five percent (45%) of the annual CPI adjustment computed in accordance with Section 520 of this Contract) and the City shall pay the remainder of such increased costs above the cap.

(e) The City shall pay fifty percent (50%) and the Contractor shall pay fifty percent (50%) of Contractor's reasonable, actual increased costs of performing this Contract when such increased costs are directly attributable to changes in law by the State of Oregon that increase the cost of Contractor's

performance of this Contract or the performance of its subcontractors, employees, or agents.

(f) The City shall not pay the Contractor for any cost increases directly attributable to changes in law by the local government jurisdictions hosting the Landfill.

(g) The Contractor shall pay for those actual increased costs of performing this Contract directly attributable to changes in law that are not the responsibility of the City pursuant to this Section.

(h) Reimbursement to the Contractor under this Section shall be allowed only for costs incurred, whether for capital, operational or maintenance purposes, to ensure compliance with the change in law and with the terms of this Contract in a reasonable and cost-effective manner.

(i) The Contractor shall notify the City of anticipated cost increases required as a result of a change in law in advance of making such expenditures, including a general description of such changes in law and the estimated costs. The purpose of this notice is to provide the City with early warning of potential City obligations for such cost increases and to provide the City an opportunity to evaluate and comment, at the earliest practicable time, on the reasonableness of such cost increases.

(j) Upon incurring an increased cost of performing this Contract, Contractor shall submit to the City the following documentation to explain the cost increase:

1) identification of the change in law causing the cost increase;

2) narrative description of reasons for incurring the cost increase as a result of the change in law;

3) if applicable, a proposed schedule for the City's monthly amortization or payment of such cost increase over a period equal to the expected useful life of the improvement, expressed in terms of: first payment date; termination date, if applicable; amount of monthly payment, including interest where Contractor financing is required;

4) where such costs benefit other jurisdictions or entities delivering solid waste to the Contractor's Receiving Facility or Landfill, an allocation of such costs between the City and such other entities; and

5) invoices for all materials, labor, services, taxes, surcharges, fees and other increased costs.

(k) The City shall commence payment of the increased costs attributable to change in law in the third full month following

receipt of Contractor's submittal of documentation in support of such cost increase. In the event of the City's disagreement over the amount of such cost increase, the City shall notify the Contractor in writing, within forty-five (45) days of receipt of Contractor's submittal, of the amount in dispute and the reasons for such disagreement by the City. The Contractor shall respond to the City in writing within fifteen (15) days of receipt of the City's statement of disagreement. In the event of continued disagreement, the City shall commence monthly payment of the amounts not disputed and the disputed amounts shall be submitted to binding arbitration in accordance with the provisions of Section 930 of this Contract.

(l) The Contractor and the City shall cooperate, in good faith, in protecting against arbitrary or unreasonable changes in Washington or Oregon State law affecting the cost of Contractor's or the City's performance under this Contract.

(m) The cost increases which are subject to pass-through to the City pursuant to this Section shall not be subject to any CPI adjustment.

Section 540. No "Put or Pay." This is not a "put or pay" Contract. There is no minimum tonnage that the City is required to deliver to the Contractor under this Contract, even if the tonnage actually delivered is lower than the amounts forecasted by the City for any given year. The City reserves the right to recycle any part of the Waste stream pursuant to the definition of Recycling in Section 25, above.

Section 550. Timing of Payment. The Contractor shall supply to the City on or before the tenth working day of each month the number of tons, and where applicable, the number of containers, received at the Receiving Facility in the preceding month, including the actual weight of each loaded container, from both the Public and Private Transfer Stations. This information will then be used to calculate payments to the Contractor. The City will calculate payments due the Contractor and shall make payment to the Contractor for the previous month's work within fifteen working days following receipt of the previous month's tonnage and container figures.

Section 560. Withholding and Payment of Tax Liens and Judgments.

In the event property owned by the City is subject to a lien filed by the Internal Revenue Service or the Department of Revenue, or a writ of garnishment, attachment, or execution, or an order of a bankruptcy court, or a court judgment, which arises from debts due from the Contractor, the City may withhold and pay the amount of any such debts to the party for whose benefit the lien, writ, order or judgment has been obtained. At such time as the City becomes subject to any such lien, writ, order or judgment, the City may, at its election, institute the interpleader proceedings under applicable federal or state law.

The City may, at its election, make direct payment of a lien, writ, order or judgment against the Contractor in any manner provided by law. Payments so made pursuant to this Section shall be credited in full toward the amount of any payment otherwise due the Contractor by the City.

G. SPECIAL WASTE; CDL WASTE

Section 600. Contractor Responsibilities for Special Waste and CDL Waste.

(a) The Contractor shall provide: a sufficient number of containers to accommodate the shipment of the City's Special Waste and CDL Waste; capacity at and access to the Receiving Facility and Special Waste Receiving Facility for delivery and receipt of the City's Special Waste and CDL Waste; transportation from the Special Waste Receiving Facility and Receiving Facility to the Landfill for the Special Waste and CDL Waste delivered to the Special Waste Receiving Facility or Receiving Facility; and capacity at the Primary Landfill for the Special Waste and CDL Waste transported to the Landfill. In the event the Special Waste Receiving Facility, Primary Transportation Services, or Primary Landfill are unavailable, the Contractor shall provide the Back-up Receiving Facility, Back-up Transportation Services and Back-up Landfill until service is restored in the Primary Facilities. The Contractor's Special Waste and CDL Waste services are described in the Operating Specifications.

(b) The Contractor shall be prepared to receive the City's Special Waste and CDL Waste at its Special Waste Receiving Facility and Receiving Facility commencing April 1, 1991.

(c) The Contractor shall directly collect charges for or, at Contractor's option, bill all persons who deliver Special Waste and CDL Waste to its Special Waste Receiving Facility and Receiving Facility.

Section 610. City Responsibilities for Special Waste and CDL Waste.

(a) The City is not required to exercise Flow Control to direct the City's Special Waste and CDL Waste to the Contractor's Special Waste Receiving Facility and Landfill. The City reserves the option to exercise such Flow Control in the future to direct Special Waste and CDL Waste to the Contractor or to another facility.

(b) In the event that Special Waste, in sufficient quantities as to require special handling, is mixed with the City's Waste, the City shall be responsible for payment of the Contractor's prices for transportation and disposal of such Special Waste as currently posted in the Operations Plan.

Section 620. Termination. If, in the future, the City elects to direct its Special Waste to an entity other than the Contractor, the Contractor's obligations in this Contract for handling Special Waste shall expire. If, in the future, the City elects to direct its CDL Waste to an entity other than the Contractor, the Contractor's obligations in this Contract for handling CDL Waste shall expire.

Section 630. Prices; Notification to City.

(a) The Contractor shall establish and post at the Special Waste Receiving Facility and Receiving Facility its prices for the transportation and disposal of Special Waste and CDL Waste. At least 60 days prior to a price change for such services, the Contractor shall post the proposed price change at the Special Waste Receiving Facility and Receiving Facility and notify SWU of such price change.

(b) The Contractor shall report to the City annually on the volumes of City and non-City Special and CDL Waste handled by the Contractor at its Special Waste Receiving Facility and Receiving Facility.

Section 640. Title to Special Waste. Transfer to the Contractor of title to Special and CDL Waste shall occur at the point in time such waste is received by the Contractor at its Receiving Facility or Special Waste Receiving Facility subject to the restrictions and conditions specified by the Contractor in writing from time to time and incorporated in the Special Waste Management Plan in the Operations Plan, and posted at the Special Waste Receiving Facility.

H. EQUAL OPPORTUNITY/NON-DISCRIMINATION

Section 700. Equal Employment Opportunity. The Contractor shall not discriminate against any employee or applicant for employment because of race, religion, creed, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupational qualification. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental, or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause.

Section 710. Equal Employment Opportunity - Implementation.

(a) The Contractor shall obtain in writing from each subcontractor or participant in a joint venture an affirmative action policy or program and retain such written policy or program for inspection by the Seattle Human Rights Department.

(b) The Contractor and each subcontractor or joint venturer performing work under this Contract shall prepare for and submit monthly to the City's Human Rights Department reports that document compliance with the provisions of Section 700 (SMC 20.44.030). All reports shall be in such form as may be specified by the Human Rights Department.

(c) The Contractor shall be responsible for the compliance of subcontractors or joint venturers. The sanctions described in this Section for noncompliance may be imposed on the Contractor. The requirements for the Contractor apply to subcontractors, regardless of tier. The Contractor's responsibility includes obtaining equal employment opportunity documentation from subcontractors or joint venturers and reviewing the same as to validity and compliance. The Contractor shall submit such documentation concurrent with the Contractor's own submittals.

(d) The Contractor will, prior to commencement and during the term of this Contract, furnish to the Director of Human Rights (as used herein "Director" means the Director of the Human Rights Department or his/her designee) upon his/her request

and on such form as may be provided by the Director therefor, a report of the affirmative action taken by the Contractor in implementing the terms of these provisions, and will permit access to his/her records of employment, employment advertisements, application forms, other pertinent data and records requested by the Director for the purposes of investigation to determine compliance with this provision. If, upon investigation, the Director finds probable cause to believe that the Contractor has failed to comply with any of the terms of these provisions, the Contractor and the Engineering Director shall be so notified in writing. The Engineering Director shall give the Contractor an opportunity to be heard, after ten days' notice. If the Engineering Director concurs in the findings of the Director, the Engineering Director may suspend this Contract and/or withhold any funds due or to become due to the Contractor, pending compliance by the Contractor with the terms of these provisions. Failure to comply with any of the terms of these provisions shall be a material breach of this Contract.

(e) The foregoing provisions will be inserted in all subcontracts for work covered by this Contract.

I. SECURITY; LIABILITY; DAMAGES

Section 800. Performance and Payment Bond.

(a) The Contractor shall provide and maintain at all times a valid Contractor's Performance and Payment Bond (hereafter "Bond") in an amount equal to one hundred percent (100%) of the estimated annual City payments to the Contractor for the one-year period following initial issuance. The amount of the Bond shall thereafter be adjusted for each subsequent year to an amount equal to one hundred percent (100%) of the estimated annual City payments to the Contractor for the upcoming year as such payments are adjusted pursuant to Section 520. The Bond shall be issued for a period of not less than one year and the Contractor shall provide a new Bond, or evidence satisfactory to the City of its bond renewability at least 60 calendar days before the Bond then in effect expires.

(b) The Bond shall be for the use and benefit of the City, with a surety company authorized to do business in the State of Washington and acceptable to the City. Said Bond shall cover Contractor's and Guarantor's failure to faithfully perform all of the provisions of this Contract and pay all laborers, mechanics, subcontractors, materialmen and all persons who shall supply such Contractor or subcontractors with provisions and supplies for the performance of this Contract, and shall also benefit any person(s) performing such work or services. 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 800. This Bond shall

obligate the surety to undertake or cause to be undertaken the work required to be performed pursuant to this Contract for the term of the Bond. Such Bond shall be submitted to and subject to approval of the City Attorney's Office prior to its effective date. The Bond must be in effect prior to April 1, 1991.

(c) Failure of the Contractor to furnish and maintain said Performance and Payment Bond or, if necessary, other functionally equivalent security acceptable to the City shall be considered a material breach of this Contract and grounds for termination at the option of the City.

Section 810. Default of Contractor.

(a) The City may declare the Contractor to be in default of the Contract in the event the Contractor and the Guarantor:

(i) Fail to adequately perform the transportation and/or disposal services required by this Contract and such failures are of at least three working days' duration each and occur three or more times during a twelve-month period;

(ii) Neglect, fail, or refuse to comply with a material term of this Contract; or

(iii) Abandon the work. For the purposes of this Section, the work shall be considered abandoned if, for a period of three consecutive days, the Contractor completely fails to perform any of its obligations under this Contract, the City has reasonable grounds to believe the Contractor has abandoned the work, and the Guarantor has not taken reasonable steps to assume or perform the Contractor's obligations.

(b) If the City intends to seek a declaration of default, the City shall first provide the Contractor, the Guarantor and the Contractor's surety written notice specifying the nature of the alleged default(s). For defaults declared under either subparagraph (a)(i) or (ii) of this Section, the Contractor, the Guarantor and its surety shall have fifteen days from the date of receipt of the default notice to cure or take reasonable steps to commence cure of the alleged default(s). For defaults declared under subparagraph (a)(iii) of this Section, the Contractor, the Guarantor and its surety shall have two days from the date of receipt of the default notice to cure, take reasonable steps to commence cure of the alleged default(s), or to contest in written reply to the City the declaration of default for abandonment. If the Contractor timely contests such declaration of default for abandonment, the Contractor, Guarantor and its surety shall have ten days from the date of receipt of such default notice to cure or take reasonable steps to commence cure of the alleged default(s).

(c) If the Contractor, the Guarantor and the

Contractor's surety each fail to cure or to commence cure within the required time after receipt of the default notice, the City may, subject to the surety's rights under the Bond, declare the Contractor to be in default. The City shall provide written notice of the declaration of default to the Contractor, the Guarantor and the Contractor's surety. On declaration of default, the City may proceed to take over some or all of the work to the extent provided in Section 820. If the Contractor, the Guarantor or the Contractor's surety contests the declaration of default, the contestant and the City 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, the Guarantor or the Contractor's surety may, prior to the filing of any judicial action, request a show cause hearing before the Engineering Director. The contestant shall provide written notice of its intent to contest the declaration of default within seven calendar days of receiving the declaration of default. Failure to provide such written notice shall constitute a waiver of any defense to the declaration of default if the notice of declaration of default by the City contains an explicit and separate statement of the consequences of failing to contest the City's declaration within seven calendar days.

(d) This Section shall not apply to delays covered by the force majeure provisions of Section 40(b) or to failures of performance for which liquidated damages are provided under Section 860.

Section 820. City Takeover of Work.

(a) The City may, subject to the rights of the Contractor's surety under the Bond, take possession of some or all of the materials and equipment described in the most recent inventory submitted to the Director to continue transportation and disposal services after the declaration of default. Such possession and interim use of the materials and equipment by the City or its Contractors, however, shall not exceed one year. The City may elect to perform the work with City employees or enter into contracts for the performance of the work by third parties.

(b) The City shall be responsible, during the period of interim use by the City or the City's Contractors, for the monthly rental, lease, installment, principal and interest payments on materials and equipment rented or leased by the Contractor or purchased by the Contractor under an installment contract or other financing arrangement. The City shall not be liable for payment of any arrearages, balloon payments, accrued interest, accelerated charges or other extraordinary payment as a condition of its interim use of the materials and equipment. The Contractor shall not be responsible for claims, causes of action, losses, damages, expenses, liabilities raised or alleged by third parties in connection with, caused by or arising out of the

performance of any of the work by the City or its Contractors.

(c) If the declaration of default is not contested or the declaration of default is found by the courts to be valid, the Contractor and the Guarantor shall be liable for excess costs incurred by the City as a result of the default. The City may also make claim against the Bond. The City shall exercise reasonable care to obtain the performance of the work at the lowest reasonable cost.

(d) In the event that the declaration of default is found to be invalid by the courts, the City shall be liable for all reasonable damages suffered by the Contractor, the Guarantor and/or the Contractor's surety as a result of the wrongful declaration of default and any takeover of the work by the City.

Section 830. Use of Contract Equipment by City and Others.

(a) All equipment, except rail equipment, identified in the Contractor's inventory under Section 80 of this Contract ("Contract Equipment"), shall be available for use in transporting and disposing of Waste during any takeover period by the City. Any document (including a lease, financing contract, acquisition over time, mortgage, or other instrument establishing a security interest to or by the Contractor) that encumbers or limits the Contractor's interest in the Contract Equipment, including any replacement or substitute equipment, shall:

(i) Allow the Guarantor to assume the Contractor's obligations and to continue use of the Contract Equipment in performing the work under the Contract during the remaining terms of the Bond;

(ii) Allow the Contractor's surety to assume the Contractor's obligations and to continue use of the Contract Equipment in performing the work under the Contract during the remaining term of the Bond;

(iii) Allow the City, in the event the Contractor is in default on the Contract and subject to the terms of the Bond and the rights of the Contractor's surety, to assume the Contractor's obligations and to continue use of the Contract Equipment in performing the work under the Contract for a period of up to one year under the terms specified in Section 820;

(iv) Forbid any foreclosure, trustee's sale, or other dispossession of the Contractor's interest without giving both the City and the Contractor's surety 60 days' prior notice, and make any termination of the Contractor's possessory interest pursuant to such document or the enforcement thereof subject to the requirements of subsections (a) and (b) of this Section.

(b) To assure compliance with this Section, the

Contractor shall submit to the Director for review and approval all contracts, leases, or other agreements encumbering or limiting the Contractor's interest in the Contract Equipment or replacement or substitute equipment, and any proposed agreement that would encumber or transfer the Contractor's interest in the Contract Equipment before the Contractor's execution of such agreements.

Section 835. Insolvency, Bankruptcy and Receivership.

(a) The parties acknowledge that the services provided under this Contract by the Contractor are vital and critical to the City, and that the failure of the Contractor to provide these services may create substantial and serious public health risks.

Therefore, if the Contractor becomes insolvent, makes a general assignment for the benefit of creditors, or has a receiver appointed for the benefit of its creditors, the City shall be entitled to request a written statement from the Contractor (or its Guarantor or 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 Contractor, Guarantor and the Surety fail to comply with the City's request within ten (10) calendar days of receipt of the request, the City may seek a declaration of default under the same procedures as provided for defaults declared under either Section 810(a)(i) or (a)(ii). The City shall not be bound to this Contract by any receiver appointed to take possession of any of the facilities of Contractor's business.

(b) If the Contractor files a petition under any bankruptcy statute, or if the debtor on any involuntary bankruptcy case that is not dismissed within sixty (60) days after the petition commencing that case is filed, Contractor and the City agree to the entry of a Stipulated Order in Contractor's bankruptcy case granting Contractor ten (10) days to assume or reject this Contract. Said assumption or rejection shall comply with 11 U.S.C. § 365.

Section 840. Insurance. Prior to the commencement of services pursuant to this Contract, the Contractor at its own expense shall obtain and file with the Engineering Director a Certificate or Certificates of Insurance for a primary policy of Commercial General Liability insurance including all of the coverages set forth below. These Certificates of Insurance shall be subject to approval by the City as to company, terms and coverages. Contractor shall also maintain Worker's Compensation insurance as required by applicable state law and Stop Gap or Employer's Contingent Liability insurance in the amount of \$500,000 per occurrence.

Such liability insurance (except for Worker's Compensation and Stop Gap or Employer's Contingent Liability) shall by endorsement specifically name the City as an additional insured thereunder.

Subject to provisions of such policies, the insurance will protect the City from any and all claims and risks and losses in connection with any activity performed by the Contractor by virtue of this Contract.

Such liability insurance must be maintained in full force and effect at the Contractor's sole expense throughout the entire term of this contract. The City shall be given thirty (30) calendar days prior written notice, by certified mail, of any cancellation, reduction or modification of the dollar amount of the insurance coverage required under this Section.

Said insurance policy and/or an endorsement thereto, as evidenced by the Certificate of Insurance, must provide the following minimum coverages and limits and contain the following provisions:

COVERAGES

- Extended Bodily Injury
- Coverage for Acts of Employees
- Premises/Operations Liability (M&C)
- Owner's and Contractor's Protective Liability
- Products and Completed Operations Liability through guarantee period
- Blanket Contractual Liability
- Broad Form Property Damage Liability
- Personal Injury [including coverage A, B, C,] and coverage for acts of employees
- Automobile Liability, including coverage for owned, nonowned, leased or hired vehicles
- Explosion, Collapse, Underground damage (referred to as "XCU")
- Railroad protective coverage

MINIMUM LIMITS

All Coverages

\$10,000,000 per occurrence, no deductible;
\$10,000,000 annual aggregate, no deductible.

Providing of coverage in these stated amounts shall not be construed to relieve the Contractor from liability in excess of such limits. Minimum limits will be adjusted every five years from commencement of services by 100% of the annual CPI described in Section 520. In addition, the minimum policy limits are subject to increase to protect the interests of the Contractor and the City, on determination of need by the Engineering Director and consent of the Contractor. Contractor shall be reimbursed by the City for any additional premiums charged for the increased policy limits, not including CPI adjustments to the minimum limits.

REQUIRED ENDORSEMENT FOR ADDITIONAL INSURED

The Commercial General Liability insurance shall provide by endorsement the following or substantially similar language: "The City of Seattle is an additional named insured for all coverages provided by this policy of insurance."

NOTICE OF CANCELLATION

The Contractor shall provide thirty (30) days' written notice of cancellation of any insurance coverage required under the terms of this Contract. The Certificate of Insurance shall contain the same or similar endorsement. The written notice shall be given by certified mail to Engineering Director, The City of Seattle, 600 Fourth Avenue, Seattle, Washington 98104.

Failure of the Contractor to fully comply with any and all of the terms of the foregoing insurance provisions shall be considered a Material Breach of this Contract and cause for its immediate termination at the option of the City.

Section 850. Indemnity.

(a) The Contractor shall defend, indemnify and save harmless the City from all losses, damages, demands, suits, judgments of any kind, on account of injury to or death of any and all persons (including but not limited to the Contractor, its agents, employees, subcontractors and their successors and assigns as well as the City or the City's agents, and all third parties), and/or on account of all property damage of any kind, including loss of use resulting therefrom, in connection with the work performed under this Contract, or caused or occasioned in whole or in part by reason of the acts or omissions of the Contractor or its subcontractors, employees or agents in connection with the work performed under this Contract, except only for those losses resulting from the negligence of the City.

(b) The indemnification provided for in this Section with respect to any acts or omissions during the term of this Contract shall not constitute a waiver by the Contractor of immunity under any applicable state workmen's compensation statutes and shall survive any termination or expiration of this Contract.

(c) Contractor shall be strictly liable for releases of any materials into the environment from the Landfill.

Section 860. Liquidated Damages. Liquidated damages for failures of performance by the Contractor may be deducted from the monthly payment to the Contractor or, in the case of failures of performance by the City, added to the monthly payment to the Contractor.

(a) In the event of the Contractor's failure to accept Waste at the Receiving Facility for a period of 24 hours or more that is not caused by an event described in Section 40(b), the Contractor shall pay liquidated damages to the City for each 24 hour period of default in the amount of the applicable base price per ton set forth in Section 500(a) for each ton of Waste not accepted. In the event that any period of failure to perform extends beyond the period entitling the City to declare a default of the Contract under Section 810, the City shall have the option of continuing to recover liquidated damages in the manner provided in this Section or to declare a default and invoke the remedies provided in Section 810.

(b) In the event the Contractor is unable to average, on a monthly basis, a 20-minute turnaround period at the Receiving Facility for the unloading of a full container and the loading on the chassis of an empty container, the Contractor shall pay the City for every minute which exceeds the 20-minute average an amount based on the following schedule: \$0.25 for the first minute; \$0.50 for the second minute; \$0.75 for the third minute; \$1.00 for the fourth minute; and \$1.25 for the fifth minute and each additional minute thereafter. The 20-minute time period shall be measured from the entrance to and the exit from the Receiving Facility if a separate gate for the sole use of the parties under this Contract is provided. If a separate gate is not provided, the 20-minute turnaround time shall be calculated using the truck trip log from each cab. The monthly average turnaround time shall be calculated by dividing the total number of minutes within the Receiving Facility for the month by the total number of trips for the month. Any total over 20 minutes will then be multiplied by the number of trips for the month with the resulting number multiplied by the applicable amount per minute specified in this subsection. For example, if the monthly average turnaround time for the month was 23 minutes, and the total number of trips made was 1100, the damages would be calculated as follows: 1100 times \$0.25, plus 1100 times \$0.50, plus 1100 times \$0.75.

(c) In the event the Contractor is able to average, on a monthly basis, less than a 15-minute turnaround period at the Receiving Facility calculated as in (b) above, the Contractor shall receive a credit from the City of \$0.05 per minute for every minute below 15 minutes.

(d) In the event container unavailability at the Receiving Facility impacts transfer station(s) operations, the Contractor shall pay the City's reasonable, actual increased transfer station costs (excluding any amounts paid by the Contractor in subsection (b) above), including but not limited to, overtime for transfer station equipment operators, scale attendants, crew chiefs, and floor attendants. If such container unavailability results in the closure of the transfer station(s) to the acceptance of Waste, the Contractor shall pay the City's reasonable, actual increased costs resulting from the closure,

including increased costs following reopening to catch up on the Waste backlog. The Contractor shall also pay the City an administrative cost of \$1,000 for each day that any transfer station is closed. The actual increased cost as a result of the closure may include, but would not be limited to, overtime payments to the refuse collection contractors, overtime for transfer truck drivers, equipment operators, scale attendants, crew chiefs, floor attendants, customer service representatives, and any special publicity costs as a result of the closure.

(e) In the event the Contractor is unable to provide an Eastern Washington Landfill meeting the requirements of Section 430 and 440 of this Contract, the Contractor shall pay or credit the City as liquidated damages an amount per ton of Waste delivered by the City to the Primary Landfill calculated according to the following schedule:

(i) From January 2, 1995 until January 1, 1996, fifty percent (50%) of the difference between the base prices per ton for the Primary Landfill and the Eastern Washington Landfill, shown in Section 500(a), after each base price is adjusted in accordance with Section 520;

(ii) From January 2, 1996 and thereafter, one hundred percent (100%) of the difference between the base prices per ton for the Primary Landfill and the Eastern Washington Landfill, shown in Section 500(a), after each base price is adjusted in accordance with Section 520;

Provided, that payments by the Contractor of the liquidated damages calculated in accordance with subsection (e)(i) above shall be made in the form of a credit against amounts otherwise owed by the City to the Contractor for the period January 2, 1996 through January 1, 1997.

(f) It is expressly understood by the City and the Contractor that the amounts of liquidated damages specified in this Section are not considered to be penalties, but because of the difficulties of proof of loss, the parties have determined that these amounts are a reasonable forecast of the actual harm which would be caused by a failure to perform by the other party.

(g) Unless expressly provided otherwise, liquidated damages owed by the City to the Contractor shall be paid in the month following the occurrence of an event requiring such payments in addition to the amounts otherwise owed to the Contractor. Liquidated damages owed by the Contractor to the City shall be deducted from any amount due the Contractor.

(h) The amount of the liquidated damages established in this Section shall be adjusted annually in accordance with the CPI adjustment in Section 520.

J. ANCILLARY PROVISIONS

Section 900. Independent Contractor.

(a) The Contractor shall perform all work under this Contract as an independent contractor. Except as provided for in Section 30(a)(vi), neither the Contractor nor any of Contractor's subcontractors, employees or agents are or shall be considered employees, agents, or servants of the City for any purposes under this Contract, or otherwise.

(b) The Contractor shall have exclusive control of and the exclusive right to control the services and work performed by its employees, subcontractors and agents. The Contractor shall be solely responsible for the acts and omissions of its employees, subcontractors and agents. Nothing in this Contract shall be construed as creating a partnership or joint venture for any purpose between the City and the Contractor.

Section 905. Assignment; Subcontracting; Delegation of Duties.

(a) Except for the subcontracts identified in this Contract, including all exhibits hereto, the Contractor shall not assign, subcontract or delegate any of its duties or obligations under this Contract without the prior written approval of the Engineering Director.

(b) The terms "assign" or "assignment," for purposes of this Section, include but are not limited to any transfer of an aggregate of fifty percent (50%) or more of the voting stock or other ownership interest of the Contractor. A change of ownership accomplished between two or more wholly owned corporations of Waste Management, Inc. or Waste Management of North America, Inc. shall not be considered an assignment, subcontract or delegation of duties or obligations under this Contract.

(c) The term "transfer," for purposes of this section, includes but is not limited to a sale, merger, or change in ownership by operation of law, the issuance of new shares, the conversion of shares without voting rights into voting shares, a withdrawal of a general partner, a transfer of a general partnership interest or a corporate reorganization of a general partner or transfer of its voting stock. "Voting stock" means the shares entitled to vote for election of the directors of the corporation.

(d) In the event the Contractor shall assign, subcontract or delegate any of its duties or obligations under this Contract, the Contractor shall remain responsible for the performance of this Contract and the assignee, subcontractor, delegee or other obligor shall become jointly responsible to the City for the satisfactory performance of the work assumed. The Engineering

Director may condition his/her approval upon the delivery by the assignee, subcontractor, delegee or other obligor of its covenant to the City to complete the work or responsibility undertaken.

Section 910. Contract Binding on Successors and Assigns. This Contract shall be binding upon and inure to the benefit of the respective successors and assigns of the parties.

Section 920. Access and Audit.

(a) The Contractor shall maintain in its office full and complete accounting records, prepared in accordance with generally accepted accounting principles, reflecting Contractor's work on this Contract.

(b) The City shall have access to the Contractor's office, records and operating facilities at any reasonable time, to enable the City to review and monitor Contractor's performance of the Contract.

(c) The City may require an audit of the Contractor's books and records relating to this Contract at any reasonable time. Such audit will be conducted by the City and/or by one of the following firms:

Coopers & Lybrand	Deloitte and Touche
Arthur Andersen & Co.	Price Waterhouse & Co.
Ernst and Young	
KPMG Peat Marwick	

and/or by another reputable, competent certified public accounting firm with experience in auditing public service companies selected by mutual agreement of the City and the Contractor.

(d) Information from the review and/or audit of the Contractor's records will be kept confidential, except as disclosure may be required by public disclosure laws.

Section 930. Arbitration.

(a) In the event of a disagreement between the parties regarding a provision of the Contract that is expressly made subject to binding arbitration in Sections 430 and 530, the provisions of this Section shall apply.

(b) The City and the Contractor shall each select one arbitrator and the two arbitrators shall select the third arbitrator, who shall be the presiding officer of a three-person panel. In the event the decision of the arbitration panel requires one of the parties to pay an additional amount, such party shall pay interest on the unpaid balance owed at the prime rate of Seattle-First National Bank or its successor plus two

percent, computed from the date when payment of such amount was owed. Each party shall bear its own attorneys fees and costs of arbitration.

Section 935. Violation of Antitrust or Corrupt Practice Laws. In the event Contractor or Guarantor is found to be guilty of a violation of antitrust or corrupt practice laws for acts performed in Washington or Oregon during the term of this Contract, the City at its election may terminate this Contract by giving the Contractor written notice of the City's intent to terminate this Contract effective on the date designated by the City in the notice. For the purpose of this Section, the "antitrust or corrupt practice laws" shall include all civil and criminal statutes, both state and federal, pertaining to the antitrust laws, fair practices acts, and any laws governing corrupt standards or practices. Further, for the purpose of this section, an entity shall be considered to be "guilty" of a violation of such antitrust or corrupt practice laws if such entity 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 a civil violation by the highest court or tribunal which considers the case against the entity.

Section 940. Contract Rights.

(a) The parties reserve the right to make written amendments of this Contract from time to time by mutual agreement.

(b) Unless specifically stated to the contrary, rights under this Contract are cumulative, and are in addition to rights existing by statute or at common law and the use of one remedy does not exclude or waive the right to use another.

(c) Performance of this Contract by either party does not waive its Contract rights. Failure by either party on any occasion to exercise a Contract right shall not forfeit or waive the right to exercise the right on another occasion.

Section 950. Approvals. Any approvals required under this Contract by the City or the Contractor shall not be unreasonably withheld.

Section 955. Entire Contract. This Contract is an integrated document and contains all the promises of the parties; no earlier oral understandings modify its provisions. This Contract shall be interpreted as a whole and to carry out its purposes.

Section 960. Captions. Captions are for convenient reference only. A caption does not limit the scope or add commentary to the text.

Section 965. Law; Venue. The laws of the State of Washington and

Charter and ordinances of the City shall govern the validity, construction and effect of this Contract. The venue for any causes of action between the parties shall be in the Superior Court of the State of Washington for King County or the United States District Court for the Western District of Washington.

Section 970. Notices. All official notices or approvals shall be in writing. Unless otherwise directed, notices shall be delivered or mailed to the parties at the following respective addresses.

To the City: Director, Solid Waste Utility
 City of Seattle
 505 Dexter Horton Building
 710 - 2nd Avenue
 Seattle, Washington 98104

To Contractor: Vice President
 Washington Waste Systems, Inc.
 15965 NE 85th, Suite 210
 Redmond, Washington 98052

 Office of the Secretary
 Washington Waste Systems, Inc.
 c/o Waste Management of North America, Inc.
 5660 Greenwood Plaza Blvd., Suite 424
 Englewood, Colorado 80111

To Guarantor: General Counsel
 Waste Management, Inc.
 3003 Butterfield Road
 Oakbrook, Illinois 60521

Either party may from time to time designate a new address for notices. Unless a return receipt or other document establishes otherwise, a notice sent by U.S. Mail shall be presumed to be received the second business day after its mailing.

Section 975. Severability. Should any term, provision, condition, or portion of this Contract or its application be held to be inoperative, invalid or unenforceable, and the remainder of this Contract still fulfills its purposes, the remainder of this Contract or its application shall not be affected thereby and shall continue in force and effect; however, the parties shall negotiate in good faith to amend the Contract to effectuate the intent of any inoperative, invalid or unenforceable provision, if permissible under applicable law.

CONTRACTOR
WASHINGTON WASTE SYSTEMS, INC.

THE CITY OF SEATTLE

Signature

Signature

ARTHUR J. DUDZINSKI,
VICE PRESIDENT

NORMAN B. RICE, MAYOR

(Date)

(Date)

CORPORATE SEAL

ATTEST:

NORWARD BROOKS
City Comptroller & City Clerk

(Date)

Authorized by Ordinance

CITY SEAL