

ORDINANCE No.

120241

COUNCIL BILL No.

113523

AN ORDINANCE authorizing the Director of Seattle Public Utilities to execute agreements with Rabanco, Ltd., and Waste Management of Washington, Inc. for collection of commercial solid waste.

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The City of Seattle--Legisla

Law Department

REPORT OF COMMITTEE

Honorable President:

Your Committee on _____

to which was referred the within Council Bill No. _____
report that we have considered the same and respectfully recommen

Pass As Amended (Amended KC)
3/0 Pageler, Drago, Conlin

(Signature)

1-22-01 Passed 8-0 (Excused)

COMPTROLLER FILE No.

Introduced:	By:
JAN 2 - 2001	PAGELER
Referred:	To:
JAN 2 - 2001	Water Resources, Solid Waste & Public Health Committee
Referred:	To:
Referred:	To:
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1-22-01	
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1-22-01	1-22-01
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1-23-01	1-25-01
Returned to City Clerk:	Published:
1-26-01	<i>3 pp.</i>
Vetoed by Mayor:	Veto Published:
Passed over Veto:	Veto Sustained:

Committee Chair

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oversize*

Margaret Pageler

The City of Seattle--Legislative Department

Law Department

Date Reported
and Adopted

REPORT OF COMMITTEE

Honorable President:

Your Committee on _____

to which was referred the within Council Bill No. _____

report that we have considered the same and respectfully recommend that the same:

Pass As Amended (Amended K)

3/0 Pageler, Drago, Conlin

(E)

1-22-01 Passed 8-0 (Excused: Steinbrueck)

*(E) Review
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Committee Chair

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ORDINANCE 120241

AN ORDINANCE authorizing the Director of Seattle Public Utilities to execute agreements with Rabanco, Ltd., and Waste Management of Washington, Inc. for collection of commercial solid waste.

WHEREAS, since 1962 the City has chosen not to regulate commercial solid waste collection; and

WHEREAS, since the City has not regulated commercial solid waste collection it is regulated by the Washington State Utilities and Transportation Commission; and

WHEREAS, the two firms collecting commercial solid waste in Seattle, Rabanco Ltd., and Waste Management of Washington, Inc. provide service throughout the City; and

WHEREAS, a 1993 consultant study indicated that commercial solid waste collection costs could be reduced if exclusive collection territories were established; and

WHEREAS, exclusive territories would reduce the number of collection trucks providing service in alleys and would reduce truck traffic throughout the City; and

WHEREAS, business leaders indicated that the ability to retain some customer choice of collection firms was important; and

WHEREAS, if the City has the ability to set garbage rates, the City can use rates to encourage waste reduction and recycling collection; and

WHEREAS, the City seeks to coordinate the use of its Recycling and Disposal Stations with stations operated by the two private companies who also provide commercial collection services; and

WHEREAS, the City wishes to ensure guaranteed control of the solid waste stream generated within the City; and

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1 WHEREAS, the City wishes to coordinate the schedules of contracts for all major contracted
2 solid waste collection, transfer, processing and disposal services, to achieve greater
3 system efficiencies; and

4 WHEREAS, the City has been negotiating commercial solid waste collection contracts with
5 Rabanco Ltd., and Waste Management of Washington, Inc. for the last several years; and

6 WHEREAS, negotiations have recently been concluded; and Now Therefore,

7 BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS

8 **Section 1.** The Director of Seattle Public Utilities is hereby authorized to execute,
9 substantially in the form of the attached, agreements with Rabanco, Ltd., and Waste Management
10 of Washington, Inc. for collection of commercial solid waste.

11
12 Service under the contracts will begin April 1, 2001 and continue through March 31,
13 2008. The City retains an option to extend the contracts to March 31, 2009 or March 31,
14 2010. The City is responsible for setting customer rates. The contractors will bill
15 customers, receive the funds and provide customer service. Received funds will be
16 deposited daily to the City and the City will reimburse the contractors on a monthly basis
17 for their services. The City will be responsible for bad debts after the collection firms
18 have exhausted their means to collect the funds.

19 The collection firms will have semi-exclusive collection areas, with Waste Management
20 collecting south of Royal Brougham Way/Jackson Street and Rabanco collecting north.
21 However, both firms will collect from customers in the other area if the customer so
22 requests.

23 The majority of the collected waste will be deposited at private disposal stations operated
24 by the collection firms, however, during the first contract year the City has the ability to
25 direct up to 10% of the collected waste to City facilities. This percentage increases over
26 the contract years to a high of 40% in the seventh year of the contract.

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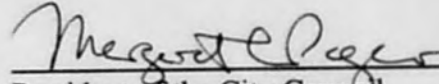


Under these contracts contractor compensation for dumpster and can collection is reduced 15% from 1996 levels. Dumpster and can rental rates are reduced 7.5% from 1996 levels. Solid waste transfer rates are reduced \$8 - \$10 per ton from current rates. The contracts also contain an option for the contractors to collect street-side litter cans for \$1.50 per collection.

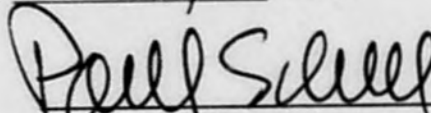
Section 2. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and confirmed.

Section 3. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

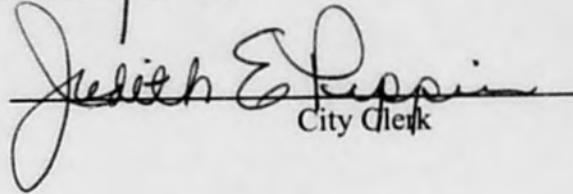
Passed by the City Council the 22nd day of January, 2001, and signed by me in open session in authentication of its passage this 22nd day of January, 2001.


President of the City Council

Approved by me this 25th day of JANUARY, 2001.


Paul Schell, Mayor

Filed by me this 26th day of January, 2001.


City Clerk

(Seal)

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**CONTRACT BETWEEN
THE CITY OF SEATTLE
AND
WASTE MANAGEMENT OF
WASHINGTON, INC.
FOR THE COLLECTION OF
COMMERCIAL WASTE**

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**CONTRACT BETWEEN THE CITY OF SEATTLE
AND WASTE MANAGEMENT OF WASHINGTON, INC.
dba WASTE MANAGEMENT OF SEATTLE
FOR THE COLLECTION OF COMMERCIAL WASTE**

THIS CONTRACT is entered into by and between THE CITY OF SEATTLE, a municipal corporation of the State of Washington (City) and WASTE MANAGEMENT OF WASHINGTON, INC., dba WASTE MANAGEMENT OF SEATTLE, (Contractor) for the purpose of collecting Commercial Waste.

A. GENERAL PROVISIONS

Section 1. Purpose and Intent of Contract.

The purpose of this Contract is to provide for the collection of Commercial Waste by the City through this Contract with Contractor, and through a similar contract with another commercial collection company. The City intends for the Contractor and the other commercial collection company to be the only providers of Commercial Waste Collection services in the City. Contractor shall collect MSW from Commercial Establishments in a Primary Collection Area defined below in Section 100, and, when requested by the City, in a Secondary Collection Area defined below in Section 105.

Section 10. Length of Contract.

The Contract shall be for a term of 7 years beginning on April 1, 2001, and ending at midnight on March 31, 2008.

The City shall have the unilateral right to extend the Contract for two one-year periods. The City may exercise this option all at once or in one-year or two-year increments. If the City decides to exercise its option to extend, it shall provide Contractor with written notice of such extension at least two (2) years in advance of the end of the initial term of the Contract and, thereafter, upon written notice at least six (6) months in advance of the end of the then existing Contract period.

Section 20. Commencement Date; Transition.

The Contract shall commence on April 1, 2001.

There will be a 3 (three)-month transition period between April 1, 2001 and June 30, 2001, during which customer accounts in the Primary and Secondary Collection Areas shall be sorted out with the other contractor, and during which the respective containers shall be switched or exchanged, in accordance with Section 205.

Section 30. Definitions.

A&E Services means ancillary and elective services associated with collection, as set forth in Attachment E.

Bulky Waste means cartons, boxes, crates, etc., or other MSW materials set out for disposal as overflow to a customer's regular Can, Cart or Detachable collection service.

Can means a watertight, galvanized, sheet metal or plastic container not exceeding 32 gallons in capacity, fitted with at least one sturdy handle and a tight cover equipped with a handle, except in the case of sunken cans, such Can to be rodent and insect proof and to be kept in a sanitary

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condition at all times. Alternate containers such as bags, boxes and bundles may be used in place of Cans for materials in excess of the customer's primary container. A Can or alternate container shall not exceed 60 pounds for each 32 gallons of nominal capacity.

Can-Unit Pickup means a pickup of a group of Cans made of durable corrosion-resistant, nonabsorbent material, watertight, with a close-fitting cover and two handles. Size to exceed twenty gallons, but not to exceed thirty-two gallons or four cubic feet.

Cart (also at times referred to as "toter" or "wheeled container") means (Not Code) a plastic container, not greater than one-half (1/2) cubic yard in capacity and equipped with wheels, handles and a tight-fitting cover. Wheeled containers means containers capable of being mechanically unloaded into the Contractor's collection vehicles.

City means the City of Seattle.

Commercial Establishment means any non-Residential location from which the Solid Waste is collected by the Contractor, and includes the non-residential portion of Mixed Use Buildings.

Commercial Waste means MSW and CDL collected from Commercial Establishments within the City.

Compacted Material means material which has been compressed by any mechanical device either before or after it is placed in the receptacle handled by the collector.

Compactor Disconnect/Reconnect Cycle means the service of disconnecting a compactor from a Drop Box or container prior to taking it to be dumped and then reconnecting the compactor when the Drop Box or container is returned to the customer's site.

Compostable Waste means any organic waste materials that are source separated for processing or composting, such as Yard Waste and Food Waste.

Container Collection means collection of Commercial Waste from Cans, Carts, and Detachable Containers.

Construction, Demolition and Land Clearing Waste; CDL "Construction, Demolition and Land Clearing Waste" or "CDL Waste" means waste comprised primarily of the following materials: "Construction Waste" means 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.

"Demolition Waste" means 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. Demolition Waste does not include Special Waste.

"Landclearing Waste" means 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.

Contractor means Waste Management of Washington, Inc., dba Waste Management of Seattle, a Washington corporation.

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CPI-W means the Consumer Price Index computed by the United States Department of Labor, Bureau of Labor Statistics, for the Seattle-Everett Metropolitan Area for Urban Wage Earners and Clerical Workers (CPI-W), or successor indices, covering the period January through December of each year.

Cycle Time is the elapsed time from time of arrival to time of departure from a Disposal Facility. Cycle Time does not include time spent removing and replacing tarps, setting off cans of compactors and rotating them for dumping, securing tailgates, washing containers, using the restroom or phone, and other similar items.

Detachable Container (also at times referred to as "dumpster") means a watertight, all-metal container, not less than one-half (1/2) cubic yard in capacity and equipped with a tight-fitting metal or other City-approved cover. The term shall also apply to containers of other material of similar size when approved by Seattle Public Utilities. Containers two (2) cubic yards and under shall be equipped with at least three (3) wheels. Detachable Containers means containers capable of being mechanically unloaded into the Contractor's collection vehicles.

Disposal Facility means both Public Transfer Stations owned by the City, and Private Transfer Stations at which the MSW shall be compacted and transferred in long haul containers to the long-haul transfer and disposal loading point designated by the City, or, as to CDL, a facility meeting the criteria of section 135.

Drop Box (also at times referred to as "rolloff" or "lugger" or "dino") means a metal container, with 3-40-cubic-yard-capacity capable of being mechanically loaded onto a collection vehicle for transport to a Disposal Facility.

Dumpster means the same as "Detachable Container."

Initial Average Haul Time means the calculated average round-trip travel time from the Contractor's collection routes to the City's South Recycling and Disposal Center, calculated based on the Contractor's defined routes and the City's GIS trip time calculation model.

Mixed Use Building means a building with both residential and commercial solid waste with common garbage chute(s), and/or the residential and commercial solid waste generated in such building cannot be readily separated.

MSW means Solid Waste excluding Special Wastes, Unacceptable Wastes, Recyclable Materials, Compostable Wastes and CDL.

Overloaded means a Toter or container whose contents exceed one foot above the top of the Toter or container.

Permanent Service means service provided for a period of more than ninety days.

Primary Collection Area means that area of the City as shown on Attachment A within which the Contractor shall be the exclusive provider of MSW collection services under this Contract, except in special cases where individual customers have requested, and been granted by the City, the right to receive such services by the City's other commercial MSW collection contractor.

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Private Transfer Stations means the transfer station owned and operated by Waste Management of Seattle at 7155 West Marginal Way S.W., the transfer station owned and operated by Rabanco at 3rd Avenue South and Lander Street, 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.

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.

Rate means the charges assessed to customers for Commercial Waste collection services provided by Contractor under this Contract.

Recyclable Materials means those Solid Wastes that are source separated for recycling or reuse, such as papers, metals and glass, that are identified as recyclable material pursuant to the City's Comprehensive Solid Waste Plan, and that are intended for recycling by the customer and delivered to a recycling facility.

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.

Residence or Residential means any house, dwelling, multiunit residence, apartment house, trailer court or any building put to residential use. The term does not include Mixed Use Buildings

Revised Average Haul Time means the calculated annual average round-trip time from the Contractor's collection routes to the combination of Disposal Facilities selected by the City for all MSW for which the City has transfer site discretion under this Contract, calculated based on the Contractor's defined routes and the City's GIS trip time calculation model.

Roll-off Collection means the collection of Commercial Waste by means of a Drop Box.

Secondary Collection Area means that area of the City as shown in Attachment A within which the City's other commercial MSW collection contractor is the designated primary MSW collection service provider, and in which the Contractor may provide such services only to individual customers who have requested, and been granted by the City, the right to receive such services from the Contractor.

Solid Waste means all putrescible and nonputrescible solid and semisolid wastes, including but not limited to garbage, rubbish, yard waste, ashes, industrial wastes, infectious wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof. The term includes all liquid, solid and semisolid materials, which are not the primary products of public, private, industrial, commercial, mining and agricultural operations. Solid Waste includes, but is not limited to sludge from wastewater treatment plans, seepage from septic tanks, wood waste, dangerous waste, and problem wastes., as well as other materials and substances that may in the future be included in the definition of "solid waste" in RCW 70.95.030. Solid Waste does not include Recyclable Materials (including Compostable Waste) collected from Commercial Establishments.

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Special Pickup means a pickup requested by the customer at a time other than the regularly scheduled pickup time, but which does not involve the dispatch of a truck. If a special dispatch is required, time rates as shown in Attachment E will apply.

Special Waste means contaminated soils, asbestos and other waste specified by Washington Waste Systems in the Special Waste Management Plan included in the Operations Plan as requiring special handling or disposal procedures.

Street Side Litter Collection means collection of MSW from City-supplied containers located on public right-of-way.

Temporary Service means service that is required for a period of ninety days or less in conjunction with containers or Drop Boxes. Temporary Service and its associated rates are not to be used for the first ninety days of service when the customer requests, and the Contractor provides, service for more than ninety days.

Toter means the same as "Cart."

Unacceptable Waste means all waste not authorized for disposal at the Columbia Ridge Landfill and Recycling Center or successor site designated by the City, 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.

WUTC means the Washington Utilities and Transportation Commission of the State of Washington.

Yard Waste means plant material (leaves, grass clippings, branches, brush, flowers, roots, wood waste, etc.); debris commonly thrown away in the course of maintaining yards and gardens, including sod and rocks not over four (4) inches in diameter; and biodegradable waste approved for the yard waste programs by the Director. It excludes loose soils, food waste; plastics and synthetic fibers; lumber; any wood or tree limbs over four (4) inches in diameter; human or animal excrement; and soil contaminated with hazardous substances.

Section 40. City Responsibilities.

The City shall be responsible for:

- a. Establishing service levels and Rates to be charged customers;
- b. Transmitting and updating Commercial Waste customer lists to Contractor in the Secondary Collection Area;
- c. Directing Commercial Waste to Disposal Facilities in accordance with the terms of this Contract;
- d. Paying all transfer fees for Commercial Waste delivered by Contractor to the specified Disposal Facilities pursuant to the terms of Section 490;

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- e. Disposing of the Commercial Waste delivered to the specified Disposal Facilities, except for CDL directed to a Disposal Facility by the Contractor pursuant to Section 135.;
- f. Approving tip fees and environmental acceptability of CDL Disposal Facilities proposed by the Contractor, or in the alternative directing CDL to a disposal facility;
- g. Initiating Street Side Litter Collection pursuant to Section 122;
- h. Assuming bad debts of customers related to billings for City collection services;
- i. Paying compensation to the Contractor for its collection services pursuant to this Contract;
- j. Paying and remitting applicable taxes which are imposed by a taxing authority directly on Commercial MSW customers to the proper taxing authority; and
- k. Taking enforcement action, as necessary, against unauthorized collection of Commercial Waste.

Section 50. City Representations and Warranties.

The City represents and warrants to Contractor as follows:

a. Organization and Qualification

- 1. The City is a municipal corporation and has all requisite corporate power and authority to enter into and perform its obligations under this Contract.

b. Authority

- 1. 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.
- 2. This Contract has been validly executed and constitutes a valid and legally binding and enforceable obligation of the City.

Section 60. Contractor Responsibilities.

Contractor shall be responsible for:

- a. Furnishing all skill, labor, equipment, material, supplies and utility services required for providing all services in accordance with this Contract;
- b. Performing all work in a timely, thorough and professional manner;
- c. Delivering all Commercial Waste to a Disposal Facility in accordance with this Contract;
- d. Assisting Commercial Waste customers with service issues
- e. Billing customers for City collection services in accordance with Rates established by the City;

- f. Acting as agent for the City for taxes imposed on Commercial MSW customers, and on rental, collection, and A&E Services for CDL customers, by billing for Rates established by the City, which include taxes, and by forwarding those payments, including taxes, to the City for payment by the City of taxes to the appropriate taxing authority;
- g. In addition to paying appropriate taxes on services not compensated by the City, remitting B&O taxes levied against the Contractor, on the basis of compensation paid to the Contractor by the City, to the appropriate taxing authority;
- h. Transferring customer payments for City collection services (including MSW rental, collection, A&E Services and disposal payments, and CDL rental, collection, and A&E Services, and taxes thereon; but excluding CDL disposal and taxes thereon, and excluding Contractor provided recycling services, and taxes thereon) to the City in accordance with this Contract; and
- i. Complying with all applicable laws and regulations.

Section 70. Contractor's Representations and Warranties.

The Contractor represents and warrants to the City as follows:

a. Organization and Qualification

- 1. 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

- 1. 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.
- 2. This Contract has been validly executed by an authorized representative of the Contractor and constitutes a valid and legally binding and enforceable obligation of Contractor.

Section 80. Contractor's Waiver.

Contractor hereby relinquishes and waives any and all claims against the City or rights it may have versus the City with regard to its certificate from the Washington Utilities and Transportation Commission to collect Commercial Waste in the City, except to the extent collection of such Commercial Waste is expressly excluded from this Contract. Contractor also waives any and all claims to compensation from the City based on a claim of taking or any other claim or circumstance related to the Contractor entering into this Contract, or to the City's continued regulation of, and contracting for, the collection of Commercial Waste in the City after the life of this Contract, apart from the payment provisions of the Contract itself. *Provided, however,* the Contractor reserves its option to reactivate its certificate from the WUTC to collect Commercial Waste in the City, should the City later cease to assert its control over the collection of Commercial Waste.

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Section 90. Control of Waste.

Pursuant to its authority under Washington State law, the City by this Contract authorizes the Contractor to act as its agent for the collection and delivery of Commercial Waste from Commercial Establishments in the City, or any other agreed upon location, to Disposal Facilities as directed by the City. The City's rights of ownership and control over the Commercial Waste collected under this Contract vest upon the collection of the Commercial Waste; provided, however, that the original owner has the right of recovery to any valuable items inadvertently discarded that can be reasonably retrieved prior to final disposal.

B. COLLECTION SERVICES

Section 100. Primary Collection Area For MSW Collection.

- a. The City shall be divided in to a Primary and a Secondary Collection Area for Commercial MSW collection along the following line: Royal Brougham to 4th Avenue to Dearborn, Dearborn to I-5, I-5 to Jackson, Jackson to Lake Washington. Attachment A provides a map of the City showing this dividing line. Contractor shall have the area south of this line as its Primary Collection Area for Commercial MSW collection, including service to Terminal 37.
- b. Unless a customer in the Primary Collection Area specifically requests to be a Secondary Collection Area customer for service by the City's other Commercial MSW collection contractor and the request is approved by the City, or is otherwise designated as a Secondary Collection Area customer by the City, all Commercial MSW customers in the Contractor's Primary Collection Area shall receive collection services from the Contractor. All requests by a customer in this area to become a Secondary Collection Area customer for collection by the City's other Commercial MSW collection contractor must be referred to and approved by the City, and the Contractor shall notify the City within 24 hours of receiving any request by a customer in the Primary Collection Area for service by the City's other Commercial MSW collection contractor. The Contractor shall be the exclusive provider of Primary Collection Area Commercial MSW collection services for this Primary Collection Area, provided that each customer shall continue to be permitted to self-haul its own MSW.

Section 105. Secondary Collection Area For MSW Collection.

- a. The area north of the dividing line described in Section 100 and shown on Attachment A shall be the Contractor's Secondary Collection Area for Commercial MSW collection.
- b. Unless a customer in this area specifically requests to become a customer of the Contractor and the request is approved by the City, or the City otherwise designates a customer in this area as a customer of the Contractor, the Contractor shall not provide Commercial MSW collection services authorized by this Contract to customers located in the Secondary Collection Area.
- c. In addition, the Contractor shall not solicit or otherwise encourage Commercial MSW customers in the Secondary Collection Area, not excluded from the scope of this Contract, to become MSW customers of the Contractor, and shall be subject to Liquidated Damages in accordance with Section 750 if found by the City to be violating this obligation.
- d. It is expected that MSW customers at Commercial Establishments may themselves initiate requests to the Contractor to become a Secondary Collection Area customer, but all requests by a customer in the Secondary Collection Area to become a MSW customer of the

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Contractor, including requests that apply to initial service under this Contract, must be referred to and approved by the City, and the Contractor shall notify the City within 24 hours of receiving any request by a customer in the Secondary Collection Area for service by the Contractor.

- e. Contractor may use residential collection vehicles providing service to the City under the "Solid Waste Collection Contract Between the City of Seattle and Washington Waste Hauling & Recycling, Inc.," to collect Commercial MSW from the Secondary Collection Area, *provided* that the weight of any Commercial MSW collected by residential vehicles shall be excluded from the "Tonnage Adjustment Factor" in Section 720 of the residential collection contract.
- f. The Contractor may schedule collection for Commercial MSW customers in the Secondary Collection Area in a manner that is most efficient for the Contractor, while at the same time providing the overall level of service required by the customer. Any disputes that arise between the Contractor and the customer shall be resolved pursuant to Section 127.

Section 110. Excluded Contracts.

The Contract does not necessarily include service to federal facilities, the Seattle Housing Authority, the Seattle School District and the University of Washington. These entities, however, may elect, at any time during the term of this Contract, to receive collection services from the City under this Contract and the Contractor agrees that upon request by the City, those collection services shall be governed by this Contract as long as such request remains in effect. Where no such request is made by the City, the Contractor shall be free to solicit and contract for collection services to such excluded facilities independent of this Contract.

Section 115. Excluded Services.

- a. The Contract does not include collection or processing of Recyclable Materials, nor does it include collection or disposal of Special Waste or Unacceptable Waste.
- b. This Contract is not intended to impose substantive standards affecting the price, route or service of "property" as that term is defined by federal laws. In the event a court decision is issued or legislation enacted which the parties in writing have agreed affects the legal definition of "property" and, as a result, limits the City's ability to enforce the provisions of Section 1 of this Contract, the Contractor may provide collection services as to that "property" as a service excluded from this Contract. The Contractor, however, shall continue to provide Commercial Waste collection services in all other respects pursuant to this Contract.

Section 120. Commercial Waste Collection.

- a. The Contractor shall provide MSW collection services to all Commercial Waste customers at Commercial Establishments who request such service in the Contractor's Primary Collection Area (and in the Contractor's Secondary Collection Area when directed to do so by the City pursuant to Section 105).
- b. Commercial MSW Container Collection services shall be provided at any service level then in effect under the City's codified service levels, so long as the requested service level can reasonably be accommodated at the customer's premise. Any Cart or Detachable Container may be owned by the customer as long as it is in good and serviceable shape and is compatible with Contractor's equipment; except as so provided by the customer, all Carts

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and Detachable Containers shall be owned and provided by Contractor.

- c. CDL collection and disposal services shall be provided City-wide to customers that request such service. CDL services may also be provided City-wide by the City's other Commercial MSW collection contractor.
- d. Roll-off MSW or CDL collection services shall be provided to customers requesting such service so long as the requested service can reasonably be accommodated at the customer's premise. The Drop Box may be owned by the customer as long as it is in good and serviceable shape and is compatible with Contractor's equipment; except as so provided by the customer, all Drop Boxes shall be owned and provided by Contractor, for which the Contractor may charge the customer a Drop Box security deposit.
- e. The Contractor shall make every reasonable effort to accommodate a customer's request for service and to provide customers with the level and type of service which is most convenient and economical to the MSW or CDL customer.

Section 122. Street Side Litter Collection.

- a. The City shall have the option to add Monday – Friday collection of City-owned and maintained street side litter containers in the Contractor's Primary Collection Area to the services provided by the Contractor, beginning no sooner January 1, 2002. The number of City-owned and maintained street side litter containers included in the program may change at any time during the Contract.
- b. The City shall have the option of requiring Saturday or Sunday collection of street side litter containers on special request related to a neighborhood or other special event. For any such Saturday or Sunday collection, the City shall pay the Contractor twice the payment amount established in Section 415 for each container collected.
- c. The City shall provide at least six months' written notice to the Contractor prior the start of street side litter collection service by the Contractor.

Section 123. Public Place Recycling Collection.

- a. Upon request from the City, the Contractor agrees to negotiate terms and conditions for collection of Recyclable Materials from City-owned recycling containers located in public places in a manner similar, but not identical, to Street Side Litter Collection provided in Section 122.
- b. Public place recycling collection shall not be requested by the City prior to January 1, 2002, nor shall such collection be requested by the City without giving the Contractor six month's written notice after specific terms and conditions for providing this service have been agreed upon by the Contractor and the City.

Section 124. Pilot Programs.

The City may wish to test and/or implement one or more new developments in waste stream segregation, materials processing, or collection technology at some point during the term of the Contract. The City will notify the Contractor in writing at least ninety days in advance of the implementation of a pilot program to be performed in one or more collection routes or of its plans to utilize a new technology system on a citywide basis. The costs (or savings) accrued by City-initiated pilot programs will be negotiated prior to implementation, and payments to the

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Contractor shall be adjusted accordingly. Contractor-initiated pilot programs will require written notification, and approval on the part of the City. Unless otherwise agreed in writing, Contractor-initiated pilot programs will be performed at no additional cost to the City or the Contractor's customers.

Section 125. A&E Services.

The Contractor shall provide A&E Services in accordance with the A&E Services then in effect under the City's codified service levels. The Contractor shall make every reasonable effort to provide customers with the level and type of A&E Services which are most convenient and economical to the customer.

Section 127. Resolution of Availability of Service Disputes.

Any disagreement between a customer and Contractor regarding the services which can reasonably be accommodated at the customer's site shall be resolved by Seattle Public Utilities, including availability of collection and A&E Services, container placement, level of service or any other issue related to collection services. The City shall attempt to mediate and, if necessary, decide the issues, taking into consideration safety of the customer and the Contractor as well as the convenience of the customer and the efficient operation of the Contractor.

Section 130. MSW Transfer/Disposal.

- a. For the first seven years of the Contract, the City will, at the Contractor's option, direct to the Contractor's Eastmont Transfer Station no less than the greater of the following guaranteed quantities, measured percentage shares of actual tonnage or first Contract year tonnage of MSW collected by the Contractor under this Contract:

Contract Year	Guaranteed Share of Base Tons Delivered to Eastmont	Guaranteed Share of Actual Tons Delivered to Eastmont
1	90% of Year 1 Tonnage	90% of Year 1 Tonnage
2	85% of Year 1 Tonnage	85% of Year 2 Tonnage
3	80% of Year 1 Tonnage	80% of Year 3 Tonnage
4	75% of Year 1 Tonnage	75% of Year 4 Tonnage
5	70% of Year 1 Tonnage	70% of Year 5 Tonnage
6	65% of Year 1 Tonnage	65% of Year 6 Tonnage
7	60% of Year 1 Tonnage	60% of Year 7 Tonnage

The Contractor may elect to receive all or a portion of its guaranteed amounts, provided that the Contractor gives the City at least three month's written notification before any change in the tonnage share or tonnage percentage amount it elects to receive.

- b. The City retains sole discretion for directing any remaining MSW collected under this Contract to transfer station(s) of its choice.
- c. In addition to the guaranteed amounts set forth in subsection (a) above, the City may, with the consent of the Contractor, direct any Commercial MSW collected in the City in excess of the amounts defined by Subsection a) above to the Contractor's Eastmont Transfer Station throughout this Contract. Except in an emergency, the City will provide at least three months' written notification prior to proposed changes in those additional amounts. With the Contractor's consent, the City may also designate the route origins within the City, of those

additional tons collected by the Contractor.

- d. When the Eastmont Transfer Station is not open, the Contractor shall first deliver the MSW to a Public Transfer Station, unless the City directs otherwise. In the event the Public Transfer Station is also closed or the City declines to accept the MSW, the waste, the Contractor shall have the option to provide the customer with an additional Cart or Detachable Container until the customer's basic Cart or Detachable Container can be emptied. The Contractor shall empty the primary Toter or Dumpster and remove the additional Toter or Dumpster as soon as practicable after the Eastmont Transfer Station is again open.
- e. The actual quantities of guaranteed tonnage will be tracked on a monthly basis, and deliveries will be adjusted as necessary to achieve the guaranteed minimum tons and percentages. In the event that actual deliveries fall short of the Contractor's guaranteed quantities of tonnage at the end of a Contract year, the shortfall, at the election of the Contractor, will be made up in additional deliveries to the Contractor's Eastmont Transfer Station during the first quarter of the next Contract year. In the event that actual deliveries fall short of the Contractor's guaranteed quantities of tonnage at the end of the final quarter of the Contract period, the City, at the election of the Contractor, will make up the shortfall with additional deliveries to the Contractor's Eastmont Transfer Station during the quarter following the end of the Contract.
- f. No adjustments will be made if actual deliveries in a Contract year exceed the Contractor's guaranteed quantities of tonnage.

Section 135. CDL Transfer/Disposal.

- a. The City reserves, but does not currently exercise, the right to direct the Contractor to any Disposal Facility of its choosing for disposal of CDL collected under this Contract.
- b. CDL collected under the Contract may be directed to Disposal Facilities by the Contractor, *provided that:*
 - 1. The facilities are environmentally acceptable to the City; and
 - 2. The tip fees are acceptable to the City.
- c. The City's rejection of facilities or tip fees shall not be unreasonably exercised.
- d. At such time as Contractor is unable to designate a Disposal Facility which is acceptable to the City under Section 135c, above, the City will exercise its right to direct the disposal of CDL, *provided*, that the City shall in no circumstance exercise this option to direct CDL to a City-owned Disposal Facility prior to April 1, 2006.

C. OPERATIONS

Section 200. Coordination; Implementation.

In order to minimize problems during implementation of the Contract, to provide a forum for discussing and resolving any transition and operational problems that may arise, and to update the Operations Plan, the Contractor and City agree to meet on a regular basis as follows:

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- a. During the three-month period before the Contract takes effect, the Contractor and City will meet on a weekly basis, or on such more or less frequent basis as may be otherwise mutually agreed. The primary purpose of the weekly pre-Contract meetings will be to refine the Transition Plan and the Operations Plan, to seek resolution of any customer service issues, and to discuss promotion, public information and public relations in anticipation of the commencement of the Contract.
- b. During the three-month transition period, the Contractor and City will meet on a weekly basis, or on such more or less frequent basis as may be otherwise mutually agreed. The primary purpose of the weekly transition period meetings will be to refine the Transition Plan and the Operations Plan, to evaluate the Contractor's performance in implementing the Contract, to evaluate container exchange or purchase issues, to review and seek resolution of any customer service issues, and to discuss promotion, public information and public relations.
- c. Following the three-month transition period, the meetings between the Contractor and the City will be held at least on a monthly basis, or on such more or less frequent basis as may be otherwise mutually agreed. The primary purpose of these meetings will be to review day-to-day operations, to refine and revise the Operations Plan, and to discuss promotion, public information and public relations.
- d. Meetings during the transition period will be held at the offices of the City, unless otherwise agreed. Meetings held after the transition period will be held at a mutually agreed location. Each Party will be available for at least 90 minutes per meeting, unless otherwise agreed to in advance. Meetings shall be held during normal business hours.

Section 205. Transition Plan.

In order to effect a smooth transition from the former WUTC regulation to collection of Commercial Waste under this Contract, a Transition Plan shall be developed which shall detail procedures: for easing the customer's transition to a new collector in the Primary Collection Area; for receiving customer information from the City; for exchanging customer service information; and for exchanging or purchasing containers from the City's other Commercial Waste collection contractor.. The Transition Plan will be appended to the Contract as Attachment B and shall begin to be implemented as soon as the Transition Plan is agreed to, which in no case shall be later than the start of collections under the Contract.

Section 210. Operations Plan.

A schedule of activities and detailed procedures related to the effective implementation and operation of the Contract is appended to the Contract as Attachment C. This plan shall be known as the "Operations Plan."

Section 220. Night Collection.

The Contractor shall be able to continue to operate during the night (6 p.m. to 7 a.m.). Any additional restrictions or conditions placed on the Contractor's nighttime operations during the term of the Contract shall be considered a change in law, which may result in additional compensation to the Contractor pursuant to Section 825.

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Section 230. Traffic Laws; Noise Control.

All Contractor vehicles shall be operated in conformity with the Seattle Traffic Code, SMC Chapter 11. The maximum noise level of motor vehicles during travel shall not exceed the levels set forth in SMC 25.08.430. The maximum noise level while collecting or compacting materials collected under this Contract shall not exceed the levels set forth in SMC 25.08.410.

Section 235. Container Maintenance.

The Contractor shall be responsible for repainting, graffiti paint out and steam cleaning of Cans, Carts, Detachable Containers and Drop Boxes as requested by the City. If the City makes any such request, the Contractor will be compensated at the rates set forth in Attachment G, Item 210.

Section 240. Inventory of Equipment.

The Contractor shall provide the City at the start of the Contract with a complete inventory of its equipment, showing each vehicle (type, capacity, approximate age, vehicle license and identification numbers) and all Cans, Carts, Detachable Containers and Drop Boxes used for performing the Contract. The Contractor shall provide the City with an updated vehicle inventory on a monthly basis, which shall incorporate changes within sixty (60) days of their occurrence, and an updated container inventory on an annual basis.

Section 250. Ownership of Equipment.

All vehicles, facilities, equipment and property used in the performance of this Contract shall be wholly owned by the Contractor; provided, that leases, conditional sale contracts, mortgages, or other agreements for the use or financing the purchase of vehicles, facilities, equipment and property may be allowed with the prior written approval of the City. All such leases, conditional sale contracts, mortgages, or other agreements entered into during the term of the Contract shall provide that, in the event of the Contractor's failure to perform its obligations under this Contract, the City, at its option, shall have the right to take possession of and operate vehicles, facilities, equipment, and property covered by such lease or agreement for the unexpired term of this Contract. No further encumbrance shall be placed upon any such vehicles, facilities, or equipment without the prior written approval of the City.

Section 260. City Option to Purchase Containers.

The City shall have the option to purchase all the Contractor's Cans, Carts, and Detachable Containers used for performing the Contract at the end of the Contract period. The purchase price shall be equal to the recorded purchase cost of those containers net of accumulated depreciation as of December 31, 2000, according to the Balance Sheet and supporting schedules in the Contractor's Fixed Asset Inventory, consistent with the total container asset value included in the most recent Annual Report from Waste Management to the WUTC, as set forth in Attachment I, adjusted for 1) the change in the CPI from December 31, 2000, until the end of the Contract period (at 100%), and 2) the percentage changes in the numbers of commercial containers of each size served by Waste Management from December 31, 2000 until the end of the Contract period, *provided* that the number of each size of new containers acquired by Waste Management during 2000 that will be included in the calculation above will be no greater than 15% of the Waste Management container inventory as of December 31, 2000.

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Section 270. Contractor's Office.

The Contractor shall maintain within King County an office with local telephone service and such staff as needed to take care of complaints, billing issues, requests for missed collections and other coordination with City staff. Phone service shall include multiple lines and voice mail and e-mail. Any voice mail messages shall be returned by the Contractor's office within sixty (60) minutes. The Contractor's customer service hours shall be from 8 a.m. to 4:30 p.m., Monday through Friday.

D. RATES TO CUSTOMERS

Section 300. City Sets All Rates to Customers.

The City shall retain the authority to set Rates for all services to customers under this Contract. Rates shall be established by City ordinance. The City's rate ordinances shall specify the container size categories and service levels (frequency of services) that shall be made available to the customers by the Contractor. The Rates, service categories and service levels offered by the City may be changed at any time and as many times during the Contract as the City deems appropriate, so long as after the start of the Contract the Contractor is provided sixty (60) days notice of any change of Rate, service category, or service level. Customers shall be charged for services pursuant to rates established by the City.

Section 310. Rates for Primary Collection Area.

Rates and service levels shall be established by City ordinance for the Contractor's Primary Collection Area. Unless designated a Secondary Collection Area customer by the City, all customers in the Contractor's Primary Collection Area shall be afforded and charged for services pursuant to the City's Primary Collection Area Rate and service level ordinances.

Section 320. Rates for Secondary Collection Area.

- a. Rates and service levels shall be established by City ordinance for the Contractor's Secondary Collection Area. Unless a Commercial MSW customer in the Secondary Collection Area is designated a customer of the Contractor by the City, the Contractor shall not provide Commercial MSW collection services in the Secondary Collection Area. For all Secondary Collection Area services provided by the Contractor, however, the customers shall be afforded and charged for services pursuant to the City's Secondary Collection Area Rates and service levels.
- b. The Secondary Collection Area Rates may be established by the City in any amount. If the Rates for the Secondary Collection Area in any category are less than fifteen (15) percent above the Rates for the same service level in the Primary Collection Area, then the payment provisions of Section 435 shall apply.

Section 330. Rates for A&E Services.

Rates for A&E Services shall also be established by City ordinance for both the Primary and Secondary Collection Areas. Customers shall be charged for A&E Services pursuant to Rates established by City ordinance.

Section 340. Establishing Different Service Levels.

The City shall have the authority to establish different service levels by ordinance at any time during the term of the Contract. The City will provide the Contractor no less than six months'

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written notice prior to requiring the Contractor to begin providing and collecting such new services. Compensation to the Contractor for any new or revised service levels shall be determined pursuant to Section 450.

Section 350. Establishing Different Types of Service.

In addition to creating different service levels under Section 340, the City shall have the authority to establish different types of Commercial Waste collection service by ordinance at any time during the term of the Contract. The City will provide the Contractor no less than six months' written notice prior to requiring the Contractor to begin providing and collecting such new services. Compensation to the Contractor for any new or revised MSW or CDL collection services shall be determined pursuant to Section 450.

Section 360. Recycling.

The City reserves the right to promote and contract for Recycling of any component of the Commercial Waste stream at any time during the term of the Contract. The City shall be under no obligation to contract with the Contractor for the collection of any such Recyclable Materials.

E. COMPENSATION TO CONTRACTOR

Section 400. Compensation for MSW Container Collection.

- a. Unless otherwise stated in the Contract, the City will compensate the Contractor on a monthly basis for collection from all Commercial customers receiving MSW Container Collection service, based on a per unit schedule defining the payment per collection pickup for each level of service. The per unit payments defined by that schedule will be multiplied by the number of collections of each service level performed by the Contractor during the preceding month, to derive the monthly compensation for Commercial MSW Container Collection.
- b. The initial per unit payment schedule for Container Collection in the first Contract year is shown in Attachment D.
- c. The per unit payment schedule in Attachment D reflects an estimated average weight per cubic yard of 155 pounds for the Contractor's MSW Container Collection customers.
- d. A revised per unit payment schedule for Container Collection will be established after the first contract year and will become the basis for subsequent monthly compensation calculations and for establishing the amount of any true-up adjustments as provided for in Section 408.
- e. The format for Contractor reporting of monthly collection service levels, and overall billing procedures are set forth in Sections 500 through 540.

Section 403. Compensation for A&E Services.

- a. The City will compensate the Contractor on a monthly basis for A&E Services based on the per unit payment and the types of A&E services listed in Attachment E. The per unit payment defined by that schedule will be multiplied by the number of A&E Services performed by the Contractor during the preceding month, to derive the monthly compensation for A&E Services.

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- b. The Contractor will be compensated only for those A&E Services set forth in Attachment E. In setting Rates, however, the City may establish charges to customers for A&E Services which are not set forth in Attachment E, and for which the Contractor would receive no additional compensation.
- c. The format for Contractor reporting of monthly A&E Services, and overall billing procedures are defined in Section 500 through 540.
- d. For the first Contract year, per unit payments for A&E Services will be at the levels listed in Attachment E.
- e. Payment for A&E Services shall be adjusted annually each year of the Contract in accordance with the procedures set forth in Section 470.

Section 404. Procedure for Establishing Average Weight Per Cubic Yard.

- a. The per unit payments in Attachment D are based on an estimated average weight of 155 pounds per cubic yard for Contractor's Commercial MSW Container Collection customers. The actual average weight per cubic yard will be established based on City-wide data from the first Contract year in accordance with the procedures set forth in this Section, and then will become the basis for adjustments under Section 407 for the remaining term of the Contract.
- b. Average Weight Per Cubic Yard. The average weight per cubic yard will be derived from City-wide data on:
 - 1. Commercial MSW tonnage collected by the Contractor and the City's other Commercial MSW collection contractor in the City of Seattle from Can Cart and Detachable Container customers from April 1, 2001 through March 31, 2002, and
 - 2. Cubic yards of subscribed Commercial MSW service and billed Bulky Waste collected by the Contractor and the City's other Commercial MSW collection contractor from Can, Cart and Detachable Container Commercial Waste customers in Seattle from April 1, 2001 through March 31, 2002.
- c. Source of Contractor's MSW Tonnage Data. The source of data on Commercial MSW tonnage collected by the Contractor in Seattle from April 1, 2001 through March 31, 2002 will be electronically transferred records of the weights of Commercial MSW delivered by Contractor's Commercial MSW route collection vehicles' tipped weights at any Disposal Facilities used during that period. In addition, the Contractor will provide copies of the weight slips provided to the Contractor's Commercial MSW collection vehicles when they dispose of each load collected in the City of Seattle. The Contractor will arrange for electronic data transfer of records from Eastmont Transfer Station, and will provide a complete copy set of the weight slips from all Disposal Facilities used to the City on a monthly basis, including information on date of disposal, time of disposal, and number assigned by the Contractor to the route. The City will likewise arrange for electronic data transfer to the Contractor of records of the Contractor's Commercial MSW disposal at the City's Disposal Facilities.
 - 1. Data from these sources will be compared to 1) the corresponding data for the two calendar years preceding the start of the Contract, and 2) the monthly submittals made by the operator of the Eastmont Transfer Station during those two calendar years to the

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Seattle-King County Department of Public Health, which define all waste streams tipped at the Eastmont Transfer Station, of Commercial MSW, excluding CDL, disposed of at that facility, for verification.

- d. Source of Contractor's Cubic Yards Collected Data. The source of data on total cubic yards of Commercial MSW collected in Seattle from April 1, 2001 through March 31, 2002 will be Commercial MSW billing data provided by the Contractor in monthly submittals to the City. Cubic yards included in the count will be subscribed cubic yards of container service to Can, Cart and Detachable accounts (adjusted for compaction ratios), collected by the Contractor's Commercial MSW collection route vehicles, plus billed cubic yards of Bulky Waste collected from those accounts. The City may survey a sample of customers, or conduct a spot-audit of Contractor routes, to verify customer service levels identified in the Contractor's billing data submittals.
- e. In the event of any apparent discrepancy, the City and the Contractor will review the records, and attempt to agree on a specific average weight per cubic yard estimate. If disagreement remains, the matter will be addressed pursuant to the provisions of Section 830.

Section 407. Compensation Based on Average Weight Per Cubic Yard.

- a. Per unit payment amounts for Commercial MSW Container Collection shall be adjusted once following the first year of service under this Contract using the average weight per cubic yard defined by the procedures set forth in Section 404. The revised per unit payment structure for the remaining term of the Contract will then be calculated based on the baseline tariff rates in Attachment D, adjusted downward in three steps, to:
1. exclude the portion of those tariffs associated with disposal costs;
 2. exclude the portion of those tariffs associated with taxes; and
 3. reduce the remaining net payments by 15% at each service level.
- b. These three adjustments will be calculated as follows:
1. The adjustment for exclusion of disposal costs at each level of service will be made by i) multiplying the average weight per cubic yard established by the procedures set forth in Section 404 (in tons) by the size of the container picked up (in cubic yards), by \$77.87, and ii) subtracting that amount from the baseline tariff rate in Attachment D.
 2. The adjustment for exclusion of tax costs at each level of service will be made by i) multiplying the average weight per cubic yard established by the procedures set forth in Section 404 (in tons) by the size of the container picked up (in cubic yards), by \$11.70, and ii) subtracting that amount from the baseline tariff rate in Attachment D subtracted from the original tariff.
 3. Finally the tariff rates at each collection service level that result from the two preceding adjustments will be multiplied by 85% to determine the revised initial year per unit payments for Commercial MSW Container Collection.

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Section 408. True-up Procedure for Recalculating First Year Compensation.

- a. When the revised initial year per unit payments for Commercial MSW Container Collection have been calculated pursuant to Section 407 for the period April 1, 2001 through March 31, 2002 the compensation from the City to the Contractor for the first twelve months of the Contract will be recalculated, based on the revised initial year per unit payments for Commercial MSW Container Collection..
- b. Any difference between the resulting recalculated compensation and the compensation actually made for Container Collection service in the first twelve months of the Contract will be applied to the twelve monthly payments to the Contractor from the City for the Contract period July 1, 2002 through June 30, 2003. If the adjustment is in the Contractor's favor, one-twelfth of the difference will be added to the City's compensation payment each month; if the adjustment is in the City's favor, one-twelfth of the difference will be subtracted from the City's compensation payment each month.

Section 410. Compensation for Drop Box/Roll-off Collection (MSW or CDL).

- a. The City will compensate the Contractor on a monthly basis for Drop Box service at the per unit payment rates shown in Attachment F. The per unit payments defined in that attachment shall be multiplied by the number of Drop Box collection services performed by the Contractor during the preceding month, to derive the monthly compensation for Drop Box services.
- b. Each of these per unit payments for Drop Box service shall be adjusted annually during the term of this Contract in accordance with the provisions of Section 470.

Section 415. Compensation for Street-Side Litter Can Collection.

- a. If the City exercises its option to add street side litter collection to the services covered under this Contract, pursuant to Section 122, it will pay the Contractor:
 1. \$1.50 per pickup for all containers, whether employing replaceable bags or internal cans, and whether the replaceable bags or internal cans are removable through the top or through a side panel.
 2. If the City requires the Contractor to perform litter can collection on Saturday or Sunday, the City shall pay the Contractor twice the payment amount established in this Section for each container collected.
- b. The per-container payment for litter can collection in the initial year of the City's exercise of its option will be adjusted annually from the amount set forth in subsection (a) above by multiplying the per container payment by 100% of the change in the CPI-W from December 31, 2000 until the initiation of such service. Thereafter, the per container payment for litter can collection will be adjusted annually each year during the term of this Contract according to the CPI adjustment clause set forth in Section 470 of this Contract.
- c. Any MSW collected by the Contractor from street-side litter cans will be included in the MSW tonnage upon which the percentage of tonnage guarantees are calculated, under the provisions of Section 130.

- d. If the City exercises its option to add litter can collection to the services covered under this Contract, compensation for such collection will be made on the same monthly schedule as compensation for other collection services covered under this Contract.

Section 420. Can, Cart and Detachable Container Rentals.

The City will compensate the Contractor for temporary and permanent Can, Cart and Detachable Container rentals at the daily and monthly per container payment rates shown in Attachment D, as adjusted annually according to the provisions of Section 470.

Section 422. Drop Box Rentals.

The City will compensate the Contractor for temporary and permanent Drop Box rentals at the daily and monthly per container payment rates shown in Attachment F, as adjusted annually according to the provisions of Section 470.

Section 430. Compensation for Collection in Secondary Collection Area.

- a. The Contractor will receive base payments for Commercial MSW collection service to customers in its Secondary Collection Area according to the compensation structure in Sections 400 through 422, and an additional amount for customers in its Secondary Collection Area depending on their location as set forth below.
- b. For those Commercial MSW Container Collection service customers located north of the Ship Canal collected during the day (7 AM to 5 PM), the Contractor will be paid an additional amount equal to i)50% of the difference between the City's Secondary Collection Area Rates and the City's Primary Area Collection Rates for any given service level, plus ii)\$5 per stop per day, up to a maximum of \$20 per collection day.
- c. For those Commercial MSW Container Collection service customers located north of the Ship Canal collected at night (5 PM to 7 AM), the Contractor will be paid an additional amount equal to i)50% of the difference between the City's Secondary Collection Area Rates and the City's Primary Area Collection Rates for any given service level, plus ii)\$15 per stop per day, up to a maximum of \$60 per collection day.
- d. For those Commercial MSW Container Collection service customers located more than ½ mile from the service boundary and south of the Ship Canal the Contractor collected at any time will be paid an additional amount equal to i)75% of the difference between the City's Secondary Collection Area Rates and the City's Primary Area Collection Rates for any given service level plus ii)\$15 per stop per day, up to a maximum of \$60 per collection day.
- e. The Contractor must provide the City with billing statements that include service addresses and phone numbers for all Commercial MSW Secondary Collection Area customers as the basis for payment for service delivered in its Secondary Collection Area.
- f. In addition, the Contractor must notify the City within 24 hours of any existing Commercial MSW customers in its Primary Collection Area who have requested service by the other Commercial MSW collection contractor, and of any Commercial MSW customers in its Secondary Collection Area who have requested service by the Contractor.

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Section 435. Compensation Adjustment for Primary/Secondary Rate Differentials.

- a. The City reserves the right to establish Rates that will apply to customers receiving Commercial MSW service from other than their Primary Collection Area provider.
- b. For Commercial MSW service to customers in its Secondary Collection Area whose Rates for service are 15% or more higher than for the same service level in the Primary Collection Area, the Contractor will receive no additional compensation, beyond that established by the procedures in Section 430.
- c. For Commercial MSW service to customers in its Secondary Collection Area whose Rates for service are less than 15% higher than for the same service level in the Primary Collection Area, the City will compensate the Contractor by an additional amount equal to the number of percentage points by which the differential in rates is less than 15% higher multiplied by the Contractor's total compensation for service to customers receiving that level of service.
- d. Any such compensation will be calculated and paid monthly for the period for which the differential in Rates remains less than 15%, or prorated for partial months if necessary. If the Rates fall short of the 15% differential for more than one service category, the Contractor will be paid for each such service level category according to the formula set forth above.

Section 440. Compensation Adjustment for Revised Average Round-trip Haul Times.

- a. The City reserves the right to direct the non-guaranteed portion of MSW collected by the Contractor described in Section 130(b) to any Disposal Facility of its choosing. For purposes of this section, it will be assumed that the City will initially direct all such non-guaranteed MSW to its South Recycling and Disposal Station (SRDS).
- b. After the Contractor has established its collection routes in its Primary Collection Area, an "initial average round-trip haul time" will be determined for transfer trips from the mid-points of those routes to the City's SRDS and back again. Average round-trip haul times will also be determined for transfer trips from the mid-points of those routes to each other Disposal Facility in the City.
- c. The mechanism for determining the initial average round-trip haul times will be the City of Seattle GIS model developed for residential route haul time calculations, modified to incorporate the new route location information identified for the Commercial MSW collection routes.
- d. Whenever the City elects to direct portions of the waste collected under Section 130(b) of this Contract to Disposal Facilities other than SRDS, a "revised average round-trip haul time" will be calculated by using a weighted average of the shares of non-guaranteed tons directed to each Disposal Facility times the average round-trip haul times calculated for each Disposal Facility.
- e. Any resulting difference between the initial and revised average round-trip haul times will be the basis for Contractor compensation adjustments.
- f. Contractor compensation adjustments will be based on the following calculated cost impact formula:

Calculated cost impact payment

= \$60.00 per hour
 *(revised average round-trip haul time), in hours
 *total transfer round trips per month
 * percentage of Contractor's Commercial MSW tonnage redirected

[The rate per hour will be adjusted annually by the CPI factor defined in Section 470.]

For increases in average round-trip haul time, the Contractor will receive 100% of the calculated cost impact as a compensation adjustment to be made on that month's compensation from the City. For decreases in average round-trip haul time, the City will receive 75% of the calculated cost impact (in the form of reduced payments to the Contractor), and the Contractor will retain any remaining cost savings.

An example calculation of this cost impact formula is provided in Attachment G.

- g. The City will only direct trucks to Disposal Facilities that are open at the time the truck is full.

Section 445. Compensation for Excess Cycle Time.

The Contractor will be compensated an additional amount for each Cycle Time for MSW collected under this Contract at a Public Facility or Private Facility not owned by Contractor that is greater than 15 minutes. Compensation adjustments for excess Cycle Time will be calculated monthly. The additional amount that the Contractor will be compensated for excess Cycle Time will be determined based on Contractor's submittal of all relevant scale transaction receipts for the month in question.

Compensation for excess Cycle Time =
 \$60.00 per hour
 * the sum of total hours in excess of allowable Cycle Time.

Section 450. Mechanism for Establishing Base Compensation for New Service Levels or Types of Service.

- a. The City retains the discretion to establish new service levels (e.g., 3/4 yard dumpster) or types of service at any time during the Contract. Compensation for any new service level or type of service will be based on the following:
1. For a new service level (e.g., 3/4 yard dumpster), compensation to the Contractor shall be at the next highest level of service already established (e.g., 1 yard dumpster).
 2. For a different type of service (e.g., shared 4 yard Container Collection service at the end of an alley for multiple Commercial MSW customers) the per-unit payment shall be at the same amount as the most comparable existing service (e.g., Attachment D, 4yd noncompacted service).
- b. If the City establishes new commercial recycling services for which the Contractor (1) has no contract service relationship with the City for such commercial recycling service and (2) which results in greater than 10% reduction in annual solid waste tonnage over the pre-program period, the Contractor may invoke the procedures set forth in Section 830, *provided*, however, that the City may in such case terminate the Contract with 18 month's notice rather than the 3 year's notice otherwise provided in Section 830.

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Section 470. Annual CPI Compensation Adjustment.

- a. A CPI adjustment factor will be applied to the per unit payments for Container Collection and Drop Box services; to all A&E Services, rental and maintenance fees, all hourly rates; and to any other rate that is fixed at the beginning of the Contract, unless otherwise specified.
- b. The CPI adjustment will be made annually effective April 1 of each year, with the first adjustment effective April 1, 2002. The annual adjustments will be based on a percentage of the change in the Seattle-Area CPI-W during the preceding calendar year in an amount determined by the formula below:
 - i) For each subsequent adjustment, that percentage of the change in the CPI-W will be equal to the lesser of:
 - a. 55% plus four times the absolute value of the percentage change in the CPI-W over the preceding calendar year, or
 - b. 90%.

Section 480. Compensation for Transition Services.

The City will pay the Contractor \$450,000, payable in two installments of \$250,000 on April 9, 2001 and \$200,000 October 8, 2001, to compensate the Contractor for costs associated with the transition from WJTC regulation to City contract. These payments will constitute the entire compensation for costs incurred by the Contractor for transitional activities, including, but not limited to, the costs of exchanging containers with the other Commercial MSW collection contractor, changes to the Contractor's billing systems, and collection route redesign.

Section 490. Compensation for MSW Transfer and Short Haul.

- a. For transfer and short-haul of the guaranteed tonnage described in Section 130 to the long-haul transfer and disposal loading point designated by the City, the City will compensate the Contractor according to the payment schedule defined in Attachment J, Section A: "Guaranteed Share of Tonnage."
- b. For transfer and short-haul by the Contractor of any additional commercial MSW tonnage described in Section 130 to the long-haul transfer and disposal loading point designated by the City, the City will compensate the Contractor according to the payment schedule defined in Attachment J, Section B: "Additional Tonnage."
- c. The per-ton payments for tonnage transferred at the Contractor's Eastmont Transfer Station will be adjusted annually according to the CPI adjustment terms defined in Attachment J.
- d. The City's payments to the Contractor for transfer and short haul defined in this section will be made on a monthly basis.
- e. The Contractor shall maintain the following data and transmit it to the City as back-up for transfer payments:
 - 1. Date of transfer service;
 - 2. Truck type and truck number delivering each load;
 - 3. Route identification for the truck's regularly assigned route;

4. Disposal Facility location;
5. Inbound time and weight;
6. Outbound time and weight; and
7. Any additional information as may be reasonably necessary to track transfer delivery, tonnage and costs.

Section 495. Payment Mechanism.

- a. No later than the 5th of each month, the Contractor will submit an invoice to the City, for services provided during the prior month. This invoice will be paid by the City to the Contractor by wire transfer on or before the 25th of the same month (or 20 days after the invoice date, if the invoice is presented late). This invoice will be at a level of detail that will allow the City to determine the type (i.e., MSW or CDL), container size, frequency and per unit compensation associated with each service.
- b. Compensation paid by the City to the Contractor for services under this Contract, plus CDL disposal fees and direct taxes on those fees, will determine the taxable income under this Contract for which Contractor will be responsible for paying B&O taxes. Other than revenues from disposal fees passed through to Commercial Waste customers directly by the Contractor for CDL services, it is the intent of both the City and the Contractor that Contractor's taxable income for services under this Contract is not based upon the remittances paid by the Commercial Waste customers to the Contractor acting as collecting agent for the City, including those taxes described in Section 520. The Contractor and the City will renegotiate the terms of the Contract pursuant to Section 830 to comport with the intent of this provision, should the allocation of tax responsibility change as a result of change of law, should the Department of Revenue take a position inconsistent with the intent of this provision regarding Contractor's obligations to pay B&O taxes, or should any other taxing authority take a position contrary to this provision.

F. CUSTOMER SERVICE, BILLING, CASH TRANSFERS

Section 500. Customer Services.

In addition to other customer service provisions in the this Contract, the Contractor shall provide the following services to Commercial Waste customers:

- a. Set up of new accounts for each commercial customer to be serviced by the Contractor in the Contractor's Primary Collection Area.
- b. Set up of new accounts for each Commercial Waste customer to be serviced by the Contractor in the Contractor's Secondary Collection Area, provided the requested service is approved by the City as required in Section 105;
- c. Provision of containers for each Commercial Waste customer
- d. Provision of itemized monthly invoices to each Commercial Waste customer;
- e. Receipt and processing of payments from all Commercial customers serviced by the

Contractor.

- f. Provision and maintenance of systems and personnel for managing customer inquiries and complaints.
- g. The Contractor shall maintain a record of all customer service requests and complaints, which shall be available to the City for inspection and copying during regular business hours.
- h. If during any 30 day period the City receives more than 5 complaints that customers are unable to receive a response from the Contractor by telephone within one business day, such complaints will be investigated unless the Contractor has an explanation acceptable to the City for such complaints, and the Contractor may be required to increase the capacity of telephone equipment, and/or increase the number of customer service representatives.
- i. If during any 30 day period the City receives more than 10 complaints that customers have failed to receive a response from the Contractor by telephone within one business day of calling, unless the Contractor has an explanation acceptable to the City for such complaints, the City shall impose liquidated damages per Section 750. The City shall maintain a record of the identity and service location of each complaining customer and the nature of the complaint.

Section 510. Billing to Customers.

Commercial Waste customers will be billed on a monthly basis at the rates set by the City as set forth in Section D. The Contractor will be responsible for billing each Commercial Waste customer serviced in its Primary Collection Area and its Secondary Collection Area. The invoices will be itemized to show the following:

- a. Collection costs, including size of containers and number of collections;
- b. Container rental, including, location and size of container and period of rental;
- c. A&E Services, including type and number;
- d. Applicable taxes, separately identifying the amount of each tax imposed by a taxing authority on the customer directly for which Contractor is acting only as collection agent for the City;
- e. Other services provided by the City, including type and frequency;
- f. Past due amounts for service under the Contract, including any penalty or interest charges specified by the City;
- g. Past due amounts for Commercial Waste service provided during the 90 day period prior to the start of the Contract, either by the Contractor or by the other contractor supplying Commercial Collection service to the City, *provided* such past due amounts owed to either contractor may be billed pursuant to this Contract for only a 90-day period after the start of the Contract;
- h. Disposal costs for CDL Drop Box services; and
- i. At the option of the Contractor, other services provided by the Contractor not under this Contract.

Section 520. Payment Receipt and Remittance to City.

- a. Application of Funds The Contractor will be responsible for collecting all payments from its designated Commercial Waste customers served by the Contractor. Account balances will be divided into six (6) categories, and the payment received by the Contractor from each customer will be applied in the following order:
1. specific billed services to that customer, prior or current, as directed in writing by the customer, whether or not performed pursuant to this Contract;
 2. balances carried forward by the Contractor or the other contractor supplying Commercial Collection service to the City from pre-Contract services to that customer, for a period of ninety (90) days from the commencement of services under this Contract;
 3. prior Commercial Waste services to that customer performed pursuant to this Contract and billed for the City, including any late penalties and interest as determined by the City;
 4. prior other services to that customer performed by Contractor outside the scope of this Contract or services to that customer billed by the Contractor directly (e.g., CDL disposal fees);
 5. current Commercial Waste services to that customer performed pursuant to this Contract and billed for the City; and
 6. current other services to that customer performed by Contractor outside the scope of this Contract provided or billed by the Contractor directly.
- b. City not responsible for Contractor's debts The City will not be responsible for collection of debts owed by Commercial Waste customers to the Contractor for services performed by Contractor outside the scope of this Contract except for the employment of collection mechanisms as set forth in Section 530.
- c. Remittances to City shall be as follows:
1. Payments received by the Contractor from its designated Commercial Waste customers as provided in Section 60(h) will be remitted by the Contractor to the City by wire transfer on the fourth day following posting to the customer account by the Contractor.
 2. NSF checks and fees and other non-clearing deposits will be charged back to the City, to the extent they were previously credited to the City.
 3. Disputed billings will be reconciled by the Contractor's billing department, provided that, at the City's request, a representative of the City shall join the Contractor in dealing with the disputed bill and, in that event, the City's determination of billing for City services shall be binding.
- d. Treatment of Certain Taxes and Other Excises
1. The Parties agree that Contractor will act as collecting agent for the City with regard to the following taxes and any other taxes imposed by law on the Commercial Waste customers for which the City has responsibility of remittance to the appropriate taxing

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authority, except for the portion of these taxes that are based either directly or indirectly on CDL disposal fees, which are passed through to the customers and collected and paid directly by the Contractor:

- i. Household Hazardous Waste Collection Fees, corresponding to the fees currently contained in Seattle Municipal Code § 21.44.060D;
 - ii. Seattle Solid Waste Collection Taxes contained in Seattle Municipal Code, §5.48.055;
 - iii. State Solid Waste Collection Taxes, and
 - iv. Retail Sales Tax levies on container rental charges.
2. Nothing in this Contract is intended to impose liability as a taxpayer on Contractor for amount attributable to the taxes described in this subsection, and nothing is intended to circumvent the existing regulatory structure with regard to such taxes. The Parties wish to establish a system under which Contractor will act solely as a collecting agent for the benefit of the City in the collection of such taxes. If the Contractor fails to collect such taxes the customer or the City, as the case may be, and not the Contractor will bear the ultimate tax liability.
3. The Parties agree that if the regulatory structure governing the imposition and liability for such taxes changes, so as to prohibit or otherwise interfere with Contractor acting solely as collecting agent, the Parties will renegotiate the terms of the Contract governing payment and collection of such taxes and, if necessary, make any adjustment to Contractor's compensation as may be necessary.

Section 530. Bad Debts.

All past due amounts that accrue from the services provided by the Contractor under this Contract or past due amounts for Commercial Waste service provided during the 90 day period prior to the start of the Contract, either by the Contractor or by the other contractor supplying Commercial Collection service to the City will be pursued for collection by the Contractor for a ninety (90) day period as follows:

- a. If no payment has been received at thirty (30) days from the date of the original invoice, send a second invoice with dunning message and late penalties and interest as determined by the City.
- b. If no payment has been received at forty-five (45) days from the date of the original invoice, send a collection letter.
- c. If no payment has been received at fifty-five (55) days from the date of the original invoice, call the customer.
- d. If no payment has been received at sixty-five (65) days from the date of the original invoice; call the customer and notify the customer that service is being suspended, place the account on suspension and notify the City, *provided* no service shall be suspended during April 2001
- e. If no payment has been received at seventy-five (75) days from the date of the original invoice, send final collection letter or call the customer.

- f. If no payment has been received at ninety (90) days from the date of the original invoice, the account will be closed and the balance, including accrued interest, will be forwarded to the City for collection.

Section 540. Record Keeping and Reporting.

The Contractor shall maintain complete and accurate books of account and records with respect to the performance of its obligations under this Contract including, but not limited to, all correspondence and invoices, transaction tickets, or receipts documented by books and records kept at Contractor's principal place of business. Contractor also agrees to maintain a system of internal accounting controls sufficient to ensure that all transactions are properly authorized, recorded, processed, summarized and reported and that all assets of the Contractor and the City are adequately safeguarded. The City shall have the right during reasonable business hours to inspect and audit such books, records and internal accounting controls. All books, accounts, and records required to be maintained under this Section shall be preserved intact without alteration during the term of this Contract and for a period of twelve (12) months following the termination of this Contract.

G. EQUAL OPPORTUNITY/ NON DISCRIMINATION

Section 600. Equal Employment Opportunity.

- a. 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 will 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, unless based upon a bona fide occupational qualification. Such action shall include, but not be limited to the following: employment, upgrading, promotion, 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.
- b. The Contractor will, prior to commencement and during the term of this Contract, furnish to the Executive Services Director (as used in this section, Director means the City's Executive Services Director 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.
- c. 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 contracting authority shall be so notified in writing. The contracting authority shall give the Contractor an opportunity to be heard, after ten (10) days' notice. If the contracting authority concurs in the findings of the Director, it may suspend the 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.

- d. 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.

Section 610. Equal Employment Opportunity – Implementation.

- a. The Contractor shall obtain in writing from each subcontractor or participant in a joint venture an agreement to comply with the terms of Equal Employment Opportunity set forth in Section 600.
- b. The Contractor shall be responsible for the compliance of subcontractors or joint ventures. Appropriate sanctions for noncompliance will 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 ventures and reviewing this documentation to assure its validity and compliance. Contractor shall submit such documentation from subcontractors and joint ventures concurrently with the Contractor's own submittals.

Section 620. Non-Discriminatory Service.

The Contractor shall not discriminate against any customer in the provision of service or quality of service on account 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 qualification to or for service. The Contractor shall provide comparable service throughout both the Primary and Secondary Collection Areas without regard to racial, ethnic, or cultural characteristics or relative standard of living of the neighborhood.

Section 630. NonDiscrimination in Employee Benefits.

- a. The Contractor shall comply with the requirements of SMC Ch. 20.45 and Equal Benefits Program Rules implementing such requirements, under which the Contractor is obligated to provide the same or equivalent benefits ("equal benefits") to its employees with domestic partners (other than employees subject to collective bargaining agreements where the employer does not provide health benefits directly) as the Contractor provides to its employees with spouses. At the City's request, the Contractor shall provide complete information and verification of the Contractor's compliance with SMC Ch. 20.45. Failure to cooperate with such a request shall constitute a material breach of this Contract.
- b. Any violation of this Contract Section 470 shall be a material breach of the Contract for which the City may:
 - 1. Require the Contractor to pay liquidated damages in the amount of five hundred dollars (\$500.00) per day for each day the Contractor is in violation of SMC Ch. 20.45 during the term of the Contract; or

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2. In the event the Contractor willfully refuses or repeatedly fails to comply with the requirements of SMC Ch. 20.45, terminate the Contract; or
3. Disqualify the Contractor from bidding on, responding to or being awarded a City contract for a period of up to five (5) years; or
4. Impose such other remedies as specifically provided for in SMC Ch. 20.45 and the Equal Benefits Program Rules promulgated thereunder.

H. SECURITY; LIABILITY; DAMAGES

Section 700. Performance Bond.

The Contractor shall provide and maintain at all times a valid Contractor's Performance and Payment Bond for seven and one-half (7.5) percent of the estimated annual compensation to the Contractor under the Contract. 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 the renewability of the current bond at least 90 calendar days before it expires.

The initial performance bond must be in place on or before April 1, 2001.

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 be conditioned that such Contractor shall faithfully perform all of the provisions of this Contract and pay all laborers, mechanics, subcontractors, material men and all persons who shall supply such Contractor or subcontractors with provisions and supplies for the performance of this Contract, and shall be further conditioned that any person(s) performing such work or services, said bond shall contain appropriate recitations that it is issued pursuant to this Section of this Contract, that it shall be construed to meet all requirements specified herein and that any condition or limitation in such bond which is in conflict with the conditions and requirements of this Section is void. Such bond shall be submitted to, and subject to approval of the City Attorney's Office prior to its effective date.

Failure of the Contractor to furnish and maintain said Performance and Payment Bond shall be considered a material breach of this Contract and grounds of its immediate termination at the option of the City.

Section 710. Default of Contractor.

- a. The Contractor may be held in default of the Contract in the event the Contractor:
 1. Fails to perform ninety percent (90%) of the collections required by this Contract and appears, to the City, to have abandoned the work, or to be unable to resume collections within forty-eight hours; or
 2. Has failed on three or more occasions of three (3) working days duration each, in any year, or fifteen (15) days in a calendar year to perform the collections required by the Contract; or
 3. Repeatedly neglects, fails, or refuses to comply with any of the material terms of the Contract, after having received notice of its obligation to do so.

- b. To initiate proceedings under this Section, the City shall give notice to the Contractor and its surety of the location, time, and date within the following seven calendar days of a public hearing at which the Contractor may show cause why it should not be declared in default. In the event the Contractor fails to show, to the satisfaction of the City, why the Contractor should not be declared to be in default of this Contract, the City may make such declaration.
- c. In declaring the Contractor to have defaulted on the Contract, the City also may order the Contractor to discontinue further performance of work under the Contract and transfer the obligation to perform such work from the Contractor to the surety on the Contractor's performance bond and take any other action it deems advisable.
- d. Upon receipt of a notice that the work has been transferred to the surety without termination of the Contract, the surety shall take possession of all materials and equipment described in the most recent inventory submitted to the City pursuant to Section 240 hereof, for the purpose of completing the work under the Contract; employ, by contract or otherwise, any person and all persons needed to perform the work; and provide materials and equipment required therefor. Such employment shall not relieve the surety of its obligations under the Contract and the bond. If there is a transfer to the surety, payments shall be made to the surety or its agent for all work performed under the Contract subsequent to such transfer, in amounts equal to those that would have been made to the Contractor had it performed in the manner and to the extent of the surety's performance, and the Contractor shall have no claim upon the same.
- e. In the event the surety on the Contractor's performance bond fails to assume or continue performances within 48 hours after its receipt of notice that the work has been transferred to such surety, the Contractor shall lease, sublease or otherwise license the City to use all, or whatever portion is desired by the City, of the materials and equipment described on the most recent inventory submitted to the City pursuant to Section 240 hereof, for collection [and processing] purposes for a period of up to six months following the date of the declaration of default by the City without requiring the City to execute any other document whatsoever to accomplish such lease, sublease, or license and without requiring the City to post any bond, pledge, deposit or other security for such equipment and materials, but upon the condition that the City pay for the equipment and materials actually used for such collection a market rental that is no greater than (i) the monthly lease, in the event such property is leased by the Contractor, (ii) the periodic installment, in the event such property is being acquired under a purchase contract, (iii) the periodic financing interest and principal, in the event such property is being acquired under a purchase contract, or (iv) the periodic interest and principal, in the event such property is being acquired under a financing arrangement; provided, that under no circumstances shall the City be liable during its use of such property for any arrearages, balloon payment, accrued interest, accelerated charges in the event of a default, or other extraordinary payment; nor shall the satisfaction thereof be a condition of the City's interim use of such property; provided, further, that such lease, sub-lease, or license shall be suspended the date the surety on the Contractor's bond or its agent accepts the transfer of work under the Contract.
- f. In the event the City secures the performance of work under the Contract at a lesser cost than would have been payable to the Contractor had the Contractor performed the same, then the City shall retain such difference; but in the event such cost to the City is greater, the Contractor and its surety shall be liable for and pay the amount of such excess to the City.
- g. All payments due the Contractor at the time of default, less amounts due the City from the

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Contractor, shall be applied by the City against damages suffered and expense incurred by the City be reason of such default, any excess shall be paid to the Contractor unless otherwise provided herein.

Section 720. Commitment of Equipment.

- a. Unless a replacement or substitute is provided, all vehicles, facilities, equipment and property identified in the Contractor's inventory under Section 240 for use in the performance of this Contract (called "such property") shall be available for use in collecting Commercial Waste for the duration of this Contract. When provided, this Section applies to the replacement and substitute.
- b. From the date of the Contract and for its duration, any document (including a lease to or by the Contractor, financing contract, acquisition over time, mortgage, or other instrument establishing a security interest) that encumbers or limits the Contractor's interest in such property shall:
 1. Allow the surety on the Contractor's performance bond to take over the Contractor's obligations and to continue the use of the equipment in service for performance of the Contract;
 2. In event the Contractor is in default and the surety on the Contractor's performance bond fails to assume or continue performance within 48 hours after notice to do so, allow the City to use without further documentation all or a portion of such property, at the City's discretion, for a period of up to six months following the date of the City's declaration of default, to provide such collection services on the condition that the City pays to the City's lessor a market rental for the equipment or property actually used in an amount no greater than the monthly lease in event of a lease, the installment payment in event of a purchase contract, or the monthly interest and principal in event of a financing arrangement;
 3. Exempt the City from liability during its usage of such property for arrearages, balloon payments, accrued interest, accelerated charges on account of a default, or other extraordinary payments, and not make satisfaction thereof a condition of the City's interim usage; and
 4. Forbid any foreclosure, trustee's sale or other dispossession of the Contractor's interest in such property without giving both the City and surety on the Contractor's performance bond sixty days' prior notice, and then make any termination of the Contractor's interest in such property pursuant to such action or the enforcement thereof subject to the requirements of subsections 1), 2) and 3) of this Section.
- c. To assure compliance with this Section, the Contractor shall submit to the City for its review and approval or disapproval prior to execution all material contracts, leases, or other documents for acquisition of, or encumbering or limiting the Contractor's interest in, such property or for replacements thereof and any proposed agreement that would encumber or transfer any interest of the Contractor in such property before the Contractor's execution of such agreement. The City's approval shall not be unreasonably withheld, and if the City does not respond within five business days, its approval shall be considered to have been given.



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Section 730. Insurance.

a. Contractor shall at all times during the term of this Contract, obtain and maintain continuously, at its own expense, and file with the City and the City's Risk Manager, evidence of a policy or policies of insurance as enumerated below:

1. A policy of Commercial General Liability Insurance, written on an insurance industry standard occurrence form (CG 00 01), including all the usual coverages known as:
 - Premises/Operations Liability
 - Products/Completed Operations
 - Personal/Advertising Injury
 - Contractual Liability
 - Independent Contractors Liability
 - Stop Gap/Employers Contingent Liability
 - Explosion, Collapse, or Underground (XCU)
 - Fire Damage

Such policy(ies) must provide the following minimum limit:

<u>Bodily Injury and Property Damage -</u>	
\$ 2,000,000	General Aggregate
\$ 2,000,000	Products & Completed Operations Aggregate
\$ 1,000,000	Personal & Advertising Injury
\$ 1,000,000	Each Occurrence
\$ 100,000	Fire Damage
<u>Stop Gap Employers Liability</u>	
\$ 1,000,000	Each Accident
\$ 1,000,000	Disease - Policy Limit
\$ 1,000,000	Disease - Each Employee

If a claims made policy is used, it must have an unaltered extended discovery period provision.

2. A policy of Business Automobile Liability, including coverage for owned, non-owned, leased or hired vehicles written on an insurance industry standard form (CA 00 01) or equivalent, and as specified by Insurance Services Office Symbol 1 (any auto), an MCS 90 endorsement and a CA 9948 endorsement attached if "pollutants" as defined in exclusion 11 of the commercial auto policy are to be transported.

Such policy(ies) must provide the following minimum limit:

<u>Bodily Injury and Property Damage -</u>	
\$ 1,000,000	per person
\$ 2,000,000	per occurrence

3. A policy of Workers' Compensation. As respects Workers' Compensation insurance in the State of Washington, the Contractor shall secure its liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington. If the Contractor is qualified as a self-insurer in accordance with Chapter 51.14 of the Revised Code of Washington, Contractor shall so certify by a letter signed by a corporate officer and setting forth the limits of any policy of excess insurance covering its employees. The Contractor further waives, with respect to the

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City only, its immunity under RCW Title 51, Industrial Insurance, of the Revised Code of Washington.

Any deductible or self-insured retention must be disclosed. The cost of any claim payments falling within the deductible shall be the responsibility of the Contractor.

If any such policy is written on a claim made form, the retroactive date shall be prior to or coincident with the effective date of this Contract. The policy shall state that coverage is Claims Made, and state the retroactive date. Claims made form coverage shall be maintained by Contractor for a minimum of two years following the expiration or earlier termination of this Contract, and Contractor shall annually provide the City with proof of renewal. If renewal of the claims made form of coverage becomes unavailable, or economically prohibitive, Contractor shall purchase an extended reporting period ("tail") or execute another form of guarantee acceptable to the City to assure financial responsibility for liability for services performed.

4. Additional Insured and Primary Insurance Provisions: Such insurance, as provided under items (1), (2), above, shall be endorsed to include the City of Seattle, its officers, elected officials, employees, agents and volunteers as additional insured, and shall not be reduced or canceled without forty-five (45) days prior written notice to the City. In addition, Contractor's insurance shall be primary as respects the City, and any other insurance maintained by the City shall be excess and not contributing insurance with the Contractor's insurance.
5. Evidence of Insurance: The following documents must be provided as evidence of insurance coverage:
 - a. A certificate of insurance, or a copy of the policy's declarations pages, showing the Insuring Company, policy effective dates, limits of liability and the Schedule of Forms and Endorsements.
 - b. A copy of the endorsement naming The City of Seattle as an Additional Insured, showing the policy number, and signed by an authorized representative of the insurance company for Business Auto Liability, and for the Commercial General Liability policy a Form CG2010 (ISO) or equivalent. In the event the policy carries a blanket endorsement, a copy shall be provided in satisfaction of this requirement.
 - c. A copy of the "Endorsements Form List" to the policy or policies showing endorsements issued on the policy, and including any company-specific or manuscript endorsements.
 - d. A copy of an endorsement stating that the coverages provided by this policy to the City, or any other named insured shall not be terminated, reduced or otherwise materially changed without providing at least forty-five (45) days prior written notice to the City of Seattle.
 - e. A copy of A "Separation of Insureds" or "Severability of Interests" clause, indicating essentially that - except with respect to the limits of insurance, and any rights or duties specifically assigned to the first named insured, this insurance applies as if each named insured were the only named insured, and separately to

each insured against whom claim is made or suit is brought (Commercial General Liability & Business Automobile Liability Insurance).

6. Policy Rating: All policies shall be subject to approval by the City's Risk Manager as to company (must be rated A-VII or higher in the A.M. Best's Key Rating Guide and licensed to do business in the State of Washington or issued as a surplus line by a Washington Surplus lines broker), form and coverage, and primary to all other insurance.
7. Self-Insurance: Should Contractor be self-insured, under item (1), (2) and (3) above, a letter from the Corporate Risk Manager, or appropriate Finance Officer, is acceptable - stipulating if actuarially funded and fund limits; plus any excess declaration pages to meet the Contract requirements. Further, this letter should advise how Contractor would protect and defend the City of Seattle as an Additional Insured in their Self-Insured layer, and include claims handling directions in the event of a claim.
8. Subcontractors - Contractor shall include all subcontractors as insureds under its policies or shall furnish separate evidence of insurance as stated above for each subcontractor. All coverages for subcontractors shall be subject to all the requirements stated herein and applicable to their profession.

Section 740. Indemnity.

The Contractor shall defend, indemnify and save harmless The City of Seattle and the City's officers, employees and agents from any and every claim and risk, and from all losses, damages, demands, suits, judgments and attorney fees, and other expenses of any kind (collectively "losses"), 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, whether tangible or intangible, including loss of use resulting therefrom, in connection with or related to the work performed under this Contract, or in connection with or related to (in whole or in part by reason of) the presence of the Contractor or its subcontractors, or their property, employees or agents, upon or in proximity to the property of The City of Seattle or any other property (upon which the Contractor is performing any work called for), except only those losses resulting from the negligence or willful misconduct of The City of Seattle or the City's officers, employees or agents.

For purposes of the Contractor's obligations under this Section 740, the Contractor hereby waives its immunity under industrial insurance, Title 51 RCW. The Contractor agrees that this waiver was specifically and mutually negotiated by the City and the Contractor.

Section 750. Liquidated Damages.

The acts or omissions in the left hand column are a breach of this Contract; the relief for which shall be the amounts in the right hand column that are set as Liquidated Damages. Liquidated Damages may be deducted from the monthly payment to the Contractor.

<u>OMISSION</u>	<u>LIQUIDATED DAMAGE</u>
1. Failure to collect spillage consistent with the provisions of Attachment C, Section C-240.	\$10 per incident
2. Failure to collect missed Commercial Waste Container	\$25 each incident per day for

Collection within one business day (including Saturday) after a make-up request is given to the Contractor by the City.

Can or Cart customer; \$50 each incident per day for Detachable Container customer; to a maximum of \$250 per truck per day.

- | | |
|--|---|
| 3. Failure to provide for new Detachable Containers and permanent Drop Boxes within five (5) business days of a request; provided, however, this shall not apply to seasonal temporary requests. | \$50 per container per day |
| 4. Failure, after July 1, 2001, to deliver Detachable Containers to replace those needing repair or replacement within five (5) business days of a request. | \$25 per container per day |
| 5. Failure to provide additional Detachable Containers or Carts, provide proper containers or increase collection frequency within ten (10) business days of a request. | \$25 per container per day |
| 6. Failure, after July 1, 2001, to deliver or replace 32, 64 and 96 gallon Cans for any reason within five (5) business days of a request. | \$25 per container per day |
| 7. Greater than 50 complaints per month from April 1 to July 1, 2001, and thereafter greater than 10 complaints in any 30 day period reported by Commercial Waste customers of Contractors failure to respond to telephone inquiries, pursuant to Section 500 and Attachment C.. | \$50 per each complaint above 10 complaints in any 30 day period |
| 8. In addition to progressive discipline in Section 215, unsatisfactory performance of collector after two (2) notices to Contractor to correct specific incidences involving the same address or collector in any six (6) month period, e.g. leaving gates or doors open, abusive language to customers, failure to return containers to their original location after collection, failure to perform collections, or similar violations. | \$200 each incident |
| 9. Soliciting Secondary Collection Area customers in violation of Section 105 of the Contract | \$500 per incident, plus refund to the City of all compensation paid to the Contractor for service to the solicited Secondary Collection Area customer. |

In addition to the above damages, the Contractor shall not be paid for work not performed.

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I. ANCILLARY PROVISIONS

Section 800. Independent Contractor.

The Contractor shall perform all work under this Contract as an independent contractor. 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.

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 810. Assignment; Subcontracting; Assignment of Duties.

The Contractor shall not assign or subcontract or transfer any of the work or delegate any of its duties under the Contract without the prior written approval of the City, which shall not be unreasonably withheld. Notwithstanding the foregoing, the City's approval shall not unreasonably be withheld if the Contractor proposes to assign or transfer this Contract to an affiliate of the Contractor or to Contractor's parent corporation, provided that Contractor can establish to the reasonable satisfaction of the City that (a) the assignee or transferee will operate the Contract in substantially the same manner as the Contractor, will use substantially the same management and collection personnel as Contractor, and possesses substantially the same financial capability as Contractor and (b) the assignee or transferee is not affiliated in any way with the other company that has a Commercial Waste Collection contract with the City.

In the event of an assignment, subcontract or delegation of duties, the Contractor shall remain responsible for the full and faithful performance of this Contract and the assignee, subcontractor, other obligor shall also become responsible to the City for the satisfactory performance of the work assumed. The City may condition its approval upon the delivery by the assignee, subcontractor or other obligor of its covenant to the City to fully and faithfully complete the work or responsibility undertaken.

Section 815. Access and Audit.

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

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.

The City may require an audit of such books and records at any reasonable time. Such audit will be conducted by one of the following firms:

Deloitte & Touche
Arthur Andersen & Co.
Ernst and Young

KPMG Peat Marwick
Price Waterhouse Coopers

or by another reputable, competent certified public accounting firm with experience in auditing

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public service companies selected by mutual agreement of the City and the Contractor.

Audit information will be kept confidential, except as disclosure may be required by public disclosure laws.

Section 820. Uncontrollable Events.

The Contractor is not responsible for performance where an event beyond its reasonable control prevents performance of this Contract. Such events include: riots, wars, civil disturbances, insurrections, acts of terrorism, epidemics, landslides, volcanic eruptions, earthquakes, lightning, floods, inclement weather as provided in Section C-210 of Attachment C, explosions, fires, condemnation, labor strikes at facilities other than the Contractor's, lockouts by third parties, secondary boycotts, judicial injunctions or restraining orders and federal, state and local government orders that are not subject to reasonable cure by the Contractor. Such events do not include general economic conditions. 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.

Uncontrollable Events which result in a permanent, detrimental change in circumstance for the Contractor or for the City may be the subject of a request for relief under Section 830.

Section 825. Change of Law.

- a. Changes in federal, state or local laws, such as tax law changes, that affect businesses or municipalities generally shall be to the benefit or detriment of the Contractor or City, without having any effect on the terms of or responsibilities under the Contract.
- b. Changes in federal, state or local laws or regulations that specifically affect the business of Solid Waste collection and which result in a detrimental change in circumstance for the Contractor in performing this Contract or for the City may be the subject of a request for relief under Section 830, *provided* that commercial recycling programs established by the City that are not mandatory shall not be considered a change in law under this section.
- c. Changes in federal, state or local laws or regulations of a general nature that affect the business of Solid Waste collection and which result in a material hardship for the Contractor in performing this Contract may be the subject of a request for relief by the Contractor under Section 830, *provided* that the only remedy for such a request shall be as set forth in this subsection.
 1. Any remedy imposed by the arbitrator shall be prospective only, and shall not include any remedy whatsoever for the period prior to the date of the arbitrator's order.
 2. Should the arbitrator rule in favor of the Contractor under this subsection, the City shall then have the option, at any time after the date of the arbitrator's order, of terminating the Contract upon six-months' written notice.

Section 830. Request for Relief and Dispute Resolution.

- a. Either party may invoke a request for relief under Sections 820 and 825 in the following manner:
 1. Initial Notice. The party seeking relief shall do so by providing written notice to the other

party within fifteen (15) days following the occurrence of the circumstance for which relief is sought.

2. Follow-up Notice. Within thirty (30) days following the initial notice, the party seeking relief will provide another written notice that sets forth more specifically the reasons for the request and the relief being sought.
 3. Response. The other party will then have thirty (30) days from the follow-up notice to respond.
 4. Good Faith Discussion. The parties will then meet in a good faith attempt to resolve any disagreements.
 5. Arbitration. Should the parties fail to resolve their disagreements regarding the requested relief within thirty (30) days from the date of the response to the request, the matter will be taken to binding arbitration.
 6. Arbitration Rules. Any controversy or claim arising out of or relating to this Contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules including the Emergency Interim Relief Procedures. A single arbitrator shall preside over the arbitration and, if the parties are unable to agree upon an arbitrator the AAA shall designate a list of five possible arbitrators and each party shall strike two arbitrators in alternating fashion, with the one remaining arbitrator serving as the actual arbitrator.
- b. If either party remains dissatisfied following the issuance of the arbitrator's decision, that party may provide written notice to the other party of its intent to terminate the Contract within ninety (90) days of the arbitrator's ruling, provided, however, that if the City initiates the request for relief it shall not have any right of termination.. The party receiving the notice of intent to terminate shall then have ninety (90) days to:
1. Rescind the original request for relief, whereupon the notice of termination shall be automatically cancelled; or
 2. Otherwise resolve the issues related to the original request for relief, whereupon the party desiring termination shall withdraw the notice of intent to terminate upon reaching a satisfactory resolution of the disputed issues; or
 3. Take no action and allow the termination to occur in accordance with the notice.
- c. A notice of intent to terminate the Contract under this Section shall be effective on the termination date stated in the notice, provided the following preconditions are met:
1. City Termination. For termination by the City, termination may occur no sooner than three (3) years from the date of the notice.
 2. Contractor Termination. For termination by the Contractor, termination may occur no sooner than eighteen (18) months following the date of the notice.

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Section 835. Violation of Antitrust or Corrupt Practice Laws.

In the event the Contractor is found to be guilty of a violation of antitrust or corrupt practice laws for acts performed in Washington 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 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, the Contractor shall be considered to be "guilty" of a violation of such antitrust or corrupt practice laws if the Contractor or any of its officers or management employees: (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.

Section 840. Contract Rights.

- a. The parties reserve the right to amend this Contract from time to time by mutual agreement in writing.
- b. Rights under this Contract are cumulative, and in addition to rights existing at common law.
- c. Payment by the City and performance by the Contractor do not waive their Contract rights.
- d. 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. The use of one remedy does not exclude or waive the right to use another.

Section 845. Approvals.

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

Section 850. Entire Contract.

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

Section 855. Captions.

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

Section 860. 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 claims, litigation, or causes of action between the parties shall be in the Superior Court of the State of Washington for King County; provided, however, that this section shall not prevent either party from moving for a change of venue pursuant to RCW 4.12.030, as amended from time to time.

Section 865. Notices.

All official notices or approvals shall be in writing. Unless otherwise directed, notices shall be delivered by messenger, by certified or registered mail, return receipt requested, or by fax to the

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parties at the following respective addresses:

To the City: The City of Seattle
Seattle Public Utilities
505 Dexter Horton Building
710 - 2nd Avenue
Seattle, Washington 98104
Phone: (206) 684-7666
Fax: (206) 386-0096

To the Contractor:
Waste Management of Seattle
Seattle, Washington
Phone: (206)
Fax: (206)

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 870. Severability.

Should any term, provision, condition, or other portion of this Contract or its application be held to be inoperative, invalid or unenforceable, and the remainder of the Contract still fulfills its purposes, the remainder of this Contract or its application in other circumstances shall not be affected thereby and shall continue in force and effect.

Section 890. Effect of Subsequent Commercial Collection Contract.

The City is also negotiating with another commercial collection company for the collection of Commercial Waste. In the event the City contracts the other collection company on material terms and conditions that are different or better than those contained in this Contract, the City agrees that the Contractor may elect to substitute those terms and conditions. "Material term(s)" as used in this section shall include any term or provision relating to or affecting the compensation Contractor receives for the services or Contractor's performance obligations under this agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment by having their representatives affix their signatures below.

CONTRACTOR

CITY

By: _____
JONATHAN M. ANGIN
Region Vice President

By: _____
DIANA GALE, Managing Director
Seattle Public Utilities

Dated: _____

Dated: _____

Authorized by Ordinance No. _____

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Attachment A

Map of Primary and Secondary Collection Areas

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The City of Seattle



Commercial Garbage Service Areas

Produced by the City of Seattle
June 17, 1998

Streets
 Residential
 Arterials
 State Highway
 Interstate Freeway
Waterbodies

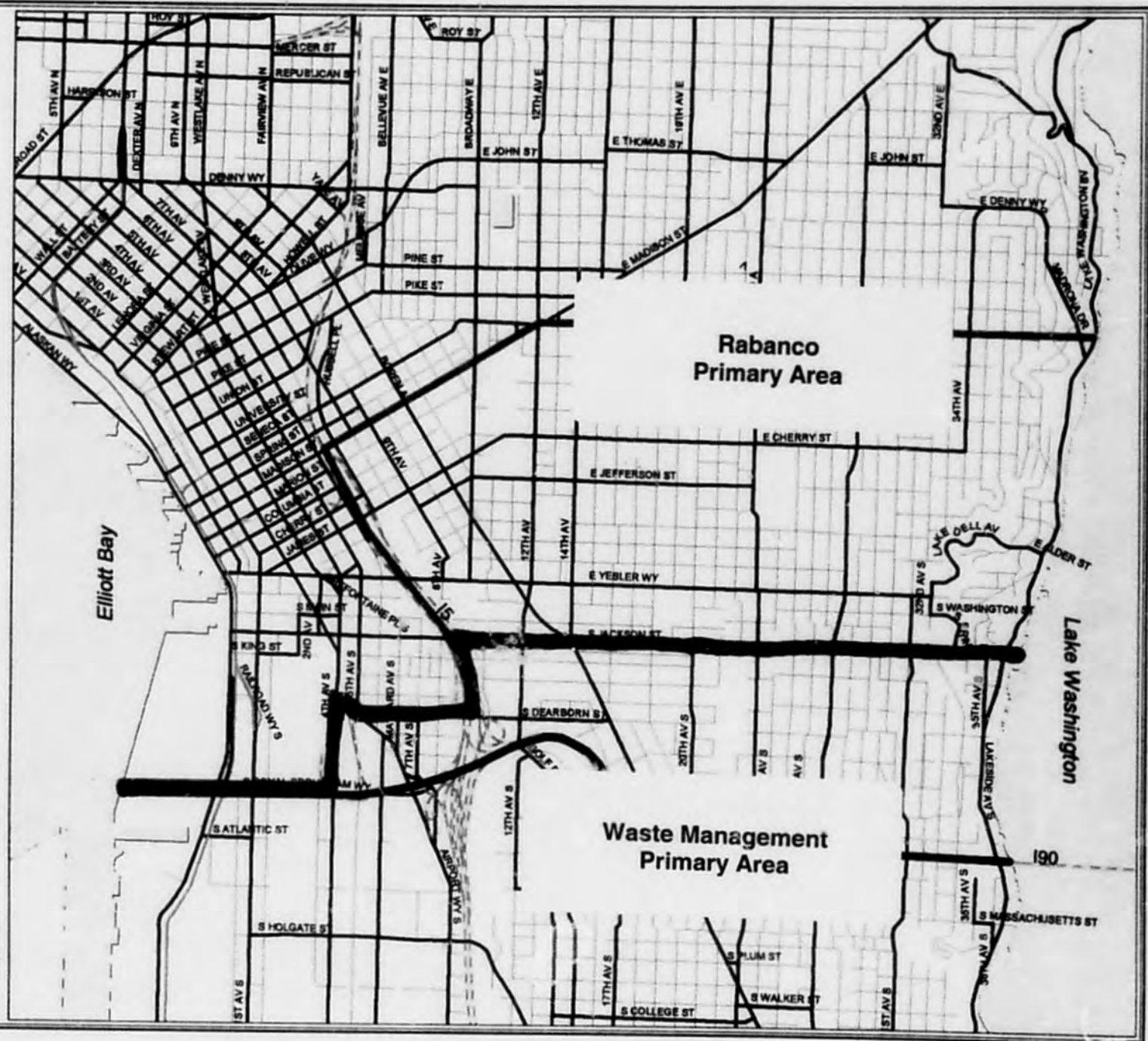


0.08 0 0.08 0.16 Miles

THE CITY OF SEATTLE, 1997. All rights reserved

No guarantee of any sort implied, including accuracy, completeness, or fitness for use.

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Attachment B
Transition Plan

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Attachment C
Operations Plan

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ATTACHMENT C.

OPERATIONS PLAN

C-1 Introduction

Appendix C sets forth a plan, including operational requirements for the effective operation of this Contract throughout its term. Section C-___, provides for procedures to modify the Operations Plan during the course of the Contract when circumstances warrant such modification.

C-2 Operational Requirements

Section C-200. Hours/Days of Operation Collections may be made 24 hours per day, seven days per week.

Section C-205. Holiday Schedules The Contractor shall designate which holidays will be observed and indicate the schedule that will be worked if the holiday falls on a regular collection day. The holiday schedule for the next year shall be provided by the Contractor to the City by November 15 of each year.

When the day of regular collection is a legal holiday, the Contractor may reschedule the remainder of the week of regular collection to the next succeeding workday, which shall include Saturdays.

Section C-208. Scheduling of Collection The Contractor shall divide the Contract Area into sectors or routes in a manner that spreads collection over the work week. Collections shall be made from Containers on a regular schedule on the same days of the week each week or month according to the frequency determined by the Contractor and the customer as necessary for each building.

The Contractor shall provide the City a listing, in electronic data format, of buildings receiving service. The listing shall include building address, number and size of Containers, collection route number and the truck number serving each route. This listing will be supplied on a monthly basis or more frequently to reflect service day changes.

The Contractor may change the day(s) of its collection routes by giving notice to the City at least fourteen (14) calendar days, and affected customers at least seven (7) calendar days, prior to the effective date of such change. Individual customer requests for changes in the frequency of collection within a route do not need advance approval. The Contractor shall provide the City with an electronic listing of the changes at least seven (7) calendar days prior to the effective date of the change. The form of notice to the customer shall be subject to the approval of the City.

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Section C-210. Inclement Weather When weather conditions are such that continued operation would result in danger to the Contractor's staff, area residents, or property, the Contractor shall collect only in areas that do not pose a danger. The Contractor shall notify the City, on the same business day, of the areas not served.

The Contractor shall collect commercial solid waste from customers with interrupted service as soon as weather conditions no longer pose a hazard. The Contractor shall use additional collection shifts and weekend collections if needed to collect stockpiled materials from customers. When service is resumed, the Contractor shall collect reasonable accumulated volumes of materials from customers at no extra charge.

Section C-215. Employee Conduct The Contractor is responsible for providing the supervision necessary to ensure that collection employees are courteous, exercise due care, do their work without delay, minimize noise, avoid damage to private property, close and relock all gates and doors that they open, replace lids on collection Containers and firmly close them, and, if on private property, follow the regular pedestrian walkways and paths; and not cross flower beds or through hedges. While collecting, employees shall wear or carry identification supplied by the Contractor. The identification shall be subject to approval of the City.

When the Contractor identifies unsatisfactory conduct by an employee or when the City notifies the Contractor of such conduct, the Contractor shall take remedial action. The remedial action shall be appropriate to the level of unsatisfactory conduct.

Level One: Examples of Level One unsatisfactory conduct are single isolated incidents such as spillage of materials, leaving gates open, not relocking doors, walking through flower beds, not returning Containers to their original location, not replacing lids, etc.

Level Two: Examples of Level Two unsatisfactory conduct are continued incidents of Level One unsatisfactory conduct, as well as rude or abusive language to customers, inappropriate behavior in customer's presence, purposeful damage of customer property, or acceptance of a cash payment or gratuity for ignoring a Contract provision.

Level Three: Examples of Level Three unsatisfactory conduct are continued incidents of Level Two unsatisfactory conduct, as well as appearing on the job under the influence of alcohol or drugs, fighting or menacing, throwing rocks, endangering customers or driving dangerously.

Under Level One, the City will send a written notice, via U.S. mail, fax or email, informing the Contractor of the unsatisfactory conduct. Under Level Two and Three, the City will notify the Contractor by telephone within five (5) working days of becoming aware of the incident and send a written notice, via U.S. mail, fax or email, within ten

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(10) working days. Written notices will identify the level of the notice, and the specifics of the incident.

If the City requests of the Contractor by letter that an employee be suspended from further work on the Contract for Level Three unsatisfactory conduct or an uncorrected pattern of Level Two unsatisfactory conduct, the Contractor will permanently remove the employee from further work on the Contract.

The Contractor will notify the City of remedial action taken in its monthly reports. The City will cooperate with the Contractor by requiring City employees to appear in disciplinary proceedings and supplying to the Contractor the names of complaining witnesses when possible.

Section C-220. Missed Collections If commercial solid waste is set out inappropriately, improperly prepared, or contaminated with unacceptable materials, the Contractor shall place in a prominent location a notification tag that identifies the specific problem(s) and reason for rejecting the materials for collection. Notification by telephone (with appropriate documentation) shall also be acceptable. Failure to provide proper notification to customers of the reason for rejecting materials for collection will be considered a missed collection and/or subject to liquidated damages due to lack of proper customer notification.

The failure of the Contractor to collect commercial solid waste that has been set out by a customer in the proper manner shall be considered a missed pick-up, and the Contractor shall collect the materials from the customer within twenty-four (24) hours of the Contractor's receipt of notification of the missed pick-up. If the Contractor is notified of a missed pick-up by 9 a.m. the following business day or Saturday, the missed pick-up will be collected that same day, provided that the Contractor may ask customers contacted on Saturday whether Monday collection would be acceptable, at the customer's option. The Contractor shall maintain a written record of all calls related to missed pick-ups and the response provided by the Contractor. Such records shall be made available for inspection upon request by the City and will be included in monthly reports.

In the event the Contractor fails to collect the missed pick-up within twenty-four (24) hours of receipt of notice, the City or its agents may collect and transport the materials. The Contractor shall reimburse the City for all costs so incurred by the City as well as any liquidated damages assessed by the City. If the Contractor is requested by the customer to make a return trip collection due to no fault of the Contractor, the Contractor shall be permitted to charge the customer an additional fee for this service, providing the Contractor notifies the customer of this charge in advance.

Section C-225. Routing Information The Contractor shall, within 48 hours of a request from the City, provide electronic information regarding the routes used by the Contractor to collect commercial solid waste within the City. Such information shall include the days service is provided to each customer, the container size used to serve such customer,

the customers service and billing addresses, and route and truck number serving each route

Section C-230. Vehicles Used in Collection All vehicles used for collection shall be registered by the State of Washington Department of Motor Vehicles, and shall be kept in a clean and sanitary condition and a state of good appearance and repair, and shall be painted in a uniform manner.

Vehicles used in the performance of this contract shall be maintained in a clean and sanitary manner, and shall be thoroughly washed at least once each week. Vehicles shall be repainted as necessary.

All collection equipment shall have appropriate safety markings, including all highway lighting, flashing and warning lights, clearance lights, and warning flags, all in accordance with current statutes. Equipment shall be maintained in good condition at all times. All parts and systems of the collection vehicles shall operate properly and be maintained in a satisfactory manner. The Contractor will be specifically required to maintain collection vehicles to ensure that no liquid wastes or oils (lubricating, hydraulic and fuel) are discharged to customer premises or City streets. Any equipment not meeting these standards shall not be used within the City until repairs are made.

No advertising shall be allowed on Contractor vehicles, other than the Contractor's name, logo, and customer service telephone number. Special promotional messages for recycling may be permitted, upon City approval.

All Contractor route, service, and supervisory vehicles shall be equipped with properly licensed two-way radios and and/or cell phones. The Contractor shall maintain a base station capable of reaching all collection areas, using repeaters if necessary.

Section C-232. Traffic Laws; Noise Control All vehicles shall be operated in conformity with State traffic laws and the Seattle traffic Code, SMC Chapter 11. The maximum noise level of motor vehicles during travel shall not exceed the levels set forth in SMC 25.08.430. The maximum noise level while collecting or compacting solid waste shall not exceed the levels set forth in SMC 25.08.410.

Section C-235. Container Condition/Replacement The Contractor shall furnish and install 1, 1.5, 2, 3, 4, 6, and 8 cubic yard detachable containers, 10, 15, 20, 25, 30, or 40 cubic yard drop boxes, and 64 or 96 gallon Toters to any customer who requires their use for storage and collection of commercial solid waste within seven days of the request. Containers shall be located on the premises in a manner satisfactory to the customer and convenient for collection by the Contractor and shall meet the provisions of the Seattle Fire Code. Any disagreements over container placement and collection shall be mediated by the City, whose decision shall be final and binding. Detachable Containers shall not be sited on public property unless there is no feasible alternative.

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The City may limit the size of detachable containers used in alleys to 2 cubic yards or less.

The Contractor shall furnish containers equipped with a locking mechanism and key when requested by the customer.

Detachable containers shall be water tight and equipped with tight-fitting metal or plastic covers, have four wheels for containers two cubic yards and under, be in good condition for commercial solid waste storage and handling, and have no leaks, jagged edges, or holes. Drop boxes shall be all-metal and, if requested by the customer, equipped with a tight-fitting screened or solid cover operated by a winch in good repair. Each type of container shall be painted a uniform color in accordance with Attachment A, with color changes subject to City approval. Containers shall bear the name and telephone number of the Contractor and the number of the container in numerals two inches high on the front of the container. Detachable Containers shall be cleaned, reconditioned and repainted (if necessary) before being supplied to a customer who had not used it earlier. The Contractor shall at its expense steam clean all its containers at least once each year or more frequently as directed by the City due to odor. The Contractor shall also provide an on-call container cleaning service to customers for those customers who request more frequent cleanings. The costs of on-call cleaning will be billed directly to users in accordance with Attachment B. However, cleanings ordered by the City shall not be billed to customers.

The Contractor is responsible for removing graffiti from its detachable containers. Collection drivers shall regularly note containers containing graffiti. Contractor personnel shall then remove the reported graffiti. The Contractor shall remove any graffiti reported by the City within five (5) business days of notification.

Containers on customer's premises are at the Contractor's risk and not the City's. The Contractor shall repair or replace within twenty-four hours any container which was supplied by the Contractor and in use, if the City or Health Department inspector determines that the container fails to comply with reasonable standards or constitutes a health or safety hazard.

Customers may elect to own or secure containers from sources other than the Contractor, and shall not be subject to discrimination by the Contractor in collection services on that account. However, containers owned or secured by customers must be capable of being serviced by front load, rear load, or drop box collection vehicles to be eligible for collection. The Contractor is not required to service customer containers that are not compatible with the Contractor's equipment.

Section C-238. Container Repair Damage to Detachable Containers on customers' premises is at the Contractor's risk, rather than the City's, as between those parties and without affecting the risk or liability of others. The Contractor shall be responsible for the repair of all customer owned Detachable Containers damaged due to the Contractor's negligence. The Contractor shall repair or replace within one business day any

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Detachable Container that the City or a Health Department inspector determines does not comply with ordinance standards or constitutes a health or safety hazard.

Section C-240. Spillage All loads collected by the Contractor shall be contained in collection vehicles at all times, except when material is actually being loaded. Hoppers on all collection vehicles shall be cleared frequently to prevent unnecessary blowing or spillage. Any spillage that occurs during collection shall be immediately cleaned up by the Contractor at its expense. Spillage not immediately collected shall be cause for liquidated damages, as described in Section 750.

Section C-242. Customer Grievances. The Contractor will designate a representative to adjudicate customer grievances. At the City's request, the representative will join the City in meeting with an aggrieved customer within 24 hours of notification to resolve a complaint about spillage, a refusal to serve or a missed pick-up, and/or other inefficiency in service or a need for special service. The decision of the City shall be final and binding.

Section C-245. Unimproved Alleys/Private Roads The Contractor shall collect commercial solid waste in unimproved alleys and private roads to the extent practicable, and consistent with the collection services offered prior to this Contract. If the Contractor believes that the unimproved alley or private road cannot be safely negotiated, the Contractor may request the City to evaluate on-site conditions and make a determination of the best approach to providing safe and appropriate service to the customer. The City's decision shall be final, provided that the Contractor shall not be required to endanger workers, equipment, or property. However, the proceeding statement notwithstanding, the Contractor shall continue to collect all commercial solid waste consistent with the collection services offered prior to this Contract if so requested by the customer.

Section C-250. Pilot Programs The City may wish to test and/or implement one or more new developments in waste stream segregation, materials processing, or collection technology at some point during the term of the contract. The City will notify the Contractor in writing at least ninety days in advance of the implementation of a pilot program to be performed in one or more collection routes or of its plans to utilize a new technology system on a citywide basis. The costs (or savings) accrued by City-initiated pilot programs will be negotiated prior to implementation. Contractor-initiated pilot programs will require written notification, and approval on the part of the City. Contractor-initiated pilot programs will be performed at no additional cost to the City or the Contractor's customers.

Section C-255. Disruption Due to Construction The City reserves the right to construct any improvement or to permit any such construction in any street or alley in such manner as the City may direct, which may have the effect of temporarily preventing the Contractor from traveling its usual collection routes. The City shall include in its construction contracts provisions to minimize the impact on Contractor's collection activities. In areas where construction is occurring, Contractor shall, to the extent

practicable, continue to collect commercial solid waste to the same extent as though no interference existed upon the streets or alleys normally traversed.

Section C-260. Safeguarding Public and Private Facilities The Contractor shall be obligated to protect all public and private facilities and utilities whether located on public or private property, including street curbs. If such facilities, utilities or curbs are damaged by reason of the Contractor's operations, the Contractor shall notify the City immediately of all damage, and the Contractor shall repair or replace same, or failing to do so promptly, the City shall cause repairs or replacements to be made and the cost of doing so shall be billed to Contractor. The City shall not be liable for any damage to property or person caused by Contractor.

Section C-265. Company Name and Telephone Number With the exception of the existing company names "Emerald City" and "Seattle Disposal," the Contractor shall not use a firm name containing the words such as "City," or any logo implying municipal ownership. The Contractor's telephone number shall appear in large, legible numbers on all of its collection vehicles.

Section C-270. Coordination; Implementation 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.

Section C-275. 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 City. The Contractor's office will be equipped with a facsimile machine and/or personal computer for the electronic exchange of documents between the Contractor and the City. Office hours shall be 8:00 am. to 5:00 pm., Monday through Friday, except holidays. The City 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 C-280. Customer Service The Contractor shall install sufficient telephone lines and hire sufficient customer service staff to handle all calls from customers regarding service, missed service, billing questions and other miscellaneous questions.

A dispatch telephone number will be available to customers 24 hours per day, seven days per week, excluding holidays not worked by the collection crews. Staff and telephone equipment shall be sufficient to handle the volume of calls typically experienced on the busiest days.

All incoming calls to the customer service section shall be answered by either a customer service representative or an automated answering machine within six (6) rings. A customer shall be connected to a customer service representative within 60 seconds of calling. If during any thirty day period the City receives more than five complaints that customers are unable to contact the Contractor by telephone, such complaints will be investigated and the Contractor may be required to increase the capacity of telephone

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equipment and/or increase the number of customer service representatives. If during any thirty day period the City receives more than ten complaints that customers are unable to contact the Contractor by telephone, the City shall impose liquidated damages per Section 750.

The Contractor's telephone system shall have the capacity to monitor the number of incoming calls received during the business day, during the week, and during the month; the average holding time for all calls received in a one hour period and the average holding time for all calls received; the longest hold time during the day; and, the number of calls handled by each customer service representative on a daily and weekly basis. This information shall be available to the City on a daily basis and the Contractor shall forward a monthly report to the City containing the information.

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Attachment D

First Year Container Compensation Payment Schedule

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Attachment D
Seattle Public Utilities'
Commercial Solid Waste Collection Contract:
Initial Contract Year Payments, 2001

I. Container Service, Non-Compacted

SERVICE TYPE	SIZE OR TYPE OF CONTAINER				
	60 Gal. Toter	90 Gal. Toter	1 Yd	1.5 Yd	2 Yd
CY/Pickup:	0.33	0.50	1	1.5	2
Permanent Account					
First Pickup	\$3.43	\$3.42	\$8.29	\$11.42	\$12.89
Ea. Add'l Pickup	\$3.43	\$3.42	\$8.29	\$11.42	\$12.89
Special Pickups	\$4.75	\$4.36	\$15.60	\$18.05	\$20.20
Monthly Rent	\$1.62	\$1.62	\$4.30	\$6.29	\$8.09
Flat Monthly Charge Account	\$16.49	\$16.46	\$40.24	\$55.78	\$63.96
Minimum Monthly Charge Account	\$8.48	\$8.47	\$20.89	\$29.13	\$33.88
Temporary Account					
Pickup Rate			\$15.60	\$18.05	\$20.20
Rent Per Calendar Day			\$2.87	\$2.87	\$2.87

SERVICE TYPE	SIZE OR TYPE OF CONTAINER				
	3 Yd	4 Yd	5 Yd	6 Yd	8 Yd
CY/Pickup:	3	4	5	6	8
Permanent Account					
First Pickup	\$16.85	\$20.98	\$25.24	\$25.63	\$30.15
Ea. Add'l Pickup	\$16.85	\$20.98	\$25.24	\$25.63	\$30.15
Special Pickups	\$24.59	\$28.93	\$31.53	\$34.04	\$39.50
Monthly Rent	\$10.04	\$11.47	\$15.77	\$17.67	\$20.07
Flat Monthly Charge Account	\$83.06	\$102.39	\$125.14	\$128.72	\$150.71
Minimum Monthly Charge Account	\$43.74	\$53.43	\$66.25	\$68.92	\$80.37
Temporary Account					
Pickup Rate	\$24.59	\$28.93	\$31.53	\$34.04	\$39.50
Rent Per Calendar Day	\$2.87	\$2.87	\$2.87	\$2.87	\$2.87

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Attachment D (Cont.)

II. Container Service, Compacted at 1 to 2 Ratio

SERVICE TYPE	SIZE OR TYPE OF CONTAINER					
	1 Yd	2 Yd	3 Yd	4 Yd	5 Yd	6 Yd
CY/Pickup:	2	4	6	8	10	12
Permanent Account						
First Pickup	\$16.67	\$20.73	\$29.15	\$37.50	\$45.76	\$54.27
Ea. Add'l Pickup	\$16.67	\$20.73	\$29.15	\$37.50	\$45.76	\$54.27
Special Pickups	\$24.32	\$28.25	\$37.10	\$45.66	\$54.17	\$62.90
Monthly Rent	\$13.37	\$26.73	\$29.60	\$33.39	\$36.26	\$40.01
Flat Monthly Charge Account	\$85.62	\$116.54	\$155.94	\$195.89	\$234.55	\$275.19
Minimum Monthly Charge Account	\$46.71	\$68.18	\$87.91	\$108.39	\$127.78	\$148.55

III. Container Service, Compacted at 1 to 5 Ratio

SERVICE TYPE	SIZE OR TYPE OF CONTAINER					
	1 Yd	2 Yd	3 Yd	4 Yd	5 Yd	6 Yd
CY/Pickup:	5	10	15	20	25	30
Permanent Account						
First Pickup	\$11.51	\$10.53	\$10.82	\$11.06	\$13.14	\$19.21
Ea. Add'l Pickup	\$11.51	\$10.53	\$10.82	\$11.06	\$13.14	\$19.21
Special Pickups	\$16.48	\$15.71	\$16.26	\$16.76	\$18.62	\$25.29
Monthly Rent	\$14.43	\$28.91	\$30.57	\$36.12	\$39.31	\$43.34
Flat Monthly Charge Account	\$64.31	\$74.52	\$77.44	\$84.07	\$96.25	\$126.58
Minimum Monthly Charge Account	\$37.45	\$49.96	\$52.20	\$58.25	\$65.59	\$81.76

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Attachment D (Cont.)

Special Service	Per Unit Payment	Units
Bulky Mat'l Pickup	\$5.36	CY
1		
Can-Unit Pickup	\$1.78	Can
0.17	\$11.69	Minimum

Initial Base Year Payment Schedule

The Contract payment schedules shown in the preceding tables will apply for the first year of the Contract between the City and the Contractor. It has been calculated according to the steps defined in **Section 407**, using an initial estimate of 155 pounds per cubic yard to make the adjustments for the costs of disposal and taxes. The full set of assumptions underlying the initial year schedule is shown below.

Disposal, \$/ton:	\$77.87
Taxes, \$/ton:	\$11.70
Lbs/CY:	155
Rental Discount:	7.5%
Pickup Discount:	15%

Revised Base Year Payment Schedule

The base year payments will be revised at the end of the first year, according to the procedures defined in the Contract. All assumptions will remain the same, with the exception of the number of pounds per cubic yard, which will be changed as necessary based on the results of the calculations defined in **Sections 404 and 407** of the Contract. The revised payment schedule will be entered in the tables on pages 7-9 of this **Attachment D**.

Annual Adjustments to Payment Schedules

All compensation payment rates shown in the preceding tables, and those later entered on pages 7-9 of this Attachment, will be adjusted annually, according to the CPI adjustment formula defined in **Section 470** of the Contract.

1996 WUTC Baseline

Disposal/ton: \$77.87
Tax/ton: \$11.70
Lbs/CY: 155

I. Container Service, Non-Compacted

SERVICE TYPE	SIZE OR TYPE OF CONTAINER				
	60 Gal. Toter	90 Gal. Toter	1 Yd	1.5 Yd	2 Yd
CY/Pickup:	0.33	0.50	1	1.5	2
Permanent Account					
First Pickup	\$6.35	\$7.50	\$16.70	\$23.85	\$29.05
Ea. Add'l Pickup	\$6.35	\$7.50	\$16.70	\$23.85	\$29.05
Special Pickups	\$7.90	\$8.60	\$25.30	\$31.65	\$37.65
Monthly Rent	\$1.75	\$1.75	\$4.65	\$6.80	\$8.75
Flat Monthly Charge Account	\$29.27	\$34.25	\$77.02	\$110.15	\$134.63
Minimum Monthly Charge Account	\$14.45	\$16.75	\$38.05	\$54.50	\$66.85
Temporary Account					
Pickup Rate			\$25.30	\$31.65	\$37.65
Rent Per Calendar Day			\$3.10	\$3.10	\$3.10

SERVICE TYPE	SIZE OR TYPE OF CONTAINER				
	3 Yd	4 Yd	5 Yd	6 Yd	8 Yd
CY/Pickup:	3	4	5	6	8
Permanent Account					
First Pickup	\$40.65	\$52.45	\$64.40	\$71.80	\$91.00
Ea. Add'l Pickup	\$40.65	\$52.45	\$64.40	\$71.80	\$91.00
Special Pickups	\$49.75	\$61.80	\$71.80	\$81.70	\$102.00
Monthly Rent	\$10.85	\$12.40	\$17.05	\$19.10	\$21.70
Flat Monthly Charge Account	\$187.00	\$239.68	\$296.12	\$330.23	\$416.03
Minimum Monthly Charge Account	\$92.15	\$117.30	\$145.85	\$162.70	\$203.70
Temporary Account					
Pickup Rate	\$49.75	\$61.80	\$71.80	\$81.70	\$102.00
Rent Per Calendar Day	\$3.10	\$3.10	\$3.10	\$3.10	\$3.10

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1996 WUTC Baseline

II. Container Service, Compacted at 1 to 2 Ratio

SERVICE TYPE	SIZE OR TYPE OF CONTAINER					
	1 Yd	2 Yd	3 Yd	4 Yd	5 Yd	6 Yd
CY/Pickup:	2	4	6	8	10	12
Permanent Account						
First Pickup	\$33.50	\$52.15	\$75.95	\$99.65	\$123.25	\$147.15
Ea. Add'l Pickup	\$33.50	\$52.15	\$75.95	\$99.65	\$123.25	\$147.15
Special Pickups	\$42.50	\$61.00	\$85.30	\$109.25	\$133.15	\$157.30
Monthly Rent	\$14.45	\$28.90	\$32.00	\$36.10	\$39.20	\$43.25
Flat Monthly Charge Account	\$159.62	\$254.88	\$361.12	\$467.92	\$573.28	\$680.90
Minimum Monthly Charge Account	\$81.45	\$133.20	\$183.90	\$235.40	\$285.70	\$337.55

1996 WUTC Baseline

III. Container Service, Compacted at 1 to 5 Ratio

SERVICE TYPE	SIZE OR TYPE OF CONTAINER					
	1 Yd	2 Yd	3 Yd	4 Yd	5 Yd	6 Yd
CY/Pickup:	5	10	15	20	25	30
Permanent Account						
First Pickup	\$48.25	\$81.80	\$116.85	\$151.85	\$189.00	\$230.85
Ea. Add'l Pickup	\$48.25	\$81.80	\$116.85	\$151.85	\$189.00	\$230.85
Special Pickups	\$54.10	\$87.90	\$123.25	\$158.55	\$195.45	\$238.00
Monthly Rent	\$15.60	\$31.25	\$33.05	\$39.05	\$42.50	\$46.85
Flat Monthly Charge Account	\$224.68	\$385.72	\$539.40	\$697.07	\$861.50	\$1,047.20
Minimum Monthly Charge Account	\$112.10	\$194.85	\$266.75	\$342.75	\$420.50	\$508.55

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1996 WUTC Baseline

Special Service	Per Unit Payment	Units
Bulky Mat'l Pickup	\$13.25	CY
1		
Can-Unit Pickup	\$3.15	Can
0.17	\$20.70	Minimum

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Attachment D
Seattle Public Utilities'
Commercial Solid Waste Collection Contract:
Revised Initial Contract Year Payments, 2001

I. Container Service, Non-Compacted

SERVICE TYPE	SIZE OR TYPE OF CONTAINER				
	60 Gal. Toter	90 Gal. Toter	1 Yd	1.5 Yd	2 Yd
CY/Pickup:	0.33	0.50	1	1.5	2
Permanent Account					
First Pickup					
Ea. Add'l Pickup					
Special Pickups					
Monthly Rent					
Flat Monthly Charge Account					
Minimum Monthly Charge Account					
Temporary Account					
Pickup Rate					
Rent Per Calendar Day					

SERVICE TYPE	SIZE OR TYPE OF CONTAINER				
	3 Yd	4 Yd	5 Yd	6 Yd	8 Yd
CY/Pickup:	3	4	5	6	8
Permanent Account					
First Pickup					
Ea. Add'l Pickup					
Special Pickups					
Monthly Rent					
Flat Monthly Charge Account					
Minimum Monthly Charge Account					
Temporary Account					
Pickup Rate					
Rent Per Calendar Day					

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Attachment D (Cont.)

II. Container Service, Compacted at 1 to 2 Ratio

SERVICE TYPE	SIZE OR TYPE OF CONTAINER					
	1 Yd	2 Yd	3 Yd	4 Yd	5 Yd	6 Yd
CY/Pickup:	2	4	6	8	10	12
Permanent Account						
First Pickup						
Ea. Add'l Pickup						
Special Pickups						
Monthly Rent						
Flat Monthly Charge Account						
Minimum Monthly Charge Account						

III. Container Service, Compacted at 1 to 5 Ratio

SERVICE TYPE	SIZE OR TYPE OF CONTAINER					
	1 Yd	2 Yd	3 Yd	4 Yd	5 Yd	6 Yd
CY/Pickup:	5	10	15	20	25	30
Permanent Account						
First Pickup						
Ea. Add'l Pickup						
Special Pickups						
Monthly Rent						
Flat Monthly Charge Account						
Minimum Monthly Charge Account						

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Attachment D (Cont.)

Special Service	Per Unit Payment	Units
Bulky Mat'l Pickup		CY
1		
Can-Unit Pickup		Can
0.17		Minimum

Disposal:	\$77.87
Taxes:	\$11.70
Lbs/CY:	???
Rent Disc:	7.5%
Service Disc:	15%

Annual Adjustments to Payment Schedules

All compensation payment rates shown in the preceding tables will be adjusted annually, according to the CPI adjustment formula defined in Section 470 of the Contract.

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Attachment E

First Year A&E Services Compensation Payment Schedule

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Attachment E
Seattle Public Utilities'
Commercial Solid Waste Collection Contract:
Initial Contract Year Payments, 2001

Ancillary Service Compensation Payments

Type of Service [1]	Contractor Compensation Per Unit [2]
Deliveries	
Toter Initial Delivery - Permanent	\$11.40
Container Initial Delivery - Temporary 1-8 CY	\$13.40
Container Initial Delivery - Permanent 1-8 CY	\$13.40
Drop Box Initial Delivery - Temporary 3-8 CY	\$19.00
Drop Box Initial Delivery - Permanent 3-8 CY	\$19.00
Drop Box Initial Delivery - Temporary 10-40 CY	\$30.00
Drop Box Initial Delivery - Permanent 10-40 CY	\$30.00
Pickup Ancillary Services	
Temporary Pickup	\$13.50
Oversize	\$3.25
Return Trip - Can	\$4.25
Return Trip - Container or Drop Box	\$9.00
Container Special Services	
Pickup/redelivery up to 8 CY	\$13.50
Pickup/redelivery over 8 CY	\$30.00
Washing and Steam Cleaning, per CY	\$2.00
Washing and Steam Cleaning, minimum payment	\$15.00
Sanitizing Containers, per CY	\$0.90
Sanitizing Containers, minimum payment	\$10.00
Compactor/Drop Box Special Services	
Compactor Disconnect/Reconnect Cycle	\$20.00
Drop Box Compactor Turnaround	\$15.90
Drop Box Solid Lid Monthly Provision	\$11.80
Overtime Service, Hourly Premium	\$34.50

- [1] Only Ancillary Services listed in this **Attachment E** will qualify for compensation payments under this Contract.
- [2] All Ancillary Service compensation payment rates shown are per unit rates for the first Contract year. All compensation payment rates shown will be adjusted annually, according to the CPI adjustment formula defined in **Section 470** of the Contract.

Attachment F

First Year Drop Box/Roll-off Collection Compensation Payment Schedule

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Attachment F
Seattle Public Utilities'
Commercial Solid Waste Collection Contract:
Initial Contract Year Payments, 2001

I. Drop Box Service, Non-Compacted Material [1]

SERVICE TYPE	SIZE OR TYPE OF CONTAINER					
	3-4 Yd	6 Yd	8 Yd	10 Yd	12 Yd	15 Yd
Permanent Account						
First Pickup	\$61.90	\$61.90	\$61.90	\$83.00	\$83.00	\$83.00
Ea. Add'l Pickup	\$61.90	\$61.90	\$61.90	\$83.00	\$83.00	\$83.00
Special Pickups	\$71.75	\$71.75	\$71.75	\$91.55	\$91.55	\$91.55
Monthly Rent	\$12.80	\$24.55	\$26.65	\$28.80	\$32.00	\$35.20
Flat Monthly Charge Account						
Minimum Monthly Charge Account	\$74.70	\$86.45	\$88.55	\$111.80	\$115.00	\$118.20
Temporary Account						
Pickup	\$71.75	\$71.75	\$71.75	\$91.55	\$91.55	\$91.55
Rent Per Calendar Day	\$3.20	\$3.20	\$3.20	\$3.20	\$3.20	\$3.20

I. Drop Box Service, Non-Compacted Material (Cont.)

SERVICE TYPE	SIZE OR TYPE OF CONTAINER				
	16 Yd	20 Yd	25 Yd	30 Yd	40 Yd
Permanent Account					
First Pickup	\$83.00	\$83.00	\$83.00	\$83.00	\$83.00
Ea. Add'l Pickup	\$83.00	\$83.00	\$83.00	\$83.00	\$83.00
Special Pickups	\$91.55	\$91.55	\$91.55	\$91.55	\$91.55
Monthly Rent	\$37.70	\$40.50	\$51.20	\$61.85	\$67.15
Flat Monthly Charge Account					
Minimum Monthly Charge Account	\$120.70	\$123.50	\$134.20	\$144.85	\$150.15
Temporary Account					
Pickup	\$91.55	\$91.55	\$91.55	\$91.55	\$91.55
Rent Per Calendar Day	\$4.25	\$4.25	\$4.25	\$5.35	\$5.35

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Attachment F
Seattle Public Utilities'
Commercial Solid Waste Collection Contract:
Initial Contract Year Payments, 2001

II. Drop Box Service, Compacted Material [1]

SERVICE TYPE	SIZE OR TYPE OF CONTAINER					
	10 Yd	15 Yd	20 Yd	25 Yd	30 Yd	40 Yd
Permanent Account						
First Pickup	\$127.75	\$127.75	\$127.75	\$127.75	\$127.75	\$127.75
Ea. Add'l Pickup	\$127.75	\$127.75	\$127.75	\$127.75	\$127.75	\$127.75
Special Pickups	\$138.45	\$138.45	\$138.45	\$138.45	\$138.45	\$138.45
Minimum Monthly Charge Account	\$127.75	\$127.75	\$127.75	\$127.75	\$127.75	\$127.75

[1] These compensation payment schedules apply to both MSW and CDL Drop Box service.
 All compensation payments shown in these tables will be adjusted annually, according to the CPI adjustment formula defined in Section 470.

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Attachment G

Section 440 Compensation Adjustment Example

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Attachment G
Section 440 Compensation Adjustment Example
for Revised Average Round-Trip Haul Times

Introduction

The City guarantees that certain percentages of the Contractor's commercial MSW tonnage collected in the City of Seattle under this Contract will be directed to the Contractor's Eastmont transfer facility, as specified in Section 130. For the remaining, non-guaranteed tonnage, the City may accept transfer trips at its facilities, or direct the tonnage to other private facilities, as set forth in the Contract.

A. Initial Average Round-Trip Haul Times for Non-Guaranteed Tonnage

Table G.1. shows hypothetical round-trip haul times for a subset of routes in the Contractor's Primary Collection Area. In actual operation, there will be many more, and these are intended to be illustrative of the form of the information that will be used in the compensation adjustment calculations.

Table G.1.
Initial Average Round-Trip Haul Time Calculation:
Illustrative Baseline Haul Time Information

Route	Trips/Day	Round-Trip Haul Times (Minutes)			
		SRDS	NRDS	3rd & Lander	Eastmont
Monday #1	3	13.7	34.1	16.6	11.8
Tuesday #1	3	16.8	29.4	11.8	15.0
Wednesday #1	3	17.3	36.3	19.4	15.4
Thursday #1	3	12.4	29.1	14.4	10.5
Friday #1	3	14.8	21.1	6.3	12.8
Average		15.0	30.0	13.7	13.1

The initial assumption, defined in Section 440, is that all Non-Guaranteed tonnage collected by the Contractor, defined in Section 130, will be transferred at the City's South Recycling and disposal Station (SRDS). Consequently, the "initial average round-trip haul time" for the data in Table G.1. would be 15.0 minutes per trip.

The data shown in Table G.1. for other transfer facilities would be used in calculating "revised average haul times" and compensation adjustments, as appropriate.

B. Revised Average Round-Trip Haul Times and Compensation Adjustment Examples

The examples below show two hypothetical scenarios for the City's decision on where to direct the non-guaranteed MSW collected by the Contractor in the 2004-05 contract year.

Example A: In Contract year 2004, the City transfers 60% of the non-guaranteed 25% of collected commercial MSW at its SRDS, and directs the remaining 40% to the Contractor's Eastmont facility.

Total commercial MSW tonnage collected by Contractor under this Contract:	80,000
Non-Guaranteed MSW tonnage:	20,000
Total annual MSW transfer trips:	10,000
Total (calculated) trips for non-guaranteed tons:	2,500
CPI-W, 2000:	160.0
CPI-W, 2003:	174.84
Redirected Transfer Trips:	$(40\% * 2,500) = 1,000$ trips
Change in Minutes Per Redirected Transfer Trip:	$(13.1 - 15.0) = -1.9$ minutes per trip
Total Hours Compensated:	$(1,000 * -1.9)/60 = -31.67$ hours

Total Haul Time Cost Adjustment:	
$-31.67 * \$60 * (1 + 0.67 * (174.84 - 160.0)/160.0) =$	$- \$2,018$
City Share of Savings (75%)	\$1,513.50
Contractor's Share of Savings (25%)	\$ 504.50

Example B: In Contract year 2004, the City transfers half of the non-guaranteed 25% of collected commercial MSW at its SRDS, and directs the remaining half to its NRDS.

Total commercial MSW tonnage collected by Contractor under this Contract:	80,000
Non-Guaranteed MSW tonnage:	20,000
Total annual MSW transfer trips:	10,000
Total (calculated) trips for non-guaranteed tons:	2,500
CPI-W, 2000:	160.0
CPI-W, 2003:	174.84
Redirected Transfer Trips:	$(50\% * 2,500) = 1,250$ trips
Change in Minutes Per Redirected Transfer Trip:	$(30.0 - 15.0) = 15.0$ minutes per trip
Total Hours Compensated:	$(1,250 * 15.0)/60 = 312.50$ hours

Total Haul Time Cost Adjustment:	
$312.50 * \$60 * (1 + 0.67 * (174.84 - 160.0)/160.0) =$	$+ \$19,915$
Contractor's Compensation for Costs(100%)	$+ \$19,915$

Attachment H

Compensation Payment Schedule for MSW Transfer and Short-Haul

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Attachment H
Seattle Public Utilities
Payment Schedule for MSW Transfer and Short-Haul
Through Contractor's Eastmont Transfer Facility

Introduction

The City's schedule for per ton payments to the Contractor for the combination of transfer and short-haul of MSW collected by the Contractor and transferred at the Contractor's Eastmont Transfer Facility under this Contract will be as defined in Tables H.1 and H.2 below.

A. Guaranteed Share of Tonnage

The City guarantees that certain percentages of the Contractor's commercial MSW tonnage collected in the City of Seattle under this Contract will be directed to the Contractor's Eastmont transfer facility, as specified in Section 130. From there, the Contractor will then haul such tonnage to the long-haul transfer and disposal loading point designated by the City.

The annual per ton payment for any such "Guaranteed" tonnage are listed in column 2 of Table H.1, in inflation-adjusted 2001 dollars. The actual per ton payments in the second and each successive year of the Contract will be calculated according to the CPI-adjustment formula defined in column 3 of Table H.1, based on the CPI-W for the December preceding the Contract anniversary.

Table H.1
Annual Per-Ton Transfer/Short-Haul Payments
for "Guaranteed Tonnage"

Contract Year	Per Ton Payment, Before CPI-W Adjustment	CPI-W Adjustment
Year 1	\$10.80	None
Year 2	\$10.30	80% of (Year 1/Year 0)
Year 3	\$9.80	80% of (Year 2/Year 0)
Year 4	\$9.30	80% of (Year 3/Year 0)
Year 5	\$8.80	80% of (Year 4/Year 0)
Year 6	\$8.30	80% of (Year 5/Year 0)
Year 7	\$7.80	80% of (Year 6/Year 0)



Attachment I
Container Inventory

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B. Additional Tonnage

The City may direct additional commercial MSW tonnage collected under this Contract to the Contractor's Eastmont facility, subject to certain conditions. From there, the Contractor will then haul such tonnage to the long-haul transfer and disposal loading point designated by the City. For any such tonnage, the City's payments for the combination of transfer and short-haul of MSW collected by the Contractor will be based on the per ton payment schedule in Table H.2. Column 2 of Table H.2 lists the inflation-adjusted 2001 dollar amounts, and column 3 lists the CPI adjustment formula.

Table H.2
Annual Per-Ton Transfer/Short-Haul Payments
for "Additional Tonnage"

Contract Year	Per Ton Payment, Before CPI-W Adjustment	CPI-W Adjustment
Year 1	\$7.05	None
Year 2	\$7.05	80% of (Year 1/Year 0)
Year 3	\$7.05	80% of (Year 2/Year 0)
Year 4	\$7.05	80% of (Year 3/Year 0)
Year 5	\$7.05	80% of (Year 4/Year 0)
Year 6	\$7.05	80% of (Year 5/Year 0)
Year 7	\$7.05	80% of (Year 6/Year 0)

Example

Contract Year:	2004
Total commercial MSW tonnage collected by Contractor under this Contract:	80,000
Guaranteed Share of Tonnage:	greater of 75% or 56,125
"Guaranteed" Tonnage:	60,000
Total commercial tonnage directed to Eastmont by the City:	66,000
"Additional" Tonnage:	6,000
CPI-W, December 2000:	157.313
CPI-W, December 2003:	170.448

Guaranteed Tonnage Payment:
 $60,000 * \$9.30 * (1 + 80% * (170.448 - 157.313)/157.313) =$ **\$595,273**

Additional Tonnage Payment:
 $6,000 * \$7.05 * (1 + 80% * (170.448 - 157.313)/157.313) =$ **\$ 45,126**

Total Transfer Short haul Payment: **\$640,399**

Amended
Version
1/05/01
Passed
Comm
11/19/01

Exhibits to
contracts not
available
electronically

The draft contracts
in this jacket will
be substituted

before the Water
Committee meets
on them on January
9th.

Keep this
note in file

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**CONTRACT BETWEEN
THE CITY OF SEATTLE
AND RABANCO, LTD.
FOR THE COLLECTION OF
COMMERCIAL WASTE**

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**CONTRACT BETWEEN THE CITY OF SEATTLE
AND RABANCO, LTD.
FOR THE COLLECTION OF COMMERCIAL WASTE**

THIS CONTRACT is entered into by and between THE CITY OF SEATTLE, a municipal corporation of the State of Washington (City) and RABANCO, LTD., (Contractor) for the purpose of collecting Commercial Waste.

A. GENERAL PROVISIONS

Section 1. Purpose and Intent of Contract.

The purpose of this Contract is to provide for the collection of Commercial Waste by the City through this Contract with Contractor, and through a similar contract with another commercial collection company. The City intends for the Contractor and the other commercial collection company to be the only providers of Commercial Waste Collection services in the City. Contractor shall collect MSW from Commercial Establishments in a Primary Collection Area defined below in Section 100, and, when requested by the City, in a Secondary Collection Area defined below in Section 105.

Section 10. Length of Contract.

The Contract shall be for a term of 7 years beginning on April 1, 2001, and ending at midnight on March 31, 2008.

The City shall have the unilateral right to extend the Contract for two one-year periods. The City may exercise this option all at once or in one-year or two-year increments. If the City decides to exercise its option to extend, it shall provide Contractor with written notice of such extension at least two (2) years in advance of the end of the initial term of the Contract and, thereafter, upon written notice at least six (6) months in advance of the end of the then existing Contract period.

Section 20. Commencement Date; Transition.

The Contract shall commence on April 1, 2001.

There will be a 3 (three)-month transition period between April 1, 2001 and June 30, 2001, during which customer accounts in the Primary and Secondary Collection Areas shall be sorted out with the other contractor, and during which the respective containers shall be switched or exchanged, in accordance with Section 205.

Section 30. Definitions.

A&E Services means ancillary and elective services associated with collection, as set forth in Attachment E.

Bulky Waste means cartons, boxes, crates, etc., or other MSW materials set out for disposal as overflow to a customer's regular Can, Cart or Detachable collection service.

Can means a watertight, galvanized, sheet metal or plastic container not exceeding 32 gallons in capacity, fitted with at least one sturdy handle and a tight cover equipped with a handle, except in the case of sunken cans, such Can to be rodent and insect proof and to be kept in a sanitary condition at all times. Alternate containers such as bags, boxes and bundles may be used in place

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of Cans for materials in excess of the customer's primary container. A Can or alternate container shall not exceed 60 pounds for each 32 gallons of nominal capacity.

Can-Unit Pickup means a pickup of a group of Cans made of durable corrosion-resistant, nonabsorbent material, watertight, with a close-fitting cover and two handles. Size to exceed twenty gallons, but not to exceed thirty-two gallons or four cubic feet.

Cart (also at times referred to as "toter" or "wheeled container") means (Not Code) a plastic container, not greater than one-half (1/2) cubic yard in capacity and equipped with wheels, handles and a tight-fitting cover. Wheeled containers means containers capable of being mechanically unloaded into the Contractor's collection vehicles.

City means the City of Seattle.

Commercial Establishment means any non-Residential location from which the Solid Waste is collected by the Contractor, and includes the non-residential portion of Mixed Use Buildings.

Commercial Waste means MSW and CDL collected from Commercial Establishments within the City.

Compacted Material means material which has been compressed by any mechanical device either before or after it is placed in the receptacle handled by the collector.

Compactor Disconnect/Reconnect Cycle means the service of disconnecting a compactor from a Drop Box or container prior to taking it to be dumped and then reconnecting the compactor when the Drop Box or container is returned to the customer's site.

Compostable Waste means any organic waste materials that are source separated for processing or composting, such as Yard Waste and Food Waste.

Container Collection means collection of Commercial Waste from Cans, Carts, and Detachable Containers.

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

"Demolition Waste" means 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. Demolition Waste does not include Special Waste.

"Landclearing Waste" means 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.

Contractor means Rabanco, Ltd., a Washington corporation.

CPI-W means the Consumer Price Index computed by the United States Department of Labor, Bureau of Labor Statistics, for the Seattle-Everett Metropolitan Area for Urban Wage Earners

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and Clerical Workers (CPI-W), or successor indices, covering the period January through December of each year.

Cycle Time is the elapsed time from time of arrival to time of departure from a Disposal Facility. Cycle Time does not include time spent removing and replacing tarps, setting off cans of compactors and rotating them for dumping, securing tailgates, washing containers, using the restroom or phone, and other similar items.

Detachable Container (also at times referred to as "dumpster") means a watertight, all-metal container, not less than one-half (1/2) cubic yard in capacity and equipped with a tight-fitting metal or other City-approved cover. The term shall also apply to containers of other material of similar size when approved by Seattle Public Utilities. Containers two (2) cubic yards and under shall be equipped with at least three (3) wheels. Detachable Containers means containers capable of being mechanically unloaded into the Contractor's collection vehicles.

Disposal Facility means both Public Transfer Stations owned by the City, and Private Transfer Stations at which the MSW shall be compacted and transferred in long haul containers to the long-haul transfer and disposal loading point designated by the City, or, as to CDL, a facility meeting the criteria of section 135.

Drop Box (also at times referred to as "rolloff" or "lugger" or "dino") means a metal container, with 3-40-cubic-yard-capacity capable of being mechanically loaded onto a collection vehicle for transport to a Disposal Facility.

Dumpster means the same as "Detachable Container."

Initial Average Haul Time means the calculated average round-trip travel time from the Contractor's collection routes to the City's South Recycling and Disposal Center, calculated based on the Contractor's defined routes and the City's GIS trip time calculation model.

Mixed Use Building means a building with both residential and commercial solid waste with common garbage chute(s), and/or the residential and commercial solid waste generated in such building cannot be readily separated.

MSW means Solid Waste excluding Special Wastes, Unacceptable Wastes, Recyclable Materials, Compostable Wastes and CDL.

Overloaded means a Toter or container whose contents exceed one foot above the top of the Toter or container.

Permanent Service means service provided for a period of more than ninety days.

Primary Collection Area means that area of the City as shown on Attachment A within which the Contractor shall be the exclusive provider of MSW collection services under this Contract, except in special cases where individual customers have requested, and been granted by the City, the right to receive such services by the City's other commercial MSW collection contractor.

Private Transfer Stations means the transfer station owned and operated by Waste Management of Seattle at 7155 West Marginal Way S.W., the transfer station owned and operated by Rabanco at 3rd Avenue South and Lander Street, and such other transfer stations

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

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.

Rate means the charges assessed to customers for Commercial Waste collection services provided by Contractor under this Contract.

Recyclable Materials means those Solid Wastes that are source separated for recycling or reuse, such as papers, metals and glass, that are identified as recyclable material pursuant to the City's Comprehensive Solid Waste Plan, and that are intended for recycling by the customer and delivered to a recycling facility.

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.

Residence or Residential means any house, dwelling, multiunit residence, apartment house, trailer court or any building put to residential use. The term does not include Mixed Use Buildings.

Revised Average Haul Time means the calculated annual average round-trip time from the Contractor's collection routes to the combination of Disposal Facilities selected by the City for all MSW for which the City has transfer site discretion under this Contract, calculated based on the Contractor's defined routes and the City's GIS trip time calculation model.

Roll-off Collection means the collection of Commercial Waste by means of a Drop Box.

Secondary Collection Area means that area of the City as shown in Attachment A within which the City's other commercial MSW collection contractor is the designated primary MSW collection service provider, and in which the Contractor may provide such services only to individual customers who have requested, and been granted by the City, the right to receive such services from the Contractor.

Solid Waste means all putrescible and nonputrescible solid and semisolid wastes, including but not limited to garbage, rubbish, yard waste, ashes, industrial wastes, infectious wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof. The term includes all liquid, solid and semisolid materials, which are not the primary products of public, private, industrial, commercial, mining and agricultural operations. Solid Waste includes, but is not limited to sludge from wastewater treatment plans, seepage from septic tanks, wood waste, dangerous waste, and problem wastes, as well as other materials and substances that may in the future be included in the definition of "solid waste" in RCW 70.95.030. Solid Waste does not include Recyclable Materials (including Compostable Waste) collected from Commercial Establishments.

Special Pickup means a pickup requested by the customer at a time other than the regularly scheduled pickup time, but which does not involve the dispatch of a truck. If a special dispatch is required, time rates as shown in Attachment E will apply.

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Special Waste means contaminated soils, asbestos and other waste specified by Rabanco in the Special Waste Management Plan included in the Operations Plan as requiring special handling or disposal procedures.

Street Side Litter Collection means collection of MSW from City-supplied containers located on public right-of-way.

Temporary Service means service that is required for a period of ninety days or less in conjunction with containers or Drop Boxes. Temporary Service and its associated rates are not to be used for the first ninety days of service when the customer requests, and the Contractor provides, service for more than ninety days.

Toter means the same as "Cart."

Unacceptable Waste means all waste not authorized for disposal at the Columbia Ridge Landfill and Recycling Center or successor site designated by the City, 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.

WUTC means the Washington Utilities and Transportation Commission of the State of Washington.

Yard Waste means plant material (leaves, grass clippings, branches, brush, flowers, roots, wood waste, etc.); debris commonly thrown away in the course of maintaining yards and gardens, including sod and rocks not over four (4) inches in diameter; and biodegradable waste approved for the yard waste programs by the Director. It excludes loose soils, food waste; plastics and synthetic fibers; lumber; any wood or tree limbs over four (4) inches in diameter; human or animal excrement; and soil contaminated with hazardous substances.

Section 40. City Responsibilities.

The City shall be responsible for:

- a. Establishing service levels and Rates to be charged customers;
- b. Transmitting and updating Commercial Waste customer lists to Contractor in the Secondary Collection Area;
- c. Directing Commercial Waste to Disposal Facilities in accordance with the terms of this Contract;
- d. Paying all transfer fees for Commercial Waste delivered by Contractor to the specified Disposal Facilities pursuant to the terms of Section 490;
- e. Disposing of the Commercial Waste delivered to the specified Disposal Facilities, except for CDL directed to a Disposal Facility by the Contractor pursuant to Section 135.;

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- f. Approving tip fees and environmental acceptability of CDL Disposal Facilities proposed by the Contractor, or in the alternative directing CDL to a disposal facility;
- g. Initiating Street Side Litter Collection pursuant to Section 122;
- h. Assuming bad debts of customers related to billings for City collection services;
- i. Paying compensation to the Contractor for its collection services pursuant to this Contract;
- j. Paying and remitting applicable taxes which are imposed by a taxing authority directly on Commercial MSW customers to the proper taxing authority; and
- k. Taking enforcement action, as necessary, against unauthorized collection of Commercial Waste.

Section 50. City Representations and Warranties.

The City represents and warrants to Contractor as follows:

- a. Organization and Qualification
 - 1. The City is a municipal corporation and has all requisite corporate power and authority to enter into and perform its obligations under this Contract.
- b. Authority
 - 1. 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.
 - 2. This Contract has been validly executed and constitutes a valid and legally binding and enforceable obligation of the City.

Section 60. Contractor Responsibilities.

Contractor shall be responsible for:

- a. Furnishing all skill, labor, equipment, material, supplies and utility services required for providing all services in accordance with this Contract;
- b. Performing all work in a timely, thorough and professional manner;
- c. Delivering all Commercial Waste to a Disposal Facility in accordance with this Contract;
- d. Assisting Commercial Waste customers with service issues;
- e. Billing customers for City collection services in accordance with Rates established by the City;
- f. Acting as agent for the City for taxes imposed on Commercial MSW customers, and on rental, collection, and A&E Services for CDL customers, by billing for Rates established by the City, which include taxes, and by forwarding those payments, including taxes, to the City for payment by the City of taxes to the appropriate taxing authority;

- g. In addition to paying appropriate taxes on services not compensated by the City, remitting B&O taxes levied against the Contractor, on the basis of compensation paid to the Contractor by the City, to the appropriate taxing authority;
- h. Transferring customer payments for City collection services (including MSW rental, collection, A&E Services and disposal payments, and CDL rental, collection, and A&E Services, and taxes thereon; but excluding CDL disposal and taxes thereon, and excluding Contractor provided recycling services, and taxes thereon) to the City in accordance with this Contract; and
- i. Complying with all applicable laws and regulations.

Section 70. Contractor's Representations and Warranties.

The Contractor represents and warrants to the City as follows:

- a. Organization and Qualification
 - 1. 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
 - 1. 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.
 - 2. This Contract has been validly executed by an authorized representative of the Contractor and constitutes a valid and legally binding and enforceable obligation of Contractor.

Section 80. Contractor's Waiver.

Contractor hereby relinquishes and waives any and all claims against the City or rights it may have versus the City with regard to its certificate from the Washington Utilities and Transportation Commission to collect Commercial Waste in the City, except to the extent collection of such Commercial Waste is expressly excluded from this Contract. Contractor also waives any and all claims to compensation from the City based on a claim of taking or any other claim or circumstance related to the Contractor entering into this Contract, or to the City's continued regulation of, and contracting for, the collection of Commercial Waste in the City after the life of this Contract, apart from the payment provisions of the Contract itself. *Provided, however,* the Contractor reserves its option to reactivate its certificate from the WUTC to collect Commercial Waste in the City, should the City later cease to assert its control over the collection of Commercial Waste.

Section 90. Control of Waste.

Pursuant to its authority under Washington State law, the City by this Contract authorizes the Contractor to act as its agent for the collection and delivery of Commercial Waste from Commercial Establishments in the City, or any other agreed upon location, to Disposal Facilities as directed by the City. The City's rights of ownership and control over the Commercial Waste collected under this Contract vest upon the collection of the Commercial Waste; provided,

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however, that the original owner has the right of recovery to any valuable items inadvertently discarded that can be reasonably retrieved prior to final disposal.

B. COLLECTION SERVICES

Section 100. Primary Collection Area For MSW Collection.

- a. The City shall be divided into a Primary and a Secondary Collection Area for Commercial MSW collection along the following line: Royal Brougham to 4th Avenue to Dearborn, Dearborn to I-5, I-5 to Jackson, Jackson to Lake Washington. Attachment A provides a map of the City showing this dividing line. Contractor shall have the area north of this line (excluding service to Terminal 37, which is south of the line that would be created if Royal Brougham were to be extended west to the water) as its Primary Collection Area for Commercial MSW collection.
- b. Unless a customer in the Primary Collection Area specifically requests to be a Secondary Collection Area customer for service by the City's other Commercial MSW collection contractor and the request is approved by the City, or is otherwise designated as a Secondary Collection Area customer by the City, all Commercial MSW customers in the Contractor's Primary Collection Area shall receive collection services from the Contractor. All requests by a customer in this area to become a Secondary Collection Area customer for collection by the City's other Commercial MSW collection contractor must be referred to and approved by the City, and the Contractor shall notify the City within 24 hours of receiving any request by a customer in the Primary Collection Area for service by the City's other Commercial MSW collection contractor. The Contractor shall be the exclusive provider of Primary Collection Area Commercial MSW collection services for this Primary Collection Area, provided that each customer shall continue to be permitted to self-haul its own MSW.

Section 105. Secondary Collection Area For MSW Collection.

- a. The area south of the dividing line described in Section 100 and shown on Attachment A shall be the Contractor's Secondary Collection Area for Commercial MSW collection.
- b. Unless a customer in this area specifically requests to become a customer of the Contractor and the request is approved by the City, or the City otherwise designates a customer in this area as a customer of the Contractor, the Contractor shall not provide Commercial MSW collection services authorized by this Contract to customers located in the Secondary Collection Area.
- c. In addition, the Contractor shall not solicit or otherwise encourage Commercial MSW customers in the Secondary Collection Area, not excluded from the scope of this Contract, to become MSW customers of the Contractor, and shall be subject to Liquidated Damages in accordance with Section 750 if found by the City to be violating this obligation.
- d. It is expected that MSW customers at Commercial Establishments may themselves initiate requests to the Contractor to become a Secondary Collection Area customer, but all requests by a customer in the Secondary Collection Area to become a MSW customer of the Contractor, including requests that apply to initial service under this Contract, must be referred to and approved by the City, and the Contractor shall notify the City within 24 hours of receiving any request by a customer in the Secondary Collection Area for service by the Contractor.

- e. Contractor may use residential collection vehicles providing service to the City under the "Solid Waste Collection Contract Between the City of Seattle and Washington Waste Hauling & Recycling, Inc.," to collect Commercial MSW from the Secondary Collection Area, *provided* that the weight of any Commercial MSW collected by residential vehicles shall be excluded from the "Tonnage Adjustment Factor" in Section 720 of the residential collection contract.
- f. The Contractor may schedule collection for Commercial MSW customers in the Secondary Collection Area in a manner that is most efficient for the Contractor, while at the same time providing the overall level of service required by the customer. Any disputes that arise between the Contractor and the customer shall be resolved pursuant to Section 127.

Section 110. Excluded Contracts.

The Contract does not necessarily include service to federal facilities, the Seattle Housing Authority, the Seattle School District and the University of Washington. These entities, however, may elect, at any time during the term of this Contract, to receive collection services from the City under this Contract and the Contractor agrees that upon request by the City, those collection services shall be governed by this Contract as long as such request remains in effect. Where no such request is made by the City, the Contractor shall be free to solicit and contract for collection services to such excluded facilities independent of this Contract.

Section 115. Excluded Services.

- a. The Contract does not include collection or processing of Recyclable Materials, nor does it include collection or disposal of Special Waste or Unacceptable Waste.
- b. This Contract is not intended to impose substantive standards affecting the price, route or service of "property" as that term is defined by federal laws. In the event a court decision is issued or legislation enacted which the parties in writing have agreed affects the legal definition of "property" and as a result, limits the City's ability to enforce the provisions of Section 1 of this Contract, the Contractor may provide collection services as to that "property" as a service excluded from this Contract. The Contractor, however, shall continue to provide Commercial Waste collection services in all other respects pursuant to this Contract.

Section 120. Commercial Waste Collection.

- a. The Contractor shall provide MSW collection services to all Commercial Waste customers at Commercial Establishments who request such service in the Contractor's Primary Collection Area (and in the Contractor's Secondary Collection Area when directed to do so by the City pursuant to Section 105).
- b. Commercial MSW Container Collection services shall be provided at any service level then in effect under the City's codified service levels, so long as the requested service level can reasonably be accommodated at the customer's premise. Any Cart or Detachable Container may be owned by the customer as long as it is in good and serviceable shape and is compatible with Contractor's equipment; except as so provided by the customer, all Carts and Detachable Containers shall be owned and provided by Contractor.
- c. CDL collection and disposal services shall be provided City-wide to customers that request

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such service. CDL services may also be provided City-wide by the City's other Commercial MSW collection contractor.

- d. Roll-off MSW or CDL collection services shall be provided to customers requesting such service so long as the requested service can reasonably be accommodated at the customer's premise. The Drop Box may be owned by the customer as long as it is in good and serviceable shape and is compatible with Contractor's equipment; except as so provided by the customer, all Drop Boxes shall be owned and provided by Contractor, for which the Contractor may charge the customer a Drop Box security deposit.
- e. The Contractor shall make every reasonable effort to accommodate a customer's request for service and to provide customers with the level and type of service which is most convenient and economical to the MSW or CDL customer.

Section 122. Street Side Litter Collection.

- a. The City shall have the option to add Monday – Friday collection of City-owned and maintained street side litter containers in the Contractor's Primary Collection Area to the services provided by the Contractor, beginning no sooner January 1, 2002. The number of City-owned and maintained street side litter containers included in the program may change at any time during the Contract.
- b. The City shall have the option of requiring Saturday or Sunday collection of street side litter containers on special request related to a neighborhood or other special event. For any such Saturday or Sunday collection, the City shall pay the Contractor twice the payment amount established in Section 415 for each container collected.
- c. The City shall provide at least six months' written notice to the Contractor prior the start of street side litter collection service by the Contractor.

Section 123. Public Place Recycling Collection.

- a. Upon request from the City, the Contractor agrees to negotiate terms and conditions for collection of Recyclable Materials from City-owned recycling containers located in public places in a manner similar, but not identical, to Street Side Litter Collection provided in Section 122.
- b. Public place recycling collection shall not be requested by the City prior to January 1, 2002, nor shall such collection be requested by the City without giving the Contractor six month's written notice after specific terms and conditions for providing this service have been agreed upon by the Contractor and the City.

Section 124. Pilot Programs.

The City may wish to test and/or implement one or more new developments in waste stream segregation, materials processing, or collection technology at some point during the term of the Contract. The City will notify the Contractor in writing at least ninety days in advance of the implementation of a pilot program to be performed in one or more collection routes or of its plans to utilize a new technology system on a citywide basis. The costs (or savings) accrued by City-initiated pilot programs will be negotiated prior to implementation, and payments to the Contractor shall be adjusted accordingly. Contractor-initiated pilot programs will require written notification, and approval on the part of the City. Unless otherwise agreed in writing, Contractor-

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initiated pilot programs will be performed at no additional cost to the City or the Contractor's customers.

Section 125. A&E Services.

The Contractor shall provide A&E Services in accordance with the A&E Services then in effect under the City's codified service levels. The Contractor shall make every reasonable effort to provide customers with the level and type of A&E Services which are most convenient and economical to the customer.

Section 127. Resolution of Availability of Service Disputes.

Any disagreement between a customer and Contractor regarding the services which can reasonably be accommodated at the customer's site shall be resolved by Seattle Public Utilities, including availability of collection and A&E Services, container placement, level of service or any other issue related to collection services. The City shall attempt to mediate and, if necessary, decide the issues, taking into consideration safety of the customer and the Contractor as well as the convenience of the customer and the efficient operation of the Contractor.

Section 130. MSW Transfer/Disposal.

- a. For the first seven years of the Contract, the City will direct to the Contractor's 3rd & Lander Transfer Station no less than the greater of the following guaranteed quantities, measured percentage shares of actual tonnage or first Contract year tonnage of MSW collected by the Contractor under this Contract:

Contract Year	Guaranteed Share of Base Tons Delivered to 3 rd & Lander	Guaranteed Share of Actual Tons Delivered to 3 rd & Lander
1	90% of Year 1 Tonnage	90% of Year 1 Tonnage
2	85% of Year 1 Tonnage	85% of Year 2 Tonnage
3	80% of Year 1 Tonnage	80% of Year 3 Tonnage
4	75% of Year 1 Tonnage	75% of Year 4 Tonnage
5	70% of Year 1 Tonnage	70% of Year 5 Tonnage
6	65% of Year 1 Tonnage	65% of Year 6 Tonnage
7	60% of Year 1 Tonnage	60% of Year 7 Tonnage

- b. The City retains sole discretion for directing any remaining MSW collected under this Contract to transfer station(s) of its choice.
- c. In addition to the guaranteed amounts set forth in subsection (a) above, the City may, with the consent of the Contractor, direct any Commercial MSW collected in the City in excess of the amounts defined by Subsection a) above to the Contractor's 3rd & Lander Transfer Station throughout this Contract. Except in an emergency, the City will provide at least three months' written notification prior to proposed changes in those additional amounts. With the Contractor's consent, the City may also designate the route origins within the City, of those additional tons collected by the Contractor.
- d. The Contractor is obligated to accept any tonnage directed to the Contractor's 3rd & Lander transfer facility under Subsections 130a or 130c.

- e. When the 3rd & Lander Transfer Station is not open, the Contractor shall first deliver the MSW to a Public Transfer Station, unless the City directs otherwise. In the event the Public Transfer Station is also closed or the City declines to accept the MSW, the waste, the Contractor shall have the option to provide the customer with an additional Cart or Detachable Container until the customer's basic Cart or Detachable Container can be emptied. The Contractor shall empty the primary Toter or Dumpster and remove the additional Toter or Dumpster as soon as practicable after the 3rd & Lander Transfer Station is again open.
- f. The actual quantities of guaranteed tonnage will be tracked on a monthly basis, and deliveries will be adjusted as necessary to achieve the guaranteed minimum tons and percentages. In the event that actual deliveries fall short of the Contractor's guaranteed quantities of tonnage at the end of a Contract year, the shortfall, at the election of the Contractor, will be made up in additional deliveries to the Contractor's 3rd & Lander Transfer Station during the first quarter of the next Contract year. In the event that actual deliveries fall short of the Contractor's guaranteed quantities of tonnage at the end of the final quarter of the Contract period, the City, at the election of the Contractor, will make up the shortfall with additional deliveries to the Contractor's 3rd & Lander Transfer Station during the quarter following the end of the Contract.
- g. No adjustments will be made if actual deliveries in a Contract year exceed the Contractor's guaranteed quantities of tonnage.

Section 135. CDL Transfer/Disposal.

- a. The City reserves, but does not currently exercise, the right to direct the Contractor to any Disposal Facility of its choosing for disposal of CDL collected under this Contract.
- b. CDL collected under the Contract may be directed to Disposal Facilities by the Contractor, *provided that:*
 - 1. The facilities are environmentally acceptable to the City; and
 - 2. The tip fees are acceptable to the City.
- c. The City's rejection of facilities or tip fees shall not be unreasonably withheld or delayed.
- d. At such time as Contractor is unable to designate a Disposal Facility which is acceptable to the City under Section 135c, above, the City will exercise its right to direct the disposal of CDL, *provided*, that the City shall in no circumstance exercise this option to direct CDL to a City-owned Disposal Facility prior to April 1, 2006.

C. OPERATIONS

Section 200. Coordination; Implementation.

In order to minimize problems during implementation of the Contract, to provide a forum for discussing and resolving any transition and operational problems that may arise, and to update the Operations Plan, the Contractor and City agree to meet on a regular basis as follows:

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- a. During the three-month period before the Contract takes effect, the Contractor and City will meet on a weekly basis, or on such more or less frequent basis as may be otherwise mutually agreed. The primary purpose of the weekly pre-Contract meetings will be to refine the Transition Plan and the Operations Plan, to seek resolution of any customer service issues, and to discuss promotion, public information and public relations in anticipation of the commencement of the Contract.
- b. During the three-month transition period, the Contractor and City will meet on a weekly basis, or on such more or less frequent basis as may be otherwise mutually agreed. The primary purpose of the weekly transition period meetings will be to refine the Transition Plan and the Operations Plan, to evaluate the Contractor's performance in implementing the Contract, to evaluate container exchange or purchase issues, to review and seek resolution of any customer service issues, and to discuss promotion, public information and public relations.
- c. Following the three-month transition period, the meetings between the Contractor and the City will be held at least on a monthly basis, or on such more or less frequent basis as may be otherwise mutually agreed. The primary purpose of these meetings will be to review day-to-day operations, to refine and revise the Operations Plan, and to discuss promotion, public information and public relations.
- d. Meetings during the transition period will be held at the offices of the City, unless otherwise agreed. Meetings held after the transition period will be held at a mutually agreed location. Each Party will be available for at least 90 minutes per meeting, unless otherwise agreed to in advance. Meetings shall be held during normal business hours.

Section 205. Transition Plan.

In order to effect a smooth transition from the former WUTC regulation to collection of Commercial Waste under this Contract, a Transition Plan shall be developed which shall detail procedures: for easing the customer's transition to a new collector in the Primary Collection Area; for receiving customer information from the City; for exchanging customer service information; and for exchanging or purchasing containers from the City's other Commercial Waste collection contractor. The Transition Plan will be appended to the Contract as Attachment B and shall begin to be implemented as soon as the Transition Plan is agreed to, which in no case shall be later than the start of collections under the Contract.

Section 210. Operations Plan.

A schedule of activities and detailed procedures related to the effective implementation and operation of the Contract is appended to the Contract as Attachment C. This plan shall be known as the "Operations Plan."

Section 220. Night Collection.

The Contractor shall be able to continue to operate during the night (6 p.m. to 7 a.m.). Any additional restrictions or conditions placed on the Contractor's nighttime operations during the term of the Contract shall be considered a change in law, which may result in additional compensation to the Contractor pursuant to Section 825.

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Section 230. Traffic Laws: Noise Control.

All Contractor vehicles shall be operated in conformity with the Seattle Traffic Code, SMC Chapter 11. The maximum noise level of motor vehicles during travel shall not exceed the levels set forth in SMC 25.08.430. The maximum noise level while collecting or compacting materials collected under this Contract shall not exceed the levels set forth in SMC 25.08.410.

Section 235. Container Maintenance.

The Contractor shall be responsible for repainting, graffiti paint out and steam cleaning of Cans, Carts, Detachable Containers and Drop Boxes as requested by the City. If the City makes any such request, the Contractor will be compensated at the rates set forth in Attachment G, Item 210.

Section 240. Inventory of Equipment.

The Contractor shall provide the City at the start of the Contract with a complete inventory of its equipment, showing each vehicle (type, capacity, approximate age, vehicle license and identification numbers) and all Cans, Carts, Detachable Containers and Drop Boxes used for performing the Contract. The Contractor shall provide the City with an updated vehicle inventory on a monthly basis, which shall incorporate changes within sixty (60) days of their occurrence, and an updated container inventory on an annual basis.

Section 250. Ownership of Equipment.

All vehicles, facilities, equipment and property used in the performance of this Contract shall be wholly owned by the Contractor; provided, that leases, conditional sale contracts, mortgages, or other agreements for the use or financing the purchase of vehicles, facilities, equipment and property may be allowed with the prior written approval of the City. All such leases, conditional sale contracts, mortgages, or other agreements entered into during the term of the Contract shall provide that, in the event of the Contractor's failure to perform its obligations under this Contract, the City, at its option, shall have the right to take possession of and operate vehicles, facilities, equipment, and property covered by such lease or agreement for the unexpired term of this Contract. No further encumbrance shall be placed upon any such vehicles, facilities, or equipment without the prior written approval of the City.

Section 260. City Option to Purchase Containers.

The City shall have the option to purchase all the Contractor's Cans, Carts, and Detachable Containers used for performing the Contract at the end of the Contract period. The purchase price shall be equal to the recorded purchase cost of those containers net of accumulated depreciation as of December 31, 2000, according to the Balance Sheet and supporting schedules in the Contractor's Fixed Asset Inventory, consistent with the total container asset value included in the most recent Annual Report from Rabanco to the WUTC, as set forth in Attachment I, adjusted for 1) the change in the CPI from December 31, 2000, until the end of the Contract period (at 100%), and 2) the percentage changes in the numbers of commercial containers of each size served by Rabanco from December 31, 2000 until the end of the Contract period, *provided* that the number of each size of new containers acquired by Rabanco during 2000 that will be included in the calculation above will be no greater than 15% of the Rabanco container inventory as of December 31, 2000.

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Section 270. Contractor's Office.

The Contractor shall maintain within King County an office with local telephone service and such staff as needed to take care of complaints, billing issues, requests for missed collections and other coordination with City staff. Phone service shall include multiple lines and voice mail and e-mail. Any voice mail messages shall be returned by the Contractor's office within sixty (60) minutes. The Contractor's customer service hours shall be from 8 a.m. to 4:30 p.m., Monday through Friday.

D. RATES TO CUSTOMERS

Section 300. City Sets All Rates to Customers.

The City shall retain the authority to set Rates for all services to customers under this Contract. Rates shall be established by City ordinance. The City's rate ordinances shall specify the container size categories and service levels (frequency of services) that shall be made available to the customers by the Contractor. The Rates, service categories and service levels offered by the City may be changed at any time and as many times during the Contract as the City deems appropriate, so long as after the start of the Contract the Contractor is provided sixty (60) days notice of any change of Rate, service category, or service level. Customers shall be charged for services pursuant to rates established by the City.

Section 310. Rates for Primary Collection Area.

Rates and service levels shall be established by City ordinance for the Contractor's Primary Collection Area. Unless designated a Secondary Collection Area customer by the City, all customers in the Contractor's Primary Collection Area shall be afforded and charged for services pursuant to the City's Primary Collection Area Rate and service level ordinances.

Section 320. Rates for Secondary Collection Area.

- a. Rates and service levels shall be established by City ordinance for the Contractor's Secondary Collection Area. Unless a Commercial MSW customer in the Secondary Collection Area is designated a customer of the Contractor by the City, the Contractor shall not provide Commercial MSW collection services in the Secondary Collection Area. For all Secondary Collection Area services provided by the Contractor, however, the customers shall be afforded and charged for services pursuant to the City's Secondary Collection Area Rates and service levels.
- b. The Secondary Collection Area Rates may be established by the City in any amount. If the Rates for the Secondary Collection Area in any category are less than fifteen (15) percent above the Rates for the same service level in the Primary Collection Area, then the payment provisions of Section 435 shall apply.

Section 330. Rates for A&E Services.

Rates for A&E Services shall also be established by City ordinance for both the Primary and Secondary Collection Areas. Customers shall be charged for A&E Services pursuant to Rates established by City ordinance.

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Section 340. Establishing Different Service Levels.

The City shall have the authority to establish different service levels by ordinance at any time during the term of the Contract. The City will provide the Contractor no less than six months' written notice prior to requiring the Contractor to begin providing and collecting such new services. Compensation to the Contractor for any new or revised service levels shall be determined pursuant to Section 450.

Section 350. Establishing Different Types of Service.

In addition to creating different service levels under Section 340, the City shall have the authority to establish different types of Commercial Waste collection service by ordinance at any time during the term of the Contract. The City will provide the Contractor no less than six months' written notice prior to requiring the Contractor to begin providing and collecting such new services. Compensation to the Contractor for any new or revised MSW or CDL collection services shall be determined pursuant to Section 450.

Section 360. Recycling.

The City reserves the right to promote and contract for Recycling of any component of the Commercial Waste stream at any time during the term of the Contract. The City shall be under no obligation to contract with the Contractor for the collection of any such Recyclable Materials.

E. COMPENSATION TO CONTRACTOR

Section 400. Compensation for MSW Container Collection.

- a. Unless otherwise stated in the Contract, the City will compensate the Contractor on a monthly basis for collection from all Commercial customers receiving MSW Container Collection service, based on a per unit schedule defining the payment per collection pickup for each level of service. The per unit payments defined by that schedule will be multiplied by the number of collections of each service level performed by the Contractor during the preceding month, to derive the monthly compensation for Commercial MSW Container Collection.
- b. The initial per unit payment schedule for Container Collection in the first Contract year is shown in Attachment D.
- c. The per unit payment schedule in Attachment D reflects an estimated average weight per cubic yard of 155 pounds for the Contractor's MSW Container Collection customers.
- d. A revised per unit payment schedule for Container Collection will be established after the first contract year and will become the basis for subsequent monthly compensation calculations and for establishing the amount of any true-up adjustments as provided for in Section 408.
- e. The format for Contractor reporting of monthly collection service levels, and overall billing procedures are set forth in Sections 500 through 540.

Section 403. Compensation for A&E Services.

- a. The City will compensate the Contractor on a monthly basis for A&E Services based on the per unit payment and the types of A&E services listed in Attachment E. The per unit

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payment defined by that schedule will be multiplied by the number of A&E Services performed by the Contractor during the preceding month, to derive the monthly compensation for A&E Services.

- b. The Contractor will be compensated only for those A&E Services set forth in Attachment E. In setting Rates, however, the City may establish charges to customers for A&E Services which are not set forth in Attachment E, and for which the Contractor would receive no additional compensation.
- c. The format for Contractor reporting of monthly A&E Services, and overall billing procedures are defined in Section 500 through 540.
- d. For the first Contract year, per unit payments for A&E Services will be at the levels listed in Attachment E.
- e. Payment for A&E Services shall be adjusted annually each year of the Contract in accordance with the procedures set forth in Section 470.

Section 404. Procedure for Establishing Average Weight Per Cubic Yard.

- a. The per unit payments in Attachment D are based on an estimated average weight of 155 pounds per cubic yard for Contractor's Commercial MSW Container Collection customers. The actual average weight per cubic yard will be established based on City-wide data from the first Contract year in accordance with the procedures set forth in this Section, and then will become the basis for adjustments under Section 407 for the remaining term of the Contract.
- b. Average Weight Per Cubic Yard. The average weight per cubic yard will be derived from City-wide data on:
 - 1. Commercial MSW tonnage collected by the Contractor and the City's other Commercial MSW collection contractor in the City of Seattle from Can Cart and Detachable Container customers from April 1, 2001 through March 31, 2002, and
 - 2. Cubic yards of subscribed Commercial MSW service and billed Bulky Waste collected by the Contractor and the City's other Commercial MSW collection contractor from Can, Cart and Detachable Container Commercial Waste customers in Seattle from April 1, 2001 through March 31, 2002.
- c. Source of Contractor's MSW Tonnage Data. The source of data on Commercial MSW tonnage collected by the Contractor in Seattle from April 1, 2001 through March 31, 2002 will be electronically transferred records of the weights of Commercial MSW delivered by Contractor's Commercial MSW route collection vehicles' tipped weights at any Disposal Facilities used during that period. In addition, the Contractor will provide copies of the weight slips provided to the Contractor's Commercial MSW collection vehicles when they dispose of each load collected in the City of Seattle. The Contractor will arrange for electronic data transfer of records from 3rd & Lander Transfer Station, and will provide a complete copy set of the weight slips from all Disposal Facilities used to the City on a monthly basis, including information on date of disposal, time of disposal, and number assigned by the Contractor to the route. The City will likewise arrange for electronic data

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transfer to the Contractor of records of the Contractor's Commercial MSW disposal at the City's Disposal Facilities.

1. Data from these sources will be compared to 1) the corresponding data for the two calendar years preceding the start of the Contract, and 2) the monthly submittals made by the operator of the 3rd & Lander Transfer Station during those two calendar years to the Seattle-King County Department of Public Health, which define all waste streams tipped at the 3rd & Lander Transfer Station, of Commercial MSW, excluding CDL, disposed of at that facility, for verification.
- d. Source of Contractor's Cubic Yards Collected Data. The source of data on total cubic yards of Commercial MSW collected in Seattle from April 1, 2001 through March 31, 2002 will be Commercial MSW billing data provided by the Contractor in monthly submittals to the City. Cubic yards included in the count will be subscribed cubic yards of container service to Can, Cart and Detachable accounts (adjusted for compaction ratios), collected by the Contractor's Commercial MSW collection route vehicles, plus billed cubic yards of Bulky Waste collected from those accounts. The City may survey a sample of customers, or conduct a spot-audit of Contractor routes, to verify customer service levels identified in the Contractor's billing data submittals.
- e. In the event of any apparent discrepancy, the City and the Contractor will review the records, and attempt to agree on a specific average weight per cubic yard estimate. If disagreement remains, the matter will be addressed pursuant to the provisions of Section 830.

Section 407. Compensation Based on Average Weight Per Cubic Yard.

- a. Per unit payment amounts for Commercial MSW Container Collection shall be adjusted once following the first year of service under this Contract using the average weight per cubic yard defined by the procedures set forth in Section 404. The revised per unit payment structure for the remaining term of the Contract will then be calculated based on the baseline tariff rates in Attachment D, adjusted downward in three steps, to:
 1. exclude the portion of those tariffs associated with disposal costs;
 2. exclude the portion of those tariffs associated with taxes; and
 3. reduce the remaining net payments by 15% at each service level.
- b. These three adjustments will be calculated as follows:
 1. The adjustment for exclusion of disposal costs at each level of service will be made by i) multiplying the average weight per cubic yard established by the procedures set forth in Section 404 (in tons) by the size of the container picked up (in cubic yards), by \$77.87, and ii) subtracting that amount from the baseline tariff rate in Attachment D.
 2. The adjustment for exclusion of tax costs at each level of service will be made by i) multiplying the average weight per cubic yard established by the procedures set forth in Section 404 (in tons) by the size of the container picked up (in cubic yards), by \$11.70, and ii) subtracting that amount from the baseline tariff rate in Attachment D subtracted from the original tariff.

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3. Finally the tariff rates at each collection service level that result from the two preceding adjustments will be multiplied by 85% to determine the revised initial year per unit payments for Commercial MSW Container Collection.

Section 408. True-up Procedure for Recalculating First Year Compensation.

- a. When the revised initial year per unit payments for Commercial MSW Container Collection have been calculated pursuant to Section 407 for the period April 1, 2001 through March 31, 2002 the compensation from the City to the Contractor for the first twelve months of the Contract will be recalculated, based on the revised initial year per unit payments for Commercial MSW Container Collection.
- b. Any difference between the resulting recalculated compensation and the compensation actually made for Container Collection service in the first twelve months of the Contract will be applied to the twelve monthly payments to the Contractor from the City for the Contract period July 1, 2002 through June 30, 2003. If the adjustment is in the Contractor's favor, one-twelfth of the difference will be added to the City's compensation payment each month; if the adjustment is in the City's favor, one-twelfth of the difference will be subtracted from the City's compensation payment each month.

Section 410. Compensation for Drop Box/Roll-off Collection (MSW or CDL).

- a. The City will compensate the Contractor on a monthly basis for Drop Box service at the per unit payment rates shown in Attachment F. The per unit payments defined in that attachment shall be multiplied by the number of Drop Box collection services performed by the Contractor during the preceding month, to derive the monthly compensation for Drop Box services.
- b. Each of these per unit payments for Drop Box service shall be adjusted annually during the term of this Contract in accordance with the provisions of Section 470.

Section 415. Compensation for Street-Side Litter Can Collection.

- a. If the City exercises its option to add street side litter collection to the services covered under this Contract, pursuant to Section 122, it will pay the Contractor:
 1. \$1.50 per pickup for all containers, whether employing replaceable bags or internal cans, and whether the replaceable bags or internal cans are removable through the top or through a side panel.
 2. If the City requires the Contractor to perform litter can collection on Saturday or Sunday, the City shall pay the Contractor twice the payment amount established in this Section for each container collected.
- b. The per-container payment for litter can collection in the initial year of the City's exercise of its option will be adjusted annually from the amount set forth in subsection (a) above by multiplying the per container payment by 100% of the change in the CPI-W from December 31, 2000 until the initiation of such service. Thereafter, the per container payment for litter can collection will be adjusted annually each year during the term of this Contract according to the CPI adjustment clause set forth in Section 470 of this Contract.
- c. Any MSW collected by the Contractor from street-side litter cans will be included in the MSW

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tonnage upon which the percentage of tonnage guarantees are calculated, under the provisions of Section 130.

- d. If the City exercises its option to add litter can collection to the services covered under this Contract, compensation for such collection will be made on the same monthly schedule as compensation for other collection services covered under this Contract.

Section 420. Can, Cart and Detachable Container Rentals.

The City will compensate the Contractor for temporary and permanent Can, Cart and Detachable Container rentals at the daily and monthly per container payment rates shown in Attachment D, as adjusted annually according to the provisions of Section 470.

Section 422. Drop Box Rentals.

The City will compensate the Contractor for temporary and permanent Drop Box rentals at the daily and monthly per container payment rates shown in Attachment F, as adjusted annually according to the provisions of Section 470.

Section 430. Compensation for Collection in Secondary Collection Area.

- a. The Contractor will receive base payments for Commercial MSW collection service customers in its Secondary Collection Area according to the compensation structure in Sections 400 through 422, and an additional amount for customers in its Secondary Collection Area depending on their location as set forth below.
- b. For those Commercial MSW Container Collection service customers located more than ½ mile from the service boundary collected during the day (7 AM to 5 PM), the Contractor will be paid an additional amount equal to i) 50% of the difference between the City's Secondary Collection Area Rates and the City's Primary Area Collection Rates for any given service level, plus ii) \$5 per stop per day, up to a maximum of \$20 per collection day.
- c. For those Commercial MSW Container Collection service customers located more than ½ mile from the service boundary collected at night (5 PM to 7 AM), the Contractor will be paid an additional amount equal to i) 50% of the difference between the City's Secondary Collection Area Rates and the City's Primary Area Collection Rates for any given service level, plus ii) \$15 per stop per day, up to a maximum of \$60 per collection day.
- d. The Contractor must provide the City with billing statements that include service addresses and phone numbers for all Commercial MSW Secondary Collection Area customers as the basis for payment for service delivered in its Secondary Collection Area.
- e. In addition, the Contractor must notify the City within 24 hours of any existing Commercial MSW customers in its Primary Collection Area who have requested service by the other Commercial MSW collection contractor, and of any Commercial MSW customers in its Secondary Collection Area who have requested service by the Contractor.

Section 435. Compensation Adjustment for Primary/Secondary Rate Differentials.

- a. The City reserves the right to establish Rates that will apply to customers receiving Commercial MSW service from other than their Primary Collection Area provider.

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- b. For Commercial MSW service to customers in its Secondary Collection Area whose Rates for service are 15% or more higher than for the same service level in the Primary Collection Area, the Contractor will receive no additional compensation, beyond that established by the procedures in Section 430.
- c. For Commercial MSW service to customers in its Secondary Collection Area whose Rates for service are less than 15% higher than for the same service level in the Primary Collection Area, the City will compensate the Contractor by an additional amount equal to the number of percentage points by which the differential in rates is less than 15% higher multiplied by the Contractor's total compensation for service to customers receiving that level of service.
- d. Any such compensation will be calculated and paid monthly for the period for which the differential in Rates remains less than 15%, or prorated for partial months if necessary. If the Rates fall short of the 15% differential for more than one service category, the Contractor will be paid for each such service level category according to the formula set forth above.

Section 440. Compensation Adjustment for Revised Average Round-trip Haul Times.

- a. The City reserves the right to direct the non-guaranteed portion of MSW collected by the Contractor described in Section 130(b) to any Disposal Facility of its choosing. For purposes of this section, it will be assumed that the City will initially direct all such non-guaranteed MSW to its South Recycling and Disposal Station (SRDS).
- b. After the Contractor has established its collection routes in its Primary Collection Area, an "initial average round-trip haul time" will be determined for transfer trips from the mid-points of those routes to the City's SRDS and back again. Average round-trip haul times will also be determined for transfer trips from the mid-points of those routes to each other Disposal Facility in the City.
- c. The mechanism for determining the initial average round-trip haul times will be the City of Seattle GIS model developed for residential route haul time calculations, modified to incorporate the new route location information identified for the Commercial MSW collection routes.
- d. Whenever the City elects to direct portions of the waste collected under Section 130(b) of this Contract to Disposal Facilities other than SRDS, a "revised average round-trip haul time" will be calculated by using a weighted average of the shares of non-guaranteed tons directed to each Disposal Facility times the average round-trip haul times calculated for each Disposal Facility.
- e. Any resulting difference between the initial and revised average round-trip haul times will be the basis for Contractor compensation adjustments.
- f. Contractor compensation adjustments will be based on the following calculated cost impact formula:

Calculated cost impact payment

= \$60.00 per hour

*(revised average round-trip haul time), in hours

*total transfer round trips per month

* percentage of Contractor's Commercial MSW tonnage redirected

[The rate per hour will be adjusted annually by the CPI factor defined in Section 470.]

For increases in average round-trip haul time, the Contractor will receive 100% of the calculated cost impact as a compensation adjustment to be made on that month's compensation from the City. For decreases in average round-trip haul time, the City will receive 75% of the calculated cost impact (in the form of reduced payments to the Contractor), and the Contractor will retain any remaining cost savings.

An example calculation of this cost impact formula is provided in Attachment G.

- g. The City will only direct trucks to Disposal Facilities that are open at the time the truck is full.

Section 445. Compensation for Excess Cycle Time.

The Contractor will be compensated an additional amount for each Cycle Time for MSW collected under this Contract at a Public Facility or Private Facility not owned by Contractor that is greater than 15 minutes. Compensation adjustments for excess Cycle Time will be calculated monthly. The additional amount that the Contractor will be compensated for excess Cycle Time will be determined based on Contractor's submittal of all relevant scale transaction receipts for the month in question.

Compensation for excess Cycle Time =

\$60.00 per hour

* the sum of total hours in excess of allowable Cycle Time.

Section 450. Mechanism for Establishing Base Compensation for New Service Levels or Types of Service.

- a. The City retains the discretion to establish new service levels (e.g., $\frac{3}{4}$ yard dumpster) or types of service at any time during the Contract. Compensation for any new service level or type of service will be based on the following:
1. For a new service level (e.g., $\frac{3}{4}$ yard dumpster), compensation to the Contractor shall be at the next highest level of service already established (e.g., 1 yard dumpster).
 2. For a different type of service (e.g., shared 4 yard Container Collection service at the end of an alley for multiple Commercial MSW customers) the per-unit payment shall be at the same amount as the most comparable existing service (e.g., Attachment D, 4yd noncompacted service).
- b. If the City establishes new commercial recycling services for which the Contractor (1) has no contract service relationship with the City for such commercial recycling service and (2) which results in greater than 10% reduction in annual solid waste tonnage over the pre-program period, the Contractor may invoke the procedures set forth in Section 830, *provided*, however, that the City may in such case terminate the Contract with 18 month's notice rather than the 3 year's notice otherwise provided in Section 830.

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Section 470. Annual CPI Compensation Adjustment.

- a. A CPI adjustment factor will be applied to the per unit payments for Container Collection and Drop Box services; to all A&E Services, rental and maintenance fees, all hourly rates; and to any other rate that is fixed at the beginning of the Contract, unless otherwise specified.
- b. The CPI adjustment will be made annually effective April 1 of each year, with the first adjustment effective April 1, 2002. The annual adjustments will be based on a percentage of the change in the Seattle-Area CPI-W during the preceding calendar year in an amount determined by the formula below:
 1. For each subsequent adjustment, that percentage of the change in the CPI-W will be equal to the lesser of:
 - a. 55% plus four times the absolute value of the percentage change in the CPI-W over the preceding calendar year, or
 - b. 90%.

Section 480. Compensation for Transition Services.

The City will pay the Contractor \$450,000, payable in two installments of \$250,000 on April 9, 2001 and \$200,000 October 8, 2001, to compensate the Contractor for costs associated with the transition from WUTC regulation to City contract. These payments will constitute the entire compensation for costs incurred by the Contractor for transitional activities, including, but not limited to, the costs of exchanging containers with the other Commercial MSW collection contractor, changes to the Contractor's billing systems, and collection route redesign.

Section 490. Compensation for MSW Transfer and Short Haul.

- a. For transfer and short-haul of the guaranteed tonnage described in Section 130 to the long-haul transfer and disposal loading point designated by the City, the City will compensate the Contractor according to the payment schedule defined in Attachment J, Section A: "Guaranteed Share of Tonnage."
- b. For transfer and short-haul by the Contractor of any additional commercial MSW tonnage described in Section 130 to the long-haul transfer and disposal loading point designated by the City, the City will compensate the Contractor according to the payment schedule defined in Attachment J, Section B: "Additional Tonnage."
- c. The per-ton payments for tonnage transferred at the Contractor's 3rd & Lander Transfer Station will be adjusted annually according to the CPI adjustment terms defined in Attachment J.
- d. The City's payments to the Contractor for transfer and short haul defined in this section will be made on a monthly basis.
- e. The Contractor shall maintain the following data and transmit it to the City as back-up for transfer payments:
 1. Date of transfer service;
 2. Truck type and truck number delivering each load;

3. Route identification for the truck's regularly assigned route;
4. Disposal Facility location;
5. Inbound time and weight;
6. Outbound time and weight; and
7. Any additional information as may be reasonably necessary to track transfer delivery, tonnage and costs.

Section 495. Payment Mechanism.

- a. No later than the 5th of each month, the Contractor will submit an invoice to the City, for services provided during the prior month. This invoice will be paid by the City to the Contractor by wire transfer on or before the 25th of the same month (or 20 days after the invoice date, if the invoice is presented late). This invoice will be at a level of detail that will allow the City to determine the type (i.e., MSW or CDL), container size, frequency and per unit compensation associated with each service.
- b. Compensation paid by the City to the Contractor for services under this Contract, plus CDL disposal fees and direct taxes on those fees, will determine the taxable income under this Contract for which Contractor will be responsible for paying B&O taxes. Other than revenues from disposal fees passed through to Commercial Waste customers directly by the Contractor for CDL services, it is the intent of both the City and the Contractor that Contractor's taxable income for services under this Contract is not based upon the remittances paid by the Commercial Waste customers to the Contractor acting as collecting agent for the City, including those taxes described in Section 520. The Contractor and the City will renegotiate the terms of the Contract pursuant to Section 830 to comport with the intent of this provision, should the allocation of tax responsibility change as a result of change of law, should the Department of Revenue take a position inconsistent with the intent of this provision regarding Contractor's obligations to pay B&O taxes, or should any other taxing authority take a position contrary to this provision.

F. CUSTOMER SERVICE, BILLING, CASH TRANSFERS

Section 500. Customer Services.

In addition to other customer service provisions in the this Contract, the Contractor shall provide the following services to Commercial Waste customers:

- a. Set up of new accounts for each commercial customer to be serviced by the Contractor in the Contractor's Primary Collection Area.
- b. Set up of new accounts for each Commercial Waste customer to be serviced by the Contractor in the Contractor's Secondary Collection Area, provided the requested service is approved by the City as required in Section 105;
- c. Provision of containers for each Commercial Waste customer

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- d. Provision of itemized monthly invoices to each Commercial Waste customer;
- e. Receipt and processing of payments from all Commercial customers serviced by the Contractor.
- f. Provision and maintenance of systems and personnel for managing customer inquiries and complaints.
- g. The Contractor shall maintain a record of all customer service requests and complaints, which shall be available to the City for inspection and copying during regular business hours.
- h. If during any 30 day period the City receives more than 5 complaints that customers are unable to receive a response from the Contractor by telephone within one business day, such complaints will be investigated unless the Contractor has an explanation acceptable to the City for such complaints, and the Contractor may be required to increase the capacity of telephone equipment, and/or increase the number of customer service representatives.
- i. If during any 30 day period the City receives more than 10 complaints that customers have failed to receive a response from the Contractor by telephone within one business day of calling, unless the Contractor has an explanation acceptable to the City for such complaints, the City shall impose liquidated damages per Section 750. The City shall maintain a record of the identity and service location of each complaining customer and the nature of the complaint.

Section 510. Billing to Customers.

Commercial Waste customers will be billed on a monthly basis at the rates set by the City as set forth in Section D. The Contractor will be responsible for billing each Commercial Waste customer serviced in its Primary Collection Area and its Secondary Collection Area. The invoices will be itemized to show the following:

- a. Collection costs, including size of containers and number of collections;
- b. Container rental, including, location and size of container and period of rental;
- c. A&E Services, including type and number;
- d. Applicable taxes, separately identifying the amount of each tax imposed by a taxing authority on the customer directly for which Contractor is acting only as collection agent for the City;
- e. Other services provided by the City, including type and frequency;
- f. Past due amounts for service under the Contract, including any penalty or interest charges specified by the City;
- g. Past due amounts for Commercial Waste service provided during the 90 day period prior to the start of the Contract, either by the Contractor or by the other contractor supplying Commercial Collection service to the City, *provided* such past due amounts owed to either contractor may be billed pursuant to this Contract for only a 90-day period after the start of the Contract;

- h. Disposal costs for CDL Drop Box services, and
- i. At the option of the Contractor, other services provided by the Contractor not under this Contract.

Section 520. Payment Receipt and Remittance to City.

- a. Application of Funds The Contractor will be responsible for collecting all payments from its designated Commercial Waste customers served by the Contractor. Account balances will be divided into six (6) categories, and the payment received by the Contractor from each customer will be applied in the following order:
 - 1. specific billed services to that customer, prior or current, as directed in writing by the customer, whether or not performed pursuant to this Contract;
 - 2. balances carried forward by the Contractor or the other contractor supplying Commercial Collection service to the City from pre-Contract services to that customer, for a period of ninety (90) days from the commencement of services under this Contract;
 - 3. prior Commercial Waste services to that customer performed pursuant to this Contract and billed for the City, including any late penalties and interest as determined by the City;
 - 4. prior other services to that customer performed by Contractor outside the scope of this Contract or services to that customer billed by the Contractor directly (e.g., CDL disposal fees);
 - 5. current Commercial Waste services to that customer performed pursuant to this Contract and billed for the City; and
 - 6. current other services to that customer performed by Contractor outside the scope of this Contract provided or billed by the Contractor directly.
- b. City not responsible for Contractor's debts The City will not be responsible for collection of debts owed by Commercial Waste customers to the Contractor for services performed by Contractor outside the scope of this Contract except for the employment of collection mechanisms as set forth in Section 530.
- c. Remittances to City shall be as follows:
 - 1. Payments received by the Contractor from its designated Commercial Waste customers as provided in Section 60(h) will be remitted by the Contractor to the City by wire transfer on the fourth day following posting to the customer account by the Contractor.
 - 2. NSF checks and fees and other non-clearing deposits will be charged back to the City, to the extent they were previously credited to the City.
 - 3. Disputed billings will be reconciled by the Contractor's billing department, provided that, at the City's request, a representative of the City shall join the Contractor in dealing with the disputed bill and, in that event, the City's determination of billing for City services shall be binding.

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d. Treatment of Certain Taxes and Other Excises

1. The Parties agree that Contractor will act as collecting agent for the City with regard to the following taxes and any other taxes imposed by law on the Commercial Waste customers for which the City has responsibility of remittance to the appropriate taxing authority, except for the portion of these taxes that are based either directly or indirectly on CDL disposal fees, which are passed through to the customers and collected and paid directly by the Contractor:
 - i. Household Hazardous Waste Collection Fees, corresponding to the fees currently contained in Seattle Municipal Code § 21.44.060D;
 - ii. Seattle Solid Waste Collection Taxes contained in Seattle Municipal Code, §5.48.055;
 - iii. State Solid Waste Collection Taxes, and
 - iv. Retail Sales Tax levies on container rental charges.
2. Nothing in this Contract is intended to impose liability as a taxpayer on Contractor for amount attributable to the taxes described in this subsection, and nothing is intended to circumvent the existing regulatory structure with regard to such taxes. The Parties wish to establish a system under which Contractor will act solely as a collecting agent for the benefit of the City in the collection of such taxes. If the Contractor fails to collect such taxes the customer or the City, as the case may be, and not the Contractor will bear the ultimate tax liability.
3. The Parties agree that if the regulatory structure governing the imposition and liability for such taxes changes, so as to prohibit or otherwise interfere with Contractor acting solely as collecting agent, the Parties will renegotiate the terms of the Contract governing payment and collection of such taxes and, if necessary, make any adjustment to Contractor's compensation as may be necessary.

Section 530. Bad Debts.

All past due amounts that accrue from the services provided by the Contractor under this Contract or past due amounts for Commercial Waste service provided during the 90 day period prior to the start of the Contract, either by the Contractor or by the other contractor supplying Commercial Collection service to the City will be pursued for collection by the Contractor for a ninety (90) day period as follows:

- a. If no payment has been received at thirty (30) days from the date of the original invoice, send a second invoice with dunning message and late penalties and interest as determined by the City.
- b. If no payment has been received at forty-five (45) days from the date of the original invoice, send a collection letter.
- c. If no payment has been received at fifty-five (55) days from the date of the original invoice, call the customer.
- d. If no payment has been received at sixty-five (65) days from the date of the original invoice;

call the customer and notify the customer that service is being suspended, place the account on suspension and notify the City, *provided* no service shall be suspended during April 2001

- e. If no payment has been received at seventy-five (75) days from the date of the original invoice, send final collection letter or call the customer
- f. If no payment has been received at ninety (90) days from the date of the original invoice, the account will be closed and the balance, including accrued interest, will be forwarded to the City for collection.

Section 540. Record Keeping and Reporting.

The Contractor shall maintain complete and accurate books of account and records with respect to the performance of its obligations under this Contract including, but not limited to, all correspondence and invoices, transaction tickets, or receipts documented by books and records kept at Contractor's principal place of business. Contractor also agrees to maintain a system of internal accounting controls sufficient to ensure that all transactions are properly authorized, recorded, processed, summarized and reported and that all assets of the Contractor and the City are adequately safeguarded. The City shall have the right during reasonable business hours to inspect and audit such books, records and internal accounting controls. All books, accounts, and records required to be maintained under this Section shall be preserved intact without alteration during the term of this Contract and for a period of twelve (12) months following the termination of this Contract.

G. EQUAL OPPORTUNITY/ NON DISCRIMINATION

Section 600. Equal Employment Opportunity.

- a. 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 will 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, unless based upon a bona fide occupational qualification. Such action shall include, but not be limited to the following: employment, upgrading, promotion, 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.
- b. The Contractor will, prior to commencement and during the term of this Contract, furnish to the Executive Services Director (as used in this section, Director means the City's Executive Services Director 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.

- c. 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 contracting authority shall be so notified in writing. The contracting authority shall give the Contractor an opportunity to be heard, after ten (10) days' notice. If the contracting authority concurs in the findings of the Director, it may suspend the 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.
- d. 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.

Section 610. Equal Employment Opportunity – Implementation.

- a. The Contractor shall obtain in writing from each subcontractor or participant in a joint venture an agreement to comply with the terms of Equal Employment Opportunity set forth in Section 600.
- b. The Contractor shall be responsible for the compliance of subcontractors or joint ventures. Appropriate sanctions for noncompliance will 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 ventures and reviewing this documentation to assure its validity and compliance. Contractor shall submit such documentation from subcontractors and joint ventures concurrently with the Contractor's own submittals.

Section 620. Non-Discriminatory Service.

The Contractor shall not discriminate against any customer in the provision of service or quality of service on account 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 qualification to or for service. The Contractor shall provide comparable service throughout both the Primary and Secondary Collection Areas without regard to racial, ethnic, or cultural characteristics or relative standard of living of the neighborhood.

Section 630. NonDiscrimination in Employee Benefits.

- a. The Contractor shall comply with the requirements of SMC Ch. 20.45 and Equal Benefits Program Rules implementing such requirements, under which the Contractor is obligated to provide the same or equivalent benefits ("equal benefits") to its employees with domestic partners (other than employees subject to collective bargaining agreements where the employer does not provide health benefits directly) as the Contractor provides to its employees with spouses. At the City's request, the Contractor shall provide complete information and verification of the Contractor's compliance with SMC Ch. 20.45. Failure to cooperate with such a request shall constitute a material breach of this Contract.
- b. Any violation of this Contract Section 470 shall be a material breach of the Contract for which the City may:

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1. Require the Contractor to pay liquidated damages in the amount of five hundred dollars (\$500.00) per day for each day the Contractor is in violation of SMC Ch. 20.45 during the term of the Contract; or
2. In the event the Contractor willfully refuses or repeatedly fails to comply with the requirements of SMC Ch. 20.45, terminate the Contract; or
3. Disqualify the Contractor from bidding on, responding to or being awarded a City contract for a period of up to five (5) years; or
4. Impose such other remedies as specifically provided for in SMC Ch. 20.45 and the Equal Benefits Program Rules promulgated thereunder.

H. SECURITY; LIABILITY; DAMAGES

Section 700. Performance Bond.

The Contractor shall provide and maintain at all times a valid Contractor's Performance and Payment Bond for seven and one-half (7.5) percent of the estimated annual compensation to the Contractor under the Contract. 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 the renewability of the current bond at least 90 calendar days before it expires.

The initial performance bond must be in place on or before April 1, 2001.

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 be conditioned that such Contractor shall faithfully perform all of the provisions of this Contract and pay all laborers, mechanics, subcontractors, material men and all persons who shall supply such Contractor or subcontractors with provisions and supplies for the performance of this Contract, and shall be further conditioned that any person(s) performing such work or services, said bond shall contain appropriate recitations that it is issued pursuant to this Section of this Contract, that it shall be construed to meet all requirements specified herein and that any condition or limitation in such bond which is in conflict with the conditions and requirements of this Section is void. Such bond shall be submitted to, and subject to approval of the City Attorney's Office prior to its effective date.

Failure of the Contractor to furnish and maintain said Performance and Payment Bond shall be considered a material breach of this Contract and grounds of its immediate termination at the option of the City.

Section 710. Default of Contractor.

- a. The Contractor may be held in default of the Contract in the event the Contractor:
 1. Fails to perform ninety percent (90%) of the collections required by this Contract and appears, to the City, to have abandoned the work, or to be unable to resume collections within forty-eight hours; or
 2. Has failed on three or more occasions of three (3) working days duration each, in any

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year, or fifteen (15) days in a calendar year to perform the collections required by the Contract; or

3. Repeatedly neglects, fails, or refuses to comply with any of the material terms of the Contract, after having received notice of its obligation to do so.
- b. To initiate proceedings under this Section, the City shall give notice to the Contractor and its surety of the location, time, and date within the following seven calendar days of a public hearing at which the Contractor may show cause why it should not be declared in default. In the event the Contractor fails to show, to the satisfaction of the City, why the Contractor should not be declared to be in default of this Contract, the City may make such declaration.
- c. In declaring the Contractor to have defaulted on the Contract, the City also may order the Contractor to discontinue further performance of work under the Contract and transfer the obligation to perform such work from the Contractor to the surety on the Contractor's performance bond and take any other action it deems advisable.
- d. Upon receipt of a notice that the work has been transferred to the surety without termination of the Contract, the surety shall take possession of all materials and equipment described in the most recent inventory submitted to the City pursuant to Section 240 hereof, for the purpose of completing the work under the Contract; employ, by contract or otherwise, any person and all persons needed to perform the work; and provide materials and equipment required therefor. Such employment shall not relieve the surety of its obligations under the Contract and the bond. If there is a transfer to the surety, payments shall be made to the surety or its agent for all work performed under the Contract subsequent to such transfer, in amounts equal to those that would have been made to the Contractor had it performed in the manner and to the extent of the surety's performance, and the Contractor shall have no claim upon the same.
- e. In the event the surety on the Contractor's performance bond fails to assume or continue performances within 48 hours after its receipt of notice that the work has been transferred to such surety, the Contractor shall lease, sublease or otherwise license the City to use all, or whatever portion is desired by the City, of the materials and equipment described on the most recent inventory submitted to the City pursuant to Section 240 hereof, for collection [and processing] purposes for a period of up to six months following the date of the declaration of default by the City without requiring the City to execute any other document whatsoever to accomplish such lease, sublease, or license and without requiring the City to post any bond, pledge, deposit or other security for such equipment and materials, but upon the condition that the City pay for the equipment and materials actually used for such collection a market rental that is no greater than (i) the monthly lease, in the event such property is leased by the Contractor, (ii) the periodic installment, in the event such property is being acquired under a purchase contract, (iii) the periodic financing interest and principal, in the event such property is being acquired under a purchase contract, or (iv) the periodic interest and principal, in the event such property is being acquired under a financing arrangement; provided, that under no circumstances shall the City be liable during its use of such property for any arrearages, balloon payment, accrued interest, accelerated charges in the event of a default, or other extraordinary payment; nor shall the satisfaction thereof be a condition of the City's interim use of such property; provided, further, that such lease, sub-lease, or license shall be suspended the date the surety on the Contractor's bond or its agent accepts the transfer of work under the Contract.

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- f. In the event the City secures the performance of work under the Contract at a lesser cost than would have been payable to the Contractor had the Contractor performed the same, then the City shall retain such difference; but in the event such cost to the City is greater, the Contractor and its surety shall be liable for and pay the amount of such excess to the City.
- g. All payments due the Contractor at the time of default, less amounts due the City from the Contractor, shall be applied by the City against damages suffered and expense incurred by the City be reason of such default, any excess shall be paid to the Contractor unless otherwise provided herein.

Section 720. Commitment of Equipment.

- a. Unless a replacement or substitute is provided, all vehicles, facilities, equipment and property identified in the Contractor's inventory under Section 240 for use in the performance of this Contract (called "such property") shall be available for use in collecting Commercial Waste for the duration of this Contract. When provided, this Section applies to the replacement and substitute.
- b. From the date of the Contract and for its duration, any document (including a lease to or by the Contractor, financing contract, acquisition over time, mortgage, or other instrument establishing a security interest) that encumbers or limits the Contractor's interest in such property shall:
 - 1. Allow the surety on the Contractor's performance bond to take over the Contractor's obligations and to continue the use of the equipment in service for performance of the Contract;
 - 2. In event the Contractor is in default and the surety on the Contractor's performance bond fails to assume or continue performance within 48 hours after notice to do so, allow the City to use without further documentation all or a portion of such property, at the City's discretion, for a period of up to six months following the date of the City's declaration of default, to provide such collection services on the condition that the City pays to the City's lessor a market rental for the equipment or property actually used in an amount no greater than the monthly lease in event of a lease, the installment payment in event of a purchase contract, or the monthly interest and principal in event of a financing arrangement;
 - 3. Exempt the City from liability during its usage of such property for arrearages, balloon payments, accrued interest, accelerated charges on account of a default, or other extraordinary payments, and not make satisfaction thereof a condition of the City's interim usage; and
 - 4. Forbid any foreclosure, trustee's sale or other dispossession of the Contractor's interest in such property without giving both the City and surety on the Contractor's performance bond sixty days' prior notice, and then make any termination of the Contractor's interest in such property pursuant to such action or the enforcement thereof subject to the requirements of subsections 1), 2) and 3) of this Section.
- c. To assure compliance with this Section, the Contractor shall submit to the City for its review and approval or disapproval prior to execution all material contracts, leases, or other documents for acquisition of, or encumbering or limiting the Contractor's interest in, such

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property or for replacements thereof and any proposed agreement that would encumber or transfer any interest of the Contractor in such property before the Contractor's execution of such agreement. The City's approval shall not be unreasonably withheld, and if the City does not respond within five business days, its approval shall be considered to have been given.

Section 730. Insurance.

- a. Contractor shall at all times during the term of this Contract, obtain and maintain continuously, at its own expense, and file with the City and the City's Risk Manager, evidence of a policy or policies of insurance as enumerated below:
1. A policy of Commercial General Liability Insurance, written on an insurance industry standard occurrence form (CG 00 01), including all the usual coverages known as:
- Premises/Operations Liability
 - Products/Completed Operations
 - Personal/Advertising Injury
 - Contractual Liability
 - Independent Contractors Liability
 - Stop Gap/Employers Contingent Liability
 - Explosion, Collapse, or Underground (XCU)
 - Fire Damage

Such policy(ies) must provide the following minimum limit:

<u>Bodily Injury and Property Damage -</u>	
\$ 2,000,000	General Aggregate
\$ 2,000,000	Products & Completed Operations Aggregate
\$ 1,000,000	Personal & Advertising Injury
\$ 1,000,000	Each Occurrence
\$ 100,000	Fire Damage
Stop Gap Employers Liability	
\$ 1,000,000	Each Accident
\$ 1,000,000	Disease - Policy Limit
\$ 1,000,000	Disease - Each Employee

If a claims made policy is used, it must have an unaltered extended discovery period provision.

2. A policy of Business Automobile Liability, including coverage for owned, non-owned, leased or hired vehicles written on an insurance industry standard form (CA 00 01) or equivalent, and as specified by Insurance Services Office Symbol 1 (any auto), an MCS 90 endorsement and a CA 9948 endorsement attached if "pollutants" as defined in exclusion 11 of the commercial auto policy are to be transported.

Such policy(ies) must provide the following minimum limit:

<u>Bodily Injury and Property Damage -</u>	
\$ 1,000,000	per person
\$ 2,000,000	per occurrence

3. A policy of Workers' Compensation. As respects Workers' Compensation insurance

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in the State of Washington, the Contractor shall secure its liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington. If the Contractor is qualified as a self-insurer in accordance with Chapter 51.14 of the Revised Code of Washington, Contractor shall so certify by a letter signed by a corporate officer and setting forth the limits of any policy of excess insurance covering its employees. The Contractor further waives, with respect to the City only, its immunity under RCW Title 51, Industrial Insurance, of the Revised Code of Washington.

Any deductible or self-insured retention must be disclosed. The cost of any claim payments falling within the deductible shall be the responsibility of the Contractor.

If any such policy is written on a claim made form, the retroactive date shall be prior to or coincident with the effective date of this Contract. The policy shall state that coverage is Claims Made, and state the retroactive date. Claims made form coverage shall be maintained by Contractor for a minimum of two years following the expiration or earlier termination of this Contract, and Contractor shall annually provide the City with proof of renewal. If renewal of the claims made form of coverage becomes unavailable, or economically prohibitive, Contractor shall purchase an extended reporting period ("tail") or execute another form of guarantee acceptable to the City to assure financial responsibility for liability for services performed.

4. Additional Insured and Primary Insurance Provisions: Such insurance, as provided under items (1), (2), above, shall be endorsed to include the City of Seattle, its officers, elected officials, employees, agents and volunteers as additional insured, and shall not be reduced or canceled without forty-five (45) days prior written notice to the City. In addition, Contractor's insurance shall be primary as respects the City, and any other insurance maintained by the City shall be excess and not contributing insurance with the Contractor's insurance.
5. Evidence of Insurance: The following documents must be provided as evidence of insurance coverage:
 - a. A certificate of insurance, or a copy of the policy's declarations pages showing the Insuring Company, policy effective dates, limits of liability and the Schedule of Forms and Endorsements.
 - b. A copy of the endorsement naming The City of Seattle as an Additional Insured, showing the policy number, and signed by an authorized representative of the insurance company for Business Auto Liability, and for the Commercial General Liability policy a Form CG2010 (ISO) or equivalent. In the event the policy carries a blanket endorsement, a copy shall be provided in satisfaction of this requirement.
 - c. A copy of the "Endorsements Form List" to the policy or policies showing endorsements issued on the policy, and including any company-specific or manuscript endorsements.
 - d. A copy of an endorsement stating that the coverages provided by this policy to the City, or any other named insured shall not be terminated, reduced or otherwise materially changed without providing at least forty-five (45) days prior

written notice to the City of Seattle.

- e. A copy of A "Separation of Insureds" or "Severability of Interests" clause, indicating essentially that - except with respect to the limits of insurance, and any rights or duties specifically assigned to the first named insured, this insurance applies as if each named insured were the only named insured, and separately to each insured against whom claim is made or suit is brought (Commercial General Liability & Business Automobile Liability Insurance).
6. Policy Rating: All policies shall be subject to approval by the City's Risk Manager as to company (must be rated A-:VII or higher in the A.M. Best's Key Rating Guide and licensed to do business in the State of Washington or issued as a surplus line by a Washington Surplus lines broker), form and coverage, and primary to all other insurance.
7. Self-Insurance: Should Contractor be self-insured, under item (1), (2) and (3) above, a letter from the Corporate Risk Manager, or appropriate Finance Officer, is acceptable - stipulating if actuarially funded and fund limits; plus any excess declaration pages to meet the Contract requirements. Further, this letter should advise how Contractor would protect and defend the City of Seattle as an Additional Insured in their Self-Insured layer, and include claims handling directions in the event of a claim.
8. Subcontractors - Contractor shall include all subcontractors as insureds under its policies or shall furnish separate evidence of insurance as stated above for each subcontractor. All coverages for subcontractors shall be subject to all the requirements stated herein and applicable to their profession.

Section 740. Indemnity.

The Contractor shall defend, indemnify and save harmless The City of Seattle and the City's officers, employees and agents from any and every claim and risk, and from all losses, damages, demands, suits, judgments and attorney fees, and other expenses of any kind (collectively "losses"), 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, whether tangible or intangible, including loss of use resulting therefrom, in connection with or related to the work performed under this Contract, or in connection with or related to (in whole or in part by reason of) the presence of the Contractor or its subcontractors, or their property, employees or agents, upon or in proximity to the property of The City of Seattle or any other property (upon which the Contractor is performing any work called for), except only those losses resulting from the negligence or willful misconduct of The City of Seattle or the City's officers, employees or agents.

For purposes of the Contractor's obligations under this Section 740, the Contractor hereby waives its immunity under industrial insurance, Title 51 RCW. The Contractor agrees that this waiver was specifically and mutually negotiated by the City and the Contractor.

Section 750. Liquidated Damages.

The acts or omissions in the left hand column are a breach of this Contract; the relief for which shall be the amounts in the right hand column that are set as Liquidated Damages. Liquidated Damages may be deducted from the monthly payment to the Contractor.

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OMISSION

1. Failure to collect spillage consistent with the provisions of Attachment C, Section C-240.
2. Failure to collect missed Commercial Waste Container Collection within one business day (including Saturday) after a make-up request is given to the Contractor by the City.
3. Failure to provide for new Detachable Containers and permanent Drop Boxes within five (5) business days of a request; provided, however, this shall not apply to seasonal temporary requests.
4. Failure, after July 1, 2001, to deliver Detachable Containers to replace those needing repair or replacement within five (5) business days of a request.
5. Failure to provide additional Detachable Containers or Carts, provide proper containers or increase collection frequency within ten (10) business days of a request.
6. Failure, after July 1, 2001, to deliver or replace 32, 64 and 96 gallon Cans for any reason within five (5) business days of a request.
7. Greater than 50 complaints per month from April 1 to July 1, 2001, and thereafter greater than 10 complaints in any 30 day period reported by Commercial Waste customers of Contractors failure to respond to telephone inquiries, pursuant to Section 500 and Attachment C..
8. In addition to progressive discipline in Section 215, unsatisfactory performance of collector after two (2) notices to Contractor to correct specific incidences involving the same address or collector in any six (6) month period, e.g. leaving gates or doors open, abusive language to customers, failure to return containers to their original location after collection, failure to perform collections, or similar violations.
9. Soliciting Secondary Collection Area customers in violation of Section 105 of the Contract

LIQUIDATED DAMAGE

- \$10 per incident
- \$25 each incident per day for Can or Cart customer; \$50 each incident per day for Detachable Container customer; to a maximum of \$250 per truck per day.
- \$50 per container per day
- \$25 per container per day
- \$25 per container per day
- \$25 per container per day
- \$50 per each complaint above 10 complaints in any 30 day period
- \$200 each incident
- \$500 per incident, plus refund to the City of all compensation paid to the Contractor for service to the solicited Secondary Collection Area

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customer.
In addition to the above damages, the Contractor shall not be paid for work not performed.

I. ANCILLARY PROVISIONS

Section 800. Independent Contractor.

The Contractor shall perform all work under this Contract as an independent contractor. 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.

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 810. Assignment; Subcontracting; Assignment of Duties.

The Contractor shall not assign or subcontract or transfer any of the work or delegate any of its duties under the Contract without the prior written approval of the City, which shall not be unreasonably withheld. Notwithstanding the foregoing, the City's approval shall not unreasonably be withheld if the Contractor proposes to assign or transfer this Contract to an affiliate of the Contractor or to Contractor's parent corporation, provided that Contractor can establish to the reasonable satisfaction of the City that (a) the assignee or transferee will operate the Contract in substantially the same manner as the Contractor, will use substantially the same management and collection personnel as Contractor, and possesses substantially the same financial capability as Contractor and (b) the assignee or transferee is not affiliated in any way with the other company that has a Commercial Waste Collection contract with the City.

In the event of an assignment, subcontract or delegation of duties, the Contractor shall remain responsible for the full and faithful performance of this Contract and the assignee, subcontractor, other obligor shall also become responsible to the City for the satisfactory performance of the work assumed. The City may condition its approval upon the delivery by the assignee, subcontractor or other obligor of its covenant to the City to fully and faithfully complete the work or responsibility undertaken.

Section 815. Access and Audit.

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

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.

The City may require an audit of such books and records at any reasonable time. Such audit will be conducted by one of the following firms:

Deloitte & Touche
Arthur Andersen & Co.

KPMG Peat Marwick
Price Waterhouse Coopers

Ernst and Young

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.

Audit information will be kept confidential, except as disclosure may be required by public disclosure laws.

Section 820. Uncontrollable Events.

The Contractor is not responsible for performance where an event beyond its reasonable control prevents performance of this Contract. Such events include: riots, wars, civil disturbances, insurrections, acts of terrorism, epidemics, landslides, volcanic eruptions, earthquakes, lightning, floods, inclement weather as provided in Section C-210 of Attachment C, explosions, fires, condemnation, labor strikes at facilities other than the Contractor's, lockouts by third parties, secondary boycotts, judicial injunctions or restraining orders and federal, state and local government orders that are not subject to reasonable cure by the Contractor. Such events do not include general economic conditions. 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.

Uncontrollable Events which result in a permanent, detrimental change in circumstance for the Contractor or for the City may be the subject of a request for relief under Section 830.

Section 825. Change of Law.

- a. Changes in federal, state or local laws, such as tax law changes, that affect businesses or municipalities generally shall be to the benefit or detriment of the Contractor or City, without having any effect on the terms of or responsibilities under the Contract.
- b. Changes in federal, state or local laws or regulations that specifically affect the business of Solid Waste collection and which result in a detrimental change in circumstance for the Contractor in performing this Contract or for the City may be the subject of a request for relief under Section 830, *provided* that commercial recycling programs established by the City that are not mandatory shall not be considered a change in law under this section.
- c. Changes in federal, state or local laws or regulations of a general nature that affect the business of Solid Waste collection and which result in a material hardship for the Contractor in performing this Contract may be the subject of a request for relief by the Contractor under Section 830, *provided* that the only remedy for such a request shall be as set forth in this subsection.
 1. Any remedy imposed by the arbitrator shall be prospective only, and shall not include any remedy whatsoever for the period prior to the date of the arbitrator's order.
 2. Should the arbitrator rule in favor of the Contractor under this subsection, the City shall then have the option, at any time after the date of the arbitrator's order, of terminating the Contract upon six-months' written notice.

Section 830. Request for Relief and Dispute Resolution.

- a. Either party may invoke a request for relief under Sections 820 and 825 in the following manner:

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1. Initial Notice. The party seeking relief shall do so by providing written notice to the other party within fifteen (15) days following the occurrence of the circumstance for which relief is sought.
 2. Follow-up Notice. Within thirty (30) days following the initial notice, the party seeking relief will provide another written notice that sets forth more specifically the reasons for the request and the relief being sought.
 3. Response. The other party will then have thirty (30) days from the follow-up notice to respond.
 4. Good Faith Discussion. The parties will then meet in a good faith attempt to resolve any disagreements.
 5. Arbitration. Should the parties fail to resolve their disagreements regarding the requested relief within thirty (30) days from the date of the response to the request, the matter will be taken to binding arbitration.
 6. Arbitration Rules. Any controversy or claim arising out of or relating to this Contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules including the Emergency Interim Relief Procedures. A single arbitrator shall preside over the arbitration and, if the parties are unable to agree upon an arbitrator the AAA shall designate a list of five possible arbitrators and each party shall strike two arbitrators in alternating fashion, with the one remaining arbitrator serving as the actual arbitrator.
- b. If either party remains dissatisfied following the issuance of the arbitrator's decision, that party may provide written notice to the other party of its intent to terminate the Contract within ninety (90) days of the arbitrator's ruling, provided, however, that if the City initiates the request for relief it shall not have any right of termination.. The party receiving the notice of intent to terminate shall then have ninety (90) days to:
1. Rescind the original request for relief, whereupon the notice of termination shall be automatically cancelled; or
 2. Otherwise resolve the issues related to the original request for relief, whereupon the party desiring termination shall withdraw the notice of intent to terminate upon reaching a satisfactory resolution of the disputed issues; or
 3. Take no action and allow the termination to occur in accordance with the notice.
- c. A notice of intent to terminate the Contract under this Section shall be effective on the termination date stated in the notice, provided the following preconditions are met:
1. City Termination. For termination by the City, termination may occur no sooner than three (3) years from the date of the notice.
 2. Contractor Termination. For termination by the Contractor, termination may occur no sooner than eighteen (18) months following the date of the notice.

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Section 835. Violation of Antitrust or Corrupt Practice Laws.

In the event the Contractor is found to be guilty of a violation of antitrust or corrupt practice laws for acts performed in Washington 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 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, the Contractor shall be considered to be "guilty" of a violation of such antitrust or corrupt practice laws if the Contractor or any of its officers or management employees: (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.

Section 840. Contract Rights.

- a. The parties reserve the right to amend this Contract from time to time by mutual agreement in writing.
- b. Rights under this Contract are cumulative, and in addition to rights existing at common law.
- c. Payment by the City and performance by the Contractor do not waive their Contract rights.
- d. 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. The use of one remedy does not exclude or waive the right to use another.

Section 845. Approvals.

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

Section 850. Entire Contract.

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

Section 855. Captions.

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

Section 860. 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 claims, litigation, or causes of action between the parties shall be in the Superior Court of the State of Washington for King County; provided, however, that this section shall not prevent either party from moving for a change of venue pursuant to RCW. 4.12.030, as amended from time to time.

Section 865. Notices.

All official notices or approvals shall be in writing. Unless otherwise directed, notices shall be

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delivered by messenger, by certified or registered mail, return receipt requested, or by fax to the parties at the following respective addresses:

To the City: The City of Seattle
Seattle Public Utilities
505 Dexter Horton Building
710 - 2nd Avenue
Seattle, Washington 98104
Phone: (206) 684-7666
Fax: (206) 386-0096

To the Contractor:
Rabanco, Ltd.
Seattle, Washington
Phone: (206)
Fax: (206)

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 870. Severability.

Should any term, provision, condition, or other portion of this Contract or its application be held to be inoperative, invalid or unenforceable, and the remainder of the Contract still fulfills its purposes, the remainder of this Contract or its application in other circumstances shall not be affected thereby and shall continue in force and effect.

Section 890. Effect of Subsequent Commercial Collection Contract.

The City is also negotiating with another commercial collection company for the collection of Commercial Waste. In the event the City contracts the other collection company on material terms and conditions that are different or better than those contained in this Contract, the City agrees that the Contractor may elect to substitute those terms and conditions. "Material term(s)" as used in this section shall include any term or provision relating to or affecting the compensation Contractor receives for the services or Contractor's performance obligations under this agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Contract by having their representatives affix their signatures below.

RABANCO, Ltd.

THE CITY OF SEATTLE

By _____
ROBERT BERRES
District Manager

By _____
DIANA GALE, Managing Director
Seattle Public Utilities

Date: _____

Date: _____

Authorized by Ordinance Number _____

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Attachment A

Map of Primary and Secondary Collection Areas

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The City of Seattle



Commercial Garbage Service Areas

Produced by the City of Seattle
June 17, 1998

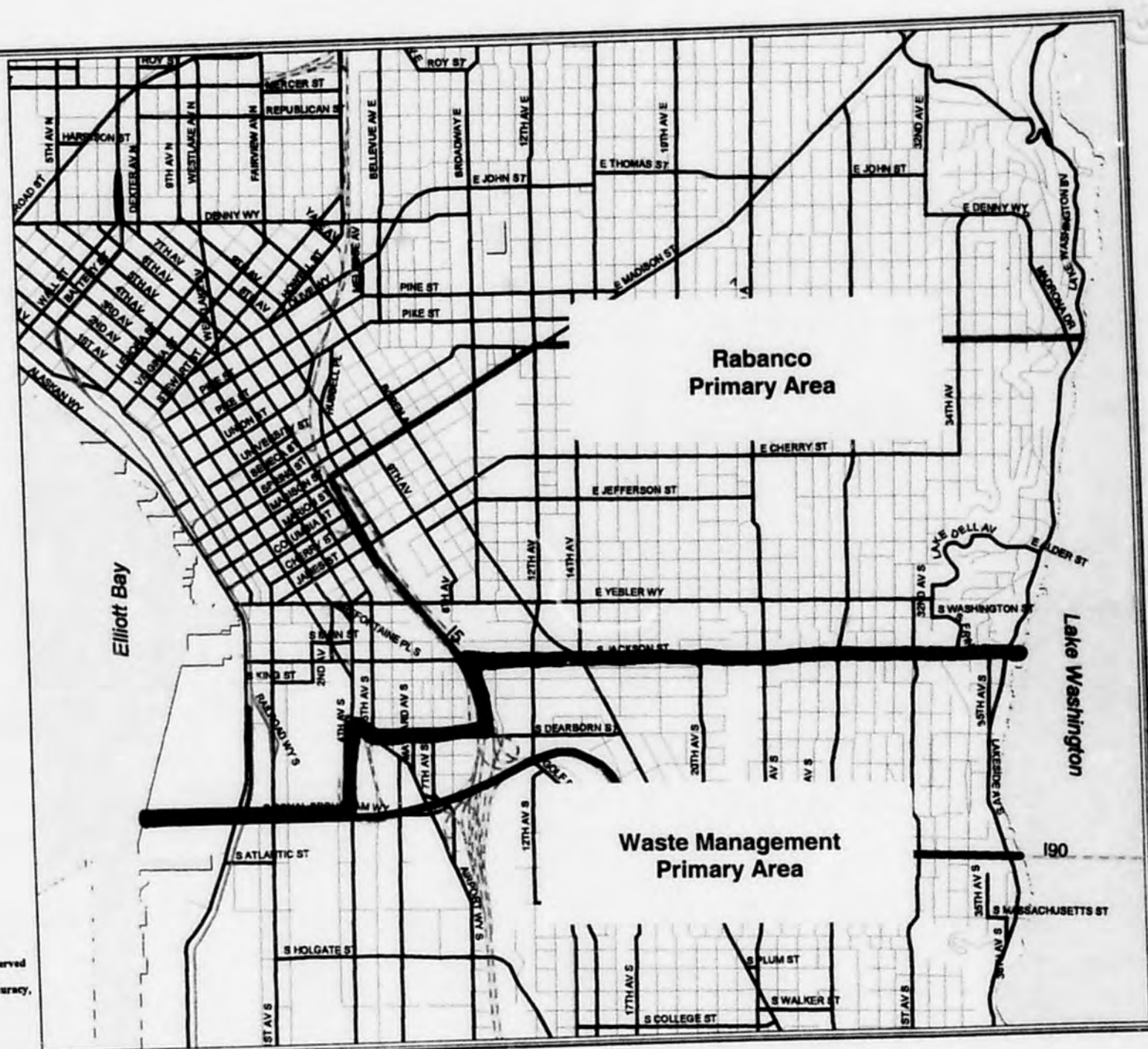
Streets
 Residential
 Arterials
 State Highway
 Interstate Freeway
Waterbodies



0.08 0 0.08 0.16 Miles

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Attachment B
Transition Plan

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Attachment C
Operations Plan

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ATTACHMENT C.

OPERATIONS PLAN

C-1 Introduction

Appendix C sets forth a plan, including operational requirements for the effective operation of this Contract throughout its term. Section C-____, provides for procedures to modify the Operations Plan during the course of the Contract when circumstances warrant such modification.

C-2 Operational Requirements

Section C-200. Hours/Days of Operation Collections may be made 24 hours per day, seven days per week.

Section C-205. Holiday Schedules The Contractor shall designate which holidays will be observed and indicate the schedule that will be worked if the holiday falls on a regular collection day. The holiday schedule for the next year shall be provided by the Contractor to the City by November 15 of each year.

When the day of regular collection is a legal holiday, the Contractor may reschedule the remainder of the week of regular collection to the next succeeding workday, which shall include Saturdays.

Section C-208. Scheduling of Collection The Contractor shall divide the Contract Area into sectors or routes in a manner that spreads collection over the work week. Collections shall be made from Containers on a regular schedule on the same days of the week each week or month according to the frequency determined by the Contractor and the customer as necessary for each building.

The Contractor shall provide the City a listing, in electronic data format, of buildings receiving service. The listing shall include building address, number and size of Containers, collection route number and the truck number serving each route. This listing will be supplied on a monthly basis or more frequently to reflect service day changes.

The Contractor may change the day(s) of its collection routes by giving notice to the City at least fourteen (14) calendar days, and affected customers at least seven (7) calendar days, prior to the effective date of such change. Individual customer requests for changes in the frequency of collection within a route do not need advance approval. The Contractor shall provide the City with an electronic listing of the changes at least seven (7) calendar days prior to the effective date of the change. The form of notice to the customer shall be subject to the approval of the City.

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Section C-210. Inclement Weather When weather conditions are such that continued operation would result in danger to the Contractor's staff, area residents, or property, the Contractor shall collect only in areas that do not pose a danger. The Contractor shall notify the City, on the same business day, of the areas not served.

The Contractor shall collect commercial solid waste from customers with interrupted service as soon as weather conditions no longer pose a hazard. The Contractor shall use additional collection shifts and weekend collections if needed to collect stockpiled materials from customers. When service is resumed, the Contractor shall collect reasonable accumulated volumes of materials from customers at no extra charge.

Section C-215. Employee Conduct The Contractor is responsible for providing the supervision necessary to ensure that collection employees are courteous, exercise due care, do their work without delay, minimize noise, avoid damage to private property, close and relock all gates and doors that they open, replace lids on collection Containers and firmly close them, and, if on private property, follow the regular pedestrian walkways and paths; and not cross flower beds or through hedges. While collecting, employees shall wear or carry identification supplied by the Contractor. The identification shall be subject to approval of the City.

When the Contractor identifies unsatisfactory conduct by an employee or when the City notifies the Contractor of such conduct, the Contractor shall take remedial action. The remedial action shall be appropriate to the level of unsatisfactory conduct.

Level One: Examples of Level One unsatisfactory conduct are single isolated incidents such as spillage of materials, leaving gates open, not relocking doors, walking through flower beds, not returning Containers to their original location, not replacing lids, etc.

Level Two: Examples of Level Two unsatisfactory conduct are continued incidents of Level One unsatisfactory conduct, as well as rude or abusive language to customers, inappropriate behavior in customer's presence, purposeful damage of customer property, or acceptance of a cash payment or gratuity for ignoring a Contract provision.

Level Three: Examples of Level Three unsatisfactory conduct are continued incidents of Level Two unsatisfactory conduct, as well as appearing on the job under the influence of alcohol or drugs, fighting or menacing, throwing rocks, endangering customers or driving dangerously.

Under Level One, the City will send a written notice, via U.S. mail, fax or email, informing the Contractor of the unsatisfactory conduct. Under Level Two and Three, the City will notify the Contractor by telephone within five (5) working days of becoming aware of the incident and send a written notice, via U.S. mail, fax or email, within ten

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(10) working days. Written notices will identify the level of the notice, and the specifics of the incident.

If the City requests of the Contractor by letter that an employee be suspended from further work on the Contract for Level Three unsatisfactory conduct or an uncorrected pattern of Level Two unsatisfactory conduct, the Contractor will permanently remove the employee from further work on the Contract.

The Contractor will notify the City of remedial action taken in its monthly reports. The City will cooperate with the Contractor by requiring City employees to appear in disciplinary proceedings and supplying to the Contractor the names of complaining witnesses when possible.

Section C-220. Missed Collections If commercial solid waste is set out inappropriately, improperly prepared, or contaminated with unacceptable materials, the Contractor shall place in a prominent location a notification tag that identifies the specific problem(s) and reason for rejecting the materials for collection. Notification by telephone (with appropriate documentation) shall also be acceptable. Failure to provide proper notification to customers of the reason for rejecting materials for collection will be considered a missed collection and/or subject to liquidated damages due to lack of proper customer notification.

The failure of the Contractor to collect commercial solid waste that has been set out by a customer in the proper manner shall be considered a missed pick-up, and the Contractor shall collect the materials from the customer within twenty-four (24) hours of the Contractor's receipt of notification of the missed pick-up. If the Contractor is notified of a missed pick-up by 9 a.m. the following business day or Saturday, the missed pick-up will be collected that same day, provided that the Contractor may ask customers contacted on Saturday whether Monday collection would be acceptable, at the customer's option. The Contractor shall maintain a written record of all calls related to missed pick-ups and the response provided by the Contractor. Such records shall be made available for inspection upon request by the City and will be included in monthly reports.

In the event the Contractor fails to collect the missed pick-up within twenty-four (24) hours of receipt of notice, the City or its agents may collect and transport the materials. The Contractor shall reimburse the City for all costs so incurred by the City as well as any liquidated damages assessed by the City. If the Contractor is requested by the customer to make a return trip collection due to no fault of the Contractor, the Contractor shall be permitted to charge the customer an additional fee for this service, providing the Contractor notifies the customer of this charge in advance.

Section C-225. Routing Information The Contractor shall, within 48 hours of a request from the City, provide electronic information regarding the routes used by the Contractor to collect commercial solid waste within the City. Such information shall include the days service is provided to each customer, the container size used to serve such customer,

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the customers service and billing addresses, and route and truck number serving each route

Section C-230. Vehicles Used in Collection All vehicles used for collection shall be registered by the State of Washington Department of Motor Vehicles, and shall be kept in a clean and sanitary condition and a state of good appearance and repair, and shall be painted in a uniform manner.

Vehicles used in the performance of this contract shall be maintained in a clean and sanitary manner, and shall be thoroughly washed at least once each week. Vehicles shall be repainted as necessary.

All collection equipment shall have appropriate safety markings, including all highway lighting, flashing and warning lights, clearance lights, and warning flags, all in accordance with current statutes. Equipment shall be maintained in good condition at all times. All parts and systems of the collection vehicles shall operate properly and be maintained in a satisfactory manner. The Contractor will be specifically required to maintain collection vehicles to ensure that no liquid wastes or oils (lubricating, hydraulic and fuel) are discharged to customer premises or City streets. Any equipment not meeting these standards shall not be used within the City until repairs are made.

No advertising shall be allowed on Contractor vehicles, other than the Contractor's name, logo, and customer service telephone number. Special promotional messages for recycling may be permitted, upon City approval.

All Contractor route, service, and supervisory vehicles shall be equipped with properly licensed two-way radios and and/or cell phones. The Contractor shall maintain a base station capable of reaching all collection areas, using repeaters if necessary.

Section C-232. Traffic Laws; Noise Control All vehicles shall be operated in conformity with State traffic laws and the Seattle traffic Code, SMC Chapter 11. The maximum noise level of motor vehicles during travel shall not exceed the levels set forth in SMC 25.08.430. The maximum noise level while collecting or compacting solid waste shall not exceed the levels set forth in SMC 25.08.410.

Section C-235. Container Condition/Replacement The Contractor shall furnish and install 1, 1.5, 2, 3, 4, 6, and 8 cubic yard detachable containers, 10, 15, 20, 25, 30, or 40 cubic yard drop boxes, and 64 or 96 gallon Toters to any customer who requires their use for storage and collection of commercial solid waste within seven days of the request. Containers shall be located on the premises in a manner satisfactory to the customer and convenient for collection by the Contractor and shall meet the provisions of the Seattle Fire Code. Any disagreements over container placement and collection shall be mediated by the City, whose decision shall be final and binding. Detachable Containers shall not be sited on public property unless there is no feasible alternative.

The City may limit the size of detachable containers used in alleys to 2 cubic yards or less.

The Contractor shall furnish containers equipped with a locking mechanism and key when requested by the customer.

Detachable containers shall be water tight and equipped with tight-fitting metal or plastic covers, have four wheels for containers two cubic yards and under, be in good condition for commercial solid waste storage and handling, and have no leaks, jagged edges, or holes. Drop boxes shall be all-metal and, if requested by the customer, equipped with a tight-fitting screened or solid cover operated by a winch in good repair. Each type of container shall be painted a uniform color in accordance with Attachment A, with color changes subject to City approval. Containers shall bear the name and telephone number of the Contractor and the number of the container in numerals two inches high on the front of the container. Detachable Containers shall be cleaned, reconditioned and repainted (if necessary) before being supplied to a customer who had not used it earlier. The Contractor shall at its expense steam clean all its containers at least once each year or more frequently as directed by the City due to odor. The Contractor shall also provide an on-call container cleaning service to customers for those customers who request more frequent cleanings. The costs of on-call cleaning will be billed directly to users in accordance with Attachment B. However, cleanings ordered by the City shall not be billed to customers.

The Contractor is responsible for removing graffiti from its detachable containers. Collection drivers shall regularly note containers containing graffiti. Contractor personnel shall then remove the reported graffiti. The Contractor shall remove any graffiti reported by the City within five (5) business days of notification.

Containers on customer's premises are at the Contractor's risk and not the City's. The Contractor shall repair or replace within twenty-four hours any container which was supplied by the Contractor and in use, if the City or Health Department inspector determines that the container fails to comply with reasonable standards or constitutes a health or safety hazard.

Customers may elect to own or secure containers from sources other than the Contractor, and shall not be subject to discrimination by the Contractor in collection services on that account. However, containers owned or secured by customers must be capable of being serviced by front load, rear load, or drop box collection vehicles to be eligible for collection. The Contractor is not required to service customer containers that are not compatible with the Contractor's equipment.

Section C-238. Container Repair Damage to Detachable Containers on customers' premises is at the Contractor's risk, rather than the City's, as between those parties and without affecting the risk or liability of others. The Contractor shall be responsible for the repair of all customer owned Detachable Containers damaged due to the Contractor's negligence. The Contractor shall repair or replace within one business day any

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Detachable Container that the City or a Health Department inspector determines does not comply with ordinance standards or constitutes a health or safety hazard.

Section C-240. Spillage All loads collected by the Contractor shall be contained in collection vehicles at all times, except when material is actually being loaded. Hoppers on all collection vehicles shall be cleared frequently to prevent unnecessary blowing or spillage. Any spillage that occurs during collection shall be immediately cleaned up by the Contractor at its expense. Spillage not immediately collected shall be cause for liquidated damages, as described in Section 750.

Section C-242. Customer Grievances. The Contractor will designate a representative to adjudicate customer grievances. At the City's request, the representative will join the City in meeting with an aggrieved customer within 24 hours of notification to resolve a complaint about spillage, a refusal to serve or a missed pick-up, and/or other deficiency in service or a need for special service. The decision of the City shall be final and binding.

Section C-245. Unimproved Alleys/Private Roads The Contractor shall collect commercial solid waste in unimproved alleys and private roads to the extent practicable, and consistent with the collection services offered prior to this Contract. If the Contractor believes that the unimproved alley or private road cannot be safely negotiated, the Contractor may request the City to evaluate on-site conditions and make a determination of the best approach to providing safe and appropriate service to the customer. The City's decision shall be final, provided that the Contractor shall not be required to endanger workers, equipment, or property. However, the proceeding statement notwithstanding, the Contractor shall continue to collect all commercial solid waste consistent with the collection services offered prior to this Contract if so requested by the customer.

Section C-250. Pilot Programs The City may wish to test and/or implement one or more new developments in waste stream segregation, materials processing, or collection technology at some point during the term of the contract. The City will notify the Contractor in writing at least ninety days in advance of the implementation of a pilot program to be performed in one or more collection routes or of its plans to utilize a new technology system on a citywide basis. The costs (or savings) accrued by City-initiated pilot programs will be negotiated prior to implementation. Contractor-initiated pilot programs will require written notification, and approval on the part of the City. Contractor-initiated pilot programs will be performed at no additional cost to the City or the Contractor's customers.

Section C-255. Disruption Due to Construction The City reserves the right to construct any improvement or to permit any such construction in any street or alley in such manner as the City may direct, which may have the effect of temporarily preventing the Contractor from traveling its usual collection routes. The City shall include in its construction contracts provisions to minimize the impact on Contractor's collection activities. In areas where construction is occurring, Contractor shall, to the extent

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practicable, continue to collect commercial solid waste to the same extent as though no interference existed upon the streets or alleys normally traversed.

Section C-260. Safeguarding Public and Private Facilities The Contractor shall be obligated to protect all public and private facilities and utilities whether located on public or private property, including street curbs. If such facilities, utilities or curbs are damaged by reason of the Contractor's operations, the Contractor shall notify the City immediately of all damage, and the Contractor shall repair or replace same, or failing to do so promptly, the City shall cause repairs or replacements to be made and the cost of doing so shall be billed to Contractor. The City shall not be liable for any damage to property or person caused by Contractor.

Section C-265. Company Name and Telephone Number With the exception of the existing company names "Emerald City" and "Seattle Disposal," the Contractor shall not use a firm name containing the words such as "City," or any logo implying municipal ownership. The Contractor's telephone number shall appear in large, legible numbers on all of its collection vehicles.

Section C-270. Coordination; Implementation 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.

Section C-275. 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 City. The Contractor's office will be equipped with a facsimile machine and/or personal computer for the electronic exchange of documents between the Contractor and the City. Office hours shall be 8:00 am. to 5:00 pm., Monday through Friday, except holidays. The City 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 C-280. Customer Service The Contractor shall install sufficient telephone lines and hire sufficient customer service staff to handle all calls from customers regarding service, missed service, billing questions and other miscellaneous questions. A dispatch telephone number will be available to customers 24 hours per day, seven days per week, excluding holidays not worked by the collection crews. Staff and telephone equipment shall be sufficient to handle the volume of calls typically experienced on the busiest days.

All incoming calls to the customer service section shall be answered by either a customer service representative or an automated answering machine within six (6) rings. A customer shall be connected to a customer service representative within 60 seconds of calling. If during any thirty day period the City receives more than five complaints that customers are unable to contact the Contractor by telephone, such complaints will be investigated and the Contractor may be required to increase the capacity of telephone

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equipment and/or increase the number of customer service representatives. If during any thirty day period the City receives more than ten complaints that customers are unable to contact the Contractor by telephone, the City shall impose liquidated damages per Section 750.

The Contractor's telephone system shall have the capacity to monitor the number of incoming calls received during the business day, during the week, and during the month; the average holding time for all calls received in a one hour period and the average holding time for all calls received; the longest hold time during the day; and, the number of calls handled by each customer service representative on a daily and weekly basis. This information shall be available to the City on a daily basis and the Contractor shall forward a monthly report to the City containing the information.

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Attachment D

First Year Container Compensation Payment Schedule

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Attachment D
Seattle Public Utilities'
Commercial Solid Waste Collection Contract:
Initial Contract Year Payments, 2001

I. Container Service, Non-Compacted

SERVICE TYPE	SIZE OR TYPE OF CONTAINER				
	60 Gal. Toter	90 Gal. Toter	1 Yd	1.5 Yd	2 Yd
CY/Pickup:	0.33	0.50	1	1.5	2
Permanent Account					
First Pickup	\$3.43	\$3.42	\$8.29	\$11.42	\$12.89
Ea. Add'l Pickup	\$3.43	\$3.42	\$8.29	\$11.42	\$12.89
Special Pickups	\$4.75	\$4.36	\$15.60	\$18.05	\$20.20
Monthly Rent	\$1.62	\$1.62	\$4.30	\$6.29	\$8.09
Flat Monthly Charge Account	\$16.49	\$16.46	\$40.24	\$55.78	\$63.96
Minimum Monthly Charge Account	\$8.48	\$8.47	\$20.89	\$29.13	\$33.88
Temporary Account					
Pickup Rate			\$15.60	\$18.05	\$20.20
Rent Per Calendar Day			\$2.87	\$2.87	\$2.87

SERVICE TYPE	SIZE OR TYPE OF CONTAINER				
	3 Yd	4 Yd	5 Yd	6 Yd	8 Yd
CY/Pickup:	3	4	5	6	8
Permanent Account					
First Pickup	\$16.85	\$20.98	\$25.24	\$25.63	\$30.15
Ea. Add'l Pickup	\$16.85	\$20.98	\$25.24	\$25.63	\$30.15
Special Pickups	\$24.59	\$28.93	\$31.53	\$34.04	\$39.50
Monthly Rent	\$10.04	\$11.47	\$15.77	\$17.67	\$20.07
Flat Monthly Charge Account	\$83.06	\$102.39	\$125.14	\$128.72	\$150.71
Minimum Monthly Charge Account	\$43.74	\$53.43	\$66.25	\$68.92	\$80.37
Temporary Account					
Pickup Rate	\$24.59	\$28.93	\$31.53	\$34.04	\$39.50
Rent Per Calendar Day	\$2.87	\$2.87	\$2.87	\$2.87	\$2.87

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Attachment D (Cont.)

II. Container Service, Compacted at 1 to 2 Ratio

SERVICE TYPE	SIZE OR TYPE OF CONTAINER					
	1 Yd	2 Yd	3 Yd	4 Yd	5 Yd	6 Yd
CY/Pickup:	2	4	6	8	10	12
Permanent Account						
First Pickup	\$16.67	\$20.73	\$29.15	\$37.50	\$45.76	\$54.27
Ea. Add'l Pickup	\$16.67	\$20.73	\$29.15	\$37.50	\$45.76	\$54.27
Special Pickups	\$24.32	\$28.25	\$37.10	\$45.66	\$54.17	\$62.90
Monthly Rent	\$13.37	\$26.73	\$29.60	\$33.39	\$36.26	\$40.01
Flat Monthly Charge Account	\$85.62	\$116.54	\$155.94	\$195.89	\$234.55	\$275.19
Minimum Monthly Charge Account	\$46.71	\$68.18	\$87.91	\$108.39	\$127.78	\$148.55

III. Container Service, Compacted at 1 to 5 Ratio

SERVICE TYPE	SIZE OR TYPE OF CONTAINER					
	1 Yd	2 Yd	3 Yd	4 Yd	5 Yd	6 Yd
CY/Pickup:	5	10	15	20	25	30
Permanent Account						
First Pickup	\$11.51	\$10.53	\$10.82	\$11.06	\$13.14	\$13.21
Ea. Add'l Pickup	\$11.51	\$10.53	\$10.82	\$11.06	\$13.14	\$13.21
Special Pickups	\$16.48	\$15.71	\$16.26	\$16.76	\$18.62	\$25.29
Monthly Rent	\$14.43	\$28.91	\$30.57	\$36.12	\$39.31	\$43.34
Flat Monthly Charge Account	\$64.31	\$74.57	\$77.44	\$84.07	\$96.25	\$126.58
Minimum Monthly Charge Account	\$37.45	\$49.96	\$52.20	\$58.25	\$65.59	\$81.76

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Attachment D (Cont.)

Special Service	Per Unit Payment	Units
Bulky Mat'l Pickup	\$5.36	CY
1		
Can-Unit Pickup	\$1.78	Can
0.17	\$11.69	Minimum

Initial Base Year Payment Schedule

The Contract payment schedules shown in the preceding tables will apply for the first year of the Contract between the City and the Contractor. It has been calculated according to the steps defined in **Section 407**, using an initial estimate of 155 pounds per cubic yard to make the adjustments for the costs of disposal and taxes. The full set of assumptions underlying the initial year schedule is shown below.

Disposal, \$/ton:	\$77.87
Taxes, \$/ton:	\$11.70
Lbs/CY:	155
Rental Discount:	7.5%
Pickup Discount:	15%

Revised Base Year Payment Schedule

The base year payments will be revised at the end of the first year, according to the procedures defined in the Contract. All assumptions will remain the same, with the exception of the number of pounds per cubic yard, which will be changed as necessary based on the results of the calculations defined in **Sections 404 and 407** of the Contract. The revised payment schedule will be entered in the tables on pages 7-9 of this **Attachment D**.

Annual Adjustments to Payment Schedules

All compensation payment rates shown in the preceding tables, and those later entered on pages 7-9 of this Attachment, will be adjusted annually, according to the CPI adjustment formula defined in **Section 470** of the Contract.

1996 WUTC Baseline

Disposal/ton: \$77.87
Tax/ton: \$11.70
Lbs/CY: 155

I. Container Service, Non-Compacted

SERVICE TYPE	SIZE OR TYPE OF CONTAINER				
	60 Gal. Toter	90 Gal. Toter	1 Yd	1.5 Yd	2 Yd
CY/Pickup:	0.33	0.50	1	1.5	2
Permanent Account					
First Pickup	\$6.35	\$7.50	\$16.70	\$23.85	\$29.05
Ea. Add'l Pickup	\$6.35	\$7.50	\$16.70	\$23.85	\$29.05
Special Pickups	\$7.90	\$8.60	\$25.30	\$31.65	\$37.65
Monthly Rent	\$1.75	\$1.75	\$4.65	\$6.80	\$8.75
Flat Monthly Charge Account	\$29.27	\$34.25	\$77.02	\$110.15	\$134.63
Minimum Monthly Charge Account	\$14.45	\$16.75	\$38.05	\$54.50	\$66.85
Temporary Account					
Pickup Rate			\$25.30	\$31.65	\$37.65
Rent Per Calendar Day			\$3.10	\$3.10	\$3.10

SERVICE TYPE	SIZE OR TYPE OF CONTAINER				
	3 Yd	4 Yd	5 Yd	6 Yd	8 Yd
CY/Pickup:	3	4	5	6	8
Permanent Account					
First Pickup	\$40.65	\$52.45	\$64.40	\$71.80	\$91.00
Ea. Add'l Pickup	\$40.65	\$52.45	\$64.40	\$71.80	\$91.00
Special Pickups	\$49.75	\$61.80	\$71.80	\$81.70	\$102.00
Monthly Rent	\$10.85	\$12.40	\$17.05	\$19.10	\$21.70
Flat Monthly Charge Account	\$187.00	\$239.68	\$296.12	\$330.23	\$416.03
Minimum Monthly Charge Account	\$92.15	\$117.30	\$145.85	\$162.70	\$203.70
Temporary Account					
Pickup Rate	\$49.75	\$61.80	\$71.80	\$81.70	\$102.00
Rent Per Calendar Day	\$3.10	\$3.10	\$3.10	\$3.10	\$3.10

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1996 WUTC Baseline

II. Container Service, Compacted at 1 to 2 Ratio

SERVICE TYPE	SIZE OR TYPE OF CONTAINER					
	1 Yd	2 Yd	3 Yd	4 Yd	5 Yd	6 Yd
CY/Pickup:	2	4	6	8	10	12
Permanent Account						
First Pickup	\$33.50	\$52.15	\$75.95	\$99.65	\$123.25	\$147.15
Ea. Add'l Pickup	\$33.50	\$52.15	\$75.95	\$99.65	\$123.25	\$147.15
Special Pickups	\$42.50	\$61.00	\$85.30	\$109.25	\$133.15	\$157.30
Monthly Rent	\$14.45	\$28.90	\$32.00	\$36.10	\$39.20	\$43.25
Flat Monthly Charge Account	\$159.62	\$254.88	\$361.12	\$467.92	\$573.28	\$680.90
Minimum Monthly Charge Account	\$81.45	\$133.20	\$183.90	\$235.40	\$285.70	\$337.55

1996 WUTC Baseline

III. Container Service, Compacted at 1 to 5 Ratio

SERVICE TYPE	SIZE OR TYPE OF CONTAINER					
	1 Yd	2 Yd	3 Yd	4 Yd	5 Yd	6 Yd
CY/Pickup:	5	10	15	20	25	30
Permanent Account						
First Pickup	\$48.25	\$81.80	\$116.85	\$151.85	\$189.00	\$230.85
Ea. Add'l Pickup	\$48.25	\$81.80	\$116.85	\$151.85	\$189.00	\$230.85
Special Pickups	\$54.10	\$87.90	\$123.25	\$158.55	\$195.45	\$238.00
Monthly Rent	\$15.60	\$31.25	\$33.05	\$39.05	\$42.50	\$46.85
Flat Monthly Charge Account	\$224.68	\$385.72	\$539.40	\$697.07	\$861.50	\$1,047.20
Minimum Monthly Charge Account	\$112.10	\$194.85	\$266.75	\$342.75	\$420.50	\$508.55

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1996 WUTC Baseline

Special Service	Per Unit Payment	Units
Bulky Mat'l Pickup	\$13.25	CY
1		
Can-Unit Pickup	\$3.15	Can
0.17	\$20.70	Minimum

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**Attachment D
Seattle Public Utilities'
Commercial Solid Waste Collection Contract:
Revised Initial Contract Year Payments, 2001**

I. Container Service, Non-Compacted

SERVICE TYPE	SIZE OR TYPE OF CONTAINER				
	60 Gal. Toter	90 Gal. Toter	1 Yd	1.5 Yd	2 Yd
CY/Pickup:	0.33	0.50	1	1.5	2
Permanent Account					
First Pickup					
Ea. Add'l Pickup					
Special Pickups					
Monthly Rent					
Flat Monthly Charge Account					
Minimum Monthly Charge Account					
Temporary Account					
Pickup Rate					
Rent Per Calendar Day					

SERVICE TYPE	SIZE OR TYPE OF CONTAINER				
	3 Yd	4 Yd	5 Yd	6 Yd	8 Yd
CY/Pickup:	3	4	5	6	8
Permanent Account					
First Pickup					
Ea. Add'l Pickup					
Special Pickups					
Monthly Rent					
Flat Monthly Charge Account					
Minimum Monthly Charge Account					
Temporary Account					
Pickup Rate					
Rent Per Calendar Day					

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Attachment D (Cont.)

II. Container Service, Compacted at 1 to 2 Ratio

SERVICE TYPE	SIZE OR TYPE OF CONTAINER					
	1 Yd	2 Yd	3 Yd	4 Yd	5 Yd	6 Yd
CY/Pickup:	2	4	6	8	10	12
Permanent Account						
First Pickup						
Ea. Add'l Pickup						
Special Pickups						
Monthly Rent						
Flat Monthly Charge Account						
Minimum Monthly Charge Account						

III. Container Service, Compacted at 1 to 5 Ratio

SERVICE TYPE	SIZE OR TYPE OF CONTAINER					
	1 Yd	2 Yd	3 Yd	4 Yd	5 Yd	6 Yd
CY/Pickup:	5	10	15	20	25	30
Permanent Account						
First Pickup						
Ea. Add'l Pickup						
Special Pickups						
Monthly Rent						
Flat Monthly Charge Account						
Minimum Monthly Charge Account						

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Attachment D (Cont.)

Special Service	Per Unit Payment	Units
Bulky Mat'l Pickup		CY
1		
Can-Unit Pickup		Can
0.17		Minimum

Disposal:	\$77.87
Taxes:	\$11.70
Lbs/CY:	???
Rent Disc:	7.5%
Service Disc:	15%

Annual Adjustments to Payment Schedules

All compensation payment rates shown in the preceding tables will be adjusted annually, according to the CPI adjustment formula defined in Section 470 of the Contract.

Attachment E

First Year A&E Services Compensation Payment Schedule

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Attachment E
Seattle Public Utilities'
Commercial Solid Waste Collection Contract:
Initial Contract Year Payments, 2001
Ancillary Service Compensation Payments

Type of Service [1]	Contractor Compensation Per Unit [2]
Deliveries	
Toter Initial Delivery - Permanent	\$11.40
Container Initial Delivery - Temporary 1-8 CY	\$13.40
Container Initial Delivery - Permanent 1-8 CY	\$13.40
Drop Box Initial Delivery - Temporary 3-8 CY	\$19.00
Drop Box Initial Delivery - Permanent 3-8 CY	\$19.00
Drop Box Initial Delivery - Temporary 10-40 CY	\$30.00
Drop Box Initial Delivery - Permanent 10-40 CY	\$30.00
Pickup Ancillary Services	
Temporary Pickup	\$13.50
Oversize	\$3.25
Return Trip - Can	\$4.25
Return Trip - Container or Drop Box	\$9.00
Container Special Services	
Pickup/redelivery up to 8 CY	\$13.50
Pickup/redelivery over 8 CY	\$30.00
Washing and Steam Cleaning, per CY	\$2.00
Washing and Steam Cleaning, minimum payment	\$15.00
Sanitizing Containers, per CY	\$0.90
Sanitizing Containers, minimum payment	\$10.00
Compactor/Drop Box Special Services	
Compactor Disconnect/Reconnect Cycle	\$20.00
Drop Box Compactor Turnaround	\$15.90
Drop Box Solid Lid Monthly Provision	\$11.80
Overtime Service, Hourly Premium	\$34.50

- [1] Only Ancillary Services listed in this Attachment E will qualify for compensation payments under this Contract.
- [2] All Ancillary Service compensation payment rates shown are per unit rates for the first Contract year. All compensation payment rates shown will be adjusted annually, according to the CPI adjustment formula defined in Section 470 of the Contract.

Attachment F

First Year Drop Box/Roll-off Collection Compensation Payment Schedule

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Attachment F
Seattle Public Utilities'
Commercial Solid Waste Collection Contract:
Initial Contract Year Payments, 2001

I. Drop Box Service, Non-Compacted Material [1]

SERVICE TYPE	SIZE OR TYPE OF CONTAINER					
	3-4 Yd	6 Yd	8 Yd	10 Yd	12 Yd	15 Yd
Permanent Account						
First Pickup	\$61.90	\$61.90	\$61.90	\$83.00	\$83.00	\$83.00
Ea. Add'l Pickup	\$61.90	\$61.90	\$61.90	\$83.00	\$83.00	\$83.00
Special Pickups	\$71.75	\$71.75	\$71.75	\$91.55	\$91.55	\$91.55
Monthly Rent	\$12.80	\$24.55	\$26.65	\$28.80	\$32.00	\$35.20
Flat Monthly Charge Account						
Minimum Monthly Charge Account	\$74.70	\$86.45	\$88.55	\$111.80	\$115.00	\$118.20
Temporary Account						
Pickup	\$71.75	\$71.75	\$71.75	\$91.55	\$91.55	\$91.55
Rent Per Calendar Day	\$3.20	\$3.20	\$3.20	\$3.20	\$3.20	\$3.20

I. Drop Box Service, Non-Compacted Material (Cont.)

SERVICE TYPE	SIZE OR TYPE OF CONTAINER				
	16 Yd	20 Yd	25 Yd	30 Yd	40 Yd
Permanent Account					
First Pickup	\$83.00	\$83.00	\$83.00	\$83.00	\$83.00
Ea. Add'l Pickup	\$83.00	\$83.00	\$83.00	\$83.00	\$83.00
Special Pickups	\$91.55	\$91.55	\$91.55	\$91.55	\$91.55
Monthly Rent	\$37.70	\$40.50	\$51.20	\$61.85	\$67.15
Flat Monthly Charge Account					
Minimum Monthly Charge Account	\$120.70	\$123.50	\$134.20	\$144.85	\$150.15
Temporary Account					
Pickup	\$91.55	\$91.55	\$91.55	\$91.55	\$91.55
Rent Per Calendar Day	\$4.25	\$4.25	\$4.25	\$5.35	\$5.35

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Attachment F
Seattle Public Utilities'
Commercial Solid Waste Collection Contract:
Initial Contract Year Payments, 2001

II. Drop Box Service, Compacted Material [1]

SERVICE TYPE	SIZE OR TYPE OF CONTAINER					
	10 Yd	15 Yd	20 Yd	25 Yd	30 Yd	40 Yd
<u>Permanent Account</u>						
First Pickup	\$127.75	\$127.75	\$127.75	\$127.75	\$127.75	\$127.75
Ea. Add'l Pickup	\$127.75	\$127.75	\$127.75	\$127.75	\$127.75	\$127.75
Special Pickups	\$138.45	\$138.45	\$138.45	\$138.45	\$138.45	\$138.45
Minimum Monthly Charge Account	\$127.75	\$127.75	\$127.75	\$127.75	\$127.75	\$127.75

[1] These compensation payment schedules apply to both MSW and CDL Drop Box service.
All compensation payments shown in these tables will be adjusted annually, according to the CPI adjustment formula defined in Section 470.

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Attachment G

Section 440 Compensation Adjustment Example

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Attachment G
Section 440 Compensation Adjustment Example
for Revised Average Round-Trip Haul Times

Introduction

The City guarantees that certain percentages of the Contractor's commercial MSW tonnage collected in the City of Seattle under this Contract will be directed to the Contractor's Eastmont transfer facility, as specified in Section 130. For the remaining, non-guaranteed tonnage, the City may accept transfer trips at its facilities, or direct the tonnage to other private facilities, as set forth in the Contract.

A. Initial Average Round-Trip Haul Times for Non-Guaranteed Tonnage

Table G.1. shows hypothetical round-trip haul times for a subset of routes in the Contractor's Primary Collection Area. In actual operation, there will be many more, and these are intended to be illustrative of the form of the information that will be used in the compensation adjustment calculations.

Table G.1.
Initial Average Round-Trip Haul Time Calculation:
Illustrative Baseline Haul Time Information

Route	Trips/Day	Round-Trip Haul Times (Minutes)			
		SRDS	NRDS	3rd & Lander	Eastmont
Monday #1	3	13.7	34.1	16.6	11.8
Tuesday #1	3	16.8	29.4	11.8	15.0
Wednesday #1	3	17.3	36.3	19.4	15.4
Thursday #1	3	12.4	29.1	14.4	10.5
Friday #1	3	14.8	21.1	6.3	12.8
Average		15.0	30.0	13.7	13.1

The initial assumption, defined in Section 440, is that all Non-Guaranteed tonnage collected by the Contractor, defined in Section 130, will be transferred at the City's South Recycling and disposal Station (SRDS). Consequently, the "initial average round-trip haul time" for the data in Table G.1. would be 15.0 minutes per trip.

The data shown in Table G.1. for other transfer facilities would be used in calculating "revised average haul times" and compensation adjustments, as appropriate.

B. Revised Average Round-Trip Haul Times and Compensation Adjustment Examples

The examples below show two hypothetical scenarios for the City's decision on where to direct the non-guaranteed MSW collected by the Contractor in the 2004-05 contract year.

Example A: In Contract year 2004, the City transfers 60% of the non-guaranteed 25% of collected commercial MSW at its SRDS, and directs the remaining 40% to the Contractor's Eastmont facility.

Total commercial MSW tonnage collected by Contractor under this Contract:	80,000
Non-Guaranteed MSW tonnage:	20,000
Total annual MSW transfer trips:	10,000
Total (calculated) trips for non-guaranteed tons:	2,500
CPI-W, 2000:	160.0
CPI-W, 2003:	174.84

Redirected Transfer Trips:	$(40\% * 2,500) = 1,000$ trips
Change in Minutes Per Redirected Transfer Trip:	$(13.1 - 15.0) = -1.9$ minutes per trip
Total Hours Compensated:	$(1,000 * -1.9)/60 = -31.67$ hours

Total Haul Time Cost Adjustment:	
$-31.67 * \$60 * (1 + 0.67 * (174.84 - 160.0)/160.0) =$	- \$2,018
City Share of Savings (75%)	\$1,513.50
Contractor's Share of Savings (25%)	\$ 504.50

Example B: In Contract year 2004, the City transfers half of the non-guaranteed 25% of collected commercial MSW at its SRDS, and directs the remaining half to its NRDS.

Total commercial MSW tonnage collected by Contractor under this Contract:	80,000
Non-Guaranteed MSW tonnage:	20,000
Total annual MSW transfer trips:	10,000
Total (calculated) trips for non-guaranteed tons:	2,500
CPI-W, 2000:	160.0
CPI-W, 2003:	174.84

Redirected Transfer Trips:	$(50\% * 2,500) = 1,250$ trips
Change in Minutes Per Redirected Transfer Trip:	$(30.0 - 15.0) = 15.0$ minutes per trip
Total Hours Compensated:	$(1,250 * 15.0)/60 = 312.50$ hours

Total Haul Time Cost Adjustment:	
$312.50 * \$60 * (1 + 0.67 * (174.84 - 160.0)/160.0) =$	+ \$19,915
Contractor's Compensation for Costs(100%)	+ \$19,915

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Attachment H

Compensation Payment Schedule for MSW Transfer and Short-Haul

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**Attachment H
Seattle Public Utilities
Payment Schedule for MSW Transfer and Short-Haul
Through Contractor's Eastmont Transfer Facility**

Introduction

The City's schedule for per ton payments to the Contractor for the combination of transfer and short-haul of MSW collected by the Contractor and transferred at the Contractor's Eastmont Transfer Facility under this Contract will be as defined in **Tables H.1 and H.2** below.

A. Guaranteed Share of Tonnage

The City guarantees that certain percentages of the Contractor's commercial MSW tonnage collected in the City of Seattle under this Contract will be directed to the Contractor's Eastmont transfer facility, as specified in **Section 130**. From there, the Contractor will then haul such tonnage to the long-haul transfer and disposal loading point designated by the City.

The annual per ton payment for any such "Guaranteed" tonnage are listed in column 2 of Table H.1, in inflation-adjusted 2001 dollars. The actual per ton payments in the second and each successive year of the Contract will be calculated according to the CPI-adjustment formula defined in column 3 of Table H.1, based on the CPI-W for the December preceding the Contract anniversary.

**Table H.1
Annual Per-Ton Transfer/Short-Haul Payments
for "Guaranteed Tonnage"**

Contract Year	Per Ton Payment, Before CPI-W Adjustment	CPI-W Adjustment
Year 1	\$10.80	None
Year 2	\$10.30	80% of (Year 1/Year 0)
Year 3	\$9.80	80% of (Year 2/Year 0)
Year 4	\$9.30	80% of (Year 3/Year 0)
Year 5	\$8.80	80% of (Year 4/Year 0)
Year 6	\$8.30	80% of (Year 5/Year 0)
Year 7	\$7.80	80% of (Year 6/Year 0)

B. Additional Tonnage

The City may direct additional commercial MSW tonnage collected under this Contract to the Contractor's Eastmont facility, subject to certain conditions. From there, the Contractor will then haul such tonnage to the long-haul transfer and disposal loading point designated by the City. For any such tonnage, the City's payments for the combination of transfer and short-haul of MSW collected by the Contractor will be based on the per ton payment schedule in Table H.2. Column 2 of Table H.2 lists the inflation-adjusted 2001 dollar amounts, and column 3 lists the CPI adjustment formula.

Table H.2
Annual Per-Ton Transfer/Short-Haul Payments
for "Additional Tonnage"

Contract Year	Per Ton Payment, Before CPI-W Adjustment	CPI-W Adjustment
Year 1	\$7.05	None
Year 2	\$7.05	80% of (Year 1/Year 0)
Year 3	\$7.05	80% of (Year 2/Year 0)
Year 4	\$7.05	80% of (Year 3/Year 0)
Year 5	\$7.05	80% of (Year 4/Year 0)
Year 6	\$7.05	80% of (Year 5/Year 0)
Year 7	\$7.05	80% of (Year 6/Year 0)

Example

Contract Year:	2004
Total commercial MSW tonnage collected by Contractor under this Contract:	80,000
Guaranteed Share of Tonnage:	greater of 75% or 56,125
"Guaranteed" Tonnage:	60,000
Total commercial tonnage directed to Eastmont by the City:	66,000
"Additional" Tonnage:	6,000
CPI-W, December 2000:	157.313
CPI-W, December 2003:	170.448

Guaranteed Tonnage Payment:
 $60,000 * \$9.30 * (1 + 80\% * (170.448 - 157.313)/157.313) =$ **\$595,273**

Additional Tonnage Payment:
 $6,000 * \$7.05 * (1 + 80\% * (170.448 - 157.313)/157.313) =$ **\$ 45,126**

Total Transfer Short haul Payment: **\$640,399**

Attachment I

Container Inventory

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City of Seattle

Paul Schell, Mayor

Seattle Public Utilities

Diana Gale, Director

December 11, 2000

City Council
City of Seattle

Via: Paul Schell, Mayor

Attention: Joan Walters, Budget Director
Executive Services Department

Subject: Contracts with Rabanco Ltd., and Waste Management of Washington, Inc.

Honorable Members:

REQUEST. We request City Council adoption of the enclosed ordinance. This ordinance authorizes the Director of Seattle Public Utilities to execute contracts with Rabanco, Ltd., and Waste Management of Washington, Inc. for collection of commercial solid waste.

BACKGROUND. Since 1992 the City has chosen not to regulate or control commercial solid waste collection. Since the City has not regulated this service, it has been regulated by the Washington State Utilities and Transportation Commission (WUTC). There are presently two firms providing collection services in Seattle; Rabanco and Waste Management of Washington. Rabanco provides service to approximately 70% of commercial customers, and Waste Management provides service to the remaining 30%.

Four main factors have motivated the City to negotiate contracts for commercial solid waste collection. First, a 1993 consultant study indicated that collection costs could be substantially reduced with a City contract.

Second, a 1994 U.S. Supreme Court decision restricts municipal authority to direct the flow of municipal solid waste (MSW). Under the City's disposal contract with Waste Management, the City is obligated to direct all the MSW generated within the City to Waste Management's landfill in eastern Oregon. Contracting for commercial MSW collection will allow the City to direct this waste stream to the landfill in Oregon.

Third, present WUTC rate setting regulations do not allow for service options and rate incentives that would achieve maximum, cost-effective recycling and waste reduction. City rate setting and management of the overall system allows this flexibility.

Dexter Horton Building, 10th Floor, 710 Second Avenue, Seattle, WA 98104
Tel: (206) 684-5851, TTY/TDD: (206) 233-7241, Fax: (206) 684-4631

An equal employment opportunity, affirmative action employer. Accommodations for people with disabilities provided upon request.



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City Council
December 11, 2000
Page 2

Finally, collection, disposal and waste diversion efficiencies can be better realized under City control, resulting in a more cost-effective system.

SUMMARY OF CONTRACT. These contracts are for seven-year terms, beginning April 1, 2001 and extending through March 31, 2008. The City can extend the contracts for two additional one-year terms to March 31, 2009 or March 31, 2010. The City is responsible for setting customer rates. The contractors will bill customers, receive the funds and provide customer service. Received funds will be deposited daily to the City and the City will reimburse the contractors on a monthly basis for their services. The City will be responsible for bad debts after the collection firms have exhausted their means to collect the funds.

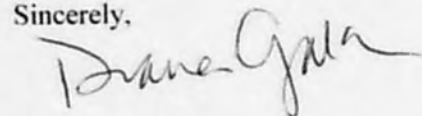
The collection firms will have semi-exclusive collection areas, with Waste Management collecting south of Royal Brougham Way/Jackson Street and Rabanco collecting north. However, both firms will collect from customers in the other area if the customer so requests.

The majority of the collected waste will be deposited at private disposal stations operated by the collection firms, however, during the first contract year the City has the ability to direct up to 10% of the collected waste to City facilities. This percentage increases over the contract years to a high of 40% in the seventh year of the contract.

Under these contracts contractor compensation for dumpster and can collection is reduced 15% from 1996 levels. Dumpster and can rental rates are reduced 7.5% from 1996 levels. Solid waste transfer rates are reduced \$8 - \$10 per ton from current rates. The contracts also contain an option for the contractors to collect street-side litter cans for \$1.50 per collection.

If you have any questions about the attached ordinance or the contract amendment, please contact Ed Steyh, SPU's Solid Waste Contract Manager at 684-7645.

Sincerely,



DIANA GALE
Managing Director

Attachments:
Ordinance

Contract with Rabanco Ltd., and Waste Management of Washington, Inc.

cc: Jeff Davis, Office of Management and Planning
Scott Haskins, SPU Resource Management Branch Director
Paul Fleming, SPU Legislative Liaison
Sean McDonald, SPU Community Services Division
Ed Steyh, SPU Community Services Division
Will Patton, Law Department

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Draft 12-6/20/00

Rabanco Draft 13: 07/07/00

Rabanco Draft 14: 08/04/00

**CONTRACT BETWEEN THE CITY OF SEATTLE
AND RABANCO, LTD.
FOR THE COLLECTION OF COMMERCIAL WASTE**

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- Attachment A Map of Primary and Secondary Service Areas
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- Attachment D First Year Payment Schedule
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- Attachment G Payment for Intermodal Service
- Attachment H Payment for Container Rentals
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- Attachment J Payment Schedule for MSW Transfer and Short-Haul

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**CONTRACT BETWEEN THE CITY OF SEATTLE
AND RABANCO, LTD.
FOR THE COLLECTION OF COMMERCIAL WASTE**

THIS CONTRACT is entered into by and between THE CITY OF SEATTLE, a municipal corporation of the State of Washington (City) and RABANCO, LTD., (Contractor) for the purpose of collecting Commercial Waste.

A. GENERAL PROVISIONS

Section 1. Purpose and Intent of Contract

The purpose of this Contract is to provide for the collection of Commercial Waste by the City through this Contract with Contractor, and through a similar contract with another commercial collection company. Contractor shall collect Commercial Waste in a Primary Service Area defined below in Section 100, and, when requested by the City, in a Secondary Service Area defined below in Section 105.

Section 10. Length of Contract

The Contract shall be for a term of 7.25 (seven and one quarter) years beginning on January 1, 2001, and ending at midnight on March 31, 2008.

The City shall have the unilateral right to extend the Contract for two one-year periods. The City may exercise this option all at once or in one-year or two-year increments. If the City decides to exercise its option to extend, it shall provide Contractor with written notice of such extension at least two (2) year's in advance of the end of the initial term of the Contract and, thereafter, upon written notice at least six (6) month's in advance of the end of the then existing Contract period.

Section 20 Commencement Date; Transition

The Contract shall commence on January 1, 2001.

There will be a 3 (three)-month transition period between January 1, 2001 and March 31, 2001, during which customer accounts in the Primary and Secondary Service Areas shall be sorted out with the other Contractor, and during which the respective containers shall be switched or exchanged, in accordance with Section 205.

Section 30 Definitions

1) A&E Services means

2) Bulky Waste means empty carriers, cartons, boxes, crates, etc., or other MSW materials set out for disposal as overflow to a customers regular can, toter or dumpster collection service.

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2-Can-

- 3) means a watertight, galvanized, sheet metal or plastic container not exceeding 32 gallons in capacity, fitted with at least one sturdy handle and a tight cover equipped with a handle, except in the case of sunken cans, such Can to be rodent and insect proof and to be kept in a sanitary condition at all times. Alternate containers such as bags, boxes and bundles may be used in place of Cans for materials in excess of the customer's primary container. A Can or alternate container shall not exceed 60 pounds for each 32 gallons of nominal capacity.
- 4) Cart (also at times referred to as "toter" or "wheeled container") means (Not Code) a plastic container, not greater than one-half (1/2) cubic yard in capacity and equipped with wheels, handles and a tight-fitting cover. Wheeled Containers means containers capable of being mechanically unloaded into the Contractor's collection vehicles.
- 5) City means the City of Seattle.
- 6) Commercial Establishment means any non-Residential location from which the Solid Waste is collected by the Contractor, and includes the non-residential portion of Mixed Use Buildings.
- 7) Commercial Waste means MSW and CDL collected from Commercial Establishments within the City and further includes Dumpster, Drop Box and Intermodal Service for CDL at what would otherwise be a Residential location.
- 8) Compostable Waste means any organic waste materials that are source separated for processing or composting, such as Yard Waste and Food Waste.
- 9) "Container Collection" means collection of Commercial Waste and collection of Construction, Demolition and Land Clearing Waste from Cans, Carts, Detachable Containers, and Drop Boxes
- 10) Construction, Demolition and Land Clearing Waste; CDL "Construction, Demolition and Land Clearing Waste" or "CDL Waste" means (Code) waste comprised primarily of the following materials:
 - a) "Construction Waste" means 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.
 - b) "Demolition Waste" means 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. Demolition Waste does not include Special Waste.

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- c) "Landclearing Waste" means 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.

11) Contractor means Rabanco, Ltd., a Washington corporation.

12) CPI-W means the Consumer Price Index computed by the United States Department of Labor, Bureau of Labor Statistics, for the Seattle-Everett Metropolitan Area for Urban Wage Earners and Clerical Workers (CPI-W), or successor indices, covering the period January through December of each year.

13) Cycle Time is the elapsed time from time of arrival to time of departure from a transfer facility. Cycle Time does not include time spent removing and replacing tarps, setting off cans of compactors and rotating them for dumping, securing tailgates, washing containers, using the restroom or phone, and other similar items.

14) Detachable Container (also at times referred to as "dumpster") means (Code) a watertight, all-metal container, not less than one-half (1/2) cubic yard in capacity and equipped with a tight-fitting metal or other City-approved cover. The term shall also apply to containers of other material of similar size when approved by Seattle Public Utilities. Containers two (2) cubic yards and under shall be equipped with at least three (3) wheels. (Not Code): Detachable Containers means containers capable of being mechanically unloaded into the Contractor's collection vehicles.

15) Disposal Facility means both Public Transfer Stations owned by the City, and Private Transfer Stations at which the MSW shall be compacted and transferred in long haul containers to the long-haul transfer and disposal loading point designated by the City, or, as to CDL, a facility meeting the criteria of section 135.

16) Drop Box (also at times referred to as "rolloff" or "lugger" or "dino") means a metal container, with 3-40-cubic-yard-capacity capable of being mechanically loaded onto a collection vehicle for transport to a transfer station.

17) Dumpster means the same as "Detachable Container."

18) Intermodal Container means an open top intermodal rail container intended to be placed directly upon a rail flat car for transportation without any transloading or other handling of the waste within the container. Intermodal Containers are owned and provided by companies operating landfills and are used exclusively for CDL for purposes of this Contract.

19) Intermodal Service means the service of the Contractor in delivering the empty Intermodal Container to the customer's site and then picking up the Intermodal container loaded with CDL Waste and delivering the Intermodal Container directly to the appropriate rail yard.

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- 20) Initial Average Haul Time means the calculated average round-trip travel time from the Contractor's collection routes to the City's South Recycling and Disposal Center, calculated based on the Contractor's defined routes and the City's GIS trip time calculation model.
- 21) Mixed Use Building means (Code) a building with both residential and commercial solid waste with common garbage chute(s), and/or the residential and commercial solid waste generated in such building cannot be readily separated.
- 22) MSW means Solid Waste excluding Special Wastes, Unacceptable Wastes, Recyclable Materials, Compostable Wastes and CDL.
- 23) Primary Collection Area means that area of the City as shown on Attachment A within which the Contractor shall be the exclusive provider of MSW collection services under this Contract, except in special cases where individual customers have requested, and been granted by the City, the right to receive such services by the City's other commercial MSW collection contractor.
- 24) Private Transfer Stations means the transfer station owned and operated by Waste Management of Seattle at 7155 West Marginal Way S.W., the transfer station owned and operated by Rabanco at 3rd Avenue South and Lander Street, 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.
- 25) 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.
- 26) Recyclable Materials means (Modified Code) those Solid Wastes that are source separated for recycling or reuse, such as papers, metals and glass, that are identified as recyclable material pursuant to the City's Comprehensive Solid Waste Plan, and that are intended for recycling by the customer and delivered to a recycling facility.
- 27) Recycle or Recycling means (Code) 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.
- 28) Residence or Residential means any house, dwelling, multiunit residence, apartment house, trailer court or any building put to residential use. The term does not include Mixed Use Buildings. (Note: Placeholder for resolution of how multiunit residence and apartment house may be handled.)
- 29) Revised Average Haul Time means the calculated annual average round-trip time from the Contractor's collection routes to the combination of transfer stations selected by the City for all MSW for which the City has transfer site discretion under this

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Contract, calculated based on the Contractor's defined routes and the City's GIS trip time calculation model.

- 30) Roll-off Collection means the collection of Commercial Waste by means of a Drop Box.
- 31) Solid Waste means (Code) all putrescible and nonputrescible solid and semisolid wastes, including but not limited to garbage, rubbish, yard waste, ashes, industrial wastes, infectious wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof. The term includes all liquid, solid and semisolid materials, which are not the primary products of public, private, industrial, commercial, mining and agricultural operations. Solid waste includes, but is not limited to sludge from wastewater treatment plans, seepage from septic tanks, wood waste, dangerous waste, and problem wastes. (Not Code); as well as other materials and substances that may in the future be included in the definition of "solid waste" in RCW 70.95.030. Solid Waste does not include Recyclable Materials (including Compostable Waste) collected from Commercial Establishments.
- 32) Secondary Collection Area means that area of the City as shown in Attachment A within which the City's other commercial MSW collection contractor is the designated primary MSW collection service provider, and in which the Contractor may provide such services only to individual customers who have requested, and been granted by the City, the right to receive such services from the Contractor.
- 33) Special Waste means (Code) contaminated soils, asbestos and other waste specified by Washington Waste Systems in the Special Waste Management Plan included in the Operations Plan as requiring special handling or disposal procedures.
- 34) "Street Side Litter Collection" means collection of Solid Waste from City supplied containers that are located on public right of way. These containers are primarily intended for the use of the public in disposing of litter. The containers may be either top or side unloading.
- 35) Toter means the same as "Cart."
- 36) Unacceptable Waste means (Code) all waste not authorized for disposal at the Columbia Ridge Landfill and Recycling Center or successor site designated by the City, 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.
- 37) WUTC means the Washington Utilities and Transportation Commission of the State of Washington.

- 38) Yard Waste means (Code) plant material (leaves, grass clippings, branches, brush, flowers, roots, wood waste, etc.); debris commonly thrown away in the course of maintaining yards and gardens, including sod and rocks not over four (4) inches in diameter; and biodegradable waste approved for the yard waste programs by the Director. It excludes loose soils, food waste; plastics and synthetic fibers; lumber; any wood or tree limbs over four (4) inches in diameter; human or animal excrement; and soil contaminated with hazardous substances.

Section 40 City Responsibilities

The City shall be responsible for:

- 1) Establishing service levels and rates to be charged customers;
- 2) Transmitting and updating Commercial Waste customer lists to Contractor in both the Primary and Secondary Service Areas;
- 3) Directing Commercial Waste to Disposal Facilities in accordance with the terms of this Contract;
- 4) Paying all transfer fees for Commercial Waste delivered by Contractor to the specified Disposal Facilities pursuant to the terms of Section 490;
- 5) Disposing of the Commercial Waste delivered to the specified Disposal Facilities, except for CDL directed to a Disposal Facility by the Contractor pursuant to Section 135.;
- 6) Approving tip fees and environmental acceptability of CDL Disposal Facilities proposed by the Contractor, or in the alternative directing CDL to a disposal facility;
- 7) Initiating Street Side Litter Collection pursuant to Section 122;
- 8) Assuming bad debts of customers related to billings for City collection services;
- 9) Paying Contractor for its collection services pursuant to this Contract.

Section 50 City Representations and Warranties

The City represents and warrants to Contractor as follows:

- 1) Organization and Qualification
 - a) The City is a municipal corporation and has all requisite corporate power and authority to enter into and perform its obligations under this Contract.
- 2) Authority
 - a) 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.
 - b) This Contract has been validly executed and constitutes a valid and legally binding and enforceable obligation of the City.

Section 60. Contractor Responsibilities

Contractor shall be responsible for:

- a. Furnishing all skill, labor, equipment, material, supplies and utility services required for providing all services in accordance with this Contract;

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- b. Performing all work in a timely, thorough and professional manner;
- c. Delivering all Commercial Waste to a Disposal Facility in accordance with this Contract;
- d. Assisting Commercial Waste customers with service issues
- e. Billing customers for City collection services in accordance with rates established by the City;
- f. Transferring customer payments for City collection services to the City in accordance with this Contract;
- g. Complying with all applicable laws and regulations.

Section 70. Contractor's Representations and Warranties

The Contractor represents and warrants to the City as follows:

Organization and Qualification

- a) 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.

Authority

- b) 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.
- c) This Contract has been validly executed by an authorized representative of the Contractor and constitutes a valid and legally binding and enforceable obligation of Contractor.

Section 80. Contractor's Waiver

Contractor hereby relinquishes and waives any and all claims against the City or rights it may have versus the City with regard to its certificate from the Washington Utilities and Transportation Commission to collect Commercial Waste in the City, except to the extent collection of such Commercial Waste is expressly excluded from this Contract. Contractor also waives any and all claims to compensation from the City based on a claim of taking or any other claim or circumstance related to the Contractor entering into this Contract, or to the City's continued regulation of, and contracting for, the collection of Commercial Waste in the City after the life of this Contract, apart from the payment provisions of the Contract itself. *Provided, however,* the Contractor reserves its option to reactivate its certificate from the WUTC to collect commercial waste in the City, should the City later cease to assert its control over the collection of Commercial Waste.

Section 90. Control of Waste

Pursuant to its authority under Washington State law, the City by this Contract authorizes the Contractor to act as its agent for the collection and delivery of Commercial Waste from Commercial Establishments in the City, or any other agreed upon location, to Disposal Facilities as directed by the City. The City's rights of ownership and control over the Commercial Waste collected under this Contract vest upon the collection of the Commercial Waste; provided, however, that the original owner has the right of recovery

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to any valuable items inadvertently discarded that can be reasonably retrieved prior to final disposal.

B. COLLECTION SERVICES

Section 100. Primary Service Area For MSW Collection

a. The City shall be divided into a Primary and a Secondary Service Area for MSW collection along the following line: Royal Brougham to 4th Avenue to Dearborn, Dearborn to I-5, I-5 to Jackson, Jackson to Lake Washington. Attachment A provides a map of the City showing this dividing line. Contractor shall have the area north of this line as its Primary Service Area for MSW collection.

b. Unless a customer in this area specifically requests to be a Secondary Service Area customer and the request is approved by the City, or is otherwise designated as a Secondary Service Area customer by the City, all MSW customers in the Contractor's Primary Service Area customers shall receive collection services from the Contractor. All requests by a customer in this area to become a Secondary Service Area customer for MSW collection must be referred to and approved by the City. The Contractor shall be the exclusive provider of Primary Service Area MSW collection services for this Primary Service Area, provided that each customer shall continue to be permitted to self-haul its own MSW.

Section 105. Secondary Service Area For MSW Collection

a. The area south of the dividing line described in Section 100 and shown on Attachment A shall be the Contractor's Secondary Service Area for MSW collection.

b. Unless a customer in this area specifically requests to become a customer of the Contractor and the request is approved by the City, or the City otherwise designates a customer in this area as a customer of the Contractor, the Contractor shall not provide MSW collection services authorized by this Contract to customers located in the Secondary Service Area. In addition, the Contractor shall not solicit or otherwise encourage MSW customers in the Secondary Service Area, not excluded from the scope of this Contract, to become MSW customers of the Contractor. All requests by a customer in this Secondary Service Area to become an MSW customer of the Contractor must be referred to and approved by the City.

Section 110. Excluded Contracts

The Contract does not necessarily include service to federal facilities, the Seattle Housing Authority, the Seattle School District and the University of Washington. These entities, however, may elect, at any time during the term of this Contract, to receive collection services from the City under this Contract and the Contractor agrees that upon request by the City, those collection services shall be governed by this Contract as long as such request remains in effect. Where no such request is made by the City, the Contractor shall be free to solicit and contract for collection services to such excluded facilities independent of this Contract.

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Section 115 Excluded Services

The Contract does not include recycling collection or processing (including organics recycling), nor does it include collection or disposal of Special Waste or Unacceptable Waste.

Section 120. Commercial Waste Collection

a. The Contractor shall provide MSW collection services to all Commercial Waste customers who request such service in the Contractor's Primary Service Area (and in the Contractor's Secondary Service Area when directed to do so by the City pursuant to Section 105).

b. Can, Toter, and Dumpster MSW collection services shall be provided at any service level then in effect under the City's codified service levels, so long as the requested service level can reasonably be accommodated at the customer's premise. Any Toter or Dumpster may be owned by the customer as long as it is in good and serviceable shape and is compatible with Contractor's equipment; except as so provided by the customer, all Toters and Dumpsters shall be owned and provided by Contractor.

c. CDL services shall be provided City wide to customers that request such service. CDL services may also be provided City-wide by another company that has a Commercial MSW Collection contract with the City.

d. Roll-off MSW or CDL collection services shall be provided to customers requesting such service so long as the requested service can reasonably be accommodated at the customer's premise. The Drop Box may be owned by the customer as long as it is in good and serviceable shape and is compatible with Contractor's equipment; except as so provided by the customer, all Drop Boxes shall be owned and provided by Contractor.

e. Intermodal CDL Service shall be provided subject to availability of Intermodal Containers and if the service can reasonably be accommodated at the customer's premises.

f. The Contractor shall make every reasonable effort to accommodate a customer's request for service and to provide customers with the level and type of service which is most convenient and economical to the MSW or CDL customer.

Section 122. Street Side Litter Collection

a. The City shall have the option to add collection of City-owned and maintained street side litter containers in the Contractor's Primary Service Area to the services provided by the Contractor, beginning no sooner January 1, 2002. The number of City-owned and maintained street side litter containers included in the program may change at any time during the contract.

b. The City shall provide at least six months' written notice to the Contractor prior the start of such service.

Section 125. A&E Services

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The Contractor shall provide A&E Services in accordance with the A&E Services then in effect under the City's codified service levels. The Contractor shall make every reasonable effort to provide customers with the level and type of A&E Services which are most convenient and economical to the customer.

Section 127. Resolution of Availability of Service Disputes

Any disagreement between a customer and Contractor regarding the services which can reasonably be accommodated at the customer's site shall be resolved by Seattle Public Utilities.

Section 130. MSW Transfer/Disposal

a. For the first seven years of the contract, the City will direct to the Contractor's 3rd & Lander transfer facility no less than the greater of the following tons or percentage shares of tons of MSW collected by the Contractor under this contract:

Contract Year	Guaranteed Tons Delivered to 3rd & Lander	Guaranteed Share of Tons Delivered to 3rd & Lander
1	126,000	90%
2	119,000	85%
3	112,000	80%
4	105,000	75%
5	98,000	70%
6	91,000	65%
7	84,000	60%
8 [1/4 year]	21,000	60%

b. The City retains sole discretion for directing any remaining MSW collected under this contract to transfer station(s) of its choice.

- 1) ~~e.~~ In addition to the "Guaranteed Share of Tonnage," the City may, at its sole discretion, direct any Commercial MSW collected in the City ~~tonnage in excess of the amounts defined by Subsection a) above to the Contractor's 3rd & Lander transfer facility during the first seven and one quarter years of this~~ tonnage in excess of the amounts defined by Subsection a) above to the Contractor's 3rd & Lander transfer facility throughout this contract. Except in an emergency, the City will provide at least three months' written notification prior to changing those additional amounts. The City may also designate the route origins within the City, of ~~these~~ those additional tons collected by the Contractor.
- 2) The Contractor is obligated to accept any tonnage directed to the Contractor's 3rd & Lander transfer facility under Sections 130a or 130c.
- 3) ~~d.~~ When the Third and Lander facility is not open, the Contractor shall first deliver the MSW to a City Facility, unless the City directs otherwise. In the event the City Facility is also closed or the City declines the waste, the Contractor shall have the

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flexibility to provide the customer with a second Toter or Dumpster until the customer's primary Toter or Dumpster can be emptied. The Contractor shall empty the primary Toter or Dumpster and remove the additional Toter or Dumpster as soon as practicable after the Third and Lander Facility is again open.

- 3)
- 4) The actual levels of guaranteed tonnage defined in Section 130a will be tracked on a monthly basis, and deliveries will be adjusted as necessary to achieve the guaranteed minimum tons and percentages. In the event that actual deliveries fall short of the Contractor's guaranteed levels of tonnage at the end of a calendar year, the shortfall will be made up in additional deliveries to the Contractor's 3rd & Lander transfer facility during the first quarter of the next calendar year. No adjustments will be made if actual deliveries in a calendar year exceed the Contractor's guaranteed levels of tonnage.

Section 135. CDL Transfer/Disposal

- a. The City reserves, but does not currently exercise, the right to direct the Contractor to any Disposal Facility of its choosing for disposal of CDL collected under this Contract.
- b. CDL collected under the Contract may be directed to Disposal Facilities by the Contractor, *provided that*:
 - i) The facilities are environmentally acceptable to the City; and
 - ii) The tip fees are acceptable to the City.
- c. The City's acceptance of facilities and tip fees shall not be unreasonably withheld or delayed.
- d. At such time as Contractor is unable to designate a Disposal Facility which is acceptable to the City under Section 135c, above, the City will exercise its right to direct the disposal of CDL.

C. OPERATIONS

Section 200. Coordination; Implementation

In order to minimize problems during implementation of the Contract, to provide a forum for discussing and resolving any transition and operational problems that may arise, and to update the Operations Plan, the Contractor and City agree to meet on a regular basis as follows:

- a. During the three-month period before the Contract takes effect, the Contractor and City will meet on a weekly basis, or on such more or less frequent basis as may be otherwise mutually agreed. The primary purpose of the weekly pre-Contract meetings will be to provide for exchange of customer account information between the Primary and Secondary Service Area Contractors, to refine the Transition Plan and the Operations Plan, to seek resolution of any



customer service issues, and to discuss promotion, public information and public relations in anticipation of the commencement of the Contract.

b. During the three-month transition period, the Contractor and City will meet on a weekly basis, or on such more or less frequent basis as may be otherwise mutually agreed. The primary purpose of the weekly transition period meetings will be to refine the Transition Plan and the Operations Plan, to evaluate the Contractor's performance in implementing the Contract, to evaluate container exchange or purchase issues, to review and seek resolution of any customer service issues, and to discuss promotion, public information and public relations.

c. Following the three-month transition period, the meetings between the Contractor and the City will be held at least on a monthly basis, or on such more or less frequent basis as may be otherwise mutually agreed. The primary purpose of these meetings will be to review day-to-day operations, to refine and revise the Operations Plan, and to discuss promotion, public information and public relations.

d. Meetings during the transition period will be held at the offices of the City, unless otherwise agreed. Meetings held after the transition period will be held at a mutually agreed location. Each Party will be available for at least 90 minutes per meeting, unless otherwise agreed to in advance. Meetings shall be held during normal business hours.

Section 205 Transition Plan

In order to effect a smooth transition from the former WUTC regulation to collection of Commercial Waste under this Contract, a Transition Plan shall be developed which shall detail procedures: for easing the customer's transition to a new collector in the Primary Service Area; for receiving customer information from the City; for exchanging customer service information; and for exchanging or purchasing containers from the Contractor in the Secondary Service Area. The Transition Plan is appended to the Contract as Attachment B and shall be implemented at the start of the Contract term and completed by March 31, 2000.

Section 210 Operations Plan

A schedule of activities and detailed procedures related to the effective implementation and operation of the Contract is appended to the Contract as Attachment C. This plan shall be known as the "Operations Plan."

Section 220. Night Collection

The Contractor shall be able to continue to operate during the night (6p.m. to 7 a.m.). Any additional restrictions or conditions placed on the Contractor's nighttime operations during the term of the Contract shall be considered a change in law, which may result in additional compensation to the Contractor pursuant to Section 825.

Section 230. Traffic Laws; Noise Control

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All Contractor vehicles shall be operated in conformity with the Seattle Traffic Code, SMC Chapter 11. The maximum noise level of motor vehicles during travel shall not exceed the levels set for the in SMC 25.08.430. The maximum noise level while collecting or compacting materials collected under this Contract shall not exceed the levels set forth in SMC 25.08.410.

Section 240. Inventory of Equipment

The Contractor shall provide the City at the start of the Contract with a complete inventory of its equipment, showing each vehicle (type, capacity, approximate age, vehicle license and identification numbers) and all carts, cans, totes, dumpsters, and drop boxes used for performing the Contract. The Contractor shall provide the City with an updated vehicle inventory on a monthly basis, which shall incorporate changes within sixty (60) days of their occurrence, and an updated container inventory on an annual basis.

Section 250. Ownership of Equipment

All vehicles, facilities, equipment and property used in the performance of this Contract shall be wholly owned by the Contractor; provided, that leases, conditional sale contracts, mortgages, or other agreements for the use or financing the purchase of vehicles, facilities, equipment and property may be allowed with the prior written approval of the City. All such leases, conditional sale contracts, mortgages, or other agreements entered into during the term of the Contract shall provide that, in the event of the Contractor's failure to perform its obligations under this Contract, the City, at its option, shall have the right to take possession of and operate vehicles, facilities, equipment, and property covered by such lease or agreement for the unexpired term of this Contract. No further encumbrance shall be placed upon any such vehicles, facilities, or equipment without the prior written approval of the City.

Section 260. City Option to Purchase Containers

The City shall have the option to purchase all the Contractor's carts, cans, totes, dumpsters, and drop boxes used for performing the contract at the end of the contract period. The purchase price shall be equal to the value of those containers net of accumulated depreciation as of December 31, 2000, according to the Balance Sheet and supporting schedules in the Annual Report from Rabanco to the WUTC, adjusted for 1) the change in the CPI from December 31, 2000, until the end of the contract period (at 100%), and 2) the percentage change in the number of commercial containers collected by Rabanco from December 31, 2000 until the end of the contract period, *provided that* the number of new containers acquired by Rabanco during 2000 that will be included in the calculation above will be no greater than 15% of the Rabanco container inventory as of December 31, 2000.

Section 270. Contractor's Office

The Contractor shall maintain within King County an office with local telephone service and such staff as needed to take care of complaints, billing issues, requests for missed collections and other coordination with City staff. Phone service shall include multiple lines and voice mail and e-mail. Any voice mail messages shall be returned by the

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Contractor's office within sixty (60) minutes. The Contractor's customer service hours shall be from 8 a.m. to 4:30 p.m., Monday through Friday.

D. RATES TO CUSTOMERS

Section 300. City Sets All Rates to Customers

The City shall retain the authority to set rates for all services to customers under this Contract. Rates shall be established by City ordinance. The City's rate ordinances shall specify the level and frequency of services that shall be made available to the customers by the Contractor. The rates, service categories and frequency of service offered by the City may be changed at any time and as many times during the Contract as the City deems appropriate, so long as the Contractor is provided sixty (60) days notice of any change of rate, service category, or frequency of service. Customers shall be charged for services pursuant to rates established by the City.

Section 310. Rates for Primary Service Area

Rates and service levels shall be established by City ordinance for the Contractor's Primary Service Area. Unless designated a Secondary Service Area customer by the City, all customers in the Contractor's Primary Service Area shall be afforded and charged for services pursuant to the City's Primary Service Area rates.

Section 320. Rates for Secondary Service Area

a. Rates and service levels shall be established by City ordinance for the Contractor's Secondary Service Area. Unless a customer in the Secondary Service Area is designated a customer of the Contractor by the City, the Contractor shall not provide collection services in the Secondary Service Area. For all Secondary Service Area services provided by the Contractor, however, the customers shall be afforded and charged for services pursuant to the City's Secondary Service Area rates.

b. The Secondary Service Area rates may be established by the City at any level. If the rates for the Secondary Service Area in any category are less than fifteen (15) percent above the rates for the same category of service in the Primary Service Area, then the payment provisions of Section 435 shall apply.

Section 330. Rates for A&E Services

Rates for A&E Services shall also be established by City ordinance for both the Primary and Secondary Service Areas. Customers shall be charged for A&E Services pursuant to rates established by City ordinance.

Section 340. Establishing Different Service Levels

The City shall have the authority to establish different service levels by ordinance at any time during the term of the Contract. The City will provide the Contractor no less than six months' written notice prior to requiring the Contractor to begin providing and

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collecting such new services. Payment to the Contractor for any new or revised service levels shall be determined pursuant to Section 450

Section 350. Establishing Different Types of Service

In addition to creating different service levels under Section 340, the City shall have the authority to establish different types of Commercial Waste collection service by ordinance at any time during the term of the Contract. The City will provide the Contractor no less than six months' written notice prior to requiring the Contractor to begin providing and collecting such new services. -Payment to the Contractor for any new or revised MSW or CDL collection services shall be determined pursuant to Section 450.

Section 360. Recycling

The City reserves the right to promote and contract for recycling of any component of the Commercial Waste stream at any time during the term of the Contract. The City shall be under no obligation to contract with the Contractor for the collection of any such recycling.

E. PAYMENT TO CONTRACTOR

Section 400. Payment for MSW Container Collection

a. Unless otherwise adjusted by the Contract, the City will compensate the Contractor on a monthly basis for collection from all customers receiving Can, Toter and Dumpster collection service, based on a per unit schedule defining the payment per collection pickup for each level of service. The per unit payments defined by that schedule will be multiplied by the number of collections of each service level performed by the Contractor during the preceding month, to derive the payment for MSW Container Collection.

b. The initial payment schedule for Can, Toter and Dumpster collection in the first year is shown in Attachment D.

c. The payment schedule for Can, Toter and Dumpster collection in the remaining years of the Contract shall be based on the calculation in Section 407.

d. The format for Contractor reporting of monthly collection service levels, and overall billing procedures are defined in Sections 500 through 540.

Section 402. Estimated Payment for First Year of MSW Container Collection

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a. The payment schedule in Attachment D reflects an estimated average weight per cubic yard of ____ pounds for the Contractor's MSW Container Collection customers.

b. The revised payment schedule will reflect an empirically calculated average weight per cubic yard, to be calculated according to the provisions of Section 404.

c. Until such time as the City bills customers separately for A&E Services, payment to the Contractor shall be based on the assumed level of A&E Services set forth in Attachment D. At such time as the City implements customer charges for A&E Services, the number of customers receiving A&E Services shall be calculated according to the provisions of Section 405.

Section 403. Payment for A&E Services

The City will compensate the Contractor on a monthly basis for A&E Services listed in Attachment E.

For the first three months, per unit payments for A&E Services will be at the levels listed in Attachment E.

Payment levels will be adjusted from this base on April 1 of each year of the Contract based on the procedure set forth in Section 470.

Section 404. Procedure for Establishing Average Weight Per Cubic Yard

1) Average Weight Per Cubic Yard. The Average Weight Per Cubic Yard will be derived from City-wide data on:

- a) Commercial ~~Waste~~-MSW tonnage collected by the Contractor and the City's other Commercial MSW collection contractor in the City of Seattle from Cans, Toters and Dumpsters customers from April 1, 2001 through March 31, 2002, and
- b) total cubic yards of subscribed Commercial ~~Waste~~-MSW service and billed Bulky Waste collected by the Contractor ~~Contractor and the City's other Commercial MSW collection contractor~~ from Can, Toter, and Dumpster Commercial Waste customers in Seattle from April 1, 2001 through March 31, 2002.

2) Source of Contractor's MSW Tonnage Data. The source of data on Commercial ~~Waste~~-MSW tonnage collected by the Contractor in Seattle from April 1, 2001 through March 31, 2002 will be electronically transferred records of the Contractor's Commercial ~~Waste~~-MSW route collection vehicles' tipped weights at Allied's 3rd & Lander transfer station and any commercial vehicles' tipped weights at either of the City's any transfer stations used during that period. In addition, the Contractor will provide copies of the weight slips provided to the Contractor's Commercial ~~Waste~~-MSW collection vehicles when they dispose of each load collected in the City of Seattle. The Contractor will arrange for electronic data transfer, and will provide a complete copy set of the weight slips to the City on a monthly basis, including information on date, time, and route of origin.

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Data from these sources will be compared to 1) the corresponding data for the three calendar years preceding the start of the contract, and 2) the monthly submittals made by the operator of the 3rd & Lander Transfer Station during those three calendar years to the Washington State Department of Health, which define all waste streams tipped at the 3rd & Lander Transfer Station, including those non-CDL, non-pass-through commercial container tons collected by the Contractor within the City of Seattle, for verification.

In the event of any apparent discrepancy, the City and the Contractor will review the records, and attempt to agree on a specific tonnage estimate. If disagreement remains, the matter will be arbitrated according to the provisions of Section 830.

Source of Contractor's Cubic Yards Collected Data. The source of data on total cubic yards of billed service collected from Commercial Waste-MSW customers in Seattle during from April 1, 2001 through March 31, 2002 the first contract year will be Commercial Waste-MSW billing data provided by the Contractor in monthly submittals to the City. Cubic yards included in the count will be subscribed cubic yards of container service to Can, Toter and Dumpster accounts, plus billed cubic yards of Bulky Waste collected from those accounts.

The City may survey a sample of customers, or conduct a spot-audit of Contractor routes, to verify customer service levels identified in the Contractor's billing data submittals.

In the event of any apparent discrepancy, the City and the Contractor will review the records, and attempt to agree on a specific cubic yard estimate. If disagreement remains, the matter will be arbitrated according to the provisions of Section 830.

Section 405 Procedure for Establishing Percentages of Customers Receiving A&E Services

The number of customers at each service level assumed to be receiving A&E Services in the initial contract year will be the quantity of A&E Services per service level listed in Attachment E, provided that the City may, at its discretion and cost, conduct a ride-along audit of collection routes to observe and document the actual quantity of A&E Services provided. If the quantity of these observed A&E Services per service level differs from the initial quantities in Attachment E by an amount that is statistically significant (at the 95% significance level), then the observed quantity of A&E Services per service level will become the initial estimate, for that service level.

The basis for any adjustment in the percentages of customers receiving A&E Services for which the Contractor will be compensated will be actual billing records, if customer charges have been implemented for those A&E services. In addition, at any time during the Contract period, either party may request that the City conduct a ride-along audit to

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obtain updated estimates of the number of customers receiving A&E Services. In such cases, the requesting party will pay the costs of the ride-along audit and analysis, and payments for A&E Services will be adjusted to reflect the results of the audit.

Section 407. Payment Based on Average Weight Per Cubic Yard

- 1) A revised base payment structure will be calculated using the Average Weight Per Cubic Yard defined by the procedure in Section 404. The revised base payment structure for the remaining term of the Contract will then be calculated based on the 1996 WUTC tariffs for container collection, adjusted downward in four steps, to:
 - a) exclude the portion of those tariffs associated with disposal costs;
 - b) exclude the portion of those tariffs associated with taxes;
 - c) reduce the remaining net payments by 15% at each service level; and
 - d) reduce that result further to reflect separate payments to be made by the City to the Contractor for Ancillary and Elective Services.
- 2) These four adjustments will be calculated as follows:
 - a) The adjustment for exclusion of disposal costs at each level of service will be made by multiplying the empirically determined average weight per cubic yard (in tons) by the size of the container picked up (in cubic yards), by \$77.87, with that calculated amount subtracted from the original tariff.
 - b) The adjustment for exclusion of tax costs at each level of service will be made by multiplying the empirically determined average weight per cubic yard (in tons) by the size of the container picked up (in cubic yards), by \$11.70, with that calculated amount subtracted from the original tariff.
 - c) Next, the dollar amounts of net tariffs at each collection service level that result from the two preceding adjustments will be multiplied by 85%.
 - d) The adjustment for Ancillary and Elective Service payments at each level of service will be made by multiplying the percentage of customers at each service level receiving compensable Ancillary and Elective Service by \$3.00, and subtracting that amount from the payment resulting from the three preceding adjustments.
- 3) The structure of per unit payments that results from these four steps will become the "Permanent Payment Structure" for Can, Toter, and Dumpster collection Service.

Section 408. True-up Procedure for Recalculating First Year Payments

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- 1) When the Permanent Payment Structure for Can, Toter, and Dumpster collection service has been calculated pursuant to Section 407 for the period April 1, 2001 through March 31, 2002 based on the empirically determined average weight per cubic yard identified according to the procedures in Section 404, the payments from the City to the Contractor for the first fifteen months of the Contract will be recalculated, based on the Permanent Payment Structure for Container Collection Service.
- 2) Any difference between the resulting calculated payment and the payments actually made for Can, Toter, and Dumpster collection service in the first fifteen months of the Contract will be applied to the twelve monthly payments to the Contractor from the City for the Contract period July 1, 2002 through June 30, 2003. If the adjustment is in the Contractor's favor, one-twelfth of the difference will be added to the City's payment each month; if the adjustment is in the City's favor, one-twelfth of the difference will be subtracted from the City's payment each month.

Section 410. Payment for Drop Box/Roll-off Collection (MSW or CDL)

The City will compensate the Contractor for drop box service at the payment rates shown in Attachment E. There will be no compensation for dismount services associated with drop boxes, other than the delivery and spotting fees specified in Attachment G. Each of these components of Drop Box payment will be adjusted annually according to the provisions of Section 470.

Section 412. Payment for Intermodal Service

The City will compensate the Contractor for Intermodal Service at the payment rates specified in Attachment G, as adjusted annually according to the provisions of Section 470.

Section 415. Payment for Street-Side Litter Can Collection

a. If the City exercises its option to add street side litter collection to the services covered under this contract, pursuant to Section 122, it will pay the Contractor:

- \$1.50 per pickup for all containers, whether employing replaceable bags or internal cans, and whether removable through the top or through a side panel.

b. The per-container payments for litter can collection in the initial year of the City's election of this optional service will be escalated from the amount defined in Section a) above by 100% of the change in the CPI-W from December 31, 2000 until the initiation of such service. Subsequently, the per container payments for litter can collection will be adjusted annually according to the CPI adjustment clause defined in Section 470 of this Contract.

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c. Any MSW collected by the Contractor from street-side litter cans will be included in the MSW tonnage upon which the percentage of tonnage guarantees are calculated, under the provisions of Section 130.

d. If the City exercises its option to add litter can collection to the services covered under this Contract, payment for such collection will be made on the same schedule as payments for other collection services covered under this contract.

Section 420. Can, Toter and Dumpster Rentals

The City will compensate the Contractor for Can, Toter and Dumpster rentals at the monthly per container rates shown in Attachment H, as adjusted annually according to the provisions of Section 470.

Section 422. Drop Box Rentals

The City will compensate the Contractor for Drop Box rentals at the monthly per container rates shown in Attachment I, as adjusted annually according to the provisions of Section 470.

Section 430. Payment for Collection in Secondary Service Area

a. The contractor will receive base payments for collection service to customers in its Secondary Service Area according to the payment structure in Sections 400 through 422.

b. In addition, the Contractor will be paid an amount equal to 50% of any premium above base service charges that are assessed by the City on retail customers in the Contractor's Secondary Service Area who select, or are designated by the City to receive service by the Contractor, rather than by their primary service provider, *provided, however*, that this additional compensation will only be paid to the Contractor for service to customers in the Secondary Service Area that are located more than 1/2 mile from the service boundary.

c. The Contractor must provide the City with billing statements that include service addresses and phone numbers for all secondary service customers as the basis for payment for service delivered in their secondary service territory.

d. In addition, the Contractor must notify the City on a monthly basis of any existing customers in their primary service territory who have requested service by the secondary service provider.

Section 435. Payment Adjustment for Primary/Secondary Rate Differentials

a. The City reserves the right to establish rates that will apply to customers receiving service from other than their primary service area provider.

b. For any such rate that exceeds the base rate for service by the primary provider by 15% or more, the Contractor will receive no additional compensation, beyond that defined in Section 430.

c. For any rate that is less than 115% of the base rate for that specific level of service, the City will compensate the Contractor by an additional amount equal to the number of percentage points by which the actual rate is less than 115% of the base rate for that service category, multiplied by the Contractor's total payment for service to customers receiving that level of service.

d. Any such payments will be calculated and paid monthly for the period for which the rate(s) fall short of the 115% threshold. If the rates fall short of the 115% threshold for more than one service category, the Contractor will be paid for each such rate, according to the formula defined above.

Section 440. Payment Adjustment for Revised Average Haul Times

The City reserves the right to direct the portion of Contractor waste described in Section 130b to any transfer station of its choosing. For purposes of this section, it will be assumed that the City will initially direct all MSW described in Section 130b to its South Recycling and Disposal Station (SRDS).

After the Contractor has established its collection routes in its primary collection area, an "initial average haul time" will be determined for those routes, from information obtained according to the procedure described in Subsection 440a below.

Whenever the City elects to direct portions of the waste collected under Section 130b of this Contract to transfer facilities other than SRDS, a "revised average haul time" will be calculated, according to the procedure described in Subsection 440b below.

Any resulting changes in the average haul time will be the basis for Contractor payment adjustments.

Contractor payment adjustments will be based on the following calculated cost impact formula:

Calculated cost impact payment
= \$60.00 per hour
* (revised average haul time), in hours
* total round trips per month

[The rate per hour will be adjusted annually by the CPI factor defined in Section 470.]

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For increases in average haul time, the Contractor will receive 100% of the calculated cost impact as a payment adjustment. For decreases in average haul time, the City will receive 75% of the calculated cost impact (in the form of reduced payments to the Contractor), and the Contractor will retain any remaining cost savings.

Trucks will only be directed to facilities that are open at the time the truck is full.

a. Calculation of Initial Average Haul Time

Based on the Contractor's initial collection routes in its primary collection area, a "departure point" will be defined for each route, representing the mid-point of the route. From each route's departure point, the City will determine haul times to City's SRDS facility (the "Base Facility"), and to other area transfer facilities.

The mechanism for estimating the route haul times will be the City of Seattle GIS model developed for residential route haul time calculations, modified to incorporate the new route location information identified for the commercial collection routes.

An "initial average haul time" will then be calculated by summing over all routes the product of 1) the round-trip haul time from each route's departure point to the Base Facility times 2) the route's number of transfer station trips, and then dividing by the Contractor's total number of route transfer-trips.

b. Calculation of Revised Average Haul Time

Whenever the City elects to direct a portion of the Contractor's collected waste to transfer station(s) other than the Base Facility, a "revised average haul time" will be calculated, as follows:

First, the number of route transfer-trips from which waste is to be delivered to any revised transfer facility destination will be determined as follows. If the City specifies geographic areas or numbers of routes, the number of route transfer-trips for that area or set of routes will apply. If instead, the City specifies numbers of tons, the corresponding number of route transfer-trips will be derived based on the average route transfer-trips per ton calculated from the Contractor's transfer weight slips from all routes.

Second, for any number of route transfer-trips the City directs to be delivered to an alternative transfer facility, it will be assumed for calculations that the Contractor will select routes that would produce the minimum total haul time. Based on these assumed route re-directions, revised haul times will be identified for each route, using the GIS model.

A "revised average haul time" will be calculated by summing all haul times - those associated with a new transfer facility and those unchanged - from each route's departure

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point to the appropriate facility, and dividing by the Contractor's total number of route transfer-trips.

Section 445. Compensation for Excess Cycle Time.

The Contractor will be compensated an additional amount for each Cycle Time (that occur at facilities other than the base facility) that is greater than 15 minutes. Compensation adjustments for excess Cycle Time will be calculated monthly. The additional amount that the Contractor will be compensated for excess Cycle Time will be determined based on Contractor's submittal of all relevant scale transaction receipts for the month in question.

Compensation for excess Cycle Time =

\$60.00 per hour

* the sum of total hours in excess of allowable cycle time.

Section 450. Mechanism for Establishing Base Payment for New Service Levels or Types of Service

- 1) The City retains the discretion to establish new service levels (e.g., $\frac{3}{4}$ yard dumpster) or types of service at any time during the Contract. The Base Payment for any new service level will be established as follows:
 - a) For a new service level (e.g., $\frac{3}{4}$ yard dumpster), payment to the Contractor shall be at the next highest level of service already established (e.g., 1 yard dumpster).
 - b) For a different type of service the per-unit payment shall be at the same rate as the most comparable existing service.

Section 460. Payment Adjustment for Total Cubic Yards Collected and Stops

Beginning in the second year of the contract, annual adjustments to the City's compensation payment will be made based on the sum of two product:

- ~~2.1.~~ (i) The percentage increase or decrease in the **total dumpster-yards** collected by the Contractor, times (ii) sixty-two percent (62%), times (iii) the **total formulaic dumpster revenues** of the Contractor in the first contract year.
2. (i) Ther percentage increase or decrease in the **total collection stops**, times (ii) fifteen percent (15%), times (iii) the **total formulaic dumpster revenues** of the Contractor in the first contract year.

~~4.3.~~

If the number of dumpster-yards has increased, the calculated payment adjustment will be from the Contractor to the City; if the number of dumpster-yards has decreased, the calculated payment adjustment will be from the City to the Contractor.

Annual payment adjustments calculated pursuant to this section will be paid or credited in twelve equal amounts over the succeeding year of the Contract.

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The attached "Dumpster Revenue Calculation Model" will be used as the basis for calculating these payment adjustments from the City to the Contractor, or from the Contractor to the City. **Total dumpster-yards** and **total formulaic dumpster revenues** will be defined as used in that model.

Section 470. Annual CPI Payment Adjustment

a. The CPI factor will be applied to Can, Toter, Dumpster, Drop Box and Intermodal Service payments, all A&E service, payments, rental fees, to all hourly rates; and to any other rate that is fixed at the beginning of the Contract, unless otherwise specified.

b. The per unit compensation payments from the City to the Contractor will be adjusted annually, with the first adjustment effective April 1, 2001. The annual adjustments will be based on a percentage of the change in the Seattle-Area CPI-W during the preceding calendar year.

c. For the initial adjustment on April 1, 2001, that percentage of the change in the CPI-W will be equal to 21.5% of the lesser of:

- 1) 55% plus four times the absolute value of the percentage change in the CPI-W during the preceding calendar year, or
- 2) 90%

d. For each subsequent adjustment, that percentage of the change in the CPI-W will be equal to 100% of the lesser of:

- 1) 55% plus four times the absolute value of the percentage change in the CPI-W over the preceding calendar year, or
- 2) 90%.

Section 480. Payment for Transition Services

The City will pay the Contractor \$400,000, payable in two equal installments on January 7, 2001 and July 7, 2001, to compensate the Contractor for costs associated with the transition from WUTC regulation to City contract. These payments will constitute the entire compensation for costs incurred by the Contractor for transitional activities, including, but not limited to, the costs of exchanging containers with the other company currently serving part of the City's commercial customers, changes to the Contractor's billing systems, and collection route redesign.

Section 490. Payment for MSW Transfer and Short Haul

a. For transfer and short-haul of the guaranteed tonnage defined in Section 130 to the

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long-haul transfer and disposal loading point designated by the City, the City will compensate the Contractor according to the payment schedule defined in Attachment J, Section A: "Guaranteed Share of Tonnage."

b. For transfer and short-haul by the Contractor of any additional commercial MSW tonnage described in Section 130 to the long-haul transfer and disposal loading point designated by the City, the City will compensate the Contractor according to the payment schedule defined in Attachment J, Section B: "Additional Tonnage."

c. The per-ton payments for tonnage transferred at the Contractor's 3rd & Lander facility will be adjusted annually according to the CPI adjustment terms defined in Attachment J.

d. The City's payments to the Contractor for transfer and short haul defined in this section will be made on a monthly basis.

F. CUSTOMER SERVICE, BILLING, CASH TRANSFERS

G. EQUAL OPPORTUNITY/ NON DISCRIMINATION

Section 600. Equal Employment Opportunity

a. 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 will 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, unless based upon a bona fide occupational qualification. Such action shall include, but not be limited to the following: employment, upgrading, promotion, 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.

b. The Contractor will, prior to commencement and during the term of this contract, furnish to the Executive Services Director (as used in this section, Director means the Executive Services Director 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.



c. 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 contracting authority shall be so notified in writing. The contracting authority shall give the Contractor an opportunity to be heard, after ten (10) days' notice. If the contracting authority concurs in the findings of the Director, it may suspend the 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.

d. 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.

Section 610. Equal Employment Opportunity – Implementation

a. The Contractor shall obtain in writing from each subcontractor or participant in a joint venture an agreement to comply with the terms of Equal Employment Opportunity set forth in Section 600.

b. The Contractor shall be responsible for the compliance of subcontractors or joint ventures. Appropriate sanctions for noncompliance will 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 ventures and reviewing this documentation to assure its validity and compliance. Contractor shall submit such documentation from subcontractors and joint ventures concurrently with the Contractor's own submittals.

Section 620. Non-Discriminatory Service

The Contractor shall not discriminate against any customer in the provision of service or quality of service on account 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 qualification to or for service. The Contractor shall provide comparable service throughout both the Primary and Secondary Service Areas without regard to racial, ethnic, or cultural characteristics or relative standard of living of the neighborhood.

H. SECURITY; LIABILITY; DAMAGES

Section 700. Performance Bond

The Contractor shall provide and maintain at all times a valid Contractor's Performance and Payment Bond for seven and one-half (7.5) percent of the estimated annual payment to the Contractor under the Contract. 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 the renewability of the current bond at least 90 calendar days before it expires.

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The initial performance bond must be in place on or before December 1, 2000.

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 be conditioned that such Contractor shall faithfully perform all of the provisions of this Contract and pay all laborers, mechanics, subcontractors, material men and all persons who shall supply such Contractor or subcontractors with provisions and supplies for the performance of this Contract, and shall be further conditioned that any person(s) performing such work or services, said bond shall contain appropriate recitations that it is issued pursuant to this Section of this Contract, that it shall be construed to meet all requirements specified herein and that any condition or limitation in such bond which is in conflict with the conditions and requirements of this Section is void. Such bond shall be submitted to, and subject to approval of the City Attorney's Office prior to its effective date.

Failure of the Contractor to furnish and maintain said Performance and Payment Bond shall be considered a material breach of this Contract and grounds of its immediate termination at the option of the City.

Section 710. Default of Contractor

This Section is independent, notwithstanding any other provisions of this Contract, except as provided in Section 820. The Contractor may be held in default of the Contract in the event the Contractor:

- 1) Fails to perform ninety percent (90%) of the collections required by this Contract and appears, to the City, to have abandoned the work, or to be unable to resume collections within forty-eight hours; or
- 2) Has failed on three or more occasions of three (3) working days duration each, in any year, or fifteen (15) days in a calendar year to perform the collections required by the Contract; or
- 3) Repeatedly neglects, fails, or refuses to comply with any of the material terms of the Contract, after having received notice of its obligation to do so.

To initiate proceedings under this Section, the City shall give notice to the Contractor and its surety of the location, time, and date within the following seven calendar days of a public hearing at which the Contractor may show cause why it should not be declared in default. In the event the Contractor fails to show, to the satisfaction of the City, why the Contractor should not be declared to be in default of this Contract, the City may make such declaration.

In declaring the Contractor to have defaulted on the Contract, the City also may order the Contractor to discontinue further performance of work under the Contract and transfer the obligation to perform such work from the Contractor to the surety on the Contractor's

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performance bond and take any other action it deems advisable.

Upon receipt of a notice that the work has been transferred to the surety without termination of the Contract, the surety shall take possession of all materials and equipment described in the most recent inventory submitted to the City pursuant to Section 240 hereof, for the purpose of completing the work under the Contract; employ, by contract or otherwise, any person and all persons needed to perform the work; and provide materials and equipment required therefor. Such employment shall not relieve the surety of its obligations under the Contract and the bond. If there is a transfer to the surety, payments shall be made to the surety or its agent for all work performed under the Contract subsequent to such transfer, in amounts equal to those that would have been made to the Contractor had it performed in the manner and to the extent of the surety's performance, and the Contractor shall have no claim upon the same.

In the event the surety on the Contractor's performance bond fails to assume or continue performances within 48 hours after its receipt of notice that the work has been transferred to such surety, the Contractor shall lease, sublease or otherwise license the City to use all, or whatever portion is desired by the City, of the materials and equipment described on the most recent inventory submitted to the City pursuant to Section 240 hereof, for collection [and processing] purposes for a period of up to six months following the date of the declaration of default by the City without requiring the City to execute any other document whatsoever to accomplish such lease, sublease, or license and without requiring the City to post any bond, pledge, deposit or other security for such equipment and materials, but upon the condition that the City pay for the equipment and materials actually used for such collection a market rental that is no greater than (i) the monthly lease, in the event such property is leased by the Contractor, (ii) the periodic installment, in the event such property is being acquired under a purchase contract, (iii) the periodic financing interest and principal, in the event such property is being acquired under a purchase contract, or (iv) the periodic interest and principal, in the event such property is being acquired under a financing arrangement; provided, that under no circumstances shall the City be liable during its use of such property for any arrearages, balloon payment, accrued interest, accelerated charges in the event of a default, or other extraordinary payment; nor shall the satisfaction thereof be a condition of the City's interim use of such property; provided, further, that such lease, sub-lease, or license shall be suspended the date the surety on the Contractor's bond or its agent accepts the transfer of work under the Contract.

In the event the City secures the performance of work under the Contract at a lesser cost than would have been payable to the Contractor had the Contractor performed the same, then the City shall retain such difference; but in the event such cost to the City is greater, the Contractor and its surety shall be liable for and pay the amount of such excess to the City.

All payments due the Contractor at the time of default, less amounts due the City from the Contractor, shall be applied by the City against damages suffered and expense incurred by the City be reason of such default, any excess shall be paid to the Contractor

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unless otherwise provided herein.

Section 720. Commitment of Equipment

Unless a replacement or substitute is provided, all vehicles, facilities, equipment and property identified in the Contractor's inventory under Section 240 for use in the performance of this Contract (called "such property") shall be available for use in collecting MSW and CDL for the duration of this Contract. When provided, this Section applies to the replacement and substitute.

From the date of the Contract and for its duration, any document (including a lease to or by the Contractor, financing contract, acquisition over time, mortgage, or other instrument establishing a security interest) that encumbers or limits the Contractor's interest in such property shall:

- 1) Allow the surety on the Contractor's performance bond to take over the Contractor's obligations and to continue the use of the equipment in service for performance of the Contract;
- 2) In event the Contractor is in default and the surety on the Contractor's performance bond fails to assume or continue performance within 48 hours after notice to do so, allow the City to use without further documentation all or a portion of such property, at the City's discretion, for a period of up to six months following the date of the City's declaration of default, to provide such collection services on the condition that the City pays to the City's lessor a market rental for the equipment or property actually used in an amount no greater than the monthly lease in event of a lease, the installment payment in event of a purchase contract, or the monthly interest and principal in event of a financing arrangement;
- 3) Exempt the City from liability during its usage of such property for arrearages, balloon payments, accrued interest, accelerated charges on account of a default, or other extraordinary payments, and not make satisfaction thereof a condition of the City's interim usage; and
- 4) Forbid any foreclosure, trustee's sale or other dispossession of the Contractor's interest in such property without giving both the City and surety on the Contractor's performance bond sixty days' prior notice, and then make any termination of the Contractor's interest in such property pursuant to such action or the enforcement thereof subject to the requirements of subSections 1), 2) and 3) of this Section.

To assure compliance with this Section, the Contractor shall submit to the City for its review and approval or disapproval prior to execution all material contracts, leases, or other documents for acquisition of, or encumbering or limiting the Contractor's interest

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in, such property or for replacements thereof and any proposed agreement that would encumber or transfer any interest of the Contractor in such property before the Contractor's execution of such agreement. The City's approval shall not be unreasonably withheld, and if the City does not respond within five business days, its approval shall be considered to have been given.

Section 730. Insurance

Contractor shall at all times during the term of this Contract, obtain and maintain continuously, at its own expense, and file with the City and the City's Risk Manager, evidence of a policy or policies of insurance as enumerated below:

- 1) A policy of **Commercial General Liability Insurance**, written on an insurance industry standard occurrence form (CG 00 01), including all the usual coverages known as:
 - Premises/Operations Liability
 - Products/Completed Operations
 - Personal/Advertising Injury
 - Contractual Liability
 - Independent Contractors Liability
 - Stop Gap/Employers Contingent Liability
 - Explosion, Collapse, or Underground (XCU)
 - Fire Damage

Such policy(ies) must provide the following minimum limit:

Bodily Injury and Property Damage -
\$ 2,000,000 General Aggregate
\$ 2,000,000 Products & Completed Operations Aggregate
\$ 1,000,000 Personal & Advertising Injury
\$ 1,000,000 Each Occurrence
\$ 100,000 Fire Damage

Stop Gap Employers Liability
\$ 1,000,000 Each Accident
\$ 1,000,000 Disease - Policy Limit
\$ 1,000,000 Disease - Each Employee

If a claims made policy is used, it must have an unaltered extended discovery period provision.

- 2) A policy of **Business Automobile Liability**, including coverage for owned, non-owned, leased or hired vehicles written on an insurance industry standard form (CA 00 01) or equivalent, and as specified by Insurance Services Office Symbol 1 (any auto), an MCS 90 endorsement and a CA 9948 endorsement attached if "pollutants" as defined in exclusion 11 of the commercial auto policy are to be transported.

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Such policy(ies) must provide the following minimum limit:

Bodily Injury and Property Damage -

\$ 1,000,000 per person
\$ 2,000,000 per occurrence

- 3) A policy of **Worker's Compensation**. As respects Workers' Compensation insurance in the State of Washington, the Contractor shall secure its liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington. If the Contractor is qualified as a self-insurer in accordance with Chapter 51.14 of the Revised Code of Washington, Contractor shall so certify by a letter signed by a corporate officer and setting forth the limits of any policy of excess insurance covering its employees. The Contractor further waives, with respect to the City only, its immunity under RCW Title 51, Industrial Insurance, of the Revised Code of Washington.

Any deductible or self-insured retention must be disclosed and is subject to approval by the City's Risk Manager. The cost of any claim payments falling within the deductible shall be the responsibility of the Contractor.

If any such policy is written on a claim made form, the retroactive date shall be prior to or coincident with the effective date of this contract. The policy shall state that coverage is Claims Made, and state the retroactive date. Claims made form coverage shall be maintained by Contractor for a minimum of two years following the expiration or earlier termination of this contract, and Contractor shall annually provide the City with proof of renewal. If renewal of the claims made form of coverage becomes unavailable, or economically prohibitive, Contractor shall purchase an extended reporting period ("tail") or execute another form of guarantee acceptable to the City to assure financial responsibility for liability for services performed.

- 4) **Additional Insured and Primary Insurance Provisions:** Such insurance, as provided under items (1), (2), above, shall be endorsed to include the City of Seattle, its officers, elected officials, employees, agents and volunteers as additional insured, and shall not be reduced or canceled without forty-five (45) days prior written notice to the City. In addition, Contractor's insurance shall be primary as respects the City, and any other insurance maintained by the City shall be excess and not contributing insurance with the Contractor's insurance.
- 5) **Evidence of Insurance:** The following documents must be provided as evidence of insurance coverage:
- A copy of the policy's declarations pages, showing the Insuring Company, policy effective dates, limits of liability and the Schedule of Forms and Endorsements.

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- A copy of the endorsement naming The City of Seattle as an Additional Insured, showing the policy number, and signed by an authorized representative of the insurance company for Business Auto Liability, and for the Commercial General Liability policy a Form CG2010 (ISO) or equivalent.
 - A copy of the "Endorsements Form List" to the policy or policies showing endorsements issued on the policy, and including any company-specific or manuscript endorsements.
 - A copy of an endorsement stating that the coverages provided by this policy to the City, or any other named insured shall not be terminated, reduced or otherwise materially changed without providing at least forty-five (45) days prior written notice to the City of Seattle.
 - A copy of A "Separation of Insureds" or "Severability of Interests" clause, indicating essentially that - except with respect to the limits of insurance, and any rights or duties specifically assigned to the first named insured, this insurance applies as if each named insured were the only named insured, and separately to each insured against whom claim is made or suit is brought (Commercial General Liability & Business Automobile Liability Insurance).
- 6) **Policy Rating:** All policies shall be subject to approval by the City's Risk Manager as to company (must be rated A-:VII or higher in the A.M. Best's Key Rating Guide and licensed to do business in the State of Washington or issued as a surplus line by a Washington Surplus lines broker), form and coverage, and primary to all other insurance.
- 7) **Self-Insurance:** Should Contractor be self-insured, under item (1), (2) and (3) above, a letter from the Corporate Risk Manager, or appropriate Finance Officer, is acceptable - stipulating if actuarially funded and fund limits; plus any excess declaration pages to meet the contract requirements. Further, this letter should advise how Contractor would protect and defend the City of Seattle as an Additional Insured in their Self-Insured layer, and include claims handling directions in the event of a claim.
- 8) **Subcontractors** - Contractor shall include all subcontractors as insureds under its policies or shall furnish separate evidence of insurance as stated above for each subcontractor. All coverages for subcontractors shall be subject to all the requirements stated herein and applicable to their profession.

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Section 740. Indemnity

The Contractor shall defend, indemnify and save harmless The City of Seattle and the City's officers, employees and agents from any and every claim and risk, and from all losses, damages, demands, suits, judgments and attorney fees, and other expenses of any kind (collectively "losses"), 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, whether tangible or intangible, including loss of use resulting therefrom, in connection with or related to the work performed under this Contract, or in connection with or related to (in whole or in part by reason of) the presence of the Contractor or its subcontractors, or their property, employees or agents, upon or in proximity to the property of The City of Seattle, or any other property (upon which the Contractor is performing any work called for), except only those losses resulting from the negligence or willful misconduct of The City of Seattle or the City's officers, employees or agents.

For purposes of the Contractor's obligations under this Section 740, the Contractor hereby waives its immunity under industrial insurance, Title 51 RCW. The Contractor agrees that this waiver was specifically and mutually negotiated by the City and the Contractor.

Section 750. Liquidated Damages The acts or omissions in the left hand column are a breach of this Contract; the relief for which shall be the amounts in the right hand column that are set as Liquidated Damages. Liquidated Damages may be deducted from the monthly payment to the Contractor.

<u>OMISSION</u>	<u>LIQUIDATED DAMAGE</u>
1. Failure to collect spillage consistent with the provisions of Section 240.	\$10 per incident
2. Failure to collect missed Garbage within one business day (including Saturday) after a make-up request is given to the Contractor.	\$25 each incident to a maximum of \$250 per truck per day for Garbage Can, \$50 each incident per Detachable Container
3. Failure to provide for new on-going service of Detachable Containers and Drop Boxes within five (5) business days of a request; provided, however, this shall not apply to seasonal temporary requests	\$50 per Container per day
4. Failure to deliver Detachable Containers to replace those needing repair or replacement within five (5) business days of a request.	\$25 per Container per day



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| 5. Failure to provide additional Detachable Containers or Toter, provide proper Containers or increase collection frequency within ten (10) business days of a request. | \$25 per Container per day |
| 6. Failure to deliver or replace 32, 64 and 96 gallon Garbage Cans for any reason within five (5) business days of a request. | \$25 per Container per day |
| 7. In addition to progressive discipline in Section 215, unsatisfactory performance of collector after two (2) notices to Contractor to correct specific incidences involving the same address or collector in any six (6) month period, e.g. leaving gates or doors open, abusive language to customers, failure to return Containers to their original location after collection, failure to perform collections, or similar violations. | \$200 each incident |

In addition to the above damages, the Contractor shall not be paid for work not performed.

H. ANCILLARY PROVISIONS

Section 800. Independent Contractor

The Contractor shall perform all work under this Contract as an independent contractor. 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.

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 810. Assignment; Subcontracting; Assignment of Duties

The Contractor shall not assign or subcontract or transfer any of the work or delegate any of its duties under the Contract without the prior written approval of the City, which shall not be unreasonably withheld.

In the event of an assignment, subcontract or delegation of duties, the Contractor shall

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remain responsible for the full and faithful performance of this Contract and the assignee, subcontractor, other obligor shall also become responsible to the City for the satisfactory performance of the work assumed. The City may condition its approval upon the delivery by the assignee, subcontractor or other obligor of its covenant to the City to fully and faithfully complete the work or responsibility undertaken.

Section 815. Access and Audit

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

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.

The City may require an audit of such books and records at any reasonable time. Such audit will be conducted by one of the following firms:

Deloitte & Touche
Arthur Andersen & Co.
Ernst and Young

KPMG Peat Marwick
Price Waterhouse Coopers

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.

Audit information will be kept confidential, except as disclosure may be required by public disclosure laws.

Section 820. Uncontrollable Events

The Contractor is not responsible for performance where an event beyond its reasonable control prevents performance of this Contract. Such events include: riots, wars, civil disturbances, insurrections, acts of terrorism, epidemics, landslides, volcanic eruptions, earthquakes, lightning, floods, inclement weather as provided in Section C-210 of Attachment C, explosions, fires, condemnation, labor strikes at facilities other than the Contractor's, lockouts by third parties, secondary boycotts, judicial injunctions or restraining orders and federal, state and local government orders that are not subject to reasonable cure by the Contractor. Such events do not include general economic conditions. 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.

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Uncontrollable Events which result in a permanent, detrimental change in circumstance for the Contractor or for the City may be the subject of a request for relief under Section 830.

Section 825. Change of Law

Changes of federal, state or local laws, such as tax law changes, that affect businesses or municipalities generally shall be to the benefit or detriment of the Contractor or City respectively, without having any effect on the terms of or responsibilities under the Contract.

Changes in law that specifically affect the collection of MSW or CDL and which result in a detrimental change in circumstance for the Contractor or for the City may be the subject of a request for relief under Section 830.

Section 830. Request for Relief and Dispute Resolution

Either party may invoke a request for relief under Sections 820 and 825 in the following manner:

- a. Initial Notice. The party seeking relief shall do so by providing written notice to the other party within fifteen (15) days following the occurrence of the circumstance for which relief is sought.
- b. Follow-up Notice. Within thirty (30) days following the initial notice, the party seeking relief will provide another written notice that sets forth more specifically the reasons for the request and the relief being sought.
- c. Response. The other party will then have thirty (30) days from the follow-up notice to respond.
- d. Good Faith Discussion. The parties will then meet in a good faith attempt to resolve any disagreements.
- e. Arbitration. Should the parties fail to resolve their disagreements regarding the requested relief within thirty (30) days from the date of the response to the request, the matter will be taken to binding arbitration.
- f. Arbitration Rules. [Discussion]

If either party remains dissatisfied following the issuance of the arbitrator's decision, that party may provide written notice to the other party of its intent to terminate the Contract within ninety (90) days of the arbitrator's ruling, provided, however, that if the City initiates the request for relief it shall not have any right of termination. The party receiving the notice of intent to terminate shall then have ninety (90) days to:

- a. Rescind the original request for relief, whereupon the notice of termination shall be automatically cancelled; or
- b. Otherwise resolve the issues related to the original request for relief, whereupon the party desiring termination shall withdraw the notice of intent to terminate upon reaching a satisfactory resolution of the disputed issues; or
- c. Take no action and allow the termination to occur in accordance with the notice.



A notice of intent to terminate the Contract under this Section shall be effective on the termination date stated in the notice, provided the following preconditions are met:

- a. City Termination. For termination by the City, termination may occur no sooner than three (3) years from the date of the notice.
- b. Contractor Termination. For termination by the Contractor, termination may occur no sooner than eighteen (18) months following the date of the notice.

Section 835. Violation of Antitrust or Corrupt Practice Laws

In the event the Contractor is found to be guilty of a violation of antitrust or corrupt practice laws for acts performed in Washington 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 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, the Contractor shall be considered to be "guilty" of a violation of such antitrust or corrupt practice laws if the Contractor or any of its officers or management employees: (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.

Section 840. Contract Rights

The parties reserve the right to amend this Contract from time to time by mutual agreement in writing.

Rights under this Contract are cumulative, and in addition to rights existing at common law.

Payment by the City and performance by the Contractor do not waive their 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 another occasion. The use of one remedy does not exclude or waive the right to use another.

Section 845. Approvals

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

Section 850. Entire Contract

This Contract shall be interpreted as a whole and to carry out its purposes. This Contract

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is an integrated document and contains all the promises of the parties; no earlier oral understandings modify its provisions.

Section 855. Captions

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

Section 860. 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 claims, litigation, or causes of action between the parties shall be in the Superior Court of the State of Washington for King County.

Section 865. Notices

All official notices or approvals shall be in writing. Unless otherwise directed, notices shall be delivered by messenger, by certified or registered mail, return receipt requested, or by fax to the parties at the following respective addresses:

To the City: The City of Seattle
Seattle Public Utilities
505 Dexter Horton Building
710 - 2nd Avenue
Seattle, Washington 98104
Phone: (206) 684-7666
Fax: (206) 386-0096

To the Contractor:

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 870. Severability

Should any term, provision, condition, or other portion of this Contract or its application be held to be inoperative, invalid or unenforceable, and the remainder of the Contract still fulfills its purposes, the remainder of this Contract or its application in other circumstances shall not be affected thereby and shall continue in force and effect.

Section 890. Effect of Subsequent Commercial Collection Contract

The City is also negotiating with another commercial collection company for the collection of Commercial Waste. In the event the City contracts the other collection company on material terms and conditions that are different or better than those contained

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in this Contract, the City agrees that the Contractor may elect to substitute those terms and conditions.

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12/08/00

Waste Management Draft 5a

**CONTRACT BETWEEN THE CITY OF SEATTLE
AND WASTE MANAGEMENT OF WASHINGTON, INC.
dba WASTE MANAGEMENT OF SEATTLE
FOR THE COLLECTION OF COMMERCIAL WASTE**

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**CONTRACT BETWEEN THE CITY OF SEATTLE
AND WASTE MANAGEMENT OF WASHINGTON, INC.
dba WASTE MANAGEMENT OF SEATTLE
FOR THE COLLECTION OF COMMERCIAL WASTE**

THIS CONTRACT is entered into by and between THE CITY OF SEATTLE, a municipal corporation of the State of Washington (City) and WASTE MANAGEMENT OF WASHINGTON, INC. dba WASTE MANAGEMENT OF SEATTLE, (Contractor) for the purpose of collecting Commercial Waste.

A. GENERAL PROVISIONS

Section 1 Purpose and Intent of Contract

The purpose of this Contract is to provide for the collection of Commercial Waste by the City through this Contract with Contractor, and through a similar contract with another commercial collection company. The City intends for the Contractor and the other commercial collection company to be the only providers of Commercial Waste Collection services in the City. Contractor shall collect MSW from Commercial Establishments in a Primary Collection Area defined below in Section 100, and, when requested by the City, in a Secondary Collection Area defined below in Section 105.

Section 10 Length of Contract

The Contract shall be for a term of 7 years beginning on April 1, 2001, and ending at midnight on March 31, 2008.

The City shall have the unilateral right to extend the Contract for two one-year periods. The City may exercise this option all at once or in one-year or two-year increments. If the City decides to exercise its option to extend, it shall provide Contractor with written notice of such extension at least two (2) years in advance of the end of the initial term of the Contract and, thereafter, upon written notice at least six (6) months in advance of the end of the then existing Contract period.

Section 20 Commencement Date; Transition

The Contract shall commence on April 1, 2001.

There will be a 3 (three)-month transition period between April 1, 2001 and June 30, 2001, during which customer accounts in the Primary and Secondary Collection Areas shall be sorted out with the other contractor, and during which the respective containers shall be switched or exchanged, in accordance with Section 205.

Section 30 Definitions

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A&E Services means ancillary and elective services associated with collection, as set forth in Attachment E.

Bulky Waste means cartons, boxes, crates, etc., or other MSW materials set out for disposal as overflow to a customer's regular Can, Cart or Detachable collection service.

Can means a watertight, galvanized, sheet metal or plastic container not exceeding 32 gallons in capacity, fitted with at least one sturdy handle and a tight cover equipped with a handle, except in the case of sunken cans, such Can to be rodent and insect proof and to be kept in a sanitary condition at all times. Alternate containers such as bags, boxes and bundles may be used in place of Cans for materials in excess of the customer's primary container. A Can or alternate container shall not exceed 60 pounds for each 32 gallons of nominal capacity.

Can-Unit Pickup means a pickup of a group of Cans made of durable corrosion-resistant, nonabsorbent material, watertight, with a close-fitting cover and two handles. Size to exceed twenty gallons, but not to exceed thirty-two gallons or four cubic feet.

Cart (also at times referred to as "toter" or "wheeled container") means (Not Code) a plastic container, not greater than one-half (1/2) cubic yard in capacity and equipped with wheels, handles and a tight-fitting cover. Wheeled Containers means containers capable of being mechanically unloaded into the Contractor's collection vehicles.

City means the City of Seattle.

Commercial Establishment means any non-Residential location from which the Solid Waste is collected by the Contractor, and includes the non-residential portion of Mixed Use Buildings.

Commercial Waste means MSW and CDL collected from Commercial Establishments within the City.

Compacted Material means material which has been compressed by any mechanical device either before or after it is placed in the receptacle handled by the collector.

Compactor Disconnect/Reconnect Cycle means the service of disconnecting a compactor from a Drop Box or Container prior to taking it to be dumped and then reconnecting the compactor when the Drop Box or Container is returned to the customer's site.

Compostable Waste means any organic waste materials that are source separated for processing or composting, such as Yard Waste and Food Waste.

Container Collection means collection of Commercial Waste from Cans, Carts, and Detachable Containers.

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

"Construction Waste" means 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.

"Demolition Waste" means 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. Demolition Waste does not include Special Waste.

"Landclearing Waste" means 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.

Contractor means Waste Management of Washington, Inc., dba Waste Management of Seattle, a Washington corporation.

CPI-W means the Consumer Price Index computed by the United States Department of Labor, Bureau of Labor Statistics, for the Seattle-Everett Metropolitan Area for Urban Wage Earners and Clerical Workers (CPI-W), or successor indices, covering the period January through December of each year.

Cycle Time is the elapsed time from time of arrival to time of departure from a Disposal Facility. Cycle Time does not include time spent removing and replacing tarps, setting off cans of compactors and rotating them for dumping, securing tailgates, washing containers, using the restroom or phone, and other similar items.

Detachable Container (also at times referred to as "dumpster") means a watertight, all-metal container, not less than one-half (1/2) cubic yard in capacity and equipped with a tight-fitting metal or other City-approved cover. The term shall also apply to containers of other material of similar size when approved by Seattle Public Utilities. Containers two (2) cubic yards and under shall be equipped with at least three (3) wheels. Detachable Containers means containers capable of being mechanically unloaded into the Contractor's collection vehicles.

Disposal Facility means both Public Transfer Stations owned by the City, and Private Transfer Stations at which the MSW shall be compacted and transferred in long haul containers to the long-haul transfer and disposal loading point designated by the City, or, as to CDL, a facility meeting the criteria of section 135.

Drop Box (also at times referred to as "rolloff" or "lugger" or "dino") means a metal container, with 3-40-cubic-yard-capacity capable of being mechanically loaded onto a collection vehicle for transport to a Disposal Facility.

Dumpster means the same as "Detachable Container."

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Initial Average Haul Time means the calculated average round-trip travel time from the Contractor's collection routes to the City's South Recycling and Disposal Center, calculated based on the Contractor's defined routes and the City's GIS trip time calculation model.

Mixed Use Building means a building with both residential and commercial solid waste with common garbage chute(s), and/or the residential and commercial solid waste generated in such building cannot be readily separated.

MSW means Solid Waste excluding Special Wastes, Unacceptable Wastes, Recyclable Materials, Compostable Wastes and CDL.

Overloaded means a Toter or Container whose contents exceed one foot above the top of the Toter or Container.

Permanent Service means service provided for a period of more than ninety days.

Primary Collection Area means that area of the City as shown on Attachment A within which the Contractor shall be the exclusive provider of MSW collection services under this Contract, except in special cases where individual customers have requested, and been granted by the City, the right to receive such services by the City's other commercial MSW collection contractor.

Private Transfer Stations means the transfer station owned and operated by Waste Management of Seattle at 7155 West Marginal Way S.W., the transfer station owned and operated by Rabanco at 3rd Avenue South and Lander Street, 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.

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.

Rate means the charges assessed to customers for Commercial Waste collection services provided by Contractor under this Contract.

Recyclable Materials means those Solid Wastes that are source separated for recycling or reuse, such as papers, metals and glass, that are identified as recyclable material pursuant to the City's Comprehensive Solid Waste Plan, and that are intended for recycling by the customer and delivered to a recycling facility.

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.

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Residence or Residential means any house, dwelling, multiunit residence, apartment house, trailer court or any building put to residential use. The term does not include Mixed Use Buildings

Revised Average Haul Time means the calculated annual average round-trip time from the Contractor's collection routes to the combination of Disposal Facilities selected by the City for all MSW for which the City has transfer site discretion under this Contract, calculated based on the Contractor's defined routes and the City's GIS trip time calculation model.

Roll-off Collection means the collection of Commercial Waste by means of a Drop Box.

Secondary Collection Area means that area of the City as shown in Attachment A within which the City's other commercial MSW collection contractor is the designated primary MSW collection service provider, and in which the Contractor may provide such services only to individual customers who have requested, and been granted by the City, the right to receive such services from the Contractor.

Solid Waste means all putrescible and nonputrescible solid and semisolid wastes, including but not limited to garbage, rubbish, yard waste, ashes, industrial wastes, infectious wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof. The term includes all liquid, solid and semisolid materials, which are not the primary products of public, private, industrial, commercial, mining and agricultural operations. Solid Waste includes, but is not limited to sludge from wastewater treatment plants, seepage from septic tanks, wood waste, dangerous waste, and problem wastes, as well as other materials and substances that may in the future be included in the definition of "solid waste" in RCW 70.95.030. Solid Waste does not include Recyclable Materials (including Compostable Waste) collected from Commercial Establishments.

Special Pickup means a pickup requested by the customer at a time other than the regularly scheduled pickup time, but which does not involve the dispatch of a truck. If a special dispatch is required, time rates as shown in Attachment E will apply.

Special Waste means contaminated soils, asbestos and other waste specified by Washington Waste Systems in the Special Waste Management Plan included in the Operations Plan as requiring special handling or disposal procedures.

Street Side Litter Collection means

Temporary Service means service that is required for a period of ninety days or less in conjunction with Containers or Drop Boxes. Temporary Service and its associated rates are not to be used for the first ninety days of service when the customer requests, and the Contractor provides, service for more than ninety days.

Toter means the same as "Cart."



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Unacceptable Waste means all waste not authorized for disposal at the Columbia Ridge Landfill and Recycling Center or successor site designated by the City, 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.

WUTC means the Washington Utilities and Transportation Commission of the State of Washington.

Yard Waste means plant material (leaves, grass clippings, branches, brush, flowers, roots, wood waste, etc.); debris commonly thrown away in the course of maintaining yards and gardens, including sod and rocks not over four (4) inches in diameter; and biodegradable waste approved for the yard waste programs by the Director. It excludes loose soils, food waste; plastics and synthetic fibers; lumber; any wood or tree limbs over four (4) inches in diameter; human or animal excrement; and soil contaminated with hazardous substances.

Section 40 City Responsibilities

The City shall be responsible for:

- a. Establishing service levels and Rates to be charged customers;
- b. Transmitting and updating Commercial Waste customer lists to Contractor in the Secondary Collection Area;
- c. Directing Commercial Waste to Disposal Facilities in accordance with the terms of this Contract;
- d. Paying all transfer fees for Commercial Waste delivered by Contractor to the specified Disposal Facilities pursuant to the terms of Section 490;
- e. Disposing of the Commercial Waste delivered to the specified Disposal Facilities, except for CDL directed to a Disposal Facility by the Contractor pursuant to Section 135.;
- f. Approving tip fees and environmental acceptability of CDL Disposal Facilities proposed by the Contractor, or in the alternative directing CDL to a disposal facility;
- g. Initiating Street Side Litter Collection pursuant to Section 122;
- h. Assuming bad debts of customers related to billings for City collection services;
- i. Paying compensation to the Contractor for its collection services pursuant to this Contract;
- j. Paying and remitting applicable taxes which are imposed by a taxing authority directly on Commercial MSW customers to the proper taxing authority;
- k. Taking enforcement action, as necessary, against unauthorized collection of Commercial Waste.

Section 50 City Representations and Warranties

The City represents and warrants to Contractor as follows:



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a. Organization and Qualification

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

b. Authority

1. 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.
2. This Contract has been validly executed and constitutes a valid and legally binding and enforceable obligation of the City.

Section 60 Contractor Responsibilities

Contractor shall be responsible for:

- a. Furnishing all skill, labor, equipment, material, supplies and utility services required for providing all services in accordance with this Contract;
- b. Performing all work in a timely, thorough and professional manner;
- c. Delivering all Commercial Waste to a Disposal Facility in accordance with this Contract;
- d. Assisting Commercial Waste customers with service issues
- e. Billing customers for City collection services in accordance with Rates established by the City;
- f. Acting as agent for the City for taxes imposed on Commercial MSW customers, and on rental, collection, and A&E Services for CDL customers, by billing for Rates established by the City, which include taxes, and by forwarding those payments, including taxes, to the City for payment by the City of taxes to the appropriate taxing authority;
- g. In addition to paying appropriate taxes on services not compensated by the City, remitting B&O taxes levied against the Contractor, on the basis of compensation paid to the Contractor by the City, to the appropriate taxing authority;
- h. Transferring customer payments for City collection services (including MSW rental, collection, A&E Services and disposal payments, and CDL rental, collection, and A&E Services, and taxes thereon; but excluding CDL disposal and taxes thereon, and excluding Contractor provided recycling services, and taxes thereon) to the City in accordance with this Contract;
- i. Complying with all applicable laws and regulations.

Section 70 Contractor's Representations and Warranties

The Contractor represents and warrants to the City as follows:

a. Organization and Qualification

1. 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



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1. 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.
2. This Contract has been validly executed by an authorized representative of the Contractor and constitutes a valid and legally binding and enforceable obligation of Contractor.

Section 80 Contractor's Waiver

Contractor hereby relinquishes and waives any and all claims against the City or rights it may have versus the City with regard to its certificate from the Washington Utilities and Transportation Commission to collect Commercial Waste in the City, except to the extent collection of such Commercial Waste is expressly excluded from this Contract. Contractor also waives any and all claims to compensation from the City based on a claim of taking or any other claim or circumstance related to the Contractor entering into this Contract, or to the City's continued regulation of, and contracting for, the collection of Commercial Waste in the City after the life of this Contract, apart from the payment provisions of the Contract itself. *Provided, however,* the Contractor reserves its option to reactivate its certificate from the WUTC to collect Commercial Waste in the City, should the City later cease to assert its control over the collection of Commercial Waste.

Section 90 Control of Waste

Pursuant to its authority under Washington State law, the City by this Contract authorizes the Contractor to act as its agent for the collection and delivery of Commercial Waste from Commercial Establishments in the City, or any other agreed upon location, to Disposal Facilities as directed by the City. The City's rights of ownership and control over the Commercial Waste collected under this Contract vest upon the collection of the Commercial Waste; provided, however, that the original owner has the right of recovery to any valuable items inadvertently discarded that can be reasonably retrieved prior to final disposal.

B. COLLECTION SERVICES

Section 100 Primary Collection Area For MSW Collection

- a. The City shall be divided into a Primary and a Secondary Collection Area for Commercial MSW collection along the following line: Royal Brougham to 4th Avenue to Dearborn, Dearborn to I-5, I-5 to Jackson, Jackson to Lake Washington. Attachment A provides a map of the City showing this dividing line. Contractor shall have the area south of this line as its Primary Collection Area for Commercial MSW collection, including service to Terminal 37.
- b. Unless a customer in the Primary Collection Area specifically requests to be a Secondary Collection Area customer for service by the City's other Commercial MSW collection contractor and the request is approved by the City, or is otherwise designated as a Secondary Collection Area customer by the City, all Commercial MSW customers in the Contractor's Primary Collection Area shall receive collection services from the Contractor. All requests by a customer in this area to become a

Secondary Collection Area customer for collection by the City's other Commercial MSW collection contractor must be referred to and approved by the City, and the Contractor shall notify the City within 24 hours of receiving any request by a customer in the Primary Collection Area for service by the City's other Commercial MSW collection contractor. The Contractor shall be the exclusive provider of Primary Collection Area Commercial MSW collection services for this Primary Collection Area, provided that each customer shall continue to be permitted to self-haul its own MSW.

Section 105 Secondary Collection Area For MSW Collection

- a. The area north of the dividing line described in Section 100 and shown on Attachment A shall be the Contractor's Secondary Collection Area for Commercial MSW collection.
- b. Unless a customer in this area specifically requests to become a customer of the Contractor and the request is approved by the City, or the City otherwise designates a customer in this area as a customer of the Contractor, the Contractor shall not provide Commercial MSW collection services authorized by this Contract to customers located in the Secondary Collection Area.
- c. In addition, the Contractor shall not solicit or otherwise encourage Commercial MSW customers in the Secondary Collection Area, not excluded from the scope of this Contract, to become MSW customers of the Contractor, and shall be subject to Liquidated Damages in accordance with Section 750 if found by the City to be violating this obligation.
- d. It is expected that MSW customers at Commercial Establishments may themselves initiate requests to the Contractor to become a Secondary Collection Area customer, but all requests by a customer in the Secondary Collection Area to become a MSW customer of the Contractor, including requests that apply to initial service under this Contract, must be referred to and approved by the City, and the Contractor shall notify the City within 24 hours of receiving any request by a customer in the Secondary Collection Area for service by the Contractor.
- e. Contractor may use residential collection vehicles providing service to the City under the "Solid Waste Collection Contract Between the City of Seattle and Washington Waste Hauling & Recycling, Inc.," to collect Commercial MSW from the Secondary Collection Area, *provided* that the weight of any Commercial MSW collected by residential vehicles shall be excluded from the "Tonnage Adjustment Factor" in Section 720 of the residential collection contract.
- f. The Contractor may schedule collection for Commercial MSW customers in the Secondary Collection Area in a manner that is most efficient for the Contractor, while at the same time providing the overall level of service required by the customer. Any disputes that arise between the Contractor and the customer shall be resolved pursuant to Section 127.

Section 110 Excluded Contracts

The Contract does not necessarily include service to federal facilities, the Seattle Housing Authority, Seattle Pacific University, the Seattle School District and the University of Washington. These entities, however, may elect, at any time during the term of this Contract, to receive collection services from the City under this Contract and the Contractor agrees that upon request by the City, those collection services shall be governed by this Contract as long as such request remains in effect. Where no such request is made by the City, the Contractor shall be free to solicit and contract for collection services to such excluded facilities independent of this Contract.

Section 115 Excluded Services

- a. The Contract does not include collection or processing of Recyclable Materials, nor does it include collection or disposal of Special Waste or Unacceptable Waste.
- b. This Contract is not intended to impose substantive standards affecting the price, route or service of "property" as that term is defined by federal laws. In the event a court decision is issued or legislation enacted which the parties in writing have agreed affects the legal definition of "property" and, as a result, limits the City's ability to enforce the provisions of Section 1 of this Contract, the Contractor may provide collection services as to that "property" as a service excluded from this Contract. The Contractor, however, shall continue to provide Commercial Waste collection services in all other respects pursuant to this Contract.

Section 120 Commercial Waste Collection

- a. The Contractor shall provide MSW collection services to all Commercial Waste customers at Commercial Establishments who request such service in the Contractor's Primary Collection Area (and in the Contractor's Secondary Collection Area when directed to do so by the City pursuant to Section 105).
- b. Commercial MSW Container Collection services shall be provided at any service level then in effect under the City's codified service levels, so long as the requested service level can reasonably be accommodated at the customer's premise. Any Cart or Detachable Container may be owned by the customer as long as it is in good and serviceable shape and is compatible with Contractor's equipment; except as so provided by the customer, all Carts and Detachable Containers shall be owned and provided by Contractor.
- c. CDL collection and disposal services shall be provided City-wide to customers that request such service. CDL services may also be provided City-wide by the City's other Commercial MSW collection contractor.
- d. Roll-off MSW or CDL collection services shall be provided to customers requesting such service so long as the requested service can reasonably be accommodated at the customer's premise. The Drop Box may be owned by the customer as long as it is in good and serviceable shape and is compatible with Contractor's equipment; except as so provided by the customer, all Drop Boxes shall be owned and provided by



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Contractor, for which the Contractor may charge the customer a Drop Box security deposit.

- e. The Contractor shall make every reasonable effort to accommodate a customer's request for service and to provide customers with the level and type of service which is most convenient and economical to the MSW or CDL customer.

Section 122 Street Side Litter Collection

- a. The City shall have the option to add Monday - Friday collection of City-owned and maintained street side litter containers in the Contractor's Primary Collection Area to the services provided by the Contractor, beginning no sooner January 1, 2002. The number of City-owned and maintained street side litter containers included in the program may change at any time during the Contract.
- b. The City shall have the option of requiring Saturday or Sunday collection of street side litter containers on special request related to a neighborhood or other special event. For any such Saturday or Sunday collection, the City shall pay the Contractor twice the payment amount established in Section 415 for each container collected.
- c. The City shall provide at least six months' written notice to the Contractor prior the start of street side litter collection service by the Contractor.

Section 123 Public Place Recycling Collection

- a. Upon request from the City, the Contractor agrees to negotiate terms and conditions for collection of Recyclable Materials from City-owned recycling containers located in public places in a manner similar, but not identical, to Street Side Litter Collection provided in Section 122.
- b. Public place recycling collection shall not be requested by the City prior to January 1, 2002, nor shall such collection be requested by the City without giving the Contractor six month's written notice after specific terms and conditions for providing this service have been agreed upon by the Contractor and the City.

Section 124 Pilot Programs

The City may wish to test and/or implement one or more new developments in waste stream segregation, materials processing, or collection technology at some point during the term of the Contract. The City will notify the Contractor in writing at least ninety days in advance of the implementation of a pilot program to be performed in one or more collection routes or of its plans to utilize a new technology system on a citywide basis. The costs (or savings) accrued by City-initiated pilot programs will be negotiated prior to implementation, and payments to the Contractor shall be adjusted accordingly. Contractor-initiated pilot programs will require written notification, and approval on the part of the City. Unless otherwise agreed in writing, Contractor-initiated pilot programs will be performed at no additional cost to the City or the Contractor's customers.

Section 125 A&E Services

The Contractor shall provide A&E Services in accordance with the A&E Services then in

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effect under the City's codified service levels. The Contractor shall make every reasonable effort to provide customers with the level and type of A&E Services which are most convenient and economical to the customer.

Section 127 Resolution of Availability of Service Disputes

Any disagreement between a customer and Contractor regarding the services which can reasonably be accommodated at the customer's site shall be resolved by Seattle Public Utilities, including availability of collection and A&E Services, container placement, level of service or any other issue related to collection services. The City shall attempt to mediate and, if necessary, decide the issues, taking into consideration safety of the customer and the Contractor as well as the convenience of the customer and the efficient operation of the Contractor.

Section 130 MSW Transfer/Disposal

- a. For the first seven years of the Contract, the City will, at the Contractor's option, direct to the Contractor's Eastmont Transfer Station no less than the greater of the following guaranteed quantities, measured in amount of tons or percentage shares of tonnage of MSW collected by the Contractor under this Contract:

Contract Year	Guaranteed Tons Delivered to Eastmont	Guaranteed Share of Tons Delivered to Eastmont
1	67,500	90%
2	63,750	85%
3	60,000	80%
4	56,250	75%
5	52,500	70%
6	48,750	65%
7	45,000	60%

The Contractor may elect to receive all or a portion of its guaranteed amounts, provided that the Contractor gives the City at least three month's written notification before any change in the tonnage share or tonnage percentage amount it elects to receive.

- b. The City retains sole discretion for directing any remaining MSW collected under this Contract to transfer station(s) of its choice.
- c. In addition to the guaranteed amounts set forth in subsection (a) above, the City may, with the consent of the Contractor, direct any Commercial MSW collected in the City in excess of the amounts defined by Subsection a) above to the Contractor's Eastmont Transfer Station throughout this Contract. Except in an emergency, the City will provide at least three months' written notification prior to proposed changes in those additional amounts. With the Contractor's consent, the City may also designate the route origins within the City, of those additional tons collected by the Contractor.

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- d. When the Eastmont Transfer Station is not open, the Contractor shall first deliver the MSW to a Public Transfer Station, unless the City directs otherwise. In the event the Public Transfer Station is also closed or the City declines to accept the MSW, the waste, the Contractor shall have the option to provide the customer with an additional Cart or Detachable Container until the customer's basic Cart or Detachable Container can be emptied. The Contractor shall empty the primary Toter or Dumpster and remove the additional Toter or Dumpster as soon as practicable after the Eastmont Transfer Station is again open.
- e. The actual quantities of guaranteed tonnage will be tracked on a monthly basis, and deliveries will be adjusted as necessary to achieve the guaranteed minimum tons and percentages. In the event that actual deliveries fall short of the Contractor's guaranteed quantities of tonnage at the end of a Contract year, the shortfall, at the election of the Contractor, will be made up in additional deliveries to the Contractor's Eastmont Transfer Station during the first quarter of the next Contract year. In the event that actual deliveries fall short of the Contractor's guaranteed quantities of tonnage at the end of the final quarter of the Contract period, the City, at the election of the Contractor, will make up the shortfall with additional deliveries to the Contractor's Eastmont Transfer Station during the quarter following the end of the Contract.
- f. No adjustments will be made if actual deliveries in a Contract year exceed the Contractor's guaranteed quantities of tonnage.

Section 135 CDL Transfer/Disposal

- a. The City reserves, but does not currently exercise, the right to direct the Contractor to any Disposal Facility of its choosing for disposal of CDL collected under this Contract.
- b. CDL collected under the Contract may be directed to Disposal Facilities by the Contractor, *provided that*:
 - 1. The facilities are environmentally acceptable to the City; and
 - 2. The tip fees are acceptable to the City.
- c. The City's rejection of facilities or tip fees shall not be unreasonably exercised.
- d. At such time as Contractor is unable to designate a Disposal Facility which is acceptable to the City under Section 135c, above, the City will exercise its right to direct the disposal of CDL, *provided*, that the City shall in no circumstance exercise this option to direct CDL to a City-owned Disposal Facility prior to April 1, 2006.

C. OPERATIONS

Section 200 Coordination; Implementation

In order to minimize problems during implementation of the Contract, to provide a forum for discussing and resolving any transition and operational problems that may arise, and

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to update the Operations Plan, the Contractor and City agree to meet on a regular basis as follows:

- a. During the three-month period before the Contract takes effect, the Contractor and City will meet on a weekly basis, or on such more or less frequent basis as may be otherwise mutually agreed. The primary purpose of the weekly pre-Contract meetings will be to refine the Transition Plan and the Operations Plan, to seek resolution of any customer service issues, and to discuss promotion, public information and public relations in anticipation of the commencement of the Contract.
- b. During the three-month transition period, the Contractor and City will meet on a weekly basis, or on such more or less frequent basis as may be otherwise mutually agreed. The primary purpose of the weekly transition period meetings will be to refine the Transition Plan and the Operations Plan, to evaluate the Contractor's performance in implementing the Contract, to evaluate container exchange or purchase issues, to review and seek resolution of any customer service issues, and to discuss promotion, public information and public relations.
- c. Following the three-month transition period, the meetings between the Contractor and the City will be held at least on a monthly basis, or on such more or less frequent basis as may be otherwise mutually agreed. The primary purpose of these meetings will be to review day-to-day operations, to refine and revise the Operations Plan, and to discuss promotion, public information and public relations.
- d. Meetings during the transition period will be held at the offices of the City, unless otherwise agreed. Meetings held after the transition period will be held at a mutually agreed location. Each Party will be available for at least 90 minutes per meeting, unless otherwise agreed to in advance. Meetings shall be held during normal business hours.

Section 205 Transition Plan

In order to effect a smooth transition from the former WUTC regulation to collection of Commercial Waste under this Contract, a Transition Plan shall be developed which shall detail procedures: for easing the customer's transition to a new collector in the Primary Collection Area; for receiving customer information from the City; for exchanging customer service information; and for exchanging or purchasing containers from the City's other Commercial Waste collection contractor. The Transition Plan will be appended to the Contract as Attachment B and shall begin to be implemented as soon as the Transition Plan is agreed to, which in no case shall be later than the start of collections under the Contract.

Section 210 Operations Plan

A schedule of activities and detailed procedures related to the effective implementation and operation of the Contract is appended to the Contract as Attachment C. This plan shall be known as the "Operations Plan."

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Section 220 Night Collection

The Contractor shall be able to continue to operate during the night (6 p.m. to 7 a.m.). Any additional restrictions or conditions placed on the Contractor's nighttime operations during the term of the Contract shall be considered a change in law, which may result in additional compensation to the Contractor pursuant to Section 825.

Section 230 Traffic Laws; Noise Control

All Contractor vehicles shall be operated in conformity with the Seattle Traffic Code, SMC Chapter 11. The maximum noise level of motor vehicles during travel shall not exceed the levels set forth in SMC 25.08.430. The maximum noise level while collecting or compacting materials collected under this Contract shall not exceed the levels set forth in SMC 25.08.410.

Section 235 Container Maintenance

The Contractor shall be responsible for repainting, graffiti paint out and steam cleaning of Cans, Carts, Detachable Containers and Drop Boxes as requested by the City. If the City makes any such request, the Contractor will be compensated at the rates set forth in Attachment G, Item 210.

Section 240 Inventory of Equipment

The Contractor shall provide the City at the start of the Contract with a complete inventory of its equipment, showing each vehicle (type, capacity, approximate age, vehicle license and identification numbers) and all Cans, Carts, Detachable Containers and Drop Boxes used for performing the Contract. The Contractor shall provide the City with an updated vehicle inventory on a monthly basis, which shall incorporate changes within sixty (60) days of their occurrence, and an updated container inventory on an annual basis.

Section 250 Ownership of Equipment

All vehicles, facilities, equipment and property used in the performance of this Contract shall be wholly owned by the Contractor; provided, that leases, conditional sale contracts, mortgages, or other agreements for the use or financing the purchase of vehicles, facilities, equipment and property may be allowed with the prior written approval of the City. All such leases, conditional sale contracts, mortgages, or other agreements entered into during the term of the Contract shall provide that, in the event of the Contractor's failure to perform its obligations under this Contract, the City, at its option, shall have the right to take possession of and operate vehicles, facilities, equipment, and property covered by such lease or agreement for the unexpired term of this Contract. No further encumbrance shall be placed upon any such vehicles, facilities, or equipment without the prior written approval of the City.

Section 260 City Option to Purchase Containers

The City shall have the option to purchase all the Contractor's Cans, Carts, and Detachable Containers used for performing the Contract at the end of the Contract period. The purchase price shall be equal to the recorded purchase cost of those containers net of

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accumulated depreciation as of December 31, 2000, according to the Balance Sheet and supporting schedules in the Contractor's Fixed Asset Inventory, consistent with the total Container asset value included in the most recent Annual Report from Waste Management to the WUTC, as set forth in Attachment I, adjusted for 1) the change in the CPI from December 31, 2000, until the end of the Contract period (at 100%), and 2) the percentage changes in the numbers of commercial Containers of each size served by Waste Management from December 31, 2000 until the end of the Contract period, *provided* that the number of each size of new Containers acquired by Waste Management during 2000 that will be included in the calculation above will be no greater than 15% of the Waste Management container inventory as of December 31, 2000.

Section 270 Contractor's Office

The Contractor shall maintain within King County an office with local telephone service and such staff as needed to take care of complaints, billing issues, requests for missed collections and other coordination with City staff. Phone service shall include multiple lines and voice mail and e-mail. Any voice mail messages shall be returned by the Contractor's office within sixty (60) minutes. The Contractor's customer service hours shall be from 8 a.m. to 4:30 p.m., Monday through Friday.

D. RATES TO CUSTOMERS

Section 300 City Sets All Rates to Customers

The City shall retain the authority to set Rates for all services to customers under this Contract. Rates shall be established by City ordinance. The City's rate ordinances shall specify the container size categories and service levels (frequency of services) that shall be made available to the customers by the Contractor. The Rates, service categories and service levels offered by the City may be changed at any time and as many times during the Contract as the City deems appropriate, so long as after the start of the Contract the Contractor is provided sixty (60) days notice of any change of Rate, service category, or service level. Customers shall be charged for services pursuant to rates established by the City.

Section 310 Rates for Primary Collection Area

Rates and service levels shall be established by City ordinance for the Contractor's Primary Collection Area. Unless designated a Secondary Collection Area customer by the City, all customers in the Contractor's Primary Collection Area shall be afforded and charged for services pursuant to the City's Primary Collection Area Rate and service level ordinances.

Section 320 Rates for Secondary Collection Area

- a. Rates and service levels shall be established by City ordinance for the Contractor's Secondary Collection Area. Unless a Commercial MSW customer in the Secondary Collection Area is designated a customer of the Contractor by the City, the Contractor shall not provide Commercial MSW collection services in the Secondary Collection Area. For all Secondary Collection Area services provided by the

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Contractor, however, the customers shall be afforded and charged for services pursuant to the City's Secondary Collection Area Rates and service levels.

- b. The Secondary Collection Area Rates may be established by the City in any amount. If the Rates for the Secondary Collection Area in any category are less than fifteen (15) percent above the Rates for the same service level in the Primary Collection Area, then the payment provisions of Section 435 shall apply.

Section 330 Rates for A&E Services

Rates for A&E Services shall also be established by City ordinance for both the Primary and Secondary Collection Areas. Customers shall be charged for A&E Services pursuant to Rates established by City ordinance.

Section 340 Establishing Different Service Levels

The City shall have the authority to establish different service levels by ordinance at any time during the term of the Contract. The City will provide the Contractor no less than six months' written notice prior to requiring the Contractor to begin providing and collecting such new services. Compensation to the Contractor for any new or revised service levels shall be determined pursuant to Section 450.

Section 350 Establishing Different Types of Service

In addition to creating different service levels under Section 340, the City shall have the authority to establish different types of Commercial Waste collection service by ordinance at any time during the term of the Contract. The City will provide the Contractor no less than six months' written notice prior to requiring the Contractor to begin providing and collecting such new services. Compensation to the Contractor for any new or revised MSW or CDL collection services shall be determined pursuant to Section 450.

Section 360 Recycling

The City reserves the right to promote and contract for Recycling of any component of the Commercial Waste stream at any time during the term of the Contract. The City shall be under no obligation to contract with the Contractor for the collection of any such Recyclable Materials.

E. COMPENSATION TO CONTRACTOR

Section 400 Compensation for MSW Container Collection

- a. Unless otherwise stated in the Contract, the City will compensate the Contractor on a monthly basis for collection from all Commercial customers receiving MSW Container Collection service, based on a per unit schedule defining the payment per collection pickup for each level of service. The per unit payments defined by that schedule will be multiplied by the number of collections of each service level performed by the Contractor during the preceding month, to derive the monthly compensation for Commercial MSW Container Collection.

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- b. The initial per unit payment schedule for Container Collection in the first Contract year is shown in Attachment D.
- c. The per unit payment schedule in Attachment D reflects an estimated average weight per cubic yard of 155 pounds for the Contractor's MSW Container Collection customers.
- d. A revised per unit payment schedule for Container Collection will be established after the first contract year and will become the basis for subsequent monthly compensation calculations and for establishing the amount of any true-up adjustments as provided for in Section 408.
- e. The format for Contractor reporting of monthly collection service levels, and overall billing procedures are set forth in Sections 500 through 540.

Section 403 Compensation for A&E Services

- a. The City will compensate the Contractor on a monthly basis for A&E Services based on the per unit payment and the types of A&E services listed in Attachment E. The per unit payment defined by that schedule will be multiplied by the number of A&E Services performed by the Contractor during the preceding month, to derive the monthly compensation for A&E Services.
- b. The Contractor will be compensated only for those A&E Services set forth in Attachment E. In setting Rates, however, the City may establish charges to customers for A&E Services which are not set forth in Attachment E, and for which the Contractor would receive no additional compensation.
- c. The format for Contractor reporting of monthly A&E Services, and overall billing procedures are defined in Section 500 through 540.
- d. For the first Contract year, per unit payments for A&E Services will be at the levels listed in Attachment E.
- e. Payment for A&E Services shall be adjusted annually each year of the Contract in accordance with the procedures set forth in Section 470.

Section 404 Procedure for Establishing Average Weight Per Cubic Yard

- a. The per unit payments in Attachment D are based on an estimated average weight of 155 pounds per cubic yard for Contractor's Commercial MSW Container Collection customers. The actual average weight per cubic yard will be established based on City-wide data from the first Contract year in accordance with the procedures set forth in this Section, and then will become the basis for adjustments under Section 407 for the remaining term of the Contract.
- b. Average Weight Per Cubic Yard. The average weight per cubic yard will be derived from City-wide data on:

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1. Commercial MSW tonnage collected by the Contractor and the City's other Commercial MSW collection contractor in the City of Seattle from Can Cart and Detachable Container customers from April 1, 2001 through March 31, 2002, and
 2. Cubic yards of subscribed Commercial MSW service and billed Bulky Waste collected by the Contractor and the City's other Commercial MSW collection contractor from Can, Cart and Detachable Container Commercial Waste customers in Seattle from April 1, 2001 through March 31, 2002.
- c. Source of Contractor's MSW Tonnage Data. The source of data on Commercial MSW tonnage collected by the Contractor in Seattle from April 1, 2001 through March 31, 2002 will be electronically transferred records of the weights of Commercial MSW delivered by Contractor's Commercial MSW route collection vehicles' tipped weights at any Disposal Facilities used during that period. In addition, the Contractor will provide copies of the weight slips provided to the Contractor's Commercial MSW collection vehicles when they dispose of each load collected in the City of Seattle. The Contractor will arrange for electronic data transfer of records from Eastmont Transfer Station, and will provide a complete copy set of the weight slips from all Disposal Facilities used to the City on a monthly basis, including information on date of disposal, time of disposal, and number assigned by the Contractor to the route. The City will likewise arrange for electronic data transfer to the Contractor of records of the Contractor's Commercial MSW disposal at the City's Disposal Facilities.
1. Data from these sources will be compared to 1) the corresponding data for the two calendar years preceding the start of the Contract, and 2) the monthly submittals made by the operator of the Eastmont Transfer Station during those two calendar years to the Seattle-King County Department of Public Health, which define all waste streams tipped at the Eastmont Transfer Station, of Commercial MSW, excluding CDL, disposed of at that facility, for verification.
- d. Source of Contractor's Cubic Yards Collected Data. The source of data on total cubic yards of Commercial MSW collected in Seattle from April 1, 2001 through March 31, 2002 will be Commercial MSW billing data provided by the Contractor in monthly submittals to the City. Cubic yards included in the count will be subscribed cubic yards of container service to Can, Cart and Detachable accounts (adjusted for compaction ratios), collected by the Contractor's Commercial MSW collection route vehicles, plus billed cubic yards of Bulky Waste collected from those accounts. The City may survey a sample of customers, or conduct a spot-audit of Contractor routes, to verify customer service levels identified in the Contractor's billing data submittals.
- e. In the event of any apparent discrepancy, the City and the Contractor will review the records, and attempt to agree on a specific average weight per cubic yard estimate. If disagreement remains, the matter will be addressed pursuant to the provisions of Section 830.

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Section 407 Compensation Based on Average Weight Per Cubic Yard

a. Per unit payment amounts for Commercial MSW Container Collection shall be adjusted once following the first year of service under this Contract using the average weight per cubic yard defined by the procedures set forth in Section 404. The revised per unit payment structure for the remaining term of the Contract will then be calculated based on the baseline tariff rates in Attachment D, adjusted downward in three steps, to:

1. exclude the portion of those tariffs associated with disposal costs;
2. exclude the portion of those tariffs associated with taxes; and
3. reduce the remaining net payments by 15% at each service level.

b. These three adjustments will be calculated as follows:

1. The adjustment for exclusion of disposal costs at each level of service will be made by i) multiplying the average weight per cubic yard established by the procedures set forth in Section 404 (in tons) by the size of the container picked up (in cubic yards), by \$77.87, and ii) subtracting that amount from the baseline tariff rate in Attachment D.
2. The adjustment for exclusion of tax costs at each level of service will be made by i) multiplying the average weight per cubic yard established by the procedures set forth in Section 404 (in tons) by the size of the container picked up (in cubic yards), by \$11.70, and ii) subtracting that amount from the baseline tariff rate in Attachment D subtracted from the original tariff.
3. Finally the tariff rates at each collection service level that result from the two preceding adjustments will be multiplied by 85% to determine the revised initial year per unit payments for Commercial MSW Container Collection.

Section 408 True-up Procedure for Recalculating First Year Compensation

a. When the revised initial year per unit payments for Commercial MSW Container Collection have been calculated pursuant to Section 407 for the period April 1, 2001 through March 31, 2002 the compensation from the City to the Contractor for the first twelve months of the Contract will be recalculated, based on the revised initial year per unit payments for Commercial MSW Container Collection..

b. Any difference between the resulting recalculated compensation and the compensation actually made for Container Collection service in the first twelve months of the Contract will be applied to the twelve monthly payments to the Contractor from the City for the Contract period July 1, 2002 through June 30, 2003. If the adjustment is in the Contractor's favor, one-twelfth of the difference will be added to the City's compensation payment each month; if the adjustment is in the City's favor, one-twelfth of the difference will be subtracted from the City's compensation payment each month.

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Section 410 Compensation for Drop Box/Roll-off Collection (MSW or CDL)

- a. The City will compensate the Contractor on a monthly basis for Drop Box service at the per unit payment rates shown in Attachment F. The per unit payments defined in that attachment shall be multiplied by the number of Drop Box collection services performed by the Contractor during the preceding month, to derive the monthly compensation for Drop Box services.
- b. Each of these per unit payments for Drop Box service shall be adjusted annually during the term of this Contract in accordance with the provisions of Section 470.

Section 415 Compensation for Street-Side Litter Can Collection

- a. If the City exercises its option to add street side litter collection to the services covered under this Contract, pursuant to Section 122, it will pay the Contractor:
 - i) \$1.50 per pickup for all containers, whether employing replaceable bags or internal cans, and whether the replaceable bags or internal cans are removable through the top or through a side panel.
 - ii) If the City requires the Contractor to perform litter can collection on Saturday or Sunday, the City shall pay the Contractor twice the payment amount established in this Section for each container collected.
- b. The per-container payment for litter can collection in the initial year of the City's exercise of its option will be adjusted annually from the amount set forth in subsection (a) above by multiplying the per container payment by 100% of the change in the CPI-W from December 31, 2000 until the initiation of such service. Thereafter, the per container payment for litter can collection will be adjusted annually each year during the term of this Contract according to the CPI adjustment clause set forth in Section 470 of this Contract.
- c. Any MSW collected by the Contractor from street-side litter cans will be included in the MSW tonnage upon which the percentage of tonnage guarantees are calculated, under the provisions of Section 130.
- d. If the City exercises its option to add litter can collection to the services covered under this Contract, compensation for such collection will be made on the same monthly schedule as compensation for other collection services covered under this Contract.

Section 420 Can, Cart and Detachable Container Rentals

The City will compensate the Contractor for temporary and permanent Can, Cart and Detachable Container rentals at the daily and monthly per container payment rates shown in Attachment D, as adjusted annually according to the provisions of Section 470.

Section 422 Drop Box Rentals

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The City will compensate the Contractor for temporary and permanent Drop Box rentals at the daily and monthly per container payment rates shown in Attachment F, as adjusted annually according to the provisions of Section 470.

Section 430 Compensation for Collection in Secondary Collection Area

- a. The Contractor will receive base payments for Commercial MSW collection service to customers in its Secondary Collection Area according to the compensation structure in Sections 400 through 422, and an additional amount for customers in its Secondary Collection Area depending on their location as set forth below.
- b. For those Commercial MSW Container service customers located north of the Ship Canal collected during the day (7 AM to 5 PM), the Contractor will be paid an additional amount equal to i)50% of the difference between the City's Secondary Collection Area Rates and the City's Primary Area Collection Rates for any given service level, plus ii)\$5 per stop per day, up to a maximum of \$20 per collection day.
- c. For those Commercial MSW Container service customers located north of the Ship Canal collected at night (5 PM to 7 AM), the Contractor will be paid an additional amount equal to i)50% of the difference between the City's Secondary Collection Area Rates and the City's Primary Area Collection Rates for any given service level, plus ii)\$15 per stop per day, up to a maximum of \$60 per collection day.
- d. For those Commercial MSW Container service customers located more than 1/2 mile from the service boundary and south of the Ship Canal the Contractor collected at any time will be paid an additional amount equal to i)75% of the difference between the City's Secondary Collection Area Rates and the City's Primary Area Collection Rates for any given service level plus ii)\$15 per stop per day, up to a maximum of \$60 per collection day..
- d. The Contractor must provide the City with billing statements that include service addresses and phone numbers for all Commercial MSW Secondary Collection Area customers as the basis for payment for service delivered in its Secondary Collection Area.
- e. In addition, the Contractor must notify the City within 24 hours of any existing Commercial MSW customers in its Primary Collection Area who have requested service by the other Commercial MSW collection contractor, and of any Commercial MSW customers in its Secondary Collection Area who have requested service by the Contractor.

Section 435 Compensation Adjustment for Primary/Secondary Rate Differentials

- a. The City reserves the right to establish Rates that will apply to customers receiving Commercial MSW service from other than their Primary Collection Area provider.
- b. For Commercial MSW service to customers in its Secondary Collection Area whose Rates for service are 15% or more higher than for the same service level in the

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Primary Collection Area, the Contractor will receive no additional compensation, beyond that established by the procedures in Section 430.

- c. For Commercial MSW service to customers in its Secondary Collection Area whose Rates for service are less than 15% higher than for the same service level in the Primary Collection Area, the City will compensate the Contractor by an additional amount equal to the number of percentage points by which the differential in rates is less than 15% higher multiplied by the Contractor's total compensation for service to customers receiving that level of service.
- d. Any such compensation will be calculated and paid monthly for the period for which the differential in Rates remains less than 15%, or prorated for partial months if necessary. If the Rates fall short of the 15% differential for more than one service category, the Contractor will be paid for each such service level category according to the formula set forth above.

Section 440 Compensation Adjustment for Revised Average Round-trip Haul Times

- a. The City reserves the right to direct the non-guaranteed portion of MSW collected by the Contractor described in Section 130(b) to any Disposal Facility of its choosing. For purposes of this section, it will be assumed that the City will initially direct all such non-guaranteed MSW to its South Recycling and Disposal Station (SRDS).
- b. After the Contractor has established its collection routes in its Primary Collection Area, an "initial average round-trip haul time" will be determined for transfer trips from the mid-points of those routes to the City's SRDS and back again. Average round-trip haul times will also be determined for transfer trips from the mid-points of those routes to each other Disposal Facility in the City.
- c. The mechanism for determining the initial average round-trip haul times will be the City of Seattle GIS model developed for residential route haul time calculations, modified to incorporate the new route location information identified for the Commercial MSW collection routes.
- d. Whenever the City elects to direct portions of the waste collected under Section 130(b) of this Contract to Disposal Facilities other than SRDS, a "revised average round-trip haul time" will be calculated by using a weighted average of the shares of non-guaranteed tons directed to each Disposal Facility times the average round-trip haul times calculated for each Disposal Facility.
- e. Any resulting difference between the initial and revised average round-trip haul times will be the basis for Contractor compensation adjustments.
- f. Contractor compensation adjustments will be based on the following calculated cost impact formula:

Calculated cost impact payment



- = \$60.00 per hour
- * (revised average round-trip haul time), in hours
- * total transfer round trips per month
- * percentage of Contractor's Commercial MSW tonnage redirected

[The rate per hour will be adjusted annually by the CPI factor defined in Section 470.]

For increases in average round-trip haul time, the Contractor will receive 100% of the calculated cost impact as a compensation adjustment to be made on that month's compensation from the City. For decreases in average round-trip haul time, the City will receive 75% of the calculated cost impact (in the form of reduced payments to the Contractor), and the Contractor will retain any remaining cost savings.

An example calculation of this cost impact formula is provided in Attachment G.

- g. The City will only direct trucks to Disposal Facilities that are open at the time the truck is full.

Section 445 Compensation for Excess Cycle Time.

The Contractor will be compensated an additional amount for each Cycle Time for MSW collected under this Contract at a Public Facility or Private Facility not owned by Contractor that is greater than 15 minutes. Compensation adjustments for excess Cycle Time will be calculated monthly. The additional amount that the Contractor will be compensated for excess Cycle Time will be determined based on Contractor's submittal of all relevant scale transaction receipts for the month in question.

Compensation for excess Cycle Time =
 \$60.00 per hour
 * the sum of total hours in excess of allowable Cycle Time.

Section 450 Mechanism for Establishing Base Compensation for New Service Levels or Types of Service

- a. The City retains the discretion to establish new service levels (e.g., 3/4 yard dumpster) or types of service at any time during the Contract. Compensation for any new service level or type of service will be based on the following:
 - 1. For a new service level (e.g., 3/4 yard dumpster), compensation to the Contractor shall be at the next highest level of service already established (e.g., 1 yard dumpster).
 - 2. For a different type of service (e.g., shared 4 yard Container Collection service at the end of an alley for multiple Commercial MSW customers) the per-unit payment shall be at the same amount as the most comparable existing service (e.g., Attachment D, 4yd noncompacted service).
- b. If the City establishes new commercial recycling services for which the Contractor (1) has no contract service relationship with the City for such commercial recycling service and (2) which results in greater than 10% reduction in annual solid waste

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tonnage over the pre-program period, the Contractor may invoke the procedures set forth in Section 830, *provided*, however, that the City may in such case terminate the Contract with 18 month's notice rather than the 3 year's notice otherwise provided in Section 830.

Section 470 Annual CPI Compensation Adjustment

- a. A CPI adjustment factor will be applied to the per unit payments for Container Collection and Drop Box services; to all A&E Services, rental and maintenance fees, all hourly rates; and to any other rate that is fixed at the beginning of the Contract, unless otherwise specified.
- b. The CPI adjustment will be made annually effective April 1 of each year, with the first adjustment effective April 1, 2002. The annual adjustments will be based on a percentage of the change in the Seattle-Area CPI-W during the preceding calendar year in an amount determined by the formula below:
 - i) For each subsequent adjustment, that percentage of the change in the CPI-W will be equal to the lesser of:
 - a. 55% plus four times the absolute value of the percentage change in the CPI-W over the preceding calendar year, or
 - b. 90%.

Section 480 Compensation for Transition Services

The City will pay the Contractor \$400,000, payable in two equal installments on April 7, 2001 and October 7, 2001, to compensate the Contractor for costs associated with the transition from WUTC regulation to City contract. These payments will constitute the entire compensation for costs incurred by the Contractor for transitional activities, including, but not limited to, the costs of exchanging containers with the other Commercial MSW collection contractor, changes to the Contractor's billing systems, and collection route redesign.

Section 490 Compensation for MSW Transfer and Short Haul

- a. For transfer and short-haul of the guaranteed tonnage described in Section 130 to the long-haul transfer and disposal loading point designated by the City, the City will compensate the Contractor according to the payment schedule defined in Attachment J, Section A: "Guaranteed Share of Tonnage."
- b. For transfer and short-haul by the Contractor of any additional commercial MSW tonnage described in Section 130 to the long-haul transfer and disposal loading point designated by the City, the City will compensate the Contractor according to the payment schedule defined in Attachment J, Section B: "Additional Tonnage."
- c. The per-ton payments for tonnage transferred at the Contractor's Eastmont Transfer Station will be adjusted annually according to the CPI adjustment terms defined in Attachment J.

- d. The City's payments to the Contractor for transfer and short haul defined in this section will be made on a monthly basis.
- e. The Contractor shall maintain the following data and transmit it to the City as back-up for transfer payments:
 - 1. Date of transfer service,
 - 2. Truck type and truck number delivering each load,
 - 3. Route identification for the truck's regularly assigned route,
 - 4. Disposal Facility location,
 - 5. Inbound time and weight,
 - 6. Outbound time and weight,
 - 7. Any additional information as may be reasonably necessary to track transfer delivery, tonnage and costs.

Section 495 Payment Mechanism

- a. No later than the 5th of each month, the Contractor will submit an invoice to the City, for services provided during the prior month. This invoice will be paid by the City to the Contractor by wire transfer on or before the 25th of the same month (or 20 days after the invoice date, if the invoice is presented late). This invoice will be at a level of detail that will allow the City to determine the type (i.e., MSW or CDL), container size, frequency and per unit compensation associated with each service.
- b. Compensation paid by the City to the Contractor for services under this Contract will determine the revenue for which Contractor will be responsible for paying B&O taxes. Other than revenues from disposal fees passed through to Commercial Waste customers directly by the Contractor for CDL services, Contractor's taxable revenues do not include disposal fees. Otherwise, Contractor's revenue is limited to only the compensation paid by the City to the Contractor, and is not determined by the remittances paid by the Commercial Waste customers to the Contractor acting as collecting agent for the City, including those taxes described in Section 520. Should this allocation of tax responsibility change as a result of a change of law or should the appropriate taxing authority take a position contrary to this allocation, the Contractor and the City will renegotiate the terms of the Contract pursuant to Section 830 to comport with the intent of this provision.

F. CUSTOMER SERVICE, BILLING, CASH TRANSFERS

Section 500 - Customer Services

In addition to other customer service provisions in the this Contract, the Contractor shall provide the following services to Commercial Waste customers:

- a. Set up of new accounts for each commercial customer to be serviced by the Contractor in the Contractor's Primary Collection Area.

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- b. Set up of new accounts for each Commercial Waste customer to be serviced by the Contractor in the Contractor's Secondary Collection Area, provided the requested service is approved by the City as required in Section 105;
- c. Provision of containers for each Commercial Waste customer
- d. Provision of itemized monthly invoices to each Commercial Waste customer;
- e. Receipt and processing of payments from all Commercial customers serviced by the Contractor.
- f. Provision and maintenance of systems and personnel for managing customer inquiries and complaints.
- g. The Contractor shall maintain a record of all customer service requests and complaints, which shall be available to the City for inspection and copying during regular business hours.
- h. If during any 30 day period the City receives more than 5 complaints that customers are unable to receive a response from the Contractor by telephone within one business day, such complaints will be investigated unless the Contractor has an explanation acceptable to the City for such complaints, and the Contractor may be required to increase the capacity of telephone equipment, and/or increase the number of customer service representatives.
- i. If during any 30 day period the City receives more than 10 complaints that customers have failed to receive a response from the Contractor by telephone within one business day of calling, unless the Contractor has an explanation acceptable to the City for such complaints, the City shall impose liquidated damages per Section 750. The City shall maintain a record of the identity and service location of each complaining customer and the nature of the complaint.

Section 519 - Billing to Customers

Commercial Waste customers will be billed on a monthly basis at the rates set by the City as set forth in Section D. The Contractor will be responsible for billing each Commercial Waste customer serviced in its Primary Collection Area and its Secondary Collection Area. The invoices will be itemized to show the following:

- a. Collection costs, including size of Containers and number of collections;
- b. Container rental, including, location and size of Container and period of rental;
- c. A&E Services, including type and number;
- d. Applicable taxes, separately identifying the amount of each tax imposed by a taxing authority on the customer directly for which Contractor is acting only as collection agent for the City,
- e. Other services provided by the City, including type and frequency
- f. Disposal costs for CDL Drop Box services, and
- g. At the option of the Contractor, other services provided by the Contractor not under

this Contract.

Section 520 - Payment Receipt and Remittance to City

- a. Application of Funds The Contractor will be responsible for collecting all payments from its designated Commercial Waste customers served by the Contractor. Account balances will be divided into six (6) categories, and the payment received by the Contractor will be applied in the following order:
1. specific billed services, prior or current, as directed in writing by the customer, whether or not performed pursuant to this Contract;
 2. balances carried forward by the Contractor from pre-Contract services, for a period of ninety (90) days from the commencement of services under this Contract;
 3. prior Commercial Waste services performed pursuant to this Contract and billed for the City, including any late penalties and interest as determined by the City;
 4. prior other services performed by Contractor outside the scope of this Contract and billed by the Contractor directly;
 5. current Commercial Waste services performed pursuant to this Contract and billed for the City; and
 6. current other services performed by Contractor outside the scope of this Contract provided and billed by the Contractor directly.
- b. City not responsible for Contractor's debts The City will not be responsible for collection of debts owed by Commercial Waste customers to the Contractor for services performed by Contractor outside the scope of this Contract.
- c. Remittances to City shall be as follows:
1. Payments received by the Contractor from its designated Commercial Waste customers as provided in Section 60(h) will be remitted by the Contractor to the City by wire transfer on the fourth day following posting to the customer account by the Contractor.
 2. NSF checks and fees and other non-clearing deposits will be charged back to the City, to the extent they were previously credited to the City.
 3. Disputed billings will be reconciled by the Contractor's billing department, provided that, at the City's request, a representative of the City shall join the Contractor in dealing with the disputed bill and, in that event, the City's determination of billing for City services shall be binding.

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d. Treatment of Certain Taxes and Other Excises

1. The Parties agree that Contractor will act as collecting agent for the City with regard to the following taxes and any other taxes imposed by law on the Commercial Waste customers for which the City has responsibility of remittance to the appropriate taxing authority:
 - i. the State Solid Waste Collection Tax, Ch. 82.18 RCW; and
 - ii. the Household Hazardous Waste Collection Tax, Seattle Municipal Code §§ 10.76.020, 10.76.060, and [King County Code] § 21.44.060; and
 - iii. the Seattle Solid Waste Collection Tax, Seattle Municipal Code, §5.48.055; and
 - iv. the Retail Sales Tax levied on container rental charges, Ch. 82.08 RCW; and.
 - v. the portion of disposal fees attributable to the Landfill Closure Tax [add citation] (other than for CDL disposal fees which are passed through to the customers, and collected and paid directly by Contractor).
2. Nothing in this Contract is intended to impose liability as a taxpayer on Contractor for amount attributable to the taxes described in this subsection, and nothing is intended to circumvent the existing regulatory structure with regard to such taxes. The Parties wish to establish a system under which Contractor will act solely as a collecting agent for the benefit of the City in the collection of such taxes. If the Contractor fails to collect such taxes the customer or the City, as the case may be, and not the Contractor will bear the ultimate tax liability.
3. The Parties agree that if the regulatory structure governing the imposition and liability for such taxes changes, so as to prohibit or otherwise interfere with Contractor acting solely as collecting agent, the Parties will renegotiate the terms of the Contract governing payment and collection of such taxes and, if necessary, make any adjustment to Contractor's compensation as may be necessary.

Section 530 - Bad Debts

All past due balances that accrue from the services provided by the Contractor under this Contract will be pursued for collection by the Contractor for a ninety (90) day period. The Contractor will:

- a. If no payment has been received at thirty (30) days from the date of the original invoice, send a second original invoice with dunning message and late penalties and interest as determined by the City.
- b. If no payment has been received at forty-five (45) days from the date of the original

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invoice, send a collection letter.

- c. If no payment has been received at fifty-five (55) days from the date of the original invoice, call the customer.
- d. If no payment has been received at sixty-five (65) days from the date of the original invoice; call the customer and notify the customer that service is being suspended, place the account on suspension and notify the City.
- e. If no payment has been received at seventy-five (75) days from the date of the original invoice, send final collection letter or call the customer.
- f. If no payment has been received at ninety (90) days from the date of the original invoice, the account will be closed and the balance, including accrued interest, will be forwarded to the City for collection.

Section 540 - Record Keeping and Reporting

The Contractor shall maintain complete and accurate books of account and records with respect to the performance of its obligations under this Contract including, but not limited to, all correspondence and invoices, transaction tickets, or receipts documented by books and records kept at Contractor's principal place of business. Contractor also agrees to maintain a system of internal accounting controls sufficient to ensure that all transactions are properly authorized, recorded, processed, summarized and reported and that all assets of the Contractor and the City are adequately safeguarded. The City shall have the right during reasonable business hours to inspect and audit such books, records and internal accounting controls. All books, accounts, and records required to be maintained under this Section shall be preserved intact without alteration during the term of this Contract and for a period of twelve (12) months following the termination of this Contract.

G. EQUAL OPPORTUNITY/ NON DISCRIMINATION

Section 600 Equal Employment Opportunity

- a. 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 will 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, unless based upon a bona fide occupational qualification. Such action shall include, but not be limited to the following: employment, upgrading, promotion, 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

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applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause.

- b. The Contractor will, prior to commencement and during the term of this Contract, furnish to the Executive Services Director (as used in this section, Director means the City's Executive Services Director 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.
- c. 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 contracting authority shall be so notified in writing. The contracting authority shall give the Contractor an opportunity to be heard, after ten (10) days' notice. If the contracting authority concurs in the findings of the Director, it may suspend the 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.
- d. 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.

Section 610 Equal Employment Opportunity - Implementation

- a. The Contractor shall obtain in writing from each subcontractor or participant in a joint venture an agreement to comply with the terms of Equal Employment Opportunity set forth in Section 600.
- b. The Contractor shall be responsible for the compliance of subcontractors or joint ventures. Appropriate sanctions for noncompliance will 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 ventures and reviewing this documentation to assure its validity and compliance. Contractor shall submit such documentation from subcontractors and joint ventures concurrently with the Contractor's own submittals.

Section 620 Non-Discriminatory Service

The Contractor shall not discriminate against any customer in the provision of service or quality of service on account 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 qualification to or for service. The Contractor shall provide comparable service throughout both the Primary and

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Secondary Collection Areas without regard to racial, ethnic, or cultural characteristics or relative standard of living of the neighborhood.

Section 630 NonDiscrimination in Employee Benefits

- a. The Contractor shall comply with the requirements of SMC Ch. 20.45 and Equal Benefits Program Rules implementing such requirements, under which the Contractor is obligated to provide the same or equivalent benefits ("equal benefits") to its employees with domestic partners as the Contractor provides to its employees with spouses. At the City's request, the Contractor shall provide complete information and verification of the Contractor's compliance with SMC Ch. 20.45. Failure to cooperate with such a request shall constitute a material breach of this Contract.
- b. Any violation of this Contract Section 470 shall be a material breach of the Contract for which the City may:
 - 1) Require the Contractor to pay liquidated damages in the amount of five hundred dollars (\$500.00) per day for each day the Contractor is in violation of SMC Ch. 20.45 during the term of the Contract; or
 - 2) In the event the Contractor willfully refuses or repeatedly fails to comply with the requirements of SMC Ch. 20.45, terminate the Contract; or
 - 3) Disqualify the Contractor from bidding on, responding to or being awarded a City contract for a period of up to five (5) years; or
 - 4) Impose such other remedies as specifically provided for in SMC Ch. 20.45 and the Equal Benefits Program Rules promulgated thereunder.

H. SECURITY; LIABILITY; DAMAGES

Section 700 Performance Bond

The Contractor shall provide and maintain at all times a valid Contractor's Performance and Payment Bond for seven and one-half (7.5) percent of the estimated annual compensation to the Contractor under the Contract. 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 the renewability of the current bond at least 90 calendar days before it expires.

The initial performance bond must be in place on or before April 1, 2001.

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 be conditioned that such Contractor shall faithfully perform all of the provisions of this Contract and pay all laborers, mechanics, subcontractors, material men and all persons who shall supply such Contractor or subcontractors with provisions and supplies for the performance of this Contract, and shall be further conditioned that any person(s)

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performing such work or services, said bond shall contain appropriate recitations that it is issued pursuant to this Section of this Contract, that it shall be construed to meet all requirements specified herein and that any condition or limitation in such bond which is in conflict with the conditions and requirements of this Section is void. Such bond shall be submitted to, and subject to approval of the City Attorney's Office prior to its effective date.

Failure of the Contractor to furnish and maintain said Performance and Payment Bond shall be considered a material breach of this Contract and grounds of its immediate termination at the option of the City.

Section 710 Default of Contractor

a. The Contractor may be held in default of the Contract in the event the Contractor:

1. Fails to perform ninety percent (90%) of the collections required by this Contract and appears, to the City, to have abandoned the work, or to be unable to resume collections within forty-eight hours; or
2. Has failed on three or more occasions of three (3) working days duration each, in any year, or fifteen (15) days in a calendar year to perform the collections required by the Contract; or
3. Repeatedly neglects, fails, or refuses to comply with any of the material terms of the Contract, after having received notice of its obligation to do so.

b. To initiate proceedings under this Section, the City shall give notice to the Contractor and its surety of the location, time, and date within the following seven calendar days of a public hearing at which the Contractor may show cause why it should not be declared in default. In the event the Contractor fails to show, to the satisfaction of the City, why the Contractor should not be declared to be in default of this Contract, the City may make such declaration.

c. In declaring the Contractor to have defaulted on the Contract, the City also may order the Contractor to discontinue further performance of work under the Contract and transfer the obligation to perform such work from the Contractor to the surety on the Contractor's performance bond and take any other action it deems advisable.

d. Upon receipt of a notice that the work has been transferred to the surety without termination of the Contract, the surety shall take possession of all materials and equipment described in the most recent inventory submitted to the City pursuant to Section 240 hereof, for the purpose of completing the work under the Contract; employ, by contract or otherwise, any person and all persons needed to perform the work; and provide materials and equipment required therefor. Such employment shall not relieve the surety of its obligations under the Contract and the bond. If there is a transfer to the surety, payments shall be made to the surety or its agent for all work performed under the Contract subsequent to such transfer, in amounts equal to those

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that would have been made to the Contractor had it performed in the manner and to the extent of the surety's performance, and the Contractor shall have no claim upon the same.

- e. In the event the surety on the Contractor's performance bond fails to assume or continue performances within 48 hours after its receipt of notice that the work has been transferred to such surety, the Contractor shall lease, sublease or otherwise license the City to use all, or whatever portion is desired by the City, of the materials and equipment described on the most recent inventory submitted to the City pursuant to Section 240 hereof, for collection [and processing] purposes for a period of up to six months following the date of the declaration of default by the City without requiring the City to execute any other document whatsoever to accomplish such lease, sublease, or license and without requiring the City to post any bond, pledge, deposit or other security for such equipment and materials, but upon the condition that the City pay for the equipment and materials actually used for such collection a market rental that is no greater than (i) the monthly lease, in the event such property is leased by the Contractor, (ii) the periodic installment, in the event such property is being acquired under a purchase contract, (iii) the periodic financing interest and principal, in the event such property is being acquired under a purchase contract, or (iv) the periodic interest and principal, in the event such property is being acquired under a financing arrangement; provided, that under no circumstances shall the City be liable during its use of such property for any arrearages, balloon payment, accrued interest, accelerated charges in the event of a default, or other extraordinary payment; nor shall the satisfaction thereof be a condition of the City's interim use of such property; provided, further, that such lease, sub-lease, or license shall be suspended the date the surety on the Contractor's bond or its agent accepts the transfer of work under the Contract.
- f. In the event the City secures the performance of work under the Contract at a lesser cost than would have been payable to the Contractor had the Contractor performed the same, then the City shall retain such difference; but in the event such cost to the City is greater, the Contractor and its surety shall be liable for and pay the amount of such excess to the City.
- g. All payments due the Contractor at the time of default, less amounts due the City from the Contractor, shall be applied by the City against damages suffered and expense incurred by the City be reason of such default, any excess shall be paid to the Contractor unless otherwise provided herein.

Section 720 Commitment of Equipment

- a. Unless a replacement or substitute is provided, all vehicles, facilities, equipment and property identified in the Contractor's inventory under Section 240 for use in the performance of this Contract (called "such property") shall be available for use in collecting Commercial Waste for the duration of this Contract. When provided, this Section applies to the replacement and substitute.

b. From the date of the Contract and for its duration, any document (including a lease to or by the Contractor, financing contract, acquisition over time, mortgage, or other instrument establishing a security interest) that encumbers or limits the Contractor's interest in such property shall:

1. Allow the surety on the Contractor's performance bond to take over the Contractor's obligations and to continue the use of the equipment in service for performance of the Contract;
2. In event the Contractor is in default and the surety on the Contractor's performance bond fails to assume or continue performance within 48 hours after notice to do so, allow the City to use without further documentation all or a portion of such property, at the City's discretion, for a period of up to six months following the date of the City's declaration of default, to provide such collection services on the condition that the City pays to the City's lessor a market rental for the equipment or property actually used in an amount no greater than the monthly lease in event of a lease, the installment payment in event of a purchase contract, or the monthly interest and principal in event of a financing arrangement;
3. Exempt the City from liability during its usage of such property for arrearages, balloon payments, accrued interest, accelerated charges on account of a default or other extraordinary payments, and not make satisfaction thereof a condition of the City's interim usage; and
4. Forbid any foreclosure, trustee's sale or other dispossession of the Contractor's interest in such property without giving both the City and surety on the Contractor's performance bond sixty days' prior notice, and then make any termination of the Contractor's interest in such property pursuant to such action or the enforcement thereof subject to the requirements of subsections 1), 2) and 3) of this Section.

c. To assure compliance with this Section, the Contractor shall submit to the City for its review and approval or disapproval prior to execution all material contracts, leases, or other documents for acquisition of, or encumbering or limiting the Contractor's interest in, such property or for replacements thereof and any proposed agreement that would encumber or transfer any interest of the Contractor in such property before the Contractor's execution of such agreement. The City's approval shall not be unreasonably withheld, and if the City does not respond within five business days, its approval shall be considered to have been given.

Section 730 Insurance

a. Contractor shall at all times during the term of this Contract, obtain and maintain continuously, at its own expense, and file with the City and the City's Risk Manager, evidence of a policy or policies of insurance as enumerated below:

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1. A policy of Commercial General Liability Insurance, written on an insurance industry standard occurrence form (CG 00 01), including all the usual coverages known as:

- Premises/Operations Liability
- Products/Completed Operations
- Personal/Advertising Injury
- Contractual Liability
- Independent Contractors Liability
- Stop Gap/Employers Contingent Liability
- Explosion, Collapse, or Underground (XCU)
- Fire Damage

Such policy(ies) must provide the following minimum limit:

Bodily Injury and Property Damage -

\$ 2,000,000	General Aggregate
\$ 2,000,000	Products & Completed Operations Aggregate
\$ 1,000,000	Personal & Advertising Injury
\$ 1,000,000	Each Occurrence
\$ 100,000	Fire Damage

Stop Gap Employers Liability

\$ 1,000,000	Each Accident
\$ 1,000,000	Disease - Policy Limit
\$ 1,000,000	Disease - Each Employee

If a claims made policy is used, it must have an unaltered extended discovery period provision.

2. A policy of Business Automobile Liability, including coverage for owned, non-owned, leased or hired vehicles written on an insurance industry standard form (CA 00 01) or equivalent, and as specified by Insurance Services Office Symbol 1 (any auto), an MCS 90 endorsement and a CA 9948 endorsement attached if "pollutants" as defined in exclusion 11 of the commercial auto policy are to be transported.

Such policy(ies) must provide the following minimum limit:

Bodily Injury and Property Damage -

\$ 1,000,000	per person
\$ 2,000,000	per occurrence

3. A policy of Workers' Compensation. As respects Workers' Compensation insurance in the State of Washington, the Contractor shall secure its liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington. If the Contractor is qualified as a self-insurer in accordance with Chapter 51.14 of the Revised Code of Washington, Contractor shall so certify by a letter signed by a corporate officer and setting

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forth the limits of any policy of excess insurance covering its employees. The Contractor further waives, with respect to the City only, its immunity under RCW Title 51, Industrial Insurance, of the Revised Code of Washington.

Any deductible or self-insured retention must be disclosed and is subject to approval by the City's Risk Manager. The cost of any claim payments falling within the deductible shall be the responsibility of the Contractor.

If any such policy is written on a claim made form, the retroactive date shall be prior to or coincident with the effective date of this Contract. The policy shall state that coverage is Claims Made, and state the retroactive date. Claims made form coverage shall be maintained by Contractor for a minimum of two years following the expiration or earlier termination of this Contract, and Contractor shall annually provide the City with proof of renewal. If renewal of the claims made form of coverage becomes unavailable, or economically prohibitive, Contractor shall purchase an extended reporting period ("tail") or execute another form of guarantee acceptable to the City to assure financial responsibility for liability for services performed.

4. Additional Insured and Primary Insurance Provisions: Such insurance, as provided under items (1), (2), above, shall be endorsed to include the City of Seattle, its officers, elected officials, employees, agents and volunteers as additional insured, and shall not be reduced or canceled without forty-five (45) days prior written notice to the City. In addition, Contractor's insurance shall be primary as respects the City, and any other insurance maintained by the City shall be excess and not contributing insurance with the Contractor's insurance.
5. Evidence of Insurance: The following documents must be provided as evidence of insurance coverage:
 - a. A copy of the policy's declarations pages, showing the Insuring Company, policy effective dates, limits of liability and the Schedule of Forms and Endorsements.
 - b. A copy of the endorsement naming The City of Seattle as an Additional Insured, showing the policy number, and signed by an authorized representative of the insurance company for Business Auto Liability, and for the Commercial General Liability policy a Form CG2010 (ISO) or equivalent.
 - c. A copy of the "Endorsements Form List" to the policy or policies showing endorsements issued on the policy, and including any company-specific or manuscript endorsements.
 - d. A copy of an endorsement stating that the coverages provided by this policy to the City, or any other named insured shall not be terminated,

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reduced or otherwise materially changed without providing at least forty-five (45) days prior written notice to the City of Seattle.

- e. A copy of A "Separation of Insureds" or "Severability of Interests" clause, indicating essentially that - except with respect to the limits of insurance, and any rights or duties specifically assigned to the first named insured, this insurance applies as if each named insured were the only named insured, and separately to each insured against whom claim is made or suit is brought (Commercial General Liability & Business Automobile Liability Insurance).
6. Policy Rating: All policies shall be subject to approval by the City's Risk Manager as to company (must be rated A-:VII or higher in the A.M. Best's Key Rating Guide and licensed to do business in the State of Washington or issued as a surplus line by a Washington Surplus lines broker), form and coverage, and primary to all other insurance.
7. Self-Insurance: Should Contractor be self-insured, under item (1), (2) and (3) above, a letter from the Corporate Risk Manager, or appropriate Finance Officer, is acceptable - stipulating if actuarially funded and fund limits; plus any excess declaration pages to meet the Contract requirements. Further, this letter should advise how Contractor would protect and defend the City of Seattle as an Additional Insured in their Self-Insured layer, and include claims handling directions in the event of a claim.
8. Subcontractors - Contractor shall include all subcontractors as insureds under its policies or shall furnish separate evidence of insurance as stated above for each subcontractor. All coverages for subcontractors shall be subject to all the requirements stated herein and applicable to their profession.

Section 740 Indemnity

The Contractor shall defend, indemnify and save harmless The City of Seattle and the City's officers, employees and agents from any and every claim and risk, and from all losses, damages, demands, suits, judgments and attorney fees, and other expenses of any kind (collectively "losses"), 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, whether tangible or intangible, including loss of use resulting therefrom, in connection with or related to the work performed under this Contract, or in connection with or related to (in whole or in part by reason of) the presence of the Contractor or its subcontractors, or their property, employees or agents, upon or in proximity to the property of The City of Seattle or any other property (upon which the Contractor is performing any work called for), except only those losses resulting from the negligence or willful misconduct of The City of Seattle or the City's officers, employees or agents.



For purposes of the Contractor's obligations under this Section 740, the Contractor hereby waives its immunity under industrial insurance, Title 51 RCW. The Contractor agrees that this waiver was specifically and mutually negotiated by the City and the Contractor.

Section 750 Liquidated Damages

The acts or omissions in the left hand column are a breach of this Contract; the relief for which shall be the amounts in the right hand column that are set as Liquidated Damages. Liquidated Damages may be deducted from the monthly payment to the Contractor.

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OMISSION

1. Failure to collect spillage consistent with the provisions of Attachment C, Section C-240.
2. Failure to collect missed Commercial Waste Container Collection within one business day (including Saturday) after a make-up request is given to the Contractor by the City.
3. Failure to provide for new Detachable Containers and permanent Drop Boxes within five (5) business days of a request; provided, however, this shall not apply to seasonal temporary requests.
4. Failure, after July 1, 2001, to deliver Detachable Containers to replace those needing repair or replacement within five (5) business days of a request.
5. Failure to provide additional Detachable Containers or Carts, provide proper containers or increase collection frequency within ten (10) business days of a request.
6. Failure, after July 1, 2001, to deliver or replace 32, 64 and 96 gallon Cans for any reason within five (5) business days of a request.
7. Greater than 50 complaints per month from April 1 to July 1, 2001, and thereafter greater than 10 complaints in any 30 day period reported by Commercial Waste customers of Contractors failure to respond to telephone inquiries, pursuant to Section 500 and Attachment C..
8. In addition to progressive discipline in Section 215, unsatisfactory performance of collector after two (2) notices to Contractor to correct specific incidences involving the same address or collector in any six (6) month period, e.g. leaving gates or doors open, abusive language to customers, failure to return Containers to their original location after collection, failure to perform collections, or similar violations.

LIQUIDATED DAMAGE

- \$10 per incident
- \$25 each incident per day for Can or Cart customer; \$50 each incident per day for Detachable Container customer; to a maximum of \$250 per truck per day.
- \$50 per container per day
- \$25 per container per day
- \$25 per container per day
- \$25 per container per day
- \$50 per each complaint above 10 complaints in any 30 day period
- \$200 each incident

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9. Soliciting Secondary Collection Area customers in violation of Section 105 of the Contract

\$500 per incident, plus refund to the City of all compensation paid to the Contractor for service to the solicited Secondary Collection Area customer.

In addition to the above damages, the Contractor shall not be paid for work not performed.

H. ANCILLARY PROVISIONS

Section 800 Independent Contractor

The Contractor shall perform all work under this Contract as an independent contractor. 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.

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 810 Assignment; Subcontracting; Assignment of Duties

The Contractor shall not assign or subcontract or transfer any of the work or delegate any of its duties under the Contract without the prior written approval of the City, which shall not be unreasonably withheld. Notwithstanding the foregoing, the City's approval shall not unreasonably be withheld if the Contractor proposes to assign or transfer this Contract to an affiliate of the Contractor or to Contractor's parent corporation, provided that Contractor can establish to the reasonable satisfaction of the City that (a) the assignee or transferee will operate the Contract in substantially the same manner as the Contractor, will use substantially the same management and collection personnel as Contractor, and possesses substantially the same financial capability as Contractor and (b) the assignee or transferee is not affiliated in any way with the other company that has a Commercial Waste Collection contract with the City.

In the event of an assignment, subcontract or delegation of duties, the Contractor shall remain responsible for the full and faithful performance of this Contract and the assignee, subcontractor, other obligor shall also become responsible to the City for the satisfactory performance of the work assumed. The City may condition its approval upon the delivery by the assignee, subcontractor or other obligor of its covenant to the City to fully and faithfully complete the work or responsibility undertaken.

Section 815 Access and Audit

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

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.

The City may require an audit of such books and records at any reasonable time. Such audit will be conducted by one of the following firms:

Deloitte & Touche
Arthur Andersen & Co.
Ernst and Young

KPMG Peat Marwick
Price Waterhouse Coopers

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.

Audit information will be kept confidential, except as disclosure may be required by public disclosure laws.

Section 820 Uncontrollable Events

The Contractor is not responsible for performance where an event beyond its reasonable control prevents performance of this Contract. Such events include: riots, wars, civil disturbances, insurrections, acts of terrorism, epidemics, landslides, volcanic eruptions, earthquakes, lightning, floods, inclement weather as provided in Section C-210 of Attachment C, explosions, fires, condemnation, labor strikes at facilities other than the Contractor's, lockouts by third parties, secondary boycotts, judicial injunctions or restraining orders and federal, state and local government orders that are not subject to reasonable cure by the Contractor. Such events do not include general economic conditions. 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.

Uncontrollable Events which result in a permanent, detrimental change in circumstance for the Contractor or for the City may be the subject of a request for relief under Section 830.

Section 825 Change of Law

- a. Changes in federal, state or local laws, such as tax law changes, that affect businesses or municipalities generally shall be to the benefit or detriment of the Contractor or City, without having any effect on the terms of or responsibilities under the Contract.

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- b. Changes in federal, state or local laws or regulations that specifically affect the business of Solid Waste collection and which result in a detrimental change in circumstance for the Contractor in performing this Contract or for the City may be the subject of a request for relief under Section 830, *provided* that commercial recycling programs established by the City that are not mandatory shall not be considered a change in law under this section.
- c. Changes in federal, state or local laws or regulations of a general nature that affect the business of Solid Waste collection and which result in a material hardship for the Contractor in performing this Contract may be the subject of a request for relief by the Contractor under Section 830, *provided* that the only remedy for such a request shall be as set forth in this subsection.
 - 1. Any remedy imposed by the arbitrator shall be prospective only, and shall not include any remedy whatsoever for the period prior to the date of the arbitrator's order.
 - 2. Should the arbitrator rule in favor of the Contractor under this subsection, the City shall then have the option, at any time after the date of the arbitrator's order, of terminating the Contract upon six-months' written notice.

Section 830 Request for Relief and Dispute Resolution

- a. Either party may invoke a request for relief under Sections 820 and 825 in the following manner:
 - 1. Initial Notice. The party seeking relief shall do so by providing written notice to the other party within fifteen (15) days following the occurrence of the circumstance for which relief is sought.
 - 2. Follow-up Notice. Within thirty (30) days following the initial notice, the party seeking relief will provide another written notice that sets forth more specifically the reasons for the request and the relief being sought.
 - 3. Response. The other party will then have thirty (30) days from the follow-up notice to respond.
 - 4. Good Faith Discussion. The parties will then meet in a good faith attempt to resolve any disagreements.
 - 5. Arbitration. Should the parties fail to resolve their disagreements regarding the requested relief within thirty (30) days from the date of the response to the request, the matter will be taken to binding arbitration.
 - 6. Arbitration Rules. Any controversy or claim arising out of or relating to this Contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules including the Emergency Interim Relief Procedures. A single arbitrator shall preside over the arbitration and, if the parties are unable to agree upon an arbitrator the AAA shall designate a list of five possible arbitrators and each party shall strike two arbitrators in alternating fashion, with the one remaining arbitrator serving as the actual arbitrator.
- b. If either party remains dissatisfied following the issuance of the arbitrator's decision, that party may provide written notice to the other party of its intent to terminate the

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Contract within ninety (90) days of the arbitrator's ruling, provided, however, that if the City initiates the request for relief it shall not have any right of termination.. The party receiving the notice of intent to terminate shall then have ninety (90) days to:

1. Rescind the original request for relief, whereupon the notice of termination shall be automatically cancelled; or
 2. Otherwise resolve the issues related to the original request for relief, whereupon the party desiring termination shall withdraw the notice of intent to terminate upon reaching a satisfactory resolution of the disputed issues; or
 3. Take no action and allow the termination to occur in accordance with the notice.
- c. A notice of intent to terminate the Contract under this Section shall be effective on the termination date stated in the notice, provided the following preconditions are met:
1. City Termination. For termination by the City, termination may occur no sooner than three (3) years from the date of the notice.
 2. Contractor Termination. For termination by the Contractor, termination may occur no sooner than eighteen (18) months following the date of the notice.

Section 835 Violation of Antitrust or Corrupt Practice Laws

In the event the Contractor is found to be guilty of a violation of antitrust or corrupt practice laws for acts performed in Washington 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 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, the Contractor shall be considered to be "guilty" of a violation of such antitrust or corrupt practice laws if the Contractor or any of its officers or management employees: (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.

Section 840 Contract Rights

- a. The parties reserve the right to amend this Contract from time to time by mutual agreement in writing.
- b. Rights under this Contract are cumulative, and in addition to rights existing at common law.
- c. Payment by the City and performance by the Contractor do not waive their Contract rights.
- d. 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. The use of one remedy does not exclude or waive the right to use another.

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Section 845 Approvals

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

Section 850 Entire Contract

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

Section 855 Captions

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

Section 860 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 claims, litigation, or causes of action between the parties shall be in the Superior Court of the State of Washington for King County; provided, however, that this section shall not prevent either party from moving for a change of venue pursuant to RCW 4.12.030, as amended from time to time.

Section 865 Notices

All official notices or approvals shall be in writing. Unless otherwise directed, notices shall be delivered by messenger, by certified or registered mail, return receipt requested, or by fax to the parties at the following respective addresses:

To the City: The City of Seattle
Seattle Public Utilities
505 Dexter Horton Building
710 - 2nd Avenue
Seattle, Washington 98104
Phone: (206) 684-7666
Fax: (206) 336-0096

To the Contractor:
Waste Management of Seattle
Seattle, Washington
Phone: (206)
Fax: (206)

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 870 Severability

Should any term, provision, condition, or other portion of this Contract or its application be held to be inoperative, invalid or unenforceable, and the remainder of the Contract still

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fulfills its purposes, the remainder of this Contract or its application in other circumstances shall not be affected thereby and shall continue in force and effect.

Section 890 Effect of Subsequent Commercial Collection Contract

The City is also negotiating with another commercial collection company for the collection of Commercial Waste. In the event the City contracts the other collection company on material terms and conditions that are different or better than those contained in this Contract, the City agrees that the Contractor may elect to substitute those terms and conditions. "Material term(s)" as used in this section shall include any term or provision relating to or affecting the compensation Contractor receives for the services or Contractor's performance obligations under this agreement.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
IT IS DUE TO THE QUALITY OF THE DOCUMENT.



STATE OF WASHINGTON - KING COUNTY

--SS.

127246
City of Seattle, Clerk's Office

No. ORD.TITLES

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CTOT:120238-120246

was published on

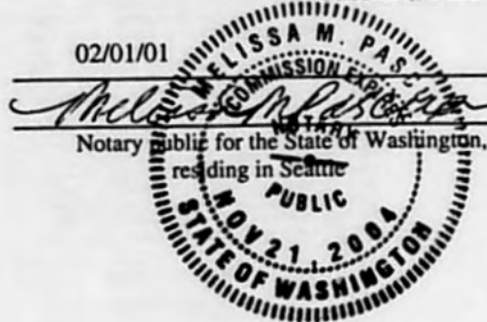
02/01/01

The amount of the fee charged for the foregoing publication is the sum of \$0.00, which amount has been paid in full.

[Signature]

Subscribed and sworn to before me on

02/01/01



Notary Public for the State of Washington,
residing in Seattle

Affidavit of Publication

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State of Washington, King County

City of Seattle

TITLE-ONLY PUBLICATION

The full text of the following ordinances, passed by the City Council on January 23, 2001, and published here by title only, will be mailed upon request, or can be accessed electronically at: <http://clerk.ci.seattle.wa.us>. For further information, contact the Seattle City Clerk at 206-435-4444.

ORDINANCE NO. 120238

AN ORDINANCE relating to the Executive Services Department; authorizing a sale of real property at fair market value to the abutting property owners, Rodger and Karen Riggers and MarLen Kaiser; authorizing execution of Quit Claim Deeds; and designating the disposition of sales proceeds.

ORDINANCE NO. 120239

AN ORDINANCE authorizing an expenditure from the Judgment/Claims Fund to be reimbursed by the Light Fund to settle the claim of Stella Warnick (C-66186), all by a two-thirds vote of the City Council.

ORDINANCE NO. 120240

AN ORDINANCE authorizing the addition of a full-time equivalent position to coordinate the Citywide Career Quest Program, by a majority vote of the City Council.

ORDINANCE NO. 120241

AN ORDINANCE authorizing the Director of Seattle Public Utilities to execute agreement with Rabanco, Ltd., and Waste Management of Washington, Inc. for collection of commercial solid waste.

ORDINANCE NO. 120242

AN ORDINANCE authorizing the Director of Seattle Public Utilities to execute an agreement with Cedar Grove Composting, Inc. for processing of yard waste.

ORDINANCE NO. 120243

AN ORDINANCE authorizing the Director of Seattle Public Utilities to execute an amendment to an agreement with Washington Waste Systems Inc. for transportation and disposal of waste.

ORDINANCE NO. 120244

AN ORDINANCE relating to active and retired City police officers entitled to benefits under the 'LEOFF' Act (Ch. 41.26 RCW); authorizing an execution of a Contract Administration Agreement with Promera Blue Cross regarding certain medical care coverage to be provided such individuals.

ORDINANCE NO. 120245

AN ORDINANCE concerning the Elevated Transportation Company; transferring and reappropriating funds from the 2001 budget for Finance General to the Initiative 53 Planning Fund; directing the transfer of such funds to a bank account of the ETC acceptable to the Mayor; authorizing and directing the Director of Finance to develop a program of reports and other information to be submitted to the City by the Elevated Transportation Company; authorizing the Director of Finance to enter into agreements with the Elevated Transportation Company; and ratifying and confirming certain prior acts; all by a three-fourths vote of all the members of the City Council.

ORDINANCE NO. 120246

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

Publication ordered by JUDITH PIPPIN, City Clerk.

Date of official publication in Daily Journal of Commerce, Seattle, February 1, 2001. 2/1(127246C1)

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