

Adopted: 3/21/18

Effective: 4/5/18

SNOHOMISH COUNTY COUNCIL  
SNOHOMISH COUNTY, WASHINGTON

ORDINANCE NO. 18-022

APPROVING AND AUTHORIZING THE COUNTY EXECUTIVE TO EXECUTE THE  
CONTRACT BETWEEN SNOHOMISH COUNTY AND REGIONAL DISPOSAL  
COMPANY FOR ACTIVITIES RELATED TO SOLID WASTE RECEIVING,  
TRANSPORT, AND DISPOSAL IN SNOHOMISH COUNTY

WHEREAS, County Council, through Motion No. 16-406, authorized the release of RFP-07-17DW and appointed Matthew Zybas, Snohomish County Solid Waste Director, as its designated representative under RCW 36.58.090; and

WHEREAS, Republic Services and Waste Management submitted proposals for RFP-07-17DW; and

WHEREAS, an Evaluation Team met to review the proposals and interview the two proposers; and

WHEREAS, the Evaluation Team scored Republic Services the highest based on the Evaluation Criteria established in RFP-07-17DW; and

WHEREAS, With the recommendation of the designated representative and the Evaluation Team, the County Council authorized the designated representative to enter into negotiations with Republic Services for RFP-07-17DW through Motion No. 17-247 on July 26, 2017; and

WHEREAS, the designated representative and Republic Services have concluded negotiations and prepared a contract to memorialize the terms of their agreement; and

WHEREAS, pursuant to RCW 36.58.090 the County Council held a public hearing on March 21, 2018, to discuss the proposed contract with Republic Services for the provision of solid waste receiving, transport and disposal services.

NOW, THEREFORE, BE IT ORDAINED:

Section 1. The County Council make the following findings of fact: The proposed contract with Republic Services for the provision of solid waste transport and disposal services is in the public interest; the proposed contract is financially sound; and it is advantageous for the County to utilize RCW 36.59.090 for the award of this contract.

Section 2. The Snohomish County Council hereby approves the proposed Contract Regarding Solid Waste Receiving, Transport and Disposal Services for

1 Snohomish County, Washington, and authorizes the Snohomish County Executive to  
2 execute the Contract, a copy of which is attached to this ordinance as Exhibit A.

3  
4 PASSED this 21<sup>st</sup> day of March, 2018.  
5  
6

7 SNOHOMISH COUNTY COUNCIL  
8 Snohomish County, Washington

9  
10 [Signature]  
11 Chairperson

12  
13 ATTEST:  
14 [Signature]  
15 Clerk of the Council, *Asst.*

- 16
- 17
- 18 (  ) APPROVED
- 19
- 20 ( ) EMERGENCY
- 21
- 22 ( ) VETOED

23 DATE: 3/26/18  
24 [Signature]  
25  
26 County Executive

27  
28 ATTEST:  
29 [Signature]  
30

31  
32  
33 Approved as to form only:  
34 [Signature] 2/22/18  
35 Deputy Prosecuting Attorney  
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**EXHIBIT A**  
to  
**ORDINANCE NO. 18-022**

CONTRACT REAGRADING SOLID WASTE RECEIVING, TRANSPORT AND  
DISPOSAL SERVICES FOR SNOHOMISH COUNTY, WASHINGTON

*[See Attached]*

*[The remainder of this page is intentionally left blank.]*

**CONTRACT**  
**REGARDING SOLID WASTE**  
**RECEIVING, TRANSPORT AND DISPOSAL SERVICES**  
**FOR**  
**SNOHOMISH COUNTY, WASHINGTON**

**DATED** 3/26, 2018

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1  
2 **CONTRACT**  
3 **REGARDING ACCEPTABLE SOLID WASTE TRANSPORT AND DISPOSAL**  
4 **SERVICES FOR SNOHOMISH COUNTY, WASHINGTON**  
5

6 THIS CONTRACT (the "Contract") is made by and between SNOHOMISH COUNTY, a  
7 political subdivision of the State of Washington (the "County") and Rabanco, Ltd, a  
8 Washington public utility corporation, doing business as Republic Services (the  
9 "Contractor"). In consideration of the mutual benefits and covenants contained herein, the  
10 parties agree as follows:  
11

12 **ARTICLE 1** **DEFINITIONS**  
13

14 For the purposes of this Contract and the Contract Documents, the following terms  
15 shall have the following meanings when they are used with initial capitalization:  
16

17 1.1 "Acceptable Waste" means Solid Waste excluding Unacceptable Waste.  
18

19 1.2 "Addenda" means written or graphic documents signed by both parties that clarify,  
20 the Contract Documents.  
21

22 1.3 "Business Day" means any day, Monday through Friday, from 8:00 AM, Pacific  
23 Time until 5:00 PM, Pacific Time, which is not a holiday designated as such in the  
24 Contract.  
25

26 1.4 "Chassis" means a Tractor-drawn trailer that conforms to the Contract and is  
27 designed for over-the-road Transport of a Container.  
28

29 1.5 "City" or "Cities" means those incorporated cities or towns in Snohomish County  
30 that participate in the Comprehensive Solid Waste Management Plan through execution of  
31 an interlocal agreement with the County.  
32

33 1.6 "Closed Top Container" means any fully enclosed Container equipped with rear doors  
34 that conforms to the specifications of this Contract and is designed for trucking or rail  
35 shipment.  
36

37 1.7 "Collect" means the act of removing Acceptable Waste from the generator for  
38 Transport.  
39

40 1.8 "Compacted Container" means a Container Loaded with Solid Waste that has been  
41 crushed or compressed in a hydraulic compactor at the County Transfer Station.  
42

43 1.9 "Comprehensive Solid Waste Management Plan" means the County's  
44 Comprehensive Solid and Hazardous Waste Management Plan adopted in accordance with  
45 Chapter 70.95 RCW.  
46

47 1.10 "Consumer Price Index" or "CPI" means the Consumer Price Index computed by  
48 the United States Department of Labor, Bureau of Labor Statistics, for the Seattle-Tacoma  
49 Metropolitan Area for Urban Wage Earners and Clerical Workers, or a successor index



1 produced by the United States government. If the United States government discontinues  
2 publication of such an index for the Seattle-Tacoma area, then its index for the Puget Sound  
3 Region or the State of Washington shall be used, and if such indices are not available, a  
4 similar index proposed by another governmental agency shall be used.  
5

6 1.11 "Construction, Demolition and Land-clearing Waste ("CDL Wastes") means any  
7 recyclable or non-recyclable waste that results from construction, remodeling, repair or  
8 demolition of buildings, roads, or other structures, or from land-clearing for development,  
9 and that is removed from the site of construction, demolition or land clearing.  
10

11 1.12 "Container" means a Closed Top Container or Open Top Container conforming to  
12 Section 6.3 of the Contract.  
13

14 1.13 "Contract" and "Contract Documents" are synonymous and mean the combination  
15 of all of the following:  
16

17 (A) This Contract, and all duly authorized and enacted amendments thereto;  
18

19 (B) The performance bonds, letters of credit or other financial guarantees  
20 required by the Contract;  
21

22 (C) All exhibits and attachments to the Contract;  
23

24 (D) RFP No. 07-17DW and the Contractor's Response to RFP No. 07-17DW;  
25

26 (E) Any and all Addenda to the Contract;  
27

28 (F) Any and all change orders or modifications of the foregoing documents  
29 agreed to by the parties in the manner prescribed by the Contract unless otherwise  
30 designated for informational or bid evaluation purposes only.  
31

32 1.14 "County System" means the Solid Waste handling system in accordance with the  
33 Comprehensive Solid Waste Management Plan.  
34

35 1.15 "County Transfer Station" means any Facility used by County as part of the  
36 Comprehensive Solid Waste Management Plan where Solid Waste is accepted from  
37 Persons and loaded into Containers for Transport to a Receiving Facility or Disposal Site.  
38

39 1.16 "Customer" means (i) the County, (ii) City or Cities, or (iii) other person required by  
40 County Code to utilize the County System.  
41

42 1.17 "Dispose" or "Disposal" means all work, services or operations performed by the  
43 Contractor pursuant to this Contract on or after the time that Solid Waste enters the  
44 boundaries of Contractor's Disposal Site pursuant to this Contract.  
45

46 1.18 "Disposal Services Fee" means the per ton fee for Disposal provided by Contractor.  
47

48 1.19 "Disposal Site" means the landfill used by the Contractor for the final treatment,  
49 utilization, processing, or deposition of any Solid Waste received under this Contract.

1  
2 1.20 "Facility" or "Facilities" means all real and personal property necessary for the  
3 Contractor to fulfill its obligations under this Contract, including but not limited to, all  
4 vehicles, equipment, fixtures, and improvements used in Receiving, Transporting, and  
5 Disposing of Solid Waste, that are owned, leased, operated, or used by the Contractor or the  
6 County to carry out the provisions of this Contract.

7  
8 1.21 "Hazardous Waste" means any Solid Waste that is either expressly subject to  
9 regulation as "hazardous waste" or is not excluded from regulation as "hazardous waste" or  
10 "dangerous waste" by application of hazardous waste or dangerous waste regulations  
11 adopted by the United States Environmental Protection Agency, the Washington State  
12 Department of Ecology or, if the Solid Waste is Received, Transported or Disposed outside  
13 the State of Washington, any other applicable state or federal agency and now or hereafter.

14  
15 1.22 "Load" or "Loaded" means the process by which, and the status of a Container after  
16 which, Solid Waste is placed inside a Container and prepared for Transport to the  
17 Receiving Facility.

18  
19 1.23 "Open Top Container" means any Container that is open on top and equipped with a  
20 tarp or cover system that conforms to the specifications of this Contract and is designed for  
21 trucking or rail shipment.

22  
23 1.24 "Person" or "Persons" means, without limitation, any individual, firm, corporation,  
24 association, partnership, consortium, joint venture, entity, government agency or unit of  
25 local government.

26  
27 1.25 "Project" means any and all matters and things that the Contract requires to be done,  
28 kept, performed and furnished by the Contractor and by the County, respectively.

29  
30 1.26 "Receiving" means all work, services or operations performed by the Contractor  
31 pursuant to this Contract on or after the time that Solid Waste enters the boundaries of  
32 Receiving Facility pursuant to this Contract.

33  
34 1.27 "Receiving Facility" means a Facility at which the Contractor accepts Loaded  
35 Containers.

36  
37 1.28 "Receiving Services and Transport Services Fee" means the per ton fee for  
38 Receiving and Transport provided by Contractor.

39  
40 1.29 "Recycling" means transforming or remanufacturing Solid Waste materials into  
41 usable or marketable materials for use other than for landfill Disposal or incineration.  
42 Recycling does not include collection, compacting, repackaging, and sorting for the  
43 purpose of Transport.

44  
45 1.30 "Representative" means the authorized representative of the County or the  
46 Contractor designated in accordance with Article 5.

47  
48 1.31 "Residual Recycling Waste" means Solid Waste generated during the processing of  
49 Recyclable Materials.

1  
2 1.32 "Security Seal" means a lead-and-wire seal, or similar nonreusable closure, installed  
3 on a Loaded Container for protection against undetectable access, removal, adjustment or  
4 unauthorized use that must be broken to open that Container.

5  
6 1.33 "Solid Waste" means Solid Waste as defined by chapter 7.35 of the Snohomish  
7 County Code.

8  
9 1.34 "Special Waste" means any nonhazardous solid waste which, because of its physical  
10 characteristics, chemical make-up, or biological nature requires either special handling,  
11 disposal procedures, including liquids for solidification at the landfill, documentation,  
12 and/or regulatory authorization, or poses an unusual threat to human health, equipment,  
13 property, or the environment. Special Waste must conform in all respects with a  
14 Contractor-approved Special Waste Profile. Special Waste includes, but is not limited to:

- 15 (i) Waste generated by an industrial process or a pollution control process;  
16 (ii) Waste which may contain residue and debris from the cleanup of spilled petroleum,  
17 chemical or commercial products or wastes, or contaminated residuals;  
18 (iii) Waste which is nonhazardous as a result of proper treatment pursuant to Subtitle C  
19 of the Resource Conservation and Recovery Act of 1976 ("RCRA");  
20 (iv) Waste from the cleanup of a facility which generates, stores, treats, recycles or  
21 disposes of chemical substances, commercial products or wastes;  
22 (v) Waste which may contain free liquids and requires liquid waste solidification;  
23 (vi) Containers that once contained hazardous substances, chemicals, or insecticides so  
24 long as such containers are "empty" as defined by RCRA;  
25 (vii) Asbestos containing or asbestos bearing material that has been properly secured  
26 under existing Applicable Law;  
27 (viii) Waste containing regulated polychlorinated biphenyls (PCBs) as defined in the  
28 Toxic Substances Control Act (TSCA);  
29 (ix) Waste containing naturally occurring radioactive material (NORM) and/or  
30 technologically-enhanced NORM (TENORM);  
31 (x) Street Sweepings; and  
32 (xi) Municipal or commercial solid waste that may have come into contact with any of  
33 the foregoing.

34  
35 1.35 "Special Waste Profile" means Contractor's form of documentation that the County  
36 must complete, and Contractor must approve, with respect to any Special Waste prior to  
37 Contractor's acceptance of such Special Waste

38  
39 1.36 "State/Local Solid Waste Handling Fee" means a governmentally-imposed fee, tax,  
40 surcharge or similar charge on Solid Waste handling services, including but not limited to  
41 Receiving, Transport and Disposal services; the term does not include federally-imposed  
42 fees, taxes, surcharges or other charges levied equally on Solid Waste Receiving, Transport  
43 and Disposal in all states.

44  
45 1.37 "Surety" means the Person approved by the County to provide a cash bond,  
46 performance bond, letter of credit or other financial guarantee required guaranteeing or  
47 providing the funds to guarantee performance of the Contractor's obligations under this  
48 Contract; the surety must be licensed to conduct business in Washington and included on  
49 the current list of Companies Holding Certificates of Authority as Acceptable Sureties on

1 Federal Bonds and as Acceptable Reinsuring Companies, as published in Circular 570, as  
2 amended, by the Audit Staff Bureau of Accounts, United States Treasury Department.

3  
4 1.38 "Tipping Fee" or "Tipping Fees" means the per ton fees paid by the County to the  
5 Contractor, it is the combination of the Disposal Services Fee and the Receiving Services  
6 and Transport Services Fee. .

7  
8 1.39 "Tractor" means a vehicle used to move Containers.

9  
10 1.40 "Transport" or "Transportation" means but is not limited to the storage, handling,  
11 loading, unloading, and movement of Containers under this Contract.

12  
13 1.41 "Unacceptable Waste" means:

14  
15 (A) Solid Waste that may not be Disposed at the Disposal Site under state or  
16 federal law, regulation, rule, code, permit or permit condition;

17  
18 (B) Solid Waste that is restricted from acceptance at County owned and operated  
19 Solid Waste Facilities in accordance with County Code;

20  
21 (C) Any other Solid Waste that the County Representative and Contractor  
22 Representative have agreed in writing to exclude from Acceptable Waste; and

23  
24 (D) Hazardous Waste.

25  
26 1.42 "Uncompacted Container" means a Container containing waste that has not been  
27 crushed or compressed in a hydraulic compactor.

28  
29 1.43 "Uncontrollable Circumstances" means to the extent that the occurrence of a riot,  
30 war, civil disturbance, insurrection, act of terrorism, or epidemic delays the Contractor from  
31 performing any of its obligations under this Contract and no alternative means for the  
32 services under this Contract is available. Uncontrollable Circumstances shall not include  
33 to the extent the occurrence of a riot, war, civil disturbance, insurrection, act of terrorism,  
34 or epidemic does not delay the Contractor from performing any of its obligations under this  
35 Contract. Uncontrollable Circumstance shall not include any other events or circumstances  
36 such as, but not limited to, labor shortage or dispute, strikes, slowdowns, walkouts,  
37 lockouts, industrial disturbances or other disputes involving the Contractor's employees;  
38 changes in the Contractor's costs for performance under this Contract; economic changes;  
39 or slowdowns or shutdowns of Transport systems, including but not limited to railroads and  
40 other thoroughfares.

41  
42 1.44 "Factor wastes" means liquid and solid wastes collected during maintenance of  
43 stormwater catch basins, detention/retention ponds, and roadside ditches and similar  
44 stormwater treatments and conveyance structures and solid wastes collected during street  
45 and parking lot sweeping.

46  
47 **ARTICLE 2 GENERAL PROVISIONS**

48  
49 **2.1 Governing Law; Venue**

1 This Contract shall be governed by the laws of the State of Washington. The venue of any  
2 action arising out of this Contract shall be in the Superior Court of the State of Washington,  
3 in and for Snohomish County.  
4

5 **2.2 Complete Contract**

6 The Contractor was selected through the County's RFP No. 07-17DW. The RFP and the  
7 Contractor's response are incorporated herein by this reference. To the extent of any  
8 inconsistency among this Contract, the RFP, and the Contractor's response, this Contract  
9 shall govern. To the extent of any inconsistency between the RFP and the Contractor's  
10 response, the RFP shall govern.  
11

12 **2.3 Conflicts between Attachments and Text**

13 Should any conflicts exist between any exhibit, attachment, or schedule and the text or  
14 main body of this Contract, the text or main body of this Contract shall prevail unless  
15 expressly stated otherwise in the applicable exhibit, attachment or schedule.  
16

17 **2.4 Severability**

18 If any Contract provision is held by any court of competent jurisdiction to be void, invalid  
19 or unenforceable under any applicable law, the remaining provisions of this Contract shall  
20 remain in effect and bind the parties; however, the parties shall negotiate in good faith to  
21 amend the Contract to effectuate the intent of any void, invalid or unenforceable provision,  
22 if permissible under applicable law.  
23

24 **2.5 Time is of the Essence**

25 Time is of the essence of this Contract. The County's or Contractor's failure to object to a  
26 breach of any Contract provision is not, and shall not, be construed as a waiver of that  
27 provision. The payment or acceptance of compensation subsequent to any breach is not,  
28 and shall not, be deemed an acceptance of that breach. Any waiver must be in writing and  
29 signed by the party against whom the waiver is asserted; otherwise the waiver shall not be  
30 effective; and each of the Parties irrevocably waives any claim of an oral waiver by the  
31 other of any of the provisions of this Contract.  
32

33 **2.6 Construction of Terms**

34 Unless otherwise specified in the Contract, words describing material or work that have a  
35 well-known technical or trade meaning shall be construed in accordance with the well-  
36 known meaning generally recognized by Solid Waste professionals, engineers and trades.  
37

38 **2.7 Access**

39 The County shall have the right and unlimited access to inspect any or all of the  
40 Contractor's and subcontractor's operations, Facilities or records related to this Contract;  
41 however, the County's access to records under this Section shall be subject to Section 2.17.  
42 The County shall have access to operations and Facilities under this Section during all  
43 normal business hours or when there is activity of any kind at those operations or Facilities.  
44

45 **2.8 No Third Party Beneficiaries**

46 This Contract is entered into by the County in its governmental capacity and is not intended  
47 to nor does it create any third party beneficiary or rights in any private Person.  
48

49 **2.9 Personal Liability**

1 This Contract is not intended to create or result in any personal liability on the part of any  
2 public official or County employee or agent, nor shall the Contract be construed to create  
3 that liability.

4  
5 **2.10 Comprehensive Contract**

6 All services that are necessary to complete and carry out the terms of the Contract as  
7 described in the Contract Documents shall be considered part of the Contract and the  
8 Contractor shall perform or provide for the services without extra compensation unless  
9 otherwise expressly stated in the Contract Documents.

10  
11 **2.11 Subsidiary Contracts**

12 No agreement between the Contractor and its subcontractors, officers, employees or agents,  
13 including any agreement relating to the use, lease, operation or ownership of the Disposal  
14 Site and other Facilities, shall prevent, the Contractor from performing its obligations under  
15 this Contract.

16  
17 **2.12 Notices**

18 All notices and other communications shall be in writing and shall be sufficient if given, and  
19 shall be deemed given, on the date on which the same has been mailed by certified mail,  
20 return receipt requested, postage prepaid, addressed as follows:

21  
22 If to the County: Snohomish County Department of Public Works  
23 3000 Rockefeller Avenue M/S 607  
24 Everett, Washington 98201  
25 Attention: Solid Waste Director or their designee  
26

27 and to: Snohomish County Purchasing Division  
28 3000 Rockefeller Avenue, M/S 507  
29 Everett, Washington 98201  
30 Attention: Purchasing Manager or their designee  
31

32 If to the Contractor: Regional Disposal Company  
33 54 S. Dawson Street  
34 Seattle, WA 98134  
35 Attention: Don Tibbets  
36 General Manager  
37

38 The County or the Contractor may, by notice to the other given hereunder, designate  
39 any further or different addresses to which subsequent notices or other communications shall  
40 be sent.

41  
42 **2.13 Article, Section and Subsection References**

43 Any Articles, Sections or subsections mentioned in this Contract by number only without  
44 reference to another document refer to the Articles, Sections and subsections contained in  
45 this Contract.

46  
47 **2.14 County Non-discrimination**

48 It is the policy of the County to reject discrimination which denies equal treatment to any  
49 individual because of his or her race, creed, color, national origin, families with children,

1 sex, marital status, sexual orientation, age, honorably discharged veteran or military status,  
2 or the presence of any sensory, mental, or physical disability or the use of a trained dog  
3 guide or service animal by a person with a disability as provided in Washington’s Law  
4 against Discrimination, Chapter 49.60 RCW, and the Snohomish County Human Rights  
5 Ordinance, Chapter 2.460 SCC. These laws protect against specific forms of  
6 discrimination in employment, credit transactions, public accommodation, housing, county  
7 facilities and services, and county contracts.  
8

9 The Contractor shall comply with the substantive requirements of Chapter 2.460  
10 SCC, which are incorporated herein by this reference. Execution of this Contract  
11 constitutes a certification by the Contractor of its compliance with the requirements of  
12 Chapter 2.460 SCC. If the Contractor is found to have violated this provision, or to have  
13 furnished false or misleading information in an investigation or proceeding conducted  
14 pursuant to this Contract or Chapter 2.460 SCC, this Contract may be subject to a  
15 declaration of default and termination at the County's discretion. This provision shall not  
16 affect the Contractor's obligations under other federal, state, or local laws against  
17 discrimination.  
18

19 **2.15 Federal Non-discrimination**

20 Snohomish County assures that no person shall be excluded from participation in, denied  
21 the benefits of, or be otherwise subjected to discrimination under any County sponsored  
22 program or activity on the basis of race, color, national origin, or sex as provided by Title  
23 VI of the Civil Rights Act of 1964 (Pub. L. No. 88-352), as amended, and the Civil Rights  
24 Restoration Act of 1987 (Pub. L. No. 100-259). Snohomish County further assures that  
25 every effort will be made to ensure nondiscrimination in all of its programs and activities  
26 without regard to whether those programs and activities are federally funded.  
27

28 **2.16 Employment of County Employees**

29 SCC 2.50.075, “Restrictions on future employment of County employees,” imposes certain  
30 restrictions on the subsequent employment and compensation of County employees. The  
31 Contractor represents and warrants to the County that it does not at the time of execution of  
32 this Contract, and that it shall not during the term of this Contract, employ a former or  
33 current County employee in violation of SCC 2.50.075. For breach or violation of these  
34 representations and warranties, the County shall have the right to terminate this Contract  
35 without liability.  
36

37 **2.17 Public Records Act**

38 This Contract and all public records associated with it shall be available from the County  
39 for inspection and copying by the public where required by the Public Records Act,  
40 Chapter 42.56 RCW (the “Act”). To the extent that public records then in the custody of  
41 the Contractor are needed for the County to respond to a request under the Act, as  
42 determined by the County, the Contractor agrees to make them promptly available to the  
43 County but no later than a minimum of five (5) Business Days prior to the response  
44 deadline set forth in the Act. If the Contractor considers any portion of any record provided  
45 to the County under this Contract, whether in electronic or hard copy form, to be protected  
46 from disclosure under law, the Contractor shall clearly identify any specific information  
47 that it claims to be confidential or proprietary. If the County receives a request under the  
48 Act to inspect or copy the information so identified by the Contractor and the County  
49 determines that release of the information is required by the Act or otherwise necessary, the

1 County's sole obligations shall be to notify the Contractor (a) of the request and (b) of the  
2 date that such information will be released to the requester unless the Contractor obtains a  
3 court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Contractor fails to  
4 timely obtain a court order enjoining disclosure, the County may release the requested  
5 information on the date specified.  
6

7 The County has no obligation (and nothing in this section establishes a County  
8 obligation) to claim on behalf of the Contractor any exemption from disclosure under the  
9 Act. The County shall not be liable to the Contractor for releasing records that (i) have not  
10 been clearly identified and labeled by the Contractor as confidential or proprietary or (ii)  
11 were released in compliance with this section or in compliance with an order of a court of  
12 competent jurisdiction.  
13

#### 14 **2.18 Compliance with Other Laws**

15 Both parties, their officers, employees, agents and subcontractors shall each comply with  
16 every applicable federal, state or local law, statute, rule, regulation or ordinance, including  
17 those of agencies having jurisdiction over the Project, in performing obligations under this  
18 Contract. The County shall have the right to inspect copies of all correspondence or any  
19 other documents in the possession of the Contractor or its subcontractors related to the  
20 Contractor's compliance with that law under this Contract.  
21

#### 22 **2.19 Permits, Licenses, etc.**

23 The Contractor shall obtain, maintain and pay for, at Contractor's sole expense, all permits  
24 required by law for its operations and activities under this Contract. For purposes of this  
25 Contract, the term "permits" means any temporary and/or permanent governmental  
26 authorization, approvals, licenses, certificates, inspection fees, surcharges or other  
27 approvals required for the performance of the Project. The Contractor shall provide to the  
28 County a list of all permits required for the Project designating the issuing agency and the  
29 permits' respective dates of issuance and expiration, copies of all current permits and the  
30 Contractor's schedule for obtaining or renewing all permits required during the term of the  
31 Contract.  
32

33 The Contractor shall be liable for all fines or civil penalties that may be imposed by  
34 any regulatory agency for Contractor-caused violations of permits, laws or regulations; the  
35 County shall not be liable for and shall not reimburse Contractor for payment of those fines  
36 or civil penalties. Nothing herein is intended to restrict the Contractor's right to contest any  
37 fine in an administrative proceeding or in court.  
38

#### 39 **2.20 Taxes and Fees**

40 The Contractor shall be responsible and liable for payment of all federal, state and local  
41 taxes and fees, and surcharges of every form, that apply to any and all Persons, property,  
42 income, equipment, materials, supplies, structures or activities that are involved in the  
43 performance of the Contract, including but not limited to, any income taxes, real property,  
44 excise, sales and use taxes and fees that arise in connection with the Contract; however, the  
45 Contractor shall not be responsible or liable for payment of any tax or fee for which the  
46 County is ordinarily responsible without regard to the services provided by the Contractor  
47 under this Contract.  
48

#### 49 **2.21 Compliance with Grant Terms and Conditions**



1 The Contractor shall comply with any and all conditions, terms and requirements of any  
2 federal, state or other grant that wholly or partially funds the Contractor's work hereunder.

3  
4 **2.22 Records and Access; Audit; Ineligible Expenditures**

5 The Contractor shall maintain records related to performance of its obligations under this  
6 Contract for a period of seven (7) years after completion of its services under this Contract.  
7 The County or any of its duly authorized representatives shall have access at reasonable  
8 times to any books, documents, papers and records of the Contractor which are directly  
9 related to this Contract for the purposes of making audit examinations, obtaining excerpts,  
10 transcripts or copies, and ensuring compliance by the County with applicable laws.  
11 Expenditures under this Contract, which are determined by audit to be ineligible for  
12 reimbursement and for which payment has been made to the Contractor, shall be refunded  
13 to the County by the Contractor.

14  
15 **2.23 Visitation Rights**

16 The County shall have the right to have its representative present at the Receiving Facility  
17 and Disposal Site during Contractor's hours of operation to observe and monitor  
18 Contractor's compliance with the provisions of this Contract, provided that such  
19 observation monitoring shall be conducted in a manner to minimize interference with the  
20 Receiving Facility and Disposal Site operations. While visiting the Receiving Facility or  
21 Disposal Site, the County representative shall comply with all reasonable rules and  
22 regulations adopted by Contractor.

23  
24 **2.24 Amendments**

25 No changes, additions, or amendments shall be made in this Agreement except as agreed to  
26 by both parties, reduced to writing and executed with the same formalities as are required  
27 for the execution of this Agreement.

28  
29 **ARTICLE 3 INDEPENDENT CONTRACTOR**

30  
31 The Contractor agrees that it will perform the services under this Contract as an  
32 independent contractor and not as an agent, employee, or servant of the County. This  
33 Contract neither constitutes nor creates an employer-employee relationship. The parties  
34 agree that the Contractor is not entitled to any benefits or rights enjoyed by employees of  
35 the County. The Contractor specifically has the right to direct and control Contractor's  
36 own activities in providing the agreed services in accordance with the specifications set out  
37 in this Contract. The County shall only have the right to ensure performance. Nothing in  
38 this Contract shall be construed to render the parties partners or joint ventures.

39  
40 The Contractor shall furnish, employ and have exclusive control of all persons to be  
41 engaged in performing the Contractor's obligations under this Contract (the "Contractor  
42 personnel"), and shall prescribe and control the means and methods of performing such  
43 obligations by providing adequate and proper supervision. For all purposes under this  
44 Contract, the Contractor personnel shall be the employees or agents of the Contractor  
45 exclusively and shall not be deemed to be employees or agents of the County for any  
46 purposes whatsoever. The Contractor shall be solely responsible for compliance by  
47 Contractor personnel with all rules, laws and regulations relating to employment of labor,  
48 hours of labor, working conditions, payment of wages and payment of taxes, including  
49 applicable contributions from Contractor personnel when required by law.

1  
2 Because it is an independent contractor, the Contractor shall be responsible for all  
3 obligations relating to federal income tax, self-employment or FICA taxes and  
4 contributions, and all other so-called employer taxes and contributions including, but not  
5 limited to, industrial insurance (workers' compensation). The Contractor agrees to  
6 indemnify, defend and hold the County harmless from any and all claims, valid or  
7 otherwise, made against the County with respect to those obligations.

8  
9 The Contractor assumes full responsibility for the payment of all payroll taxes, use,  
10 sales, income, or other form of taxes, fees, licenses, excises or payments required by any  
11 city, county, federal or state legislation which are now or may during the term of the  
12 Contract be enacted as to all persons employed by the Contractor and as to all duties,  
13 activities and requirements by the Contractor in performance of the work under this  
14 Contract. The Contractor has exclusive liability for all such obligations, and shall meet all  
15 requirements with regard to those obligations under any rules or regulations currently in  
16 force or which may be promulgated in connection therewith in the future.

#### 17 18 **ARTICLE 4 SUBCONTRACTING AND ASSIGNMENT**

##### 19 20 **4.1 Subcontracting and Assignment**

21 The Contractor shall not subcontract, assign, or delegate any of the rights, duties or  
22 obligations covered by this Contract without prior express written consent of the County  
23 which shall not be unreasonably withheld. Any attempt by the Contractor to subcontract,  
24 assign, or delegate any portion of the Contractor's rights, duties or obligations under this  
25 Contract to another party in violation of the preceding sentence shall be null and void and  
26 shall constitute a material breach of this Contract.

##### 27 28 **4.2 Assignment of Subcontracts**

29 All contracts between the Contractor and its subcontractors for services and work under this  
30 Contract shall contain a clause that if the Contractor defaults in performance of the Contract  
31 and the County accepts assignment of the subcontract, the subcontractor shall recognize the  
32 County or its assignee as the Contractor and the County or its assignee shall have all the  
33 former rights, remedies and responsibilities of the Contractor under the subcontract. The  
34 Contractor shall be responsible to the County for the acts and omissions of its  
35 subcontractors and suppliers and the subcontractor's suppliers, employees, agents or  
36 servants.

#### 37 38 **ARTICLE 5 CONTRACTOR AND COUNTY REPRESENTATIVES**

##### 39 40 **5.1 Representatives**

41 The Contractor and the County shall each designate a Contract Representative  
42 ("Representative") for this Contract.

43  
44 The Representative for the County initially is: Solid Waste Director or their designee

45  
46 The Representative for the Contractor initially is: Don Tibbets, General Manager

1 **5.2 Contractor Representative**

2 The Contractor's Representative shall be the Contractor's agent and shall represent the  
3 Contractor for all purposes of this Contract. All written directions, instructions or notices  
4 given by the County to that Representative and related to the subject matter of the Contract  
5 shall bind the Contractor. The Contractor's Representative shall have authority to act on  
6 behalf of the Contractor; the Contractor's Representative's statements, representations,  
7 actions and commitments shall fully bind the Contractor. The Contractor Representative  
8 shall be available to the County Representative at all times during the term of this Contract.  
9

10 **5.3 Change in Representative**

11 The parties shall promptly notify each other in writing of any change in the Representative  
12 designations.  
13

14 **ARTICLE 6 CONTRACTOR RESPONSIBILITIES**

15  
16 The services to be performed under the terms of this Contract shall be performed in  
17 accordance with the requirements of this Contract and with generally accepted practices  
18 prevailing in the solid waste industry at the time the services are performed. The  
19 Contractor shall perform the work in a timely manner. Any materials or equipment used by  
20 the Contractor in connection with performing the services shall be of good quality. The  
21 Contractor represents that it is fully qualified to perform the services to be performed under  
22 this Contract in a competent and professional manner.  
23

24 **6.1 General**

25 The Contractor shall:

- 26  
27 (A) Own, operate, and/or lease Facilities necessary to perform its obligations  
28 under this Contract;  
29  
30 (B) Procure and maintain performance bonds, letters of credit or other financial  
31 guarantees in accordance with Article 6.10 of this Contract;  
32  
33 (C) Comply with all applicable laws; obtain any permit, license, certificate or  
34 governmental approval required for the Project; and pay all applicable taxes and  
35 fees in accordance with this Contract;  
36  
37 (D) Procure and maintain insurance in accordance with this Contract; and  
38  
39 (E) Maintain a closure and post-closure trust financial assurance in accordance  
40 with this Contract (see Section 6.11).  
41

42 **6.2 Receiving, Transportation, and Disposal Services**

43 The Contractor shall Receive, Transport, and Dispose of Solid Waste from Customers as  
44 follows:  
45

46 (A) Receiving Services:

- 47  
48 1.) Contractor shall operate and maintain a Receiving Facility, Everett  
49 Intermodal Facility, located at 811 Riverside Road, Everett, Washington

1 98201 throughout the term of the Contract unless an alternative Receiving  
2 Facility is approved in writing by the County Representative, not to be  
3 unreasonably withheld.  
4

5 2.) The Receiving Facility shall be open Monday through Friday, from  
6 6:00 a.m. to 4:00 p.m. PST. The Receiving Facility shall be open Saturday  
7 from 7:00 a.m. to 3:00 p.m. PST.  
8

9 3.) Notwithstanding Section 6.2(A)(2), if the County Transfer Station is  
10 closed for New Year's Day, Thanksgiving Day, or Christmas Day then the  
11 Receiving Facility may be closed for such holiday.  
12

13 4.) In the event an emergency results in an increase in the volume of  
14 Solid Waste, the Contractor shall extend the minimum hours of operation as  
15 necessary to accommodate Receiving of the increased volume of Solid  
16 Waste.  
17

18 5.) Contractor shall accept all Loaded Containers delivered to the  
19 Receiving Facility by Customers.  
20

21 6.) Contractor shall provide priority access at the Receiving Facility  
22 during hours of operation to County vehicles delivering Loaded Containers.  
23 Priority access means that at any time during the Contractor's hours of  
24 operation County vehicles delivering Loaded Containers shall be provided  
25 service prior to all other vehicles delivering Solid Waste.  
26

27 7.) Contractor shall ensure that its daily operations do not result in a wait  
28 time of more than fifteen (15) minutes from the time a County vehicle  
29 Transports a Loaded Container to the Receiving Facility and the time the  
30 County vehicle leaves the Receiving Facility with an empty Container.  
31

32 (B) Transport Services:  
33

34 1.) Contractor shall Transport to the Disposal Site in a timely manner all  
35 Loaded Containers accepted at the Receiving Facility.  
36

37 2.) Contractor shall Transport all empty Containers from the Disposal  
38 Site to the Receiving Facility as required by the Contract.  
39

40 (C) Disposal Services:  
41

42 1.) Contractor shall operate and maintain any and all Disposal Sites  
43 utilized for this Contract in compliance with WAC 173-351-300 Design  
44 Criteria (2)(a) or CFR Title 40, Subpart D, Section 258.40 Design Criteria  
45 (2)(b). Any Disposal Site used by the Contractor to Dispose of Solid Waste  
46 shall collect landfill gas.  
47

48 2.) Contractor shall Dispose at the Disposal Site, Roosevelt Regional  
49 Landfill, located at 500 Roosevelt Grade Rd. Roosevelt, WA 99356 of all

1 Solid Waste accepted at the Receiving Facility within ninety-six (96) hours  
2 throughout the term of the Contract unless an alternative Disposal Site is  
3 approved in writing by the County Representative.  
4

5 3.) The Contractor shall not Dispose of Solid Waste in a Disposal Site  
6 that has been nominated or proposed for the National Priorities List (“NPL”)  
7 of contaminated sites, or that has been nominated or proposed for inclusion  
8 in a list of contaminated sites under another program similar to the NPL.  
9

10 4.) If a Disposal Site is located in a jurisdiction that is required to  
11 prepare a Comprehensive Solid Waste Management Plan, or the equivalent  
12 if the Disposal Site is located outside the State of Washington, the  
13 Contractor shall not Dispose of Solid Waste at such Disposal Site unless the  
14 plan of the receiving jurisdiction allows Solid Waste import to the Disposal  
15 Site.  
16

17 5.) At the Disposal Site, the Contractor will weigh each Container as it  
18 enters and leaves the Disposal Site.  
19

20 (D) Contractor shall be solely responsible for providing sufficient capacity to  
21 Receive, Transport, and Dispose of Solid Waste in accordance with this Contract.  
22 The Contractor may accept materials from other sources provided that acceptance of  
23 such materials shall not interfere with providing services in accordance with this  
24 Contract.  
25

### 26 **6.3 Containers and Chassis**

27  
28 (A) Containers:

29  
30 1.) Contractor shall provide Containers that have the following features:

31  
32 (a) Designed for intermodal refuse Transport;

33  
34 (b) Tare weight not more than 12,700 pounds for 48’ Closed Top  
35 Containers;

36  
37 (c) Rigid and durable, designed to Transport a minimum payload of  
38 30 tons;

39  
40 (d) Corrosion resistant;

41  
42 (e) Smooth interior walls and floors;

43  
44 (f) Rear loading driver’s side hinged single doors with heavy duty  
45 rubber seals that are safe and easily opened and closed manually  
46 by County personnel;

47  
48 (g) 100% leak-proof to a height of 24” from the Container floor;

- 1  
2 (h) Screened vent door at the front to allow dissipation of heat and  
3 expanding gases;  
4  
5 (i) No sharp edges or other hazardous conditions; and  
6  
7 (j) Painted with a unique alpha-numeric identification number that is  
8 not less than six (6) inches high on the two (2) long sides of the  
9 Container.

10  
11 2.) Prior to the release of each Container by the Contractor to a  
12 Customer, the Contractor will inspect the Container doorway seals and  
13 locking mechanisms and the overall condition of the Container to ensure that  
14 it conforms to this Contract.

15  
16 3.) Contractor shall ensure Containers are available at the Receiving  
17 Facility in accordance with Section 6.3(A)(5) and other requirements of the  
18 Contract at all times unless otherwise agreed to by County Representative.

19  
20 4.) Following delivery to the Disposal Site, all Solid Waste shall be  
21 removed from each Container. The Contractor shall clean each Container as  
22 necessary to comply with the requirements of the jurisdictional health  
23 department(s) and to mitigate malodor, unsightliness, or the attraction of  
24 vectors.

25  
26 5.) Contractor shall supply the following types of Containers in  
27 sufficient quantities to facilitate the successful performance of the Contract,  
28 which shall be no fewer than the number needed to hold at least three days'  
29 Solid Waste delivered to the Receiving Facility based on the County's  
30 average daily Solid Waste deliveries for the prior quarter for each of the  
31 following Containers types:

- 32  
33 (a) 20' Open Top Containers used for the transportation and  
34 disposal of County Vector Waste; and  
35  
36 (b) 48' Closed Top Containers.

37  
38 For purposes of calculating the minimum Container quantities, the quarters  
39 shall be as follows: August 1<sup>st</sup> through October 31<sup>st</sup>, November 1<sup>st</sup> through  
40 January 31<sup>st</sup>, February 1<sup>st</sup> through April 30<sup>th</sup>, and May 1<sup>st</sup> through July 31<sup>st</sup>.  
41 Container quantities at the start of the contract shall be calculated based on  
42 the last quarter of the previous contract.

43  
44 Contractor shall monitor Container inventories to ensure compliance with  
45 minimum Container quantities. The Container quantities shall be based on  
46 RFID tag data reporting Containers at Receiving Facility plus Containers in  
47 County's possession at 6:00 a.m. PST. Contractor shall adhere to the  
48 Container inventory plan specified in Exhibit A if the Containers quantities  
49 are less than the minimum Container requirements specified herein.

1 Contractor shall calculate the Container quantities and submit to County for  
2 review and approval by 7:00 a.m. PST each day the Receiving Facility is  
3 open.  
4

5 6.) Contractor shall supply and replace a minimum of ten percent (10%)  
6 of the County minimum Containers quantities annually with new Containers  
7 to facilitate the successful performance of the Contract.  
8

9 7.) Upon County Representative approval, the Contractor shall provide a  
10 Container to a Customer; provided that the County reserves the right to  
11 override such Customer requests.  
12

13 (B) Chassis:  
14

15 1.) Contractor shall ensure Chassis are available at both the Receiving  
16 Facility and County Transfer Station at all times unless otherwise agreed to  
17 by County Representative.  
18

19 2.) Contractor shall provide Chassis for all types of Containers, which  
20 shall have the following features:  
21

22 (a) 53' Double Drop 4-Axle Chassis unless otherwise specified;  
23

24 (b) Tare weight not more than 11,900 pounds;  
25

26 (c) A total legal GVWR of 105,500 pounds when coupled to  
27 County tractors;  
28

29 (d) Chassis will be configured with single tires on axles one, two,  
30 and three. Axle four will have dual tires; and  
31

32 (e) Lug nut torque indicators.  
33  
34

35 3.) Contractor shall provide all Chassis for Vector Grit/Street Sweepings  
36 as needed by the County with no less than three calendar days' notice from  
37 the County, with the following features:  
38

39 (a) Lowboy 4-Axle Trailer – To accommodate 20' containers;  
40

41 (b) Deck height of approximately 38"; and  
42

43 (c) Tare weight not more than 11,600 pounds.  
44

45 4.) All Chassis for Residual Recycling Waste/Construction Demolition  
46 Debris (RRW/CDL) must be 48' four axle chassis and have a tare weight  
47 equal to or less than 12,460 pounds.  
48

49 5.) Contractor shall supply all Chassis in sufficient quantity to facilitate

1 the successful performance of the Contract, which shall be no fewer than the  
2 following:

3  
4 (a) The number needed to transport at least three days' Solid  
5 Waste delivered to the Receiving Facility based on the County's  
6 average daily Solid Waste deliveries for the prior quarter; and

7  
8 (b) 14 at the Receiving Facility and at each County Transfer Station  
9 as well as 4 at the Cathcart facility, located in Snohomish, WA.

10  
11 6.) Upon commencement of Contract, the Contractor shall supply a  
12 minimum of sixty three (63) new 53' Chassis and shall utilize such Chassis  
13 to facilitate the successful performance of the Contract for the term of the  
14 Contract.

15  
16 7.) Upon County approval, the Contractor shall provide a Chassis to a  
17 Customer, provided that the County reserves the right to override such  
18 Customer requests.

19  
20  
21 (C) Maintenance:

22  
23 1.) Chassis and Containers shall be properly maintained in a safe  
24 working condition at all times.

25  
26 2.) Chassis and Containers shall be maintained by the Contractor in  
27 accordance with the manufacturer's recommended maintenance and Federal  
28 Department of Transportation requirements.

29  
30 3.) Brake adjustments shall be checked weekly and documented in  
31 maintenance records.

32  
33 4.) The Contractor shall replace any Chassis or Container that does not  
34 meet the requirements specified in this Contract.

35  
36 5.) Containers and Chassis shall be maintained in a neat and sanitary  
37 manner including, but not limited to, washing and sanitizing the Containers  
38 and Chassis with a suitable disinfectant and deodorant upon request by the  
39 County, which request may not be made more than once per quarter.

40  
41 6.) Containers shall be maintained to avoid leakage or spillage of either  
42 Solid Waste or liquids from the Container while in transit or storage.

43  
44 7.) Containers shall be inspected and repaired at least monthly for loose  
45 fitting doors, damage to doors, seals or locking mechanisms, blocked vents,  
46 corrosion, leaks, frayed or ripped tarps on Open Top Containers, or other  
47 damage incurred during loading, Transport, handling and Disposal of Solid  
48 Waste.



1  
2 8.) If a Chassis or Container becomes legally inoperable while in transit  
3 by the County, the County operator will uncouple the Chassis or Container  
4 from the Tractor, immediately notify the Contractor of the breakdown, and  
5 return to the Contractor Transfer Facility for a replacement Chassis or  
6 Container. The Contractor shall provide the replacement within one hour of  
7 such notification. The Contractor shall be responsible for removing and  
8 repairing the disabled Chassis or Container, and shall Transport and Dispose  
9 of its Solid Waste load.

10  
11 9.) If the County damages a Chassis or Container during Transport the  
12 County will reimburse the Contractor for all reasonable costs of repair or  
13 replacement.

14  
15 10.) The Contractor shall provide Chassis and Containers in sufficient  
16 quantities to allow County operations to continue without delay in the event  
17 of scheduled or unscheduled maintenance. The Contractor shall provide  
18 quarterly maintenance reports to the County. Such reports shall include a  
19 record of all scheduled and unscheduled maintenance performed on any  
20 Chassis used in the Project during the previous quarter.

21  
22 11.) Maintenance records shall be preserved for the term of this  
23 agreement plus three (3) years and made available for inspection upon the  
24 request of the County or the jurisdictional health department(s).

#### 25 26 **6.4 Radio Frequency Identification (RFID)**

27  
28 (A) The Contractor shall equip all Containers with RFID tags in a manner as to  
29 minimize damage to RFID tags. Contractor is responsible for replacement of  
30 missing or damaged RFID tags.

31  
32 (B) The Contractor shall record the Container unique identification number and  
33 RFID tag number for each Container.

34  
35 (C) The Contractor shall equip the Receiving Facility and Disposal Site with  
36 RFID tag readers,

37  
38 (D) The Contractor shall ensure all empty and Loaded Container RFID tags are  
39 scanned and electronically recorded upon entrance and exit to the Receiving Facility  
40 and Disposal Site.

41  
42 (E) The Contractor shall provide real time access twenty-four (24) hours per day  
43 to RFID data to County via micro-site and app for mobile device.

#### 44 45 **6.5 Scales**

46  
47 (A) The Contractor shall provide adequately sized truck scales and computerized  
48 record-keeping systems for weighing and recording all incoming and outgoing  
49 Containers at the Disposal Site.

1  
2 (B) At the Disposal Site, the Contractor shall weigh each Container and Chassis  
3 and electronically record the tare weight of each Container and Chassis. Upon any  
4 modification to a Chassis or Container the Contractor shall weigh each Container  
5 and Chassis for purposes of recording the tare weight upon modification to such  
6 Container or Chassis resulting in an increase or decrease of the tare weight. The  
7 County reserves to the right to observe weighing and recording of tare weights.  
8

9 (C) At the Disposal Site, the Contractor will prepare a weight ticket showing the  
10 date, Container number, RFID tag number, time-in and time-out, Security Seal  
11 markings, and gross weight, tare weight and net weight of the Container. This  
12 information will serve as the basis of payment for all services provided by the  
13 Contractor under this Contract. At the County's request, a copy of each weight  
14 ticket will be provided to the County.  
15

16 (D) The Contractor shall weigh, record, and tabulate materials delivered  
17 pursuant to this Contract by Customer.  
18

19 (E) The Contractor shall maintain the scales used for weighing Containers in  
20 accordance with the requirements set forth in *Specifications, Tolerances, and Other*  
21 *Technical Requirements for Weighing and Measuring Devices*, U.S. Department of  
22 Commerce, National Institute of Standards and Technology, Handbook 44  
23 (available at <http://www.nist.gov/pml/wmd/pubs/upload/hb44-15-web-final.pdf>)  
24 or upon request of the County. At a minimum, the Contractor shall test the Disposal  
25 Site scales every six (6) months. At the County's request, the Contractor shall test  
26 the scales if the net weight of a Container at the Disposal Site varies by more than  
27 two percent (2.0%) from the net weight of such Container at the County Transfer  
28 Station.  
29

30 (F) The Contractor will pay for the recalibration of scales excluding scales at the  
31 County Transfer Station.  
32

33 (G) The Contractor will reimburse the County for any overpayment attributable  
34 to improper calibration, retroactive to the date of the County's request for the  
35 Contractor to test the scales.  
36

## 37 **6.6 Alternative Operations Plan**

38

39 (A) No later than sixty (60) calendar days after execution of the Contract, the  
40 Contractor shall submit to the County for approval a complete and detailed  
41 alternative operations plan for correcting, repairing or reconstructing any Facility  
42 that for any reason becomes incapable of performing its role pursuant to the  
43 Contract. This plan shall include provisions for alternative Facilities if necessary  
44 and shall be of sufficient detail to satisfy the County of the Contractor's ability to  
45 maintain operations in the event that Uncontrollable Circumstances prevent the use  
46 of the primary system, or if for any other reason the Contractor is unable to Receive,  
47 Transport, and/or Dispose of Solid Waste using the primary system pursuant to this  
48 Contract. The County shall not be responsible for additional costs related to the  
49 utilization of alternative Facilities unless otherwise specified in this Contract. The

1 Contractor shall be responsible for procuring the alternative Facilities and any and  
2 all increases in costs, including, but not limited to, transportation costs, Disposal  
3 costs, and County capital and operational costs incurred due to the need for use of  
4 the alternative Facilities. The plans shall include but not be limited to:

- 5
- 6 1.) An inventory of alternative Receiving, Transportation, and Disposal  
7 Sites;
- 8
- 9 2.) A listing of financial and technical resources for the implementation  
10 of the plan;
- 11
- 12 3.) A mobilization plan for each component of the alternative operations  
13 system;
- 14
- 15 4.) Copies of any operating permits for alternative Facilities and/or a  
16 timeline (to be updated annually) for receiving permits that have pending  
17 applications.
- 18

19 (B) All alternate Facilities shall be available from the first day that operations  
20 commence under this Contract. The alternative operations plan shall be updated  
21 and submitted for County approval on an annual basis. If no changes have occurred  
22 since the last submittal that affect any part of the alternative operations system, a  
23 report stating this fact and signed by the Contractor's representative will satisfy the  
24 requirement for the annual alternative operations plan update.

25

26 (C) The County's approval of the plan is not and shall not be construed as a  
27 limitation on Contractor's obligations pursuant to the provisions of the Contract.

28

### 29 **6.7 Transition Support**

30 The Contractor understands, acknowledges, and agrees that a smooth transition from one  
31 provider(s) to another is essential for the health and safety of the County, Cities and their  
32 residents; the failure of the Contractor to timely and promptly transition the services  
33 provided pursuant to this Contract may create serious health and safety issues for County,  
34 Cities and their residents; and neither County nor Cities possess the necessary manpower or  
35 equipment to provide the services herein.

36

37 The Contractor shall cooperate fully and timely with the County and any  
38 previous and subsequent provider(s) in any transition of services. If the Contractor fails to  
39 fully and completely transition in accordance with this Contract, the County may engage  
40 the services of another provider to immediately fully and completely transition in  
41 accordance with this Contract, and Contractor shall pay the County any and all expenses of  
42 such transition. In the event the County is unable to secure the immediate services of  
43 another provider, the County may pursue any and all equitable and legal remedies available  
44 to it.

45

### 46 **6.8 Solid Waste Acceptance and Transfer of Ownership**

47

48 (A) Customers shall deliver each Loaded Container to the Receiving Facility.  
49 Ownership of the Solid Waste within a Loaded Container shall pass to the

1 Contractor at the Receiving Facility after the Contractor verifies that the Security  
2 Seal is intact and signs the County transaction ticket. After this transfer of  
3 ownership occurs, the Contractor shall be responsible for all duties, costs, and  
4 liabilities associated with managing the Solid Waste within the Container, except  
5 for such duties, costs, and liabilities that are the direct cause of Unacceptable Waste  
6 that was Loaded by the Customer into the Container. Provided the Contractor  
7 complies with Article 10, title to and liability for Unacceptable Waste discovered by  
8 Contractor shall not pass to the Contractor.

9  
10 (B) If a Container is delivered to the Receiving Facility with a Security Seal that  
11 is not intact, the Contractor shall:

- 12 1.) Notify the County Representative within four (4) hours of discovery;
- 13 2.) Promptly inspect the Container in accordance with Article 10;
- 14 3.) Promptly install a replacement Security Seal on the Container  
15 marked with the same markings as the original seal; and
- 16 4.) Sign the County transaction ticket.

17  
18 (C) If a Container is delivered to the Receiving Facility with external evidence  
19 (such as smoke or extreme heat) that the Container might contain hazardous or  
20 explosive material, the Contractor shall take steps necessary to protect its employees  
21 and the public from potential hazard. The County will reimburse the Contractor for  
22 all costs associated with managing and Disposing of the contents of the Container.

## 23 **6.9 Special Waste**

24 For Special Waste managed under this Agreement, County shall utilize Contractor's  
25 approved Special Waste Profile, signed by an authorized County officer or County's  
26 authorized senior on-site manager responsible for environmental compliance, containing a  
27 description of the waste stream, including the generating process and chemical and physical  
28 characteristics.

29 (A) County agrees that County, not Contractor, shall be responsible for any  
30 liability arising from errors or omissions in the Special Waste Profile. Contractor, in  
31 its discretion, also may request a sample and full analytical characterization be  
32 supplied for each Special Waste.

33  
34 (B) County shall thereafter update the Special Waste Profile (1) upon request of  
35 Contractor or (2) immediately upon any change in the composition, generating  
36 process or characteristics of the waste. County agrees, upon written request of  
37 Contractor, to provide a Special Waste Profile or, in Contractor's discretion, a  
38 representative sample and full analytical characterization of any Waste Material to  
39 Contractor or others in connection with the proper management of the Special  
40 Waste.

41 (C) County warrants that it has sufficient knowledge and information to ensure  
42 that the Special Waste Profile provided is true and correct at the time of tender of  
43

1 every load of Special Waste and that each load of Special Waste tendered for  
2 management by Contractor (1) shall be fully and precisely described in a Special  
3 Waste Profile; (2) shall conform to the information provided in the Special Waste  
4 Profile; and (3) shall not contain any hazardous waste or Unacceptable Waste.  
5

#### 6 **6.10 Performance Bond**

7  
8 (A) At the execution of the Contract, the Contractor shall provide and maintain  
9 for the term of the Contract, a performance bond from a bonding company, financial  
10 institution or other entity approved by the County. Said bond shall be (i) a standby  
11 letter of credit from a financial institution whose long-term debt is rated in one of  
12 the three highest categories by a nationally recognized rating agency (e.g., Standard  
13 & Poor's rating of AAA, AA or A), or (ii) any other financial guarantee or type of  
14 bond or letter of credit that is approved by the County. The Contractor shall  
15 maintain the bond in an amount equal to seventy percent (70%) of the total revenues  
16 paid by the County to the Contractor under the prior contract or this Contract for the  
17 previous year of operations. The bond shall be issued for a period of not less than  
18 one (1) year; the Contractor shall provide a new bond, or evidence satisfactory to  
19 the County of the bond's renewability, at least one hundred eighty (180) days before  
20 the bond then in effect expires.  
21

22 (B) Any bond under this Section shall automatically terminate on the expiration  
23 of the Contract. Notwithstanding that termination, at any time within two (2) years  
24 after the date any bond terminates, the County may make a claim against the bond  
25 to compensate for the Contractor's failure to perform its obligations under the  
26 Contract. For purposes of Section 6.10 the word "bond" shall mean any bond, letter  
27 of credit or other financial guarantee referred to in this Section and provided to  
28 guarantee or provide the funds to guarantee the performance of the Contractor's  
29 obligations under this Contract. All bonds given under this Section that are signed  
30 by the Surety's agent must be accompanied by a certified copy of that agent's  
31 authority to act for the Surety at the time the bond is signed. The County must  
32 approve in writing the Surety providing, and the form and substance of, all bonds.  
33 The Contractor may satisfy the bond obligations under this Section by providing  
34 bonds from one or more bonding companies meeting the qualifications set forth in  
35 this Section.  
36

#### 37 **6.11 Closure and Post-Closure Financial Assurance**

38 The Contractor shall be responsible for all closure and post-closure costs relating to the  
39 Facilities. The Contractor shall establish and maintain at its sole expense any closure and  
40 post-closure financial assurance now or hereafter required under any applicable federal,  
41 state or local law or regulation.  
42

43 The Contractor shall use the money in the financial assurance, including any interest  
44 earnings thereon, to guarantee proper closure and post-closure activities and to provide for  
45 the mitigation of environmental effects of the Receiving Facility and the Disposal Site.  
46 Money in the financial assurance shall be disbursed in accordance with laws and  
47 regulations of the State of Washington or other applicable law.  
48

#### 49 **6.12 Records; Reporting**

1  
2 (A) The Contractor shall keep accurate records of all transactions connected with  
3 this Contract including, but not limited to, all correspondence and invoices and  
4 transaction tickets issued at a Receiving Facility or a Disposal Site. The Contractor  
5 shall at all times maintain an accounting system that uses generally accepted  
6 accounting principles for all services rendered and materials supplied in connection  
7 with this Contract.  
8

9 (B) The Contractor shall provide to the County by the fifteenth (15th) day of  
10 each month a report for the preceding month summarizing routine and extraordinary  
11 activities during the prior month and plans and schedules for future activities. The  
12 monthly report shall include, but not be limited to:  
13

14 1.) The condition of the Facilities including, but not limited to, damage,  
15 maintenance, and capital improvements.  
16

17 2.) Any complaints submitted to the Contractor, including but not  
18 limited to the date and time of the complaint, description of the complaint,  
19 the date and time of resolution of the complaint, and description of the  
20 resolution of complaint;  
21

22 3.) Any extraordinary occurrences affecting the Contractor's  
23 performance including but not limited to occurrences affecting the Facilities;  
24

25 4.) Documentation regarding deliveries of materials to Receiving  
26 Facility including date of delivery to the Receiving Facility, date of Disposal  
27 at the Disposal Site, Customer name, type of Solid Waste, tonnage of Solid  
28 Waste, type of Container (i.e. Closed Top Container or Open Top  
29 Container), Compacted Container or Uncompacted Container, and other  
30 information as requested by the County.  
31

32 5.) Copies of transaction tickets, invoices and/or receipts for the month;  
33

34 6.) Changes in the status and readiness of alternate Facilities;  
35

36 7.) Documentation regarding Unacceptable Waste as required in the  
37 Contract;  
38

39 8.) Maintenance activities performed;  
40

41 9.) Accidents reported at facilities; and  
42

43 10.) Violations of permits, laws or regulations.  
44

45 (C) The Contractor shall provide to the County, on a daily basis by 4:00 p.m.,  
46 PST, the number and location of all Chassis and empty Containers used in the  
47 performance of this Contract.  
48

49 (D) The Contractor shall provide to the County, on a weekly basis, a cumulative

1 report of the matters specified in subsection 6.12(B)(4) for the previous week, up to  
2 the day prior to the report.  
3

#### 4 **6.13 Accidents; Complaints**

5 The Contractor shall be responsible for all injuries, accidents and other mishaps associated  
6 with its operations that are not caused by the negligence of the County. The Contractor  
7 shall report any accidents resulting from the performance of this Contract to the County as  
8 soon as practicable. For purposes of this Section, "accident" shall include the death of any  
9 person, any personal injury resulting in inpatient hospitalization or outpatient treatment by  
10 a physician or damage to any real or personal property exceeding \$5,000. Within seven (7)  
11 days of an accident, the Contractor shall report in writing to the County complete details of  
12 the accident including witness statements.  
13

14 The Contractor shall respond in a reasonable manner to complaints, charges and  
15 allegations related to Contractor's performance under the Contract within one (1) Business  
16 Day of receipt of the complaint, charge or allegation, including but not limited to those  
17 complaints made or actions brought by citizens, citizen groups and public agencies. The  
18 Contractor shall deliver to the County a report of all complaints submitted that shall include  
19 but not be limited to the name and address of the complainant, the substance of the  
20 complaint including the activity or service at issue, the action, if any, the Contractor has  
21 taken to investigate or remedy the problem or an explanation of why no action has been  
22 taken.  
23

#### 24 **6.14 Other Customers**

25 For purposes of assuring that Contractor's use of the Facilities under other contracts will not  
26 adversely affect Contractor's performance under this Contract, by May 16 of each year,  
27 beginning in 2018, the Contractor shall provide a report to the County listing all contracts  
28 with public customers which have utilized the Receiving Facility and Contractor's  
29 equipment, including, but not limited to Containers and Chassis.  
30

#### 31 **6.15 Payment of Subcontractors and Agents**

32 Unless a reasonable dispute exists concerning payment, the Contractor shall promptly pay  
33 all subcontractors, materialmen, suppliers or laborers engaged for purposes of this Contract  
34 in accordance with the contract or agreement between that Person and the Contractor.  
35

#### 36 **6.16 Scheduling; Management; Quality of Performance**

37 The Contractor shall coordinate, schedule in an orderly manner and manage all work done  
38 by Contractor's officers, employees, subcontractors and agents under this Contract. The  
39 Contractor and subcontractors shall perform every act or service under this Contract in a  
40 skillful and competent manner in accordance with the highest standards of the Solid Waste  
41 Receiving, Transportation and Disposal industries. The Contractor shall be responsible to  
42 the County for any errors, deficiencies or failures to perform under this Contract. All  
43 workers and subcontractors shall be skilled in their trades. All operators shall be licensed or  
44 otherwise qualified as required by law. The Contractor shall furnish evidence of the skill  
45 and licenses of its officers, employees, subcontractors and agents on the request of the  
46 County.  
47

#### 48 **6.17 Spillage, Leakage, Litter and Odor, and Other Nuisances.**

49

1 (A) The Contractor shall be responsible for the cleanup of any spillage or  
2 leakage caused by the Contractor or the Contractor's employees or subcontractors.  
3 The Contractor shall clean up any materials including leakage of fluids spilled while  
4 performing services under this Contract. During Transport, the Contractor shall  
5 ensure all materials are contained, covered and enclosed to prevent leaking, spilling,  
6 or blowing of materials. The Contractor shall perform all clean-ups within two (2)  
7 hours of when the Contractor or the Contractor's employees or subcontractors  
8 learns (for avoidance of doubt, whichever learns first) of the spilling, leaking, etc.  
9

10 (B) The Contractor shall be required to pick up all litter caused by services in  
11 connection with this Contract.  
12

13 (C) The Contractor shall maintain the Receiving Facility and equipment located  
14 in the County in a manner that prevents odors. The Contractor shall routinely clean  
15 equipment at the Receiving Facility and equipment located in the County in a  
16 manner that prevents odors.  
17

18 (D) The Contractor shall ensure that nuisances are not caused by the Contractor  
19 or the Contractor's employees or subcontractors while performing services under  
20 this Contract.  
21

## 22 **6.18 Subsidiary Use of Facilities**

23 The Contractor may use Facilities for its own purposes if used in accordance with all  
24 applicable federal, state and local laws and regulations and provided that said use does not  
25 interfere with the Contractor's performance under this Contract. If the Facilities are used  
26 for Contractor's own purposes, the Contractor shall be solely responsible for all losses,  
27 damages, costs, charges, expenses, judgments or any liabilities whatsoever resulting from  
28 that use.  
29  
30

## 31 **ARTICLE 7 COUNTY AND OTHER CUSTOMER RESPONSIBILITIES**

32

### 33 **7.1 Processing and Delivery of Solid Waste**

34

35 (A) During operations at the County Transfer Stations, the County will load  
36 Acceptable Waste into Containers. The County will Transport Loaded Containers to  
37 the Receiving Facility with County tractors and Contractor Chassis.  
38

39 (B) Prior to delivering a Loaded Container to the Receiving Facility the  
40 Customer shall:

- 41
- 42 1.) Close the Container;
- 43
- 44 2.) Prepare and install a Safety Seal for the Container; and
- 45
- 46 3.) Prepare a bill of lading for the Container.  
47

48 (C) If the Customer does not create or install a Security Seal, the Contractor  
49 shall install a replacement Security Seal on the Container and follow the procedures



1 set forth in Section 6.7(B).

2  
3 (D) The County will provide and operate all equipment necessary for County  
4 Transfer Station operation. Containers and Chassis shall be provided by and remain  
5 the property of the Contractor.  
6

7 (E) The Customers will provide the Tractors and Transport necessary to  
8 Transport Containers and Chassis to and from the Receiving Facility.  
9

10  
11 **7.2 Weighing and Transaction Tickets**

12 The County shall weigh each Loaded Container to be delivered from the County Transfer  
13 Station to the Receiving Facility. After each Loaded Container is weighed, the County will  
14 prepare a transaction ticket bearing the time, date, Security Seal markings, and gross weight  
15 of the Container. Such transaction tickets will serve as the basis for the reconciliation of  
16 the difference between the Contractor's gross weights as stated on the Contractor's weight  
17 tickets, and the County's gross weights as stated on the County's corresponding transaction  
18 tickets. Two copies of the transaction ticket will be provided to the Contractor at the time  
19 that the Contractor accepts ownership of the Solid Waste pursuant to Section 6.7.  
20

21 **7.3 Flow Control**

22 The County agrees to use reasonable efforts to enforce the laws directing all Acceptable  
23 Waste generated and collected in the County to the County System.  
24

25 **7.4 Interlocal Agreement**

26 The County agrees any Interlocal Agreement between the County and a local government  
27 shall direct Acceptable Waste generated and collected in the local government jurisdiction  
28 to the County System.  
29

30 **7.5 Not a Put or Pay Contract**

31 The Contractor and the County agree this is not a "put or pay" contract. The Contractor  
32 and the County agree there is no minimum annual tonnage that the County is required to  
33 deliver to the Contractor under this Contract.  
34

35 **7.6 Right to Establish Diversion Programs**

36 The Contractor and the County agree that the County and City or Cities reserve the right to  
37 establish diversion programs. The Contractor and the County agree that nothing contained  
38 in this Contract shall be construed to prevent the County and/or City or Cities from  
39 establishing diversion programs that, recycles, composts, or otherwise diverts all or a  
40 portion of Acceptable Waste.  
41

42 **ARTICLE 8 TIPPING FEES AND CONTRACTOR COMPENSATION**

43  
44 **8.1 Calculation of Tipping Fees**

45 For each Loaded Container delivered by Customers to and accepted by the Contractor at  
46 Receiving Facility, Transported from the Receiving Facility to the Disposal Site, and  
47 Disposed at the Disposal Site, the County shall pay Contractor a Tipping Fee based on the  
48 greater of the net weight reported by the scale at the Disposal Site or twenty-six (26.00)  
49 tons. For each Loaded Container delivered by Customer directly to the Disposal Site and

1 Disposed at the Disposal Site by the Contractor, the County shall pay Contractor a Disposal  
2 Services Fee based on the net weight reported by the scale at the Disposal Site. The  
3 Contractor shall not receive payment for any fees other than those specifically identified in  
4 Exhibit B.

5  
6 **8.2 Credit for County Compacted Container Weight**

7 The County shall receive a credit each quarter that the average weight per Compacted  
8 Container delivered to the Receiving Facility from the County Transfer Stations exceeds  
9 27.50 tons from May 16, 2018, through May 15, 2019, and exceeds 28.00 tons May 16,  
10 2019, through the termination of the Contract. Each ton will be credited in accordance with  
11 Exhibit C. For purposes of calculating the credit, the quarters shall be as follows: August 1<sup>st</sup>  
12 through October 31<sup>st</sup>, November 1<sup>st</sup> through January 31<sup>st</sup>, February 1<sup>st</sup> through April 30<sup>th</sup>,  
13 and May 1<sup>st</sup> through July 31<sup>st</sup>. Credits shall be applied to the invoice for the month  
14 following the end of each quarter.

15  
16 For example, if the average weight per load contained in the 1,000 eligible Containers  
17 delivered to the Receiving Facility in the August 1<sup>st</sup> through October 31<sup>st</sup> quarter is 29.50  
18 tons, the County would receive a credit of \$22,125 (1,000 containers x 29.50 tons= 29,500  
19 tons x \$0.75 per ton = \$22,125 credit). The credit will be deducted from the November  
20 invoice as a separate line item and calculated in the form of an electronic spreadsheet  
21 acceptable to the County that will be available to the County each month. The CPI Credit  
22 and Fee Adjustments in Section 8.4 shall apply to the credit.

23  
24 **8.3 Fee Adjustments**

25 All fees in Exhibit B shall remain fixed from May 16, 2018 through April 31, 2019. On  
26 May 1, 2019 and every May 1<sup>st</sup> thereafter for the term of the Contract, all fees in Exhibit B  
27 shall be increased or decreased in accordance with this section. The adjustment, if any,  
28 shall be effective May 1 of each year. The adjustment shall be calculated by multiplying  
29 the fee in the immediate preceding calendar year by seventy percent (70%) of the change in  
30 the Consumer Price Index for the previous calendar year.

31  
32 In the event that the standard reference base period of the CPI is changed, the annual  
33 adjustment shall reflect the new base period in the first calendar year the new base period is  
34 available. Any unresolved dispute regarding any other change in the definition or calculation  
35 of the CPI that materially affects the CPI Fee Adjustment under this Article shall be resolved  
36 by arbitration in accordance with Article 15 of the Contract.

37  
38 Contract rates may, contingent upon agreement of the parties, in accordance with  
39 Article 2.24, increase for services as a result of:

- 40  
41 (A) Changes in local, state, or federal rules, ordinances or regulations; or  
42 (B) Changes in taxes, fees or other governmental charges (other than income or  
43 real property taxes).

44  
45 **8.4 Credit Adjustments**

46 All credits in Exhibit C shall remain fixed from May 16, 2018 through April 31, 2019. On  
47 May 1, 2019 and every May 1<sup>st</sup> thereafter for the term of the Contract, all credits in Exhibit  
48 C shall be increased or decreased in accordance with this section upon approval of the  
49 County. The adjustment, if any, shall be effective May 1 of each year. The adjustment

1 shall be calculated by multiplying the fee in the immediate preceding calendar year by  
2 seventy percent (70%) of the change in the Consumer Price Index for the previous calendar  
3 year.  
4

5 In the event that the standard reference base period of the CPI is changed, the annual  
6 adjustment shall reflect the new base period in the first calendar year the new base period is  
7 available. Any unresolved dispute regarding any other change in the definition or calculation  
8 of the CPI that materially affects the CPI Fee Adjustment under this Article shall be resolved  
9 by arbitration in accordance with Article 15 of the Contract.  
10

## 11 **8.5 Payment**

12  
13 (A) The Contractor shall provide to the County by the tenth (10<sup>th</sup>) day of each  
14 month an invoice (both a hard copy and a data file) in a format acceptable to the  
15 County and accompanied by supporting documentation as required by the County  
16 for services performed by the Contractor under this Contract in the preceding  
17 month. The invoice shall include (i) the tonnage and count of Compacted Loads by  
18 type of Solid Waste, (ii) the tonnage and count of Uncompacted Loads by type of  
19 Solid Waste, (iii) average weight of Compacted Loads, (iv) average weight of  
20 Uncompacted Loads, (v) description of condition of Facilities, (vi) copies of County  
21 transaction tickets, (vii) documentation of Unacceptable Waste and Special Waste;  
22 and (viii) changes in Alternative Operations Plan. The County shall pay the  
23 Contractor electronically (ACH) for the previous month's service by the last  
24 Business Day of the month in which the invoice is received. If any amount is  
25 disputed, the County may withhold payment of that disputed amount. If the invoice  
26 is not received by the 10<sup>th</sup> of the month, the County shall be given one additional  
27 Business Day to make payment for every day of delay in receiving the invoice. In  
28 no case shall the payment be made more than 45 days after receipt of invoice.  
29

30 (B) All unresolved disputes concerning the calculation of or adjustment to  
31 payments based on the Tipping Fees shall be resolved by arbitration in accordance  
32 with Article 15. However, the undisputed portion of the fee (or fees) shall be made  
33 effective promptly; further adjustment shall be made effective on the resolution of  
34 the dispute under Article 15. In addition to any portion of the disputed amount  
35 ultimately awarded, the arbitrator may also award to the Contractor interest on the  
36 disputed amount from the date the Tipping Fee component or Payment adjustment  
37 was effective. The interest rate shall be equal to the maximum interest rate  
38 permitted by State law. The interest award may be made by means of a further  
39 increase or decrease in the payment made to the Contractor.  
40

41 Upon acceptance of payment, the Contractor waives any claims for the services  
42 covered by the Invoice.  
43

44 (C) No advance payment shall be made for the services furnished by Contractor  
45 pursuant to this Contract.  
46

## 47 **8.6 Calculation Rounding**

48 Rounding for calculations shall be done to the nearest hundredth. For example: 8.355 shall  
49 be rounded to 8.36, and 8.354 shall be rounded to 8.35.

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**ARTICLE 9                    ALLOCATION OF RISK; UNCONTROLLABLE CIRCUMSTANCES**

**9.1      Contractor Reliance**

The Contractor warrants that prior to submitting its response to the Request For Proposals, it has examined carefully and acquainted itself with:

- (A)    All Contract Documents;
- (B)    The Project;
- (C)    The Facilities;
- (D)    The difficulties that may be encountered in performing the Project;
- (E)    All applicable federal, state and local laws, regulations, ordinances, codes and rules.

**9.2      County Disclaimer**

The County does not warrant or admit the correctness of any investigation, interpretation, deduction or conclusion by the Contractor relative to the condition or conditions of the Disposal Site or other Facilities. The Contractor has made and shall make its own deductions and conclusions as to any and all problems that may arise from Facility site conditions and shall accept full legal responsibility and liability for those conditions.

**9.3      Uncontrollable Circumstances**

- (A)    Notification; Damaged Facilities Plan. Within twenty-four (24) hours of the occurrence of an Uncontrollable Circumstance, the knowledgeable party shall notify the other of the event. If the occurrence of the Uncontrollable Circumstance damages, destroys or otherwise incapacitates the Facilities, the Contractor shall, at the earliest practicable time, activate the alternative operations plan prepared in accordance with the Contract. If the Uncontrollable Circumstance or the damage to the Facilities is not provided for in that plan, the Contractor shall submit to the County as soon as practicable a plan for correcting, repairing or reconstructing the affected Facilities.
- (B)    Obligation to Provide Alternate Facilities. If the Contractor on the occurrence of an Uncontrollable Circumstance, cannot or fails to provide services under this Contract with the primary Facilities, the Contractor shall make available to the County alternate Facilities at the prevailing fees in effect at the primary Facility when the event occurs.
- (C)    Fees for Alternative Facilities. Fees of Article 8 may be increased to reflect additional costs incurred because an alternate Facility must be used due to an Uncontrollable Circumstance. If the reasonable actual increased cost of remedying the effects of any Uncontrollable Circumstance will or is estimated to increase the fees more than twenty-five percent (25%), or, in the event of an increase in or

1 imposition of a State/Local Solid Waste Handling Fee that exceeds twenty-five  
2 percent (25%) of the fees not including that State/Local Solid Waste Handling Fee,  
3 the County may use other alternate Facilities.  
4

5 (D) Disputes. Unresolved disputes concerning the calculation of the cost of  
6 remedying the effects of an Uncontrollable Circumstance under this Section shall be  
7 resolved by arbitration in accordance with Article 15.  
8

#### 9 **9.4 Insurable Uncontrollable Circumstances**

10 If any of the Facilities are damaged or destroyed due to events for which the Contractor is  
11 obligated to carry insurance, the Contractor shall act diligently to promptly collect and  
12 apply insurance proceeds to the correction or reconstruction of those Facilities.  
13

### 14 **ARTICLE 10 INSPECTION OF SOLID WASTE; UNACCEPTABLE WASTE**

#### 15 16 **10.1 Solid Waste Inspection at Disposal Site; Handling of Suspected Unacceptable** 17 **Waste**

18 The Contractor may inspect all delivered Loaded Containers for the presence of  
19 Unacceptable Waste. If the Contractor removes the Security Seal during an inspection for  
20 the presence of Unacceptable Waste, the Contractor shall notify the County within one (1)  
21 hour of its removal and install a replacement Security Seal on the Container marked with  
22 the same markings as the original seal upon completion of the inspection if such Solid  
23 Waste shall not be immediately disposed at the Disposal Site. The County may be present  
24 to observe any inspection conducted under this Article and may at its sole discretion and  
25 cost inspect any Solid Waste or Unacceptable Waste delivered to the Disposal Site under  
26 this Contract.  
27

28 If the Contractor discovers Unacceptable Waste in a Loaded Container, the  
29 Contractor shall:  
30

31 (A) First, notify the County of the discovery of the Unacceptable Waste within  
32 one (1) hour of the discovery;  
33

34 (B) Second, gather, preserve, maintain and make available to the County all  
35 evidence demonstrating that the Unacceptable Waste was delivered to the  
36 Contractor pursuant to this Contract including without limitation to the following:  
37

- 38 1.) The time the Loaded Container was delivered to the Disposal Site;
- 39 2.) The Security Seal number on that Loaded Container;
- 40 3.) Photographs of the Unacceptable Waste that might establish that the  
41 Solid Waste is Unacceptable Waste and was delivered pursuant to this  
42 Contract;
- 43 4.) Samples of Acceptable Waste from the Loaded Container that may  
44 demonstrate that the Loaded Container was delivered pursuant to this  
45 Contract;
- 46
- 47
- 48
- 49

1 5.) Other evidence that may demonstrate the origin of the Unacceptable  
2 Waste;

3  
4 6.) Laboratory results (if any);

5  
6 7.) Other documentation provided by federal, state, or local authorities;  
7 and

8  
9 8.) Other relevant documentation.

10  
11 (C) Third, test or arrange to have tested at the Contractor's own expense the  
12 Unacceptable Waste if required to prove to the County's satisfaction that such Solid  
13 Waste is Unacceptable Waste;

14  
15 (D) Fourth, provide confirmation to the County of the Unacceptable Waste. In  
16 the event the Contractor provides confirmation to the County of Unacceptable  
17 Waste, the County can elect to do any or all of the following:

18  
19 1.) Inspect that Unacceptable Waste within seventy-two (72) hours of  
20 the Contractor's notice to the County of the existence of that Unacceptable  
21 Waste,

22  
23 2.) Test the Unacceptable Waste within a reasonable period of time; and

24  
25 3.) At any time after the discovery of the Unacceptable Waste examine  
26 all other evidence gathered by the Contractor under Section 10.1 (B), above.

27  
28 For purposes of any inspection conducted pursuant to this Section, the County shall  
29 have unrestricted access to the Disposal Site and/or any other site or facility at  
30 which the Unacceptable Waste is located; and

31  
32 (E) After completion of Section 10.1 (D) by County, Dispose of the  
33 Unacceptable Waste and seek reimbursement from the County for the actual  
34 reasonable cost of that Disposal in accordance with Section 10.2.

35  
36 **10.2 Liability for Testing, Inspecting, Handling and/or Disposing of Unacceptable**  
37 **Waste**

38 If, after inspecting and/or testing the Solid Waste delivered under this Contract the  
39 Contractor discovers no Unacceptable Waste, or discovers that the Unacceptable Waste was  
40 not delivered to the Disposal Site under this Contract, the Contractor shall Dispose of that  
41 Solid Waste at no additional cost to the County and shall reimburse the County for the  
42 County's costs, if any, of inspecting and/or testing that Solid Waste including but not  
43 limited to laboratory fees, Transportation and handling costs and the inspector's food,  
44 transportation, lodging and labor costs.

45  
46 If Unacceptable Waste is discovered and there is proof satisfactory to the County  
47 (acting reasonably) that the Unacceptable Waste was delivered to the Disposal Site under  
48 this Contract, the County shall pay or reimburse the Contractor for, subject to the  
49 limitations and conditions of this Article, the actual reasonable cost of the inspection,

1 testing, identification, handling and Disposal of that Unacceptable Waste.

2  
3 Payment or reimbursement by the County will only be made if the Contractor:

4  
5 (A) Complies with the requirements of this Article including but not limited to  
6 subsections 10.1(A) through (E), above;

7  
8 (B) Assists the County to the extent possible in ascertaining the Person  
9 previously owning or responsible for the delivery of the Unacceptable Waste; and

10  
11 (C) Documents its actual costs, the reasonableness of those costs and that the  
12 costs represent the least costly method of inspecting, testing, identifying, handling  
13 and/or Disposing of the Unacceptable Waste in compliance with applicable federal,  
14 state or local law.

15  
16 Any payment or reimbursement made by the County to the Contractor under this  
17 Section shall be paid in four (4) consecutive quarterly installments or a single lump sum  
18 payment at the County's sole discretion. The first installment or the lump sum payment  
19 shall be paid on the fifteenth day of January, April, July or October, whichever date first  
20 occurs a minimum of ninety (90) calendar days after all costs for the Unacceptable Waste  
21 are documented and submitted to the County. The County shall not pay the Contractor any  
22 interest accruing on any payment due under this Article. Any unresolved disputes arising  
23 under this Article relating to the Contractor's actual reasonable costs shall be resolved by  
24 arbitration in accordance with Article 15.

25  
26 **ARTICLE 11 INDEMNIFICATION**

27  
28 **11.1 Indemnification of County**

29 The Contractor shall at all times indemnify, hold harmless and defend the County and any  
30 City, their elected officials, officers, employees, agents and representatives, from and  
31 against any and all losses, damages, costs, charges, expenses, judgments, liabilities (except  
32 those resulting solely from the City's or County's negligence) and attorneys' fees (including  
33 those fees to establish the right to indemnification), (collectively the "losses"), directly or  
34 indirectly resulting from, arising out of, or related to one or more claims described in this  
35 Article. The term "claims" as used in this Article shall mean all claims, lawsuits, causes of  
36 action, demands, damages, penalties, charges, judgments, losses, liabilities of any character  
37 or kind and other legal actions and proceedings of whatever nature, including but not  
38 limited to lawsuits, causes of action, and other legal actions and proceedings involving  
39 bodily or personal injury or death of any person or damage to any property (including but  
40 not limited to persons employed by the County, the Contractor or any other person and all  
41 property owned or claimed by the County, the Contractor, any affiliate of the Contractor or  
42 any other person), insofar as such claims are in any way connected with:

43  
44 (A) The performance or nonperformance of any provision or requirement of this  
45 Contract including but not limited to Transportation and Disposal services by  
46 Contractor, its officers, employees, subcontractors, agents or servants;

47  
48 (B) Any negligent act or omission of Contractor, its officers, employees,  
49 subcontractors, agents or servants at any of the Facilities;

1  
2 (C) The failure of Contractor, its officers, employees, subcontractors, agents, or  
3 servants to comply in any respect with the provisions and requirements of all  
4 applicable permits, licenses, laws, statutes, regulations, ordinances, codes, orders  
5 and all other legal requirements of federal, state, regional, county and local  
6 government authorities and agencies having jurisdiction over the Facilities or  
7 relevant activities of the Contractor;

8  
9 (D) Any release(s) or emissions, or threatened release(s) or emissions of Solid  
10 Waste, Unacceptable Waste, or any dangerous substance by any Person(s) at, onto,  
11 into, above, under, through or from any of the Facilities subject to the limitations  
12 and conditions in Section 11.2, below; or

13  
14 (E) Defects in or damage to the Facilities caused by the Contractor, its  
15 employees, agents or subcontractors as result of negligence or failure to maintain  
16 the Facilities in accordance with the manufacturer's instructions or schedules.

17  
18 **11.2 Unacceptable Waste Liability**

19 Notwithstanding Section 11.1, above, the County shall be liable for losses incurred during  
20 Transportation caused by the presence of Unacceptable Waste in a Loaded Container and  
21 all losses related to the handling and Disposal of Unacceptable Waste after the Contractor  
22 has properly notified the County of the discovery of the Unacceptable Waste and otherwise  
23 complied with Article 10.

24  
25 **11.3 Notice to Contractor; Legal Defense**

26 In the event an action is brought against the County for which indemnity may be sought  
27 against the Contractor, the County shall promptly notify the Contractor in writing. The  
28 Contractor shall have the right to assume and control the investigation and defense  
29 including the employment of counsel and the payment of all expenses of claims against  
30 which it must provide indemnity under this Article. On demand of the County, the  
31 Contractor shall at its own cost and expense, defend and provide qualified attorneys  
32 acceptable to the County under service contracts acceptable to the County to defend the  
33 County, its officers, employees, agents and servants against all claims.

34  
35 The County at its own discretion may employ separate counsel and participate in the  
36 investigation and defense but the County shall pay the fees and expenses of that counsel  
37 unless the Contractor has agreed otherwise.

38  
39 **11.4 Applicability of RCW 4.24.115**

40 If a court of competent jurisdiction determines that this Contract is subject to RCW 4.24.  
41 115, then the Contractor's duty to indemnify the County for liability for damages arising out  
42 of bodily injury to persons or damage to property caused by or resulting from concurrent  
43 negligence of the Contractor and the County shall be limited to the Contractor's negligence.

44  
45 **11.5 Waiver of Industrial Insurance**

46 It is further specifically and expressly understood that the indemnification provided in this  
47 Article constitutes the Contractor's waiver of immunity under industrial insurance and Title  
48 51 RCW, as respects the County only, solely for the purposes of this indemnification. This  
49 waiver has been mutually negotiated by the parties.



1  
2 **11.6 Royalties; License Fees; Patents**

3 The Contractor shall pay royalties and license fees, shall defend all suits or claims for  
4 patent infringements that may occur in the performance of this Contract and shall hold the  
5 County harmless from any loss on account thereof.  
6

7 **11.7 No Waiver**

8 Except as otherwise expressly stated herein, the parties do not under this Article waive or  
9 surrender immunity available under any federal, state, regional or local law. This Article  
10 shall survive termination or expiration of the Contract.  
11

12 **ARTICLE 12 INSURANCE**

13  
14 **12.1 General**

15 The Contractor, at its own cost, shall procure and maintain for the duration of this Contract  
16 insurance as specified in this Article. The Contractor shall furnish the County with  
17 certificates of insurance and endorsements required by this Contract. The County reserves  
18 the right to require complete, certified copies of all required insurance policies at any time  
19 in the event of a loss.  
20

21 Each insurance policy shall be written on an "occurrence" form, except that  
22 pollution liability, will be acceptable on a "claims made" form.  
23

24 If coverage is approved and purchased on a "claims made" basis, the Contractor  
25 warrants continuation of coverage, either through policy renewals or the purchase of an  
26 extended discovery period, if such extended coverage is available, for not less than three  
27 years from the date of completion of the work that is the subject of this Contract.  
28

29 By requiring such minimum insurance coverage, the County shall not be deemed or  
30 construed to have assessed the risks that may be applicable to the Contractor under this  
31 Contract. The Contractor shall assess its own risks and, if it deems appropriate and/or  
32 prudent, maintain greater limits and/or broader coverage.  
33

34 Nothing contained within these insurance requirements shall be deemed to limit the  
35 scope, application and/or limits of the coverage afforded, which coverage will apply to each  
36 insured to the full extent provided by the terms and conditions of the policy(s). Nothing  
37 contained within this provision shall affect and/or alter the application of any other  
38 provision contained within this Contract.  
39

40 **12.2 Minimum Scope and Limits of Insurance**

41 The Contractor shall maintain insurance coverage with limits of liability no lower than the  
42 following:  
43

44 (A) General Liability: \$10,000,000 combined single limit per occurrence for  
45 bodily injury, personal injury and property damage, and for those policies with  
46 aggregate limits, a \$10,000,000 aggregate limit. CG 00 01 current edition, including  
47 Products and Completed Operations.  
48

49 (B) Automobile Liability: \$5,000,000 combined single limit per accident for

1 bodily injury and property damage. CA 0001 current edition, Symbol 1. If hauling  
2 Hazardous Waste, Pollution Liability at least as broad as that provided under ISO  
3 Pollution Liability-Broadened Coverage for Covered Autos Endorsement CA 99 48  
4 shall be provided, and the Motor Carrier Act Endorsement (MCS 90) shall be  
5 attached.

6  
7 (C) Workers' Compensation: Statutory requirements of the State of residency.

8  
9 (D) Pollution Legal Liability and/or Environmental Impairment Liability:  
10 \$10,000,000 per loss, with an annual aggregate of at least \$10,000,000.

### 11 12 **12.3 Other Insurance Provisions and Requirements**

13 The insurance coverage(s) required in this Contract are to contain, or be endorsed to  
14 contain the following provisions:

15  
16 All Liability Policies except Workers Compensation:

17  
18 (A) The County, its officers, officials, employees and agents are to be covered as  
19 additional insureds as respects liability arising out of activities performed by or on  
20 behalf of the Contractor in connection with this Contract, including Products and  
21 Completed Operations. Such coverage shall be primary and non-contributory  
22 insurance as respects the County, its officers, officials, employees and agents.  
23 Additional Insured Endorsement shall be included with the certificate of insurance,  
24 "CG 20 37 07 04" or its equivalent is required.

25  
26 (B) There shall be no endorsement or modification of the Commercial General  
27 Liability insurance for liability arising from explosion, collapse, or underground  
28 property damage.

29  
30 (C) The Contractor's insurance coverage shall apply separately to each insured  
31 against whom a claim is made and/or lawsuit is brought, except with respect to the  
32 limits of the insurer's liability.

33  
34 (D) Any deductible and/or self-insured retention of the policies shall not limit or  
35 apply to the Contractor's liability to the County and shall be the sole responsibility  
36 of the Contractor.

37  
38 (E) Insurance coverage is to be placed with insurers with a Best's rating of no  
39 less than A: VIII, or, if not rated by Best's, with minimum surpluses the equivalent  
40 of Best's surplus size VIII.

### 41 42 **12.4 Non-Separation of Insureds**

43 The Contractor shall include all Subcontractors as insureds under its policies, or shall  
44 furnish separate certificates of insurance and policy endorsements for each Subcontractor.  
45 Insurance coverages provided by Subcontractors (in lieu of the Contractor) as evidence of  
46 compliance with the requirements of this Contract shall be subject to all of the requirements  
47 stated herein.

### 48 49 **12.5 Change in Coverage**

1 Coverage shall not be canceled, reduce, or otherwise materially modified without thirty  
2 (30) calendar days' prior written notice to the County.

3  
4 **12.6 Proof of Insurance**

5 A certificate of insurance and the additional insured endorsement outlining the required  
6 coverage is mandatory.

7  
8 **12.7 Failure to Provide Insurance**

9 Failure on the part of the Contractor to maintain insurance as required shall constitute a  
10 Class B Default of contract upon which Snohomish County may, after giving five working  
11 days' notice to the Contractor to correct the breach, immediately terminate the contract or,  
12 at its discretion, procure or renew such insurance and pay any and all premiums in  
13 connection therewith, with any sums so expended to be repaid to the County on demand, or  
14 at the sole discretion of the County, offset against funds due the Contractor.

15  
16 **12.8 Required Coverage for Marine Operations**

17 In the event of barge or other marine operations, the Contractor shall contact the County in  
18 advance of said operations and comply with all insurance requirements determined by the  
19 County's Risk Manager relative to said Marine Operations.

20  
21 **12.9 Insurance Review**

22 In consideration of the duration of this Contract, the parties agree that the Insurance section  
23 herein, at the discretion of the County Risk Manager, may be reviewed and adjusted with  
24 each amendment and within ninety (90) days of the end of the first ten (10) year period of  
25 the Contract and the end of each successive five (5) year period thereafter.

26  
27 Any adjustments made as determined by the County Risk Manager shall be in  
28 accordance with reasonably prudent risk management practices and insurance industry  
29 standards and shall be effective on the first day of each successive five (5) year period.

30  
31 Adjustment, if any, in insurance premium(s) shall be the responsibility of the  
32 Contractor. Any failure by the County to exercise the right to review and adjust at any of  
33 the aforementioned intervals shall not constitute a waiver of future review and adjustment  
34 intervals.

35  
36 Any combination of primary and excess/umbrella policies may be utilized to satisfy  
37 the required limits of liability.

38  
39 **THE CONTRACTOR SHALL NOT BEGIN WORK AND THE CONTRACT IS**  
40 **NOT CONSIDERED FINAL UNTIL THE CERTIFICATES OF INSURANCE**  
41 **WITH ENDORSEMENTS IS RECEIVED AND APPROVED BY COUNTY RISK**  
42 **MANAGEMENT.**

43  
44 **ARTICLE 13 COORDINATION MEETINGS**

45  
46 **13.1 Initial Coordination Meeting**

47 Prior to the commencement of services under this Contract, the Contractor, County,  
48 principal subcontractors and others requested by either party shall meet to discuss  
49 scheduling, processes, materials, personnel and any other matters the parties deem

1 appropriate.  
2

3 **13.2 Periodic Coordination Meetings and Reports**

4 The County and the Contractor shall hold periodic coordination meetings but no less than  
5 one every three (3) months to review the progress of the work and to discuss operations,  
6 problems and/or complaints made by third parties. Either the County or the Contractor may  
7 organize, call and notify the other party of that meeting. The County and the Contractor  
8 shall submit monthly reports to each other regarding operations, problems and/or  
9 complaints arising under the Contract.  
10

11 **ARTICLE 14 DEFAULTS IN PERFORMANCE OF THE CONTRACT**  
12

13 **14.1 Contractor Default**

14 There shall be three classes of defaults by the Contractor in its performance under  
15 this Contract:  
16

17 (A) A Class A default is the Contractor's failure to commence Receiving,  
18 Transport and Disposal under this Contract with Facilities properly permitted by  
19 law and in substantial and material compliance with the Contract, on May 16, 2018.  
20

21 (B) A Class B default is any of the following:  
22

23 (1) Failure to perform the services under this Contract on three or more  
24 occasions in any given contract year; or  
25

26 (2) Failure to maintain a Container Inventory of 98% as specified in  
27 Exhibit A on three or more occasions in any given contract year; or  
28

29 (3) Change of control or transfer of controlling interest in the beneficial  
30 ownership of the Contractor; or  
31

32 (4) Failure to procure and/or maintain a contract performance bond  
33 and/or other financial guarantee under the Contract; or  
34

35 (5) Failure to procure and maintain insurance under Article 12.  
36

37 (C) A Class C default is the Contractor's failure to maintain and follow the  
38 Container inventory plan specified in Exhibit A.  
39

40 **14.2 Default Procedure**  
41

42 (A) To initiate default proceedings under this Article, the County's  
43 Representative shall give notice to the Contractor and its Surety of the County's  
44 intention to declare the Contractor in default. Unless the Contractor promptly  
45 shows cause to the County's satisfaction why it should not be declared in default  
46 under the Contract, the County shall declare the Contractor in default.  
47

48  
49 (B) General. Any amount due the Contractor under this Contract at the time of

1 default shall be reduced by the damages suffered and expenses incurred by the  
2 County due to the default.

3  
4 **14.3 Consequences of Contractor Defaults**

5  
6 (A) Class A Default.

7  
8 1.) Contractor shall pay to the County liquidated damages in the amount  
9 of \$125,000 per day from the date of that notice to the date the default is  
10 remedied.

11  
12 2.) In the event of a Class A default, the Contractor or Surety shall be  
13 permitted to remedy the default within three (3) days from notice by the  
14 County.

15  
16 3.) If the Class A default is not remedied within three (3) days of that  
17 notice, the County may, at its sole option:

18  
19 (a) Be released from its obligations under this Contract and use  
20 any other method or Person to Transport and/or Dispose of Solid  
21 Waste and may sue for actual damages;

22  
23 (b) Seek the judicial remedy of specific performance; or

24  
25 (c) Pursue any combination of the foregoing or any other remedy  
26 provided by law.

27  
28 (B) Class B Default.

29  
30 1.) Contractor shall pay to the County the County's actual damages and  
31 costs associated with the default.

32  
33 2.) In the event of a Class B default, the Contractor or Surety shall be  
34 permitted to remedy the default within five (5) calendar days from notice by  
35 the County.

36  
37 3.) If the Class B default is not remedied with five (5) days, the County  
38 may at its sole option:

39  
40 (a) Be released from its obligations under this Contract and use  
41 any other method or Person to Transport and/or Dispose of Solid  
42 Waste and may sue for damages;

43  
44 (b) Seek the judicial remedy of specific performance; or

45  
46 (c) Pursue any combination of the foregoing or any other remedy  
47 provided under this Contract.

48  
49 (C) Class C Default.

- 1
- 2 1.) Contractor shall pay to the County the County's actual damages and
- 3 costs associated with the default.
- 4
- 5 2.) In the event of a Class C default, the Contractor shall be permitted to
- 6 remedy the default within one (1) calendar day from notice by the
- 7 County.
- 8
- 9 3.) If the Class C default is not remedied within one (1) calendar day,
- 10 the County may at its sole option:
- 11
- 12 (a) Be released from its obligations under this Contract and use
- 13 any other method or Person to Transport and/or Dispose of Solid
- 14 Waste and may recover damages;
- 15
- 16 (b) Seek the judicial remedy of specified performance; or
- 17
- 18 (c) Pursue any combination of the foregoing or any other remedy
- 19 provided under this Contract.
- 20

21 **14.4 County Default**

22 In the event the County defaults, the County shall be permitted to remedy the default within

23 10 days from the notice of the default. In the event the County fails to cure the default, the

24 Contractor may pursue all remedies available in law or equity. In the event the County has

25 not remedied the default within 120 days of notice, Contractor shall be entitled to

26 terminate or suspend Contractor's performance of the Contract.

27

28 **14.5 Contractor's Bankruptcy/Receivership**

29 If during the term of this Contract the Contractor becomes insolvent, is dissolved, files a

30 petition under any bankruptcy statute, is the debtor in any involuntary bankruptcy case that

31 is not dismissed within sixty (60) days after the petition commencing that case is filed,

32 makes a general assignment for the benefit of creditors, or if a receiver is appointed for the

33 benefit of its creditors or on account of its insolvency, that event could impair or frustrate

34 the Contractor's performance of this Contract. Therefore, it is agreed that on the occurrence

35 of any one or more of those events, the County shall be entitled to request of Contractor or

36 its successor-in-interest adequate assurance of future performance in accordance with the

37 terms and conditions of this Contract. Failure of Contractor and Surety to comply with that

38 request within ten (10) calendar days of service on both Contractor and Surety of a written

39 request from the County for that assurance shall entitle the County to terminate or suspend

40 Contractor's performance of the Contract. The County shall not be bound to the Contract

41 by any trustee or receiver appointed to take possession of any of the Facilities or the

42 Contractor's business.

43

44 **14.6 No Waiver by County**

45 Nothing in this Article, and no actions taken pursuant to this Article shall constitute a

46 waiver or surrender of any rights, remedies, claims or causes of action the County may

47 have against Contractor or its Surety under any other provision of this Contract or any

48 provision of law.

49

1 **14.7 Termination of Contract**

2 Subject to the provisions of Article 9, if an Uncontrollable Circumstance occurs and  
3 prevents the County or the Contractor from performing the Contract (except for an increase  
4 in or imposition of a State/Local Solid Waste Handling Fee enacted by the County or a  
5 change in County law that makes performance impossible), the County shall have the right,  
6 in its sole discretion, to terminate this Contract.  
7

8 **ARTICLE 15 ARBITRATION, JUDICIAL VENUE AND GOVERNING LAW**  
9

10 **15.1 Arbitration for Calculations**

11 Subject to the conditions and limitations of this Article, controversies or claims arising out  
12 of or relating to the Tipping Fee, Payment or other calculations under this Contract and any  
13 other unresolved disputes designated for arbitration in the Contract shall be exclusively  
14 settled by arbitration under the laws of the State of Washington, in accordance with the  
15 Commercial Arbitration Rules of the American Arbitration Association. All other  
16 controversies and claims shall be decided exclusively by the Superior Court of the State of  
17 Washington in Snohomish County, Washington. The decision of the arbitrator shall be  
18 final and binding on both parties and the Surety.  
19

20 **15.2 One Arbitrator**

21 All arbitrated disputes shall be heard and decided by one (1) arbitrator.  
22

23 **15.3 Limited Consolidation**

24 There shall be no consolidation of any arbitration between the County and the Contractor  
25 involving, arising from or relating to this Project with any other arbitration not involving,  
26 arising from or relating to this Project.  
27

28 **15.4 Expedited Procedure**

29 In the event that the County determines, in its sole discretion, that the public interest  
30 requires a speedy resolution of any arbitral controversy or claim regardless of the amount,  
31 the County shall have the option of electing resolution of the controversy or claim by the  
32 Expedited Procedures of the Commercial Arbitration Rules of the American Arbitration  
33 Association (Rules 54 through 58).  
34

35 **15.5 Arbitral Disputes: Jurisdiction; Venue**

36 Each party to the Contract and the Surety accept the jurisdiction of the courts of the State of  
37 Washington for the purposes of commencing, conducting and enforcing arbitration  
38 proceedings and agree to accept written notice of the arbitration proceedings sent by  
39 certified mail. The parties agree that proper venue for any judicial proceeding to enter any  
40 decision or award made by an arbitrator under this Article as a judgment shall be  
41 exclusively in Snohomish County in the State of Washington.  
42

43 **15.6 Nonarbitral Disputes: Jurisdiction; Venue**

44 The parties agree that the proper jurisdiction and venue for any judicial proceeding brought  
45 under this Contract or any subcontract made pursuant to this Contract that is not subject to  
46 resolution by arbitration under this Article shall be the Superior Court of the State of  
47 Washington in Snohomish County.  
48

49 **15.7 Arbitrator's Fees; Attorney's Fees**

1 Each party shall bear its own expenses associated with the arbitration but shall share  
2 equally the cost of any arbitration conducted under this Article in the first instance (the  
3 arbitrator shall have the authority, however, to require the non-prevailing party in the  
4 arbitration to reimburse the prevailing party for such fees if the arbitrator determines the  
5 non-prevailing party's claim(s) or defense(s) have been asserted without a rational or  
6 factual basis or not in good faith). In the event that a suit or other action is instituted to  
7 enforce any matter involving, arising from or relating to this Project or the Contract, each  
8 party shall be responsible for payment of its own attorney's fees unless otherwise indicated  
9 in this Contract.

10  
11 **15.8 Standing**

12 Only the County and the Contractor shall have standing to bring or become a party to  
13 arbitration claims or legal actions under this Contract.  
14

15 **ARTICLE 16 SUCCESSORS; ASSIGNMENT**

16  
17 **16.1 Contractor Delegation**

18 The County executes this Contract with the Contractor as a qualified party to accomplish  
19 the Project. The Contractor's delegation of any Contract duties shall require the prior  
20 written consent of the County. Any delegation of duties shall not relieve the Contractor or  
21 the Surety of any liability and/or obligation to perform.  
22

23 **16.2 Assignment**

24 The Contractor shall not assign any rights or obligations under or arising from this Contract  
25 without the prior written consent of the County unless otherwise permitted under Section  
26 16.3.  
27

28 **16.3 Change in Control or Ownership**

29 Any change in control or the transfer of a controlling interest in the beneficial ownership of  
30 the Contractor shall constitute a Class B default under the terms of this Contract, unless the  
31 County consents to that transfer. "The transfer of a controlling interest of Contractor" shall  
32 include, but is not limited to, the transfer or assignment of ten percent (10%) or more of the  
33 beneficial ownership of Contractor to or from a single entity, unless the County consents to  
34 that transfer or assignment; however, the following transfers or assignments shall not be  
35 construed as "the transfer of a controlling interest of Contractor": (a) intra-company  
36 transfers in the form of transfers between different subsidiaries or branches of the  
37 Contractor's parent corporation, or (b) if the Contractor, or its parent corporation, is a  
38 closely held corporation, transfers or assignments between individuals who own, in whole  
39 or in part, the parent or any subsidiary including transfers or assignments between or to (i)  
40 the individuals who own, in whole or in part, the parent or any subsidiary, (ii) the spouses,  
41 surviving spouses and linear descendants (including adopted children) of the persons  
42 described in (b)(1), above, (iii) a trust, corporation, partnership or other entity owned by the  
43 persons described in (b)(1), above, and (iv) a corporate trustee designated to act in a  
44 fiduciary capacity for the estate or trust of any person described in (b)(1), above.  
45

46 Notwithstanding the foregoing, the County may in its sole discretion determine that  
47 new ownership can adequately and faithfully render the service called for in this Contract  
48 for the remaining term of the Contract, and the County may then elect to execute a  
49 novation, allowing new ownership to assume the rights and duties of this Contract and



1 releasing the previous ownership of all obligations and liability. The new ownership would  
2 then be solely liable for any work and/or claims related to this Contract.

3  
4 **16.4 Binding Effect**

5 This Contract shall be binding on any and all successors or assignees in accordance with  
6 this Article.

7  
8 **ARTICLE 17 GUARANTEES AND WARRANTIES**

9  
10 **17.1 Guarantees and Warranties Required by Contract**

11 The Contractor shall provide to the County any and all warranties and guarantees  
12 specifically or implicitly required by any of the Contract Documents.

13  
14 **17.2 Other Guarantees and Warranties**

15 The Contractor shall provide warranties and guarantees not expressly required by the  
16 Contract Documents that may be reasonably necessary to ensure the viability of the  
17 County's rights and remedies under this Contract.

18  
19  
20 **17.3 County as Beneficiary**

21 All warranties or guarantees for equipment, services or materials furnished to Contractor or  
22 subcontractors by any supplier shall be deemed to inure to the benefit of the County. If any  
23 supplier of any equipment, service or material furnishes a guarantee or warranty for a  
24 period in excess of one year from the date of acceptance, Contractor's guarantee, as  
25 provided in this Article, shall be deemed to extend for a like period as to that equipment,  
26 service or material.

27  
28 **17.4 Contractor Compliance with Warranties**

29 The Contractor shall fulfill the conditions of any manufacturer's warranty for material or  
30 equipment.

31  
32 **17.5 Contractor Repair of Defects**

33 Within a reasonable time after receiving written notice, the Contractor, at its own expense  
34 and without cost to the County or interruption of the Project, shall correct any defects in  
35 workmanship that exist prior to or during the period of any guarantee as well as any  
36 damage caused by those defects or their repair.

37  
38 **17.6 Independent Guarantees and Warranties**

39 The guarantees and warranties described in this Article shall not be construed to modify,  
40 limit or lessen in any way, any rights or remedies that the County may otherwise have  
41 against the Contractor and the Surety.

42  
43 **ARTICLE 18 DISSOLUTION OF THE COUNTY AND SUCCESSOR TO**  
44 **THE COUNTY**

45  
46 In the event that the County is dissolved or its Solid Waste functions and powers  
47 relative to this Contract are taken from the County by legislative act or by referendum of  
48 the people or by agreement, all of the duties, rights, and remedies of the County under the

1 Contract, including but not limited to all bonds executed for this Contract, shall remain in  
2 full force and effect and shall be transferred to either: (i) the successor to the County as  
3 specified by the legislative act or referendum by which the County is dissolved; or (ii) if no  
4 successor to the County is specified by the relevant legislation or referendum, the State of  
5 Washington, which shall be deemed to be the successor to the County under this Contract.  
6

7 **ARTICLE 19 TERM**

8  
9 This Contract shall be effective upon execution by both parties. The Contractor shall  
10 commence services on May 16, 2018, at 12:00 AM, Pacific Time and shall terminate on  
11 January 15, 2028, at 11:59 PM, Pacific Time , PROVIDED, HOWEVER, that the term of  
12 this Contract may be extended or renewed for up to two (2) additional five (5) year terms,  
13 upon agreement of the parties.  
14  
15  
16  
17  
18

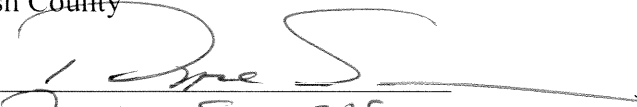
19 "Contractor"

20 Rabanco Ltd.

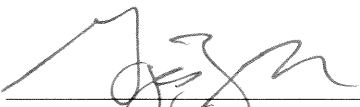
21  
22 By: \_\_\_\_\_  
23 Name: \_\_\_\_\_  
24 Title: \_\_\_\_\_  
25

26  
27 "County"

28 Snohomish County

29  
30 By:   
31 Name: DAVE SOMERS  
32 Title: COUNTY EXECUTIVE  
33  
34 Date: 3/21/18  
35  
36

37 Approved as to Form Only:

38  
39  2/22/18  
40 \_\_\_\_\_ Date  
41 Deputy Prosecuting Attorney  
42  
43

44  
45 COUNCIL USE ONLY  
46 Approved: 3/21/18  
47 Docfile: D-8  
48

## Exhibit A

Contractor shall supply Containers and Chassis in accordance with the Contract including Section 6.3. The following Container Inventory Plan shall be based on the number needed to hold at least three days' Solid Waste delivered to the Receiving Facility based on the County's average daily Solid Waste deliveries for the prior quarter as described in Section 6.3.

<b>Container Inventory:</b>	<b>Required Action:</b>
<b>100% - 98%</b>	County Contract Manager will be informed. If inventory remains below 100% for more than three days a meeting, either in phone or in person will be offered. A schedule will be provided to the County detailing when Republic plans to have inventory levels back to 100%.
<b>98-90%</b>	County Contract Manager will be informed and a meeting, either in phone or in person will be offered. A schedule will be provided to the County detailing when Republic plans to have inventory levels back to 100%. Republic will have 10 calendar days for inventory to return to the 100% - 98% inventory level, or will be notified of a Class C default.
<b>90-80%</b>	Republic will schedule a meeting with the County Contract Manager to provide what contingency plan is being implemented in order to get inventory back up. The plan may consist of train schedules supplemented with trucking resources. Republic will have 5 calendar days for inventory to return to the 100% - 98% inventory level, or will be notified of a Class C default.
<b>80-50%</b>	Republic will schedule a meeting with the County Contract Manager to provide what contingency plan is being implemented in order to get inventory back up. The plan will consist of train schedules supplemented with trucking resources. Republic will have 3 calendar days for inventory to return to the 100% - 98% inventory level, or will be notified of a Class C default. In addition, the County reserves the right to procure disposal services from other vendors once inventory reached 70% and will be reimbursed by Republic.
<b>&lt;50%</b>	In addition to the above actions, Republic will divert materials to landfills closer to Snohomish County utilizing either trucks or trains in order to get inventory back up to acceptable ranges as quickly as possible. Republic will be notified of a Class C default.

## Exhibit B

Description	Solid Waste Tipping Fee <sup>1</sup>
Receiving Services and Transport Services <sup>2</sup>	\$26.70 per ton
Disposal Services Fee <sup>2,3</sup>	\$22.75 per ton
<b>Total</b>	<b>\$49.45 per ton</b>

Description	Street Sweeping / Vactor Waste Tipping Fee <sup>1</sup>
Receiving / Transport / Disposal Services Fee <sup>2,3</sup>	\$43.50 per ton

1. Tipping Fees shall be adjusted in accordance with Section 8.3.
2. For each ton per Loaded Container delivered by Customer to and accepted by the Contractor at Receiving Facility, Transported from the Receiving Facility to the Disposal Site, and Disposed of at the Disposal Site, County shall pay Contractor a Receiving Services and Transport Services Fee and a Disposal Services Fee.
3. For each ton per Loaded Container delivered by Customer directly to the Disposal Site and Disposed at the Disposal Site by the Contractor, County shall pay Contractor a Disposal Services Fee only.

## Exhibit C

	<b>Year 1 Rebate<sup>1</sup></b>	<b><u>Year 2+ Rebate<sup>1</sup></u></b>
<b>Guaranteed Weight:</b> per container	26.00 tons	<u>26.00 tons</u>
<b>Container Weight:</b>		
27.50 -28.49	\$0.25	<u>&gt;28.00 tons= \$0.50</u>
28.50 -28.99	\$0.50	
29.00 -29.99	\$0.75	<u>\$0.75</u>
30+	\$1.00	<u>\$1.00</u>

1. Rebates shall be adjusted in accordance with Section 8.4.