

CONTRACT  
REGARDING SOLID WASTE RECYCLING,  
TRANSFER, TRANSPORT AND OUT-OF-COUNTY DISPOSAL  
BETWEEN  
CLARK COUNTY, WASHINGTON  
AND  
COLUMBIA RESOURCE COMPANY, L.P.

JANUARY 1, 2006

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Article 1. CONTRACT

This Contract Regarding Solid Waste Recycling, Transfer, Transport and Out-of-County Disposal ("Contract") is entered between Clark County, a political subdivision of the State of Washington ("County"), and Columbia Resource Company, L.P., a Washington limited partnership ("Contractor"), and is effective on the Effective Date. The County and Contractor agree as follows.

Article 2. RECITALS AND FINDINGS

2.1 In order to fulfill its responsibility under RCW 70.95.090 to provide a program for the orderly development of solid waste handling facilities, including solid waste disposal sites, the County undertook a competitive process in accordance with RCW 36.58.090 to select a firm to develop and operate transfer and recycling stations, transport facilities and facilities for final disposal of solid waste originating within the County.

2.2 The County determined that Contractor is best qualified to provide services for the County, and Contractor has offered to provide those services in a manner and at rates that the County finds to be in the best interests of the ratepayers living and doing business within the County.

2.3 The Cities of Vancouver, Ridgefield, La Center, Battleground, Camas, Washougal and Yacolt operate or contract for solid waste collection within their boundaries, or allow for WUTC regulation of collection within their boundaries, and those cities have determined or may in the future determine that it is in the best interest of their citizens that the County provide for a long-term method of solid waste disposal.

2.4 The initial Contract was entered between County and Tidewater Barge Lines, Inc. in April 1990. The Contract was amended from time-to-time by addenda and other writings. This Contract is restated and replaces all prior writings between County and Contractor.

Article 3. DEFINITIONS

For the purposes of the Contract and the Contract Documents, the following terms shall have the following meanings:

3.1 "Acceptable Waste" means all putrescible and non-putrescible wastes including but not limited to:

- 3.1.1 Garbage as defined in WAC 173-304-100;
- 3.1.2 Rubbish;
- 3.1.3 Refuse;

- 3.1.4 Residential heating and cooking ash;
- 3.1.5 Waste paper;
- 3.1.6 Cardboard;
- 3.1.7 Commercial waste as defined in Chapter 173-351 WAC;
- 3.1.8 Industrial waste as defined in Chapter 173-351 WAC;
- 3.1.9 Demolition waste as defined in Chapter 173-351 WAC;
- 3.1.10 Construction waste;
- 3.1.11 Manure;
- 3.1.12 Dead animals under 200 pounds;
- 3.1.13 Yard Waste;
- 3.1.14 Empty non-rigid pesticide containers (bags);
- 3.1.15 Empty rigid pesticide containers that have been properly decontaminated by jet or multiple rinsing and crushing; or
- 3.1.16 Other materials and substances that may in the future be included in the definition of "solid waste" in ORS 459.005, RCW 70.95.030 or regulations promulgated thereunder.

3.2 "Administrative/Regulatory Fee" means any County-imposed fee, charge or surcharge to pay costs related to solid waste handling or recycling, including but not limited to, planning, administration, facilities and services, environmental improvements, closure and post-closure of previously operating facilities in the County, financing for any of those purposes or related activities.

3.3 "Backup Transport System" means the alternative Transportation system and plan used by the Contractor and approved by the County that the Contractor will use if the Contractor's primary Transportation system is unavailable to satisfy its obligations under the Contract.

3.4 "City" or "Cities" means one or more incorporated cities or towns in the County that participate in the Comprehensive Solid Waste Management Plan and contract for and/or authorize the County to designate disposal sites for Waste originating in those cities or towns.

3.5 “Claims Fund” means the Solid Waste Claims Fund established by the County under Section 27.6.

3.6 “Cleanup” means, but is not limited to, the containment, investigation, monitoring, testing, collection, removal, storage, transport, treatment or disposal of Unacceptable Waste or contamination caused by Unacceptable Waste, Acceptable Waste or Special Waste or their decomposition by-products, as required or performed by federal, state or local government agencies.

3.7 “Commercial Drop Box” means a detachable container of 10 yards or greater capacity, transported by a vehicle for purposes of hauling waste originating from a single customer at a single location.

3.8 “Commercial Vehicle” means a self-unloading vehicle, with a capacity of 10 yards or greater.

3.9 “Comprehensive Solid Waste Management Plan” (or “Plan”) means the County’s Comprehensive Solid Waste Management Plan adopted in accordance with Chapter 70.95 RCW.

3.10 “Construction and Demolition Waste” means Waste as defined at WAC 173-304-100 (19) or as otherwise approved by the Director.

3.11 “Consumer Price Index” or “CPI” means the Consumer Price Index for Urban Wage Earners and Clerical Workers for the Portland-Vancouver Metropolitan Area, as prepared by the United States Department of Labor, Bureau of Labor Statistics (“BLS”). In the event that BLS no longer publishes the identified index, the parties will agree to a substitute index or submit the issue to arbitration under Article 28.

3.12 “Container” means the receptacle used to hold Waste during Transportation from the Transfer Stations to the Disposal Site.

3.13 “Contract” and “Contract Documents” are synonymous and mean:

3.13.1 This Contract, and the performance bond, letter(s) of credit or other financial guarantee provided under Article 26;

3.13.2 Any and all addenda to the Contract; and

3.13.3 Any and all appendices, amendments, change orders, or extensions to or of the foregoing documents mutually agreed on by the parties in accordance with the Contract.

3.14 “Contractor” means Columbia Resource Company, L.P., its successors or assigns.

3.15 “Costs” means all direct costs incurred by the Contractor in performing its obligations under the Contract, including associated overhead costs.

3.16 "County" means Clark County, a political subdivision of the State of Washington, its successors or assigns.

3.17 "County System" means the County system or systems of solid waste handling, as established by ordinance and as may be amended from time; inclusive of agreements with Cities and other public or private parties.

3.18 "Director" means the County Director of Public Works or any other county official hereafter designated by the County in writing.

3.19 "Dispose" or "Disposal" means all work, services or operations performed by the contractor under the Contract on or after the time Waste enters the boundaries of the Disposal Site.

3.20 "Disposal Site" means the Contractor-selected and County approved Finley Buttes Landfill located in Morrow County, Oregon, and any other disposal site or sites as may be designated in accordance with Article 17.

3.21 "East County Transfer Station" is the Transfer facility variously referred to as the Washougal Transfer Station or Third Transfer Station, to be located in East Clark County.

3.22 "Effective Date" means January 1, 2006.

3.23 "Facility" or "Facilities" means the facility or facilities owned, operated or used by the Contractor to perform its obligations under the Contract to Recycle, Transfer, load, unload, Transport and Dispose of Waste including, but not limited to, the Transfer Stations, Transportation Facilities, Disposal Site and any other facilities or capital equipment described in the Contract.

3.24 "Fees" including "Tipping Fees", are the per ton rates or other charges imposed by the Contractor on Persons who deliver Waste to a Transfer Station, fixed in accordance with Article 12; and other Fees identified in the Contract.

3.25 "Food Waste" means preconsumer and postconsumer, source-separated animal and vegetable waste resulting from the handling, preparation, cooking and consumption of food, as subject to and as otherwise authorized by the Director.

3.26 "Hazardous Waste" means any waste, material or substance that is not excluded from regulation as "hazardous waste" or "dangerous waste" by application of hazardous waste or dangerous waste regulations adopted by the United States Environmental Protection Agency, the Washington State Department of Ecology or the Oregon State Department of Environmental Quality and that now or hereafter:

3.26.1 is required to be dealt with as hazardous waste under regulations promulgated by the United States Environmental Protection Agency at 40 CFR part 261;

3.26.2 contains a radioactive material the storage or disposal of which is regulated by state or federal law or regulation; or

3.26.3 is designated a "dangerous waste" or "extremely hazardous waste" by regulations adopted pursuant to Chapter 70.105 RCW or Oregon law.

Certain Waste that is not as of the Effective Date of the Contract within one of subsections 3.26.1 through 3.26.3, above, may after that date come within the scope of one or more of those subsections as determined by a governmental entity with jurisdiction; certain other waste that is within one of those subsections may cease to be recognized as a Hazardous Waste as defined herein. Accordingly, any waste, material or substance shall be deemed Hazardous Waste only so long as and to the extent that it is included in at least one of subsections 3.26.1 through 3.26.3, above.

3.27 "Health Department" means the Clark County Health Department or successor entity.

3.28 "Household Hazardous Waste" means any source-separated substance that customarily is produced or distributed for sale or used by individuals in or around a residence, is ignitable, corrosive, reactive or toxic as defined in or contains a substance listed in 40 CFR part 261 and "Appendices" and is deposited in the Household Hazardous Waste receptacles provided by the Contractor. The term does not include waste produced, used, stored or disposed by commercial, industrial and other non-residential Persons, or Waste that is not Household Hazardous Waste as defined in regulations or guidance issued under Chapter 70.95 RCW. Household Hazardous Waste does not include waste generated by "Small Quantity Generators," as that term is defined by regulations or guidelines issued under Chapter 70.95 RCW.

3.29 "Loading Facility" means the Facility used to load Containers of Waste on barges for Transport to the Unloading Facility and to unload empty Containers from barges for Transport to the Transfer Stations.

3.30 "Materials Recovery" means the process for removing Recyclable Materials from the waste stream.

3.31 "Medical Waste" means Waste materials and substances that may be included in the definition of medical waste in Chapter 173-304 WAC et seq. or successor provisions and as included in the applicable definition of medical waste under RCW 70.95.010.

3.32 "Mixed Waste" means Waste that contains non-recyclable and Recyclable Materials.

3.33 “ORS” means the Oregon Revised Statutes.

3.34 “Person” or “Persons” means any individual, firm association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity.

3.35 “Primary Transport System” means the Transportation system and plan primarily used by the Contractor and approved by the County to satisfy its obligations under the Contract.

3.36 “Prime Rate” means that rate of interest announced from time to time by LIBOR Bank, or its successor, as its prime rate.

3.37 “Project” means any and all matters and things that are required to be done; kept, performed and furnished under the Contract.

3.38 “RCW” means the Revised Code of Washington.

3.39 “Recovered Materials” means those materials that are either Source-Separated or recovered from Acceptable Waste delivered to the Transfer Stations including the Recycling Processing center and are prepared for reuse or sale.

3.40 “Recyclable Collection Contractor” means any Person delivering Source-Separated Recyclable Materials to the Transfer Stations including the Recycling Processing Center pursuant to a contract with the County or Cities to collect Recyclable Materials from residences.

3.41 “Recyclable Materials” means those recyclable materials approved by the Director.

3.42 “Recycling” means the transformation or remanufacture of Waste into usable or marketable materials for reuse or sale rather than Disposal including but not limited to the removal of Recyclable Materials from the waste stream.

3.43 “Recycling Processing Center” means a Facility located at a Transfer Station at which Recyclable Materials are recovered, processed and stored.

3.44 “Representative” means the individual from time to time designated as the authorized representative of the Contractor.

3.45 “Residual Waste” means the Waste remaining after the removal of Recyclable Materials from Waste and any non-recyclable or other waste that bypasses processing for the removal of Recyclable Materials. The term does not include Unacceptable Waste.

3.46 “Shakedown” means the period in Contract development following the Start-up period during which any Facility is operated at design capacity for a designated test period.



3.47 "Small Public Loads" means any Waste delivered to the Transfer Stations in loads that contain not more than two and one-half (2-1/2) cubic yards of Waste (unless a greater volume is approved by the Director) and weigh less than one ton (2,000 pounds) including the public drop-off of Recyclable Materials and small quantities of Household Hazardous Waste.

3.48 "Source-Separated" means Recyclable Material that is kept separate from non-recyclable Waste by the original generator of that Waste.

3.49 "Special Waste" means any waste (even though it may be part of a delivered load of waste), that is otherwise considered Acceptable Waste but by virtue of its unique properties, requires special handling and is thereby subject to special compensation as defined in Article 12. Special Waste includes but is not limited to:

3.49.1 Dead animals over 200 pounds;

3.49.2 Tires;

3.49.3 Batteries;

3.49.4 Used motor oil;

3.49.5 Medical Waste;

3.49.6 Discarded or abandoned vehicles or parts thereof;

3.49.7 Discarded White Goods and industrial appliances;

3.49.8 Discarded furniture and mattresses;

3.49.9 Asbestos packaged and handled in accordance with applicable laws and permits;

3.49.10 Wastes listed under Section 3.58.5;

3.49.11 Municipal refuse ash and sewage sludge incinerator ash disposed in accordance with applicable laws and permits;

3.49.12 Residue or debris from the cleanup of a spill or release of chemical substances, commercial products or wastes that require special approval by the Oregon Department of Environmental Quality;

3.49.13 Soil, water, residue, debris or articles that are contaminated from the cleanup of a site or facility formerly used for the generation, storage, treatment, recycling, reclamation, transport or disposal of wastes that require special approval by the Oregon Department of Environmental Quality;

3.49.14 Sewage sludge dewatered in accordance with applicable state and federal regulations;

3.49.15 Restaurant waste grease;

3.49.16 Residue and debris from wastewater treatment plant operations; or

3.49.17 Other wastes that because of a change in applicable law may no longer be treated as Acceptable Waste but may be handled under special requirements set forth in an applicable statute, rule or permit, or as otherwise approved by the Director.

3.50 "Start-up" means the period following the construction of any Facility during which the operations under the Contract are monitored and modified to satisfy the requirements of the Contract.

3.51 "State/Local Fee" means a governmentally-imposed fee, tax, surcharge or similar charge on solid waste handling services, including but not limited to solid waste transportation and disposal services. The term does not include: federally-imposed fees, taxes, surcharges or other charges levied equally on solid waste handling in all states; the County's Administrative/Regulatory Fee or Fees; taxes, surcharges or other charges imposed on Waste handling by any city or county in which a Disposal Site is located; or state corporate or personal income taxes.

3.52 "Surety" means the Person approved by the County that provides a performance bond, letter of credit or other similar instrument required under Article 26 guaranteeing or providing funds to guarantee performance of the Contractor's obligations under the Contract.

3.53 "Term" or "Term of Contract" shall mean the term of the Contract determined in accordance with Article 32 including any extensions thereof.

3.54 "Transaction Fee" means the Contractor collected and retained payment for each qualified transaction at a Transfer Station.

3.55 "Transfer" means but is not limited to the handling, separation, Recycling, processing, loading and storage of waste and any other activities performed at the Transfer Stations in accordance with the Contract.

3.56 "Transfer Stations" means the Facilities at which Waste collected from residences or commercial, institutional or industrial users that is received, compacted and loaded in Containers including but not limited to Recycling and Household Hazardous Waste collection Facilities and the Recycling Processing Center.

3.57 "Transport" or "Transportation" means but is not limited to the handling, storage, loading, unloading and transportation of Containers between the Transfer Stations and the Disposal Site in accordance with the Contract.

3.58 “Unacceptable Waste” means any and all waste that is:

3.58.1 Hazardous Waste;

3.58.2 Substances or materials used for fertilizer or other agricultural purposes including but not limited to crop production or raising fowl or animals;

3.58.3 Septic tank pumpings;

3.58.4 Other wastes prohibited from Disposal at the Disposal Site by local, state or federal law, regulation, rule, code, permit or permit condition; or

3.58.5 Acceptable Waste that because of its size, weight or shape, cannot be handled by Transfer Station or Transportation Facilities including but not limited to concrete, rocks or stumps over three feet in diameter, construction debris (large structural timber or steel), or other materials designated by the Director.

3.59 “Uncontrollable Circumstances” means only the following and no other events: riots, wars, civil disturbances, insurrections, acts of terrorism, epidemics, landslides, volcanic eruptions, earthquakes, lightning, explosions, floods, fire, vandalism, collapse or underground occurrence at or near any of the Facilities that directly affect the operation of a Facility; an increase in or imposition of State/Local Fees or federal fees on solid waste handling that Contractor passes through by increasing the Tipping Fee in accordance with Article 12 that in total exceed twenty-five percent of the total Tipping Fee not including those State/Local Fees and federal fees; or a change in any applicable Washington or Oregon law that in combination increases the Tipping Fees, County or Cities’ waste handling and disposal costs, and costs to haulers, by more than 33.33% of the then-current Tipping Fees.

3.60 “Unloading Facility” means the Facility used to unload Containers of Waste from barges for Transport to the Disposal Site and to load empty Containers on barges for Transport to the Loading Facility.

3.61 “WAC” means the Washington Administrative Code.

3.62 “Wood Waste” means Waste as defined at WAC 173-304-100, or as otherwise approved by the Director.

3.63 “WUTC” means the Washington Utilities and Transportation Commission.

3.64 “Waste” means Acceptable Waste and/or Special Waste, including Recyclable Materials, unless indicated otherwise. “Waste originating within the County” or “County’s Waste” means Waste originating within the unincorporated areas of the County or within Cities.

3.65 “White Goods” means refrigerators, stoves, washers, dryers and other large appliances that are Recyclable Materials.

3.66 “Yard Waste” means clippings and prunings from grass, trees, shrubs and other plants in a proportion of mixed leaves/grass and woody material designated by the Director.

#### Article 4. GENERAL PROVISIONS

4.1 Applicable Law. The Contract is made in and shall be construed under the laws of the State of Washington.

4.2 Quality of Performance. The Contractor and its officers, employees, agents and subcontractors shall perform every act or service to be performed under the Contract in a skillful and competent manner in accordance with the highest standards of the solid waste transportation and disposal industries. The Contractor shall be responsible to the County for any errors, deficiencies or failures to perform the Contract.

4.3 Facilities and Personnel. The Contractor warrants that the Facilities and personnel used in the performance of the Contract shall conform to the requirements of the Contract and the design, operation and training requirements of applicable law.

4.4 Compliance with Law; Documentation; Confidential Business Records. The Contractor, its officers, employees/ agents and subcontractors shall comply with applicable federal, state, county, regional or local law, statute, rule, regulation or ordinance, including those of agencies having jurisdiction over the Project, in performing its obligations under the Contract. The County shall have the right to inspect copies of all correspondence or any other documents sent to or received from the Contractor or its subcontractors related to the Contractor’s compliance with applicable law. The Contractor may designate documents as confidential business records. If so designated, those documents shall be inspected by an independent accountant or other third party designated by the County and approved by the Contractor, acting reasonably; the third party selected shall determine whether the documents are relevant to the Contractor’s compliance with applicable law. If the third party determines that the documents are relevant, then the County may inspect and copy the documents. For documents that contain both relevant and irrelevant information, the third party may delete any irrelevant information. The third party may at the Contractor’s discretion be required to sign a reasonable confidentiality agreement. All agreements between the Contractor and Persons employed for the Contract shall contain this Section’s requirements. The requirements of this Section shall survive the expiration of the Contract.

#### 4.5 Notices.

4.5.1 Written Notice. Any written notice under the Contract shall be deemed served when delivered in person to the Person to whom it was intended, or if sent by mail or other carrier, or by electronic mail, when mailed to that Person at the Person’s address as set

forth in Section 4.5.3. The date or time of service shall be the date or time the relevant document was mailed to or personally delivered at the proper address. The Contractor shall address all notices and correspondence for the County to the Director. The County shall address all notices and correspondence for the Contractor to the Contractor's Representative.

4.5.2 Notice of Death or Injury. The Contractor shall notify the Director promptly of any death, serious injuries, emergencies, or material damages or claims made against the Contractor as a result of an accident. In the case of events with possible pollution and or contamination impacts, such notification shall be immediate. Upon resolution of the event by the Contractor, and upon request by Director, a report shall be submitted to the Director explaining the nature of the event, resolution or mitigation of the results of the events and action to be taken by the Contractor to avoid future similar events.

4.5.3 Representatives.

A. COUNTY

Clark County  
Department of Public Works  
Attn: Public Works Director  
1300 Franklin Street  
P.O. Box 9810  
Vancouver, WA 98666-9810  
Phone: 360-397-6118  
Facsimile: 360-397-2062  
Electronic Mail: Anita.Largent@clark.wa.gov



B. CONTRACTOR

Columbia Resource Company  
Attn: Pacific Northwest Regional Vice President  
501 S.E. Columbia Shores Blvd., Suite 350  
P.O. Box 61726  
Vancouver, WA 98661  
Phone: 360-695-4858  
Facsimile: 360-695-5091  
Electronic Mail: ericme@WCNX.org

AND TO:

Waste Connections, Inc.  
Office of the General Counsel  
35 Iron Point Circle

Suite 200  
Folsom, CA 95630

C. Change of notice information for a representative shall be given in writing to the other party.

4.6 Time of the Essence. Time limits stated in the Contract are of the essence. No waiver of the Contract time limits or schedule dates is to be implied from either party's failure to object to untimely performance under the Contract. Any waiver of time limits or schedules shall not be construed as a waiver of any future time limits or schedules.

4.7 Contractor's Records; Access; Inspection.

4.7.1 The Contractor shall at all times maintain an accounting system using generally accepted accounting principles for all services rendered and materials supplied, including additional and deleted work, in connection with the Contract. The Contractor shall maintain the accounting system in a manner which clearly separates its revenues and expenses related to the provision of services under the Contract from any revenues or expenses related to any affiliated company. The Contractor's accounts including but not limited to all records, invoices and payments under the Contract, as adjusted for additional and deleted work shall, together with the Facilities themselves, at all reasonable times during the term of the Contract and for two years thereafter, be open for inspection for any reasonable purpose by the County, the Director and officers or employees of the states of Washington and Oregon. The County shall have the right to inspect and copy all records and documents, to interview any person, and to review any evidence in Contractor's possession or control that may assist the County in determining whether and by what amount:

- A. The Contractor is entitled to reimbursement or increased Tipping Fees under the Contract;
- B. The County is entitled to a reduction in Tipping Fees under the Contract; or
- C. The Contractor is in compliance with the Contract.

4.7.2 The Contractor may designate certain documents or records as confidential business records and the County may examine and copy those documents or records in accordance with Section 4.4.

4.7.3 County Inspection of Operations. The County shall have access to and the Contractor shall permit inspection by County of all elements of the Contractor's operations and Facilities that are a part of the Contractor's performance of the Contract. The County shall be allowed to inspect Facilities at any time during the Facility's operational hours as long as such inspection does not unduly interfere with the Contractor's operations.

4.8 Payment of Subcontractors and Agents. Unless a reasonable dispute exists concerning payment, the Contractor shall promptly pay all subcontractors, materialmen, suppliers or laborers engaged for purposes of the Contract in accordance with the contract or agreement between that Person and the Contractor. The Contractor agrees promptly to remove, have removed or bond in accordance with Washington law, any liens or encumbrances that, because of any act or default of Contractor, its officers, employees, agents, subcontractors, sub-subcontractors, material suppliers or Facility owners, are filed against a Facility or against any real or personal property required to fully perform the Contract. If the Contractor does not promptly pay all subcontractors, materialmen, suppliers or laborers in accordance with this Section, the Contractor agrees to defend, indemnify and hold the County harmless in accordance with Article 15.

4.9 No Personal Liability. The Contract is not intended to and shall not be construed to create or result in any personal liability for any public official or County employee or agent.

4.10 Severability. If any Contract provision is void, invalid or unenforceable under any applicable law, the remaining provisions of the Contract shall remain in effect and bind the parties.

4.11 Waivers. The County's or Contractor's failure to object to a breach of any Contract provision is not and shall not be construed as a waiver of that provision. The payment or acceptance of compensation subsequent to any breach is not and shall not be construed as an acceptance of that breach. All waivers must be in writing and supported by consideration.

4.12 Venue. The parties agree that the proper and exclusive venue for any and all actions under the Contract or any subcontracts made pursuant to the Contract shall be the Superior Court of the State of Washington in Clark County or the U.S. District Court for the Western District of Washington. Any and all disputes arising under the Contract shall be decided under Washington law unless otherwise specified herein.

4.13 Third Party Beneficiaries. The Contract is entered into by the County in its governmental capacity and is not intended to nor does it create any third party beneficiary or other rights in any private Person, except as otherwise provided herein. The Contract does create certain rights in the Cities with respect to the Contractor, but those rights may be exercised only by and through the County.

4.14 Contractor's Compliance with Contract Documents. The Contractor shall comply with each and every provision of the Contract Documents.

4.15 Article, Section and Subsection References. Any Articles, Sections or subsections referred to in the Contract by number only without reference to another document refer to those Articles, Sections or subsections contained in the Contract.

Article 5. INTENT OF THE CONTRACT DOCUMENTS

5.1 Comprehensive Contract. All services that are necessary to complete and carry out the Project in accordance with the Contract Documents shall be considered part of the Project and the Contractor shall perform or provide those services without extra compensation unless otherwise expressly stated.

5.2 Comprehensive Services. Unless expressly agreed otherwise, Contractor shall provide and pay for all Recycling, Transfer, Transport and Disposal Site access, services, operation, labor, overtime labor, standby labor, methods, materials, equipment, Transportation, power, fuel, water, taxes and all other Facilities and services of any kind necessary to perform the Project.

5.3 Construction of Terms. Unless otherwise specifically defined in the Contract, words describing material or work that have a well-known technical or trade meaning shall be construed in accordance with the well-known meaning generally recognized by solid waste professionals, engineers and trades.

5.4 Complementary Contract Documents. The Contract Documents are complementary and shall be interpreted so that what is required by one shall be as binding as if required by all. The Contractor immediately shall bring to the County's attention for mutual decision and mutual revision any observed conflicts between or duplications of any Contract provisions or any material omission from the Contract, The Contractor shall obtain written instructions from the Director before proceeding with services affected by omissions or discrepancies in the Contract Documents.

5.5 No Waiver of Governmental Powers. It is understood and agreed that, by execution of the Contract, the County does not waive or surrender any of its governmental powers.

Article 6. CONTRACTOR'S REPRESENTATIVE

6.1 Contractor Designee. The Contractor shall designate and provide the services of a competent Representative for the Term of the Contract.

6.2 Scope of Representation. The Contractor's Representative shall be the Contractor's agent and shall represent the Contractor for all purposes of the Contract. All directions, instructions or notices given by the County to that Representative shall bind the Contractor as if delivered to the Contractor personally. The Representative shall be in charge of the Project at all times and shall have authority to act on behalf of the Contractor; the Representative's statements, representations, actions and commitments shall fully bind the Contractor.



6.3 Change in Representative. The Contractor shall promptly inform the County in writing of any change in the individual designated as the Contractor's Representative.

#### Article 7. INDEPENDENT CONTRACTOR

7.1 Contractor as Independent Contractor. The Contractor shall perform all work under the Contract as an independent contractor. The Contractor is not and shall not be considered an employee, agent or servant of the County for the Contract or otherwise; the Contractor's subcontractors, employees or agents are not and shall not be considered employees, agents, subagents or servants of the County for the Contract or otherwise.

7.2 Contractor's Control of Project. The Contractor shall have the exclusive right to control the services and work performed under the Contract and, except as otherwise provided in Section 6.1, the Persons performing those services and work. The Contractor shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors. Nothing in the Contract creates or shall be construed to create a partnership or joint venture between the County and the Contractor or giving the County a duty to supervise or control the acts or omissions of any Person performing services or work under the Contract.

#### Article 8. SUBCONTRACTORS AND OTHER COUNTY CONTRACTORS

8.1 Approval of Subcontractors. Within sixty (60) days of execution of the Contract, the Contractor shall submit to the Director for approval, acting reasonably, the names and addresses of existing subcontractors for Project items and services equal to or exceeding \$100,000 per year. Thereafter, the names and addresses of proposed additional such subcontractors shall be submitted for Director approval at least thirty (30) days (except in an emergency) prior to the execution of a subcontract.

8.2 Assignment of Subcontracts. All contracts or agreements entered into by the Contractor with its subcontractors, officers, employees and agents for performance of the Contract, including all contracts or agreements relating to the operation or ownership of the Disposal Site and any other Facilities, shall include and be consistent with all terms and conditions of the Contract. All Transfer Station subcontracts shall include a clause that if the Contractor defaults in performance of the Contract and the County accepts assignment of the subcontract, the subcontractor shall recognize the County or its assignee as the Contractor and the County or its assignee shall have all the rights, remedies and responsibilities of the Contractor under the relevant subcontract. The Contractor shall be as fully responsible to the County for the acts and omissions of its subcontractors and suppliers and of the subcontractors' suppliers, employees, firms, agents, servants or subcontractor as it is for the acts or omissions of its own employees or agents.

8.3 County Power to Award Other Contracts. The County reserves the right to grant other contracts for the collection and/or recycling of solid waste, so long as those contracts do not conflict with the County's obligations to the Contractor under Article 11. The Contractor

shall use its best efforts to cooperate with other firms, contractors or subcontractors engaged by the County, and with County-approved or WUTC certificated collectors and haulers of solid waste, so that the Project and the County's Comprehensive Solid Waste Management Plan may be implemented in the most efficient and timely manner, without interfering with work on related projects. If the County is legally entitled and determines to enter a contract with a private entity for the delivery of Source-Separated commercial/industrial Waste to that private entity, then the County shall conduct good faith negotiations with the Contractor to deliver that Waste to the Contractor as additional work under Article 22. If the County and the Contractor are unable to negotiate a mutually acceptable agreement for that work, the County may enter a contract with any other Person for that work.

## Article 9. RECYCLING

### 9.1 Minimum Annual Recycling Requirements (MARR).

9.1.1. Minimum Annual Recycling Requirement. The Contractor shall satisfy a minimum annual recycling requirement or waste reduction goal (the "Recycling requirement") of ten percent of the Waste delivered to the Transfer Stations or Recycling Processing Center, as specified by the Parties' Agreement Relating To Recycling Credits and Penalties (October 5, 2004) (the "MARR Narrative").

### 9.1.2 Calculating Compliance with Recycling Requirement.

A. The Director shall determine future compliance with the MARRs based on the MARR Narrative. The Director shall retain authority on behalf of the County to modify the MARR Narrative, provided, however, that any such modifications shall be agreed to in writing by the Contractor. Modifications may specifically include changes to the classification of recycle categories within the MARRs calculation; however, these modifications must comply with Section 9.3 of the Contract. The 10% MARR Bonus shall be calculated based on the materials identified as MARRs Bonus Items in the MARR Narrative. The Contractor shall be entitled to a bonus when the MARRs Bonus Items exceed the 10% MARR. Penalties for failing to meet the 10% MARRs shall be calculated based on the materials identified as MARRs Bonus Items and MARRs Recovered Items in the MARR Narrative. Contractor shall be subject to the penalty provisions when the combined recovery rate from the MARRs Bonus Items and MARRs Recovery Items fail to meet the 10% MARRs.

B. By March 1 of each year, the Contractor shall provide the Director with the necessary documentation as determined by the most recent MARR Narrative which will allow the Director to determine the Contractor's compliance or noncompliance with the Recycling requirement for the past calendar year. The first calculation shall be based on the time period from January 1, 1993, to December 31, 1993. Recyclable Materials removed from the Waste stream and stored pursuant to Section 9.3 shall be considered Recycled for purposes of calculations under this Section.

9.1.3 Adjustment of Recycling Requirement. It is recognized that the effects of other waste stream reduction and recycling measures and market conditions, which are beyond the control of the Contractor, may impact the Contractor's ability to meet the ten percent recycling requirement, therefore, the County and Contractor agree that upon notice and demonstration by the Contractor of a substantial change in the waste stream condition, the parties shall negotiate in good faith to adjust the percentage Recycling requirement to reflect the changed conditions. The effective date of any adjustment shall be a part of the negotiations.

9.1.4 Liquidated Damages for Failure to Comply with Recycling Requirement; Bonus for Exceeding Recycling Requirement. For any year in which the Contractor falls below the Recycling requirement then in effect, the Contractor shall pay to the County liquidated damages in accordance with Section 27.3 of the Contract. For any year in which the Contractor exceeds the Recycling requirement, the County shall pay to the Contractor a bonus in the following amount:

- B = \$2000 x E, where:
- B = Bonus in dollars;
- E = Percentage points by which Recycling requirement is exceeded;

However, in no event shall the bonus paid by the County to the Contractor under this Section exceed \$10,000 per year.

## 9.2 Recyclable Materials Delivered by Recyclable Collection Contractors.

9.2.1 Records of Recyclable Materials Delivered by Recyclable Collection Contractors. The Contractor shall weigh all Recyclable Materials delivered to the Transfer Stations or Recycling Processing Center by Recyclable Collection Contractors. The Contractor shall maintain records of the weight of Recyclable Materials and the Persons delivering the Recyclable Materials and shall submit those records to the Director each month. The Contractor is not required to pay Persons for any Recyclable Materials delivered.

9.2.2 Distribution of Revenue from Sale of Recyclable Materials. Revenue received from the sale of Recyclable Materials received at the Transfer Stations or Recycling Processing Center from Recyclable Collection Contractors shall be distributed as follows:

- A. Contractor shall retain an amount equal to:
  - (1) Thirty Dollars (\$30.00) per ton of received Recyclable Materials, and
  - (2) After subtracting A(1) above, thirty percent of the remaining revenue derived from the sale of those Recyclable Materials.

B. The amount set forth in Section 9.2.2A(1) may be increased annually by the CPI adjustment under Section 12.3.1A. Provided, such annual increase shall not commence until the first full calendar year after Contractor satisfies Section 23.5.2B.

C. Contractor shall pay to the County any amount remaining after Contractor retains the amount described in Section 9.2.2A(1) under procedures set forth in Section 9.2.2D.

D. The Contractor shall calculate and report to the County the amount of Recyclable Materials quarterly for the periods January 1 - March 31, April 1 - June 30, July 1 - September 30, and October 1 - December 31, and gross revenue therefrom, within thirty (30) days of the end of each quarter. Following County review of report and direction to Contractor, Contractor shall pay and distribute payments as directed by County within twenty-one (21) days of County direction.

9.2.3 Setoff Against Future Revenues Payable to the County. Such report, if any, shall be provided within thirty (30) days following the end of the applicable quarter. If revenues received from the sale of Recyclable Materials delivered by Recyclable Collection Contractors in any calendar year are insufficient to meet the Costs described in Section 9.2.2, the Contractor shall provide the Director with documentation of that finding and the shortfall shall be setoff against any amounts payable to the County under Section 9.2.2 in the future. The Contractor may accumulate setoffs from year to year.

9.2.4 Refusal to Accept Recyclable Materials. If the market prices paid for a Recyclable Material delivered by Recyclable Collection Contractors have been insufficient to meet the Costs described in Section 9.2.2A(1) for six (6) consecutive months, or have met less than eighty-five percent of the Costs described in Section 9.2.2A(1) during an eleven (11)-month period, the Contractor may give the County thirty (30) days notice of its intent to refuse to accept such Recyclable Material if the market prices paid for those materials have been less than the Costs described in Section 9.2.2A(1) for three (3) consecutive months.

On notice by the Contractor of its intent to stop accepting a Recyclable Material from Recyclable Collection Contractors under this Section 9.2.4, the County may elect to fund the acceptance of that Recyclable Material for Recycling in an amount sufficient so that revenue from the sale of that Recyclable Material equals the Costs described in Section 9.2.2A(1).

9.3 Removal of Recyclable Materials Not Required; Storage of Recyclable Materials; Reporting; Recycling Reinstated.

9.3.1 Removal of Recyclable Materials Not Required. Subject to the prior written approval of the County, the Contractor may stop removing certain Recyclable Materials from the Waste stream. The County shall grant that approval if the Contractor meets the following conditions: (1) the Contractor notifies the County thirty (30) days before it stops removing those materials; and (2) the Contractor documents from at least two (2) market sources

acceptable to the County, that prices paid for the material have been insufficient to cover Costs such that the net Cost of processing, transporting and marketing the material has been greater than the Cost of processing, transporting and disposing of the material at the Disposal Site for the five (5) consecutive months preceding the notice or Contractor documents that a change of law, lack of markets, or other circumstances have made the material non-recyclable.

9.3.2 Storage of Recyclable Materials. Contractor may store Recyclable Materials removed from the Waste stream. Any Recyclable Material that is in storage at the time the County authorizes the Contractor to stop removing that material from the Waste stream shall be Recycled unless otherwise approved by the Director.

9.3.3 Quarterly Market Reports. Once the Contractor is authorized by the County to stop removing a Recyclable Material from the Waste stream under this Section, the Contractor shall provide to the County quarterly reports of the current market for that material from at least two (2) market sources acceptable to the County, acting reasonably.

9.3.4 Recycling Reinstated. When the market value of a Recyclable Material that is no longer being removed from the Waste stream under this Section exceeds projected Costs such that the net Cost of processing, transporting and marketing the material is less than the Cost of processing, Transporting and Disposing of the material at the Disposal Site for two (2) consecutive quarters, Contractor shall within ten (10) days of the second quarterly report remove that material from the Waste stream for Recycling and the material shall again be considered a Recyclable Material for purposes of this Contract.

#### 9.4 Recyclable Wood.

9.4.1 Processing into Fuel. Subject to the prior written approval of the County, the Contractor may process wood into fuel. For purposes of this Section 9.4, "wood" means wood for energy recovery. The County shall grant that approval if the net Cost of processing or composting, transporting and marketing the material is more than the Cost of processing, Transporting and Disposing of the material at the Disposal Site for any thirty-day period.

9.4.2 Notice to County. The Contractor shall notify the County thirty (30) days before it begins processing wood into fuel. The notice shall include an explanation for the production of fuel in lieu of Recycling, that includes the market prices paid for wood from at least two (2) market sources acceptable to the County and the Contractor's Costs in Recycling those materials.

9.4.3 Processing Into Fuel Considered Recycling. If the County approves the processing of wood into fuel, that processing shall be considered a recovered item for the purposes of calculating the MARRs.

9.4.4 Monthly Reports. Once the Contractor is authorized by the County to process wood into fuel, the Contractor shall provide to the County monthly reports of the current

market prices for wood from at least two (2) market sources acceptable to the County, acting reasonably.

9.4.5 Recycling Reinstated. When the market for wood exceeds projected Costs such that the net Cost of processing or composting, transporting and marketing the material is less than the Cost of processing, Transporting and Disposing of the material at the Disposal Site for two (2) consecutive months, the Contractor shall stop processing wood into fuel and, within thirty days of the second monthly report, market that material for Recycling.

9.5 Waste Stream Analysis Study. The County and the Contractor shall mutually select and the County shall pay for a consulting firm to perform an analysis of the composition of the Waste stream delivered to the Transfer Stations and the Recycling Processing Center in the years 2007, 2011 and 2015 and every four (4) years thereafter during any Contract extension to determine if significant differences exist or changes have occurred in the Waste stream composition. The Contractor may elect to conduct an analysis at any additional time at no expense to the County. The County and the Contractor may at any time mutually agree to pay for any additional analysis of the composition of the Waste stream.

9.6 Recycling Processing Center.

9.6.1 The Recycling Processing Center shall function as a processing Facility to prepare for market Recyclable Materials recovered and received at the Transfer Stations. The Recycling Processing Center shall be designed and operated to receive and process the following: Recyclable Materials which are Source-Separated prior to entering the Transfer Station; commercial and industrial Waste that is predominantly composed of Recyclable Materials; Recyclable Materials recovered at the Transfer Stations; White Goods and other Recyclable Materials.

9.6.2 The Contractor shall provide sufficient labor and equipment to: operate and maintain the Recycling Processing Center; assure the Recovered Materials are properly prepared for storage and/or market; assure sufficient storage and Transport Containers are available for use; Transport Recovered Materials to market; and keep the Recycling Processing Center safe and free from litter and contaminated materials.

9.6.3 Unless otherwise approved by the Director, all materials receiving, processing and loading of Recyclable Materials in the Recycling Processing Center shall be done in an enclosed building. Suitable storage areas shall be provided for all Recovered Materials. Recovered Materials, except for used motor oil, shall be stored in Containers located in an area covered from the weather and suitably screened with appropriate measures to prevent stored materials from blowing and causing litter. Non-recyclable Waste materials resulting from the processing of the Waste shall be directed to the Transfer Station for processing for eventual Disposal.

9.7 Recycling Facilities at Transfer Stations.

9.7.1 In addition to the Recycling Processing Center, at a minimum, each Transfer Station shall have Recycling capabilities to separate loads of commercial and industrial Waste that have high percentages of Recyclable Materials and allow the public to drop off Source-Separated Recyclable Materials.

9.7.2 The Contractor shall make every reasonable effort to remove Recyclable Materials from Waste delivered to the Transfer Stations. Recyclable Materials removed from the Waste delivered to the Transfer Stations shall be Transported to the Recycling Processing Center or directly to market when the material receiving Containers are full. Unless otherwise approved by the Director, Recyclable Materials shall be stored at the Transfer Stations within an enclosed structure.

9.8 Recycling Bins. At a minimum, the Contractor shall supply and maintain Recycling bins at the Transfer Stations for public drop-off of the Recyclable Materials. These bins shall be sufficiently large and strong to contain the Recyclable Materials and volumes anticipated and to withstand wear and tear of loading, hauling and unloading. The public shall have access to the Recyclable Materials drop-off Facilities during normal Transfer Station operating hours. The Contractor shall not charge the public for using the Recycling bins for the drop-off of the Recyclable Materials, except as approved by the director under Section 9.9.

9.9 Special Wastes. Tires, White Goods and other Special Wastes are subject to Director approval. If the Contractor chooses to charge the public, it shall do so under the Special Waste compensation provisions of Section 12.7 of the Contract.

9.10 Used Motor Oil. Used motor oil shall be stored in above-ground storage tank(s) suitable for storage of this material. Appropriate spill containment provisions shall be provided and appropriate control over the use of the motor oil receiving tank(s) shall be exercised by the Contractor to assure that only uncontaminated used motor oil is disposed in the tank(s).

9.11 Weighing Recyclable Materials. All Recyclable Materials removed from the Waste stream shall be weighed at the scalehouse prior to shipment for reuse.

9.12 Monthly Recycling Report. The Contractor shall submit to the Director no later than the 15<sup>th</sup> day of each month or on such other schedule as the Director may determine a report on the Contractor's Recycling activity for the previous month that shall contain the following information unless otherwise required by the Director:

9.12.1 Total tonnage of Recyclable Materials, by specific material and in the aggregate, received at the Transfer Stations and Recycling Processing Center from Recyclable Collection Contractors.

9.12.2 Estimated tonnage of Recyclable Material received at the Transfer Stations in public Recycling bins listed both by specific Recyclable Material and in aggregate.

9.12.3 Estimated tonnage of each Recyclable Material placed in storage for that month.

9.12.4 Estimated total tonnage of each Recyclable Material in storage.

9.12.5 Estimated value of stored Recyclable Materials.

9.12.6 Tonnage of each Recyclable Material sold or conveyed for Recycling.

9.12.7 Revenue received from the sale of each Recyclable Material.

9.12.8 Total tonnage of Waste received at the Transfer Stations.

#### Article 10. CONTRACTOR'S BASIC RESPONSIBILITIES

10.1 General. The Contractor shall accept, Transfer, Transport and Dispose of all Acceptable Waste, using Facilities necessary to perform its obligations under the Contract, and shall handle Household Hazardous Waste in accordance with the Contract. The Contractor shall construct or otherwise provide for, test, obtain all approvals for, maintain, operate and, unless acquired by the County, later close, in accordance with the Contract, and all applicable federal, state and local laws or regulations:

10.1.1 Transfer Stations for the acceptance and Transfer of all Waste self-hauled or commercially collected within the unincorporated areas of the County and within the Cities;

10.1.2 Loading and Unloading Facilities for the Waste referred to in Section 10.1.1;

10.1.3 Facilities for Recycling part of the Waste referred to in Section 10.1.1;

10.1.4 Facilities for Transporting the Waste referred to in Section 10.1.1 to the Disposal Site;

10.1.5 A Disposal Site for final Disposal of the Waste referred to in Section 10.1.1; and

10.1.6 Household Hazardous Waste drop-off Facilities.

10.2 Transportation. During the Term of the Contract, the Contractor shall Transport all Waste using barge, truck or rail transportation methods. The Contractor may request Director approval to transport Waste by truck or rail, which approval shall not be unreasonably withheld.



10.3 Recycling. The Contractor shall Recycle Waste delivered to the Transfer Stations in the manner and in the amounts set forth in Article 9.

10.4 Permits. The Contractor shall in accordance with all applicable laws and at its own expense obtain and maintain all required permits and approvals for, and satisfy all applicable mitigation or other requirements relating to, its operations and activities under the Contract.

10.5 Closure and Post-Closure Activities. The Contractor shall be solely responsible for Facilities closure and all post-closure activities described in the Contract. Provided, however, upon County acquisition of Transfer Facilities under Article 33, the County shall be solely responsible for closure and post-closure of Transfer Facilities.

10.6 Fees and Taxes. The Contractor shall pay all host community fees, federal, state and local taxes and other fees and taxes imposed for the Facilities and operations required under the Contract.

10.7 Backup Facilities. The Contractor shall provide backup Facilities in accordance with the Contract.

10.8 Tipping Fees. The Contractor shall charge Tipping Fees and other Fees in accordance with the Contract.

10.9 Operating and Transfer Station Regulations. The Contractor shall issue in accordance with Article 18 Transfer Station operating regulations governing haulers and other Persons who deliver Waste to the Transfer Stations.

10.10 Other Customers; Other Facilities. The Contractor promptly shall notify the County of any customer whom it anticipates serving with any of the Facilities pursuant to a written contract. The Contractor shall make available for review at the Contractor's offices to the County a copy of the contract executed with the other customer and shall inform the County of any loss of that customer. The Contractor shall also allow the County upon reasonable notice to inspect certain records of Contractor which evidence the character and source of waste streams, other than those originating in Clark County, which utilize the Facilities. In the case of the Disposal Site, review of reports filed by the Contractor with the Oregon Department of Environmental Quality shall be deemed sufficient, unless good cause is shown why additional information is needed by the County to determine the waste stream composition of non-Clark County waste disposed at Contractor's disposal site. Nothing in this section shall abrogate or limit Contractor's disclosure requirements pursuant to Sections 4.4 and 4.7 of the Contract.

10.11 Corporate Structure and Accounting Systems.

10.11.1 The Contractor shall operate the companies or divisions providing service under this Contract as entities separate from any other company or division affiliated with the

Contractor. The Contractor shall employ a different individual as the controller between companies providing service under this Contract and any collection operations in the County. The County, however, does not object to a General Manager or clerical positions with combined responsibilities for the separate entities.

10.11.2 The Contractor shall at all times maintain an accounting system, separate from collection Company operations, using generally accepted accounting principles to account for all services rendered and materials supplied by Contractor, including additional and deleted work, in connection with the Contract. Provided, commercial recycling collection contracts are specifically excluded from the requirements of this Section.

10.12 Destination of Waste. Contractor agrees that any and all Waste (expressly excluding commercial recyclable materials), collected by it or an affiliate within Clark County will be delivered only to Contract Facilities during the term of this Contract. However, Waste, Household Hazardous Waste, Recyclable Materials and Recovered Materials may be delivered to facilities other than Contract Facilities as otherwise authorized by the Director or this Contract.

10.13 General Plan of Operation. The Contractor shall maintain, subject to the approval of the Director, plan(s) of operation covering all components and aspects of the Contract and Project. The plan shall include, as appropriate, descriptions and discussions of the following:

10.13.1 General physical characteristics of the System components such as location, layout, major Facilities and equipment, and utilities;

10.13.2 General operational characteristics including hours of operation and schedules, operating capacities of system components and/or unit processes, description of special processing and other operating steps, personnel requirements, and other operational procedures and matters;

10.13.3 Overall System logistics including scheduling and compatibility of the various System components; and

10.13.4 General contingency and emergency response plans and procedures for each of the major System components.

10.14 Other Obligations. The Contractor shall carry out all of its other obligations under the Contract.

10.15 Revisions to Required Plans. During the Term of the Contract, the Contractor shall revise, as necessary, any required plan to maintain the information contained in those plans current and reflect any substantive changes to activities, information or other material included in those plans. The Director shall be promptly notified of any revisions to those plans. If appropriate, as determined by the Director, such revisions shall be subject to prior approval by

the Director. The Contractor shall revise the plans by amendment or any other appropriate means.

10.16 Records and Information System; Reports.

10.16.1 The Contractor shall establish and maintain an information system to provide storage and ready retrieval of the complete System operating data. The Contractor shall prepare and maintain proper, accurate, and complete records and accounts of all transactions related to the System. These shall include, but not be limited to (as applicable to each component of the System): maintenance records, equipment replacement records and schedules, and safety and accident reports; quantities of Waste delivered and Source-Separated Recyclable Materials delivered to the Transfer Stations; quantities of Recyclable Materials sold; quantities of compacted Waste transported for disposal; quantities and types of unacceptable Waste and Household Hazardous Wastes handled; scalehouse transactions; Container transport information; and landfill operations data.

10.16.2 The Contractor shall submit to the Director no later than the 15<sup>th</sup> day after each month or on such other schedule as the Director may determine, a monthly report that includes, but is not limited to, the following information related to the operation of the system (as applicable and unless otherwise required by the Director):

- A. Daily and monthly tonnages of Waste brought into the Transfer Stations, separately and combined;
- B. Daily and monthly totals of incoming vehicles utilizing the Transfer Stations, separately and combined;
- C. Daily and monthly tonnage of containerized and other Waste categories leaving the Transfer Stations, separately and combined;
- D. Daily and monthly totals of Containers leaving the Transfer Stations, separately and combined;
- E. Household Hazardous Waste information as required under Section 18.19;
- F. Recycling activity information as specified in Section 9.12;
- G. A summary of any suspicious and unacceptable Waste incidents and actions taken;
- H. Complaint forms and recommended actions;

- I. Any extraordinary occurrences affecting the County or the Contractor;
- J. Status of operating equipment;
- K. Any substantive correspondence between the Contractor and regulatory governmental bodies relevant to the Contract; and
- L. Other items as deemed necessary by the Director for its record-keeping and other Contract performance evaluation purposes.
- M. Daily and monthly tonnages of Waste delivered to the Transfer Stations by Commercial Vehicle, separately and combined, originating from outside the County.

10.17 Safety Equipment; Safety Operations.

10.17.1 The Contractor, as part of its safety program, shall maintain at its office or other well-known place at the job site, safety equipment applicable to the work as prescribed by the governing safety authorities, all articles necessary for giving first-aid to the injured, and shall establish the procedure for the immediate removal to a hospital or a doctor's care of any person who may be injured on the job site.

10.17.2 The Contractor shall do all work necessary to protect the general public from hazards, including, but not limited to, unloading and pit areas, surface irregularities or unramped grade changes in pedestrian sidewalk or walkway, and trenches or excavations in roadway. Barricades, lanterns, and proper signs shall be furnished in sufficient amount to safeguard the public and the work.

10.17.3 The performance of all work and all maintenance, particularly with respect to ladders, guard rails and cable, platforms, structure openings, scaffolding, shoring, lagging, machinery guards and the like, shall be in accordance with the applicable governing safety authorities.

10.17.4 During operation and maintenance of the Facilities, the Contractor shall construct and at all times maintain satisfactory and substantial temporary chain link fencing, solid fencing, railing, barricades or steel plates, as applicable, at all openings, obstructions, or the Facilities, on streets, sidewalks, floors, roofs, and walkways. All such barriers shall have adequate warning lights as necessary, or required, for safety. The Contractor shall ensure that all movable guard rails and guard wires at the unloading areas are properly maintained and functional at all times.

10.17.5 The Contractor shall be responsible for controlling the efficient and safe movement of traffic at each Transfer Station as needed. This shall include the optimal use of queuing lanes and unloading spaces, and the provision of personnel to direct traffic. The

Contractor shall assist all disabled vehicles and remove them from the traffic ways as necessary to ensure the efficient movement of traffic. Traffic-related noise on the Transfer Station sites shall be minimized by enforcement of on-site speed limits.

## Article 11. COUNTY'S BASIC RESPONSIBILITIES

### 11.1 Contract Compliance.

11.1.1 As long as Contractor's Facilities are available, the Contractor is providing the services required under the Contract and the Contractor is otherwise materially in compliance with the terms of the Contract, the County shall cause to be delivered to the Contractor to the extent authorized by law Waste originating in unincorporated areas of the County and incorporated areas of Cities pursuant to interlocal agreement(s) with the County, including: (a) all non-Source-Separated Waste or Source-Separated Recyclable Materials; (b) residential Recyclable Materials collected by a hauler or transporter; or (c) any residual Waste remaining from a private commercial recycling operation or transfer station. Provided, however, County shall not be obligated to deliver or cause to be delivered Waste diverted by legal self-haul, self-disposal or reuse. If the Contractor receives the right to receive Source-Separated commercial/industrial Waste pursuant to Section 8.3, then the County shall cause that Waste to be delivered to the Contractor in accordance with the terms of the agreement reached under Section 8.3.

11.1.2 The County does not guarantee the amount of Waste that will originate within the County during any time period. The County shall, through its Plan and ordinance(s) maintain and vigorously enforce the Contract sufficient to carry out the purposes of this Section in order to prevent unauthorized diversions not within the exceptions noted in Section 11.1.1, above.

11.2 Interlocal Agreements with Cities. The County shall enter into, maintain and enforce an intergovernmental agreement with the City of Vancouver concerning Waste disposal, and the County shall use its best efforts to enter into, maintain and enforce similar intergovernmental agreements with other Cities. Under those agreements, the Cities would grant the County authority to contract for Transfer Stations and/or Disposal Sites for Waste collected in those Cities by those Cities, by WUTC certificated haulers or by other Persons under contract to those Cities. Furthermore, under those agreements the Cities would agree to enforce the requirements of this Article.

11.3 Comprehensive Solid Waste Management Plan. In revising the Comprehensive Solid Waste Management Plan, the County shall maintain that Plan consistent with the provisions of the Contract to the extent permissible by law.

11.4 Recycling and Waste Reduction. As long as the Disposal Site is located in the State of Oregon, but subject to Article 13, the County shall establish and maintain a recycling and waste reduction program in compliance with ORS 459.305, as amended, and regulations

promulgated thereunder, and shall comply with other applicable provisions of Oregon law or the law of any other jurisdiction in which the Disposal Site is located.

11.5 Household Hazardous Waste Educational Program. The County shall establish and maintain an educational program for its residents regarding Household Hazardous Waste handling and disposal.

11.6 Cooperation with Contractor. The County shall use its best efforts to cooperate with the Contractor and to respond to the Contractor's reasonable requests for information and assistance, in accordance with the Contract.

11.7 Limited County Supervision. It is not and shall not be construed to be the County's responsibility to notify the Contractor when to begin, cease or resume the Project, nor to give early notice of rejection of faulty work, nor in any way to superintend so as to relieve the Contractor of any liability, any responsibility or any consequences for neglect, negligence, carelessness, substandard or defective work or for use of substandard or defective materials or equipment by the Contractor, its officers, employees, subcontractors or agents.

## Article 12. TIPPING FEES AND CONTRACTOR COMPENSATION

12.1 General. For the Term of the Contract, the Contractor shall charge Tipping and other Fees in accordance with this Contract. The Fees are the exclusive compensation to the Contractor for all services the Contractor provides under the Contract.

### 12.2 Tipping Fees.

12.2.1 Effective January 1, 2006, the Tipping Fees for Acceptable Waste delivered to the Transfer Stations shall be as follows:

Non-drop Box Waste	\$73.18 per Ton
Commercial Drop Box Waste	\$64.80 per Ton

12.2.2 In addition to the Tipping fees above, each load of Acceptable Waste delivered to the transfer stations will be assessed a \$10.00 Transaction Fee by Contractor. The Transaction Fee shall not be subject to adjustment under Section 12.3.1.

### 12.3 Tipping Fee Increases.

#### 12.3.1 CPI Adjustment.

A. Beginning January 1, 2007, the Tipping Fees under Section 12.2 may be increased or decreased on January 1 of each year up to the rate of 82% of the percentage point increase or decrease in the Consumer Price Index that occurred during the first six months of the previous year and the last six months of the year preceding that year, at the sole option of

the Contractor. Should Contractor elect to not increase Basic Tipping Fees on January 1 of any year, up to the full amount allowed, the CPI adjustment shall not be carried forward into subsequent years.

B. Beginning January 1, 2006, if the tonnage of County Waste exported for Disposal grows by three percent (3%) or more over the prior year's exported County Waste tonnage, the allowable percentage increase in the CPI shall be reduced to 75%. Tonnage shall be calculated based on the first six (6) months of the previous year and the last six (6) months of the year preceding that year, from July 1<sup>st</sup> through June 30<sup>th</sup>.

C. After January 1, 2006, if for four (4) consecutive years the County Waste exported for Disposal grows by an average of six percent (6%) or more, there shall be no CPI adjustment in the fifth year. The first period of review shall be calculated based on tonnage of County Waste exported for Disposal from July 1, 2005 through June 30, 2009, and every 4-year period (e.g., July 1, 2009 through June 30, 2014) thereafter through Term of Contract, as may be extended. Provided, however, in the event the calculated CPI percentage increase for a fifth and tenth year (and fifteenth and twentieth, if extended) exceeds eight percent (8%), the Contractor shall be allowed to adjust the Tipping Fees by eighty-two percent (82%) of the number of percentage points above eight percent (8%) in such year.

12.3.2 Increased Tipping Fees for Uncontrollable Circumstances and Changes in Federal, State and Local Law. Subject to Article 13, the Contractor may increase Tipping Fee components for reasonable actual increased Costs resulting from Uncontrollable Circumstances or changes in federal or state laws applicable to Persons engaged in the solid waste handling industry. For purposes of determining the amount, if any, Costs have increased under this Section, the Costs incurred to satisfy Washington and Oregon state law in effect as of January 1, 2006, shall constitute the baseline Costs. The Contractor may increase Tipping Fee components for reasonable actual increased Costs due to changes in local and county laws applicable to Persons engaged in the solid waste handling industry. However, the Contractor may not increase Tipping Fee components for increased Costs due to changes in local or county laws in the jurisdiction in which the Disposal Site is located that in purpose or effect are applicable only to the Contractor or Contractor's activities under the Contract. For purposes of this Section, the term "change in law" means any new, changed or revised law, statute, rule, regulation or ordinance effective at any time after January 1, 2006, including but not limited to (1) new or revised regulations issued after the Contract is executed but pursuant to a statute in effect prior to execution of the Contract and (2) changes in the definitions of Hazardous Waste, Household Hazardous Waste or the substances that comprise those terms as defined in Article 3.

12.3.3 Increased Tipping Fees for State/Local Fees or Federal Taxes Fees or Surcharges.

A. Subject to Article 13, the Contractor may increase Tipping Fee components for reasonable actual increased Costs caused by the imposition of or increases in the rates of State/Local fees or surcharges applicable primarily to Persons engaged in the solid waste

handling industry. Applicable Oregon Department of Environmental Quality ("DEQ") Fees total \$1.24 per ton as of January 1, 2006, and the Contractor shall be entitled to recover 90 percent of any future increase in the DEQ Fee through a Tipping Fee increase.

B. Notwithstanding the foregoing, Contractor shall not increase Tipping Fees or otherwise be entitled to compensation under this Contract for host fees not otherwise permitted under Section 12.3.2 or other payments to cities in the County (including those referenced in this Section), or to cities or counties in the state of Oregon. The Parties acknowledge Contractor's agreement with the City of Washougal for payment of fees to that city ("Transfer Station Payment"). Further, upon execution of this Contract by the Parties and the City of Vancouver, and so long as the City of Vancouver uses the Facilities, Contractor shall pay to the City of Vancouver a monthly Transfer Station Payment under Section 12.3.3C.

C. Contractor shall pay, by the fifteenth of the following month, ten thousand four hundred and sixteen dollars and sixty-seven cents (\$10,416.67) per month to the City of Vancouver so long as the City of Vancouver uses the Facilities. The monthly Transfer Station Payment to the City of Vancouver shall be adjusted on the same date and by the same percentage as the CPI adjustment to the Tipping Fees as provided for in Article 12.

D. This Contract between the County and Contractor is based on certain assumptions regarding continued Waste flow and County agreements with cities as provided in Section 11.2. The City of Vancouver agrees that for the term of this Contract, it will direct waste under the control of the City of Vancouver to the County system, whether or not an interlocal agreement is maintained between the City of Vancouver and the County under Section 11.2. The City of Vancouver is a signatory to this Agreement, as a specific beneficiary and obligor under this Section 12.3.3, only.

12.3.4 Increased Tipping Fees for Additional Work. The Contractor may increase Tipping Fees for additional work in accordance with Article 22.

12.3.5 Tipping Fee Adjustments for County Charges. The County may cause Tipping Fees to be imposed or increased to reflect the cost of County Administrative/Regulatory Fees.

12.3.6 Timing. In accordance with this Article, the Contractor may, after obtaining the County's written approval, acting reasonably, increase Tipping Fees under Sections 12.3.2 – 12.3.5 to reflect the Contractor's reasonable actual increased Costs due to a change in law, increases in certain taxes, Uncontrollable Circumstances and certain other reasons. Tipping Fee increases shall not take effect sooner than seventy-five (75) days after the County approves the increase, unless such period be waived by WUTC-regulated collection companies authorized to receive notice of Tipping Fee increases.

12.4 General Conditions and Limitations on Tipping Fee Increases. The County shall allow increases in Tipping Fee components under this Article only for Costs incurred that are the



most cost effective means of ensuring full compliance with a relevant change in law or responding to events of Uncontrollable Circumstances. (Adjustments relating to Uncontrollable Circumstances are further governed by Article 13.) In determining "most cost effective means," prevailing wages determined by the U.S. Department of Labor or the State Department of Labor and Industries, and wages paid under union contracts applicable to employers additional to the Contractor or its subcontractors, shall be considered reasonable and cost effective. No Tipping Fee increases shall be allowed for any Cost increases that are in any way attributable to adverse conditions, defective structures, deficient operations or activities at the Facilities that are caused by the Contractor or its subcontractors, employees, agents, or servants, or are otherwise within Contractor's control.

12.4.1 Documentation of Need for Tipping Fee Increase. The Contractor must fully demonstrate and document the need for the requested Tipping Fee increase to the County's reasonable satisfaction and approval as a condition precedent to the Contractor's right to any increase Tipping Fees under this Article.

12.4.2 Tipping Fee Adjustments for Capital Expenditures for Transfer Station Facilities. In calculating adjustments to Tipping Fees to reflect capital expenditures relating to Transfer Station Facilities, those expenditures shall be amortized (and accordingly allocated to Tipping Fees) over a period equal to the useful life of those Facilities under federal tax law, or if that useful life is longer than the remaining Term of the Contract, the County may choose to:

12.4.2.1 allocate those capital Costs over the remaining years of the Contract (including any renewal Terms) and, if those Facilities are used by any other customers of the Contractor, collect from the Contractor a return of that portion of the capital Costs previously paid by the County that is properly allocated to the use of the Facilities and borne by the Contractor's other customers, or

12.4.2.2 extend the Term of the Contract to a period equal to the useful life under federal tax law of those Facilities.

12.4.2.3 If the useful life of the Disposal Site Facilities is shortened by reductions in the Disposal Site's useful life due to state or federal environmental laws or regulations, then the County's share of any capital Costs relating to the Disposal Site shall be amortized (and accordingly allocated to Tipping Fees) over that shortened useful life,

12.5 Tipping Fee Decreases. Tipping Fees may be reduced in accordance with this Section.

12.5.1 Cancellation of Tipping Fee Increases. On the County's request, the Contractor immediately shall provide the County, subject to the confidentiality provisions of Section 4.4, with all documents, information or other evidence in Contractor's possession or control that the County requests to determine whether there is a continuing need for Tipping Fee increases. The County may at any time, acting reasonably, cancel any Tipping Fee increase

made under this Article. The Contractor shall reduce Tipping Fees within thirty days of the County's written notice to the Contractor that the need for the Tipping Fee increase has expired or that the original Tipping Fee increase was made in error. The Contractor shall promptly notify the County upon learning of the cessation of conditions which justified a Tipping Fee increase.

12.5.2 Reduced Tipping Fees for Reduced Costs due to Changes in Law and Fees. Subject to the conditions stated in this subsection, the County may cause the Contractor to reduce Tipping Fees to reflect the reduced Cost of Contractor's performance under the Contract if the reduced Cost is attributable to a change in law or change in taxes, fees, surcharges or other causes for which the Contractor may increase Tipping Fee components under Sections 12.3.2, 12.3.3 and 12.3.5. The County may at any time notify the Contractor of the County's intent to reduce Tipping Fees under this Section including the reasons for that deduction. Within thirty days of that notice, the Contractor shall respond to the County in writing; the written response shall state whether or not the Contractor believes the Tipping Fee reduction is justified and shall itemize the reductions in Cost of performing the Contract, The Contractor shall fully document and otherwise support its response to the County's notice. On petition of the Contractor, the County may on thirty (30) days' written notice to the Contractor cancel Tipping Fee reductions made under this Section if the County determines that the need for the reduction has expired or that a reduction was made in error. The Contractor shall at all times inform the County of whether a reduction due to a change in law is appropriate and whether any reduction in Tipping Fees is no longer appropriate.

12.5.3 Reduced Tipping Fees for "Most Favored Customer".

A. The Contractor may use the Loading, Transportation, Unloading Facilities and Disposal Site for Waste from other customers and the Contractor may use the Recycling Facilities to recycle materials originating in Morrow County, Oregon, without the County's prior approval. The Contractor may use the Transfer Facilities to handle Waste from other customers only with the County's prior approval.

B. If the Waste disposed using the Contractor's Finley Buttes Disposal Site is substantially similar to the County's Waste and the tipping fee charged that other customer for disposal (whether a separate disposal fee is charged or is combined in one total tipping fee that includes disposal) is lower than the applicable disposal tipping fee charged to the County, then that disposal tipping fee charged to the County shall be reduced as set forth below. By way of example but without the intention of excluding any waste from the list, dredge spoils, sludge and homogeneous commercial/industrial Waste are not "substantially similar" to the County's Waste for purposes of this subsection. The "most favored customer" reduction shall not apply to the Contractor's use of the Recycling Facilities to recycle materials originating in Morrow County, Oregon.

C. The Contractor shall annually notify the County of any written contract for disposal at Finley Buttes Landfill which:

(1) Provides for the disposal of a waste stream which is substantially similar to the County's;

(2) Is for the disposal of greater than 75,000 tons per year, and or contracts in the aggregate total 300,000 tons per year;

(3) Has a lower disposal tipping fee (or combined average of each per ton rate of each contract with lower disposal tipping fee, if 300,000 tons or more annually) than the disposal tipping fee being paid by the County.

D. The disposal tipping fee paid by the County will be adjusted on the following January 1 to meet the lowest contracted disposal tipping fee which meets the above conditions.

E. The tonnage limit in Section 12.5.3C(2) shall increase from 75,000 to 150,000 tons per year upon establishment and implementation of a Construction and Demolition Waste rate under Section 12.7, and thereafter as follows:

<b>Year</b>	<b>Annual Tons</b>	<b>Aggregate Total Annual Tons at Finley Buttes</b>
2007	153,900	307,800
2008	157,901	315,803
2009	162,007	324,014
2010	166,219	332,438
2011	170,541	341,081
2012	174,975	349,950
2013	179,524	359,048
2014	184,192	368,383
2015	188,981	377,961
2016	193,894	387,788
2017	198,935	397,871
2018	204,108	408,216
2019	209,415	418,829
2020	214,859	429,719
2021	220,446	440,891
2022	227,059	454,118
2023	233,871	467,742
2024	240,887	481,774
2025	248,114	496,227
2026	255,557	511,114

		<b>Aggregate Total</b>
		<b>Annual Tons at</b>
<b>Year</b>	<b>Annual Tons</b>	<b>Finley Buttes</b>

F. This subsection shall not apply to fees paid by Persons handling Waste originating in Morrow County, Oregon, or any other local jurisdiction in which the Disposal Site is located. The County's Administrative/Regulatory Fee and similar fees charged by other customers shall not be taken into account for calculations under this subsection.

G. For purposes of this section only, the Contractor and the County agree that the current disposal component of the Tipping Fee is Twenty Dollars (\$20.00) per Ton.

12.6 Further Tipping Fee Adjustments due to Alternate Facilities or Cancellations. The Contractor also shall adjust Tipping Fees to reflect changed Costs of handling Waste at alternate Facilities under Article 17.

12.7 Additional Tipping Fee Schedules.

12.7.1 The Contractor shall develop a special Tipping Fee schedule for Small Public Loads; Special Waste; Construction and Demolition Waste; Yard Waste; Wood Waste; Food Waste; and, acceptance of Waste during non-operating hours. Special Tipping Fees may be charged by Contractor following written approval of the Director, acting reasonably. The Contractor may calculate those Tipping Fees in accordance with this Article or on any other basis approved by the Director.

12.7.2 The Contractor may charge Persons delivering unscheduled Special Waste for the actual additional Costs of handling that Special Waste plus an amount equal to ten percent (10%) of those Costs.

12.8 Conditions Precedent. This Article does not and is not intended to establish an exhaustive list of all conditions precedent to the imposition of Tipping Fees under the Contract and all other conditions precedent to payment established by the Contract but not contained in this Article remain valid.

12.9 Arbitration of Tipping Fee Adjustments.

12.9.1 All unresolved disputes concerning calculation of or adjustments to Tipping Fees or the amount the Contractor shall pay to the County under Section 12.4.2 for amortized capital Costs previously paid by the County shall be resolved by arbitration in accordance with Article 28. Except as otherwise provided in Section 12.9.2, in the event of a dispute, the undisputed portion of the adjustment promptly shall be made effective subject to Section 12.3 and further adjustment, if any, shall be made effective on the resolution of the dispute under Article 28. In addition to any portion of the disputed adjustment ultimately

awarded, the arbitrators may also award to the Contractor an amount equal to interest on that amount from the date the Tipping Fee adjustment was effective, at the Prime Rate and within a period determined by the arbitrators but in no event a period greater than eighteen months from the effective date of the Tipping Fee adjustment. The interest award may be made by means of a further increase or decrease in Tipping Fees.

12.9.2 Notwithstanding Section 12.9.1, if the Contractor initiates arbitration in accordance with Article 28 to resolve a dispute regarding a Tipping Fee reduction under Section 12.5, the Contractor may retain the Tipping Fee then in effect and place that portion of the Tipping Fee in controversy into an interest-bearing escrow account acceptable to the County until the dispute is resolved by arbitration. If the arbitrators approve the Tipping Fee reduction ordered by the County, the Contractor shall reduce the Tipping Fee in accordance with the arbitrators' decision so the reduced Tipping Fee and payments from the escrow account (including pro rata share of interest on that amount) equal the Tipping Fee reduction ordered by the County. If the arbitrators disapprove the Tipping Fee reduction, the Contractor shall receive the money held in the escrow account. Notwithstanding the foregoing, the arbitrators may order the proportionate distribution of the escrow fund (including pro rata share of interest on that amount) at their sole discretion. In the event Contractor elects to proceed in accordance with this subsection 12.9.2 the Contractor shall not receive an award of interest under Section 12.9.1.

12.10 Administrative/Regulatory Fee. On or before the fifteenth day of each month, Contractor shall pay to the County an Administrative/Regulatory Fee of \$112,424 so long as this Contract is in effect. Upon the commencement of operations of the East County Transfer Facility, the monthly Administrative/Regulatory fee shall increase to \$122,841. The Administrative/Regulatory Fee shall be adjusted on the same date and by the same percentage as the CPI adjustment to the Basic Tipping Fees in accordance with Section 12.3.1. Except as set forth in this Section 12.10, any subsequent increase(s) in the Administrative/Regulatory Fee, other than CPI adjustments, may be allowed as an increase to the Basic Tipping Fees under Section 12.3.5.

12.11 Incremental Waste Fee. In addition to the monthly County Administrative Fee, the contractor shall pay the County a fee of \$3.96 per ton for all tons of Acceptable Waste delivered for disposal at a Disposal Site, in excess of the annual tonnage level listed below. A second level of tonnage, the incremental level, is the annual tonnage level plus an additional increment of 25,000 tons per year ("Incremental Tonnage Level"), as listed below. Contractor shall pay the County \$15.28 per ton (\$3.96 plus an additional \$11.32) for all tons in excess of the Incremental Tonnage Level. Acceptable Waste, for purposes of determining the additional fees under this Section 12.11, does not include separated recyclables; and, Recyclable Materials removed from the Waste stream as set forth in Section 9.1, including wood, yard debris or clean co-mingled recyclables. The fee will be paid to the County sixty (60) days following the last day of the year for all tons received in excess of the total tons for the year.

<b>Year</b>	<b>Annual Tonnage Level</b>	<b>Incremental Tonnage Level</b>
2005	323,871	348,871
2006	332,357	357,357
2007	341,098	366,098
2008	350,101	375,101
2009	359,374	384,374
2010	368,925	393,925
2011	378,763	403,763
2012	388,914	413,914
2013	399,376	424,376
2014	410,159	435,159
2015	421,274	446,274
2016	432,733	457,733
2017	444,546	469,546
2018	456,727	481,727
2019	469,287	494,287
2020	482,239	507,239
2021	495,597	520,597
2022	509,375	534,375
2023	523,586	548,586
2024	538,247	563,247
2025	553,372	578,372
2026	568,977	593,977

**Article 13. ALLOCATION OF RISK/UNCONTROLLABLE CIRCUMSTANCES**

13.1 Contractor Investigation. The Contractor warrants that prior to executing the Contract, it has examined carefully all Contract Documents, acquainted itself with the Disposal Site and all other conditions, laws and regulations relevant to the Project, and made all investigations essential to a full understanding of any and all difficulties that may be encountered in performing the Project. Prior to constructing any Transfer Station, the Contractor shall have made a similar investigation with respect to the siting, construction and operation of that Transfer Station.

13.2 County Disclaimer. The County does not warrant or admit the correctness of any investigation, interpretation, deduction or conclusion 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 conditions and shall accept full legal responsibility and liability for those conditions.

13.3 Uncontrollable Circumstances. The obligations of the Contractor and the County under the Contract are subject to Uncontrollable Circumstances that necessarily and unavoidably prevent performance of the Project. The Contractor and the County agree that no other events however catastrophic or uncontrollable shall excuse nonperformance of either party of its obligations under the Contract. The parties further agree that no changes in law or regulations (other than changes in law or regulations that render performance impossible), strikes, lockouts, other labor disturbances, or breakage or accidents to machinery, equipment or other Facilities shall excuse nonperformance of the parties' obligations under the Contract.

13.4 Performance After Uncontrollable Circumstance; Alternative Plans. In the event either party is rendered unable, wholly or in part, by the occurrence of an event of Uncontrollable Circumstances to carry out any of its obligations under the Contract, then the obligations of that party, but only with respect to the particular component affected by the occurrence, shall be suspended during the continuance of that inability. The affected party shall use due diligence to resume performance at the earliest practicable time. Any time a party intends to assert the occurrence of an event of Uncontrollable Circumstances as a basis to suspend performance, that party shall notify the other party immediately or as soon as reasonably possible of the particulars of the situation and shall notify the other party when the effect of the occurrence of the event has ceased.

If the Contractor notifies the County of the Contractor's inability to carry out any obligation under the Contract due to an event of Uncontrollable Circumstances, the Contractor shall as soon as practicable submit to the County a plan for correcting or reconstructing the Facilities made inoperable due to that Uncontrollable Circumstance which plan shall include but not be limited to the schedule, Cost, proposed financing method and estimated Tipping Fee increases for the correction or reconstruction. The Contractor shall also submit an alternative performance plan for performance under the Contract while the Facility affected is inoperable. The Contractor's alternative performance plan and plan to correct or reconstruct the affected Facilities must each be approved by the County and any other agency with approval authority before the Contractor may proceed with each plan. The Contractor must fully demonstrate and document the need for the Costs of correction or reconstruction and the requested Tipping Fee increase to the County's satisfaction and approval, acting reasonably, as a condition precedent to the Contractor's right to a Tipping Fee increase under this Section.

If the cost of remedying the occurrence of an event of Uncontrollable Circumstances is estimated to cause Tipping Fees to increase more than twenty-five percent, the County may at its sole option within one year of the event of Uncontrollable Circumstances purchase the Facilities (other than the Disposal Site, rail or marine facilities) affected by the event of Uncontrollable Circumstances in accordance with Article 33. Notwithstanding the foregoing, the County may

require the Contractor to repair or rebuild those Facilities and recover the Cost of that work by means of an increase in Tipping Fees.

Unresolved disputes concerning the calculation of the Cost to correct or reconstruct the Facilities, or the purchase price of the Facilities shall be resolved by arbitration in accordance with Article 28.

13.5 Insurable Uncontrollable Circumstances. If any Facility is damaged or Destroyed due to explosion, floods, fire, vandalism or other events for which the Contractor is obligated to carry insurance, the Contractor shall act diligently to promptly collect and apply insurance proceeds to the correction or reconstruction of those Facilities. On the occurrence of that event, the Contractor shall as soon as practicable submit to the County a plan for correcting or reconstructing the Facilities, including the schedule and Cost therefore.

13.6 Obligation to Provide Alternative Facilities. Notwithstanding the provisions of Sections 13.4 and 13.5, in the event that Contractor fails or is unable to Dispose of any Waste that it is obligated to Dispose of under the Contract because the occurrence of an event of Uncontrollable Circumstances materially and adversely affects Contractor's ability to accept or Dispose of the Waste, the Contractor shall use its best efforts to make available to the County alternative disposal at another Facility for as long as the event continues at a cost equal to the prevailing solid waste disposal fee then in effect for the majority of Waste disposed at that site. Tipping Fees may be increased in accordance with Section 12.3.3 to reflect additional disposal costs incurred because an alternative Facility is used due to the occurrence of an event of Uncontrollable Circumstances. The Contractor's failure to provide alternative disposal plans when an event of Uncontrollable Circumstances has occurred shall not be deemed a default under the Contract if Contractor has exercised its best efforts to make alternative arrangements.

#### Article 14. RESPONSIBILITY FOR UNACCEPTABLE WASTE

14.1 Responsibility for Unacceptable Waste. If the Contractor receives Unacceptable Waste, including but not limited to Hazardous Waste, the Contractor may at its option return that waste to the Person who delivered it in accordance with the operating and Transfer Station regulations established under Article 18, or the Contractor may dispose of that Unacceptable Waste in accordance with all applicable laws and regulations and charge the Person responsible for that delivery for the Cost of that disposal, plus an amount equal to 10% of the Cost of handling the Unacceptable Waste. If the Contractor is unable to identify the Person responsible for the nonconforming delivery and return the Unacceptable Waste to that Person, the Contractor shall at the Contractor's sole expense, dispose of that Unacceptable Waste in accordance with applicable law. The Contractor shall pay all Costs, consequential damages or liability related to Unacceptable Waste not returned in accordance with this Section to the Person delivering that waste except that the Contractor may pursue any available remedies against Persons later identified as responsible for delivering that Unacceptable Waste.



14.2 Prosecution of Persons Delivering Unacceptable Waste. The County shall assist the Contractor in identifying Persons responsible for delivering Unacceptable Waste to the Transfer Stations and shall, subject to the County Prosecuting Attorney's discretion, diligently prosecute Persons who illegally deposit Unacceptable Waste at any Facilities within the County.

14.3 Handling of Household Hazardous Waste. The Contractor shall accept, Transfer, Transport and Dispose of source-separated Household Hazardous Waste delivered to Contractor at the Transfer Stations. Contractor's vendors and disposal site for Household Hazardous Waste shall be approved by the Director.

#### Article 15. INDEMNIFICATION

15.1 Contractor's Indemnification of County. Except as expressly provided in this Article, the Contractor shall at all times during the Term of the Contract indemnify, hold harmless and defend the County and any City, their elected officials, officers, employees, agents and representatives, from and against any and all losses, damages, costs, charges, expenses, judgments and liabilities, including attorneys' fees (including those fees incurred to establish the County's right to indemnification) (collectively, "losses"), directly or indirectly resulting from, arising out of, or related to one or more claims described in Section 15.2. The indemnity provided in this Article shall not apply to (1) losses resulting from the gross negligence or intentional acts of the County, its agents or employees, (2) losses primarily and directly caused by the active (as opposed to passive) negligence of the County, and (3) claims arising out of the gross negligence of a City in collecting and transporting Waste originating in that City or claims against the County or a City resulting from that entity's enactment or enforcement of a flow control ordinance governing the disposal of Waste. Except as otherwise provided immediately above it is the intention of the parties that the Contractor's indemnification apply to claims arising from the concurrent negligence of the County and the Contractor, or their respective agents, employees or subcontractors.

15.2 Claims Subject to Indemnification. The term "claims" as used in this Article means all claims, lawsuits, causes of action, damages, penalties, charges, judgments, losses, liabilities of any character or kind and other legal actions and proceedings of any nature, whether or not asserted in a judicial forum, including but not limited to claims, lawsuits, causes of action, and other legal actions and proceedings involving bodily or personal injury or death of any person or damage to any property (including but not limited to Persons employed by the County, the Contractor or any other Person and all property owned or claimed by the County, the Contractor, any affiliate of the Contractor or any other Person) that are in any way connected with:

15.2.1 the performance or nonperformance of any provision or requirement of the Contract by Contractor, its officers, employees, subcontractors, agents or servants;

15.2.2 any act or omission of Contractor, its officers, employees, subcontractors, agents or servants at any of the Facilities;

15.2.3 the failure of Contractor, its officers, employees, subcontractors, agents or servants to comply in any respect with the provisions and requirements of all applicable permits, licenses, laws, statutes, regulations, ordinances, codes, orders and all other legal requirements of federal, state, regional, county and local government entities and agencies having jurisdiction over the Facilities or relevant activities of the Contractor; or

15.2.4 any release(s) or emission(s), or threatened release(s) or emission(s) of Waste, Unacceptable Waste or otherwise by any Person(s) at, onto, into, above, under, through or from any of the Facilities.

15.3 County Liability to Contractor. The County shall not be liable to the Contractor for, and the Contractor hereby releases the County from, all liability for any injuries, damages or destruction to all or a part of any property owned or claimed by the Contractor that directly or indirectly results from, arises out of or is related to the Project, unless that liability as between the County and Contractor arises from the gross negligence or intentional acts of the County, its agents or employees.

15.4 Notice to Contractor; Defense. In the event an action is brought against the County for which indemnity may be sought against the Contractor, the County shall promptly notify the Contractor in writing. The Contractor shall have the right to assume the investigation and defense including the employment of counsel and the payment of all expenses. On demand of the County, the Contractor shall at its own cost and expense, defend and provide qualified attorneys acceptable to the County under service contracts acceptable to the County to defend the County, its officers, employees, agents and servants against any claim in any way connected with the events described in Section 15.2. The County shall fully cooperate with the Contractor in its defense of the County, including consenting to all reasonable affirmative defenses and counterclaims asserted on behalf of the County. The County may employ separate counsel and participate in the investigation and defense but the County shall pay the fees and costs of that counsel unless the Contractor has agreed otherwise. The Contractor shall control the defense of claims (including the assertion of counterclaims) against which it is providing indemnity under this Article, and if the County employs separate counsel the County shall assert all defenses and counterclaims reasonably available to it.

15.5 Applicability of RCW 4.24.115. If a court of competent jurisdiction determines that the Contract is subject to RCW 4.24.115, then the Contractor's liability to indemnify the County for liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of the Contractor and the County shall be limited to the Contractor's negligence.

15.6 Indemnification for Claims of Contractor's Employees. It is further specifically and expressly understood that the indemnification provided in this Article extends to suits against the County for injuries sustained by any person directly or indirectly employed by the Contractor. However, the County shall assert in any claim made by a person employed by the

Contractor, that the employee's remedy is limited to that provided under applicable workers' compensation statutes.

15.7 Royalties; License Fees; Patents. The Contractor shall pay all royalties and license fees, shall defend all suits or claims for any patent infringements that may occur in the performance of the Contract and shall hold the County harmless from any loss on account thereof.

15.8 No Indemnity Waiver. The parties do not under this Article waive or surrender any indemnity available under any applicable federal, regional, state or local law. This Article shall survive termination or expiration of the Contract.

## Article 16. CONTRACTOR AND COUNTY LIABILITY INSURANCE

### 16.1 General.

16.1.1 The Contractor shall provide, maintain and pay for from an insurance company or companies approved by the County and licensed in the states of Washington and Oregon, the insurance coverage designated in this Article and shall satisfy the pollution liability coverage obligations under this Article by maintaining pollution liability insurance coverage as set forth in this Article and by establishing and maintaining a self-insurance fund in accordance with Section 16.4.

16.1.2 Thirty days before accepting Waste, the Contractor shall provide the County with copies of the insurance certificate(s), required under this Article that name the County as an additional named insured (except the insurance required under Section 16.3.1) and designate the type and amount of insurance, class of operations covered, effective date(s) and expiration date(s). Copies of insurance policies shall be available to the County on reasonable request. In addition, each certificate shall contain substantially the following statements:

A. This policy is primary insurance and exclusive of any insurance carried by Clark County and the insurance endorsed by this certificate shall be exhausted first, even if Clark County has other valid and collectible insurance covering the same risk.

B. This policy shall not be cancelled, reduced in coverage, or materially altered unless the insured gives sixty days' written notice of that cancellation, reduction or alteration in coverage to the Clark County Director of Public Works at P.O. Box 9810, Vancouver, Washington 98666.

C. The coverage of Clark County under the insurance endorsed by this certificate shall not be affected by the insured's actions or omissions to act.

D. This policy consists only of insurance on an occurrence basis, not on a claims made basis except the insurance required under Section 16.3.4; however, if

occurrence basis policies are not available then include a statement that this policy includes tail coverage unless tail coverage becomes unavailable in the market place.

16.1.3 The Contractor shall maintain the insurance coverage required under this Article for the Term of the Contract. The Contractor immediately shall increase the amount of insurance required to reflect any changes in Washington, Oregon or federal law to ensure that the insurance provided shall cover, at a minimum and in addition to the designated insurance requirements listed in this Article, the maximum limits under the Oregon Tort Claims Act, or any other applicable tort claims act.

16.2 Replacement Insurance. In the event the Contractor breaches any provision of this Article, the County at its discretion, may procure and maintain, at the Contractor's sole expense, insurance to the extent the County deems proper but not in excess of that which the Contractor is required to provide under this Article.

16.3 Designated Insurance Requirements Minimum Limits.

16.3.1 Workers' Compensation.

A.	Workers' Compensation covering all employees who are engaged in any work under the Contract; and	Statutory (State/Federal)
B.	Employers' Liability including bodily injury caused by disease:	\$1,000,000

16.3.2 Comprehensive General Liability.

A.	Bodily injury and Broad Form Property Damage and Broad Form Property Damage including Completed operations, and shall include coverage for Explosion, Collapse and Underground:	\$1,000,000 Each Occurrence
B.	Personal & Advertising Injury Limit:	\$1,000,000
C.	Products/Completed Operations	\$2,000,000
Aggregate:		
D.	General Aggregate:	\$2,000,000
Liability:		
E.	County's and Contractor's Protective	
(i)	Bodily injury (inc. death)	\$1,000,000 Each Occurrence

<p>(ii) Property Damage and Broad Form Property Damage including Completed Operation that shall include coverage for Explosion, Collapse and Underground:</p>	<p>\$1,000,000 Each Occurrence</p>
<p>(iii) General Aggregate</p>	<p>\$1,000,000</p>
<p>16.3.3 Property Insurance including coverage for fire, floods, explosion, vandalism and Extended Coverage for replacement value of buildings and equipment used for the Project.</p>	<p>As scheduled</p>
<p>16.3.4 Pollution Liability covering bodily injury and property damage to third parties resulting from sudden or gradual pollution from any Facility provided or activity performed under the Contract including but not limited to Transfer Stations, Loading Facilities, Unloading Facilities and Disposal Site(s). The Contractor shall also establish a self insurance fund in accordance with Section 16.4.</p>	<p>\$10,000,000 Each Incident; \$20,000,000 Aggregate</p>
<p>16.3.5 Comprehensive Automobile Liability including owned, nonowned and hired vehicles for Bodily Injury/Property Damage, Combined Single Limit:</p>	<p>\$1,000,000</p>
<p>16.3.6 Contractor or the barge subcontractor shall provide proof of Protection and Indemnity covering loss of life/personal injury, damage to property or other vessels for vessels used for the Project. Coverage shall include liability to third parties for pollution damage resulting from sudden discharges in water for vessels used for the Project.</p>	<p>\$5,000,000</p>
<p>16.3.7 Excess/Umbrella Coverage including but not limited to General Liability, Employer's Liability, Automobile Liability and Contractor's Protective Liability:</p>	<p>\$25,000,000 Each Occurrence; \$25,000,000 Aggregate</p>

16.4 Pollution Liability Self-Insurance Fund.

16.4.1 Establishment and Funding of Self-Insurance Fund. Pursuant to the Contract, the Contractor has previously made periodic payments to a self-insurance fund to satisfy the pollution insurance coverage required under Section 16.1.1 of the Contract. The self-insurance fund is currently being held in escrow and managed by a trustee designated by the Contractor and approved by the County. Any future interest earned on fund principal shall remain on deposit in the fund until distributed in accordance with this Article.

16.4.2 Insurance Adjuster to Handle Pollution Claims; Distributions. The Contractor shall designate an insurance adjuster approved by the County, acting reasonably, to handle any pollution claims made against the Contractor or County that are related to the Project. The fund shall be used exclusively for claims arising for the Contractor's performance of its obligations under the Contract. The trustee shall hold the funds for a period of ten years from the last date that Waste originating within the County is disposed of at the Disposal Site. Provided there are no claims against the fund then pending, the Contractor may thereafter direct the trustee in writing to distribute the fund balance to the Contractor.

16.4.3 Arbitration. Any unresolved disputes relating to the management or distribution of money from the fund shall be resolved by arbitration in accordance with Article 28.

16.4.4 Tax-Exempt Status of Fund. The parties intend that the fund be exempt from taxation, however, in the event that the fund becomes subject to income tax as a trust or insurance fund subject to reserve requirements, any tax shall be paid from the money on deposit in the fund. In addition, in the event that Contractor is subject to taxation for the fund or any portion thereof, Contractor shall be reimbursed from the fund for the income tax attributable to the fund.

16.4.5 Fund Secondary. The self-insurance fund shall be secondary to all other insurance and coverages available to Contractor or County, and may be used if other coverages are exhausted or for any excluded events.

16.5 Use of Fund. Notwithstanding Section 16.4.2 of the Contract, the Contractor may also utilize the fund for the following purposes:

16.5.1 To satisfy any insurance coverage deductible related to environmental liability for claims made against the Contractor or any affiliated entity arising out of the operation of Finley Buttes Landfill.

16.5.2 As a pledge of financial assurance to the Oregon Department of Environmental Quality, pursuant to requirements relating to the siting and operation of the Finley Buttes Landfill in Morrow County, Oregon.

16.6 Special Insurance Coverage. When the Contractor is required to operate within a public or private right-of-way that requires special insurance coverage, the Contractor shall provide that insurance. The Contractor shall include in its liability policy all endorsements that any public or private entity requires for the protection of the entity, its officers, agents and employees. The Contractor shall also provide any insurance coverage required for special conditions.

16.7 Minimum Coverage. The insurance coverage required in this Article is the minimum coverage required and shall in no way lessen or limit the liability or responsibility of

Contractor under the Contract. The Contractor may at its own expense provide any additional insurance it deems necessary.

#### Article 17. FINLEY BUTTES AND ALTERNATE FACILITIES

17.1 Finley Buttes Landfill. The primary Disposal Site is the Finley Buttes landfill and is located in the State of Oregon approximately twelve miles south of the Interstate 84 - Boardman junction. The Disposal Site shall be owned by the Contractor (except as provided in Section 13.6 of the Contract) and designed, constructed and operated by the Contractor in accordance with the substantive requirements of the most stringent of federal, state or local standards (including, but not limited to Chapter 173-351 WAC). In addition to the Disposal Site, upon approval by the Director (subject to any interlocal agreement), Acceptable Waste may be disposed at Contractor's Wasco Landfill under Section 17.4.

17.2 Alternate Transportation Contract. If the Contractor enters a contract or agreement with any other customer or otherwise commences handling substantially similar Waste in substantially similar volumes and transports that Waste through the County or the Portland metropolitan area to the Disposal Site using rail, truck or other transport methods at a Cost lower than the barge method then being used to Transport Waste under the Contract, the County may require that those non-barge methods of transport be used to Transport Waste under the Contract, and Tipping Fees shall be adjusted in accordance with Section 12.5.3.

17.3 Alternate Facilities; Tipping Fee. The contractor may, with the County's written approval, use facilities, disposal sites (including but not limited to Wasco County, or processes different from the Facilities contemplated in the Contract to perform the Contractor's obligations under the Contract and, with the County's written approval, may adjust Tipping Fees to reflect reasonable actual Cost increases or decreases of providing and operating those alternate facilities.

17.4 Transport from East County Transfer Station. Following a required environmental review and approval, Contractor may deliver by truck Acceptable Waste from the East County Transfer Station to the Finley Buttes Disposal Site, or to Contractor's Wasco Landfill. Transportation to the Wasco Landfill shall be provided by the Contractor and shall comply with the following.

17.4.1 All waste shall be transported in containers with leak-proof design and shall be capable of withstanding arduous, heavy-duty, repetitive service associated with the long-haul transport of Solid Waste.

17.4.2 Containers used for the transportation of Solid Waste shall be tightly covered or screened, durable and capable of being easily cleaned.

17.4.3 Contractor shall avoid littering at the loading point and during transport.

17.4.4 Containers shall be cleaned as necessary to prevent nuisance odors, rodents, and insect breeding and shall be maintained in good repair and acceptable in appearance.

17.4.5 Containers shall be loaded and moved in such a manner that containers will not fail and the contents will not spill or leak. Where such spillage or leakage does occur, the spill shall be properly cleaned or picked up immediately by the transporter.

17.4.6 Contractor shall inspect transportation vehicles at least monthly. Inspection records shall be maintained at the Contractor's offices identified at Section 4.5.3B.

17.4.7 Use of turnouts, scenic vista points, and state parks shall be limited to cases of emergency.

17.4.8 Contractor shall meet upon request of the Columbia River Gorge Commission to discuss other issues that may arise in the course of Contractor's transportation through the Columbia River Gorge NSA.

#### 17.5 Other Customers.

17.5.1 Should the County reasonably determine that intermingling of the County's Waste at Finley Buttes Landfill with Waste of other parties presents an unacceptable liability risk, then the County shall be entitled to require that the County's Waste be placed in a separate defined portion of the Disposal Site or in separate cells. The Contractor shall provide for a separation method acceptable to the County within a mutually agreeable time frame (which time frame shall not be more than 12 months) between the Contractor and the County upon written notification by the Director. Additionally, County may direct that Waste from the East County Transfer Station be transported to Finley Buttes Landfill for disposal.

17.5.2 The Contractor shall be compensated for its additional incremental cost in complying with the provisions of this Section 17.5 as additional work pursuant to Article 22 of the Contract.

17.6 Disposal Site Closure and Post-Closure Activities. The Contractor is responsible for performing and for paying all Costs associated with the Disposal Site closure, post-closure maintenance, leachate management, gas recovery and preparation for final use in a manner that is consistent with all federal, state and local permits, laws and regulations. The Contract price shall include all costs of whatever nature associated with landfill closure and post-closure care and the County shall not be obligated financially to the Contractor or to any other party for those costs even though incurred after termination of the Contract.

17.7 Back-up Facilities Plan. The Contractor shall maintain, subject to Director review and approval, a specific plan and schedule for the implementation of any back-up Facilities. This plan shall present details on, at a minimum, specific Facilities proposed, the equipment necessary, availability of necessary equipment, time and method of implementation and the



status of all necessary permits or approvals. The Contractor's right, if any, to additional compensation for the use of back-up Facilities is governed by Article 12 of the Contract.

Article 18. OPERATING AND TRANSFER STATION REGULATION

18.1 General.

18.1.1 The Contractor shall maintain operating and Transfer Station regulations, approved by the County, that include regulations for each Person who delivers Waste to the Transfer Stations. After notice to the County, the Contractor may amend those regulations; those amendments are automatically effective unless the County protests their enactment in writing within sixty (60) days of receiving notice of the proposed amendments.

18.1.2 Contractor shall use its best efforts to establish and maintain a system or systems of environmental management for Transfer Stations in conformance with ISO 14001. The system(s) shall be initially developed by Contractor, and approved by Director, no later than 2007. By 2009, Contractor shall use best efforts to secure certification of its system(s) by an external third party organization.

18.1.3 The Contractor shall not use the Transfer Stations or Recycling Processing Center to process or handle waste originating outside the County without Director approval if the total amount of waste received at the Transfer Stations is more than the amount listed in the table below and is comprised of more than 20% out of County waste. The Contractor shall use all reasonable measures to prevent Unacceptable Waste from being delivered to the Disposal Site. The Contractor shall use reasonable measures to determine the origin of all Acceptable Waste delivered to the Transfer Stations by Commercial Vehicles.

<b>Year</b>	<b>Tons</b>
2005	369,365
2006	379,696
2007	390,336
2008	404,297
2009	412,585
2010	424,213
2011	436,189
2012	448,402
2013	460,958
2014	473,864
2015	487,133
2016	500,772
2017	514,794
2018	529,208

Year	Tons
2019	544,026
2020	559,259
2021	574,918
2022	592,166
2023	609,931
2024	628,228
2025	647,075
2026	666,488

18.1.4 Daily Removal of Waste. Once the Transfer Stations are closed each day, the Contractor shall continue operations until all putrescible Waste is removed from the Waste receiving area, has been processed, compacted, and containerized.

18.1.5 Security of Transfer Stations. The Contractor is responsible for 24-hour site security, 365 days per year. The Transfer Station sites shall be secured during and after normal hours of operation such that no unauthorized entry is allowed. Staffed security is not required unless systems without staffing are found to be inadequate. The Transfer Station sites shall be surrounded by a slatted woven metal, masonry or other fence of at least 6-foot height with lockable gates, reasonably approved by the Director to provide appropriate screening and security.

18.1.6 County Access to Transfer Station Facilities. County staff shall be able to use the Transfer Station lunch rooms, parking and other areas for the purpose of providing tours of the Facilities and conducting other business matters related to the Transfer Station operations. Any use of these areas by the County shall not create an impact on the Contractor's operation of the Transfer Stations.

18.2 Operation of Transfer Stations. The Contractor shall operate Transfer Stations at its own Cost and in accordance with all permit conditions under all permits and other approvals required for the siting, construction and operation of the Transfer Stations, including those permit conditions of new permits or modifications to existing permits. The Contractor's right, if any, to a Tipping Fee increase for increased Costs incurred for revised or additional permits or permit conditions is set forth in Article 12 of the Contract. The Transfer Stations shall be open for the disposal of Waste by the public, commercial haulers, industrial accounts, and other customers at least during the hours established by the Director:

18.3 Additional Regulations. The Contractor may impose any reasonable regulation it deems necessary on any Person who delivers Waste to the Transfer Stations.

18.4 Transfer Stations Designed in Compliance with Applicable Law; Waiver of Design Requirements. In addition to required permit approvals, all construction plans and

substantial changes thereto for the Transfer Stations and Facilities shall be submitted to the Director for review and approval for conformance with the Contract. Unless the Director objects in writing to the design of the Transfer Stations within thirty days, the design requirements of Article 18 shall be deemed satisfied or waived. The Contractor shall notify the Director in writing on the date that construction of the Transfer Stations is complete and provide as-built drawings. Unless the Director thereafter objects in writing to that construction within thirty (30) days of notice of completion, the conformance of the construction with the approved design shall be deemed satisfied or waived. However, the Director's acceptance of the design or construction of the Transfer Stations and other Facilities shall not relieve the Contractor of its obligation to operate the Transfer Stations and other Facilities in a manner that conforms to the Contract.

18.5 Composition and Operation of Transfer Station Facilities. The Transfer Station buildings shall be constructed of either concrete, masonry or substantial metal panels. Framing shall be of either steel or concrete. The floor of the buildings including the tipping area and loading pit shall be constructed of concrete designed for appropriate equipment maneuvering and loadings including shock loadings. The buildings shall include, at a minimum, facilities for employees, administration and operational control, equipment storage and restrooms, and shall have appropriate mechanical, electrical and HVAC systems for the specific functions. Where applicable, the buildings shall be securable with lockable doors on all openings. The buildings shall be designed appropriately for use as Transfer Stations and the Contractor is solely responsible to ensure functionality. The Contractor shall be responsible for all appropriate and needed outbuildings, equipment maintenance and storage areas, Container storage areas, and other appurtenances. The Transfer Stations shall be designed to allow the following:

	West Vancouver and Central	East
18.5.1 Minimum daily through-put capacity	1200 tons/day	100 tons/day
18.5.2 Minimum Waste storage capacity (pit capacity)	½ day tonnage	1/2 day tonnage
18.5.3 Maximum design wait time		
1. scale house	5 minutes	5 minutes
2. tip area to scale house	5 minutes	5 minutes
18.5.4 Maximum design wait time shall be deemed satisfied if no vehicle must wait more than five minutes prior to being processed.		

18.5.5 Separation of public and commercial tip areas; Daily emptying and cleaning of entire tip area; Odor control; Vector control; Litter control; Dust control.

18.6 Loading and Unloading Areas. Unless otherwise approved by the County, the Contractor shall perform all Waste receiving, processing and loading into Containers and Materials Recovery in an enclosed building. Separate unloading areas for commercial and public vehicles, and a separate loading area for the Transfer vehicles are required. Space shall be provided for unloading Waste in distinct areas based on the type of load: mixed commercial, mixed public and Source-Separated. Unloading areas shall provide for the quick and efficient offloading of Waste from a variety of vehicles. The Waste receiving Facilities shall provide for the safety of users and operating personnel.

18.7 Recycling Facilities Requirements. At a minimum, each Transfer Station shall have Recycling capabilities to: separate loads of commercial and industrial Waste that have high percentages of Recyclable Material and allow the public to drop off Source-Separated Recyclable Material. Additionally, each Transfer Station shall have a Facility for the public drop-off of small quantities of Household Hazardous Waste materials.

18.8 Waste Compaction. Except as otherwise approved by the Director, Residual Waste shall be compacted into Containers at each Transfer Station for Transport to the Disposal Site. Each compaction system is to be appropriate for the use intended and is to be designed, furnished, and operated by the Contractor. Design of the compaction system should allow for maintenance and repair of the system such that the overall Transfer Station operations are not impeded. Special precautions shall be taken by the Contractor to load the compactor so it will function properly without jamming, puncturing the compactor or Container walls, causing fire, explosion, or any other damage. The compaction unit shall either be equipped with load sensing cells or individual Containers shall be coded, identified and weighed to ensure that the loaded Containers are road weight legal when they leave the Transfer Stations. The compaction area shall include appropriate odor, dust, and noise suppression equipment and liquids management systems.

18.9 Containers Loaded on Trucks.

18.9.1 At the Transfer Stations, Containers shall be placed by the Contractor onto Contractor-supplied trucks and semitrailers, and the Contractor shall install a lock seal on the Container such as a flat metal seal that prohibits removal by hand. All truck equipment shall comply with applicable federal, state and local requirements. Each truck shall be equipped with a two-way radio capable of communicating with the Contractor's office and appropriate personnel at the Transfer Station and barge Loading Facility. The same provisions shall apply,

as appropriate, to empty Containers being transported from the barge Loading Facility to the Transfer Stations.

18.9.2 The Contractor shall wash all Transfer vehicles at least once per week and steam clean all Transfer vehicles at least once per month. In addition to this requirement, all vehicles shall be cleaned as warranted by specific operating conditions.

18.10 Loading Containers; Storage of Loaded Containers.

18.10.1 The Contractor shall be responsible for moving empty Containers to and loaded Containers from the compactor in a timely fashion such that the overall Transfer Station operations are not impeded. Each Transfer Station shall have a designated Container staging area. The staging area shall be secured, lighted and paved and shall have adequate space for efficient Transfer Station operations. The staging area shall be appropriately screened.

18.10.2 Loaded Containers shall not be stored longer than twenty-four (24) hours at the Transfer Stations and no more than two (2) days' worth of loaded and unloaded Containers shall be stored at the Transfer Stations at any one time. The above provision may be temporarily waived by the Director if weather or other conditions should preclude safe transport of loaded Containers from the Transfer Stations.

18.11 Scalehouses; Weighing Loads; Payment.

18.11.1 The Contractor is required to provide scalehouses at the Transfer Stations. Each Transfer Station shall have a minimum of two scales. At minimum, each scale shall be certified at Contractor's expense on a semi-annual basis; however, the County may in its discretion arrange and pay for any additional testing. The scalehouse shall be capable of weighing all types of vehicles anticipated to be utilizing the Transfer Stations on an automatic scale system such that recorded weights can be used for charging fees and evaluating Transfer Station performance. The scale system shall be computerized and have a printout capacity providing a minimum of three tickets and/or receipts for each load (one for the customer, one for the Contractor and one for the County). The controls and printout equipment shall be located in the main scalehouse building.

18.11.2 All customer vehicles shall use the same access road and same weigh station/payment area. All incoming loads shall be processed through the scalehouse. Adequate queuing capacity shall be provided such that impacts on the offsite street system are minimized. The main scalehouse shall accommodate all commercial inbound traffic and all outbound commercial and Transfer truck traffic. Consideration shall be given for providing a secondary scalehouse facility consisting of a pay booth with no weighing capabilities to service Small Public Loads only. The scalehouses shall be appropriately designed to withstand anticipated structural abuse from vehicles. The Contractor shall provide and maintain a communication link between the Contractor's scalehouse personnel and the Waste receiving area.

18.11.3 All incoming vehicles, except for Small Public Loads, shall be weighed upon entering the Transfer Station. Vehicles which have had tare weights established shall not be required to reweigh each time after unloading, except that said vehicles shall have their tare weights determined at least twice each year without advance notice to the vehicle owners or drivers. All other vehicles, except for Small Public Loads, shall be weighed again after unloading to determine the net weight of Waste delivered and the applicable disposal fee. All Recovered Materials, compacted Waste, and other Waste shall be weighed prior to removal from the Transfer Stations and/or Recycling Processing Center. The public, businesses and haulers shall pay disposal fees by cash, debit card, credit card or by check (with a check guarantee card approved by the Contractor if required by the Contractor). The Contractor shall provide for lines of credit by haulers delivering Waste in accordance with Article 8 if that hauler provides reasonable security or demonstrates an acceptable credit rating for that line of credit in accordance with the operating and Transfer Station regulations promulgated by the Contractor in accordance with this Article 18 and accepted by the County, acting reasonably.

18.11.4 The Contractor shall charge Tipping Fees in accordance with the provisions of Article 12 to all persons who dispose of Acceptable and Special Wastes at the Transfer Stations. All loads of incoming Waste, except for Small Public Loads and loads of Source-Separated Recyclable Materials delivered by Recyclable Collection Contractors, shall be charged a disposal fee based on weight and/or type of Waste. The Contractor shall develop under Section 12.7 an alternative Tipping Fee schedule to charge Small Public Loads which are not weighed. The Contractor may develop and offer an alternative Tipping Fee schedule at different amounts than the regular Tipping Fee schedule for Small Public Loads and loads of commercial or industrial Waste that are predominantly composed of Recyclable Materials. Establishment of and all changes to the alternative Tipping Fee schedules are subject to the prior approval of the Director.

18.11.5 Except as otherwise provided by the Contract, the Contractor may not by act or omission discriminate, treat unequally or prefer any Person who delivers Waste to the Transfer Stations.

#### 18.12 Roads; Paved Areas.

18.12.1 All areas subject to vehicular traffic, including but not limited to access roads, driveways, storage areas, Container storage areas, parking areas, and other areas, shall be paved with either concrete or asphalt concrete designed for appropriate loadings. All areas subject to slow speed vehicles' turning movements, including but not limited to maneuvering areas near scales, tipping areas, areas where trucks maneuver prior to or after tipping and Transfer vehicle maneuvering areas, shall be paved with concrete. Parking spaces are to be provided at each Transfer Station to include adequate parking for Contractor personnel and visitors. All access roads, vehicle maneuvering areas, parking areas, and other paved areas shall have adequate drainage.

18.12.2 The Contractor shall be responsible for painting and maintaining traffic direction lines on roadways from the Transfer Station entrances to the Waste unloading areas. Provisions shall be made for providing appropriate traffic directional control such as signs and/or a color coding system to distinguish the public unloading area from the commercial unloading area or other methods as approved by the Director.

18.12.3 The Contractor shall be responsible for the repair, replacement, patching, and remarking of drives and pavements inside and outside of structures at the Transfer Stations as needed or directed by the Director.

18.12.4 The Contractor shall remove daily all metal from access roads, driveways, entrances, truck wash area, and Transfer Station areas used by customer vehicles. The same areas shall be kept clean by street cleaning equipment or other method approved by the Director. These areas shall be cleaned at least once per week or as often as necessary, as determined by the Director.

### 18.13 Emergency Power System.

18.13.1 Each Transfer Station shall have an emergency back-up power system, so as to ensure power, lights, and safety in the event of a power shortage. This should include, as a minimum, auxiliary lighting, as well as adequate power to continue to operate the scalehouse facilities.

18.13.2 No emergency power system (generator) shall be required at the East County Transfer Facility. The East County Transfer Facility shall have emergency battery back-up power for safety lighting, Scalehouse operation, and other essential functions. The battery back-up capability for the Scalehouse must be sufficient for four (4) hours of operation. In the event that a power outage exceeds four hours, waste shall be routed to other facilities.

18.14 Daily Cleaning. The Contractor shall conduct a daily litter cleanup at the sites each business day. The entire Transfer Station buildings are to be cleaned prior to the start of each business day.

18.15 Storage of Drop Boxes. The Contractor may provide at each Transfer Station, and make available to commercial haulers, an area for the storage of empty drop boxes. The Contractor may charge users of the drop box storage area an appropriate user fee, subject to the County's approval, to recover its costs of maintaining and operating that Facility and service.

18.16 Personnel. The Contractor is responsible for staffing the Transfer Stations with qualified, trained employees.

18.16.1 Adequate Personnel. The Contractor shall provide sufficient on-site personnel to ensure efficient operation, maintenance, and management of the Transfer Stations. Additional personnel shall be made available as is necessary to ensure effective and efficient

operation of the Transfer Stations in case of sickness, vacation, or other periods in which regular personnel are not available.

18.16.2 Skills; Functions. At a minimum, the Contractor shall ensure adequate staff to perform the following functions at each Transfer Station:

A. Supervision and management of the work and Facilities of each Transfer Station as the Contractor's representative;

B. Spotting of commercial and public loads;

C. Continuous visual inspection of all loads as they are being tipped by a qualified person trained to spot, field test and remove if necessary, suspicious and Unacceptable Waste. This individual shall also be trained in all reporting and notification procedures to deal with such Waste and will have communications equipment that will allow direct communication with the equipment operator in the Waste receiving area;

D. Operation of all Transfer Station equipment with trained operators;

E. Scalehouse control;

F. Control of traffic, unloading of refuse, control of debris, maintenance of the site and equipment, recovery and processing of Recyclable Materials, checking of receipts, litter control, maintain clean and safe operation of the Transfer Stations, and other station activities.

18.17 Equipment. It is the Contractor's responsibility to supply and operate all equipment required for the operation of the Transfer Stations and the performance of the Contract, including all compaction and loading equipment. All equipment so provided shall be appropriate for the intended usage. All equipment shall be suitably painted and/or finished and kept clean so as to present an acceptable appearance. The Contractor is required to provide all required maintenance of equipment. The Contractor shall plan, schedule, and control preventive maintenance to ensure minimum equipment downtime. The Contractor shall prepare and maintain a schedule for the maintenance and replacement of all major equipment, and a reporting system shall be instituted to log all preventive and other maintenance and repair activities.

#### 18.18 Maintenance of Transfer Stations.

18.18.1 It shall be the Contractor's responsibility to maintain the Transfer Stations in good working order and condition. The Contractor shall be responsible for the inspection, testing, maintenance and repair of all equipment and facilities, all plumbing, sumps, mechanical, heating, ventilating, air conditioning, computer, and electrical systems and components, all landscaping, all private drainage and sewer structures and systems, fire and dust suppression systems, scale facilities, radio communication equipment, and all fixtures and devices related



thereto which form a part or are installed therein. The Contractor shall replace any item, component, fixture or device which is lost, damaged, destroyed, or which fails during the Contract with a new item, component, device, or fixture of the same type and quality at no additional cost under the Contract.

18.18.2 All buildings and Facilities at the Transfer Stations shall be maintained in good condition at all times. Painted surfaces on the interior and exterior shall be repainted by the Contractor as needed. The Contractor shall steam clean the interior of the Waste receiving and processing buildings at least annually from the time the operation commences. At a minimum, work and vehicle maneuvering areas shall be swept daily, and washed with detergent if necessary. Other areas shall be cleaned of accumulated dust on a weekly basis. Other buildings and Facilities shall be cleaned at frequencies as necessary to maintain them in good condition. The Contractor shall supply all equipment, supplies and labor for cleaning.

18.18.3 As practical, all scheduled maintenance, repair or modification of a Transfer Station shall be performed during non-operating hours if that planned activity would otherwise result in the shutdown of the Transfer Station. Scheduled maintenance, repair or modification of a Transfer Station which has been approved in advance by the Director to be undertaken during operational hours shall not constitute a default shutdown. The Contractor shall give sufficient written notice of any planned shutdown so arrangements can be made to notify the commercial haulers and general public in advance.

#### 18.19 Household Hazardous Waste Drop-off; Compensation.

18.19.1 The Contractor shall provide a facility at each Transfer Station for the public drop-off of small quantities of Household Hazardous Waste material. This facility shall be appropriate for the usage intended and designed, operated and maintained according to all federal, state, and local requirements. Each facility shall be fitted with a secure and tight fitting door and is to be located in an area readily accessible but secure from inappropriate usage. Each facility shall be emptied and cleaned by the Contractor weekly (unless otherwise approved by the Director) and all materials properly disposed in accordance with all federal, state and local laws and regulations. All materials removed shall be taken to a fully permitted Hazardous Waste treatment or disposal facility. The Contractor shall provide the Director by the fifteenth day of each month with records as to the amount and types of materials received, the dates the facilities were emptied and cleaned, and receipts from the Hazardous Waste disposal facility.

18.19.2 After commencement of operations of the East County Transfer Station, all costs associated with the furnishing and operation of a Household Hazardous Waste facility, including cost of disposal, shall be included in the fees paid to the Contractor and no additional compensation shall be paid. Until commencement of operations of the East County Transfer Station, County shall compensate Contractor for disposal, only, of Household Hazardous Waste. Unless otherwise approved by the Director, the Contractor shall submit monthly invoices to the Director for the disposal of these materials. Such invoices shall detail the amount, types and disposition of the materials, including the actual costs. The Contractor shall submit with its

invoices, receipts or other documentation for actual disposal costs. The County shall reimburse the Contractor within forty-five (45) days of receipt of invoices for materials disposed under this section.

18.19.3 The Household Hazardous Waste drop-off facilities shall be used only for the drop-off by residential generators of small quantities of Household Hazardous Wastes generated within the County unless otherwise approved by the Director. Until the commencement of operations of the East County Transfer Station, the facilities are not to be utilized for the storage of Unacceptable Waste removed, generated and/or managed by the Contractor pursuant to Section 14.1. Unless otherwise approved by the Director, the facilities shall be available during normal Transfer Station operating hours. The Contractor shall not charge the public for using the Household Hazardous Waste drop-off facilities.

#### Article 19. PERFORMANCE OF SERVICES

19.1 Coordination of Work. The Contractor shall be responsible for coordinating, orderly scheduling and managing all services and work performed by its officers, employees, subcontractors and agents for the Project.

19.2 Coordination Meetings. Upon reasonable request of either party, the Contractor, County, principal subcontractors and any other Persons requested by either party shall meet to discuss the Project including but not limited to the scheduling, process or materials used, change orders, personnel and any other matters either party deems appropriate.

#### Article 20. TRANSPORTATION

20.1 General. This Article sets forth the requirements for the Transport or movement of the containerized Waste from the Transfer Stations to the Disposal Site and the return of empty Containers from the Disposal Site to the Transfer Stations.

20.2 Transportation System. The Contractor is solely responsible for the Transport of all Waste. This includes, but is not limited to, the loading of Waste Containers at the Transfer Stations; the Transport of those Containers by truck to a barge Loading Facility; the loading of those Containers onto barges; the Transport of those barges up the Columbia River to the Unloading Facility; the unloading of the Containers from barges and onto trucks; the Transport of Containers by truck to the Disposal Site; the unloading of the Containers at the Disposal Site; and, the return of empty Containers from the Disposal Site to the Transfer Stations. Contractor is further responsible for the Transport of Containers by truck from the Transfer Stations to the Disposal Site and return of the empty Containers by truck to the Transfer Stations during closure of Columbia River locks or upon Director approval.

20.3 Sealed Containers. Once the numbered seal is attached, Containers shall not be opened nor shall material be added to or taken from the sealed Containers at any time once

having left the Transfer Station of origin until arrival at the Disposal Site unless found necessary pursuant to Section 20.6.

20.4 Containers. The Contractor shall supply all Containers in sufficient quantity to allow the successful performance of the Contract, but no less than the number needed to hold six days' Waste. The Containers shall be appropriate for the extremely heavy use intended. Containers shall either be completely enclosed or be of open top design enclosed with a heavy tarp or other cover approved by the Director. Containers shall be tightly sealed; shall not allow the release of Waste, including liquids, or allow the attraction or release of vectors; shall not allow the infiltration of liquids into or leakage of leachate or other liquids or any Waste or odors from the Container; and shall be capable of withstanding the expected heavy use from handling compacted Waste. The Contractor shall repair or replace Containers not meeting these standards. All emptied Containers shall be thoroughly cleaned at the Disposal Site after each use such that no visible Waste remains in the Containers during their return to the Transfer Stations, and to prevent odors, unsightliness, and attraction and breeding of vectors in the empty Containers. Prior to the use of each Container, the Contractor shall inspect the Container doorway seals and the overall condition of the Container to ensure that the Container conforms to Contract obligations. Spillage of any Waste or liquids from the Containers while in storage or transit is prohibited.

20.5 Transportation of Containers to and from Barge Loading Facility. The Contractor is responsible for the Transport of containerized Waste from the Transfer Stations to the barge Loading Facility and the return of empty Containers from the barge Loading Facility to the Transfer Stations.

20.6 Weight Limits. The Contractor is responsible for ensuring that all Containers are loaded such that vehicles do not exceed road load limits. The Contractor shall be responsible for unloading Waste from any overweight Container. If there is a discrepancy between federal, state, and local road legal weights, the more stringent legal weight shall apply. The Contractor shall give special attention to locally imposed seasonal road weight restrictions.

20.7 Barge Loading Facility. The Contractor shall develop and operate and/or provide a barge Loading Facility, or by Director approved subcontract, in accordance with all applicable laws, permits and regulations.

20.7.1 Operation of Barge Loading Facility. The barge Loading Facility shall be appropriate for the usage intended. The Contractor is solely responsible to ensure the satisfactory design, usage, and operation of the Facility. The Facility shall be operated by personnel skilled and qualified in their respective trades.

20.7.2 Compliance with Applicable Law. Containerized Waste shall not remain at the barge Loading Facility for a period of time longer than allowed by the land use or operations permits or by the Health Department or other regulatory agencies.

20.8 Barge.

20.8.1 Transportation of Containers to and from Barge Unloading Facility. The Contractor is responsible for the Transport of containerized Waste from the barge Loading Facility to the barge Unloading Facility and the return of empty Containers from the barge Unloading Facility to the barge Loading Facility.

20.8.2 Barges. All barges utilized for the Transport of containerized Waste and empty Containers shall be appropriate for the usage intended and shall be appropriately licensed and permitted. Waste shall not remain on barges longer than allowed by appropriate regulatory agencies. When barge transport is unavailable due to yearly lock maintenance or for any other reason, or when the barge Loading or Unloading Facilities are unavailable, the Contractor shall transport containerized Waste to the Disposal Site and return empty Containers by alternate means of transportation. All alternate means of transportation are the responsibility of the Contractor without additional compensation except as provided in Article 12 of the Contract.

20.8.3 Barge Unloading Facility. The barge Unloading Facility shall be located at the Port of Morrow, Oregon. The Contractor is responsible for the unloading of Containers from the barges, the storage and subsequent loading of these Containers onto surface transportation, and the transportation of the Containers to the Disposal Site. The Contractor shall abide by all rules and regulations of the Port of Morrow and other applicable laws. Containerized Waste shall not be stored at the Port of Morrow for a period of time longer than allowed by permits or the Oregon Department of Environmental Quality or other regulatory agencies.

20.9 Transportation from Barge Unloading Facility to Disposal Site. The Contractor is responsible for the transportation of containerized Waste from the barge Unloading Facility to the Disposal Site.

20.9.1 Containers Loaded on Trucks. The Containers are to be loaded onto trucks and semitrailers at the barge Unloading Facility.

20.9.2 Radio Required. Each truck shall be equipped with a two-way radio capable of communicating with the Contractor's office at the Disposal Site.

20.10 Transportation of Containers from Disposal Site to Transfer Stations. The Contractor is responsible for the return transportation of empty Containers from the Disposal Site to the Transfer Stations.

20.11 Transportation of Containers to Other Disposal Sites. In the event Containers are transmitted by truck to a Disposal Site, the Contractor shall submit for Director approval a plan of operation for the transportation of Containers to and from the Disposal Site.

Article 21. PERMITS AND REGULATIONS

21.1 Permits; Licenses. The Contractor shall obtain, maintain and pay (without additional compensation, unless otherwise provided in the Contract) for all temporary and/or permanent permits, business or other licenses, certificates, and all inspection fees, surcharges or other approvals required by law. Copies of all licenses, permits, certificates and approvals shall be provided to the County.

21.2 Fines; Penalties. The Contractor shall be liable for all fines or penalties imposed by any government agency for Contractor-caused violations of permits, licenses, certificates, laws or regulations; the County shall not be liable for and shall not reimburse the Contractor through a Tipping Fee increase or otherwise for any fine or penalty imposed. The Contractor reserves the right to contest any fine or penalty in administrative proceedings or in court prior to its payment.

Article 22. ADDITIONAL WORK

22.1 Additional Work. All requests for payment for work under the Contract shall be made only under the conditions and procedures of this Article and Sections 12.3.4 and 12.4. For purposes of this Article, the term "additional work" means work that is in addition to the Project but reasonably related to the scope of the Project, or other work required to be performed under the Contract or any amendments thereof, including but not limited to the delivery of Source-Separated commercial/industrial Waste under Section 8.3, work required to comply with a change in law, statute, rule, regulation, ordinance, permit, permit condition or regulatory provision. Nothing in this Article is intended to change any other precondition to or procedure for payment or reimbursement required in the Contract.

22.2 Third Transfer Station.

22.2.1 The Contractor shall within twelve (12) months of the Contract Effective Date commence construction and operation of a Third Transfer Station to be located in east Clark County. Contractor shall not be reimbursed for actual costs incurred in the construction of the third transfer station as Additional Work under Section 22.1. Provided, however, the date for commencement of construction shall be extended by any period of appeal (administrative or judicial) of any permit necessary for construction and operation of the third Transfer Station.

22.2.2 The Contractor has a separate agreement with the City of Washougal related to the Third Transfer Station in which the City has the option to purchase the facility. In the event that the Third Transfer Station is purchased by the City of Washougal, Contractor shall pay to the County Seven Hundred Fifty Thousand Dollars (\$750,000), adjusted and reduced on a ten (10) year straight-line depreciation basis beginning on the Effective Date. Should the City of Washougal not exercise its option to purchase the facility, the County shall retain the right to purchase under the same terms and conditions offered to the City of Washougal.

22.2.3 In the event Contractor does not commence construction of the Third Transfer Station as required in Section 22.2.1, Contractor shall pay to County \$750,000 on or before the fifteenth (15) month following the Effective Date; and, County may give notice to Contractor to terminate this Contract on or after January 1, 2011.

22.3 Fourth Transfer Station. Contractor shall at its sole expense, by January 1, 2008, commence a feasibility study to analyze the need for an additional Transfer Facility in the Ridgefield / LaCenter area of the County. The scope of the study shall be subject to Director approval, and shall be completed by December 31, 2009. If, based on the feasibility study, the County determines a Fourth Transfer Station is needed, the Contractor shall propose a location and design; and, upon Director approval, permit, construct and operate the Facility in accordance with the Contract. The Contractor shall be compensated for developing, constructing and operating the Fourth Transfer Station as additional work under Section 22.1 of the Contract.

22.4 Request for Proposal for Additional Work; Obligation to Perform.

22.4.1 County Request; Contractor Proposal. The County shall submit to the Contractor a written request for additional work that includes information regarding a description of the work to be performed, a schedule for that work and an estimate of the Cost of that work. Within twenty-one days after the Contractor receives that request, the Contractor shall submit to the County an itemized proposal stating the actual Costs to the Contractor for performing the additional work, a schedule for performing the work, and the anticipated effect of that work, if any, on the Contractor's performance of the existing Contract work. The Contractor's proposal shall be based on the most cost effective method for performing the additional work in accordance with the Contract.

22.4.2 Written Authorization by County Required. A request for proposal for additional work from the County is not and shall not be construed as an authorization for the Contractor to perform the additional work covered by that proposal; the Contractor must receive from the County written authorization to perform the additional work before the Contractor may perform and be compensated for that additional work. If the County does not order the Contractor to perform the additional work, the Contractor shall not be entitled to a Tipping Fee increase unless the Contractor performed work to remedy what a reasonable person would consider an emergency.

22.5 Contractor Compensation for Additional Work. Except as provided in Section 22.2 and 22.3, the Contractor shall increase Tipping Fees for additional work performed under this Article in accordance with this Section.

22.5.1 The Contractor shall increase Tipping Fees for capital and operation/maintenance expenditures as follows:

$$\text{TFIX} = ((1.05) (\text{DS} + \text{MO}) - \text{R}) / \text{Tx}, \text{ where:}$$

- TFIX = The per ton Tipping Fee Increase for Year x
- DS = The amount equal to the equivalent annual level debt service on AC amortized over the useful life of the capital improvements or another period of time as mutually agreed between the Contractor and the County but no longer than the Term of the Contract, or if the useful life is longer than the remaining Term of the Contract the County may amortize that amount in accordance with Section 12.4.2, at an interest rate equal to the borrowing rate of the Contractor for financing the capital improvement
- AC = The amount of the capital expenditure including but not limited to reasonable engineering and construction costs and reasonable initial upfront financing costs such as points, underwriting costs, legal fees and trustee fees
- MO = The amount of the actual increase or decrease in maintenance and operation Costs, if any, incurred by Contractor in Year x as a result of the additional work
- 1.05 = The amount of profit allowed to the Contractor for the additional work equal to 5% of DS plus MO
- R = Estimated total net additional Contract revenue received by the Contractor in Year x as a result of the capital expenditure.
- Tx = Estimated tonnage of Waste delivered to Contractor in Year x

22.5.2 Subject to Section 22.2, all unresolved disputes relating to the calculation of Tipping Fee adjustments under this Article shall be resolved by arbitration in accordance with Article 28.

22.5.3 The Contractor shall recalculate TFIX under Section 22.4.1 every year. Because Tipping Fees are increased under Section 22.4.2 based in part on estimated figures, succeeding Tipping Fees shall be adjusted, if necessary, to compensate Contractor for only actual Costs incurred.

#### Article 23. SCHEDULE AND OTHER FACILITIES

23.1 Binding Schedule. All schedules submitted by the Contractor to the County pursuant to the Contract shall fully bind the Contractor.

23.2 Status Reports. Every month prior to and during construction of Facilities and at any other time on the request of the County, the Contractor shall advise the County of the status of work on the Project by an itemized report of that work, marked copies of the current schedule, and by any other method reasonably requested by the County. If any portion of the Project is not on schedule, the Contractor immediately shall advise the County in writing of the action it proposes to bring the Project into compliance with the original schedules required under the Contract.

23.3 Contractor Default. The County may deem the Contractor default under the Contract if the Project is not materially on schedule and the County reasonably believes that the action proposed to bring the Project on schedule is inadequate.

23.4 Inadequate Remedy. If the Contractor fails to take prompt and corrective action to remedy any material noncompliance with the schedules, whether or not any proposed corrections were approved or not disapproved by the County, the County may deem the Contractor in default under the Contract.

23.5 Other Facilities.

23.5.1 Contractor is responsible for making capital improvements to the Facilities and operating and maintaining the Facilities and equipment in good condition as specified in Section 10.1 and this Section 23.5.

23.5.2 The Contractor shall, subject to Director approval, construct and maintain additional improvements to the West Vancouver and Central Transfer facilities including:

A. Contractor shall install a new scale at the Central Transfer Facility, to be operational on or before December 31, 2007. Further, improvements shall be made by Contractor to the Central Transfer Facility ingress and egress to facilitate traffic flow and decrease wait times at the entrance.

B. Contractor shall install a new sort line at the West Vancouver Transfer Facility for the processing of Recyclable Materials. The line improvements will be operational on or before December 31, 2008. The sort line will be capable of handling Recyclable Materials collected curbside either through a dual stream or single stream collection method.

C. Contractor shall install by December 31, 2009 a new or reconditioned sort line at the West Vancouver Transfer Facility for Construction and Demolition Waste.

D. Contractor shall, no later than December 31, 2006, or as approved by the Director, install improvements to the household hazardous waste collection facilities at the West Vancouver and Central Transfer Facilities. The improvements to the household hazardous



waste collection facilities are to be approved by the Director, and shall include fencing; curbing and spill containment; access improvements to safety eyewash and shower; and, improvements in the receiving, storage and work areas. Contractor's obligations under this Section 23.5.2D shall be limited to \$25,000 per transfer facility, subject to the County's right to request additional work beyond that limit; provided Contractor may make claim under Article 22 for work in excess of \$25,000 per transfer facility. In any event, such facilities shall meet applicable regulatory (e.g., OSHA/WISHA) standards.

E. The improvements required by this Section 23.5.2 shall be commercially reasonable, using available technology at the time of permitting.

23.5.3 Contractor shall, upon direction of County, accept at West Vancouver Transfer Facility source separated Food Waste, the Tipping Fee for which shall be set under Section 12.7. This material will be stored and then transported separately to an organics processing facility. Should the County decide to implement a Food Waste collection program, the County will provide the Contractor with ninety (90) days notice prior to implementation.

23.5.4 On or before December 31, 2010, Contractor shall replace the compactors located at the West Vancouver and Central Transfer Facilities. The equipment will be new equipment, of similar capacity, functionality, and quality as equipment currently in place at those facilities.

#### Article 24. TAXES AND FEES

Only as between the County and Contractor, the Contractor shall be solely responsible for and pay all federal, state, regional, county and local taxes and fees, and surcharges of any kind that apply to any and all Persons, Facilities, property, income, equipment, materials, supplies or activities related to the Project including but not limited to, income, real property, excise, and sales and use taxes and fees. The extent, if any, to which the Contractor will be permitted to adjust Tipping Fees for Cost increases due to the imposition of or increase in the rates of taxes, fees or surcharges is set forth in Article 12.

#### Article 25. CLOSURE AND POST-CLOSURE FUND

25.1 Contractor Liability for Closure. The Contractor shall be solely responsible for and pay all closure and post-closure Costs relating to the Disposal Site. The Contractor shall establish and maintain for the Disposal Site a closure and post-closure fund as required by law, contract and permit. Only if a state or federal agency requires closure or post-closure financial assurance in an amount greater than that required by law or permit as of January 1, 2006, shall the provisions of Section 12.3.2 apply.

25.2 Expenditure of Funds. The Contractor shall use the money in the closure and post-closure funds to properly close the Disposal Site. The Contractor shall spend money in such funds in accordance with all applicable laws and regulations.

25.3 Contributions by Other Customers. If the Contractor accepts waste from other customers at the Disposal Site after accepting Waste originating in the County under this Contract, those other customers shall pay to the Contractor an amount not less than the per ton fee deposited in the closure and post-closure funds in accordance with Section 25.1 for Waste delivered under the Contract.

25.4 Alternative Financial Assurance; Disputes. The Contractor may in lieu of the fund(s) identified in this Section 25, with the County's written approval, provide an alternative form of financial assurance consistent with all applicable laws. Unresolved disputes under this Article shall be resolved by arbitration in accordance with Article 28.

#### Article 26. PERFORMANCE BOND

26.1 The Contractor shall maintain during the Term of the Contract a performance bond or bonds, letter of credit or other financial guarantee in the minimum amount of two million dollars (\$2,000,000), guaranteeing or providing the funds to guarantee the performance of the Contractor's obligations under the Contract. The amount of the financial guarantee required under this Article may be adjusted over the Term of the Contract subject to the prior written approval of the County. The Surety providing the form of bond, letter of credit or other guarantee, must be approved by the County in writing. The letter of credit provided under this Article, if any, shall allow the County to draw on the letter of credit by presenting a statement designating the Section of the Contract under which the County is drawing on the letter of credit.

26.2 In the event that Contractor or its Surety fails to provide the County with any required notice of the cancellation, termination or non-renewal of the performance bond and the performance bond is not substituted prior to its cancellation, termination or non-renewal with an equivalent letter of credit, performance bond or other financial guarantee acceptable to the County, the Contractor shall pay to the County liquidated damages in the sum of five thousand dollars (\$5000.00). These liquidated damages are provided for because it is difficult to determine the actual damages that would be sustained by the County as a result of the failure to provide the required notice and are not intended or considered as a penalty. The payment of liquidated damages shall not be considered to be an exclusive remedy and shall be in addition to any other legal or equitable remedy that the County may have.

#### Article 27. DEFAULTS IN PERFORMANCE OF THE CONTRACTS

27.1 Contractor Defaults. There shall be two classes of defaults by the Contractor in its performance under the Contract:

27.1.1 For purposes of this Article, the term "shutdown" means the Contractor's inability or refusal to accept Waste for one or more periods of thirty minutes or longer during operational hours of a Transfer Station during any day.

A. Class A defaults include:

(1) A Class A(i) default includes:

(a) the Contractor's failure to commence Waste Transfer, Transportation and Disposal service with Facilities properly permitted by law and constructed in substantial compliance with the Contract, or

(b) the shutdown of all Transfer Stations constructed pursuant to the Contract.

(2) A Class A (ii) default includes:

(a) the Contractor's failure to operate a Transfer Station when at least one other Transfer Station is operating in accordance with the Contract, unless the operation of only one Transfer Station is due to a delay in the construction or operation of a second Transfer Station caused by the failure of the County or any other government agency with jurisdiction to grant any necessary construction or operating permits for reasons beyond the Contractor's control and the Contractor is otherwise in compliance with the Contract, or,

(b) the Contractor's shutdown of a Transfer Station four or more times in any calendar year; or, any single shutdown in excess of six hours in any calendar year, unless the Contractor's shutdown of a Transfer Station is for a reasonable period of time to permit a Hazardous Waste response or to allow scheduled maintenance.

(3) A Class A(iii) default includes the persistent or repeated occurrence of a Class B default.

(a) A Class B default includes any other failure by the Contractor to perform its obligations under the Contract.

The Contractor shall not be deemed to be in default if the Contractor's failure to perform its obligations under the Contract is a result of the County's failure to perform its obligations under the Contract.

## 27.2 County's Remedies for Class A Defaults.

27.2.1 Class A (i) Default. In the event of a Class A(i) default, the County may, in addition to the liquidated damages imposed in accordance with Section 27.6, at its sole option:

A. 60 days following written notice of default, unless cured, terminate the County's obligations under the Contract and use any other method or Person to handle, transfer, transport or dispose of Waste;

B. give the Contractor and the Surety notice that the County will purchase, 60 days following written notice of default, unless cured, any or all of the Facilities (other than the Disposal Site and rail or marine Transportation Facilities) from the Contractor at a price equal to the fair market value of the Facilities;

C. at any time seek the appointment of a receiver for any or all of the Facilities (other than rail or marine Transportation Facilities) in the Superior Court of Clark County, to continue operation of those Facilities under the direction of that court;

D. at any time seek the judicial remedy of specific performance; or pursue any combination of the foregoing.

27.2.2 Class A (ii) Default. In the event of a Class A(ii) default, the County may, in addition to the liquidated damages imposed in accordance with Section 27.6, at its sole option:

A. 120 days following written notice of default, unless cured, terminate the County's obligations under the Contract and use any other method or Person to handle, transfer, transport or dispose of Waste;

B. 120 days following written notice of default, unless cured, give the Contractor and the Surety notice that the County will purchase any or all of the Facilities (other than the Disposal Site and rail or marine Transportation Facilities) from the Contractor at a price equal to the fair market value of those Facilities;

C. at any time seek the appointment of a receiver for any or all of the Facilities (other than rail or marine Transportation Facilities) in the Superior Court of Clark County, to continue operation of those Facilities under the direction of that court;

D. at any time seek the judicial remedy of specific performance; or

E. pursue any combination of the foregoing.

27.2.3 Class A (iii) Default. In the event of a Class A (iii) default, the County may at its sole option:

A. 90 days following written notice of default, unless cured, terminate the County's obligations under the Contract and use any other method or Person to handle, transfer, transport or dispose of Waste;

B. 90 days following written notice of default, unless cured, give the Contractor and the Surety notice that the County will purchase, any or all of the Facilities (other than the Disposal Site and rail or marine Transportation Facilities) from the Contractor at a price equal to the fair market value of those Facilities;

C. at any time seek the appointment of a receiver for any or all of the Facilities (other than rail or marine Transportation Facilities) in the Superior Court of Clark County, such receiver to continue operation of those Facilities under the direction of that court;

D. at any time seek the judicial remedy of specific performance;

E. charge liquidated damages in the amount of \$250/day; or

F. pursue any combination of the foregoing.

27.3 County's Remedies for Class B Defaults. In the event of a Class B default, the Contractor or the Surety shall be permitted to remedy the default within 120 days from the date of default and until the default is remedied shall pay to the County liquidated damages in the following amounts:

27.3.1 Failure to recycle Waste in the amounts required by the Contract: an amount equal to D where

D = S x T x P, where

D = Liquidated Damages in Dollars

S = Number of shortfall tons from the amount to be Recycled in the applicable year under Section 9.1.

T = The per ton Tip Fee for the applicable year minus the Administrative/Regulatory Fee

P = Penalty factor, applied incrementally as follows:

Percentage Points Below Recycling Requirement	P*
0 to 1	0.15
1 to 2	0.20
2 to 3	0.30
3 to 4	0.40
Greater than 4	0.50

\*NOTE: The penalty factor "P" shall be applied incrementally such that a "P" of 0.15 shall be applied against the amount, if any, of shortfall tons 0-1 percentage points below the Recycling requirement, a "P" of 0.20 shall be applied against the amount, if any, of shortfall tons 1-2 percentage points below the Recycling

requirement, a "P" of 0.30 shall be applied against the amount, if any, of shortfall tons 2-3 percentage points below the Recycling requirement, a "P" of 0.40 shall be applied against the amount, if any, of shortfall tons 3-4 percentage points below the Recycling requirement, a "P" of 0.50 shall be applied against the amount, if any, of shortfall tons more than 4 percentage points below the Recycling requirement, and the total liquidated damages shall be the sum of all incremental components.

27.3.2 Failure to provide Hazardous Waste drop-off Facilities: \$100 per day;

27.3.3 Failure to maintain insurance in the types and amounts required by Article 16: \$100 per day;

27.3.4 Failure to provide the County with access to any Facility or any records that the County is permitted to inspect: \$100 per occurrence;

27.3.5 Failure to provide the opportunity for the Recyclable Collection Contractor(s) to begin unloading of trucks hauling Recyclable Materials pursuant to Section 9.7 within 15 minutes of arrival at the Recycling Processing Center, unless such failure is determined to be caused by the Recyclable Collection Contractor's employees or equipment: \$1 per minute per truck in excess of 15 minutes if evidence acceptable to the Director exists that route trucks are consistently required to wait more than 15 minutes prior to unloading; and

27.3.6 Any other failure to perform in accordance with the Contract: \$100 per day; provided, however, that this amount shall be paid into the claims fund established under Section 27.6 if the County determines that the default may result in damage to a Person who is entitled to request reimbursement from the fund.

27.4 Contractor's Remedies for County Defaults. For any event of default by the County under Article 11 that the County has failed to cure or for which it has failed to give Contractor reasonable assurance that the default or threatened default will be promptly cured, the Contractor may, within ten days of its notice to the County of the default (except as otherwise provided in Section 27.4.4 below) exercise any or all of the following remedies to the extent provided by law or equity:

27.4.1 Judicial Remedy of Specific Performance. The Contractor may seek the judicial remedy of specific performance requiring the County to specifically perform the County's responsibilities under Article 11, it being agreed that in the event of a default by the County, Contractor's remedies at law will be inadequate.

27.4.2 Injunctive Relief. The Contractor may seek a permanent or interlocutory injunction, either in mandatory or prohibitory form, it being agreed that in the event of a default, the Contractor's remedy at law is inadequate. If on application to a court of competent jurisdiction, that court finds that Contractor is entitled to injunctive relief the Contractor shall not

be required to post a bond in excess of \$1,000. If the governing body of the County places as an agenda item before its deliberative body, any proposed ordinance, rule or other regulation that threatens on its effective date to precipitate a default of the County's responsibilities under Article 11, the Contractor may seek an injunction from a court of competent jurisdiction enjoining the County's deliberative body from enacting that ordinance, rule or regulation, if the Contractor can show that Contractor will be irreparably damaged as a result of the enactment of that proposed ordinance, rule or regulation. If a court of competent jurisdiction grants Contractor that injunction, the County and Contractor agree that the Contractor shall not be required to post a bond in excess of \$1,000.

27.4.3 Actual Damages. The Contractor shall be entitled to recover its actual damages.

27.4.4 Termination or Suspension of Contractor's Performance of the Contract. Contractor at its sole discretion may terminate or suspend its performance under the Contract if the County has not remedied any default within 120 days of notice by the Contractor to the County of that default.

27.5 Bankruptcy of Contractor. If the Contractor is insolvent, is dissolved, files for bankruptcy, is adjudged bankrupt, or makes a general assignment for the benefit of creditors, or if a special receiver is appointed or a receiver is appointed for the benefit of its creditors, that event could impair or frustrate the Contractor's performance of the Contract. Accordingly, it is agreed that on the occurrence of any of those events, the County shall be entitled to request of Contractor or its successor in interest, adequate assurance of future performance in accordance with the terms and conditions of the Contract. Failure of Contractor and Surety to comply with that request within ten (10) calendar days of service on both Contractor and Surety of a written request from the County for assurances shall entitle the County to terminate or suspend the Contract under Section 27.2.1A. The County shall not be bound to the Contract by Contractor's trustee or receiver unless it otherwise agrees to be bound.

27.6 Solid Waste Claims Fund; Waiver of Other Remedies.

27.6.1 Solid Waste Claims Fund. The County shall administer a fund known as the "Solid Waste Claims Fund" from which claims may be paid in accordance with Section 27.6.2.

27.6.2 Penalty Deposited in Claims Fund. In addition to the remedies set forth in Sections 27.2 and 27.3, the County shall impose penalties on Contractor in accordance with this Section, and shall deposit that penalty in escrow in an account designated for that default in a Solid Waste Claims Fund established and maintained by the County for the Term of the Contract. In the event of a default by the Contractor of its obligations under the Contract, the Contractor shall deposit in the account designated for the default on each day the default is not remedied a penalty (a portion of which is liquidated damages to be retained by the County) in the following amounts:

A. For a Class A (i) default: a penalty equal to the (average tons of Waste received under the Contract per day) x (Transportation and Disposal Tipping Fee components then in effect) x (.25), of which 10% shall be retained by the County as liquidated damages.

B. For a Class A(ii)(a) or (b) default: a penalty equal to \$1,000 per day accruing for the first ten defaults in 1992 and the first five defaults in any succeeding calendar year (of which 10% shall be retained by the County as liquidated damages) and, \$5,000 per day for any subsequent defaults (of which 60% shall be retained by the County as liquidated damages).

27.6.3 Claims Fund Administration and Distributions. The Claims Fund shall be administered by the County or by a County-appointed trustee in accordance with rules and regulations approved by the County and the Contractor. The County shall pay the costs of any trustee appointed under this Section.

27.6.4 Waiver of Penalty.

A. Notwithstanding the foregoing, the Director shall excuse the Contractor from payment of all but the liquidated damages portion of the penalty if the Contractor demonstrates to the Director's satisfaction either that no person eligible for reimbursement under subsection (b) has incurred actual damages or that no such person will file a claim against the Claims Fund.

B. In the event of a default by the Contractor of its obligations under the Contract, the County shall establish an account in the Claims Fund for that incident of default into which the Contractor shall deposit the penalty set forth in Section 27.6.1. In addition, the County shall notify all persons affected and entitled to reimbursement from the applicable Claims Fund account of the procedures for submitting that request. The rules and regulations developed and adopted by the County for the Claims Fund shall include but not be limited to procedures for notifying affected persons, claims submission, claims determination and the appeals process.

C. Any Person that (i) delivers Waste to the Contractor at the Transfer Stations in accordance with the requirements of Section 11.1, (ii) incurs actual damages from the Contractor's failure to accept that Waste or operate any Transfer Station in accordance with the Contract, and (iii) at the time it submits a request for reimbursement from the applicable Claims Fund account also submits a release in writing of any and all claims it may have against the County or the Contractor for the damages caused by the Contractor's failure to accept Waste or maintain Transfer Stations in accordance with the Contract, may submit a written request for reimbursement from the applicable Claims Fund account for those damages in accordance with the rules and regulations adopted in accordance with this Section. Reimbursement from the applicable Claims Fund account under this Section, if any, shall be limited to the amount of the claim proven by the Person seeking reimbursement but shall not exceed the amount in the



Claims Fund account that the County or trustee, if applicable, allocates to that Person after the County first receives the liquidated damages due it under Section 27.6.1; under no circumstances shall the Person seeking reimbursement be entitled to recover against other accounts, if any, in the Claims Fund or against the Contractor or County for any damages suffered in excess of the amount of the reimbursement hereunder. Once all claims submitted for a particular default incident are paid from the corresponding Claims Fund account, the County or trustee, if applicable, shall distribute the remaining funds in that account, if any, to the Contractor.

27.7 CPI Adjustment of Claims Fund and Liquidated Damages. The County shall adjust the claims fund and liquidated damage amounts provided in this Article every January, commencing January 1, 2006, to reflect one hundred percent of any percentage point increase or decrease in the Consumer Price Index, rounded to the nearest \$50.

27.8 No Waiver. Nothing in this Article, and no actions taken under this Article shall constitute a waiver or surrender of any rights, remedies, claims or causes of action the County or Contractor may have against each other or the Surety under any other provision of the Contract or any applicable law.

#### Article 28. ARBITRATION, JUDICIAL VENUE AND GOVERNING

28.1 Arbitration for Calculations. Subject to the conditions and limitations of this Article, controversies or claims arising out of or relating to Tipping Fee or other financial calculations under Sections 3.11, 13.4 and 16.4 and Article 9, Article 12, Article 17, Article 22, Article 25 and Article 32 of the Contract shall exclusively be settled by arbitration under the laws of the State of Washington, in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). However, AAA shall not be appointed and shall not serve as administrator of an arbitration under this Contract. All other controversies and claims shall be decided exclusively by the Superior Court of the State of Washington in Clark County, Washington or the U.S. District Court for the Western District of Washington. Any and all disputes arising under the Contract shall be decided under Washington law unless otherwise specified.

28.2 Three Arbitrators. Unless otherwise agreed by the parties, all arbitrated disputes shall be heard and decided by three arbitrators, one arbitrator selected by each party and the third selected by the other two appointed arbitrators.

28.3 Limited Consolidation. There shall be no consolidation of any arbitration between the County and the Contractor with any other arbitration involving, arising from or relating to the Project without prior written approval from the County, acting reasonably.

28.4 Expedited Procedure. In the event that the County determines that the public interest requires a speedy resolution of any arbitrable controversy or claim regardless of the amount, the County may elect to resolve the controversy or claim under the Expedited Procedures of the Commercial Arbitration Rules of the American Arbitration Association;

however, formal discovery shall be permitted regardless of the requirements of those Expedited Procedures.

28.5 Jurisdiction; Venue. The County, Contractor and Surety accept the jurisdiction of the courts of the State of Washington for the purposes of commencing, conducting and enforcing arbitration proceedings and agree to accept notice in writing sent by certified mail addressed to the party of intention to proceed with arbitration and any other proceeding related to the arbitration or its enforcement with the same effect as though personally served in the State of Washington. The decision of the arbitrators shall be final and bind both parties and the Contractor's Surety who hereby agrees to comply with that decision. The parties agree that proper venue for any judicial proceeding to enforce any decision or award made by the arbitrators under this Article shall exclusively be in Clark County, Washington.

28.6 Arbitrator's Fees; Attorneys Fees. In the event any suit, action or arbitration is commenced to enforce any right granted under the Contract, each party shall be responsible for payment of its own attorney's fees and costs unless otherwise indicated in the Contract. Arbitrators' fees shall be divided evenly between the parties.

28.7 Standing. Only the County and the Contractor shall have standing to bring or become a party to arbitration or legal proceedings brought under the Contract.

#### Article 29. SUCCESSORS; ASSIGNMENT

29.1 Contractor Delegation of Contract Obligations. The management and handling of solid waste is a governmental function. The County has executed the Contract with the Contractor who is a qualified Person to perform certain elements of that function and to accomplish the Project. The Contractor may not delegate any Contract duties without the prior written consent of the County. Any delegation of duties will not relieve the contractor or its Surety of any liability and/or obligation to perform under the Contract.

29.2 County Consent. Except for security purposes and as provided in Section 29.3, the Contractor shall not assign any rights or obligations created under or arising from the Contract without the prior written consent of the County. In considering any such delegation or assignment under this Article, the County, acting reasonably, shall after due and deliberate consideration have the discretion to determine the financial security and other qualifications of any successor or assignee.

29.3 Change in Control. Any change in control or the transfer of a controlling interest in the beneficial ownership of the Contractor shall constitute a default under the terms of the Contract, unless the County consents to that transfer. "The transfer of a controlling interest of Contractor" shall include, but is not limited to, the transfer of fifty (50) percent or more of the beneficial ownership of Contractor, unless the County, at Contractor's request, approves that transfer in writing. If the County determines that the new ownership can adequately and faithfully render the service required in the Contract for the remaining Term of the Contract, the

County may elect to execute a novation, allowing the new ownership to assume the rights and duties of the Contract and release the previous ownership of all obligation and liability.

29.4 Binding Effect. The Contract shall be binding on any and all successors or assignees of the Contractor or the County in accordance with this Article.

#### Article 30. GUARANTEES AND WARRANTIES

30.1 Guarantees and Warranties Required by Contract. The Contractor shall provide to the County any and all warranties and guarantees specifically or implicitly required by any of the Contract Documents.

30.2 County as Beneficiary. To the extent permissible under their terms, all warranties or guarantees of equipment, services or materials furnished to Contractor or subcontractors by any supplier shall be deemed to run to the benefit of the County. If any supplier of any equipment, services or material furnishes a guarantee or warranty for a period in excess of one year from the date of acceptance, Contractor's guarantee, as provided in this Article shall be deemed to extend for the same period as to that equipment, service or material.

30.3 Contractor Compliance with Warranties. The Contractor shall fulfill all conditions of any manufacturers' warranties for material or equipment.

30.4 Contractor Repair of Defects. Within a reasonable time, the Contractor shall, at its own expense and without cost to the County or interruption of the Project, correct any known defects in workmanship that exist prior to or during the period of any guarantee provided and any damage caused by those defects or the repairing of those defects.

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

#### Article 31. DISSOLUTION OF THE COUNTY AND SUCCESSOR TO THE COUNTY

In the event that the County is dissolved or its solid waste functions and powers relative to the Contract are taken from the County by legislative act, referendum of the people or by agreement, all of the duties, rights and remedies of the County under the Contract, including but not limited to, all bonds executed for the Contract, shall remain in full force and effect and shall be transferred to either: (1) the successor to the County as specified by the legislative act or referendum by which the County is dissolved; or, (2) if no successor to the County is specified by the relevant legislation or referendum, the State of Washington; however, the Contractor may terminate its obligations under the Contract if the State of Washington does not agree to be bound by the provisions of the Contract.

Article 32. TERM AND EXTENSIONS

32.1 The Term of the Contract shall commence upon the Effective Date and end December 31, 2016 subject to the provisions of this Article.

32.2 Following commencement of operations of the facility improvements set forth in Article 23, this Contract shall be extended from December 31, 2016 to December 31, 2021. County shall give notice to Contractor no later than December 31, 2015 if County believes Contractor has not satisfied its obligations necessary for extension of the Contract through 2021.

32.3 County, acting in its sole and absolute discretion, may extend the Contract for an additional five (5)-year term, from January 1, 2022 to December 31, 2026. Notice by County to extend Contract under this Section 32.3 shall be given no later than December 31, 2020.



Article 33. COUNTY PURCHASE OPTIONS

33.1 County Purchase Option of Transfer Stations. At the end of the Contract Term, if extended through December 31, 2026, County shall have the right to purchase the Transfer Facilities for a purchase price of one dollar (\$1) per Transfer Station ("Purchase Option"). Notice of exercise of this Purchase Option, with payment of the purchase price, shall be delivered to Contractor no later than December 31, 2025. In the event the County does not exercise the Purchase Option within the notice period, the Purchase Option shall expire.



33.2 Rights of Washougal Acknowledged. With respect to the East County Transfer Station, the Purchase Option shall be subject to such rights as may be held by the City of Washougal at the time of the County's exercise of a Purchase Option.

33.3 Transfer of Property. In the event of County exercise of Purchase Option, Contractor shall convey the Transfer Facilities to the County free of any lien, encumbrance or security interest; and, shall deliver to County by January 31, 2027 a bill-of-sale for and statutory warranty deed to each of the Transfer Facilities purchased by the County.

Article 34. GUARANTEE

Waste Connections, Inc., a Delaware Corporation ("WCI"), hereby irrevocably and unconditionally guarantees to the County, full and complete performance of all of the Contractor's obligations to the County under this Contract (the "Guarantee"). This Guarantee includes, but is not limited to, WCI's obligation to satisfy Contractor's obligations under the Contract, subject to all terms and conditions of Contract, including County's obligations hereunder.



Article 35. EXECUTION

This Contract first executed and dated April 11, 1990, is amended and restated this 27<sup>th</sup> day of February, 2006.

**COLUMBIA RESOURCE COMPANY, LP**

[Signature]  
Its General Partner

**WASTE CONNECTIONS, INC.**  
(as to Article 34)

[Signature]  
Its: REGION VP

**CLARK COUNTY**

[Signature] 5/9/06  
Marc Boldt, Chair  
Board of County Commissioners

Attest:

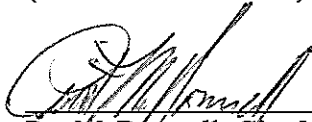
[Signature]  
Louise Richards, Clerk to the Board

Approved as to form only:  
Arthur D. Curtis  
Prosecuting Attorney

[Signature]  
~~E. Bronson Potter~~, P. STEINEN D. JULIO  
SPECIAL Deputy Prosecuting Attorney

CITY OF VANCOUVER  
(As to Section 12.3.3)

Attest:

  
\_\_\_\_\_

Pat McDonnell, City Manager

  
\_\_\_\_\_

R. Lloyd Tyler, City Clerk  
By: Carrie Lewellen, Deputy City Clerk

Approved as to form:

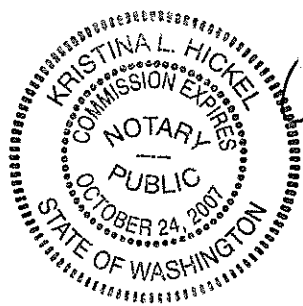
  
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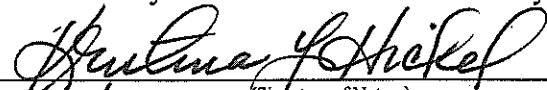
Ted H. Gathe, City Attorney

STATE OF WASHINGTON )  
  )ss  
COUNTY OF CLARK        )

On this 9<sup>TH</sup> day of MARCH, 2006, before me, a Notary Public in and for the State of Washington, personally appeared ERIC MERRILL personally known to me (or proved to me on the basis of satisfactory evidence) to be the General Partner of Columbia Resource Company, L.P., the person who executed the instrument, who on oath stated that he was authorized to execute the instrument, and acknowledged it to be the free and voluntary act and deed of the partnership for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.



  
\_\_\_\_\_

(Signature of Notary)

KRISTINA L HICKEL  
\_\_\_\_\_

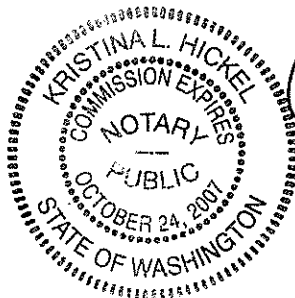
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington,  
residing at VANCOUVER  
My appointment expires OCTOBER 24, 2007

STATE OF WASHINGTON )  
 )ss  
COUNTY OF CLARK )

On this 9<sup>TH</sup> day of MARCH, 2006, before me, a Notary Public in and for the State of Washington, personally appeared ERIC MERRILL personally known to me (or proved to me on the basis of satisfactory evidence) to be the REGION VP of Waste Connections, Inc., the person who executed the instrument, who on oath stated that he was authorized to execute the instrument, and acknowledged it to be the free and voluntary act and deed of the corporation for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.



Kristina L. Hickel  
(Signature of Notary)  
KRISTINA L HICKEL  
(Legibly Print or Stamp Name of Notary)  
Notary public in and for the State of Washington,  
residing at VANCOUVER  
My appointment expires OCTOBER 24, 2007

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