Ordinance No. **2970**

["Beginning July 1, 1998"]

(Amending or Repealing Ordinances)

Amended by Ord. 3542
AN ORDINANCE of the City of Kent, Washington, relating to
public health, safety and general welfare, and the City's
Solid Waste Utility; authorizing settlement of King County
Cause No. 90-2-06373-0; authorizing solid waste handling
contracts between the City and R.S.T. Disposal Co., Inc., a
Washington corporation, and between the City and
Kent-Meridian Disposal Company, a Washington General
Partnership; repealing Sections 6 and 7, Ordinance 2870.

THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON DOES HEREBY
ORDAIN AS FOLLOWS:

Section 1. Recitals and Findings.

1.1 Section 1, Ordinance 2870, is incorporated herein by
this reference.

1.2 By Ordinance 2870, the City of Kent ("City")
reestablished a system of solid waste collection and disposal
the ("Solid Waste Utility") consistent with chapters 35.21 and
35.67 RCW. Ordinance 2870 mandated that garbage be collected
and hauled within the City by City-authorized persons operating
under a contract with, or under the direction of, the City.

1.3 To resolve the issues of City authority over management
of solid waste handling services, the City instituted a
declaratory judgment action ("Action") in King County Cause
No. 90-2-06373-9. The defendants to the Action were the solid
waste collection companies doing business within the City:

1.3.1 R.S.T. DISPOSAL COMPANY, INC., a Washington
corporation, doing business as Tri-Star Disposal; and

1.3.2 KENT-MERIDIAN DISPOSAL COMPANY, a Washington
general partnership, whose partners are Fiorito Enterprises,
Inc., a Washington corporation; and the Rabanco Companies, a
Washington general partnership and Rabanco Ltd., a Washington
corporation, its managing partner, doing business as Kent
Disposal.

1.4 The City, Tri-Star Disposal, and Kent Disposal have
determined to settle the Action, providing in part for:

1.4.1 The Recognition of City authority, through its
Solid Waste Utility, over solid waste handling within the City; and
1.4.2 Contracts, for a period of ten (10) years between the City and Tri-Star Disposal and the City and Kent Disposal for solid waste collection services within the City.

Section 2. Settlement Authorized. The City Attorney, and special assistants to the City Attorney, are authorized to settle the Action consistent with the terms set forth or incorporated by reference herein.

Section 3. Settlement Agreement Authorized. The Mayor, for and on behalf of the City, is authorized to execute a settlement Agreement, substantially in the form attached hereto Exhibit 1 and incorporated herein by this reference.

Section 4. Solid Waste Handling Contracts Authorized. The Mayor, for and on behalf of the City, is authorized to execute solid waste handling contracts, substantially in the form maintained in City Clerk File No. 738, and incorporated herein by this reference.

Section 5. Repealer. Sections 6 and 7, Ordinance 2870 are hereby repealed upon the effective date of the contracts authorized in Section 4 of this ordinance.

Section 6. Ratification. Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and confirmed.

Section 7. Effective Date. This ordinance shall take effect and be in force thirty (30) days from and after its passage, approval and publication as provided by law.

DAN KELLEHER, MAYOR

ATTEST:

BRENDA JACOBER, ACTING CITY CLERK

APPROVED AS TO FORM:

ROGER A. LUBOVICH, CITY ATTORNEY
PASSED the 19 day of March, 1991.
APPROVED the 20 day of March, 1991.
PUBLISHED the 22 day of March, 1991.

I hereby certify that this is a true copy of Ordinance No. 2910, passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

Brenda J. Jacober, Acting City Clerk

PSD-459
AGREEMENT


RECITALS

A. Over a period of years, both Tri-Star and Kent-Meridian Disposal, or their predecessors in interest, have provided garbage, refuse collection and disposal and/or recycling services ("Disposal Services"), in Kent. At certain times such Disposal Services were provided pursuant to Certificates of Public Convenience and Necessity issued by the Washington Utilities and Transportation Commission (the "WUTC"). At other times, Kent-Meridian Disposal, either directly or through affiliates and predecessors in interest, provided Disposal Services to Kent pursuant to agreements entered into directly with Kent.

B. Disposal Services were performed within the city limits of Kent as it existed as of June 12, 1957, as is legally defined in Appendix A attached hereto and incorporated herein by reference (the "Core Areas"), as well as in those additional areas of Kent which from time to time from June 12, 1957, have been annexed into and as of the date hereof are now included as a part of Kent. The Annexed Areas are legally defined in Appendix B attached hereto and incorporated herein by reference (the "Annexed Areas").

C. During the period June 12, 1957 to the date hereof, Kent annexed certain areas into the City. Such annexations caused the Certificates of Public Convenience and Necessity of Kent-Meridian and Tri-Star and/or their predecessors to be cancelled in the annexed areas under RCW 35.13.280 from June 12, 1957 to 1969 and under RCW 35A.14.900 from 1969 to the date hereof.

D. Both Kent-Meridian's predecessor, Rabanco Companies, and Tri-Star applied to the WUTC for Certificate of Public Convenience and Necessity to serve the City of Kent, including areas annexed from and after June 12, 1957. On or about

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July 31, 1989, the WUTC denied the application of Rabanco Companies and granted the application of Tri-Star. The authority of Rabanco to serve the Core Areas was not disturbed.

E. Pursuant to a certain agreement dated September 29, 1989, as later extended, (the "Kent-Meridian Disposal Agreement"), Kent granted Kent-Meridian Disposal the nonexclusive right to provide Disposal Services to both "Residential Customers" (as hereafter defined) and "Commercial Customers" (as hereafter defined) in both the Core Areas and the Annexed Areas of Kent. Pursuant to the Kent-Meridian Disposal Agreement, Kent-Meridian Disposal agreed to indemnify Kent in the event it was determined that Kent did not have the authority to reestablish its solid waste system or to contract with Kent-Meridian Disposal.

F. Both Kent-Meridian Disposal and Tri-Star have continued to provide Disposal Services to both Residential Customers and Commercial Customers in both the Core Areas and the Annexed Areas of Kent.

G. On March 28, 1990, Kent filed a declaratory action in the Superior Court of King County, Washington, Cause No. 90-2-06373-9 (the "Declaratory Action"), naming R.S.T. Disposal Company, Kent-Meridian Disposal Company, Fiorito Enterprises, Inc., the Rabanco Companies, and Rabanco, Ltd., as parties, seeking a resolution of the issues regarding the rights of the parties to provide Disposal Services in Kent. Tri-Star has filed both counter and cross claims in the Declaratory Action.

H. The purpose of this Agreement is to set forth the terms of a proposal ("Proposal") which has been developed by the parties regarding the provision of Disposal Services in Kent and other related matters and to outline the conditions present to the implementation of such Proposal, including the dismissal of the Declaratory Action and the entry of mutual releases of all existing claims.

NOW, THEREFORE, subject to and in accordance with the terms and conditions set forth herein, the parties hereto agree as follows:

AGREEMENTS:

1. RESIDENTIAL DISPOSAL SERVICES

Kent-Meridian Disposal shall be granted by Kent the exclusive contractual right and authority to provide Disposal Services for Residential Customers in both the Core Areas and
the Annexed Areas of Kent for a period of ten (10) years commencing April 1, 1991. (As used herein, the term "Residential Customers" shall mean and include only those customers residing in single family homes, mobile homes, duplexes, and trailer parks; provided, however, that Residential Customers shall not include trailer parks utilizing containers or drop boxes with a capacity of one (1) yard or longer.) Kent shall control all aspects of the provision of Disposal Services to Residential Customers by Kent-Meridian Disposal. The City may authorize, permit, or contract with the WUTC to set and modify rates and/or tariffs charged by Kent-Meridian Disposal under its WUTC Certificate of Public convenience and Necessity which rates shall apply within Kent. Kent shall have the right to impose franchise fees and/or taxes upon Kent-Meridian Disposal's provision of Disposal Services to Residential Customers. Tri-Star shall remove all of its Containers from Residential Customers and shall during the term of this agreement no longer provide any Disposal Services to the Residential Customers.

2. COMMERCIAL DISPOSAL SERVICES

(a) Commercial Disposal Services to be Provided by Kent-Meridian Disposal. Kent-Meridian Disposal shall be granted by Kent the exclusive contractual right and authority to provide Disposal Services to commercial Customers located within the Core Areas for a period of ten (10) years commencing April 1, 1991. (As used herein, the term "Commercial Customers" shall mean and include all those customers which are not included within the definition of "Residential Customers" set forth in Section 1 hereof.) Kent shall control all aspects of the provision of Disposal Services to commercial customers by Kent-Meridian Disposal, except that the City shall authorize, permit, or contract with the WUTC to set and modify rates and/or tariffs charged by Kent-Meridian Disposal under its WUTC Certificate of Public Convenience and Necessity which rates shall apply within the City of Kent. Kent shall have the right to impose franchise fees and/or other taxes upon Kent-Meridian Disposal's provision of Disposal Services to commercial Customers, and to provide input to the WUTC as to the rates and/or tariffs to be charged. Kent-Meridian Disposal shall remove all of its waste disposal containers ("Containers"), from the Annexed Areas and shall during the term of this agreement no longer provide any Disposal Services to Commercial Customers located in the Annexed Areas.

(b) Commercial Disposal Services to be Provided by Tri-Star. Tri-Star shall be granted by Kent the exclusive contractual right and authority to provide Disposal Services to Commercial Customers located within the Annexed Areas for a
period of ten (10) years commencing April 1, 1991. Kent shall control all aspects of the provision of Disposal Services to Commercial Customers by Tri-Star, except that the City shall authorize, permit, or contract with the WUTC to set and modify rates and/or tariffs under its WUTC Certificate of Public Convenience and Necessity which rates shall apply within the City of Kent. Kent shall have the right to impose franchise fees and/or taxes upon Tri-Star's provision of Disposal Services to Commercial Customers, and to provide input to the WUTC as to the rates and/or tariffs to be charged. Tri-Star shall remove all of its Containers from the Core Areas and shall during the term of this agreement no longer provide any Disposal Services to the Commercial Customers located in the Core Areas.

3. AGREEMENT TO THE PROPOSAL

By execution of this Agreement, each of the parties hereby acknowledges that the Proposal set forth herein is acceptable to it and that, subject to the satisfaction of the conditions precedent set forth in Section 5 hereto, they will proceed in good faith and with due diligence to take the following actions:

(a) Kent-Meridian Disposal and/or the Rabanco companies, a Washington partnership, agree to dismiss all claims against Tri-Star and/or Kent under the Declaratory Judgment Action, King County Cause No. 90-2-06373-9, and to issue a full and final release of Tri-Star and Kent of all actions or matters relating to Disposal Services previously provided in the City of Kent up to the date of this agreement and to take such further action as is necessary to implement this agreement.

(b) Rabanco Ltd. agrees to authorize disbursement to R.S.T. Disposal co., Inc. of the cash bond and interest filed in King County Cause No. 87-2-08197-4 and to dismiss such action with prejudice. Rabanco Ltd. agrees to dismiss with prejudice its action for Judicial Review in King County Cause No. 90-2-00776-6.

(c) Tri-Star agrees to dismiss all claims against Kent-Meridian Disposal and/or the Rabanco Companies and/or Rabanco and/or Kent under the Declaratory Judgment Action, King County Cause No. 90-2-06373-9 and to issue a full and final release of Kent-Meridian Disposal and/or the Rabanco Companies and/or Rabanco and/or Kent of all actions or matters relating to Disposal Services previously provided in the City of Kent up to the date of this agreement and to take such further action as is necessary to implement this agreement. Tri-Star agrees to dismiss its WUTC complaint against Seattle Disposal Co., Rabanco Ltd., et al., d/b/a Rabanco Companies, No. TG 900331.
(d) Kent agrees to dismiss all claims against Kent-Meridian Disposal and/or the Rabanco Companies and/or Rabanco and/or Tri-Star under the Declaratory Judgment Action, King County Cause No. 90-2-06373-9 and to release Kent-Meridian Disposal and/or the Rabanco Companies and/or Rabanco of their indemnification obligations under the terms of any prior or existing Contract Regarding Solid Waste Handling and to otherwise take such action as is necessary to implement this agreement.

4. ACKNOWLEDGMENTS REGARDING KENT'S AUTHORITY AND STATUS OF WUTC PERMITS

By execution of this Agreement, but subject to the satisfaction of the conditions precedent set forth in Section 5, the parties to this Agreement, other than Kent, hereby acknowledge and agree, now and in the future, not to assert or take any action claiming that Kent does not have the authority to reestablish its Solid Waste Utility. However, if Kent should hereafter terminate its Solid Waste Utility or otherwise relinquish authority over solid waste collection services, nothing set forth herein shall be deemed to constitute a waiver by such parties of any existing rights under their respective WUTC Certificates of Public Convenience and Necessity with respect to Kent (as modified consistent herewith).

5. CONDITIONS PRECEDENT

Each of the parties to this Agreement hereby acknowledges and agrees that the respective obligations and rights of the parties hereunder are subject to the satisfaction in full of the following conditions precedent:

(i) The execution by Kent with both Kent-Meridian Disposal and Tri-Star of agreements regulating solid waste handling and granting such entities the right and authority to provide Disposal Services in and to Kent in accordance with the provisions of Sections 1 and 2 of this Agreement;

(ii) The receipt of all necessary approvals required from the WUTC to implement the Proposal, as applicable;

(iii) The execution by each of the parties hereto of releases in accordance with the provisions of Section 4 of this Agreement; and

(iv) The dismissal of the Declaratory Action and King County Causes 87-2-08197-4 and 90-2-00776-6 by all of the parties to the actions.
(v) The exchange among Kent-Meridian Disposal, Tri-Star and others of Disposal Service businesses in Federal Way and Tukwila areas pursuant to separate agreement(s) among such persons.

6. RIGHTS OF CERTIFIED HAULER IN FUTURE ANNEXED AREA

If the City of Kent during the term of the agreements granted in accordance with the provisions of Sections 1 and 2 of this Agreement annexes any additional areas ("New Annexed Areas"), the parties agree that the New Annexed Areas shall not be included within the scope of this Agreement until the City of Kent shall have complied with all of its obligations pursuant to RCW 35A.14.900.

7. GENERAL

(a) Final Agreement. This Agreement constitutes the final agreement among the parties and supersedes all prior arrangements and understandings between the parties with respect to the subject matter hereof, except as provided in those separate agreements between Kent and Tri-Star, and Kent and Kent-Meridian Disposal pursuant to 5(i).

(b) Notices. All notices, requests, consents and other communications provided for herein to any party shall be deemed to be sufficient if contained in a written instrument either (i) delivered in person, or (ii) sent by first-class registered or certified mail, postage prepaid, addressed to the party at the address set forth below such party's signature to this Agreement, or such other address as may hereafter be designated in writing by the party.

(c) Modifications. The terms of this Agreement may not be modified or amended, nor may any of the provisions hereof be waived, except pursuant to the written consent of all parties hereto.

(d) Headings. The headings of the various Sections of this Agreement have been inserted for convenience of reference only and shall not be deemed to be a part of this Agreement.

(e) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

(f) Benefit. This Agreement shall be binding upon and inure to the benefit of the respective legal representatives, heirs, successors and assigns of the parties hereto.
(g) Attorney's Fees and Interest. In any suit or action brought to enforce this Agreement, or to obtain an adjudication, declaratory or otherwise, of rights hereunder, the losing party shall pay to the prevailing party reasonable attorney's fees and all other costs and expenses which may be incurred by the prevailing party in such action.

(h) Venue. The parties agree the venue of any suit or action between the parties arising out of this Agreement shall be in King County, Washington.

(i) Further Actions. Each party hereby agrees that it shall execute and deliver such further documents and take such other actions as are reasonably necessary and appropriate to effectuate the terms and intent of this Proposal.

(j) Recycling Contract. The parties all agree that this Agreement does not alter or amend in any manner the existing Waste Reduction and Collection of Source Separated Recyclable Materials Contract between Kent and Kent-Meridian Disposal, or its predecessor relating to Residential Recycling. All Commercial Recycling shall be governed by the agreements to be entered into in accordance with Sections 1 and 2 of this agreement.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the _____ day of March, 1991.

Kent-Meridian Disposal Company,
a Washington General Partnership

By Rabanco Companies, General Partner
By Rabanco, Ltd., Managing Partner

By: ________________
Warren J. Razore, President

By Fiorito Enterprises, Inc., General Partner

By: ________________
J. Dan Fiorito, Jr., President

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R.S.T. Disposal Co., Inc.
d/b/a Tri-Star Disposal

By: ____________________________
    President

The City of Kent

By: ____________________________
    Dan Kelleher, Mayor

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GARBAGE AND REFUSE COLLECTION, DISPOSAL AND RECYCLING AGREEMENT
AND SPECIAL PROVISIONS

DIVISION I
GARBAGE AND REFUSE COLLECTION, DISPOSAL, COMMERCIAL RECYCLING AND GENERAL
CONTRACT PROVISIONS (SCHEDULE I, IA, AND IB OF PROPOSAL).

WHEREAS, it is essential that such residential, commercial and industrial
solid waste be reduced and properly collected, recycled, and disposed of in
order to avoid adverse environmental and social effects, and
WHEREAS, the Contractor is qualified to provide solid waste collection and
processing services, including distribution of recycled materials to end
markets, in accordance with the terms of this agreement; and
WHEREAS, the Contractor agrees for the consideration stated, to collect
and dispose of all garbage and refuse within the City of Kent in accordance
with this Contract.

IN CONSIDERATION OF THE MUTUAL COVENANTS, AGREEMENTS, AND PROMISES HEREin
CONTAINED, THE CITY AND THE CONTRACTOR HEREBY AGREE AS FOLLOWS:

1. General Description

1.1 The work to be performed consists of the collection of all solid
waste or garbage refuse accumulated in the City of Kent and disposal thereof.
The work excludes all dangerous wastes or "hazardous waste" as defined in RCW
70.105 and RCW 70.105A.

1.2 The Contractor shall report in writing to the Director of Public
Works any observed violation of the City's ordinance providing for and
regulating the collection, removal and disposal of garbage and refuse. The
Director of Public Works shall cause an investigation of the report and, upon
receipt of the findings, take appropriate action to obtain compliance with
said ordinance.

1.3 It is the intent of this Contract that the Contractor shall
supply all labor, equipment, facilities, financial guarantees, liability
insurances and lands necessary to provide service as described in said
Contract.

2. Duration of Contract

2.1 The terms of this Contract shall be for a period of five (5)
years commencing 3 months after the Notice to Proceed on the Contract but not
earlier than January 1, 1987 and terminating after 5 years but not earlier than December 31, 1991. The City of Kent reserves the right to extend the Contract for additional periods not to exceed a total of five (5) years.

2.2 The actual Contract dates as determined at the time of Contract award is _____________ to ______________.

3. Exclusive Right

3.1 Subject to any agreement between the City of Kent and King County, the City gives and grants to Contractor the exclusive right to collect, haul and transport all garbage and refuse as defined in Kent City Ordinance 2365, as amended, within the City of Kent for disposal, for the term of this agreement and in accordance with the provisions hereof. Provided, however, that any areas within the City of Kent heretofore or hereafter annexed which are subject to a franchise or permit held by third parties pursuant to RCW 33.13.280 are hereby excluded from the terms of this Contract until the franchise or permit has expired.

3.2 If, during the life of this Contract, additional territory in any amount whatsoever is acquired by the City through annexation, the City reserves the right, upon ten (10) days written notice to the Contractor, to order the Contractor to make collections in such annexed area in accordance with all provisions of these specifications and at the bid unit price set forth herein.

3.3 Nothing in this Section shall be construed to prohibit the City, its Agents, or Contractors from using the collected materials for energy generation, resource recovery salvage (e.g., pick and sort) and recycling. With the exception of the City's Contractors and agents, no other use of, or scavenging of, collected materials is permitted without the permission of the City of Kent.

3.4 An exception to the exclusive right in 3.3 above is the City of Kent's recycling program. Waste generators within the City maintain the right to continue to recycle garbage and refuse. Should the City elect to enter into a separate Recycling Contract the Recycling Contract holder maintains the right to collect, haul and transport recyclable materials and commodities placed in containers and intended for recycling with the City of Kent's recycling program. Therefore a portion of the current waste stream may be diverted from the Contractor.
4. Terms

4.1 The meaning of terms and words herein shall be as defined in Kent City Code Chapter 7.08. See Exhibit "G" attached hereto.

4.2 Definitions of capacity savings, collections savings, disposal savings, energy recovery, environmental savings, functional standards, landfill, solid waste, tipping fee, volume reduction, waste recycling, and waste reduction referred to in this Contract and in any agreement with King County are defined in the Washington State Solid Waste Management Recovery and Recycling Act, Chapter 70.95 RCW and regulations promulgated by the Department of Ecology at Chapter 173-304 WAC, and are incorporated by reference herein.

4.3 In the event that definitions contained in Division I, II, and III conflict with Kent City Code Chapter 7.08, the provisions of Kent City Code Chapter 7.08 shall apply.

5. Nonassignment of the Contract

5.1 The Contract or any interest therein or part thereof, shall not be assigned, whether by operation of law or otherwise, nor shall any part thereof be subContracted without the prior written consent of the City of Kent first having been obtained which consent shall not be unreasonably withheld. The City reserves the right to cancel or terminate the Contract at any time in case the Contractor fails to obtain City approval. City approval may be conditioned upon Contractor and/or purchaser supplying an appropriate bond to cover the change in circumstances. The City reserves the right to reject the use of any proposed Subcontractor at any time during the terms of the Contract without affecting the Contract cost.

6. Breach of Contract

6.1 If Contractor shall abandon or breach or default on material terms and conditions of its Contract or fail to fully and promptly comply with any or all its obligations or shall fail to give reason satisfactory to the City for noncompliance, the City may then declare the contract in default and require that the Contractor discontinue any further service thereunder. A copy of the City's notice shall be sent to the Contractor and its surety on its performance bond. Upon receipt of such notice, Contractor agrees that it will promptly discontinue the work, whereupon the surety may, at its option to be exercised within ten (10) days from such written notice, assume the work which the City has ordered discontinued and proceed to perform same, with a firm or Contractor acceptable to the City, at the surety's sole cost and
expense, in compliance with the terms and conditions of this Contract and all documents incorporated herein. Pending consideration by the surety of said option to assume the work, the City may examine and/or audit all of the Contractor's books and records, take possession of all Contractor's equipment, vehicles and facilities necessary to perform the Contract and employ such force as it may deem advisable to continue the work; and the cost of all labor and materials necessary for such work shall be paid by the City out of the monies due or to become due the Contractor, if any, or otherwise charge same to the Contractor in full.

6.2 In the event that the surety fails to exercise its option within the ten (10) day period, or any part thereof, either by day labor, or by reletting the same, the City shall have the right to take immediate possession of and use any of the books and records, vehicles, equipment, facilities and property of every kind and nature provided by the Contractor for the work and to procure other vehicles, equipment and facilities necessary for the completion of the same, and to charge same to the Contractor and/or its surety, together with all reasonable costs incidental thereto. In such event, however, the Contractor shall be entitled to receive reasonable compensation for his material and property so taken. The City shall be entitled to recover from the Contractor and its surety as damages all expenses incurred, including reasonable expenses and attorney fees, together with such additional sums as may be necessary to complete the work, together with any further damage sustained or to be sustained by the City. The City may complete the work or any part thereof, either by employing such force as it may deem advisable to continue the work, or by reletting the same. The cost of all labor and materials necessary for such work shall be paid by the City out of the monies due or to become due to Contractor, if any, or otherwise charge same to the Contractor and/or its surety, together with all reasonable costs incidental thereto. In such event, however, the Contractor shall be entitled to receive reasonable compensation for his material and property so taken. The City shall be entitled to recover from the Contractor and its surety as damages all expenses incurred, including reasonable expenses and attorney fees, together with such additional sums as may be necessary to complete the work, together with any further damage sustained or to be sustained by the City.

6.3 Notwithstanding the provisions of this Section, a delay or interruption in the performance of all or any part of the Contract resulting
from causes beyond the Contractor's control, shall not alone be deemed to be a default of the Contract and the rights and remedies of the City provided for herein shall be inapplicable. The City may, at its sole discretion, determine whether a labor dispute resulting in the delay or interruption of Contract service shall be a default of the Contract. In all events, the City shall have the right to take immediate possession of and use any of all books and records, and all vehicles, equipment, facilities and property of every kind and nature provided by the Contractor for the work and to procure other vehicles, equipment and facilities necessary for the completion of the same.

7. **Hold Harmless**

7.1 The Contractor shall defend, indemnify, and save the City, its elected officials, officers, agents, servants and employees harmless from and against any and all loss, damage, actions, claims, suits, judgments and liability in connection with loss of life, personal injury (including injury to Contractor's employees or agents) and/or damage to property arising from or out of any occurrence, conduct or operation of or by Contractor under this Contract. Contractor shall defend all such actions and shall also pay all costs, expenses and reasonable attorney fees that may be incurred or paid by City in enforcing any and all terms and covenants hereunder. Provided the terms of this Section shall not apply in the case of the City's sole negligence.

8. **Damage to Property**

8.1 If any City property of any kind is damaged by reason of the Contractor's operations under this Contract, he shall repair or replace same after being notified in writing of the damages or, failing to do so promptly, the City may cause repairs or replacements to be made and the cost of doing so shall be deducted from the Contractor's monthly payment from the City.

8.2 The City shall not be liable to the Contractor for any loss or damage, other than any loss or damage occurring directly and solely as a result of the sole negligence of the City, its elected officials, officers, employees or agents.

8.3 The Contractor shall not be liable to the City or any other person for the damage done to privately owned garbage cans other than loss or damage occurring directly as a result of negligence or carelessness of the Contractor, his employee or agents.
9. Liability Insurance

9.1 The Contractor awarded the Hauling Contract for garbage and refuse shall provide and maintain in full force and effect during the entire term of this Contract, or any renewal thereof a policy providing for a limit of not less than $1,000,000 combined single limit bodily injury and property damage liability, including auto liability and Contractors liability. Contractor must also provide evidence of workers compensation insurance.

9.2 Certificate of such insurance shall be filed with the City Clerk and shall provide for thirty (30) days' written notice to the City of any material change, cancellations, or lapse of such policy.

9.3 The Contractor shall furnish the City with a certificate of insurance naming the City, its elected and appointed officials, agents and employees, as additional insureds with respect to the Contract.

9.4 In the event that the City of Kent awards other Contract elements to a hauler, no additional liability Insurance amount will be required.

9.5 In the event that the City of Kent awards the Recycling Center component separately with or without the Curbside Recycling component, the liability insurance shall be in accordance with the above and shall be for a limit of not less than $___________.

10. Performance Bond

10.1 Before the Contract between the hauling Contractor for garbage and refuse and the City shall be valid or binding against the City of Kent, the Contractor shall furnish to the City a proper performance bond, to be approved by the City Attorney, conditioned that the Contractor shall faithfully perform all the provisions and terms of the Contract and related documents and pay all laborers, mechanics, and Subcontractors and material men, and all persons who shall supply such Contractor with provisions and supplies for the carrying on of such work; which bond shall be signed by the Contractor and two or more good and sufficient sureties or with a surety company as surety, and shall be in the amount of five hundred thousand ($500,000) dollars which bond shall at all times be kept in full force and effect.

10.2 In the event that the City of Kent awards other Contract elements to a hauler, no additional performance bond amount will be required.
10.3 In the event that the City of Kent awards the Recycling Center component separately, with or without the curbside component, the performance bond amount shall be $_.

11. Payment of Claims

11.1 Contractor agrees and covenants to pay promptly as they become due all just claims for labor, supplies and materials purchased for or furnished to Contractor in the execution of this Contract, and further agrees to comply with all the provisions of Federal, State, County and City laws and ordinances affecting, directly or indirectly the subject matter of this Contract.

11.2 The Contractor shall provide for the prompt and efficient handling of all complaints and claims arising out of the operations of the Contractor under this Agreement. The Contractor agrees that all such complaints and claims, whether processed by the Contractor or Contractor's insurer, either directly or by means of an agent, will be administered to and resolved by a person with a permanent office in the Kent-Seattle area.

12. Taxes, Permits and Fees

12.1 The Contractor shall obtain at its own expense all permits and licenses required by the City or any other governmental authority and maintain the same in full force and effect during the term of this agreement. The Contractor shall pay promptly and before delinquency any and all taxes, fees and charges of every type required by law and upon request by the City, furnish evidence of such timely payment.

12.2 If during the term of this agreement the City levies or imposes a business and occupation tax which has significant affect on the income, operations or revenues of the Contractor, the City agrees to negotiate an adjustment in rates based upon complete documentation and analysis by the Contractor.

13. Contractor to Make Examination

13.1 The Contractor shall make his own examination, investigation and research regarding the proper method of doing the work, and all conditions affecting the work to be done, and the labor, equipment and materials needed thereon, and the quantity of the work to be performed. The Contractor agrees that he has satisfied himself by his own investigation and research regarding all of such conditions, and that his conclusion to enter into this Contract is based upon such investigation and research, and that he shall make no claim.
against the City because of any of the estimates, statements or interpretations made by any officer or agent of the City which may prove to be in any respect erroneous.

13.2 The Contractor assumes the risk of all conditions foreseen or unforeseen and agrees to continue the work without additional compensation under whatever circumstances which may develop other than as herein provided.

13.3 The Contractor should visit the City to ascertain by inspection pertinent local conditions such as locations, character and accessibility of the garbage, refuse and recycled materials, availability of facilities, location and character of existing work within or adjacent thereto, and labor conditions.

14. Disagreements

14.1 To prevent all disputes or litigation, it is understood that all questions arising as to the proper performance and the amount of work to be paid for under this Contract shall be subject to the decision of the Director of Public Works.

15. Local Improvements

15.1 The Department of Public Works reserves the right to construct any improvement or to permit any such construction in any street or alley in such manner as the corporate authorities may direct, which may have the effect for a time of preventing the Contractor from traveling his accustomed route or routes for collection. The Contractor shall, however, by whatever method selected, continue to collect the garbage and rubbish to the same extent as though no interference existed upon the streets or alleys formerly traversed. This shall be done without extra cost to the City of Kent.

16. Contractor's Office:

16.1 The Contractor shall be required to maintain an office in a location as approved by the Public Works Director provided with telephones and such attendants as may be necessary to take care of requests for service, complaints, orders for special service or instructions from the Public Works Director. This office shall be in operation between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday. The Contractor shall provide a telephone response machine with a recording, which shall be in operation when the telephone is not open. The recording shall stipulate the days and hours the Contractor is open for business.
17. **Contractor's Records:**

17.1 All records shall be submitted and maintained in a format approved by the City. Contractor shall at all times cooperate with the City. Any contract made pursuant to the enclosed bid documents and/or separately negotiated is subject to the City of Kent's right to inspect and/or audit the contractor's books and records at any reasonable time and place as may be designated by the City of Kent for any contract-related purpose, including but not limited to negotiations in the event of a contract dispute, contract modifications, bookkeeping and accounting verification, verification of haul routes and tonnage recycled or disposed of, contractor and City of Kent claims, and litigation. This right shall accrue to agents, officials, and employees of the City of Kent and King County in the event that the City of Kent executes an Agreement with King County or otherwise commits its solid waste to the control of King County. This provision extends to any subcontractors hired by the contractor or entity that has performed work in connection with or related to these services. Contractor shall provide for this clause to be included in its contracts with all subcontractors. Contractors and subcontractors shall also maintain an adequate system of books and records capable of review, financial audit, and copying in order for the City of Kent to examine overhead costs, including and accuracy of such records. Provided however, that the City shall not disclose information which may reasonably be construed to be confidential and if divulged may seriously jeopardize the Contractor's competitive position.

17.2 The Contractor shall furnish quarterly reports, within ten (10) days of the end of each calendar quarter, to the City showing the number of loads of garbage and refuse hauled by him to the disposal site during the previous quarter, the approximate number of cubic yards and tonnage per load and the total number of cubic yards and tonnage of garbage and refuse hauled to the disposal site for each month. Said reports shall show separate figures for both residential and commercial customers. A separate record also showing cubic yards and tonnage shall be kept and reported to the City for recycled materials. See recycling Section Division II of this Contract for recycle center requirements.

17.3 Contractor shall keep records of waste collected and charges therefor. Copies of dump receipts for customers shall be maintained by the Contractor and provided to the City upon request. The original dump receipt
shall remain in the Contractor's office as part of his permanent records.

17.4 The Contractor shall outline, on maps furnished by the City, the daily collection schedule for both residential and commercial. The Contractor shall give not less than one week (7 days) written notice to the Director of Public Works or his designee of any change in the boundary of any route or day of collection and the Contractor shall be responsible for notifying customers of any changes. Prior to any changes in the boundary of any residential route the Contractor shall provide new maps to the City.

17.5 The Contractor shall provide the City with a customer count by route and type of customer.

17.6 A daily log of complaints shall be maintained. A copy of the complaint log, construction box records and daily truck logs shall be submitted to the City within three (3) working days after the end of each month for the preceding month.

17.7 The Contractor shall provide immediate access to the City and King County or any of their duly authorized representatives to review any books, documents, papers and records which are directly pertinent to this Contract for the purpose of making an audit, other examination and preparing excerpts and transcriptions.

18. Contractor's Employees:

18.1 The Contractor shall require all employees to be courteous at all times; attired in clean uniforms and safety shoes (collection personnel); shall not use loud or profane language; and shall do their work as quietly as possible. Specific questions as to rates or changes in existing service should be referred to the appropriate offices and not handled by collection personnel.

18.2 Employees, in collecting garbage and refuse shall follow the regular walks for pedestrians while on private property, returning to the street or alley after replacing the empty containers. They shall also replace all container covers and close all gates opened by them.

18.3 Employees shall not trespass or loiter, cross property to adjoining premises, or meddle with property which does not concern them.

18.4 All employees shall be competent and skilled in the performance of the work to which they may be assigned. Failure or delay in the performance of this Contract due to the Contractor's inability to obtain employees of the number and skill required shall constitute a default of the
Contract. Should an employee be deemed unsatisfactory by the City, such judgment shall be related in writing to the Contractor and he will have 30 days to correct the situation to the City's satisfaction by counsel or termination; provided this paragraph does not interfere with any union Contract between Contractor and said employee.

19. Service to New Customers:

19.1 Contractor shall provide service to new customers within one week. If the Contractor is unable to provide the size of container ordered by the customer within one week then the Contractor may temporarily provide the customer with any size container; provided, however, the service provided to the customer and the rate charged to the City shall be equivalent to the service and rate for the container ordered. Also see Section 3 for information regarding annexed areas.

19.2 Temporary construction boxes shall be delivered within two weeks.

20. Collection:

20.1 Residential pickups shall be made Monday through Friday from 7:00 a.m. to 4:00 p.m. unless otherwise approved by the City in writing.

20.2 Collections may take place at any time on routes consisting of industrial and commercial customers only, provided that the Contractor's operation does not disturb residential areas or facilities. Should residential uses be found along with commercial the collection times shall be limited to 4:00 a.m. to 4:00 p.m. time limits. The City of Kent Department of Public Works shall make the final decision on the suitability of the extended collection hours (4:00 a.m. to 4:00 p.m.) for each route or location. The Department of Public Works may reverse the decision with regard to the suitability of the collection hours at any time and such decision shall take effect 2 weeks after written notice is given to the Contractor.

20.3 The Contractor shall make one collection each week at all places of residence. Residential collection shall be at curbside with the exception of customers with physical disabilities or constraints as provided for in Section C2 of Exhibit 1. Prior to any change in day or time of pickup on residential routes, the Contractor shall notify the City and the customer in writing. Contractor shall tag any refuse receptacle that is not dumped indicating the reason it wasn't serviced. Collection at all other buildings, places of business or premises where solid waste is accumulated or generated shall be made daily if necessary, or as requested. Contractor shall comply
with reasonable requirements of customers with respect to security, location of containers and frequency of removal.

20.4 The Contractor agrees to provide for the removal and disposal of garbage, refuse from City owned and occupied buildings used only for governmental purposes and from the City parks within the City limits of Kent without charge to the City, provided that the same is placed in containers conveniently located for collection. (See Exhibit "2" for facilities listing). The Contractor further agrees to service all City sidewalk cans as often as needed, but at least once a week. (See Exhibit "2" for map). Additions, deletions or changes in collection from City owned buildings, parks and street cans shall be subject to change as directed by the City. The City may waive the requirements of this Section under special circumstances.

Holidays

20.5 Contractor shall designate which holidays he will observe and indicate the schedule he will work if the holiday falls on a regular collection day. The Contractor shall notify the City in writing of the change in collection schedule at least four (4) weeks prior to the holiday. The City will arrange to have the schedule published in a newspaper with general circulation within the corporate limits of the City and bill the cost of same to the Contractor. If the Contractor fails to provide the City with Notice, the City may determine the holiday schedule. Deviation from the published schedule shall be subject to liquidated damages provided in Section 26 Liquidated Damages.

Missed Collections and Special Collections

20.6 Adequate provisions shall be made by the Contractor to provide special collections when garbage, refuse and other waste has not been collected during the regularly scheduled trip. Special pickups for missed collections shall be made by the Contractor when ordered by the Director of Public Works or his representative at no cost to the City or the occupant. If the Contractor fails to provide a special pickup within twenty-four (24) hours of notification by the Director of Public Works or his representative the Director of Public Works or his representative may cause the work to be done by City forces.
20.7 In any case the Contractor shall be fined for late special
pickups or for failure to perform special pickups at the following rates:
After 24 hours - $200.00
After 48 hours - $400.00
Each additional 24 hours - $200.00/24 hour period.
The time count shall begin at the time of the notification by the Director of
Public Works or his representative.
20.8 The City shall deduct the full sum of the fine from the payment
due the Contractor.
20.9 Should the City cause the work to be done in accordance with the
above an additional $70.00 charge for each such pickup will be deducted from
the Contractor's payment.
20.10 Garbage left purposely by the Contractor must be tagged to
indicate why it was not picked up. Also see Section 26 Liquidated Damages.
Inclement Weather
20.11 When the City and the Contractor, by mutual consent, determine
that an inclement weather condition exists which may prevent the Contractor
from providing service on a regularly scheduled basis, it shall be the policy
that users have the option of taking the refuse to the King County Transfer
Station during a period of such noncollection. The City shall attempt to
notify users - either by mail or by newspaper, radio or TV - of the "inclement
weather condition" and the established policy above defined.
20.12 In such cases, an adjustment will be made to the customer's
collection fee upon submittal of a dump fee receipt to the City of Kent
Utility Billing Office. The amount of the adjustment will correspond to the
normal rate structure and shall be calculated for the number of days or number
of pickups for which service was provided by the customer and not the
Contractor. The adjustment shall be deducted from the payment to the
Contractor.
20.13 AS AN ALTERNATIVE, customers may retain refuse until the
Contractor is able to reinstate service and Contractor shall pick up all
refuse, equal only to the normal missed pickup, at no additional charge to the
user.
Semi-Annual Cleanup Weeks and Special Events
20.14 The Contractor, when requested to do so, shall provide special
services as required by the City for the City's residential semi-annual
cleanup weeks. See Exhibit "7" for more information. Each January the Contractor shall pick up Christmas trees. Said services shall be provided at no additional cost to the City or its customers.

20.15 Contractor shall also provide collection for special events within the City. Charges for such services shall be determined through negotiations between the City and the Contractor based on the extent of service to be performed.

21. Hauling and Disposal:

21.1 Care shall be taken in the loading and transportation of garbage and refuse so that any leaking, spilling or blowing is prevented. The Contractor shall immediately clean up any spills upon notice from the City.

21.2 The Contractor shall deliver at his cost all garbage, refuse or other waste to the Bow Lake King County Transfer Station or any other site designated by the City or King County pursuant to any agreement between the City of Kent and King County. The Contractor shall furnish written evidence that he has approval and necessary permits to utilize any site chosen for the duration of this Contract. He further agrees that he will operate under applicable rules and regulations that may be a requirement of using said facilities.

21.3 Under no circumstances shall the Contractor deliver to King County disposal sites and facilities any waste that is defined as an identified "hazardous waste" that under the Resource Conservation and Recovery Act, 42 USC Section 69.01-69.87, as amended, or rules and regulations thereunder, or defined as identified "extremely hazardous wastes" or identified "dangerous wastes" under RCW Chapter 70.105 and rules and regulations promulgated thereunder. Violation of this Section shall be cause for immediate termination of the City's agreement with the County. Consequently, the Contractor shall be held strictly liable for any damages caused to the City due to the violation of this Section.

21.4 Termination of the City's agreement shall not terminate the Contractor's strict liability to the County and City for violation of this Section regarding hazardous and dangerous wastes. All waste delivered by the City of Kent through its Contractor to King County disposal sites and facilities shall be in compliance with the Federal Resource Conservation and Recovery Act, as amended; RCW Chapter 70.95; King County Board of Health Rules and Regulations No. VIII, as amended; and all other applicable federal, State,
and local environmental and health related laws, rules, and regulations.

22. Waste Reduction and Recycling:

22.1 Beginning with this Contract, the City of Kent is implementing a Waste Reduction and Recycling Program. Under this new recycling program, the Contractor is encouraged to pick and sort cardboard, waste paper and any other recyclables from commercial customers at their own private transfer station or facility. Sale of the materials removed by the Contractor from the waste stream is the responsibility of the Contractor. Compensation received by the Contractor for said recyclables shall remain with the Contractor. The Contractor shall make a monthly report to the City specifying the tonnage recycled by the Contractor.

22.2 The Contractor should be aware that as part of the initial recycling (Phase I) residential customers will receive incentives (utility credits) to recycle by hauling residential recyclable materials to a designated local recycler. Therefore, the quantity of residential garbage should be decreased.

22.3 As an optional element under this Contract the bidder is to submit a combined or separate bid and proposal for implementing and administering the Residential Coupon Program at a local Recycling Center. See Division II for details and specifications.

22.4 The commercial sector will be offered a rate incentive option for recycling mixed waste paper and other recyclables as designated by the City. The customer may choose to rent (or own) additional containers for the mixed waste paper. These containers shall be located next to the regular garbage and refuse containers. There will be a standard rate for containers going to the transfer station and a recycling rate for containers with recyclables. The standard rate will reflect the cost of collection and disposal and the recycle rate will reflect the cost of collection only. The recycle containers shall be serviced by the Contractor on an on-call basis with a once-a-month pickup minimum.

22.5 The Contractor shall deliver the materials collected from commercial customers to a recycler of his choice. The Contractor shall keep records of recycle container tonnage collected and shall make a monthly report to the City. The number of pickups per customer per month shall be counted and recorded in the same manner as for garbage containers and drop boxes except that the recycle container counts shall be separate from the
non-recycle containers. Also all monies collected by the Contractor for said recycled materials shall belong to the Contractor. The Contractor shall also provide the required additional rental containers as requested by the customers. If it is possible for the customer to reduce the current container size when installing a recycle container, the Contractor shall also supply the chosen size container if the customer is renting.

22.6 The unit Contract bid price for service fee, container rental and delivery charges shall also apply to containers used for recycling. The unit Contract bid price for container size change fee shall cover additional costs involved in removing existing rental containers from the site when an order is placed for a different container size to be used for garbage or recyclables.

22.7 The Contract provisions for garbage service shall also apply to the recycling service. Also Sections 4, 5, 6.1, 7.1, 8.1, 9.2, 10.2, 11.1, 11.2 and 11.3 of Division III regarding residential Curbside Recycling shall apply to commercial mixed waste paper recycling specified herein, unless modified herein.

22.8 Future recycling efforts which may be implemented by the City during the Contract period include the following:

1. Residential curbside collection with optional size toter containers and new tiered or stacked recycling toter containers; composting; and hazardous material sorting.

2. Additional commercial recycling of other lower value recyclables not previously being recycled including hazardous materials.

22.9 These future efforts may or may not involve the regular Contract hauler and the City of Kent reserves the right to separately Contract for such services. The Contractor should be aware that such recycling efforts and stepped rates will likely result in customers, including residential, changing container size.

22.10 As an optional element under this Contract the bidder is to submit a bid for the above mentioned residential Curbside Recycling Program. See Division III for details and specifications.

22.11 If it is determined by the City that additional portion of the garbage and refuse collected, but not recycled, under this Contract should be recycled or changes made in the method of collection, the Contractor agrees to perform the required work unless a separate Contract is utilized. Payments to
the Contractor will be made for all direct costs associated with City originated recycling requests, less any reduction in cost through recycling collection programs that reduce collection costs. If the City and the Contractor cannot agree on the amounts involved, the matter shall be submitted to arbitration under rules administered by the American Arbitration Association. Such Board of Arbitration shall be composed of three (3) arbiters, one selected by the Contractor, one by the City and one mutually acceptable to both parties and the decision of the majority of the Board shall be binding.

22.12 Should the sale or disposal of the recyclable materials, collected under any of the recycling components of this Contract, result in expenditure rather than income, no credit or payment will be due the Contractor by the City and the City will not be liable for said expenditures.

23. Equipment:

23.1 Contractor shall provide an adequate number of vehicles approved by the City for regular collection services of a type that are designed and manufactured for the collection of garbage and refuse and are capable of servicing containers.

23.2 Equipment used outside of the City limits shall also meet with all applicable requirements of other political jurisdictions such as but not limited to King County and City of Seattle (e.g., trucks hauling in the County to a transfer station or landfill).

23.3 All equipment shall be approved by the City of Kent through a Contracted representative and identified as a Contracted vehicle disposing waste under Contract to the City of Kent. The Contractor agrees to comply with all state load limits and Washington State Minimum Functional Standards for transporting solid waste.

23.4 Vehicles used in collection and hauling shall be licensed and approved for safe operation by all appropriate State agencies. Verification of title, license and safety certification shall be provided to the City prior to the vehicles use in collection and hauling within the City. Equipment is subject to periodic inspection by the City and King County.

Collection Receptacles

23.5 Contractor shall provide 90 gallon "mobile toters" to residential customers at no additional costs. All "mobile toters" shall be the same color. The "mobile toters" shall remain the property of the
Contractor. The Contractor shall replace the "mobile toters" upon request and shall bear all costs to do so. It shall be the responsibility of the Contractor to provide and pursue individual remedy against party or parties deemed responsible for said replacements by the Contractor and shall be at the Contractor's option.

23.6 Optional 60 gallon "mobile toters" may be required for the operation of the Curbside Recycling Program. See Section 10.3, of Division III. The 60 gallon "mobile toters" shall meet with the requirements specified herein for the 90 gallon "mobile toters."

23.7 The City and the residential customers shall not be liable to the Contractor for damage done to the "mobile toters" other than loss or damage occurring directly as a result of negligence, carelessness or as a result of violation of the restrictions of Kent Ordinance 2365, as amended, by the customer or the sole negligence of the City, its employees, or agents. Nothing contained herein shall prohibit any customers from providing their own containers in lieu of using the "mobile toters" provided by the Contractor provided said container is compatible with Contractor's equipment.

23.8 When any commercial establishment elects to use containers for the storage and collection of garbage and rubbish in lieu of garbage cans, the location of said containers shall be that agreed upon between the Contractor and the customer, provided, however, that the location shall be consistent with provisions of all City ordinances and as a minimum will be so placed so as to avoid any hazard to the public both while on the customers premises and while being serviced by the Contractor.

Maintenance

23.9 Collection vehicles shall be kept in good repair, appearance and sanitary condition at all times. All vehicles used in collection and hauling shall be thoroughly washed and cleaned in a manner satisfactory to the City of Kent once every week. Each vehicle shall have the Contractor's name and phone number and an identifying number clearly visible on each side of each vehicle, and the identifying number painted on the rear. No advertising shall be permitted other than the name of the Contractor. The Contractor shall not use a firm name containing the words "Kent," "City" or any other words implying municipal ownership. However, the Contractor is required to comply with any King County requirements in the event the City of Kent and King County execute an agreement.
23.10 All containers (1 yd and larger) furnished under the Contract shall be painted in a neutral color, shall be consistent in color (same color) and shall be kept in a clean and sanitary condition. Containers used solely for the recycling program shall be a different color than those used for garbage and shall also be consistent in color.

23.11 Any equipment found not to comply with the above standards shall be taken out of service and brought to standards before being placed back in City service.

23.12 Areas used by the Contractor for the storing, parking or repair of vehicles shall be kept in a clean and orderly condition.

Ownership:

23.13 All vehicles, facilities, equipment and property used in the performance of this Contract shall be wholly owned by the Contractor; provided, leasing or rental agreements shall be allowed and conditional sales Contract, mortgages, or other Contractual arrangements for financing the purchase of such equipment shall be allowed. All such leasing or rental agreements shall provide that in the event of default of this Contract, or of such leasing or rental agreement, the City at its option, shall have the right to take possession of and operate vehicles and equipment covered by such leasing or rental agreement for the unexpired term of this Contract.

23.14 At the termination of this agreement the City may, at its option, enter into negotiations to purchase, at fair market value, all of the Contractor's equipment used in the collection, hauling and disposal of garbage and refuse within the City.

24. Rates: (Exhibit 1)

25. Rate Adjustment

25.1 Service and Rental Rates. The service and rental rates (including rates for excess tonnage) set forth in Exhibit 1 shall be applicable for the calendar year 1987 and shall then be adjusted as follows on January 1 of each year:

25.2 Rates for calendar year 1988 shall be determined by taking the rates in effect during December 1987 and adjusting such rates upward or downward by 80 percent of the increase or decrease in the Consumer Price Index for the July 1986 to July 1987 period. In like manner, the rates for succeeding calendar years of the Contract shall be determined by taking the rates in effect during December of the preceding year and adjusting such rates
upward or downward by the percentage increase or decrease in the Consumer Price Index for the previous July-to-July period. The Consumer Price Index to be used shall be the "Consumer Price Index, Revised Urban Wage Earners and Clerical Workers"—all items published by the United States Department of Labor, Bureau of Labor Statistics for the Seattle-Everett Metropolitan Area, or substitute index. Although downward adjustments may be made in the rates if the Consumer Price Index declines during a July-to-July period, in no event shall the rates be less than those specified in Exhibit 1.

25.3 Dump Fees. The rate for dump fees set forth in Exhibit 1 shall be based on the dump site selected from the various possible sites included in the bid. The rates shall be calculated on the following per ton costs to the Contractor for the dumping of garbage and refuse at the referenced sites.

- Row Lake King County Transfer Station $47.00/per ton
- Algona King County Transfer Station $47.00/per ton
- Cedar Hills Landfill (Direct Haul) $31.50/per ton

These rates have been approved by King County, and will be used to assess bids. In the event that the actual King County dump fees vary from those listed herein at the commencement of the Contract the unit bid prices for dump fees will be adjusted in accordance with these provisions.

25.4 It is understood that the dump fee charged to the Contractor shall be passed directly on to the City. In the event of an increase or decrease in the dump fee per ton charged to the Contractor, the rate for dump fees shall be increased or decreased correspondingly, effective the date of such increase or decrease; provided that an increase shall not take effect until the Contractor has caused actual written notice of said increase or decrease to be received by the City.

25.5 The amount of the increase or decrease on dump fees shall be equal to the percentage change in the dump fee per ton charged to the Contractor.

25.6 All decreases in dump fees shall be automatically and immediately passed through to the City. Such decrease may result from lower tipping fees designated by King County for the City of Kent as a result of the City's recycling programs. It shall be the responsibility of the Contractor to keep the City notified of rate decreases. Rate reductions shall be credited to rates charged the City by the Contractor on a dollar for dollar basis and shall be calculated from the first day the reduced rates take effect.
26. **Liquidated Damages:**

26.1 It is agreed that in case of a breach of service, the City may elect to collect liquidated damages for each such breach and the Contractor will pay to the City as liquidated damages and not as a penalty, the amounts set forth below, such sums being agreed as the amount which the City will be damaged by the breach of such service. An election to seek such remedies shall not be construed as a waiver of any legal remedies the City may have as to any subsequent breach of service under this Contract.

26.2 All damages are subject to annual adjustment in the same percentage as the adjustments in rates under Section 25. Such liquidated damages as the City shall elect to collect will be deducted from the Contractor's monthly payment from the City. Violations of any specifications in Section in this Contract shall be subject to a fine of $50 per occurrence unless otherwise indicated.

<table>
<thead>
<tr>
<th>Violation</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>A truck beginning residential collection prior to 7:00 a.m.</td>
<td>$75 per occurrence</td>
</tr>
<tr>
<td>Contractor's employee found without proper uniform and/or safety shoes in</td>
<td>$100 per occurrence</td>
</tr>
<tr>
<td>accordance with Section 18.1</td>
<td></td>
</tr>
<tr>
<td>Failure of Contractor to maintain, wash and clean collection vehicles</td>
<td>$100 per occurrence</td>
</tr>
<tr>
<td>in accordance with Section 23.8</td>
<td></td>
</tr>
<tr>
<td>Same customer missed three (3) times in a six month period through no</td>
<td>$100</td>
</tr>
<tr>
<td>fault of the customer.</td>
<td></td>
</tr>
<tr>
<td>The repetition of complaints on a route after notification to replace</td>
<td>$150</td>
</tr>
<tr>
<td>cans or containers in designated locations, spilling, not closing gate,</td>
<td></td>
</tr>
<tr>
<td>crossing planted areas, or similar violations. Failure to comply with</td>
<td></td>
</tr>
<tr>
<td>Holiday Schedule.</td>
<td>$150</td>
</tr>
<tr>
<td>Failure of Contractor to collect a missed pickup within 24 hours of</td>
<td>$200 after 24 hours</td>
</tr>
<tr>
<td>notification provided the miss was reported within 48 hours of the miss.</td>
<td>$400 after 48 hours</td>
</tr>
<tr>
<td>(Also see Section 20)</td>
<td>$200/24 hours for each additional 24 hours.</td>
</tr>
</tbody>
</table>
If the Contractor fails to provide a special pickup within twenty-four (24) hours of notification by the City, the City may cause the work to be done. The sum of $70 for each such pickup shall be billed to the Contractor.

27. Billing and Payment:

27.1 The City will compute monthly payments to the Contractor and agrees to pay the Contractor by the 15th day of the month following the billing month. With the payment, the Contractor will receive:

- An itemized statement of gross receipts;
- A copy of all dumpster and drop-box billings;
- A list of all adjustments;

27.2 For construction box billings the Contractor will handle all billings and remit to the City a percent equal to 12 percent plus the City’s utility tax rate. The above referenced payment to the City shall be based and calculated on actual total billing amounts rather than monies collected amounts. Therefore, no adjustments will be made for uncollected bills. The Contractor agrees to pay the City by the 15th day of the month following the billing month and agrees to provide copies of invoices with the payment.

27.3 If the City should change its billing cycles, this Section will be revised accordingly.

28. Illegal Weights

28.1 The Contractor shall not be required to haul detachable containers or drop boxes which are filled to a weight which exceeds the legal weight limit for the trucks provided by the Contractor for this Contract. The Contractor may, at its option, require the customer to remove the excess weight or it may remove the excess weight itself and charge the cost of removal to the customer.