

SULTAN CITY COUNCIL AGENDA ITEM COVER SHEET

ITEM NO: A-6
DATE: July 23, 2009
SUBJECT: Award Recycling Contract
CONTACT PERSON: Deborah Knight, City Administrator

ISSUE:

The issue before the council is to award a recycling contract and authorize the Mayor sign a contract for services (Attachment B).

Attachment A provides a summary of the cost proposals for single-family and multi-family residential recycling for easier comparison between the base proposals and alternatives.

STAFF RECOMMENDATION:

- Review the proposals submitted by Allied Waste and Waste Management
- Review the additional information provided by the proposers for weekly service and one clean-up day event. **(Note - This information was requested on Friday, July 17, and may not be available in time for the council meeting on July 23, 2009 in which case the subcommittee recommends postponing action until August 13, 2009)**
- Review the council subcommittee's recommendation for a seven-year contract
- Award a recycling contract to the council's preferred proposer.
- Authorize the Mayor to sign a contract for services.

SUMMARY:

The city's contract for recycling services with Rabanco Connections dba as Lynnwood Disposal (now known as Allied Waste) expired in April 2008. The city and Allied Waste jointly agreed to extend the contract to July 31, 2009 pending a request for proposal process for recycling services.

The city received proposals from Allied Waste and Waste Management. A subcommittee of the council reviewed the proposals on July 16, 2009.

The "base" proposals submitted by Allied Waste and Waste Management include providing disposal services at no cost to the city for two clean-up day events. See Attachment A for summary of the proposals.

Allied Waste provided three alternative proposals:

1. weekly service – no clean up day events
2. every other week service (EOW) with two clean-up day events
3. every other week service and no clean up day events.

Waste Management provided one alternative proposal for every other week service.

Under the base proposals and alternatives submitted by the proposers, the cost to the customer decreases as the level of service decreases.

Council Subcommittee Recommendation

The council subcommittee reviewed the proposals on July 16, 2009. The council subcommittee members were comfortable with either a 5 year contract or 7 year contract. The contract may be extended for one additional 5 year period.

City staff support the 7 year contract since the effort to prepare the request for proposal and contract are significant. The recommendation is to award a 7 year contract.

The council subcommittee directed staff to request additional information from the proposers to aid the council in making a final award decision:

1. Allied Waste and Waste Management - Provide a cost proposal for weekly service and disposal service for one clean up day event
2. Waste Management only - Provide a 12 month history of the proposed fuel surcharge

City staff hope to have this information available to the council for review at the July 23, 2009 meeting. If the information is not available, the council may choose to postpone action until the August 13, 2009 meeting.

FISCAL IMPACT:

The current cost for recycling is \$1.13 per week (\$4.50/month). Yard waste pick-up is an optional service to city residents. Residents contract directly with Allied Waste for yard waste pick-up.

Cost to maintain level-of-service will increase by at least 47% - Under Allied Waste's proposal to provide the same level of service (i.e. no clean up day event support) the cost will be \$1.60/week (\$6.40/month) a .47 increase/week (\$1.90/month). This proposal does not include service to support the city's clean-up day event(s). Adding two clean up day events increases the weekly cost to \$1.87 a 65% increase.

Waste Management's proposal includes 2 clean up day events as requested in the contract. The weekly cost would be \$2.25 a 100% increase.

Reduce cost and reduce level-of-service - The city could choose to keep the costs low by reducing levels of service from weekly to every other week (EOW). Both Allied Waste and Waste Management offered EOW alternatives. **A summary of the cost proposals for single-family and multi-family residential recycling is provided in Attachment A.**

Cost Drivers – There seem to be two cost drivers in the proposals:

1. Clean-up Day – the city’s proposed contract shifted the cost of clean-up day from the city to the recycling provider. Currently, the city pays Allied Waste to remove clean-up day debris through the city’s garbage utility. This year the cost was over \$30,000. In some years, the city is able to recoup costs through Snohomish County grants. Grant reimbursement is not available in 2009 or 2010.
2. Weekly Service – reducing service from weekly to every other week can reduce the impact to the customer, but requires reducing level of service. As more cities offer food waste pick-up, there is a trend to shift garbage pick-up to every other week and pick-up recycling and food waste weekly.

Contract

The proposer selected by the city must enter into an agreement for a period of five or seven years beginning on October 1, 2009, at the proposed prices and pursuant to the other terms and conditions established in the request for proposal process. Upon mutual consent of the city and the successful proposer the agreement may be extended for one (1) additional five (5)-year term.

The contract includes annual cost of living adjustments beginning at the end of the first year of service (2010). There are also customer service performance standards and monetary penalties (liquidated damages) for poor performance.

DISCUSSION:

In 2003 the City entered into a contract with Rabanco Connections dba as Lynnwood Disposal (now known as Allied Waste) to provide curbside recycling services and residential yard waste collection. A separate contract for roll off drop collection, compactor services and commercial recycling was also approved.

These were five year contracts that expired in April 2008. The city extended the contract twice to provide time to prepare and issue a request for proposal. The current extension expires on July 31, 2009.

The city issued a request for proposal on May 13, 2009. The city received responsive proposals from Allied Waste and Waste Management by the June 29, 2009 deadline. Copies of the proposal were distributed to subcommittee members on June 30, 2009.

The proposals must be evaluated based on the following criteria:

1. Firm’s proven ability with similar projects.
2. Expertise of key personnel assigned to the contract.
3. Firm’s proven ability to provide innovative, cost-effective service.
4. Firm’s proven track record of responsiveness to time limitations and deadlines.
5. Firm’s alternative proposal, if any.
6. Firm’s capacity to perform.
7. Firm’s cost proposal.

The council should note the cost proposal for Waste Management is a monthly rate while Allied Waste's proposals is a per week proposal. The current residential rate is \$1.13 per week. The following table converts Waste Management's proposal to a weekly rate.

Recycling

Single-Family, Duplex, Tri-plex and Four-plex per week

Current rate \$1.13/week	Allied Waste		Waste Management		Waste Management EOW ¹ Collection Alternative	
	5 Year	7 Year	5 Year	7 Year	5 Year	7 Year
Rates/ \$ week						
65 gallon toter	1.87	1.87	2.32	2.25	2.25	2.16
95 gallon toter	1.87	1.87	2.32	2.25	2.25	2.16

Multi-family Recycling

Five-plex +, mobile home parks, apartments and condominiums

Current rate \$1.13/week	Allied Waste		Waste Management		Waste Management EOW Collection Alternative	
	5 Year	7 Year	5 Year	7 Year	5 Year	7 Year
Rates/ \$ week						
65 gallon toter	1.87	1.87	2.32	2.25	2.25	2.16
95 gallon toter	1.87	1.87	2.32	2.25	2.25	2.16
1-cubic yard	6.55	6.55	8.88	8.88	8.88	8.88
1.5 cubic yard	9.82	9.82	11.08	11.08	11.08	11.08
2 cubic yard	13.09	13.09	13.08	13.08	13.08	13.08

Miscellaneous Fees

Residential and Multi-family

Rates/ \$ week	Allied Waste		Waste Management		Waste Management EOW Alternative	
	5 Year	7 Year	5 Year	7 Year	5 Year	7 Year
Return Trip	5.80	5.80	3.70	3.70	3.70	3.70
Drive-in charge	2.50	2.50	.80	.80	.80	.80
Redelivery Fee (carts)	36.0	36.0	22.80	22.80	22.80	22.80
Carry out surcharge	.95	.95	.20	.20	.20	.20

¹ EOW – Every Other Week

Residential Yard Debris/Food Waste

Single-Family, Duplex, Tri-plex and Four-plex per week

Rates/ \$ week	Allied Waste		Waste Management	
	5 Year	7 Year	5 Year	7 Year
65 gallon toter	N/A	N/A	N/A	N/A
95 gallon toter	3.56	3.56	2.38	2.38
Extra yard debris service Can/bag/bundle	2.53	2.53	2.40	2.40
Extra toter (65/95gallon)	7.29	7.29	N/A	N/A
One-time voucher	7.39	7.39	N/A	N/A

Multi-family Yard Debris/Food Waste Services

Five-plex +, mobile home parks, apartments and condominiums

Rates/ \$ week	Allied Waste		Waste Management	
	5 Year	7 Year	5 Year	7 Year
65 gallon toter	N/A	N/A	2.55	2.48
95 gallon toter	3.56	3.56	2.55	2.48
1-cubic yard	12.46	12.46	8.88	8.88
1.5 cubic yard	18.69	18.69	11.08	11.08
2 cubic yard	24.92	24.92	13.08	13.08

Commercial, Industrial, Institutional Yard Debris/Food Waste Services

Rates/ \$ week	Allied Waste		Waste Management	
	5 Year	7 Year	5 Year	7 Year
65 gallon toter	N/A	N/A	2.55	2.48
95 gallon toter	3.56	3.56	2.55	2.48
1-cubic yard	12.46	12.46	8.88	8.88
1.5 cubic yard	18.69	18.69	11.08	11.08
2 cubic yard	24.92	24.92	13.08	13.08

Commercial, Industrial, Institutional Recycling

No proposal from Waste Management. See Allied's RFP for specific costs (Attachment A).

Alternative Proposals

Allied Waste submitted three additional proposals. The current rate is \$1.13 per week. The following tables compare the four alternatives

Residential Recycling
Residential

	Base Proposal	No clean-ups	EOW (2) clean-ups	EOW no clean-ups
Rates/ \$ week	5 Year / 7 Year	5 Year / 7 Year	5 Year / 7 Year	5 Year / 7 Year
65 gallon toter	1.87	1.60	1.32	1.05
95 gallon toter	1.87	1.60	1.32	1.05

Multi-family

	Base Proposal	No clean-ups	EOW (2) clean-ups	EOW no clean-ups
Rates/ \$ week	5 Year / 7 Year	5 Year / 7 Year	5 Year / 7 Year	5 Year / 7 Year
65 gallon toter	1.87	1.60	1.32	1.05
95 gallon toter	1.87	1.60	1.32	1.05
1-cubic yard	6.55	5.60	4.62	3.68
1.5 cubic yard	9.82	8.40	6.93	5.51
2 cubic yard	13.09	11.20	9.24	7.35

Miscellaneous Fees

Residential and Multi-family

	Base Proposal	No clean-ups	EOW (2) clean-ups	EOW no clean-ups
Rates/ \$ week	5 Year / 7 Year	5 Year / 7 Year	5 Year / 7 Year	5 Year / 7 Year
Return Trip	5.80	5.80	5.80	5.80
Drive-in charge	2.50	2.50	2.50	2.50
Redelivery Fee (carts)	36.0	36.0	36.0	36.0
Replacement Cart	72.0	72.0	72.0	72.0
Carry out surcharge	.95	.95	.95	.95

Residential Yard Debris/Food Waste

Single-Family, Duplex, Tri-plex and Four-plex per week

	Base Proposal	No clean-ups	EOW (2) clean-ups	EOW no clean-ups
Rates/ \$ week	5 Year / 7 Year	5 Year / 7 Year	5 Year / 7 Year	5 Year / 7 Year
65 gallon toter	N/A	N/A	N/A	N/A
95 gallon toter	3.56	3.02	3.56	3.02
Extra yard debris service Can/bag/bundle	2.53	2.15	2.53	2.15
Extra toter (65/95gallon)	7.29	6.19	7.29	6.19
One-time voucher	7.39	6.28	7.39	6.28

Multi-family Yard Debris/Food Waste Services

Five-plex +, mobile home parks, apartments and condominiums

	Base Proposal	No clean-ups	EOW (2) clean-ups	EOW no clean-ups
Rates/ \$ week	5 Year / 7 Year	5 Year / 7 Year	5 Year / 7 Year	5 Year / 7 Year
65 gallon toter	N/A	N/A	N/A	N/A
95 gallon toter	3.56	3.02	3.56	3.02
1-cubic yard	12.46	10.57	12.46	10.57
1.5 cubic yard	18.69	15.86	18.69	15.86
2 cubic yard	24.92	21.14	24.92	21.14

Additional Charges

Waste Management's proposed pricing assumes a fuel surcharge based on a base fuel price of \$2.40 per gallon. The surcharge would be adjusted monthly based on the amount of fuel consumed and will take effect when fuel prices change by more than 10% either up or down.

The council subcommittee requested a 12-month history of the fuel surcharge for review at the council meeting on July 23, 2009.

BACKGROUND:

The City currently incorporates a residential curbside recycling system that uses a single 95 gallon "totter" bin for glass, plastic, mixed paper, newspaper, etc.. These bins are furnished to single-family (single-family, duplex, tri-plex and four-plex) and multi-family residences (five-plex +, mobile home parks, apartments and condominiums) by the service provider.

Yard-debris collection is provided by the contracted vendor as an optional service to the residential customer. The customer is billed by the contracted vendor for regular collection service or purchases a pre-paid voucher from the City for on-call service.

In order to ensure mandatory participation, the City of Sultan invoices residential and multi-family recycling customers only with the City's monthly utility bill for water, sewer and garbage. The City collects a twenty-five percent (25%) administration/overhead fee from the customer.

Residential yard debris, commercial, institutional and industrial customers are not mandatory and are therefore invoiced directly by the vendor.

The City is billed monthly by the vendor for all residential and multi-family recycling customers. The City remits a monthly lump sum to the vendor for recycling services provided to residential and multi-family customers less the twenty-five percent (25%) administrative/overhead fee. The selected firm will be required to provide the following services including, but not limited to, the following:

1. Provide mandatory weekly single-stream curbside recycling collection services to approximately 1233 residential and 194 multi-family customers according to the terms and conditions in Attachment 5.
2. Recycling collection services should include at a minimum, cardboard and boxboard containers, cereal type boxes and packaging with liners removed; aluminum and tin; glass containers; plastic milk jugs, soda and bottled water containers; plastic shampoo and detergent containers; newspapers; junk mail; and phone books.
3. Provide for weekly curbside collection of single-family residential yard debris including food scraps and food-soiled paper (i.e. food waste) from participating customers.
4. Provide optional yard debris and food waste collection service to participating multi-family, commercial, institutional and industrial customers in accordance with the service level selected by the customer.
5. Yard debris and food waste collection services should include at a minimum anything that grows in the yard or garden, including grass clippings, leaves, weeds, and small branches less than four (4) inches in diameter or three (3) feet in length; and all compostable pre- and post-consumer food scraps, such as whole or partial pieces of produce, meats, bones, cheese, bread, cereals, coffee grounds, egg shells, and food-soiled paper accepted by the contractor's selected composting site.
6. Provide for the curbside collection of Christmas trees for single-family and multi-family customers, giving each customer two opportunities for collection.
7. Provide recycling collection services at six (6) designated city locations at no charge to the City.
8. Furnish and maintain single-stream recycling and yard debris containers (a minimum of 65 gallons) to single and multi family residences for the collection of materials to be recycled.
9. Be responsible for safely and legally transporting processing and disposing of the collected materials for recycling.

ALTERNATIVES:

1. Award a seven year recycling contract and authorize the Mayor sign a contract for services (Attachment B). This action indicates the city council is comfortable with the process used to review and award a recycling contract. The council supports the subcommittee's recommendation and is prepared to award the contract for recycling services.
2. Do not award a contract. Direct staff to areas of concern. This action indicates the council has questions and/or concerns regarding the process used to make a recommendation. The council may also need additional information before making a final decision. The council should direct staff in order to proceed with the selection process. A decision to delay the award may require extending the current contract with Allied Waste. Allied Waste has notified the city of its intent to request a cost of living adjustment with the next contract extension.

RECOMMENDED ACTION:

Award a seven year recycling contract and authorize the Mayor sign a contract for services (Attachment B).

ATTACHMENT

- A – Fee proposals from Allied Waste and Waste Management
- B – Contract for Services

Attachment A – Summary of Cost Proposals

Residential Recycling

Residential

	ALLIED WASTE				WASTE MANAGEMENT			
Current rate \$1.13/week	Base Proposal	No clean-ups	EOW (2) clean-ups	EOW no clean-ups	Base Proposal	Base Proposal	EOW Collection	EOW Collection
Rates/ week	5 / 7 Year	5 / 7 Year	5 / 7 Year	5 / 7 Year	5 Year	7 Year	5 Year	7 Year
65 gallon toter	1.87	1.60	1.32	1.05	2.32	2.25	2.25	2.16
95 gallon toter	1.87	1.60	1.32	1.05	2.32	2.25	2.25	2.16

Multi-family

	ALLIED WASTE				WASTE MANAGEMENT			
Current rate \$1.13/week	Base Proposal	No clean-ups	EOW (2) clean-ups	EOW no clean-ups	Base Proposal	Base Proposal	EOW Collection	EOW Collection
Rates/ \$ week	5 / 7 Year	5 / 7 Year	5 / 7 Year	5 / 7 Year	5 Year	7 Year	5 Year	7 Year
65 gallon toter	1.87	1.60	1.32	1.05	2.32	2.25	2.25	2.16
95 gallon toter	1.87	1.60	1.32	1.05	2.32	2.25	2.25	2.16
1-cubic yard	6.55	5.60	4.62	3.68	8.88	8.88	8.88	8.88
1.5 cubic yard	9.82	8.40	6.93	5.51	11.08	11.08	11.08	11.08
2 cubic yard	13.09	11.20	9.24	7.35	13.08	13.08	13.08	13.08

Miscellaneous Fees
Residential and Multi-family

	ALLIED WASTE				WASTE MANAGEMENT			
	Base Proposal	No clean-ups	EOW (2) clean-ups	EOW no clean-ups	Base Proposal	Base Proposal	EOW Collection	EOW Collection
Rates/ \$ week	5 / 7 Year	5 / 7 Year	5 / 7 Year	5 / 7 Year	5 Year	7 Year	5 Year	7 Year
Return Trip	5.80	5.80	5.80	5.80	3.70	3.70	3.70	3.70
Drive-in charge	2.50	2.50	2.50	2.50	.80	.80	.80	.80
Redelivery Fee (carts)	36.0	36.0	36.0	36.0	22.80	22.80	22.80	22.80
Carry out surcharge	.95	.95	.95	.95	.20	.20	.20	.20

**Attachment 1.03
Commercial and Industrial Recycling Cost Proposals
5-Year Agreement Monthly Fee**

Times/Week	1xwk	2xwk	3xwk	4xwk	5xwk	6xwk	7xwk
64 gallon toter	\$ 23.47	\$ 46.95	\$ 70.42	\$ 93.90	\$ 117.37	\$ 140.84	\$ 164.32
96 gallon toter	\$ 28.10	\$ 56.20	\$ 84.30	\$ 112.39	\$ 140.49	\$ 168.59	\$ 196.69
1-cubic yard	\$ 56.64	\$ 113.29	\$ 169.93	\$ 226.58	\$ 283.22	\$ 339.86	\$ 396.51
1.5-cubic yard	\$ 63.50	\$ 127.00	\$ 190.51	\$ 254.01	\$ 317.51	\$ 381.01	\$ 444.52
2-cubic yard	\$ 94.86	\$ 189.72	\$ 284.58	\$ 379.44	\$ 474.31	\$ 569.17	\$ 664.03
3-cubic yard	\$ 119.07	\$ 238.14	\$ 357.21	\$ 476.29	\$ 595.36	\$ 714.43	\$ 833.50
4-cubic yard	\$ 140.59	\$ 281.18	\$ 421.77	\$ 562.36	\$ 702.95	\$ 843.54	\$ 984.12
6-cubic yard	\$ 193.86	\$ 387.73	\$ 581.59	\$ 775.46	\$ 969.32	\$ 1,163.18	\$ 1,357.05
8-cubic yard	\$ 243.34	\$ 486.67	\$ 730.01	\$ 973.34	\$ 1,216.68	\$ 1,460.01	\$ 1,703.35

**Commercial and Industrial Recycling Cost Proposals
7-Year Agreement Monthly Fee**

Times/Week	1xwk	2xwk	3xwk	4xwk	5xwk	6xwk	7xwk
64 gallon toter	\$ 23.47	\$ 46.95	\$ 70.42	\$ 93.90	\$ 117.37	\$ 140.84	\$ 164.32
96 gallon toter	\$ 28.10	\$ 56.20	\$ 84.30	\$ 112.39	\$ 140.49	\$ 168.59	\$ 196.69
1-cubic yard	\$ 56.64	\$ 113.29	\$ 169.93	\$ 226.58	\$ 283.22	\$ 339.86	\$ 396.51
1.5-cubic yard	\$ 63.50	\$ 127.00	\$ 190.51	\$ 254.01	\$ 317.51	\$ 381.01	\$ 444.52
2-cubic yard	\$ 94.86	\$ 189.72	\$ 284.58	\$ 379.44	\$ 474.31	\$ 569.17	\$ 664.03
3-cubic yard	\$ 119.07	\$ 238.14	\$ 357.21	\$ 476.29	\$ 595.36	\$ 714.43	\$ 833.50
4-cubic yard	\$ 140.59	\$ 281.18	\$ 421.77	\$ 562.36	\$ 702.95	\$ 843.54	\$ 984.12
6-cubic yard	\$ 193.86	\$ 387.73	\$ 581.59	\$ 775.46	\$ 969.32	\$ 1,163.18	\$ 1,357.05
8-cubic yard	\$ 243.34	\$ 486.67	\$ 730.01	\$ 973.34	\$ 1,216.68	\$ 1,460.01	\$ 1,703.35

**Miscellaneous Fees
Commercial, Industrial and Institutional Recycling**

	5 Year Agreement Fee Per dwelling unit rate	7 Year Agreement Fee Per dwelling unit rate
Return Trip	\$ 7.37	\$ 7.37
Carry-out Surcharge/container (per 25 feet)	\$ 0.95	\$ 0.95
Redelivery Fee (carts)	\$ 36.00	\$ 36.00
Extra Yards	\$ 11.38	\$ 11.38
Monthly Rental - 64 gallon toter	\$ 2.84	\$ 2.84
Monthly Rental - 96 gallon toter	\$ 2.84	\$ 2.84

City of Sultan, Washington

Request For Proposals for Curbside
Recycling, Yard Debris and Food Waste



Attachment 1.3

Commerical and Industrial Recycling Cost Proposals 5-Year Agreement

Times/Week	1xwk	2xwk	3xwk	4xwk	6xwk	7xwk
65 gallon toter	n/a	n/a	n/a	n/a	n/a	n/a
95 gallon toter	n/a	n/a	n/a	n/a	n/a	n/a
1.0-cubic yard	n/a	n/a	n/a	n/a	n/a	n/a
1.5-cubic yard	n/a	n/a	n/a	n/a	n/a	n/a
2.0-cubic yard	n/a	n/a	n/a	n/a	n/a	n/a
4.0-cubic yard	n/a	n/a	n/a	n/a	n/a	n/a
6.0-cubic yard	n/a	n/a	n/a	n/a	n/a	n/a
8.0-cubic yard	n/a	n/a	n/a	n/a	n/a	n/a
10.0-cubic yard	n/a	n/a	n/a	n/a	n/a	n/a

Commerical and Industrial Recycling Cost Proposals 7-Year Agreement

Times/Week	1xwk	2xwk	3xwk	4xwk	6xwk	7xwk
65 gallon toter	n/a	n/a	n/a	n/a	n/a	n/a
95 gallon toter	n/a	n/a	n/a	n/a	n/a	n/a
1.0-cubic yard	n/a	n/a	n/a	n/a	n/a	n/a
1.5-cubic yard	n/a	n/a	n/a	n/a	n/a	n/a
2.0-cubic yard	n/a	n/a	n/a	n/a	n/a	n/a
4.0-cubic yard	n/a	n/a	n/a	n/a	n/a	n/a
6.0-cubic yard	n/a	n/a	n/a	n/a	n/a	n/a
8.0-cubic yard	n/a	n/a	n/a	n/a	n/a	n/a
10.0-cubic yard	n/a	n/a	n/a	n/a	n/a	n/a

Miscellaneous Fees

Commerical and Industrial Recycling Cost Proposals

	5 Year Agreement Weekly Fee Per dwelling unit rate	7 Year Agreement Weekly Fee Per dwelling unit rate
Return trip	n/a	n/a
Carrt-out Surcharge/container	n/a	n/a
Redelivery Fee (carts)	n/a	n/a
Other (defined by proposer)	n/a	n/a

A-4

AGREEMENT TO PROVIDE RECYCLING
COLLECTION AND HAULING SERVICES

RESIDENTIAL, COMMERCIAL, INDUSTRIAL, MULTI-FAMILY AND
INSTITUTIONAL

RECYCLING SERVICES AGREEMENT

BETWEEN

CITY OF Sultan City Hall

AND

DATED:

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This Solid Waste and Recycling Agreement (“Agreement”) is made and entered into as of the ____ day of _____, 2009 by and between _____, (the “Contractor”) and the City of Sultan, Washington (the “City”).

PREAMBLE

WHEREAS, the City, in order to protect the public health and welfare of its residents and commercial, industrial and institutional entities, has deemed it necessary to collect, transport and dispose of recyclable materials, yard debris and food waste; and

WHEREAS, the City is authorized pursuant to the provisions of Sultan Municipal Code 13.12 to provide for the method or methods of collection, transportation and disposal of municipal waste located within its boundaries and to provide that the method chosen may be the exclusive method to be used within its boundaries; and

WHEREAS, the City desires to provide municipal recycling collection, transportation and disposal services to its residential, multi-family, commercial, industrial and institutional entities and to impose on its residents and commercial, industrial and institutional entities rates and charges relating to such services; and

WHEREAS, the City has determined that it is in the best interests of its residents and its commercial, industrial and institutional entities to contract with a single waste hauler to collect, transport and dispose of (or sell) recycling waste; and

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions herein contained:

**ARTICLE I
DEFINITIONS**

Section 1.1 Definitions

Whenever used in this Agreement, the following terms shall have the following meanings unless a different meaning is required by the context:

- a) “Breach” means a breach of this Agreement by either the City or the Contractor in a manner described in Sections 10.1 or 10.2 of this Agreement.
- b) “City” means the City of Sultan, Washington.
- c) “City Code” means Sultan Municipal Code as amended.
- d) “Contractor” means _____, a Washington Corporation and its successors and assignees.
- e) “Customer” means an individual multi-family, commercial, industrial or institutional entity to which the Contractor provides Services pursuant to this Agreement.
- f) “Event of Default” means a declaration of default by either the City or the Contractor, as described in greater detail in Sections 10.3 and 10.4 of this Agreement.
- g) “Food Waste” means all compostable pre- and post-consumer food scraps,, such as whole or partial pieces of produce, meats, bones, cheese, bread, cereals, coffee grounds, egg shells, and food-soiled paper accepted by the Contractor’s selected composting site. Food waste does not include dead animals, plastics, diapers, kitty litter, liquid wastes, ashes, pet wastes or other materials prohibited by the selected composting facility.
- h) “Hazardous Waste” means any hazardous, toxic or dangerous waste, substance or material, or contaminant, pollutant or chemical, known or unknown, defined or identified as such in any existing or future, local, state or federal law, statute, code, ordinance, rule, regulation, guideline or order relating to human health or the environment or environmental condition.
- i) “Multi-family” means any multi-family structure, mobile home park or building that contains a minimum of at least five (5) dwelling units.
- j) “Private Service” means the collection of commercial waste by the Contractor from Customers, pursuant to separate agreements or arrangements between a Customer and the Contractor.
- k) “Recyclable Materials” means aluminum cans, tin, steel and bi-metal cans, clear, green and brown glass bottles and jars, newspapers, magazines, mixed papers (junk mail, chipboard, white and colored paper, brown kraft paper bags): corrugated cardboard, #1 PETE plastic containers and #2 HPDE plastic containers, #3 - #7 plastic containers and bags, aseptic beverage containers, six-pack rings and twelve-pack bands, landscape waste and any other material or

materials which the City identifying as a “Recyclable Material” subsequent to the execution of this Agreement.

- l) “Recycling Services” means collection, transportation, processing, sale, and disposal of single-family, multi-family, commercial, industrial, and institutional refuse, Recyclable Materials, Yard Debris, Food Waste and any other similar materials designated by the City for collection.
- m) “Single-family Residence (Residential)” means all one-unit houses, duplexes, triplexes and four-plexes or mobile homes not defined as multi-family on a public street or private road.
- n) “State” means the State of Washington.
- o) “Yard Debris” means anything that grows in the yard or garden, including grass clippings, leaves, weeds, and small branches less than four (4) inches in diameter or three (3) feet in length.

Section 1.2 Rules of Construction

- a) Grammatical Usage and Construction. In construing this Agreement, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa and plural terms shall be substituted for singular and singular for plural, in any place in which the context so requires.
- b) Defined Terms. All capitalized words and phrases throughout this Agreement shall have the meanings set forth in Section 1.1 and the other provisions of this Agreement.
- c) Headings. The headings, titles and captions in this Agreement have been inserted only for convenience and in no way define, limit, extend or describe the scope or intent of this Agreement.
- d) Calendar Days. Unless otherwise provided in this Agreement, any reference in this Agreement to “day” or “days” shall mean calendar days and not business days. If the date for giving of any notice required to be given or the performance of any obligation under this Agreement falls on a Saturday, Sunday or federal holiday, then the notice or obligation may be given or performed on the next business day after that Saturday, Sunday or federal holiday.

**ARTICLE II
SERVICE AREA AND TERM OF AGREEMENT**

Section 2.1 Service Area

The Contractor shall provide all services pursuant to this Contract throughout the entire incorporated city limits.

If, during the term of the Contract, additional territory is added to the incorporated city limits through annexation or other means, upon notification, the Contractor shall from the date of annexation make collection in such annexed area(s) in accordance with the provisions of this Contract at the unit prices and service levels set forth in this Contract.

Section 2.2 Term of Agreement

The initial term of this Agreement shall commence on October 1, 2009 (“Commencement Date”), and end on [September 30, 2014] [September 30, 2016]. Upon mutual consent of both parties, this Agreement can be extended for an additional five (5) year term.

**ARTICLE III
SCOPE OF SERVICES**

Section 3.1 Hours/Days of Collection

- a) All collection from single-family and multi-family customers shall be made between the hours of 7:00am and 6:00pm on a consistent weekday, unless the City authorizes a temporary extension of hours or days. Same-day make-up collections for customers notifying the Contractor of a missed collection by 6:00pm may be performed until 8:00pm. Saturday collection is allowed to the extent consistent with make-up collections, holidays and inclement weather schedules.
- b) All collections from commercial, industrial and institutional customers shall be made between the hours of 5:00am and midnight, with the exception of customers near residential neighborhoods or areas zone residential, which shall be made between the hours of 7:00am and 6:00pm. Exemptions to the hour requirements may be granted in writing by the City to accommodate the special needs of commercial customers.
- c) Collections from commercial customers shall occur based on customer needs and prior arrangement Monday through Friday, with Saturday collections allowed as needed to maintain adequate service.
- d) The City’s noise ordinance, as amended from time to time, may further restrict these terms and hours of collection.
- e) During inclement weather which poses a danger to the Contractor’s staff, area residents or property, the Contractor shall collect only in areas that do not pose a danger. The Contractor shall notify the City of the areas not served due to inclement weather conditions by 9:00am on the same business day. When service is resumed, the Contractor shall collect reasonably accumulated excess volumes of materials from customers at no extra charge.

Section 3.2 Recycling Services

The Contractor shall provide, on behalf of the City, weekly service for designated collection, transportation and disposal (or sale) of Recycled Materials for residential and multi-family customers at the service rates set forth in Exhibit A. Recycling Services are mandatory for residential and multi-family customers.

The Contractor shall provide recycling services to commercial, institutional and industrial customers in accordance with the service level selected by the customer and at the service rates set forth in Exhibit A. Recycling Services are voluntary for commercial, institution and industrial customers.

Section 3.3 Yard Debris and Food Waste Services

Yard Debris and Food Waste Services are voluntary for all residential, multi-family, commercial, industrial and institutional entities in the City.

The Contractor shall provide weekly curbside collection of single-family residential yard debris and food waste to participating customers at the service rates set forth in Exhibit A.

The Contractor shall provide yard debris and food waste collection services to multi-family, commercial, institutional and industrial customers in accordance with the service level selected by the customer and at the service rates set forth in Exhibit A.

Section 3.4 Service to the City

The Contractor shall provide weekly collection of Recyclable Materials, Yard Debris and Food Waste at six (6) designated city locations at no charge to the City. Additional City facilities may be added during the term of the Agreement including new facilities and facilities in future annexations.

The Contractor shall provide collection of Recyclable Materials for City-sponsored special events at no charge to the City or users including but not limited to Shindig.

The Contractor shall provide support at two (2) City special drop-off collection events scheduled each year. The Contractor shall provide Drop-box or Detachable Containers for Recyclable Materials, Yard Debris and Food Waste collected at the events. The Contract shall provide all equipment, staffing, collection, transportation, and recycling and/or disposal fees at no additional charge to the City.

Section 3.5 Private Services

The Contractor shall, on its own behalf (and not on behalf of the City), provide for the collection, transportation and disposal of all Private Service waste in accordance with the provisions of Section 4.2 of this Agreement.

Section 3.6 Revenue Collection

The Contractor shall, on behalf of the City, provide revenue collection services in accordance with Article VI under this Agreement, including, without limitation, monthly service billing and the administration fee recompensed to the City.

Section 3.7 Excluded and Exempted Services

Roll-off services and construction/demolition debris collection and disposal services are not included within this Agreement.

Recycling collection, transportation and disposal from any commercial, industrial and institutional account within the City are not included within this Agreement, if the City approves the exemption of any such services under the terms of the applicable provisions of the City Code.

Section 3.8 Modification of Required Services

The City reserves the right to adjust or expand the scope of the Recycling Services required under this Agreement, upon thirty (30) days prior written notice to the Contractor, to accommodate changes in the definition of recycled waste. The City and the Contractor agree to negotiate an equitable adjustment to the Contractor's compensation under this Agreement required as a result of any adjustment or expansion of the scope of the Recycling Services.

**ARTICLE IV
RECYCLING COLLECTION AND DISPOSAL**

Section 4.1 Recyclable Materials Collection Service

- a) Beginning on the Commencement Date of this Agreement, the Contractor shall provide Recycling Services to all Customers with whom the Contractor has a pre-existing agreement for the provision of Services. After the Commencement Date, the Contractor shall commence the provision of Recycling Services to all residential, multi-family, commercial, industrial and institutional entities in the City, upon receipt of a written request by an entity therefore.
- b) The Contractor shall collect Recyclable Materials in accordance with the schedule and at the service rates referenced in Exhibit A of this Agreement and Recyclable Materials shall be sorted, processed and transported for sale (with an intermediate diversion for processing permitted) or processing in a manner that meets the requirements of the State of Washington and United States governmental agencies.

- c) The Contractor shall retain all income (and fully bear all losses) resulting from the disposition of Recyclable Materials.
- d) The City shall have the right to add materials to the list of Recyclable Materials listed in Section 1.1(l) of this Agreement, pending the availability of disposal or resale markets for the added materials.
- e) The Contractor, as agent for the City, shall ensure that all Recyclable Materials collected are properly processed and marketed. No collected Recyclable Materials shall be land filled or incinerated, unless advance authorization to do so is given by the corporate authorities of the City.
- f) The Contractor shall sell all Recyclable Materials other than yard debris and food waste that are collected under this Agreement. If changes in the market for the sale of any particular Recyclable Material makes continued collection of such Recyclable Material not economically feasible, the Contractor shall consult with the City regarding the market changes of the affected Recyclable Material. The City may in its discretion, agree to remove from the list of Recyclable Materials any economically infeasible item upon such market change.

Section 4.2 Single Family and Multi-family Recycling Service

- a) The Contractor shall collect Recyclable Materials weekly from all single-family and multi-family residences. Recyclable Materials shall be collected on the same day as yard debris and food waste collection.
- b) Collections shall be made from residences on a regular schedule on the same day and as close to a consistent time as possible. The Contractor shall collect on public streets and private roads in the same location as garbage collection services.
- c) The Contractor shall collect all properly prepared Recyclable Materials. No limits shall be placed on set-out volumes for Recyclable Materials.

Section 4.3 Commercial, Industrial and Institutional Recycling Service

- a) Recyclable Materials shall be collected by the Contractor in accordance with the service level selected by the customer and at the service rates provided in Exhibit A of this Agreement. Recyclable Materials shall be transported to a facility meeting the requirements of the State of Washington and federal regulatory agencies.
- b) Collections shall be made on a regular schedule on the same day(s) of the week and as close to a consistent time as possible to minimize customer and tenant confusion.

Section 4.4 Private Service Recycling Service

- a) In addition to the Recycling Services provided by the Contractor on behalf of the City under Section 4.1 of this Agreement, the Contractor shall also make available to all Customers, Private Service for all types of solid waste not otherwise covered by this

Agreement, including but not limited to, Hazardous Waste as defined by the Resource Conservation and Recovery Act, 42 U.S.C. §§6901-6992k.

- b) For services provided pursuant to this Section 4.4, the Contractor agrees to keep available tractor loaders, trailers and other necessary equipment. Upon the request of a Customer, the Contractor shall furnish an estimate for the cost of removal of any materials in connection with Private Services to be provided by the Contractor.

Section 4.5 Schedule and Location of Collection

- a) Recycling Service waste shall be collected in compliance with all applicable provisions of the City Code. The Contractor acknowledges that the City may amend certain provisions of Sultan Municipal Code and agrees to comply with provisions of the City Code as may be amended.
- b) Private Service waste shall be collected in accordance with the provisions of Section 4.4 of this Agreement on days to be mutually agreed upon by the respective Customer and the Contractor.
- c) The City agrees to cooperate in providing information, if any, relating to property vacancies or any other information that will assist the Contractor in the performance of its obligations under this Agreement.

**ARTICLE V
YARD DEBRIS AND FOOD WASTE COLLECTION AND DISPOSAL**

Section 5.1 Yard Debris and Food Waste Collection Services

- a) Beginning on the Commencement Date of this Agreement, the Contractor shall provide Yard Debris and Food Waste collection services to all Customers with whom the Contractor has a pre-existing agreement for the provision of Services. After the Commencement Date, the Contractor shall commence the provision of Yard Debris and Food Waste collection services to all residential, multi-family, commercial, industrial and institutional entities in the City, upon receipt of a written request by an entity therefore.
- b) The Contractor shall collect Yard Debris and Food Waste collection services in accordance with the service level selected by the Customer and at the service rates referenced in Exhibit A of this Agreement. Yard Debris and Food Waste shall be collected, processed and transported in a manner that meets the requirements of the State of Washington and United States governmental agencies.
- c) The Contractor shall retain all income (and fully bear all losses) resulting from the disposition of Yard Debris and Food Waste.

Section 5.2 Single Family and Multi-family

- d) The Contractor shall collect Yard Debris and Food Waste from all single-family and multi-family residences in accordance with the service level selected by the Customer and at the

service rates set forth in Exhibit A. Yard Debris and Food Waste shall be collected on the same day as Recyclable Materials collection.

- e) Collections shall be made from residences on a regular schedule on the same day and as close to a consistent time as possible. The Contractor shall collect on public streets and private roads in the same location as garbage collection services.

Section 5.3 Commercial, Industrial and Institutional Yard Debris and Food Waste Services

- c) Yard Debris and Food Waste shall be collected by the Contractor in accordance with the service level selected by the customer and at the service rates provided in Exhibit A of this Agreement. Yard Debris and Food Waste shall be transported to a facility meeting the requirements of the State of Washington and federal regulatory agencies.
- d) Collections shall be made on a regular schedule on the same day(s) of the week and as close to a consistent time as possible to minimize customer and tenant confusion.

ARTICLE VI COMPENSATION AND REVENUE COLLECTION

Section 6.1 Compensation to the Contractor

- a) The Contractor shall receive as compensation from each Customer the rates set forth in Exhibit A attached to this Agreement, except as provided in Section 6.2 of this Agreement.
- b) The Contractor shall be responsible for billing the City monthly for all single-family and multi-family recycling customers only after Recyclable Materials have been collected. The City will remit a lump sum payment to the Contractor no later than sixty (60) days from receipt of an invoice by the Contractor.

The Contractor's invoice to the City will itemize the number of customers served and all services, fees, taxes and extra charges if any separated by Customer type (i.e. single-family, multi-family, yard debris vouchers, etc.).

If the City objects to all or any portion of any invoice, it shall notify the Contractor of the same within thirty (30) days from the date of receipt and shall pay that portion of the invoice not in dispute. The parties shall immediately make every effort to settle the disputed portion.

- c) The City shall be responsible for billing and collecting funds for all residential and multi-family recycling customers only including an administrative/overhead fee charged by the City.
- d) The Contract shall be responsible for billing and collecting funds from Customers for all other services (single-family/multi-family yard debris and food waste; commercial, industrial, institutional recycling, yard debris and food waste services; private services).

All Customers shall be billed at least monthly. Billing and account costs associated with customer invoicing shall be borne by the Contractor and included in the service fees in Exhibit A. The Contractor may bill to Customers late payments and insufficient funds charges as well as the costs of bad debt collection at rates and amounts approved by the City.

Customers may temporarily suspend service due to vacations or other reasons for as long as and as often as desired in one (1) week increments and be billed pro-rata for actual services received.

The Contractor's invoice to the customer will itemize all services, fees, taxes and extra charges if any separately. Charges for excess Yard Debris, container rental and/or delivery, etc. shall be itemized on the customer invoices separately.

- e) The Contractor is responsible for determining if each Customer is receiving sufficient service in terms of frequency of collection and on-site containers. If the Contractor deems that the capacity of on-site storage at the site of a Customer is exceeded regularly, it shall recommend to the City an increase in collection frequency or an upgrade of the container size.

Section 6.2 Annual Consumer Price Index Modifications

- a) Notwithstanding the rates set forth in Exhibit A to this Agreement, no Customer shall be charged for Recycling, Yard Debris or Food Waste Services under this Agreement at a rate greater than that paid by the Customer for similar services in the calendar month prior to the date on which the Contractor commenced the provision of Services to that Customer ("Prior Rate"). If Customer's Prior Rate shall continue to apply in the period through and including September 30, 2010. Beginning on October 1, 2010, each such Customer shall pay the applicable rate set forth in Exhibit A as adjusted pursuant to Section 6.2(b) below.
- b) The rates identified in Exhibit A may increase or decrease annually based on the change in the 12 previous months (June through June) Consumer Price Index (CPI-U) for Seattle, Tacoma, Bremerton – All Items, each October 1, beginning in 2010.
- c) The Contractor shall submit to the City in writing a rate adjustment statement calculating new rates for the next year (October to October) on or before August 1 of each year starting August 1, 2010.
- d) On City review and verification, the new rates shall take effect on October 1 of the current year beginning October 1, 2010. The Contractor shall notify all Customers by September 1, thirty (30) days prior to the new rate. Should Customers not receive notification by September 1, due to missed deadlines by the Contractor or failure by the City to verify the rates, implementation of the new rates shall be delayed one (1) month without opportunity for recovery of lost revenue.

Section 6.2 Administrative Fee

The Contractor shall remit to the City an administrative fee of 5% gross revenues in four quarterly payments. The administrative fee shall be included in the rates listed in Exhibit A of this Agreement and shall not be separately listed on the monthly bills to the Customers.

In addition to the administrative fee, the City or other agency may, from time to time, impose other fees or taxes that shall be assessed and payable as directed by City ordinance or legislation of another governmental agency or jurisdiction.

ARTICLE VII TITLE TO RECYCLABLE MATERIALS, DEBRIS AND WASTE

Section 7.1 Title to Waste

The Contractor shall retain title to all Recyclable Materials, Yard Debris and Food Waste collected pursuant to this Agreement.

ARTICLE VIII CUSTOMER SERVICE STANDARDS

Section 8.1 Service Options; Changes in Service

The Contractor at its expense, shall be required to develop, print and distribute to all existing Customers, prior to the commencement date and to all new Customers establishing regular service during the term of this Agreement, a brochure approved by the City explaining the recycling programs provided under this Agreement and the procedures for the Customers to modify or cancel the services provided by the Contractor. The brochure shall be updated and distributed whenever there is a change in the service or programs provided or as directed by the City.

Section 8.2 Office and Telephone

The Contractor shall maintain an office and telephone, toll free, for receipt of service calls or complaints and shall be available for such calls on all business days from 8:00 a.m. to 5:00 p.m. The Contractor shall retain the services of at least one temporary customer service representative to handle the addition of Customers to the Contractor's service base during the first ninety days of the term of this Agreement. Additional customer service representatives shall be added as necessary to meet the minimum customer service standards set forth in Section 8.3 of this Agreement.

Section 8.3 Minimum Customer Service Standards

- a) **Complaints Generally.** The Contractor shall cooperate with the City in minimizing complains from the Customers. A consistent pattern of failure to address complains or violations of Sections 8.3(a) through 8.3(h) of this Agreement shall entitle the City to exercise the remedies provided to it pursuant to Section 8.3(h) and/or Article X of this Agreement.
- b) **Initial Response.** The Contractor shall give prompt and courteous attention to all customer complaints that it may receive. The Contractor shall respond personally to every Customer from whom a complaint is received within twenty-four (24) hours or the

next business day after receipt of such complaint; except that if the Contractor receives a complaint about a missed scheduled collection, then the Contractor shall immediately investigate such complaint and if such scheduled collection was not made in accordance with the terms of this Agreement, then the Contractor shall cause such collection to be made within twenty-four (24) hours or the next business day after receipt of such complaint.

Where any dispute arises between a Customer and the Contractor as to the manner of placing waste or the nature of the contents or the like, the Contractor shall and does hereby agree in the specific instance to remove the waste even though in its opinion, it is improperly placed or contained. Thereafter, the Contractor shall immediately report the controversy to the City for settlement before additional collection becomes necessary in order to avoid further disputes or disagreements between Customers and the Contractor.

- c) Referral to City. If the Contractor is unable to resolve a complaint in a manner satisfactory to both the Contractor and the Customer, then the Contractor, within forty-eight (48) hours after receipt of such complaint, shall deliver notice of such complaint to the Public Works Director which notice shall include the name and address of the Customer, the date and hour the complaint was received, the nature of the complaint and the Contractor's response to the complaint. The Mayor or his or her designee shall arbitrate each such complaint and the Mayor's or his or her designee's decision concerning each such complaint shall be final and binding on the Contractor and the Customer.
- d) Answering Calls. During normal business hours and under normal operating conditions, a customer service representative employed by the Contractor shall answer the telephone access line. Ninety percent (90%) of the calls made to the customer service center shall be answered within thirty (30) seconds. The thirty (30) second maximum includes wait time or time spent "holding" for a customer service representative.
- e) Busy Signals. Customers placing calls to the customer service center shall receive a busy signal no more than five percent (5%) of the time.
- f) Transferring Calls. During normal business hours, if after initially addressing a Customer's concern, the customer service representative determines the call should be transferred to another representative of the Contractor, the Customer shall be connected with a customer service representative within thirty (30) seconds thereof.
- g) Hang-ups. Incoming telephone calls from Customers shall not exceed an abandonment rate of five percent (5%).
- h) Compliance Rate. During normal business hours, the minimum standards set forth in this Section 8.3 shall be met no less than ninety percent (90%) of the time, measured on a monthly basis. Reports shall be provided to the City on a monthly basis providing a log of inquiries received and action taken to address each complaint and call. The Contractor shall also distribute to the City a log providing data which tracks the customer service representative's adherence to the standards set forth in Section 8.3(a) through 8.3(g) of this Contract, then the City reserves the right to require the Contractor to implement modifications to its customer service center to bring it into compliance with the requirements of this Section 8.3.

Section 8.4 Customer Service Survey

The Contractor will, in each calendar year, conduct a customer service survey resulting in a statistically meaningful sample set of Customers at no cost to the City to assess the Contractor's service performance under the contract, in a form, of a content and administered in a manner to be approved in advance by the City.

The annual customer service survey shall include the following two parts: 1) A review of the Contractor's performance relative to requirements and standards established in this Agreement; and 2) Identified questions of customers regarding specific performance parameters. Should the City determine that the Contractor fails to meet the Contract performance requirements and standards, the City shall give the Contractor written notice of deficiency. The Contractor shall have sixty (60) days from receipt of notice to correct deficiencies to the City's satisfaction. Failure to correct deficiencies in a timely manner will constitute Breach by Contractor in accordance with Article X.

ARTICLE IX REPORTING

Section 9.1 Monthly Reporting

- f) The Contractor shall provide to the City a monthly report with the current month, prior months and a year-to-date total on the weight (in tons to two decimal places) of all Recyclable Materials collected from Customers under this Agreement. The report shall also contain a weight breakdown by tons, of the types of Recyclable Materials collected and an approximate count of the number of Customers from which Recyclable Materials have been collected. The monthly report shall be detailed by customer type (i.e. residential, multi-family, commercial, industrial and institutional).
- g) The Contractor shall provide a monthly summary with the current month, prior months and year-to-date total of total yard debris, food waste, and construction and demolition debris volumes and quantities collected (in tons to two decimal places) for each customer type. The summary shall include the names(s) of the facility used to process yard debris and food waste and the volumes and quantities of yard debris and food waste collected and processed at the facility(ies).
- h) A summary of services provided for city facilities.

Section 9.2 Annual Reports

- a) By September 30 of each year, the Contractor shall provide an annual report containing the following information for the previous year:
 - a. A consolidated summary and tabulations of the monthly reports as described above;
 - ii. A discussion of highlights and other noteworthy experiences, along with measures taken to resolve problems, increase efficiency, and increase participation in recyclables, yard debris and food waste collection programs;
 - iii. A discussion of opportunities and challenges expected during the current year, including steps to take advantage of opportunities and resolve challenges;

- iv. A discussion of promotion, education, and outreach efforts and accomplishments for each;
 - v. A financial report, certified by the Contractor's parent company's Chief Financial Officer, which includes a statement of gross income, excluding taxes itemized on customer bills, relating to all service provided under this Contract, and the total cost from the customer's perspective of each collection operation by customer type. Costs shall include all aspects of the operation for each sector, including disposal and processing of recycling and food waste;
 - vi. A discussion of the recyclables market conditions and the factors affecting commodity prices and revenues for the previous year;
 - vii. A summary of the monthly logs of customer requests, complaints, inquiries and site visits, and resolutions or results by complaint and customer type.
- b) The city may request from the Contractor ad hoc reports.

**ARTICLE X
BREACH; EVENTS OF DEFAULT AND REMEDIES**

Section 10.1 Breach by Contractor

Each of the following shall constitute a Breach on the part of the Contractor:

- a) Failure of the Contractor to pay within thirty (30) days after notice from the City of such nonpayment, amounts which are undisputed or which are due to the City under this Agreement;
- b) Repeated failure of the Contractor to comply with Section 8.3of this Agreement;
- c) Failure of the Contractor to perform in a timely fashion any obligation under this Agreement not referenced within Section 10.1(a) or 10.1(b) of this Agreement, except that such failure shall constitute a Breach only if such failure remains uncured for seven (7) days after notice to the Contractor from the City of such failure; provided however, that this seven (7) day notice with opportunity to cure shall not be required in the event of persistent and repeated failure to perform; or
- d) Any of the following: (1) the Contractor's being or becoming insolvent or bankrupt or ceasing to pay its debts as they mature or making an arrangement with or for the benefit of its creditors or consenting to or acquiescing in the appointment of a receiver, trustee or liquidator for a substantial part of its property, (2) a bankruptcy, reorganization, insolvency, arrangement or similar proceeding being instituted by the Contractor under the laws of any jurisdiction, (3) a bankruptcy, reorganization, insolvency, arrangement or similar proceeding being instituted against the Contractor under the laws of any jurisdiction, which proceeding has not been dismissed within one hundred twenty (120) days, (4) any action or answer by the Contractor approving of, consenting to or acquiescing in any such proceeding, or (5) the levy of any distress, execution or attachment upon the property of the Contractor which shall (or which reasonably might be expected to) substantially interfere with its performance under this Agreement.

Section 10.2 Breach by City

Each of the following shall constitute a Breach on the part of the City:

- a) The City's being or becoming insolvent or bankrupt or ceasing to pay its debts as they mature or making an arrangement with or for the benefit of its creditors or consenting to or acquiescing in the appointment of a receiver, trustee or liquidator for a substantial part of its property;
- b) A bankruptcy, reorganization, insolvency, arrangement or similar proceeding being instituted by the City under the laws of any jurisdiction;
- c) A bankruptcy, reorganization, insolvency, arrangement or similar proceeding being instituted against the City under the laws of any jurisdiction, which proceeding has not been dismissed within one hundred twenty (120) days;
- d) Any action or answer by the City approving of, consenting to or acquiescing in any such proceeding; or
- e) The levy of any distress, execution or attachment upon the property of the City which shall (or which reasonably might be expected to) substantially interfere with the City's performance hereunder.

Section 10.3 Events of Default and Remedies of City

- a) If a Breach occurs under Section 10.1 of this Agreement, the City may declare an Event of Default and may thereafter exercise any one or more of the following remedies:
 - 1) The City may terminate this Agreement immediately, upon notice to the Contractor. Subject to the provisions of subparagraph (5) below, upon such termination, the Contractor shall cease providing services under this Agreement.
 - 2) The City may seek and recover from the Contractor any unpaid amounts due the City along with all of its substantiated costs for the failure of the Contractor to perform any obligation under this Agreement and all damages, whether based upon contract, work stoppage, strike, Contractor negligence (including tort), warranty, delay or otherwise arising out of the performance or non-performance by the Contractor of its obligations under this Agreement and whether incidental, consequential, indirect or punitive, resulting from the Breach.
 - 3) The City may (A) call upon the sureties to perform their obligations under the performance bond, or (B) in the alternative, after releasing the sureties from their obligations under the performance bond, take over and perform the required services by its own devices or may enter into a new agreement for the required services or any portion thereof or may use such other methods as shall be required in the opinion of the City for the performance of the required services.
 - 4) The City shall have the power to proceed with any right or remedy granted by federal laws and laws of the State as it may deem best, including any suit, action or special proceeding in equity or at law for the specific performance of any covenant or agreement contained herein or for the enforcement of any proper

legal or equitable remedy as the City shall deem most effectual to protect the rights aforesaid, insofar as such may be authorized by law.

- 5) Upon any such termination of this Agreement, the Contractor shall for a period to be determined by the City in its sole and absolute discretion but no long than six (6) months, continue to perform the contractual services during which period the businesses shall pay the Contractor its scheduled compensation.
- b) No remedy by the terms of this Agreement conferred upon or reserved to the City is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the City. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein and every such right and power may be exercised from time to time and as often as may be deemed expedient. No waiver of any Event of Default shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereto.
- c) This Section 9.3 shall survive the termination of this Agreement.

Section 10.4 Events of Default and Remedies of Contractor

- a) If a Breach occurs under Section 10.2 of the Agreement, the Contractor may declare an Event of Default and terminate this Agreement immediately, upon notice to the City. In such event, the Contractor's sole remedy shall be to seek and recover from the City any unpaid amounts due the Contractor and any damages, whether incidental, consequential, indirect or punitive, resulting from the Breach. The Contractor shall not be entitled to specific performance or any other equitable remedies.
- b) This Section 10.4 shall survive termination of this Agreement.

Section 10.5 Liquidated Damages

In the event the Contractor fails to satisfactorily perform any duties of this Agreement, the City shall present a documented incident report to the Contractor detailing such unsatisfactory performance. The Contractor and the City agree that upon receiving such report, the Contractor shall pay the sums set forth in Exhibit D, not as a penalty, but as liquidated damages for failure to satisfactorily perform its duties under this Agreement.

The City and the Contractor agree the City's damages would be difficult to prove in any litigation and these sums are a reasonable estimate of the damages sustained by the City as a result of the Contractor's failure to satisfactorily perform its duties under this Agreement.

Nothing in this section shall be construed as providing an exclusive list of the acts or omissions of the Contractor that shall be considered violations or breaches of the Contract, and the City reserves the right to exercise any and all remedies it may have with respect to these and other violations and breaches.

Liquidated damages, if assessed during a given month, shall be invoiced in writing by the City to the Contractor. The Contractor shall be required to pay the City the invoiced amount within sixty (60) days of billing. Failure to pay liquidated damages shall be considered a breach of the Contract.

Any liquidated damages assessed against the Contractor may be appealed by the Contractor to the City within thirty (30) days of being invoiced for assessed liquidated damages. The Contractor shall be allowed to present evidence as to why the amount of the assessed liquidated damages should be lessened or eliminated. The decision of the City shall be final.

ARTICLE XI INSURANCE AND INDEMNIFICATION

Section 11.1 Insurance

- a) The Contractor shall maintain for the duration of this contract any extensions thereof, insurance issued by a company or companies qualified to do business in the State of Washington and that meet the requirements set forth in Exhibit B. The Contractor shall provide the City with a certificate of insurance indicating that such insurance coverage meets the requirements contained in Exhibit B.
- b) Insurance premiums shall be paid by the Contractor and shall be without cost to the City.

Section 11.2 Indemnification/Hold Harmless

The Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Service Provider and the City, its officers, officials, employees, and volunteers, the Service Provider's liability hereunder shall be only to the extent of the Service Provider's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Service Provider's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

**ARTICLE XII
MISCELLANEOUS**

Section 12.1 Non-Assignability

The Contractor shall not assign this Agreement or any part thereof without the prior written consent of the City. Approval, if any, for such assignment shall be made by the corporate authorities of the City. The Contractor shall not assign or subcontract this Agreement or the work hereunder or any part thereof, to any other person, firm or corporation without prior written consent of the City but the Contractor may perform its obligations hereunder through its subsidiaries or divisions. Such assignment shall not relieve the Contractor from its obligations or change the terms of Agreement.

Section 12.2 Equal Employment Opportunity

- a) In the event of the Contractor's noncompliance with the provisions of this Section 12.2, the Washington Human Rights Act or the Washington Department of Human Rights Rules and Regulations, the Contractor may be declared ineligible for future contracts or subcontracts with the State or any of its political subdivisions or municipal corporations and this Agreement may be canceled or voided in whole or in part and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation.
- b) During the performance of this Agreement, the Contractor agrees as follows:
 - 1) That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability or an unfavorable discharge from military service; and further, that it will examine all job classifications to determine if minority persons or women are under utilized and will take appropriate affirmative action to rectify any such under-utilization.
- c) During the term of this Agreement, the Contractor shall comply in all respects with the Equal Employment Opportunity Act. The Contractor shall have a written equal employment opportunity policy statement declaring it does not discriminate on the basis of race, color, religion, sex, national origin, disability or age. Findings of non-compliance with applicable State or federal equal employment opportunity laws and regulations may be sufficient reason for revocation or cancellation of this Agreement.

Section 12.03 Performance Bond

The Contractor shall furnish a performance bond for the faithful performance of this Agreement, in substantially in the form attached to this Agreement as Exhibit C, to be executed by a responsible surety company and to be in the penal sum of the value of the contract. Such performance bond shall be furnished annually by the Contractor for the following contract year and shall indemnify the City against any loss resulting from any failure of performance by the Contractor. The initial bond shall be posted on or before the Commencement Date and each successive bond shall be posted not later than October 1 of each successive calendar year.

Section 12.04

Equipment to be Used by Contractor

- a) The Contractor shall be responsible for paying the cost of procuring, ordering, assembling, affixing instructional information onto, maintaining inventories of, and distributing and maintaining Recycling, Yard Debris and Food Waste containers for use by Customers.
- b) The Contractor shall procure and distribute Recycling, Yard Debris and Food Waste containers to all residential and multi-family Customers prior to the Commencement Date of this Agreement.
- c) The Contractor shall provide 64 and 96 gallon wheeled carts for the respective level collection of single-family Recycled Materials. The Contractor may offer optional recycling container sizes to residential customers requiring less or additional capacity than provided by the standard 64- or 96-gallon container. Only 96 gallon carts shall be provided by the Contractor for Yard Debris and Food Waste collection.
- d) The Contractor shall provide and distribute to all requesting single-family residential customers that opt to participate in the Food Waste collection program a city approved kitchen food waste collection container. The Contractor shall include instructional materials with the container.
- e) Multi-family and commercial, industrial and institutional customers shall be offered a full range of containers and service options for Recyclable Materials, Yard Debris and Food Waste including 64- and 96-gallon wheeled carts and one (1) through ten (10) cubic yard detachable containers. The Contractor shall provide containers and collection services capable of servicing all customer sites. The Contractor shall provide and distribute household and deskside containers for the collection of Recyclable Materials and Food Waste to multi-family and commercial customer owner/manager and/or directly to tenants.
- f) The Contractor agrees to collect all materials described in this Agreement in fully enclosed, leak-proof, modern trucks. All vehicles and collection equipment will be kept in safe, operable condition. Any equipment used by the Contractor that is determined to be unsafe or in an overall poor condition by the City, shall be replaced at the request of the City. Equipment used for Private Service may be open-body trucks, dump trucks and similar type equipment. When open-body trucks are used, the Contractor shall take such action as is necessary to prevent littering and blowing debris as required by State law.
- g) Containers used in connection with the provision of Services by the Contractor pursuant to this Agreement shall be operable, safe and free of graffiti. Any container in disrepair of this sort shall be replaced within three (3) days of notification by the Customer. Containers with plastic lids that are ill-fitted or warping shall be replaced within three (3) days of notification by the Customer in order to maintain a tight fitting seal to prevent access by pests. All containers will be adequately demarcated with the Contractor's logo. Each container will have an inventory control number demarcated on each container that is cross-referenced to a service matrix.
- h) All equipment used by Contractor for the provision of Services and pursuant to this Agreement shall be properly licensed by the State and shall conform to all federal and State equipment safety standards.

Section 12.05 Compliance with Laws

- a) The Contractor shall comply at all times with all applicable federal, State and municipal laws, ordinances and regulations at any time applicable to the Contractor's operations under this Agreement, with no increase to the Contractor's compensation as set forth in this Agreement.
- b) The Contractor shall obtain at its own expense; all permits and licenses required by law or ordinance and maintain the same in full force and effect.

Section 12.06 Care and Performance

The Contractor shall undertake to perform all services rendered hereunder in a neat, thorough and competent manner without supervision by the City and to use care and diligence in the performance of all specified services and to provide neat, orderly, uniformed and courteous employees and personnel on its crews.

If the Contractor causes damages to the streets and/or alleys of the City, the City shall prepare a cost estimate to repair the damage. The Contractor shall have the right but not the obligation to provide written comment to the cost estimate within thirty (30) days after receipt of the City's estimate. The Contractor shall remit the cost to repair the damage to the City within thirty (30) days after receipt of a final written cost of the repair is sent to the Contractor.

Section 12.07 No Alcohol or Drugs

The Contractor shall prohibit and use its best efforts to enforce the prohibition of any drinking of alcoholic beverages or use of illegal drugs by its drivers and employees while on duty or in the course of performing their duties under this Agreement.

Section 12.08 Governing Law

This Agreement and the rights of the City and the Contractor under this Agreement shall be interpreted according to the internal laws but not the conflict of laws rules of the State of Washington.

Section 12.09 Severability

The provisions of this Agreement shall be interpreted when possible to sustain their legality and enforceability as a whole. In the event a provision of this Agreement shall be held invalid, illegal or unenforceable by a court of competent jurisdiction, in whole or in part, neither the validity of the remaining part of such provision nor the validity of any other provisions of this Agreement shall be in any way affected thereby. The unenforceability of any provision of this Agreement in a specific situation shall not affect the enforceability of that provision in any other situation.

Section 12.10 Entire Agreement

This Agreement sets forth the entire agreement of the City and the Contractor with respect to the provision of the Commercial Services and compensation therefore and there are not other understanding or agreement, oral or written between the City and the Contractor with respect to the Commercial Services and the compensation therefore nor was the making and execution of this Agreement induced by any representation, statement, warranty, agreement or action other than those expressed or explicitly referenced herein.

Section 12.11 Notices

All notices required or permitted to be given under this Agreement shall be in writing and shall be delivered (i) personally, (ii) by a reputable overnight courier or (iii) by certified mail, return receipt required and deposited in the U.S. mail, postage prepaid. Unless otherwise expressly provided in this Agreement, notices shall be deemed received upon the earlier of (a) actual receipt; (b) one business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (c) three (3) business days following deposit in the U.S. mail as evidenced by a return receipt. By notice complying with the requirements of this Section, each party shall have the right to change the address or addressee or both, for all future notices and communications to the other party but no notice of a change of address or addressee shall be effective until actually received.

Notices and communications to the City shall be addressed to and delivered at the following address:

Laura Koenig, City Clerk
City of Sultan
PO Box 1199
Sultan WA 98294

Notices and communications to the Contractor shall be addressed to and delivered at the following address:

With a copy to:

Section 12.12 Publicity

The City’s name or insignia, photographs of the City or any other publicity pertaining to the provision of the Commercial Services shall not be used in any magazine, trade paper, newspaper or other medium without the express written consent of the City.

Section 12.13 Dispute Resolution

The parties shall attempt to resolve any and all disputes to the mutual satisfaction of both parties by good faith negotiations. Throughout the duration of a dispute, the Contractor shall continue providing all services included in this Contract.

Disputes not resolved in accordance with other provisions of this Contract or through good faith negotiations shall, within one (1) year of the first notification of such dispute, be submitted to non-binding mediation before one (1) mediator selected from a list of mediators acceptable to both the City and the Contractor. The laws of the state of Washington shall apply to any dispute. The parties reserve the right to seek review of any dispute. All costs of mediation, including attorney’s fees, shall be paid for by the Contractor.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representative, all on the day and year first above written.

[CONTRACTOR]

[CITY]

By: _____ By: _____

Its: _____ Its: _____

ATTEST:

ATTEST:

By: _____ By: _____

Its: _____ Its: _____

EXHIBIT A
PRICING SHEET

EXHIBIT B

INSURANCE PROVISIONS

A. Insurance Requirements

The Contractor shall procure and maintain the following insurance during the entire term of the agreement described in Section 3.1:

Type of Insurance	Required Limits of Liability
1. Workers Compensation	Statutory
2. Employers' Liability	\$1,000,000 per accident \$1,000,000 disease (policy limit) \$1,000,000 disease (each employee)
3. Commercial General Liability, including "occurrence" coverage for: <ul style="list-style-type: none"> a. Premises and operations, independent Contractors protective, contractual liability, broad form property damage and XCU hazards b. Products and completed operations (including broad form property damage) c. Personal injury liability 	<ul style="list-style-type: none"> \$1,000,000 per occurrence for bodily injury and property damage combined. \$1,000,000 annual aggregate per location for bodily injury and property damage combined. \$1,000,000 per occurrence for bodily injury and property damage combined. \$2,000,000 annual aggregate for bodily injury and property damage combined. \$1,000,000 per occurrence \$2,000,000 annual aggregate
4. Business Auto liability (including owned, non-owned and hired vehicles and coverage for environmental liability)	\$1,000,000 per accident for bodily injury and property damage combined.
5. Umbrella/Excess liability (to apply as excess over 2, 3 and 4 above)	\$5,000,000 per occurrence \$5,000,000 annual aggregate

B. Miscellaneous Provisions

1. The insurance policies set forth in Sections A3 and A5 of this Exhibit C shall continue to be maintained for a period of two (2) years following the termination of the Agreement.
2. Equivalent insurance must be maintained by each subcontractor of the Contractor.
3. All insurance companies must be reasonably acceptable to the City and may include self-insurance obtained by the Contractor. Minimum insurance carrier requirements include a current rating from _____ (or any successor publication of comparable standing within the industry) of "A VIII" and all license to do business in the State of Washington.

4. All liability coverage's shall be written on an occurrence basis.
5. Prior to commencing Services under the agreements, the Contractor shall deliver or cause to be delivered to the City, certificates of insurance (and other evidence of insurance requested by the City) which the Contractor is required to purchase and maintain pursuant to this Schedule. The Contractor shall deliver certificates of renewal or replacement policies or coverage no less than ten (10) days prior to the effective date of each renewal or replacement policy or coverage.
6. All insurance coverage required to be purchased and maintained shall contain a provision or endorsement providing that the coverage afforded will not be cancelled, materially reduced or altered or renewal refused until at least thirty (30) days prior written notice has been given to the City by certified mail.
7. The Contractor shall be responsible for promptly reporting all claims to the appropriate insurer on behalf of itself, the City and the additional insured's set forth below.
8. The insurance policies set forth in Sections A3, A4 and A5 of this Exhibit C shall be endorsed to include the City, the directors, officers, employees, agents and members of the City, SWALCO and the directors, officers, employees, agents and members of SWALCO as additional named insured's for all activities of the Contractor in the performance of the Agreement. Such insurance is to be primary and non-contributory with any insurance secured and maintained by such additional named insured's.

EXHIBIT C

FORM OF PERFORMANCE BOND

Any singular reference to Contractor, Surety, City or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Principal Place of Business):

CITY (Name and Address or City):

RECYCLING SERVICES AGREEMENT (“AGREEMENT”)

Date:

Amount:

Description (Name and Location):

BOND

Date (Not earlier than In-Service Date):

Amount:

CONTRACTOR AS PRINCIPAL:

Company: (Corporate Seal)

Signature:

Name and Title:

SURETY

Company: (Corporate Seal)

Signature:

Name and Title:

.....

(Any additional signatures appear on page _____)

(FOR INFORMATION ONLY – Name, Address and Telephone)

AGENT or BROKER:

OWNER’S REPRESENTATIVE (Architect, Engineer or other party):

- I. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the City for the performance of the Agreement, which is incorporated herein by reference.
- II. If the Contractor performs all of its obligations under the Agreement, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph III (a) of this Performance Bond.
- III. The Surety's obligation under this Bond shall arise after:
 - 1.1 The City has notified the Contractor and the Surety at its address described in Paragraph 10 below that the City is considering declaring a Contractor Event of Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen (15) days after receipt of such notice to discuss methods of performing the Agreement. If the City, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Agreement, but such an agreement shall not waive the City's right, if any, subsequently to declare a Contractor Event of Default; and
 - 1.2 The City has declared a Contractor Event of Default and formally terminated the Contractor's right to complete the contract. Such Contractor Event of Default shall not be declared earlier than twenty (20) days after the Contractor and the Surety have received notice as provided in Subparagraph III (a) of this Performance Bond.
 - 1.3 The City has agreed to pay the balance of the agreement price to the Surety in accordance with the terms of the Agreement or to a Contractor selected to perform the Agreement in accordance with the terms of the City.
- IV. When the City has satisfied the conditions of Paragraph III of this Performance Bond, the Surety shall, promptly and at the Surety's expense, take one of the following actions:
 - a. Arrange for the Contractor, with consent of the City, to perform and complete the Agreement; or
 - b. Undertake to perform and complete the Agreement itself, through its agents or through independent contractors; or
 - c. Obtain bids or negotiated proposals from qualified contractors acceptable to the City for a contract for performance and completion of the Agreement, arrange for a contract to be prepared for execution by the City and the contractor selected with the City's concurrence to be secured with a performance bond executed by a qualified surety equivalent to the bond issued on the Agreement and pay to the City the amount of damages as described in Paragraph VI of this Performance Bond in excess of the balance of the agreement price incurred by the City resulting from the Contractor's default; or
- 1.4 Waive its right to perform and complete, arrange for completion or obtain a new contractor and with reasonable promptness under the circumstances:

1. After investigation, determine the amount for which it may be liable to the City and as soon as practicable after the amount is determined, tender payment therefore to the City; or
 2. Deny liability in whole or in part and notify the City citing reasons therefore.
- V. If the Surety does not proceed as provided in Paragraph IV of this Performance Bond with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen (15) days after receipt of an additional written notice from the City of the Surety demanding the Surety perform its obligations under this Bond and the City shall be entitled to enforce any remedy available to the City. If the Surety proceeds as provided in Subparagraph IV (d) of this Performance Bond and the City refuses the payment tendered or the Surety has denied liability in whole or in part, without further notice the City shall be entitled to enforce any remedy available to the City.
- VI. After the City has terminated the Contractor's right to complete the Contract and if the Surety elects to act under Subparagraph IV (a), IV (b) or IV (c) of this Performance Bond, then the responsibilities of the Surety to the City shall not be greater than those of the Contractor under the Agreement and the responsibilities of the City to the Surety shall not be greater than those of the City under the Agreement. To the limit of the amount of this Bond but subject to commitment by the City of the Balance of the Contract Price to mitigation of costs and damages on the Agreement, the Surety is obligated without duplication for:
 - a) The responsibilities of the Contractor for correction of defective work and completion of the Agreement;
 - b) Additional costs resulting from the Contractor's Event of Default and resulting from the actions or failure to act of the Surety under Paragraph IV of this Performance Bond;
 - c) Liquidated damages as provided in the Agreement or if no liquidated damages are provided for in the Agreement for such event, actual damages caused by delayed performance or non-performance of the Contractor.
 - d) The responsibilities of the Contractor for obtaining the insurance specified in the Solid Agreement and for fulfilling the indemnification obligations undertaken by the Contractor in the Agreement.
- VII. The Surety shall not be liable to the City or others for obligations of the Contractor that are unrelated to the Agreement and the balance of the agreement price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the City or its heirs, executors, administrators or successors.
- VIII. The surety hereby waives notice of any addition, alteration, modification or change, including changes of time, to the Agreement or to related subcontracts, purchase orders and other obligations.
- IX. Any proceeding legal or equitable under this Bond is required to be instituted in the Circuit Court of Snohomish County and shall be instituted within two (2) years after the date of the Contractor Breach or within two (2) years after the Contractor ceased working or within two (2) years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If

the provisions of this Paragraph are void or prohibited by law, the minimum period of limitations available to sureties as a defense prescribed by Washington State law shall be applicable.

- X. Notice to the Surety, the City or the Contractor shall be mailed or delivered to the address shown on the signature page.

(Space is provided below for additional signatures of added parties other than those appearing on the coverage page.)

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

Signature: _____
Name and Title:
Address:

SURETY

Company: (Corporate Seal)

Signature: _____
Name and Title:
Address:

Exhibit D
Liquidated Damages

The Public Works Director or his/her designee shall notify the Contractor for each violation of the Agreement reported to or discovered by him/her for the City. It shall be the duty of the Contractor to take whatever steps may be necessary to remedy the cause of the complaint and notify the City in writing of its disposition within twenty-four (24) hours after receipt of complaint.

The following acts or omissions shall be considered a Breach of Contract and for the purpose of computing damages under these contract provisions.

1. Failure to clean up solid waste spilled by Proposer within six (6) hours of oral or written notification.....\$50.00 each instance
2. Failure to maintain vehicle in a manner which prevents nuisances such as leaky seals or hydraulics.....\$100.00 each instance
3. Failure or neglect to collect solid waste, recycling, (or yard waste/bulky goods if part of the proposal) at those times provided by the Agreement within 24 hours after either oral or written notice by municipality...\$50.00 each instance
4. Failure or neglect to provide notice to resident upon solid waste refused for collection for cause\$25.00 each instance
5. In addition to above, failure or neglect to correct chronic problems will be considered a Breach of Contract.....\$50.00 each instance

Chronic problems shall be construed to be three or more occurrences of items (1), (2) or (3) immediately above at the same address within any period of six (6) consecutive months whether or not remedied within 24 hours or four hours in the case of spilled solid waste.

6. Failure to collect recyclables which are properly prepared and placed for collection as part of the collection program.....\$25.00 each instance
7. Missing entire blocks/neighborhoods. A missed block is defined as a block where residents from at least three (3) households within two intersections of that block or cul-de-sac report that their material was out before 7:00 a.m., the material was not picked up and the addresses did not appear on the records as unacceptable setouts\$250.00 each instance
8. City-wide collection not completed. The failure to complete majority (50% or more) of pickups within the municipality or collection district on the scheduled collection day without following proper notification procedure.....\$2,500.00 per instance

Contractor must maintain an escrow account of \$5,000.00 with the municipality to be used for payment of any liquidated damages. Any unused portion of the deposit shall accrue interest at 5% simple annual interest and will be returned to the Proposer at the end of the contract period.

The Public Works Director or his/her designee will inform the Contractor when or if the escrow account needs to be replenished.