

RESOLUTION R - 3639-B

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING SETTLEMENT OF RABANCO, d/b/a EASTSIDE DISPOSAL COMPANY v. CITY OF KIRKLAND, AND AUTHORIZING THE CITY MANAGER TO SIGN A FOUR WAY AGREEMENT BETWEEN THE CITY OF KIRKLAND, THE CITY OF BELLEVUE, THE RABANCO COMPANIES, A WASHINGTON PARTNERSHIP AND WASTE MANAGEMENT OF SEATTLE, INC A WASHINGTON CORPORATION RELATING TO ANNEXATIONS AND SOLID WASTE COLLECTION SERVICES

Whereas, Waste Management - Rainier, Inc. ("Rainier"), a subsidiary of WMS, holds Certificate No. G-63 issued by the Washington Utilities and Transportation Commission ("WUTC") granting Rainier authorization to service portions of King County, including portions which are presently within the city limits of Bellevue and Kirkland; and

Whereas, Waste Management - Sno-King, Inc ("Sno-King"), a subsidiary of WMS, holds Certificate No. G-126 issued by the WUTC granting Sno-King authorization to service portions of King County, including portions which are presently within the city limits of Bellevue and Kirkland; and

Whereas, Rabanco, d/b/a Eastside Disposal Company ("Eastside") operates under Certificate No G-12 issued by WUTC granting Eastside authorization to service portions of King County, including portions which are presently within the city limits of Bellevue and Kirkland; and

Whereas, Eastside currently provides refuse collection, hauling and disposal services to the City of Bellevue pursuant to an Amended Solid Waste and Collection Agreement filed June 5, 1989; and

Whereas, Sno-King currently provides refuse collection, hauling and disposal services to the City of Kirkland pursuant to contract which went into effect January 1, 1990, and

Whereas, effective January 1, 1988 Kirkland annexed a portion of King County then serviced by Eastside, and

Whereas, pursuant to RCW 35A.14.900 said annexation had the legal effect of cancelling Eastside's Certificate G-12 to serve areas within Kirkland's new city limits subject to Kirkland granting a five year franchise to Eastside and payment of damages for cancellation of the Certificate, and

Whereas, Eastside has filed an action in King County Superior Court Cause No. 89-2-2549-7 against Kirkland to recover damages resulting from the loss of certificated service area ("the lawsuit"); and

Whereas, any resolution of the lawsuit by Eastside and Kirkland may result in damages to Sno-King as a result of its contract with Kirkland; and

Whereas, in several annexations occurring since September of 1983, a list of which is attached as Exhibit 1 to this Agreement and is incorporated herein by this reference, Bellevue has annexed portions of King County serviced by Rainier at the time of the annexations; and

Whereas, pursuant to RCW RCW 35A.14.900, said annexation had the legal effect of cancelling Rainier's Certificate G-63 to serve areas within Bellevue's new city limits subject to Bellevue granting a five year franchise to Rainier and payment of damages for cancelation of the certificate, and

Whereas, Rainier and Bellevue, pursuant to an agreement dated October 31, 1989, did resolve any dispute between these resulting from the cancelling of Rainier's certificate; and

Eastside believes the October 31, 1989 agreement between Rainier and Bellevue may have resulted in damage to Eastside, and

Whereas, Kirkland and Bellevue wish to secure refuse collection, hauling and disposal services from one vendor, and

Whereas, Eastside and Kirkland wish to resolve the disputes set forth in the lawsuit without infringing on the rights of Sno-King, and

Whereas, Kirkland did on March 12, 1990 request Rabanco and WMS to consider potential

settlement possibilities subject to Kirkland's review and approval, and

Whereas, Kirkland and Bellevue wish to avoid similar disputes which may result for future annexations, now therefore

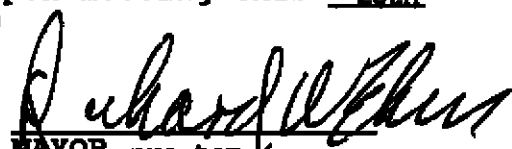
Be it resolved by the City Council of the City of Kirkland as follows:

Section 1 The City Manager of the City of Kirkland is hereby authorized and directed to sign on behalf of the City of Kirkland that certain four way agreement between the City of Kirkland, the City of Bellevue, the Rabanco Companies, a Washington partnership and Waste Management of Seattle, Inc., a Washington corporation, a copy of which is attached to this Resolution as Exhibit A and by this reference incorporated herein.

Section 2 The Kirkland City Attorney is hereby authorized and directed to sign such court documents as may be necessary or required to dismiss or otherwise dispose of the lawsuit, Rabanco Companies, d/b/a Eastside Disposal Company v City of Kirkland, King County Superior Court Cause No. 89-2-2549-7 consistent with the provisions of Exhibit A.

Section 3. The City Manager is hereby authorized to enter into and to sign an amendment to the existing solid waste collection contract between Sno-King, Inc. and the City of Kirkland to conform the service and annexation provisions of said contract with the provisions of Exhibit A.

Passed by Majority vote of the Kirkland City Council in Regular, open meeting this 20th day of November, 1990

  
MAYOR pro tem

Attest:

  
City Clerk

O R\R-Agree

AGREEMENT

THIS AGREEMENT, dated this \_\_\_\_ day of July, 1990 by and among the City of Kirkland, Washington, a municipal corporation ("Kirkland"), the City of Bellevue, Washington, a municipal corporation ("Bellevue"), the Rabanco Companies, a Washington partnership ("Rabanco"), and Waste Management of Seattle, Inc., a Washington corporation ("WMS").

R E C I T A L S

WHEREAS, Waste Management - Rainier, Inc. ("Rainier"), a subsidiary of WMS, holds Certificate No. G-63 issued by the Washington Utilities and Transportation Commission ("WUTC") granting Rainier authorization to service portions of King County, including portions which are presently within the city limits of Bellevue; and

WHEREAS, Waste Management - Sno-King, Inc. ("Sno-King"), a subsidiary of WMS, holds Certificate No. G-126 issued by the WUTC granting Sno-King authorization to service portions of King County, including portions which are presently within the city limits of Bellevue and Kirkland; and

WHEREAS, Rabanco, d/b/a Eastside Disposal Company ("Eastside") operates under Certificate No. G-12 issued by WUTC granting Eastside authorization to service portions of King County, including portions which are presently within the city limits of Bellevue and Kirkland; and

WHEREAS, Eastside currently provides refuse collection, hauling and disposal services to the City of Bellevue pursuant to an Amended Solid Waste and Collection Agreement filed June 5, 1989; and

WHEREAS, Sno-King currently provides refuse collection, hauling and disposal services to the City of Kirkland pursuant to contract which went into effect January 1, 1990; and

WHEREAS, effective January 1, 1988 Kirkland annexed a portion of King County then serviced by Eastside; and

WHEREAS, pursuant to RCW 35 A.14.900 said annexation had the legal effect of cancelling Eastside's Certificate G-12 to serve areas within Kirkland's new city limits subject to Kirkland granting a five year franchise to Eastside and payment of damages for cancellation of the Certificate; and

WHEREAS, Eastside has filed an action in King County Superior Court Cause No. 89-2-2549-7 against Kirkland to recover damages resulting from the loss of certificated service area (the "lawsuit"); and

WHEREAS, any resolution of the lawsuit by Eastside and Kirkland may result in damages to Sno-King as a result of its contract with Kirkland; and

WHEREAS, in several annexations occurring since September of 1983, a list of which is attached as Exhibit 1 to this Agreement and is incorporated herein by this reference, Bellevue has annexed portions of King County serviced by Rainier at the time of the annexations; and

WHEREAS, pursuant to RCW 35 A.14.900, said annexation had the legal effect of cancelling Rainier's Certificate G-63 to serve areas within Bellevue's new city limits subject to Bellevue granting a five year franchise to Rainier and payment of damages for cancellation of the certificate; and

WHEREAS, Rainier and Bellevue, pursuant to an agreement dated October 31, 1989, did resolve any dispute between these resulting from the cancelling of Rainier's certificate; and

WHEREAS, Eastside believes the October 31, 1989 agreement between Rainier and Bellevue may have resulted in damage to Eastside; and

WHEREAS, Kirkland and Bellevue wish to secure refuse collection, hauling and disposal services from one vendor; and

WHEREAS, Eastside and Kirkland wish to resolve the disputes set forth in the lawsuit without infringing on the rights of Sno-King; and

WHEREAS, Kirkland did on March 12, 1990 request Rabanco and WMS to consider potential settlement possibilities subject to Kirkland's review and approval; and

WHEREAS, Kirkland and Bellevue wish to avoid similar disputes which may result for future annexations;

NOW, THEREFORE, in order to resolve their various disputes and further to avoid costs of litigation, the parties have agreed as follows:

- 1. References. All references to Rabanco include all subsidiaries and divisions, including, but not limited to Eastside, and this agreement is binding on all of them. All

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refererces to WMS includes its parent and all subsidiaries and divisions, including, but not limited to Rainier and Sno-King, and this agreement is binding on all of them.

2. Rabanco Transfer. Rabanco agrees to transfer to WMS all of its residential and commercial customers located within the following areas of the City of Kirkland:

a. The entire area annexed to Kirkland effective January 1, 1988, pursuant to and as legally described in the City of Kirkland Annexation Ordinance, No. 3062, 3063 and 3064.

b. All other areas of the City of Kirkland which were annexed into the City within five (5) years prior to the effective date of this agreement; and

c. Effective as of the date of annexation to the City of Kirkland any area of unincorporated King County within the Rabanco franchise area covered by WUTC Certificate No. G-12 which may during the term of this agreement, become annexed to the City of Kirkland, so long as WMS has a contract with the City of Kirkland to provide solid waste collection services in the City, which contract applies to the solid waste collection service in the area to be annexed.

3. WMS Transfer. WMS agrees to transfer to Rabanco all of its residential and commercial customers located with the following areas of the City of Bellevue:

a. All areas of the City of Bellevue which were annexed into Bellevue as identified on Exhibit 1, attached and incorporated herein by this reference; and

b. Effective as of the date of annexation to the City of Bellevue any areas on unincorporated King County within the WMS franchise area covered by WUTC Certificate No. G-63 or G-126 which may during the term of this agreement become annexed to the City of Bellevue, so long as Rabanco has a contract with the City of Bellevue to provide solid waste collection services in the City, which contract applies to the solid waste collection service in the area to be annexed.

4. Compensation.

a. Rabanco and WMS agree to pay to the other in cash an amount equal to six (6) times the monthly revenue of each residential customer received at the tariffed rate in effect at the time of transfer (except for WMS customers in Bellevue which shall be valued at the contract rate set forth on Schedule A, Schedules 1 and 2, to said contract and

d. As used in this agreement, the reference to residential and commercial customers refers to customers serviced by any type of solid waste collection service in the area in question, including, but not limited to, municipal solid waste, yard waste, recyclable waste, special waste, hazardous waste, demolition waste and land clearing debris.

5. Time of Transfer.

a. Rabanco and WMS shall transfer the residential and commercial customers in Kirkland and Bellevue as those cities exist as the date of this agreement, to each other, effective January 1, 1991, or as soon thereafter as approved by the Cities of Kirkland and Bellevue are obtained. Rabanco and WMS shall cooperate with one another to accomplish the transfer so that service to customers suffer the least possible interruption.

b. In the event of future annexations during the term of this agreement, Rabanco and WMS shall transfer the residential and commercial customers on July 1st or January 1st, immediately following the effective date of the future annexation. Rabanco and WMS shall cooperate with one another to ensure that service to customers suffers the least possible interruption.

6. Transfer of Containers/Toters. When any residential or commercial customers are transferred under the terms of this agreement, the containers used to serve those customers shall not be transferred, but shall be retained by the company which is transferring the customers. If, by mutual agreement of Rabanco and WMS, containers are to be transferred with the customers at the time of transfer, then the transferee company shall pay for said containers at the transferring company's book value; provided, that, the containers to be transferred are compatible with the requirements of the city into which the customers are being annexed.

7. Jurisdiction. This agreement is made with reference to and is intended to be construed in accordance with the laws of the State of Washington.

8. Successors In Interest. This agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties.

9. Execution by Counterpart. This agreement shall be executed separately or independently in any number of counterparts, each and all of which together shall be deemed to

excluding any taxes or other charges under that contract and six (6) times the monthly revenue of each commercial customer received at the tariffed rate in effect at the time of transfer (except for WMS customers in Bellevue which shall be valued at the contract rate set forth on Schedule A, Schedules 1 and 2, to said contract and excluding any taxes or other charges under that contract and six (6) times the monthly revenue for roll off or drop box customers (which shall be calculated as an average of the six (6) month's revenue from such accounts for the six (6) months just prior to transfer). WMS and Rabanco agree to provide the party receiving the customers with satisfactory documentation of the monthly revenue generated from such customers. Payments shall be "netted" against one another and a cash payment shall be paid based on the "netting" of revenues otherwise due.

b. In the event that Kirkland shall after the effective date hereof and during the term of this agreement, annex additional areas presently served by Rabanco pursuant to Certificate No. G-12, Rabanco agrees to transfer to WMS and WMS agrees to purchase from Rabanco, Rabanco's customers within such annexed area, so long as WMS, at the time of transfer, has a contract with the City of Kirkland to provide solid waste collection services in the City, which contract applies to the solid waste collection service in the area to be annexed. The purchase price shall be an amount in cash equal to six (6) times the monthly revenue generated by such Rabanco customers as described in paragraph 4.a., above. The contract held by WMS shall remain in effect as to the annexed area for which a transfer under this subparagraph occurs for a minimum period of five (5) years.

c. In the event that Bellevue shall after the effective date hereof and during the term of this agreement, annex additional areas presently served by WMS pursuant to Certificate No. G-63 and/or G-126, Rainier agrees to transfer to Rabanco and Rabanco agrees to purchase from WMS, WMS' customers within such annexed areas, so long as Rabanco, at the time of transfer, has a contract with the City of Bellevue to provide solid waste collection services in the City, which contract applies to the solid waste collection service in the area to be annexed. The purchase price shall be an amount in cash equal to six (6) times the monthly revenue generated by such WMS customers as described paragraph 4.a., above, except the rate used to determine monthly revenue shall be the then effective tariff rate, not the Bellevue contract rate. The contract held by Rabanco shall remain in effect as to the annexed area for which a transfer under this subparagraph occurs for a minimum period of five (5) years.



have been executed simultaneously and for all purposes be one agreement.

10. Captions. The respective captions of the sections or paragraphs hereof are inserted for convenience of reference only and shall not be deemed to modify or otherwise effect in any respect any of the provisions hereof.

11. Construction. This agreement shall not be construed more favorably to one party over another, notwithstanding the fact that one party, or its attorney, may have been more responsible for the preparation of the agreement.

12. Attorneys' Fees. In the event that any party hereto retains an attorney to enforce any of the provisions hereof, then the prevailing party shall be entitled to costs and reasonable attorneys' fees incurred in arbitration or in trial and/or appellate courts, or fees incurred without suit and all court and accounting costs.

13. Time. Time is expressly declared to be of the essence in this agreement.

14. Confidentiality and Disclosure. Rabanco and WMS acknowledge that they have exchanged information of a confidential nature and that this agreement contemplates that in the future, confidential information may be exchanged. Any confidential information which is given by Rabanco and WMS to the other shall be treated by the other as confidential and shall be protected by the receiving party to the same extent that it would protect its own confidential or proprietary information. The receiving party shall inform its employees of the confidential nature of the information and the steps which must be taken to protect that information. Such information shall not be disclosed unless such data or information has been published or is a matter of public knowledge or is required to be disclosed by legal process. Notwithstanding the foregoing, Rabanco and WMS may at any time notify employees, unions, bargaining agents and the public at large of the agreement contemplated herein.

15. Amendment. No modification, amendment, addition to or termination of this agreement nor waiver of any of its provisions shall be valid or enforceable unless in writing and signed by all parties.

16. Waiver. No failure on the part of either party to exercise, and no delay in exercising, any rights hereunder shall operate as a waiver thereof; nor shall any waiver or acceptance of a partial, single or delayed performance of any

term or condition of this agreement operate as a continuing waiver or a waiver of any subsequent breach thereof.

17. Assignment. This agreement may not be assigned by any party hereto, without the prior written consent of all other parties, which consent shall not be unreasonably withheld.

18. Arbitration.

a. Except as may be otherwise provided herein, all disputes between Rabanco and WMS regarding the interpretation of this agreement, or arising from or in connection with this agreement, shall be resolved by arbitration. The party, Rabanco or WMS, desiring to resolve a dispute shall notify the other in writing of the grounds for the dispute. Within thirty (30) days of such notice, each party shall each appoint an arbitrator. Those two arbitrators shall, within thirty (30) calendar days of their appointment meet and select a third arbitrator. The arbitration panel so selected shall establish an arbitration date for the arbitration to be held within thirty (30) calendar days of completion of the panel. The arbitration panel shall render its decision within fifteen (15) days of the date of arbitration. The decision of the arbitration panel shall be final. If the parties cannot mutually resolve the dispute, or an arbitration panel is not selected within the time period described herein, then the aggrieved party may petition the Superior Court for King County for the appointment of an arbitrator by the then presiding judge under the provisions of the Revised Code of Washington §7.04.050, as now in effect or as hereafter amended. Thereafter, the arbitration shall be governed by the provisions of the Revised Code of Washington Chapter 7.04, as now in effect and as hereafter amended, provided that any arbitrator appointed shall have the authority granted to arbitrators under Rule 3.2 of the Superior Court Mandatory Arbitration Rules, as now in effect or as hereafter amended; and, provided further, that the decision of the arbitration panel or arbitrator shall be binding upon the parties.

b. Except as may be otherwise provided herein, all disputes between the parties, other than disputes between Rabanco and WMS, regarding the interpretation of this agreement, arising from or in connection with this agreement shall be resolved by arbitration. The party desiring to resolve a dispute shall notify the other parties in writing of the grounds for the dispute. If the parties cannot mutually resolve the dispute or agree on an arbitrator within thirty (30) calendar days of such notice, then the aggrieved party may petition the Superior Court for King County for the appointment

of an arbitrator by the then presiding judge under the provisions of the Revised Code of Washington §7.04.050, as now in effect or as hereafter amended. Thereafter, the arbitration shall be governed by the provisions of the Revised Code of Washington Chapter 7.04, as now in effect or as hereafter modified, provided that arbitrator appointed shall have the authority granted to arbitrators under Rule 3.2 of the Superior Court Mandatory Arbitration Rules, as now in effect or as hereafter amended; and, provided further, that the decision of the arbitration panel or arbitrator shall be binding upon the parties.

19. Term. This agreement shall begin as of the date set forth above and shall terminate December 31, 2015.

20. Notice. Any notice provided for in this agreement shall be deemed given if it is in writing and is personally delivered or sent by certified mail, postage prepaid, return receipt requested, and delivered or addressed as set forth below, or to such other address as a party may hereafter designate by notice to all other parties given in the same manner:

To Rabanco:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To WMS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To Bellevue:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To Kirkland:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

THIS AGREEMENT entered into the date first set forth above.

CITY OF BELLEVUE, a  
Municipal corporation

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

CITY OF KIRKLAND, a  
Municipal corporation

BY: \_\_\_\_\_


ITS: \_\_\_\_\_

RABANCO COMPANIES,  
a Washington partnership  
on behalf of itself and  
its subsidiaries and  
divisions

BY:   
Warren J. Razo

ITS: President

WASTE MANAGEMENT OF SEATTLE, INC.,  
a Washington corporation  
on behalf of itself, its parent,  
and its subsidiaries and divisions

BY: 

ITS: Vice President

STATE OF WASHINGTON )  
County of King ) ss.

On this day personally appeared before me \_\_\_\_\_, to me known to be the \_\_\_\_\_ of the City of Kirkland, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation, duly authorized by said municipal corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of said municipal corporation.

GIVEN under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 1990.

NOTARY PUBLIC in and for the State of Washington, residing at \_\_\_\_\_. My Commission Expires: \_\_\_\_\_

STATE OF WASHINGTON )  
County of King ) ss.

On this day personally appeared before me \_\_\_\_\_, to me known to be the \_\_\_\_\_ of the City of Bellevue, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation, duly authorized by said municipal corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of said municipal corporation.


GIVEN under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 1990.

NOTARY PUBLIC in and for the State of Washington, residing at \_\_\_\_\_. My Commission Expires: \_\_\_\_\_

STATE OF WASHINGTON )  
County of King ) ss.

On this day personally appeared before me Warren J. Razore, to me known to be the President of Rabanco Companies, the partnership described in and that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said partnership, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of said partnership.

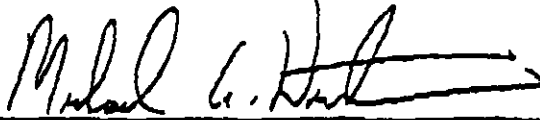
GIVEN under my hand and official seal this 2 day of November, 1990.

  
NOTARY PUBLIC in and for the state of Washington, residing at Seattle.  
My Commission Expires: 7-23-93

STATE OF WASHINGTON )  
County of King ) ss.

On this day personally appeared before me Arthur J. D'Onofrio, to me known to be the VICE PRESIDENT of Waste Management of Seattle, Inc., the corporation described in and that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of said corporation.

GIVEN under my hand and official seal this 7<sup>th</sup> day of November, 1990.

  
NOTARY PUBLIC in and for the state of Washington, residing at FULLERTON WA.  
My Commission Expires: 6-15-95

## EXHIBIT 1

<u>ANNEXATION NAME</u>	<u>ORDINANCE</u>	<u>DATE</u>
SeaBelle	3294	09-19-83
Forest Glen	3295	09-19-83
Redwood Plat	3424	10-25-84
Forest Glen East	3428	11-13-84
Forest Ridge Estates	3493	05-13-85
Mountain Pacific	3414	06-27-85
Ardmore West	3540	09-12-85
Ardmore East	3585	01-01-86
Summit Ridge	3682	07-28-86
Horizon Heights	3782	05-07-87
Lakemont	3786	05-14-87
Collingwood	3841	11-04-87
Skinner	3842	11-04-87
Newton	3844	11-11-87
Summit 4	3850	12-01-87
Whispering Heights	3877	01-13-88
Summit 3	3889	03-19-88
Whispering Horizon	3955	10-05-88
Horizon Crest	3962	11-03-88
Huegli	3963	11-17-88
Halak	3966	12-02-88
Crane	3974	12-15-88
Southpointe	3987	02-15-89
Evergreen Highlands	4024	06-28-89
Mortensen	4045	08-17-89
Somerset Park	4051	09-23-89
High Park	4060	10-11-89
Carpenter	4070	11-01-89
Pun	4113	01-10-90
Vuement South	4127	03-07-90
Cougar Glen	4150	06-28-90