



DATE 8/17/2023

TO Andrew Lee, GM/CEO
Seattle Public Utilities

CC shaquina.davis@seattle.gov
Susan.Ellingson@seattle.gov
susan.fife-ferris@seattle.gov
sally.hulsman@seattle.gov

FROM Sherry Shaffer, Contract Administrator
Sherry.shaffer@seattle.gov 206-684-7642

CONTRACT 22-083-A Organics Processing

- Original Contract
- Amendment #
- Work Assignment #
- Other

Please sign the attached contract document referenced above.

This Contract engages Cedar Grove Composting, Inc. to process Organic Waste into marketable products.

For your reference, here is a link to the [Supporting Documentation](#) (SPU internal site link). Council authorized the execution of this contract by Ordinance 126872 on 7/25/2023.

The overall future hauling and processing costs, with the proposed prices, fall within SW Fund projections, under the 2023-2025 SW Rate Study.

I have reviewed and approve this contract/agreement *Jeffrey A Fowler* 08/21/2023
Jeffrey A Fowler (Aug 21, 2023 14:53 PDT)
 Jeffrey A Fowler, SWLOB Deputy Director

THIS PAGE INTENTIONALLY LEFT BLANK

Organics Processing Contract

between
City of Seattle and
Cedar Grove Composting, Inc.

Contract # 22-083-A

[This page intentionally blank.]

Organics Processing Contract

Contents

GENERAL PROVISIONS.....	1
SECTION 10. PURPOSE AND INTENT.....	1
SECTION 20. CONTRACT TERM.....	1
SECTION 30. DEFINITIONS.....	1
SECTION 40. CITY RESPONSIBILITIES.....	2
SECTION 50. CITY REPRESENTATIONS AND WARRANTIES.....	3
SECTION 60. CONTRACTOR RESPONSIBILITIES.....	3
SECTION 65. INCORPORATION OF CONTRACTOR’S PROPOSAL.....	4
SECTION 70. CONTRACTOR REPRESENTATIONS AND WARRANTIES.....	4
SECTION 75. COMPLIANCE WITH LAW.....	5
COMPENSATION.....	5
SECTION 100. PAYMENT FOR BACK-UP TRANSPORTATION SERVICES.....	5
SECTION 105. PAYMENT FOR PROCESSING SERVICES.....	5
SECTION 110. INFLATION ADJUSTMENT.....	5
SECTION 150. PERFORMANCE FEES.....	6
SECTION 160. CITY CONTRACT FEE PAYMENT PROCEDURE.....	6
EMPLOYEES, SUBCONTRACTORS, AND NON-DISCRIMINATION	6
SECTION 200. PAID SICK TIME AND SAFE TIME ORDINANCE	6
SECTION 210. MINIMUM WAGE AND WAGE REQUIREMENTS	6
SECTION 215. WAGES AND INCREASES FOR EMPLOYEES.....	6
SECTION 220. PAYROLL RECORDS AND REPORTS.....	6
SECTION 225. WITHHOLDING AND PAYMENT OF TAX LIENS AND JUDGMENTS.....	7
SECTION 240. NONDISCRIMINATION - EMPLOYMENT ACTIONS.....	7
SECTION 245. AFFIRMATIVE EFFORTS IN HIRING AND SUBCONTRACTING.....	8
SECTION 250. EQUAL BENEFITS.....	8
SECTION 255. AMERICANS WITH DISABILITIES ACT.....	9
SECTION 260. OSHA/WISHA COMPLIANCE.....	9
SECTION 265. NOTIFICATION REQUIREMENTS FOR FEDERAL IMMIGRATION ENFORCEMENT.....	9
SECTION 270. WORKERS RIGHT TO KNOW.....	9
SECTION 280. INDEPENDENT CONTRACTOR.....	10
SECTION 290. KEY PERSONS AND SUBCONTRACTORS.....	10
SECURITY; LIABILITY; DAMAGES.....	10
SECTION 300. PERFORMANCE BOND.....	10
SECTION 310. DEFAULT OF CONTRACTOR.....	11
SECTION 320. OWNERSHIP OF EQUIPMENT.....	13
SECTION 340. INSURANCE LIMITS.....	13
SECTION 350. INSURANCE TERMS AND CONDITIONS.....	14
SECTION 360. INDEMNITY.....	16
SECTION 370. LIQUIDATED DAMAGES.....	17

INFORMATION DISCLOSURE AND ETHICS PROVISIONS	17
SECTION 400. NO DISCLOSURE UNLESS REQUIRED BY LAW.....	17
SECTION 410. CONTRACTOR’S UNDERSTANDING AND OBLIGATIONS.	17
SECTION 420. THE CITY’S OBLIGATIONS.	18
SECTION 440. VIOLATION OF ANTITRUST OR CORRUPT PRACTICE LAWS.	19
SECTION 450. NO CONFLICT OF INTEREST.	19
SECTION 460. NO GIFTS OR GRATUITIES.	19
SECTION 470. CAMPAIGN CONTRIBUTIONS.....	19
SECTION 480. INVOLVEMENT OF CURRENT AND FORMER CITY EMPLOYEES.	19
SECTION 490. ETHICS CODE FOR WORKERS WITH 1,000 HOURS.....	20
ANCILLARY PROVISIONS.....	20
SECTION 500. ASSIGNMENT OR PLEDGE OF MONEYS BY THE CONTRACTOR.	20
SECTION 505. ASSIGNMENT; SUBCONTRACTING; DELEGATION OF DUTIES.....	20
SECTION 510. AUDIT.....	21
SECTION 520. CONTRACT RIGHTS.	21
SECTION 525. INTERPRETATION.....	21
SECTION 530. LAW; VENUE.....	21
SECTION 535. NOTICES.	22
SECTION 540. SEVERABILITY.....	22
SECTION 545. NO PERSONAL LIABILITY.....	22
SECTION 550. DISPUTES.....	22
SECTION 560. TERMINATION.....	23
SECTION 570. FORCE MAJEURE – SUSPENSION.	23
SECTION 580. EMERGENCIES, DISASTERS – MAJOR SERVICE DISRUPTION; CONTINGENCY PLAN.	23
PROCESSING SERVICES.....	24
SECTION 700. ORGANIC WASTE RECEIVING AND PROCESSING.....	24
SECTION 710. CONTRACTOR SHARE OF CITY ORGANIC WASTE.....	24
SECTION 720. PRIMARY AND SECONDARY ORGANIC WASTE PROCESSING FACILITIES.....	25
SECTION 730. BACK-UP ORGANICS PROCESSING FACILITY.	25
SECTION 740. CONTAMINANTS.	26
SECTION 750. END PRODUCTS.....	26
SECTION 760. PROMOTIONAL PARTNERSHIPS.	27
SECTION 780. DISPOSAL PROHIBITION.	27
SECTION 790. PILOT TESTS.	27
HAULING SERVICES	27
SECTION 830. BACK-UP ORGANIC WASTE TRANSPORTATION.....	27
PERFORMANCE, COORDINATION AND BEST PRACTICES.....	28
SECTION 1400. PERFORMANCE EXPECTATIONS.	28
SECTION 1420. MEETINGS AND COMMUNICATION.	28
SECTION 1440. OPERATIONS PLAN.....	28
SECTION 1450. SUSTAINABLE BUSINESS PRACTICES.....	29

REPORTING AND DATA REQUIREMENTS 29
SECTION 1500. SCALE AND TRIP RECORDS..... 29
SECTION 1510. MONTHLY AND QUARTERLY REPORTS. 29

ORGANICS PROCESSING CONTRACT

BETWEEN THE CITY OF SEATTLE

AND

CEDAR GROVE COMPOSTING, INC.

THIS ORGANICS PROCESSING CONTRACT is entered into by and between THE CITY OF SEATTLE, a municipal corporation of the State of Washington by and through Seattle Public Utilities (SPU)(“City”), and Cedar Grove Composting, Inc. (“Contractor”) to provide for transportation and processing of Organic Waste (as hereinafter defined) collected through the City’s residential, commercial and transfer station services.

The parties, in consideration of the promises, representations and warranties contained herein, agree as follows:

GENERAL PROVISIONS

Section 10. Purpose and Intent.

This Contract engages Cedar Grove Composting, Inc. to process Organic Waste into marketable products.

Section 20. Contract Term.

This Contract shall enter into force and effect upon its execution, with processing services beginning April 1, 2024, continuing for a six-year term, and ending on March 31, 2030.

The City shall have the unilateral right to extend this Contract for up to three successive two-year periods, ending on March 31, 2032, or March 31, 2034, or March 31, 2036, by notifying the Contractor on or before June 30, 2029, or June 30, 2031, or June 30, 2033, respectively. If the City extends this Contract, the same terms, conditions, and method of payment in place at the time of extension shall apply during the extension period.

Section 30. Definitions.

In addition to capitalized terms that are defined elsewhere, the following definitions apply:

“City” means the City of Seattle.

“City Approved Compostable Bags” means bags approved by the City for collection in City services that meet ASTM D6400, ASTM D6868, or successor testing standards and are certified by a recognized third-party independent verification body as meeting the ASTM or successor standard specifications.

“City Approved Single-Use Food Service Ware” means single-use service ware and food packaging approved by the City for collection in City services that meet ASTM D6400, ASTM D6868, or successor testing standards and are certified by a recognized third-party independent verification body as meeting the ASTM or successor standard specifications.

“Contractor’s Share” means the portion of the City’s Organic Waste to be processed by the Contractor as described in Section 710.

“Contaminants” means any materials outside the definition of Organic Waste that are commingled in processing loads.

“Food Waste” means all food scraps, including, but not limited to, meat, dairy products, grease, and bones; paper that has been contaminated with food, fat, or grease; and soiled cardboard and paper, including but not limited to paper towels, paper plates, bags, tissue, and waxed paper.

“Organic Waste” includes Food Waste, Yard Waste, Wood Waste, City Approved Compostable Bags, City Approved Single-Use Food Service Ware, and other organic materials as mutually agreed by the City and the Contractor.

“Yard Waste” means plant material (e.g., leaves, grass clippings, branches, brush, flowers, roots, wood waste, etc.); organic debris commonly thrown away while maintaining yards and gardens, including sod and a small number of incidental rocks not over two (2) inches in diameter; and biodegradable waste approved for the Yard Waste programs by the City. Yard Waste does not include loose soils; Food Waste; plastics and synthetic fibers; Wood Waste; any wood or tree limbs over four (4) inches in diameter; human or animal excrement; animal carcasses; noxious weeds; and, soil or other materials contaminated with hazardous substances.

“Wood Waste” means unpainted and untreated pallets, lumber, lath and cedar shingles, and other clean wood delivered to the City transfer stations.

Section 40. City Responsibilities.

The City shall be responsible for:

1. Making payments contemplated by this Contract;
2. Inspecting Contractor performance;
3. Maintaining its collection contracts;
4. Delivering the Contractor’s Share of Organic Waste to the Contractor’s Processing Facilities;
5. In accordance with Section 740, disposing of Contaminants returned to the City’s disposal facilities;

6. Coordinating and implementing customer education and enforcement efforts with City–contracted collectors to minimize contamination; and
7. Monitoring loads of Organic Waste at City stations to minimize contamination.

Section 50. City Representations and Warranties.

The City represents and warrants to the Contractor as follows:

1. Organization and Qualification. The City is a municipal corporation and has all requisite corporate power and authority to enter into and to perform its obligations under this Contract.
2. Authority.
 - a) The City has the authority to execute this Contract, to make the representations and warranties set forth in it and to perform the obligations of the City under this Contract in accordance with its terms.
 - b) This Contract has been validly executed and constitutes a valid and legally binding and enforceable obligation of the City.

Section 60. Contractor Responsibilities.

The Contractor shall be responsible for:

1. Furnishing all skill, labor, equipment, materials, supplies, technology, and utility services required for providing all services in accordance with this Contract;
2. All actions and activities of its subcontractors;
3. Maintaining and supplying all records and information required by this Contract;
4. Securing at Contractor's expense all governmental permits and licenses and required regulatory approvals (including those required by City ordinance);
5. Paying all applicable taxes;
6. Complying with all applicable laws and regulations, including without limitation relevant environmental and health laws, regulations, and standards related to organics processing and related end products;
7. Performing all work in a timely, thorough, and professional manner;
8. All wage increases for Contractor's employees; and

9. Any added costs resulting from changes in technology, laws and regulations, labor practices, availability of supplies and equipment, and other business risks that may affect the performance of this Contract.

Section 65. Incorporation of Contractor's Proposal.

The Contractor's Proposal, dated September 9, 2022, submitted in response to the City's Request for Proposals, is fully incorporated by this reference, including but not limited to hauling vehicles and trailers, environmental and operational performance, employee compensation and wages, public outreach and compost give away support and staffing, customer service and community support, and other commitments made in the Contractor's proposal and all associated clarifications and supplemental proposal materials or attachments. In the case of conflict between the Contractor's proposal and this Contract, the provisions of this Contract shall prevail.

Section 70. Contractor Representations and Warranties.

The Contractor represents and warrants to the City as follows:

1. Organization and Qualification. The Contractor is duly incorporated, validly existing, and in good standing under the laws of the state of Washington and has all requisite corporate power and authority to enter into and to perform its obligations under this Contract.
2. Authority.
 - a) The Contractor has the authority to execute this Contract, to make the representations and warranties set forth in it, and to perform the obligations of Contractor under this Contract in accordance with its terms.
 - b) This Contract has been validly executed by an authorized representative of the Contractor and constitutes a valid and legally binding and enforceable obligation of Contractor.
3. Government Authorizations and Consents. The Contractor has or will obtain prior to the commencement date such licenses, permits, and other authorizations from federal, state, and other governmental authorities, as are necessary for the performance of its obligations under this Contract.
4. Compliance with Laws. The Contractor is not in violation of any applicable law, ordinance, or regulation, the consequence of which will or may materially affect Contractor's ability to perform its obligations under this Contract. The Contractor is not subject to any order or judgment of any court, tribunal, or governmental agency that materially and adversely affects its operations or assets in the state of Washington, or its ability to perform its obligations under this Contract.

5. Accuracy of Information. None of the representations or warranties in this Contract, and none of the documents, statements, certificates, or schedules furnished or to be furnished by Contractor pursuant hereto or in connection with the performance of the obligations contemplated under this Contract, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements of fact contained therein not misleading.
6. Independent Examination. In accepting these responsibilities, the Contractor represents and affirms that it has made its own examination of all conditions, facilities, and properties affecting the performance of this Contract and of the quantity and expense of labor, equipment, material needed, and of applicable taxes, permits, and laws.

Section 75. Compliance with Law

The Contractor, at its sole cost and expense, shall perform and comply with all applicable laws of the United States and the State of Washington; the Charter, Municipal Code, and ordinances of the City of Seattle; and rules, regulations, orders, and directives of their respective administrative agencies and officers.

COMPENSATION

Section 100. Payment for Back-up Transportation Services.

The City shall pay the Contractor monthly for all tons of Organic Waste transported by the Contractor during the month documented per Sections 1500 and 1510. From April 1, 2024 through March 31, 2025, the City will pay the Contractor a rate of \$515 per load from the City's transfer stations, or from a City Contractor transfer station, for back-up transportation services.

Section 105. Payment for Processing Services.

The City shall pay the Contractor monthly for all tons of Organic Waste processed by the Contractor during the month documented per Sections 1500 and 1510. From April 1, 2024 through March 31, 2025, the City will pay the Contractor a rate of \$69 per ton for processing services.

Section 110. Inflation Adjustment.

The City will compute compensation payable for the Contract year beginning April 1, 2025 and subsequent Contract years as follows:

The per load and per ton rates from the preceding year shall be multiplied by 1.0 plus **80%** of the percentage difference between the second-half annual consumer price index for Urban Wage Earners and Clerical Workers for the Seattle-Tacoma-Bellevue Area (CPI), Series ID No. CWURS49DSA, or successor indices and the previous year's CPI.

Section 150. Performance Fees.

The Contractor shall pay the City \$1 per each minute for any delays on City loads over 45 minutes at the Contractors receiving facilities. Delays include time spent waiting for the scale.

Section 160. City Contract Fee Payment Procedure.

No later than the 10th of each month, the Contractor will submit an invoice and copies of weight information required pursuant to Sections 1500 and 1510. This invoice will be paid by the City to the Contractor by wire transfer on or before the 30th of the same month (or 20 calendar days after the invoice date, if the invoice/weight information is presented late).

EMPLOYEES, SUBCONTRACTORS, AND NON-DISCRIMINATION

Section 200. Paid Sick Time and Safe Time Ordinance

The Contractor shall comply with City's Paid Sick Time and Safe Time ordinance that requires companies to provide employees who work more than 240 hours within a year inside the City, with accrued paid sick and paid safe time for use when an employee or a family member needs time off from work due to illness or a critical safety issue. The ordinance applies to employers, regardless of where they are located, with more than four full-time equivalent employees. This is in addition and additive to benefits a worker receives under prevailing wages per WAC 296-127-014(4). City contract specialists may audit payroll records or interview workers as needed to ensure compliance to the ordinance.

Section 210. Minimum Wage and Wage Requirements

The Vendor shall comply to the extent applicable with the City's Minimum Wage labor standards as required by SMC 14.19, setting wage standards for employees working within City limits as well as the Wage Theft labor standards as required by SMC 14.20, setting basic requirements for payment of wages and tips for employees working within City limits and providing various payment documentation to employees.

Section 215. Wages and Increases for Employees.

Employee wages and compensation reflect Contractor commitments in their proposal submitted September 9, 2022, in response to the City's Request for Proposals. All wage increases for any employees of the Contractor granted during the term of this Contract shall be the sole responsibility of the Contractor. Any benefits or added costs resulting from changes in technology, laws and regulations, labor practices, availability of equipment, and other foreseeable business risks that may affect the performance of this Contract shall be to the Contractor's advantage or expense respectively.

Section 220. Payroll Records and Reports.

The Contractor and subcontractors shall keep complete and accurate payrolls containing the following information with respect to staff employed upon or under this Contract:

1. Name and residence address;

2. Classification of work;
3. City route number;
4. Number of hours employed each day, as verified by a time clock record;
5. Total number of hours employed each payroll period, as verified by a time clock record;
6. Rate of wages;
7. Total amount earned;
8. All deductions;
9. Net amount paid; and
10. Funds paid by employer for prevailing benefits.

All employees shall be paid in lawful money of the United States, in the full amount accrued to each employee at the time of closing the payroll.

The Contractor's and subcontractor's payroll records shall be available for inspection and audit by City staff, or a City third-party contractor, during office hours at the Contractor's Seattle office.

The Contractor and subcontractor shall submit electronic copy of payroll records with other above information if requested by the City.

The City shall withhold payment on all estimates for work performed by the Contractor under this Contract until: (1) all payroll reports, with the above information of said Contractor and subcontractor for work performed have been filed with the City; and (2) all employees doing collection work under this Contract have been paid the prevailing rate of wage as determined by the City.

Section 225. Withholding and Payment of Tax Liens and Judgments.

The City may withhold and pay to the United States of America or to any federal court, or the State of Washington or any state court, the amount claimed in a levy filed by the United States Internal Revenue Service or the Washington State Department of Revenue, respectively; the amount directed by a writ of garnishment, writ of attachment, or writ of execution, or by an order of a Bankruptcy Court, and/or by any court order, each for monies claimed from the Contractor. When presented with such an order, the City may in its discretion institute interpleader proceedings. The City may make a payment in conjunction with the interpleader action to the appropriate court. Payments so made or deposited into the registry of the court shall be satisfaction of payment due to the Contractor.

Section 240. Nondiscrimination - Employment Actions.

The Contractor shall not discriminate against any employee or applicant for employment because of race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupational qualification.

The Contractor shall affirmatively try to ensure applicants are employed, and employees are treated during employment, without regard to race, color, age, sex, marital status, sexual orientation, gender identify, political ideology, creed, religion, ancestry, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical handicap. Such efforts include, but are not limited to: employment, upgrading, demotion, transfer, recruitment, layoff, termination, rates of pay or other compensation, and training.

Section 245. Affirmative Efforts in Hiring and Subcontracting.

In accordance with Seattle Municipal Code Chapter 20.42, Contractor shall actively solicit the employment and subcontracting of women and minority group members when there are commercially useful purposes for fulfilling the scope of work.

The WMBE Inclusion Plan submitted to the Contractor's Proposal is material to the Contract. The requirements and conditions stated in the WMBE Inclusion Plan shall be enforced as a contract requirement.

If upon investigation, the City finds probable cause to believe that the Contractor has failed to comply with the requirements of this Section, the Contractor shall be notified in writing. The City shall give the Contractor an opportunity to be heard with ten (10) calendar days' notice. If, after the Contractor's opportunity to be heard, the City still finds probable cause, then the City may suspend the Contract and/or withhold any funds due or to become due to the Contractor, pending compliance by the Contractor with the requirements of this Section.

Any violation of the mandatory requirements of this Section, or a violation of Seattle Municipal Code Chapter 14.04 (Fair Employment Practices), Chapter 14.10 (Fair Contracting Practices), Chapter 20.45 (City Contracts – Non-Discrimination in Benefits), or other local, state, or federal non-discrimination laws, shall be a material breach of Contract for which the Contractor may be subject to damages and sanctions provided for by the Contract and by applicable law. In the event the Contractor is in violation of this Section shall be subject to debarment from City contracting activities in accordance with Seattle Municipal Code Section 20.70 (Debarment).

Section 250. Equal Benefits.

The Contractor shall comply with the requirements of SMC Ch. 20.45 and Equal Benefits Program Rules implementing such requirements, under which the Contractor is obligated to provide the same or equivalent benefits ("equal benefits") to its employees with domestic partners as the Contractor provides to its employees with spouses. At the City's request, the Contractor shall provide complete information and verification of the Contractor's compliance with SMC Ch. 20.45. Failure to cooperate with such a request shall constitute a material breach of this Contract.

Remedies for Violations of SMC Ch. 20.45: Any violation of this Section shall be a material breach of Contract for which the City may:

1. Require Contractor to pay actual damages for each day that the Contractor is in violation of SMC Ch. 20.45 during the term of the Contract; and/or
2. Terminate the Contract; and/or
3. Disqualify Contractor from bidding on or being awarded a City contract for a period of up to five (5) years; and/or
4. Impose such other remedies as specifically provided for in SMC Ch. 20.45 and the Equal Benefits Program Rules promulgated thereunder.

Section 255. Americans with Disabilities Act.

The Contractor shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this Contract. If the Contractor is providing services, programs or activities to City employees or members of the public as part of this Contract, the Contractor shall not deny participation or the benefits of such services, programs, or activities, to people with disabilities based on such disability. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate Contract termination.

Section 260. OSHA/WISHA Compliance.

The Contractor agrees to comply with conditions of the Federal Occupational Safety and Health Acts of 1970 (OSHA), as may be amended, and, if it has a workplace within the State of Washington, the Washington Industrial Safety and Health Act of 1973 (WISHA), as may be amended, and the standards and regulations issued thereunder and certifies that all services under this Contract will conform to and comply with said standards and regulations. Contractor further agrees to indemnify and hold harmless purchaser from all damages assessed against the City as a result of the Contractor's failure to comply with the acts and standards thereunder and for the failure of the services furnished under this Contract to so comply.

Section 265. Notification Requirements for Federal Immigration Enforcement.

Prior to responding to any requests from an employee or agent of any federal immigration agency including the Immigration and Customs Enforcement (ICE), the U.S. Department of Homeland Security (DHS), Homeland Security Investigations (HSI), Enforcement Removal Operations (ERO), Customs and Border Protection (CBP), and U.S. Citizenship and Information Services (USCIS) regarding this Contract, the Contractor shall notify the City immediately. Such requests include but are not limited to requests for data or information (written or verbal) about workers engaged in the work of this Contract. To the extent allowed by law, no access or information shall be provided without prior review and consent of the City. The Contractor will request the federal authority wait until the City is able to verify the credentials and authority of the requesting agent and direct the Contractor on how to proceed.

Section 270. Workers Right to Know.

"Right to Know" legislation required the Department of Labor and Industries to establish a program to make employers and employees more aware of the hazardous substances in their work environment. WAC 296-62-054 requires among other things that all manufacturers/distributors of hazardous substances, must include with each delivery

completed Material Safety Data Sheets (MSDS) for each hazardous material. Additionally, each container of hazardous material must be appropriately labeled with: the identity of the hazardous material, appropriate hazardous warnings, and the Name and Address of the chemical manufacturer, importer, or other responsible party.

Labor and Industries may levy appropriate fines against employers for noncompliance and agencies may withhold payment pending receipt of a legible copy of the MSDS. OSHA Form 20 is not acceptable in lieu of this requirement unless it is modified to include appropriate information relative to "carcinogenic ingredients and "routes of entry" of the product(s) in question.

Section 280. Independent Contractor.

It is the intention and understanding of the parties that Contractor shall be an independent contractor and that the City shall be neither liable for nor obligated to pay sick leave, vacation pay, or any other benefit of employment, nor to pay any social security or other tax that may arise as an incident of employment. The Contractor shall pay all income and other taxes as due in a timely manner. Industrial or other insurance that is purchased for the benefit of the Contractor shall not be deemed to convert this Contract to an employment contract. It is recognized that Contractor may or will be performing work during the term for other parties and that the City is not the exclusive user of the services that Contractor provides.

Section 290. Key Persons and Subcontractors.

Contractor shall not transfer, reassign, or replace any individual or subcontractor that is determined to be essential or that has been agreed upon in the Contractor's Subcontracting (Inclusion) Plan, without express written consent of the City. If during the term of this Contract, any such individual leaves the Contractor's employment or any named subcontract is terminated for any reason, Contractor shall notify the City and seek approval for reassignment or replacement with an alternative individual or subcontractor. Upon the City's request, the Contractor shall present to the City, one or more subcontractors or individual(s) with greater or equal qualifications as a replacement. Continued achievement of the Subcontracting (Inclusion) Plan that was incorporated into this Contract by reference, if any, and the associated subcontract awards, aspirational goals and efforts, will be one of the considerations in approval of such changes. The City's approval or disapproval shall not be construed to release the Contractor from its obligations under this Contract.

SECURITY; LIABILITY; DAMAGES

Section 300. Performance Bond.

The Contractor shall provide and maintain always a valid Contractor's Performance and Payment Bond ("Bond") for thirty percent (30%) of the estimated annual revenue to the Contractor under the Contract. The Bond shall be issued for a period of not less than one year and the Contractor shall provide a new bond, or evidence satisfactory to the City of the renewability of the current bond at least 90 calendar days before it expires.

The initial Bond must be in place prior to the beginning of processing under this Contract.

The Bond shall be conditioned upon full performance of all obligations imposed upon the Contractor in this Contract. The Bond shall be subject to approval by the City Attorney as to the company, form, and sufficiency of surety. If the instrument is found by the City Attorney to be flawed, the Contractor must correct the flaw promptly prior to contract execution or the award may be terminated.

The Bond must be executed by a company that is included in the U. S. Department of the Treasury's Listing of Approved Sureties (Circular 570), is included on the Washington State Insurance Commissioner's Authorized Insurance Company List and is acceptable to the City.

The Bond shall be in full force effect and shall be the obligation of the surety unless the Contractor shall faithfully perform all the provisions of this Contract and pay all laborers, mechanics, subcontractors, materialmen, and all persons who shall supply such Contractor or subcontractors with provisions and supplies for the performance of this Contract. The Bond shall contain appropriate recitations that it is issued pursuant to this Section of this Contract, that it shall be construed to meet all requirements specified herein and that any condition or limitation in the Bond that conflicts with the conditions and requirements of this Section is void.

Failure of the Contractor to furnish and maintain the Bond shall be considered a material default of this Contract and grounds of its immediate termination at the option of the City.

Section 310. Default of Contractor.

This Section is independent, notwithstanding any other provisions of this Contract. Except as provided in the last paragraph of this Section, the Contractor may be held in default of the Contract in the event the Contractor:

1. Is unable to accept Organic Waste, for more than a 48-hour period for processing at the Primary, Secondary, or back-up Processing Facility or alternate facility approved by the City;
2. Fails to comply with the terms of any of the Sections 200 to 290;
3. Fails to furnish and maintain a Performance and Payment Bond per Section 300;
4. Fails to furnish and maintain the Insurance Requirements per Section 340;
5. Fails to provide timely and accurate Contractor records per Section 1500; or
6. Repeatedly neglects, fails, or refuses to comply with any material term of the Contract, after having received written notice of its obligation to do so.

To initiate proceedings under this Section, the City shall give notice to the Contractor and its surety of the location, time, and date within the following seven (7) calendar days of a meeting with the City's General Manager at which the Contractor will be given the opportunity to correct the deficiency above and to show cause why it should not be declared in default or why it should be given the opportunity to cure said default. In the event the Contractor fails to show, to the reasonable satisfaction of the City's General Manager, why the Contractor should not be declared to be in default of this Contract, the City's General Manager may make a declaration of default. In evaluating whether to make such a declaration of default, the City's General Manager shall, in her/his discretion, consider the severity of the alleged violations, and the overall performance of the Contractor under the Contract.

In declaring the Contractor to have defaulted on the Contract, the Director also may order the Contractor to discontinue further performance of work under the Contract and transfer the obligation to perform such work from the Contractor to the surety on the Contractor's performance Bond and take any other action it deems advisable.

Upon receipt of a notice that the work has been transferred to the surety without termination of the Contract, the surety shall take possession of all materials, supplies, technology, and equipment described in the most recent inventory submitted to the City pursuant to Sections 1020 and 1500 hereof, for the purpose of completing the work under the Contract; employ, by contract or otherwise, any person and all persons needed to perform the work; and provide materials, supplies, technology, and equipment required therefor. Such employment shall not relieve the surety of its obligations under the Contract and the bond. If there is a transfer to the surety, payments shall be made to the surety or its agent for all work performed under the Contract subsequent to such transfer, in amounts equal to those that would have been made to the Contractor had it performed in the manner and to the extent of the surety's performance, and the Contractor shall have no claim upon the same.

In the event the surety on the Contractor's performance Bond fails to assume or continue performances within 48 hours after its receipt of notice that the work has been transferred to such surety, the Contractor shall lease, sublease, or otherwise license the City to use all, or whatever portion is desired by the City, of the materials, supplies, technology, and equipment described on the most recent inventory submitted to the City pursuant to Section 1020 hereof, for collection purposes for a period of up to six (6) months following the date of the declaration of default by the City without requiring the City to execute any other document whatsoever to accomplish such lease, sublease, or license and without requiring the City to post any bond, pledge, deposit, or other security for such equipment and materials, but upon the condition that the City pay for the equipment, supplies, technology, and materials actually used for such collection a market rental that is no greater than (i) the monthly lease, in the event such property is leased by the Contractor, (ii) the periodic installment, in the event such property is being acquired under a purchase contract, (iii) the periodic financing interest and principal, in the event such property is being acquired under a purchase contract, or (iv) the periodic interest and principal, in the event such property is being acquired under a financing arrangement; provided, that under

no circumstances shall the City be liable during its use of such property for any arrearages, balloon payment, accrued interest, accelerated charges in the event of a default, or other extraordinary payment; nor shall the satisfaction thereof be a condition of the City's interim use of such property; provided, further, that such lease, sub-lease, or license shall be suspended the date the surety on the Contractor's bond or its agent accepts the transfer of work under the Contract.

In the event the City secures the performance of work under the Contract at a lesser cost than would have been payable to the Contractor had the Contractor performed the same, then the City shall retain such difference; but in the event such cost to the City is greater, the Contractor and its surety shall be liable for and pay the amount of such excess to the City in a timely manner.

All payments due the Contractor at the time of default, less amounts due the City from the Contractor, shall be applied by the City against damages suffered and expense incurred by the City by reason of such default, and any excess shall be paid to the Contractor unless otherwise provided herein.

Notwithstanding the provisions of this Section, a delay or interruption in the performance of all or any part of the Contract resulting from causes beyond the Contractor's control shall not be deemed to be a default and the rights and remedies of the City provided for herein shall be inapplicable; provided that labor disputes shall not be considered a cause beyond the Contractor's control.

Section 320. Ownership of Equipment.

All essential facilities, equipment, supplies, technology, and property used in the performance of this Contract shall be wholly owned by the Contractor; provided, that leases, conditional sale contracts, mortgages, or other agreements for the use or financing the purchase of vehicles, facilities, equipment, supplies, technology, and property may be allowed with the prior written approval of the City.

All such leases, conditional sale contracts, mortgages, or other agreements shall provide that in the event of the Contractor's failure to perform its obligations under this Contract, the City, at its option, shall have the right to take possession of and operate vehicles, facilities, equipment, supplies, technology, and property covered by such lease or agreement for the unexpired term of this Contract. No further encumbrance shall be placed upon any such vehicles, facilities, supplies, technology, or equipment without the prior written approval of the City.

Section 340. Insurance Limits.

At all times during the term of this Agreement, the Contractor shall maintain in force the following minimum levels of coverage and limits of liability for insurance or self-insurance ("Insurance"):

1. COMMERCIAL GENERAL LIABILITY (CGL) Insurance including coverage for:
 - Premises/Operations

- Products/Completed Operations
- Pollution – On-Site and Off-Site*
- Personal/Advertising Injury
- Contractual
- Independent Contractors
- Stop Gap/Employers Liability

Such Insurance must provide the following minimum limits of liability:

\$5,000,000	each occurrence Combined Single Limit bodily injury and property damage (CSL)
\$10,000,000	Products/completed operations aggregate
\$1,000,000	General aggregate
\$5,000,000	each accident/disease/policy limit

2. BUSINESS AUTOMOBILE LIABILITY INSURANCE for owned, non-owned, hired, and leased vehicles, as applicable, written on a form CA 00 01 or equivalent, including for City trailers when transported by the Contractor. Such insurance must provide a minimum limit of liability of \$1,000,000 CSL.
3. WORKERS' COMPENSATION INSURANCE as required by the Industrial Insurance laws of the state of Washington.
4. UMBRELLA/EXCESS/BUMBERSHOOT LIABILITY INSURANCE over CGL and automobile liability minimum limit shall be \$5,000,000 CSL (\$6,000,000 total limits requirement).

The limits of liability specified above may be satisfied with primary limits of liability or any combination of primary limits and excess/umbrella limits.

Section 350. Insurance Terms and Conditions.

1. **City of Seattle as Additional Insured:** The CGL, Auto, and excess/umbrella insurance shall include "the City of Seattle" as an additional insured for primary and non-contributory limits of liability.
2. **No Limitation of Liability:** Insurance coverage and limits of liability as specified herein are minimum coverage and limit of liability requirements only; they shall not be construed to limit the liability of the Contractor or any insurer for any claim that is required to be covered hereunder to less than the applicable limits of liability stated in the declarations. Moreover, the City shall be an additional insured, where additional insured status is required, for the full available limits of liability maintained by vendor, whether those limits are primary, excess, contingent or otherwise. The Contractor expressly understands and agrees that this provision shall override any limitation of liability or similar provision in any agreement or statement of work between the City and the Contractor.

* Pollution Liability Insurance minimum limits of liability may be evidenced with separate coverage.

- 3. Required Separation of Insured Provision; Cross-Liability Exclusion and other Endorsements Prohibited:** The Contractor's insurance policy shall include a "separation of insureds" or "severability" clause that applies coverage separately to each insured and additional insured, except with respect to the limits of the insurer's liability. The Contractor's insurance policy shall not contain any provision, exclusion or endorsement that limits, bars, or effectively precludes the City of Seattle from coverage or asserting a claim under the Contractor's insurance policy on the basis that the coverage or claim is brought by an insured or additional insured against an insured or additional insured under the policy. The Contractor's CGL policy shall NOT include any of the following Endorsements (or their *equivalent endorsement or exclusions*): (a) Contractual Liability Limitation, (CGL Form 21 39 or equivalent), b) Amendment Of Insured Contract Definition, (CGL Form 24 26 or equivalent), (c) Limitation of Coverage to Designated Premises or Project, (CGL Form 21 44 or equivalent), (d) any endorsement modifying or deleting the exception to the Employer's Liability exclusion, (e) any "Insured vs. Insured" or "cross-liability" exclusion, and (f) any type of punitive, exemplary or multiplied damages exclusion. The Contractor's failure to comply with any of the requisite insurance provisions shall be a material breach of, and grounds for, the immediate termination of the Contract with the City of Seattle; or if applicable, and at the discretion of the City of Seattle, shall serve as grounds for the City to procure insurance coverage with any related costs of premiums to be repaid by the Contractor or reduced and/or offset against the Contract.
- 4. Claims Made Form:** If any policy is written on a claims made form, the retroactive date shall be prior to or coincident with the effective date of this Contract. Claims made coverage shall be maintained by the Contractor for a minimum of three (3) years following the expiration or earlier termination of this contract, and the Contractor shall provide the City with evidence of insurance for each annual renewal. If renewal of the claims made form of coverage becomes unavailable or economically prohibitive, the Contractor shall purchase an extended reporting period ("tail") or execute another form of guarantee acceptable to the City to assure financial responsibility for liability assumed under the contract.
- 5. Deductibles and Self-Insured Retentions:** Any self-insurance retention or deductible in excess of \$ 25,000 that is not "fronted" by an insurer and for which claims the vendor or its third-party administrator is directly responsible for defending and indemnifying must be disclosed on the certificate of liability insurance. The Contractor agrees to defend and indemnify the City under its self-insured or deductible layer and upon City's request advise the full delivery address of the individual or department to whom a tender of a claim should be directed.
- 6. Notice of Cancellation:** Under RCW 48.18.290 ("Cancellation by insurer") applicable to insurers licensed to do business in the State of Washington, the City, as a certificate holder for the insurance requirements specified herein and an additional insured, has an interest in any loss which may occur; written notice of cancellation must therefore be actually delivered or mailed to the City not less than

30 days prior to cancellation (10 days as respects non-payment of premium). As respects surplus lines placements, written notice of cancellation shall be delivered not less than 30 days prior to cancellation (10 days as respects non-payment of premium).

7. **Qualification of Insurers:** Insurers shall maintain A.M. Best's ratings of A- VII unless procured as a surplus lines placement under RCW chapter 48.15, or as may otherwise be approved by the City.
8. **Changes in Insurance Requirements:** The City shall have the right to periodically review the adequacy of coverages and/or limits of liability in view of inflation and/or a change in loss exposures and shall have the right to require an increase in such coverages and/or limits upon ninety (90) days prior written notice to the Contractor. Should the Contractor, despite its best efforts, be unable to maintain any required insurance coverage or limit of liability due to deteriorating insurance market conditions, it may upon thirty (30) days prior written notice request a waiver of any insurance requirement, which request shall not be unreasonably denied.
9. **Evidence of Insurance:** The Contractor must provide the following evidence of insurance:
 - a) A certificate of liability insurance evidencing coverages, limits of liability and other terms and conditions as specified herein;
 - b) An attached City of Seattle designated additional insured endorsement or blanket additional insured wording to the CGL/MGL (and if required Pollution Liability insurance policy).
 - c) A copy of all other amendatory policy endorsements or exclusions of the Contractor's insurance CGL/MGL policy that evidences the coverage required.

In the event that the City tenders a claim or lawsuit for defense and indemnity invoking additional insured status, and the insurer either denies the tender or issues a reservation of rights letter, the Contractor shall also cause a complete copy of the requested policy to be timely furnished to the City.

Section 360. Indemnity.

To the extent permitted by law, the Contractor shall protect, defend, indemnify, and hold the City harmless from and against all claims, demands, damages, costs, actions and causes of actions, liabilities, fines, penalties, judgments, expenses and attorney fees, resulting from the injury or death of any person or the damage to or destruction of property, or the infringement of any patent, copyright, or trademark, or trade secret arising out of the work performed or goods provided under this Contract, or the Contractor's violation of any law, ordinance or regulation, contract provision or term, or condition of regulatory authorization or permit, except for damages resulting from the sole negligence of the City. As to the City, the Contractor waives any immunity it may have under RCW Title 51 or any other Worker's Compensation statute. The parties acknowledge that this waiver has been negotiated by them, and that the contract price reflects this negotiation.

Section 370. Liquidated Damages.

This Section is independent of Section 310. Liquidated Damages pursuant to this Section shall be deducted from the monthly payment to the Contractor. These damages do not apply if a major disaster or emergency causes a disruption in the Processing Facility operations or transportation services. The acts or omissions in the left-hand column are a breach of this Contract; the amounts in the right-hand column are set as Liquidated Damages.

<u>OMISSION</u>	<u>LIQUIDATED DAMAGE</u>
1. Failure to accept Organic Waste at the primary, secondary, or back up receiving facility for more than a 3-hour period, during operating hours.	\$500 per trailer per hour

Procedures for applying, appealing, and reversing liquidated damages will be included in the Operations Plan.

INFORMATION DISCLOSURE AND ETHICS PROVISIONS

Section 400. No disclosure unless required by law.

The parties agree that they will not permit the duplication, use, or disclosure of any information designated in advance by the other party as "Confidential and Proprietary" to any person (other than its own employee, agent, or representative who must have such information for the performance of that party's obligations hereunder) unless such duplication, use, or disclosure is specifically authorized in writing by the other party or is required by law. "Confidential and Proprietary" information does not include ideas, concepts, know-how, or techniques related to information that, at the time of disclosure, is in the public domain unless the entry of that information into the public domain is a result of any breach of this Contract. Likewise, "Confidential and Proprietary" information does not apply to information that is independently developed, already possessed without obligation of confidentiality, or rightfully obtained from a third party without an obligation of confidentiality.

Section 410. Contractor's Understanding and Obligations.

The Contractor understands that any records (including but not limited to proposal submittals, the Contract, and any other contract materials) it submits to the City, or that are used by the City even if the Contractor possesses the records, are public records under Washington State law, RCW Chapter 42.56. Public records must be promptly disclosed upon request unless a statute exempts them from disclosure. The Contractor also understands that even if part of a record is exempt from disclosure, the rest of that record generally must be disclosed.

The Contractor must separate and clearly mark as "proprietary" information all records related to this Contract or the performance of this Contract that the Contractor believes are exempt from disclosure. The Contractor is to be familiar with potentially applicable public

disclosure exemptions and the limits of those exemptions and will mark as “proprietary” only information that the Contractor believes legitimately fits within an exemption and will state the statutory exception upon which it is relying.

If the City notifies the Contractor of a public records request, and the Contractor believes records are exempt from disclosure, it is the Contractor’s responsibility to make its own determination and pursue a lawsuit under RCW 42.56.540 to enjoin disclosure. The Contractor must obtain the injunction and serve it on the City before the close of business on the tenth business day after the City sent notification to the Contractor. It is the Contractor’s discretionary decision whether to file the lawsuit.

If the Contractor does not timely obtain and serve an injunction, the Contractor is deemed to have authorized releasing the record.

Notwithstanding the above, the Contractor must not take any action that would affect (a) the City’s ability to use goods and services provided under this Contract or (b) the Contractor’s obligations under this Contract.

The Contractor will fully cooperate with the City in identifying and assembling records in case of any public disclosure request.

Section 420. The City’s Obligations.

The City will disclose those parts of records the Contractor has marked as “proprietary information” only to authorized persons unless: (a) the City discloses the records in response to a public records request or (b) the Contractor has given the City express advance written permission to disclose the records. “Authorized persons” means those City officers, employees, contractors and consultants for whom the proprietary information is necessary to perform their duties or obligations to the City. The term “proprietary information” does not include ideas, concepts, know-how or techniques related to any information that, at the time of disclosure, is in the public domain, unless the entry of that information into the public domain is a result of a breach of this Contract.

If the City receives a public records request for records that Contractor has marked as “proprietary information,” the City may promptly notify the Contractor of the request. The City may postpone disclosing these records for ten (10) business days after it has sent notification to the Contractor, in order to allow the Contractor to file a lawsuit under RCW 42.56.540 to enjoin disclosure. It is the Contractor’s discretionary decision whether to file the lawsuit.

If the City has notified the Contractor of a public records request, and the Contractor has not obtained an injunction and served the City with that injunction by the close of business on the tenth business day after the City sent notice, the City may disclose the record.

The City has no other obligations concerning records the Contractor has marked as “proprietary information” under this Contract. The City has no obligation to claim any exemption from disclosure. The City is not obligated or liable to the Contractor for any

records that the City releases in compliance with this Section or in compliance with the order of a court of competent jurisdiction.

Section 440. Violation of Antitrust or Corrupt Practice Laws.

In the event the Contractor is found to be guilty of a violation of antitrust or corrupt practice laws for acts performed in Washington during the term of this Contract, the City at its election may terminate this Contract by giving the Contractor written notice of the City's intent to terminate this Contract effective on the date designated by the City in the notice. For purposes of this Section, the "antitrust or corrupt practice laws" shall include all civil and criminal statutes, both state and federal, pertaining to the antitrust laws, fair practices acts, and any laws governing corrupt standards or practices. Further, for the purposes of this Section, the Contractor shall be considered to be "guilty" of a violation of such antitrust or corrupt practice laws if the Contractor or any of its officers or management employees: (1) enters a plea of guilty to a charge, (2) enters a plea of nolo contendere, or (3) is found guilty of a criminal violation or is held liable for a civil violation by the highest court or tribunal which considers the case.

Section 450. No Conflict of Interest.

Contractor confirms that Contractor does not have a business interest or a close family relationship with any City officer or employee who was, is, or will be involved in the Contractor selection, negotiation, drafting, signing, administration, or evaluating the Contractor's performance.

Section 460. No Gifts or Gratuities.

Contractor shall not directly or indirectly offer anything of value (such as retainers, loans, entertainment, favors, gifts, tickets, trips, favors, bonuses, donations, special discounts, work, or meals) to any City employee, volunteer, or official, that is intended, or may appear to a reasonable person to be intended, to obtain or give special consideration to the Vendor. Promotional items worth less than \$25 may be distributed by the vendor to City employees if the Vendor uses the items as routine and standard promotions for business. Any violation of this provision may result in termination of this Contract. Nothing in this Contract prohibits donations to campaigns for election to City office, so long as the donation is disclosed as required by the election campaign disclosure laws of the City and of the State.

Section 470. Campaign Contributions.

Elected officials and candidates are prohibited from accepting or soliciting campaign contributions from anyone having at least \$250,000 in contracts with the City in the last two years or who has paid at least \$5,000 in the last 12 months to lobby the City.

Section 480. Involvement of Current and Former City Employees.

If a Contractor has any current or former City employees, official, or volunteer working or assisting on solicitation of City business or on completion of an awarded contract, you **must** provide written notice to SPU Contracting Division of the current or former City official, employee, or volunteer's name. The Vendor Questionnaire in your proposal included an initial Contractor listing. Contractor shall update the Contracting Division with

any relevant changes. The Contractor shall be aware and familiar with the Ethics Code (SMC 4.16) and educate workers accordingly.

Section 490. Ethics Code for Workers with 1,000 hours.

The Contractor shall provide annual list of workers that perform more than 1,000 hours of contract work within a rolling 12-month period. Such hours include performance under for the Contract, and any other hours that the worker performs for the City under other contracts. The Contractor shall advise such workers that they are subject to the City Ethics Code (SMC 4.16) and educate workers accordingly.

ANCILLARY PROVISIONS

Section 500. Assignment or Pledge of Moneys by the Contractor.

The Contractor shall not assign or pledge any of the monies due under this Contract without securing the written approval of the surety on the performance bond and providing at least thirty (30) calendar days' prior notice to the City of such assignments or pledge together with a copy of the surety's approval thereof. Such assignment or pledge, however, shall not release the Contractor or its sureties from any obligations or liabilities arising under or because of this Contract.

Section 505. Assignment; Subcontracting; Delegation of Duties.

Except for the subcontracting identified in the Contractor's proposal, the Contractor shall not assign or subcontract or transfer any of the work or delegate any of its duties under the Contract without the prior written approval of the City, which approval may be granted or withheld in the City's sole discretion.

Any subcontract made by Contractor shall incorporate by reference all the terms of this Contract except for Equal Benefit provisions (Section 250). Contractor shall ensure that all subcontractors comply with the obligations and requirements of the subcontract, except for Equal Benefit provisions (Section 250).

The City's consent to any assignment or subcontract shall not release the Contractor from liability under this Contract, or from any obligation to be performed under this Contract, whether occurring before or after such consent, assignment, or subcontract. In the event of an assignment, subcontract, or delegation of duties, the Contractor shall remain responsible for the full and faithful performance of this Contract and the assignee, subcontractor, other obligor shall also become responsible to the City for the satisfactory performance of the work assumed. The City may condition its approval upon the delivery by the assignee, subcontractor, or other obligor of its covenant to the City to fully and faithfully complete the work or responsibility undertaken.

During the term of this Contract, the Contractor shall not have any ownership interest in any other company that has a contract for Organic Waste Processing with the City.

Section 510. Audit.

The Contractor shall maintain in its office in King County full and complete accounting records, prepared in accordance with generally accepted accounting principles, reflecting the Contractor's work on this Contract. The City may require an audit of such books and records at any reasonable time. Such audit will be conducted by City staff or by a certified public accounting firm with experience in auditing public service companies selected by the City.

Upon request, the Contractor shall permit the City to inspect and audit all pertinent books and records of the Contractor, any subcontractor, or any other person or entity that performed work in connection with or related to this Contract, at any and all times deemed necessary by the City, including up to six (6) years after the final payment or release of withheld amounts has been made under this Contract. Such inspection and audit shall occur in King County, Washington or other such reasonable location as the City selects. The Contractor shall supply the City with, or shall permit the City to make, a copy of any books and records and any portion thereof. The Contractor shall ensure that such inspection, audit, and copying right of the City is a condition of any subcontract, agreement, or other arrangement under which any other person or entity is permitted to perform work under this Contract.

Section 520. Contract Rights.

The parties reserve the right to amend this Contract from time to time by mutual agreement in writing. Rights under this Contract are cumulative, and in addition to rights existing at common law. Payment by the City and performance by the Contractor do not waive their contract rights.

Failure by either party on any occasion to exercise a contract right shall not forfeit or waive the right to exercise the right on another occasion. The use of one remedy does not exclude or waive the right to use another.

Section 525. Interpretation.

This Contract shall be interpreted as a whole and to carry out its purposes. This Contract is an integrated document and contains all the promises of the parties; no earlier oral understandings modify its provisions.

Captions and titles are for convenient reference only. A caption or titles does not limit the scope or add commentary to the text.

In the event of conflict between contract documents and applicable laws, codes, ordinances, or regulations, the most stringent or legally binding requirement shall govern and be considered a part of this Contract to afford the City the maximum benefits.

Section 530. Law; Venue.

The laws of the State of Washington and Charter and Ordinances of the City shall govern the validity, construction and effect of this Contract. The venue for any claims, litigation, or

causes of action between the parties shall be in the Superior Court of the State of Washington for King County.

Section 535. Notices.

All official notices or approvals shall be in writing. Unless otherwise directed, notices shall be delivered by messenger or by certified mail with delivery confirmation to the parties at the following respective addresses:

To the City:
Sally Hulsman
Solid Waste Contracts Manager
Seattle Public Utilities
700 5th Avenue, Suite 4900 *or*
PO Box 34018
Seattle, WA 98124

To the Contractor:
J. Stephan Banchemo III
President
Cedar Grove Composting
7343 *East Marginal Way S*
Seattle, WA 98108

Either party may from time to time designate a new representative and/or address for notices.

Section 540. Severability.

Should any term, provision, condition, or other portion of this Contract or its application be held to be inoperative, invalid, or unenforceable, and the remainder of the Contract still fulfills its purposes, the remainder of this Contract or its application in other circumstances shall not be affected thereby and shall continue in force and effect.

Section 545. No Personal Liability.

No officer, agent, or authorized employee of the City shall be personally responsible for any liability arising under this Contract, whether expressed or implied, nor for any statement or representation made herein or in any connection with this Contract.

Section 550. Disputes

The City and Contractor shall maintain business continuity to the extent practical while pursuing disputes. Any dispute or misunderstanding that may arise under this Contract concerning Contractor's performance shall first be resolved, if mutually agreed to be appropriate, through negotiations between the parties' Contract representatives as listed in Section 535, or if mutually agreed, referred to the City's named representative and the Contractor's senior executive(s). Either party may decline or discontinue such discussions and may then pursue other means to resolve such disputes or may by mutual agreement pursue other dispute alternatives such as mediation, arbitration, or alternate dispute resolution processes. Nothing in this dispute process shall in any way mitigate the rights, if any, of either party to terminate the Contract in accordance with the termination provisions herein.

Notwithstanding above, if the City believes in good faith that some portion of work has not been completed satisfactorily, the City may require the Contractor to correct such work prior to the City payment. In such event, the City must clearly and reasonably provide to

Contractor an explanation of the concern and the remedy that the City expects. The City may withhold from any payment that is otherwise due, an amount that the City in good faith finds to be under dispute, or if the Contractor does not provide a sufficient remedy, the City may retain the amount equal to the cost to the City for otherwise correcting or remedying the work not properly completed.

Section 560. Termination.

Notwithstanding any other provisions of this Contract, the City may terminate this Contract upon a material default under or breach of this Contract by the Contractor. A termination for violation of an equal opportunity provision, or violation of any other provision shall take effect in fifteen (15) days after delivery of notice of termination.

Section 570. Force Majeure – Suspension.

This section applies in the event either party becomes unable to perform its obligations under this Contract because of a Force Majeure Event. A Force Majeure Event is an external event that is beyond the control of the party or its agents and that renders the party severely compromised in its ability to perform all its obligations under the Contract. Such events may include a natural or man-made disaster or an action or decree of a superior governmental body, which completely prevents the party from performing all its obligations under the Contract. In circumstances where the Contractor's performance of its obligations under the Contract is not completely prevented, but is disrupted by an emergency or disaster, the provisions of Section 580 shall apply.

Should either party suffer from a Force Majeure Event, such party shall provide the other party with notice as soon as practical and shall act with speed and diligence to mitigate any potential damage that may result from the event and resume performance of all its obligations under the Contract as soon as possible. When notice has been properly provided, the obligations of both parties shall be suspended for the period of time the Force Majeure Event prevents the party from resuming performance of all its obligations under the Contract.

Section 580. Emergencies, Disasters – Major Service Disruption; Contingency Plan.

This section applies in the event an emergency or disaster causes a major disruption to the Contractor's ability to maintain standard levels of service in the performance of its obligations under the Contract. Such events may include, but are not limited to, a severe storm, high wind, earthquake, flood, hazardous material release, transportation mishap, loss of any utility service, fire, terrorist or cyber-attack, or any combination of the above. In such an event:

1. The City shall notify the Contractor of the emergency or disaster, describing the relevant circumstances arising from the event, and request emergency and priority services from the Contractor.
2. Upon such notice from the City, the Contractor shall consult with the City and exercise its best efforts in providing the emergency and priority services as requested by the City in as timely a manner as possible.

3. The Contractor shall make the City's customers its first priority, and its efforts to provide City's customers with emergency and priority services shall not be diminished as a result of the Contractor providing service to other customers.
4. If the Contractor is unable to respond in the time requested by the City, the Contractor shall respond as soon as practical. The Contractor shall immediately assist the City to the extent reasonable in providing services, which may include offering the City substitutions, provided that the Contractor obtains prior approval from the City for the substitutions.
5. The City shall compensate the Contractor for performing emergency and priority services under this section in a manner consistent with the compensation provisions of this Contract.

The Contractor and City shall jointly develop and maintain a Contingency Plan addressing the elements above. The Contractor shall take the lead to develop the Contingency Plan, with a City approved Plan completed on the date of execution of this Contract. The Contingency Plan shall be reviewed and updated annually by the Contractor beginning April 1, 2025, with each update subject to the City's approval.

PROCESSING SERVICES

Section 700. Organic Waste Receiving and Processing.

The Contractor shall be responsible for processing all Organic Waste received from the City and marketing all end products. The receiving facility shall contain, maintain, and routinely certify a truck scale for weighing all trucks in and out of the facility. Stored tare weights shall not be used for billing, unless approved by the City.

The Contractor's arrangements for processing organic material, at both the primary and back-up Processing Facilities, shall be subject to review and approval before the start of this Contract. All facilities and equipment covered under this contract shall be subject to inspection by City staff during business hours to confirm compliance with this Contract, the Operations Plan, the Contractor stated operating standards, and all the local, state, and regional air authority rules and regulations pertaining to facility operations and related products.

Upon request, the Contractor will provide adequate space at the Receiving or Processing Facility for occasional waste composition sorts by City staff or consultants.

Section 710. Contractor Share of City Organic Waste.

The Contractor shall provide processing services called for in this Contract for a minimum of 35% and maximum of 45% of the City's Organic Waste each month, as collected through the City's collection contracts and transfer stations (the "Contractor Share"). These limits can be adjusted by mutual agreement in writing by the City and the Contractor. The

total tons processed by the Contractor shall not exceed 6,000 tons per month, unless mutually agreed by the City and the Contractor.

The City has the option of directing self-haul Wood Waste from the City transfer stations to alternative regional markets.

Section 720. Primary and Secondary Organic Waste Processing Facilities.

The Contractor's Primary Processing Facility shall be:

Cedar Grove Composting
3620 36th PI SE
Everett, WA 98201

The Primary Facility shall be open for City loads from 5am to 10pm (PST) on Monday to Friday and shall be open for City loads from 8am to 4pm (PST) on Saturday and Sunday.

The Contractor's Secondary Processing Facility shall be:

Cedar Grove Composting
17825 Cedar Grove SE
Maple Valley, WA 98038

The Secondary Facility shall be open for City loads from 7 am to 5 pm (PST) on Monday to Friday and shall be open for City loads from 8 am to 4 pm (PST) on Saturday.

The Contractor and City will coordinate weekly on City hauling and Contractor receiving plans, including City delivery to the Primary and Secondary Facilities, as described in the Operations Plan. The City shall notify the Contractor by Thursday at 5 pm (PST) for any weekend loads.

Unless otherwise agreed by the Contractor and the City, the City will deliver City loads as follows:

- Weekday loads will be delivered to the Primary Facility, provided that, during the months of April, May, June, October, and November, the Contractor will provide capacity at the Secondary Facility for up to eight (8) weekday loads per week.
- Saturday loads will be delivered to the Secondary Facility, with a minimum of four (4) loads delivered, unless otherwise approved by the Contractor.
- Sunday loads will be delivered to the Primary Facility, with advance notice provided.

Section 730. Back-up Organics Processing Facility.

To avoid disruption of the organics collection program through a temporary shutdown in receiving or processing, the Contractor shall have an agreement with other permitted receiving and processing facilities for processing the organic materials accepted under this contract. The Contractor represents and warrants that as of the date hereof each of the

following facilities is so permitted and that each has agreed to receive or process Organic Waste as a back-up facility pursuant to this section:

Winton Manufacturing
17400 Winton Rd
Leavenworth, WA 98826

If the Contractor is unable to meet pertinent local or state, local, or other regulations, or is unable for any reason whatsoever to accept for processing at its specified primary or secondary processing facilities, the Contractor, at its own initiative or upon notification from the City, shall deliver Organic Waste at its expense to the back-up Organics receiving and/or processing facilities identified above.

The Contractor shall be responsible for all payments required to contract for use of the back-up facility. The City shall bill the Contractor for any additional City operational costs as a result of the Contractor delivering Organic Waste to the back-up facility. The City will document these operational costs.

Section 740. Contaminants.

The City will be responsible for the disposal of Contaminants delivered to Contractor by the City or any other City contractor. The Contractor will, without cost to the City, segregate the contaminants (segregating tires separately) at the primary, secondary, or back-up facilities, for the City to transport back to a City transfer station or other disposal facility.

The maximum contaminants that can be returned to the City shall be based on organic waste composition studies conducted by the City approximately every four (4) to six (6) years. If requested by the City, the Contractor will provide sufficient space at the Processing Facility to support contamination sorts. The Contractor will also partner with the City to incorporate non-Contract organics collected from businesses and organizations in Seattle city limits in composition studies, to help identify contamination and composition trends to inform shared outreach efforts.

The Contractor may reject loads or partial loads with excessive or high-risk contamination prior to processing, including loads with Moderate Waste, Dangerous Waste, marijuana debris, or similar waste under special classification.

The City will coordinate and implement customer education and enforcement efforts, in conjunction with City-contracted collectors to minimize contamination. The City will monitor loads of Organic Waste at City stations to minimize loading of contamination and customer carts when identified and feasible.

Section 750. End Products.

The Contractor will process Organic Wastes into marketable products such as soil amendments, mulch, animal feed product, or gaseous and liquid byproducts from anaerobic digestion. The Contractor is responsible for transporting and marketing all end

products. Marketing of the product is at the Contractor's risk, expense, and profit (or loss). The Contractor is responsible for marketing of any electrical energy or fuel produced from anaerobic digestion technologies.

The Contractor will routinely test end products to ensure that they meet relevant regulatory standards. Composter end products shall meet the State's Compost Quality Standards as specified under WAC 173-350-220 and any subsequent revisions or replacement statutory requirements. The Contractor will share the test results of end products, as reported to Department of Ecology and the local health department.

Section 760. Promotional Partnerships.

The Contractor will support outreach partnerships with the City to increase diversion and reduce contamination, including educational site tours, event tables and staffing, product giveaway, and other outreach opportunities. The Contractor will provide retail product from the processed Organic Wastes available for purchase by City residents and businesses, provide annual discounted product opportunities for City residents, and support up to four public give-away events per year. Contractor support for product give-away events will include site identification in the City, event planning, and staffing, along with 50 to 100 yards of donated compost per event.

Section 780. Disposal Prohibition.

The Contractor is prohibited from disposing of Organic Waste delivered under this Contract as Garbage or marketing products that the Contractor knows, or has reason to know, will be disposed of in a landfill or incinerator, or disposed of as Garbage. Violation of this Contract provision shall be cause for termination.

Section 790. Pilot Tests.

The City may require the Contractor to conduct pilot tests that temporarily change one or more provisions of this Contract. A pilot test is an experiment with a new processing method, and/or a different type of service. A pilot test may require additional record keeping. The City will provide sufficient advance notice for the pilot. The City and the Contractor shall negotiate in good faith, confirm a written plan, and sign a letter of agreement covering the expected cost and the pilot program duration prior to commencing any such test.

HAULING SERVICES

Section 830. Back-up Organic Waste Transportation.

The Contractor shall provide interim hauling trucks and drivers, if requested by the City, to support transporting the Contractor's Share of Organic Waste from the City transfer station

trailer yards to the Primary or Secondary Processing Facilities, in City-provided trailers. The City will compensate the Contractor for interim hauling per terms for Section 100.

Contractor long-haul trucks used for this Contract will be compatible with City trailers and meet or exceed specified emission standards. Contractor truck drivers performing under this Contract will be permanent employees with wages and benefits that meet or exceed specified contract wage.

The City shall provide one-week notice prior to interim Contractor hauling. Contractor shall notify the City immediately when the Contractor delivers an empty trailer to a City trailer yard and when the Contractor removes a full trailer from City trailer yard. The Contractor shall remove trailers from the City trailer yard within 24 hours of notification from the City. Contractor and City notification procedures will be described in the Operations Plan.

PERFORMANCE, COORDINATION AND BEST PRACTICES

Section 1400. Performance Expectations.

The following expectations are established for services under this Contract:

1. Turn times for City loads at primary, secondary, and backup facilities under 45 minutes.
2. Submit all required data and reports within the time periods specified and consistently provide correct information.
3. Other items as mutually agreed.

Section 1420. Meetings and Communication.

In order to minimize problems during implementation of the Contract, to provide a forum for discussing and resolving any operational questions or issues that may arise, and for updating the Operations Plan, the parties' representatives agree to meet on a monthly basis, unless otherwise mutually agreed.

Section 1440. Operations Plan.

The Contractor and the City shall develop an Operations Plan after the Contract is signed and prior to beginning services. This Operations Plan will include further details and protocol regarding operational leads and ongoing coordination, City hauling and Contractor receiving, data and communications, product promotion and give aways, and other elements shared by the Contractor and the City. The Operations Plan will be reviewed and updated by the parties annually by April 1st during the Contract term. The Operations Plan shall not contain procedures, activities, or schedules that conflict with any terms of this Contract.

Section 1450. Sustainable Business Practices.

Contractors shall use environmentally preferable practices and products to perform City services, including commitments in the Contractor Proposal for this Contract. The Contractors shall use Green Seal, Eco Logo, or other certified cleaning products, where applicable, in performance of cleaning work. The Contractor shall use 100% post-consumer recycled content, chlorine-free paper where possible. Contractors shall use double-sided materials prepared for the City under this Contract, except when impracticable due to the nature of the product.

REPORTING AND DATA REQUIREMENTS

Section 1500. Scale and Trip Records.

The Contractor shall provide to the City by the close of business on Wednesday of each week, in an electronic format specified by the City, a listing of the previous week's weight receipts for all materials received from the City by the Contractor at the Processing Facility. Information must include gross and net weights, truck number, trailer number, City load identification, station source, date, time entering and leaving, and other trip and load data. The Contractor shall provide corrected or missing records within five (5) working days of City request, in format specified by the City. Specific details on reporting format, procedures, and coordination will be captured in the Operations Plan.

The Contractor shall keep as back-up a paper copy of each weight transaction. Weights must be obtained from certified private scales approved by the City, or other scales approved by the City. The City has the option of requiring any private scales to be certified as frequently as quarterly. Falsified or altered weight information shall be cause for Contract termination.

Section 1510. Monthly and Quarterly Reports.

The Contractor shall submit monthly reports for the length of the Contract period commencing with initiation of Organic Waste processing. These reports shall be provided in electronic format specified by the City within ten (10) working days after the end of each month. The Contractor shall not receive its monthly compensation until all items required in the report are submitted to the City. At a minimum, the reports shall include:

1. Summary of tonnages of all received material by source and type, and
2. Contaminants summary and listing of individual weight receipts for Contaminants delivered to the City for disposal.

Contractor shall submit a quarterly report within fifteen (15) working days of the close of the quarter, which shall include:

1. Summary of monthly data for quarter and contract year to date;
2. Summary of end products sold and residuals disposed;

3. Summary of open market organics monthly tons and accounts serviced related to City businesses;
4. Discussion of problems and noteworthy experience in program operation; and
5. Contractor recommendations for improvements.


The City shall submit a quarterly report to the Contractor by the 20th of the month following the end of the quarter, which shall include:


1. Summary of City hauling and processing for prior quarter;
2. Projected City hauling and processing plans for next quarter; and
3. Summary of recent partnerships and future opportunities with the Contractor to improve operations and coordination.

IN WITNESS WHEREOF, in consideration of the terms, conditions, and covenants contained herein, or attached and incorporated and made a part hereof, the parties have executed this Contract by having their authorized representatives affix their signatures below.

CEDAR GROVE COMPOSTING, INC

**THE CITY OF SEATTLE
SEATTLE PUBLIC UTILITIES**

By 
John Stephan Banchemo III (Aug 21, 2023 08:19 PDT)
 J. Stephan Banchemo III
 President

By 
Andrew Lee (Aug 22, 2023 15:20 PDT)
 Andrew Lee
 General Manager/CEO

Date 08/21/2023

Date 08/22/2023

Authorized by City Ordinance 126872 7/25/2023