

City of Seattle
CONTRACT FOR ORGANICS PROCESSING SERVICES
Contract #16-216-B

This Contract is made effective this _____ day of _____, 2017 (the "Effective Date"), and entered into by and between the City of Seattle ("City"), a Washington municipal corporation; and **Cedar Grove Composting, Inc.** ("Contractor"), a corporation of the State of Washington, and authorized to do business in the State of Washington.

WHEREAS, the purpose of this contract is to provide for the processing of organic material produced by City's residential, commercial and transfer station services and;

WHEREAS, the processing can include composting and/or anaerobic digestion into marketable end products such as compost, mulch, biogas for energy generation or fuel and digestate for composting and/or land application;

WHEREAS, Contractor was selected as a result of a Request for Proposal process initiated December 20, 2016 as required by Seattle Municipal Code since costs are anticipated to exceed \$50,000 in value; and

WHEREAS, funds for this purpose are authorized through City of Seattle annual budget;

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance of the scope of work contained herein, as attached and made a part hereof, the City and Contractor mutually agree as follows:

1. **Entire Agreement.** This Contract including all attachments and future Contract amendments comprises the entire agreement between the City and the Contractor. The Contract is defined to explicitly include the City's Solicitation and all Addenda and Vendor's Offer. Where there are conflicts between these documents, the controlling documents will be in that same sequence, with the first taking priority over the last listed.
2. **Term of Contract.**
This Contract is entered into as of this _____ day of _____, 2017. Actual Organic Material processing services will begin August 1, 2017 and continue through March 31, 2020. The City, at its option, may extend this Contract for two successive two-year periods to March 31, 2022 or March 31, 2024 by notifying the Contractor on or before August 1, 2019 and August 1, 2021 respectively. If the City extends this Contract, the same terms, conditions, and method of payment shall apply during the extension period.
3. **Scope of Work.**
Contractor shall provide the services as specified in Exhibit A, Scope of Work. These services shall be termed "work" herein.
4. **Definitions**
In addition to capitalized terms that are defined elsewhere, the following meanings apply:
 - a. "City" means the City of Seattle.
 - b. "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 have been approved by a current or previous processor.

- c. "City Approved Single-Use Food Service Ware and Food Service/Food Packaging" means single-use service ware and food service packaging approved by the City for collection in City services that meet ASTM D6400, ASTM D6868, or successor testing standards and have been approved by current or previous processor.
- d. "Contractor's Share" means the portion of the City's Organic Waste to be processed by the Contractor as described in Exhibit A.
- e. "Contaminants" means any materials outside the definition of Organic Waste that are commingled in processing loads.
- f. "Food Waste" means all food scraps, including meat, dairy products, grease and bones; paper which has been contaminated with food, fat or grease; and soiled cardboard and paper including paper towels, paper plates, bags, tissue and waxed paper.
- g. "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.
- h. "Yard Waste" means plant material (leaves, grass clippings, branches, brush, flowers, roots, wood waste, etc.); debris commonly thrown away in the course of 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; noxious weeds and soil contaminated with hazardous substances.
- i. "Wood Waste" means unpainted and untreated pallets, lumber, lath and cedar shingles, and other clean wood delivered to the City transfer stations.

5. Payment and Payment Procedures'

- a. 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 Exhibit A. From August 1, 2017 to July 31, 2018 the City will pay the Contractor a rate of **FIFTY-FIVE DOLLARS (\$55.00)** per ton for processing services.
- b. Adjustments in Subsequent Contract Years
The City will compute compensation payable for the Contract year beginning August 1, 2018 and subsequent Contract years as follows:

The per ton rate starting August 1, 2018 and every August 1 of subsequent years 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-Bremerton Area (CPI), Series ID No. CWURA423SAO, or successor indices and the previous year's CPI.
- c. Payment Procedure
No later than the 10th of each month, the Contractor will submit an invoice and copies of weight information required pursuant to Exhibit A. 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).
- d. Invoices
Submit all invoices to City of Seattle Contract Manager as listed in Section 10.

For contracts where prevailing wages are required, the Vendor must include a statement that certifies Prevailing Wages have been paid for the Contractor and subcontractors, if any.

6. Liquidated Damages

Liquidated Damages pursuant to this Section shall be deducted from the monthly payment to the Contractor.

The act 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.

Failure to accept, for more than a 3-hour period during the hours described in Exhibit A, Organic Waste delivered by the City at the primary or back-up Receiving or Processing Facility. These damages do not apply if a major disaster or emergency causes a disruption in the facility operations.	\$500 per inbound truck per hour
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7. Performance Bond.

The Contractor shall provide and maintain at all times a valid Contractor's Performance and Payment Bond ("Bond") for Five Hundred Thousand Dollars (\$500,000). 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 Contractor shall be named as Principal and The City of Seattle shall be named as Obligee.

The 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 of the provisions of this Contract and pay all laborers, mechanics, subcontractors, material men 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 which is in conflict 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 breach of this Contract and grounds for its immediate termination at the option of the City.

8. Taxes, Fees and Licenses.

A. Fees and Licenses: Contractor shall pay for and maintain in a current status, any license fees, assessments, permit charges, etc., which are necessary for contract performance. It is the Contractor's sole responsibility to monitor and determine any changes or the enactment of any subsequent requirements for said fees, assessments, or charges and to immediately comply with said changes during the entire term of this Contract. Contractor must pay all custom duties, brokerage or import fees where applicable as part of the contract price. Contractor shall take all necessary actions to ensure that materials or equipment purchased are expedited through customs.

B. Taxes: Where required by state statute, ordinance or regulation, Contractor shall pay for and maintain in current status all taxes that are necessary for contract performance. Unless otherwise indicated, Seattle agrees to pay State of Washington sales or use taxes on all

applicable consumer services and materials purchased. No charge by the Contractor shall be made for federal excise taxes and Seattle agrees to furnish Contractor with an exemption certificate where appropriate.

- C. Withholding payment for taxes/business license fees due the City of Seattle: If specified by Seattle Municipal Code the Director of the Department of Finance and Administrative Services may withhold payment due a City contractor pending satisfactory resolution of unpaid taxes and fees due the City.
- D. Supplier is to calculate and enter the appropriate Washington State and local sales tax on the invoice. Tax is to be computed on new items after deduction of any trade-in, in accordance with WAC 458-20-247.

9. Wage Increases for Employees

All wage increases for 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, except as may be noted herein.

10. Contract Notices and Materials Delivery

Official Contract notices shall be delivered to the following addresses:

City of Seattle	Contractor
<p>Contact Manager Hans VanDusen (206) 684-4657 Hans.VanDusen@seattle.gov</p> <p>U.S. Postal Service: Seattle Public Utilities P.O. Box 34018 Seattle, WA 98124-4018</p> <p>Courier Delivery: Seattle Public Utilities 700 5th Ave, Suite 4900 Seattle, WA 98104-5017</p>	<p>Contract Contact</p> <p>U.S. Postal Service: 7343 E. Marginal Way S. Seattle, WA, 98108</p> <p>Courier Delivery: 7343 E. Marginal Way S. Seattle, WA, 98108</p>

11. Representations.

Contractor represents and warrants that it has the requisite training, skill and experience necessary to provide Work and is appropriately accredited and licensed by all applicable agencies and governmental entities.

12. 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 first date on which any materials will be processed under this Contract, 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 law, ordinance or regulation, the consequence of which violation 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 which 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.
 7. Statements in Response to RFP Binding. The Contractor hereby agrees to be bound by all statements made in its Response to the Request for Proposals, including all answers to Proposal Questions and completed Forms.
- 13. 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. 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 City is not the exclusive user of the services that Contractor provides.
- 14. Inspection.**
The Work shall be subject, at all times, to inspection by and with approval of the City, but the making (or failure or delay in making) such inspection or approval shall not relieve Contractor of responsibility for performance of the Work in accordance with this Contract, notwithstanding Seattle's knowledge of defective or noncomplying performance, its substantiality or the ease of its discovery. Contractor shall provide sufficient, safe, and proper facilities and equipment for such inspection and free access to such facilities.
- 15. Ownership of Equipment**
All essential facilities, equipment, 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 essential facilities, equipment, and property may be allowed with the prior written approval of the City. The City's approval shall not be unreasonably withheld.
- 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 facilities, equipment, and property covered by such lease or agreement for the unexpired term of this Contract. No further encumbrance shall be placed upon any such facilities, equipment, and property that would compromise the City's rights under this Contract.

16. Performance.

Acceptance by the City of unsatisfactory performance with or without objection or reservation shall not waive the right to claim damage for breach, or terminate the contract, nor constitute a waiver of requirements for satisfactory performance of any obligation remaining to be performed by Contractor.

17. Affirmative Efforts for Utilization of Women and Minority Subcontracting and Employment, Non discrimination in providing services

- Employment Actions: 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. 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.
- 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.
- If a WMBE Inclusion Plan is requested by and submitted to the City, the WMBE Inclusion Plan 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 Director of Purchasing and Contracting Services 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 Director shall give Contractor an opportunity to be heard with ten calendar days' notice. If, after the Contractor's opportunity to be heard, the Director still finds probable cause, s/he 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 of contract for which the Contractor may be subject to damages and sanctions provided for by the Vendor 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).

18. Assignment: Contractor shall not assign any of its obligations under this Contract without the City's written consent, which may be granted or withheld in Seattle's sole discretion. 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.

19. **Subcontracting:** Contractor shall not subcontract any of its obligations under this Contract without Seattle's written consent, which may be granted or withheld in Seattle's sole discretion. Contractor shall ensure that all subcontractors comply with the obligations, requirements and terms and conditions of the subcontract, except for Equal Benefit provisions. Seattle's consent to 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 to subcontract.
20. **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 Seattle. 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 Seattle and seek approval for reassignment or replacement with an alternative individual or subcontractor. Upon Seattle's request, the Contractor shall present to Seattle, 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. Seattle's approval or disapproval shall not be construed to release the Contractor from its obligations under this Contract.
21. **Equal Employment Opportunity.**
All Contractors must comply with federal Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.:
22. **Civil Rights Act Title VI.**
The Contractor must comply with the provisions of the Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.). The law provides that no person in the United States shall, on the grounds of race, color or national origin, be denied the benefits of, be excluded from participation in, or be subjected to, discrimination under any program or activity receiving federal financial assistance.
23. **Equal Benefits.**
Compliance with SMC Ch. 20.45: 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 Seattle'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. (For further information about SMC Ch. 20.45 and the Equal Benefits Program Rules, go to review information at <http://www.seattle.gov/city-purchasing-and-contracting/social-equity/equal-benefits>.)
- 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:
- A. 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; or
 - B. Terminate the Contract; or
 - C. Disqualify Contractor from bidding on or being awarded a City contract for a period of up to five (5) years; or
 - D. Impose such other remedies as specifically provided for in SMC Ch. 20.45 and the Equal Benefits Program Rules promulgated thereunder.
24. **Publicity.**
No news release, advertisement, promotional material, tour, or demonstration related to Seattle's purchase or use of the Contractor's product or services performed pursuant to this Contract shall be

produced, distributed, or take place, without the prior, specific written approval of the City's Project Manager or his/her designee.

25. Proprietary and Confidential Information

The State of Washington's Public Records Act (Release/Disclosure of Public Records) Under Washington State Law (reference RCW Chapter 42.56, the Public Records Act) all materials received or created by the City of Seattle are considered public records. These records include but are not limited to bid or proposal submittals, agreement documents, contract work product, or other bid material.

The State of Washington's Public Records Act requires that public records must be promptly disclosed by the City upon request unless that RCW or another Washington State statute specifically exempts records from disclosure. Exemptions are narrow and explicit and are listed in Washington State Law (Reference RCW 42.56 and RCW 19.108).

As mentioned above, all City of Seattle offices ("the City") are required to promptly make public records available upon request. However, under Washington State Law some records or portions of records may be considered legally *exempt from disclosure*. A list and description of records identified as exempt by the Public Records Act can be found in RCW 42.56 and RCW 19.108.

If the City receives a public disclosure request for any records or parts of records that Contractor has properly and specifically listed on the City Non-Disclosure Request Form (Form) submitted with Contractor's bid/proposal, or records that have been specifically identified in this contract, the City will notify Contractor in writing of the request and will postpone disclosure. While it is not a legal obligation, the City, as a courtesy, will allow Contractor up to ten business days to obtain and serve the City with a court injunction to prevent the City from releasing the records (reference RCW 42.56.540). If you fail to obtain a Court order and serve the City within the ten days, the City may release the documents.

The City will not assert an exemption from disclosure on Contractor's behalf. If Contractor believes that its records are exempt from disclosure, Contractor is obligated to seek an injunction under RCW 42.56.540. Contractor acknowledges that the City will have no obligation or liability to Contractor if the records are disclosed.

26. General Legal Requirements.

- A. General Requirement: Contractor, at no expense to Seattle, shall comply with all applicable laws of the United States and the State of Washington; the Charter and ordinances of Seattle; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof. Without limiting the generality of this paragraph, the Contractor shall specifically comply with the following requirements of this section.
- B. Licenses and Similar Authorizations: Contractor, at no expense to Seattle, shall secure and maintain in full force and effect during the term of this Contract all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.
- C. Taxes: The Contractor shall pay, before delinquency, all taxes, import duties, levies, and assessments arising from its activities and undertakings under this Contract; taxes levied on its property, equipment and improvements; and taxes on the Contractor's interest in this Contract.

27. American with Disabilities Act.

Contractor shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this Contract. In particular, if the Contractor is providing services, programs or activities to Seattle 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 on the basis of such disability. Failure to comply with the

provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Contract.

28. OSHA/WISHA.

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 items furnished and purchased under this order will conform to and comply with said standards and regulations. Contractor further agrees to indemnify and hold harmless purchaser from all damages assessed against purchaser as a result of Contractor's failure to comply with the acts and standards thereunder and for the failure of the items furnished under this order to so comply.

29. Contract Work Hours and Safety Standards.

For all contracts that employ mechanics or laborers, the Contractor and all subs shall comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provide that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

30. Beck Notice.

Notification of Employee Rights Concerning Payment of Union Dues or Fees (Executive Order 13201) shall apply to all contracts above \$100,000.

31. Clean Air Act and Federal Water Pollution Control Act.

All Contractors and subcontractors shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the City immediately and to the Regional Office of the Environmental Protection Agency (EPA).

32. Byrd Anti-Lobbying Amendment.

Contractors executing contracts with the City shall sign the Vendor Questionnaire, providing certification of compliance to the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 13652. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the City.

33. Prevailing Wage Requirements.

- a. If this contract has a category of work subject to prevailing wages, as required by RCW 39.12 (Prevailing Wages on Public Works) and RCW 49.28 (Hours of Labor) as amended or supplemented, Contractor shall be responsible for compliance by the Contractor and all subcontractors.
- b. Filing Your Intent: The awarded Contractor and all subcontractors shall file an Intent to Pay Prevailing Wage Form concurrent with the execution of the contract.

- To do so, the Contractor and any of their subcontractors will require a Contract Number and Start Date. The Buyer will tell you the Contract Number; the start date is the date your contract is signed.
 - The Contractor shall then promptly submit the Intent to the Department of Labor & Industries (L&I) for approval.
 - The Contractor also shall require any subcontractor to also file an Intent with L&I.
 - This must be done online at the L&I website:
<http://www.lni.wa.gov/TradesLicensing/PrevWage/default.asp>.
 - If unable to file on-line, a paper copy of the approved Intent shall instead be promptly provided to the Buyer.
 - The Contractor shall notify the Buyer of the Intents that are filed by both the Contractor and all subs,
- c. Contractor and any subcontractor shall not pay any laborer, worker or mechanic less than the prevailing hourly wage rates that were in effect at the time of bid opening for the worker classifications that are provided for under Prevailing Wages as issued by the State of Washington for the County in which the work shall be performed.
- d. Vocationally handicapped workers, i.e. those individuals whose earning capacity is impaired by physical or mental deficiency or injury, may be employed at wages lower than the established prevailing wage. The Fair Labor Standards Act requires that wages based on individual productivity be paid to handicapped workers employed under certificates issued by the Secretary of Labor. These certificates are acceptable to the Department of Labor and Industries. Sheltered workshops for the handicapped may submit a request to the Department of Labor and Industries for a special certificate, which would, if approved, entitle them to pay their employees at wages, lower than the established prevailing wage.
- e. In certain situations, an Intent to Pay Prevailing wages shall be filed with the L&I and the Buyer, but the Vendor may indicate an exception on the Intent form that exempts the prevailing wages rates for the following:
- Sole owners and their spouse.
 - Any partner who owns at least 30% of a partnership.
 - The president, vice-president, and treasurer of a corporation if each one owns at least 30% of the corporation.
 - Workers regularly employed on monthly or per diem salary by state or any political subdivision created by its laws.
- f. Prevailing Wage rates in effect at the time of bid opening remain in effect for the duration of this contract, except for annual adjustments required by this agreement for multi-year contracts (where contract is longer than one year) and for building service maintenance (janitorial, waxers, shampooers, and window cleaners).
- g. It is the sole responsibility of the Contractor to assign the appropriate classification and associate wage rates to all laborers, workers or mechanics that perform any work under this contract, in conformance with the scope of work descriptions of the Industrial Statistician of the Washington State Department of Labor and Industries.
- h. With each invoice, Contractor will attach or write a statement that wages paid were compliant to applicable Prevailing Wage rates, including the Contractor and any subcontractors.
- i. Upon contract completion, Contractor shall file the Affidavit of Wages Paid (form L700-007-000) approved by the Industrial Statistician of Washington L&I. This may be performed on-line if the Contractor has initiated the original Intent to Pay Prevailing Wage process on line. The receipt of the approved affidavit is required before Seattle can pay the final invoice. The City may withhold payment on any invoice due the Contractor until the approved affidavit is received.
- j. The Contractor shall also ensure that each Subcontractor likewise files an Affidavit.

- k. The Contractor shall notify the Buyer and provide a copy of the Affidavit(s).
- l. For jobs above \$10,000, Contractor is required to post for employees' inspection, the Intent form including the list of the labor classifications and wages used on the project. This may be posted in the nearest local office, for road construction, sewer line, pipeline, transmission line, street or alley improvement projects as long as the employer provides a copy of the Intent form to the employee upon request.
- m. In the event any dispute arises as to what the prevailing wages are for this Contract, and the dispute cannot be solved by the parties involved, the matter shall be referred to the Director of the Department of Labor and Industries of the State of Washington. In such case, the Director's decision shall be final, conclusive and binding on all parties. If the dispute involves a federal prevailing wage rate, the matter shall be referred to the U.S. Secretary of Labor for a decision. In such case, the Secretary's decision shall be final, conclusive and binding on all parties.

Prevailing Wage for Service Contracts Greater Than One Year in Duration:

- a. This provision only applies to service contracts that continue beyond a single year in duration, including building service maintenance contracts (janitorial service contractors and work performed by janitors, waxers, shampooers, and window cleaners) and to multi-year service contracts.
- b. Contractor and any subcontractor must pay at least the prevailing wage rates that were in effect at time of bid throughout the duration of the contract.
- c. Each contract anniversary thereafter, Contractor and any subcontractors shall review the then current Prevailing Wage Rates. The Contractor shall increase wages paid if required to meet no less than the current wage rates in effect at the time of the contract anniversary. Contractor and any subcontractors shall file an affidavit and a new intent prior to contract extension.
- d. Any price or rate increases made as a result of a change in the prevailing wages will be compensated by the City on a pass through basis if the Contract requests a price increase in accordance with the price increase request requirements provided elsewhere in this contract. The Contractor must follow the contract instructions for pricing increases, notifying the Buyer at least 45 days prior to the contract anniversary date of any resulting price increase and documenting the increase.
- e. Payroll, wage, and cost records shall be retained, and may be audited or inspected. The Contractor, every Subcontractor, and all other individuals or firms required to pay prevailing wages are subject to investigation—including but not limited to on-site compliance interviews—by City Purchasing and Contracting Services (CPCS) and L&I in regard to payment of the required prevailing wage to workers, laborers, and mechanics employed on the project. If the investigations result in a finding that an individual or firm has violated the requirement to pay the prevailing rate of wage, the Owner may withhold payments to the Contractor. The Contractor or Subcontractor may also be subject to civil penalties and may be prohibited from bidding on any contract within the State of Washington for the period specified by law.

34. Indemnification.

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 of Seattle, 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.

35. Insurance.

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

1. COVERAGES AND LIMITS

The Insurance shall provide the minimum coverages and limits of liability set forth below.

a) **COMMERCIAL GENERAL LIABILITY (CGL) Insurance** including coverage for:

- i. Premises/Operations
- ii. Products/Completed Operations
- iii. Personal/Advertising Injury
- iv. Contractual
- v. Independent Contractors
- vi. 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	general aggregate
\$ 1,000,000	each Offense Personal/Advertising Injury,
\$ 5,000,000	each accident/disease/policy limit

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

- b) **AUTOMOBILE LIABILITY INSURANCE** for owned, non-owned, hired, and leased vehicles, as applicable, with MCS 90. Such insurance must provide a minimum limit of liability of \$1,000,000 CSL.
- c) **WORKERS' COMPENSATION INSURANCE** as required by the Industrial Insurance laws of the state of Washington.

2. GENERAL REQUIREMENTS

- a) Each insurer must either be (1) authorized to do business in the state of Washington and maintain A.M. Best's ratings of A-: VII or higher, or (2) procured as surplus lines under the provisions of chapter 48.15 RCW ("Unauthorized Insurers"). The City reserves the right to reject insurance including based on the insurer, terms and coverage, the certification of insurance, and/or policy provisions.
- b) The Contractor shall keep this Insurance in force during the term of the contract
- c) The liability Insurance policies for which there is a requirement to include the City as an additional insured shall contain a "cross liability" provision.
- d) The insurance for the Contractor and any subcontractor performing services under this Contract shall include general liability insurance coverage that includes the City as an additional insured shall be primary and non-contributory as respects the City's self-insurance and/or insurance.
- e) All Insurance shall include a requirement providing for a minimum of thirty (30) days prior written notice to the Contracting Agency of any cancellation in any Insurance, except a minimum of ten (10) days as respects cancellation for non-payment.

- f) In the event that the City tenders a claim to any Contractor insurer for defense and indemnity, and the insurer declines to accept the tender or accepts it under a reservation of rights, upon the City's request the Contractor shall forward to the City a true and certified copy of any relevant Insurance policy(ies).
 - g) The Contractor shall not begin work under the contract until the required Insurance has been obtained and approved by the City.
 - h) Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five (5) business days notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such Insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the Contracting Agency on demand, or at the sole discretion of the Contracting Agency, offset against funds due the Contractor from the Contracting Agency.
 - i) Any self-insured retention (S.I.R.) in excess of \$50,000 must be disclosed and is subject to City's approval. The Contractor shall furnish financial information that the City shall reasonably require for performing a risk retention analysis and shall, in addition, provide a written statement that the Contractor will protect the City against any claim within the S.I.R. to the same extent that coverage would be afforded under the relevant excess of loss commercial insurance policy. The cost of any claims payments for defense and indemnity falling within the S.I.R. shall be the responsibility of the Contractor.
 - j) All costs for Insurance shall be incidental to and included in the unit or lump sum prices of the contract and no additional payment will be made.
3. NO LIMITATION OF LIABILITY; ADDITIONAL INSURED
The limits of liability specified herein are minimum limits only. Such minimum limits of liability requirements shall not be construed to limit the liability of the Contractor, any subcontractor of any tier or of any of their respective insurers. Any provision in any Contractor or subcontractor Insurance policy that limits available limits of liability to those specified in a written agreement or contract shall not apply and all Insurance policies, with the exception of Workers Compensation Insurance, shall include the City of Seattle as an additional insured for primary and non-contributory limits of general liability for the full valid and collectible limits of liability maintained by the Contractor, whether primary, excess, contingent or otherwise. This provision shall apply regardless of whether such limits maintained by the Contractor are greater than those required by this Contract, and regardless whether the certification of Insurance provided by a subcontractor of any tier pursuant to 4) below specifies lower minimum limits than those specified for or maintained by the Contractor.
4. SUBCONTRACTORS
Contractor shall contractually require that each subcontractor performing services under this contract, providing work or services in support of this Contract, of every tier maintain at a minimum the Insurance coverages specified in paragraph 1) a) and b). Upon request of the City, the Contractor shall cause evidence of such Insurance to be provided.
5. EVIDENCE OF INSURANCE (DOES NOT APPLY TO STATE OF WASHINGTON STATUTORY WORKERS' COMPENSATION)
The Contractor shall deliver to the City certification of Insurance meeting the requirements set forth herein when the Contractor delivers the signed Contract for the work. The certification of Insurance must include the following:
- a) An ACORD certificate or equivalent form fully disclosing all coverages and limits of liability maintained.

- b) A copy of the additional insured endorsement or blanket additional insured language to the Commercial General Liability Insurance documenting that the City of Seattle is an additional insured for primary and non-contributory limits off liability. A statement of additional insured status on an ACORD or other form of certificate of Insurance will not satisfy this requirement.
- c) Any other amendatory endorsements to document compliance with the requirements herein.

36. Audit.

Upon request, Contractor shall permit Seattle, and any other governmental agency involved in the funding of the Work ("Agency"), to inspect and audit all pertinent books and records of Contractor, any subcontractor, or any other person or entity that performed work in connection with or related to the Work, at any and all times deemed necessary by Seattle or Agency, including up to six 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 Seattle or Agency selects. The Contractor shall supply Seattle with, or shall permit Seattle 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 Seattle and Agency 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.

37. Contractual Relationship

The relationship of Contractor to Seattle by reason of this Contract shall be that of an independent contractor. This Contract does not authorize Contractor to act as the agent or legal representative of Seattle for any purpose whatsoever. Contractor is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of Seattle or to bind Seattle in any manner or thing whatsoever.

38. Federal Debarment for Primes and all Subcontractors.

Contractor shall immediately notify the City of any suspension or debarment or other action that excludes the Contractor and any subcontractor from participation in Federal contracting. Contractor shall verify all subcontractors that are intended and/or used by the Contractor for performance of City work are in good standing and are not debarred, suspended or otherwise ineligible by the Federal Government. Debarment shall be verified at <https://www.sam.gov/portal/public/SAM/#1>. The Contractor shall keep proof of such verification within the Contractor records.

39. Supervision and Coordination.

Contractor shall:

- Competently and efficiently, supervise and direct the implementation and completion of all contract requirements specified herein.
- Designate in its bid or proposal to Seattle, a representative(s) with the authority to legally commit Contractor's firm. All communications given or received from the Contractor's representative shall be binding on the Contractor.
- Promote and offer to Purchasers only those materials, equipment and/or services as stated herein and allowed for by contractual requirements. Violation of this condition will be grounds for contract termination.

40. 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 City of the current or former City official, employee or volunteer's name. The Vendor Questionnaire within your bid documents prompts you to answer that question. You must continue to update that information to City during the full course of the contract. The Contractor is to be aware and familiar with the Ethics Code, and educate vendor workers accordingly.

41. Anti-Trust Overcharges.

The City maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, the Contractor hereby assigns to Seattle any and all claims for such overcharges except overcharges which result from antitrust violations commencing after the price is established under this contract and which are not passed on to Seattle under an escalation clause.

42. 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.

43. 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.

44. Contract Workers with 1,000 Hours

Throughout the life of the Contract, Contractor shall provide written notice to City and the City Contract Manager of any contract worker that shall perform more than 1,000 hours of contract work for the City within a rolling 12-month period. Such hours include those that the contract worker performs for the Contract, and any other hours that the worker performs for the City under any other contract. Such workers are subject to the requirements of the City Ethics Code, Seattle Municipal Code 4.16. The Contractor shall advise their Contract workers as applicable.

45. Errors & Omissions: Correction.

Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by or on the behalf of the Contractor under this Contract. The Contractor, without additional compensation, shall correct or revise any errors or omissions in the designs, drawings, specifications, and/or other Contractor services immediately upon notification by Seattle. The obligation provided for in this section with respect to any acts or omissions during the term of this Contract shall survive any termination or expiration of this Contract and shall be in addition to all other obligations and liabilities of the Contractor.

46. Intellectual Property Rights.

Patents: Contractor hereby assigns to Seattle all rights in any invention, improvement, or discovery, together with all related information, including but not limited to, designs, specifications, data, patent rights and findings developed in connection with the performance of Contract or any subcontract hereunder. Notwithstanding the above, the Contractor does not convey to Seattle, nor does Seattle obtain, any right to any document or material utilized by Contractor that was created or produced separate from this Contract or was preexisting material (not already owned by Seattle), provided that the Contractor has clearly identified in writing such material as preexisting prior to commencement of the Work. To the extent that preexisting materials are incorporated into the Work, the Contractor grants Seattle an irrevocable, non-exclusive, fully paid, royalty-free right and/or license to use, execute, reproduce, display, and transfer the preexisting material, but only as an inseparable part of the Work.

Copyrights: For materials and documents prepared by Contractor in connection with the Work, Contractor shall retain the copyright (including the right of reuse) whether or not the Work is completed. Contractor grants to Seattle a non-exclusive, irrevocable, unlimited, royalty-free license to

use every document and all other materials prepared by the Contractor for Seattle under this Contract. If requested by Seattle, a copy of all drawing, prints, plans, field notes, reports, documents, files, input materials, output materials, the media upon which they are located (including cards, tapes, discs and other storage facilities), software programs or packages (including source code or codes, object codes, upgrades, revisions, modifications, and any related materials) and/or any other related documents or materials which are developed solely for, and paid for by, Seattle in connection with the performance of the Work, shall be promptly delivered to Seattle.

Seattle may make and retain copies of such documents for its information and reference in connection with their use on the project. The Contractor does not represent or warrant that such documents are suitable for reuse by Seattle, or others, on extensions of the project, or on any other project. Contractor represents and warrants that it has all necessary legal authority to make the assignments and grant the licenses required by this Section.

47. 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 that the Contractor:

1. Is unable to accept Organic Waste, for more than a 48 hour period for processing at the primary or back-up Processing Facility or alternate facility approved by the City;
2. Fails to comply with the terms of any of the Scope of Work;
3. Fails to furnish and maintain a Performance and Payment Bond
4. Fails to furnish and maintain the Insurance Requirements,
5. 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 calendar days of a meeting with the Director of Seattle Public Utilities at which the Contractor may 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 Director, why the Contractor should not be declared to be in default of this Contract, the Director may make a declaration of default. In evaluating whether to make such a declaration of default, the Director shall, in his/her 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, transfer the obligation to perform such work from the Contractor to the surety on the Contractor's Performance and Payment Bond, and take any other action the Director 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 and equipment thereof, 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 and equipment required thereof. 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 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, the materials and equipment necessary for processing purposes for a period of up to six 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 and materials actually used for such processing 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.

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, 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 involving Contractor's employees shall not be considered a cause beyond the Contractor's control.

48 Disputes.

The parties shall endeavor to resolve any dispute or misunderstanding that may arise under this Contract concerning Contractor's performance, if mutually agreed to be appropriate, through negotiations between the Contractor's Project Manager and City's Contract Manager, 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 including termination as allowed for within the contract, or may by mutual agreement pursue other dispute alternatives such as 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 for cause or convenience.

Notwithstanding all above, if The City believes in good faith that some portion of Work has not been completed satisfactorily, The City may require Contractor to correct such work prior to The City payment. In such event, The City will 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.

49 Termination.

- A. For Cause: The City may terminate this Contract if the Contractor is in material breach of any of the terms of this Contract, and such breach has not been corrected to the City's reasonable satisfaction in a timely manner.

- B. Acts of Insolvency: The City may terminate this Contract by written notice to Contractor if the Contractor becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or is wound up or liquidated, voluntarily or otherwise.
- C. Termination for Gratuities: The City may terminate this Contract by written notice to Contractor if The City finds that any gratuity in the form of entertainment, a gift, or otherwise, was offered to or given by the Contractor or any agent therefor to any City official, officer or employee.
- D. Notice: The City is not required to provide advance notice of termination. Notwithstanding, the Buyer may issue a termination notice with an effective date later than the termination notice itself. In such case, the Contractor shall continue to provide products and services as required by the Buyer until the effective date provided in the termination notice.

50 Force Majeure – Suspension and Termination.

This section applies in the event that either party is unable to perform the obligations of this contract because of a Force Majeure event as defined herein, to the extent that the Contract obligations must be suspended in full. A Force Majeure event is an event that prohibits performance and is beyond the control of the party. Such events may include natural or man-made disasters, or an action or decree of a superior governmental body, which prevents performance.

Force Majeure under this Section shall only apply in the event that performance is rendered not possible by either party or its agents. Should it be possible to provide partial performance that is acceptable to the City under the Emergencies or Disasters Section below.

Should either party suffer from a Force Majeure event and is unable to provide performance, such party shall give notice to the remaining party as soon as practical and shall do everything possible to resume performance.

Upon receipt of such notice, the party shall be excused from such performance as is affected by the Force Majeure Event for the period of such Event. If such Event affects the delivery date or warranty provisions of this Agreement, such date or warranty period shall automatically be extended for a period equal to the duration of such Event.

51 Major Emergencies or Disasters.

The City may undergo an emergency or disaster that may require the Contractor to either increase or decrease quantities from normal deliveries, or that may disrupt the Contractor's ability to provide normal performance. Such events may include, but are not limited to, a storm, high wind, earthquake, flood, hazardous material release, and transportation mishap, loss of any utility service, fire, terrorist activity or any combination of the above. In such events, the following shall apply.

- (a) The City shall notify the Contractor that the City is experiencing an emergency or disaster, and will request emergency and priority services from the Contractor.
- (b) The City may request that the Contractor provide either increased or decreased quantities from traditional orders, or may request Contractor provide additional products or services.
- (c) Upon such notice by the City, the Contractor shall make reasonable efforts to provide the City the materials in the quantities requested and within the schedule specified by the City, adhering to the conditions in this Section.
- (d) The City of Seattle shall be the customer of first priority for the Contractor, except where preceded by State or Federal government mandates. The Contractor shall provide its best and priority efforts to provide the requested goods and/or services to the City of Seattle in as complete and timely manner as possible. Such efforts by the Contractor are not to be diminished as a result of Contractor providing service to other customers, except as mandated by State or Federal governments.

- (e) If the Contractor is unable to respond in the time and/or quantities requested by the City, the Contractor shall promptly assist the City to the extent practicable, to gain access to alternative materials and/or services. This may include:
 - a. Coordinating with other distributors or subsidiaries beyond those in the local region to fulfill order requests;
 - b. Offering the City substitutions provided the Contractor obtains prior approval from the City for such substitution.

52. City Debarment.

In accordance with SMC Ch. 20.70, the Director of Executive Administration or designee may debar a Vendor from entering into a Contract with the City or from acting as a subcontractor on any Contract with the City for up to five years after determining that any of the following reasons exist:

- a. Contractor has received overall performance evaluations of deficient, inadequate, or substandard performance on three or more City Contracts.
- b. Contractor failed to comply with City ordinances or Contract terms, including but not limited to, ordinance or Contract terms relating to small business utilization, discrimination, prevailing wage requirements, equal benefits, or apprentice utilization.
- c. Contractor abandoned, surrendered, or failed to complete or to perform work on or in connection with a City Contract.
- d. Contractor failed to comply with Contract provisions, including but not limited to quality of workmanship, timeliness of performance, and safety standards.
- e. Contractor submitted false or intentionally misleading documents, reports, invoices, or other statements to the City in connection with a Contract.
- f. Contractor colluded with another contractor to restrain competition.
- g. Contractor committed fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Contract for the City or any other government entity.
- h. Contractor failed to cooperate in a City debarment investigation.
- i. Contractor failed to comply with SMC 14.04, SMC Ch. 14.10, SMC Ch. 20.42, or SMC Ch. 20.45, or other local, State, or federal non-discrimination laws.

The Director may issue an Order of Debarment following the procedures specified in SMC 20.70.050. The rights and remedies of the City under these provisions are in addition to any other rights and remedies provided by law or under the Contract.

53. 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, including any of the items listed on this ITB, RFP or contract bid and subsequent award, 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, improper, 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.

54. Paid Sick Time and Safe Time Ordinance

Be aware that the City has a Paid Sick Time and Safe Time ordinance that requires companies to provide employees who work more than 240 hours within a year inside Seattle, 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. Please see <http://www.seattle.gov/laborstandards>, or may call the Office of Labor Standards at 206.684.4500 with questions.

55. Other Labor Standards 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.

56. Campaign Contributions (Initiative Measure No. 122)

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. Please see Initiative 122, or call the Ethics Director with questions. For questions about this measure, contact: Polly Grow, Seattle Ethics and Elections, 206-615-1248 or polly.grow@seattle.gov.

57. Miscellaneous Provisions.

- A. Amendments: No modification of this Contract shall be effective unless in writing and signed by an authorized representative of the City, except as otherwise authorized herein
- B. Conflict: 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.
- C. Liens, Claims and Encumbrances: All materials, equipment, or services shall be free of all liens, claims or encumbrances of any kind and if the City requests a formal release of same shall be delivered to Seattle.
- D. Binding Contract: This Contract shall not be binding until signed by both parties. The provisions, covenants and conditions in this Contract shall bind the parties, their legal heirs, representatives, successors, and assigns.
- E. Applicable Law/Venue: This Contract shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought hereunder shall be in the Superior Court for King County, Washington
- F. Remedies Cumulative: Rights under this Contract are cumulative and nonexclusive of any other remedy at law or in equity.
- G. Captions: All titles, including sections or subsections, are for convenience only and do not define or limit the contents.
- H. Severability: Any term or provision of this Contract found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the Contract.
- I. Waiver: No covenant, term, or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Neither the acceptance by Seattle of any performance by the Contractor after the time the same shall have become due nor

payment to the Contractor for any portion of the Work shall constitute a waiver by Seattle of the breach or default of any covenant, term or condition unless otherwise this is expressly agreed to by Seattle, in writing. The City's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or the City's waiver of any breach hereunder shall not thereafter waive any other term, condition, or privilege, whether of the same or similar type.

- J. **Contract Representations:** This Contract as described in Item 1 constitutes the entire Agreement. No verbal agreement or conversation between any officer, agent, associate or employee of Seattle and any officer, agency, employee or associate of the Contractor prior to the execution of this Contract shall affect or modify any of the terms or obligations contained in this Contract.
- K. **Negotiated Contract:** The parties acknowledge that this is a negotiated Contract, that they have had the opportunity to have this Contract reviewed by respective legal counsel, and that terms and conditions are not construed against any party on the basis of such party's draftsmanship thereof.
- L. **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.

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.

CONTRACTOR

CITY OF SEATTLE

By _____
 Signature Date

By _____
 Signature Date

Type Name of Signer
 Type Company Name

Mami Hara, General Manager/CEO
 Seattle Public Utilities

City of Seattle Business License Number:	159692
Washington State Unified Business Identifier Number (UBI):	601-345-102

Exhibits:

- Exhibit A: Scope of Work
- Exhibit B: Inclusion Plan