

Construction Waste Collection Contract

between

City of Seattle and

Waste Management of Washington, Inc.

Contract # 18-210-B

April 1, 2019 – March 31, 2025

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Construction Waste Collection Contract

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**CONSTRUCTION WASTE COLLECTION CONTRACT
BETWEEN THE CITY OF SEATTLE
AND WASTE MANAGEMENT OF WASHINGTON, INC.**

THIS CONSTRUCTION WASTE COLLECTION 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 Waste Management of Washington, Inc. (“Contractor”) to provide for collection of Construction Waste from Drop Box Containers located at job sites within the Collection Area (each capitalized term as hereinafter defined).

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

GENERAL PROVISIONS

Section 10. Purpose and Intent.

The purpose of this Contract is to provide for the collection of Construction Wastes from Drop Box Containers through this Contract with the Contractor. The City intends for the Contractor to be the only provider of Construction Waste Collection in the City. This contract does not include services for Construction Waste Recycling or Self-Haul Construction Waste.

Section 20. Contract Term.

This Contract is entered into on this ____ day of _____, 2019. Actual collection services will begin April 1, 2019 and continue for a term of six years, ending at midnight March 31, 2025. The City shall have the unilateral right to extend this Contract for three successive two-year periods to March 31, 2027, March 31, 2029 and March 31, 2031 by notifying the Contractor on or before June 30, 2024, June 30, 2026 and June 30, 2028, 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(s).

Section 25. Collection Area.

The Contractor shall provide all collection services called for in this Contract within the entire City of Seattle.

Section 30. Definitions.

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

“Beneficial Use” means the use of solid waste as an ingredient in a manufacturing process, or as an effective substitute for natural or commercial products in a manner that does not pose a threat to human health or the environment. Avoidance of processing or disposal cost alone does not constitute beneficial use. In accordance with the City’s Administrative Code, SMC Chapter 3.02, and SMC Section 3.32.020, the Director of

Seattle Public Utilities shall adopt rules designating those uses of solid waste that constitute beneficial use.

“C&D Facility” means either (a) “disposal site” as defined in SMC 21.36.012, or (b) an “interim solid waste handling site” as defined in SMC 21.36.014, including transfer stations, intermodal facilities, and material recovery facilities.

“City Contract Fee” means a per-Container haul fee the Contractor pays to the City monthly.

“City” means the City of Seattle.

“Collection Area” means the City of Seattle.

“Construction Waste” means any combination of Recyclable or non-Recyclable waste that results from construction, remodeling, repair or demolition of buildings, roads or other structures, and requires removal from the Job Site, including, but not limited to, wood, concrete, masonry, drywall, masonry, roofing, siding, structural metal, wire, fiberglass insulation, composition roofing and roofing paper, other building materials, plastics, Styrofoam, twine, baling and strapping materials, cans and buckets, and other packaging materials and containers.

“Container” means a metal drop box used for Construction Waste collection.

“Contractor” means Waste Management of Washington, Inc.

“Drop Box” (also referred to as “rolloff”) means a metal Container, with 10-40-cubic-yard-capacity capable of being mechanically loaded onto a collection vehicle for transport to a C&D Facility.

“Duwamish Industrial Area (DIA)” means that area of the City bounded on the north by I-90/Elliott Bay, on the west by West Marginal Way (the western boundary extends west to Detroit Avenue between S.W. Michigan Street and S.W. Kenyon Street), on the south by the south City limits, and on the east by I-5.

“Excluded Recyclable Loads” means Containers containing at least 90% Recyclable Materials by volume and which are delivered to a facility for Recycling, Reuse, or Beneficial Use, unless otherwise agreed to by the parties in writing.

“General Manager” means the General Manager/CEO of Seattle Public Utilities or her/his authorized representative.

“Job Site” means the location where a Construction Waste Container is placed.

“Operations Plan” means a plan of detailed procedures and specifications to support Contract implementation and operations, mutually developed the City and Contractor, as described in Section 1440.

“Prohibited Recyclables” means those Recyclable Materials that the City has prohibited for disposal pursuant to SMC 21.36.089.

“Recyclable Materials” means those Construction Wastes that are placed into Containers at the Job Site for Recycling, Reuse, or Beneficial Use, such as cardboard, metals and wood, that are identified as recyclable material pursuant to the City’s Comprehensive Solid Waste Management Plan, and that are intended by the customer for Recycling, Reuse, or Beneficial Use and are delivered to a to a facility for Recycling, Reuse, or Beneficial Use.

“Recycle” or “Recycling” means transforming or remanufacturing waste materials into usable or marketable materials for use other than incineration (including incineration for energy recovery) or other methods of disposal.

“Recycling Container” means a Container used by the customer for Recyclable Materials.

“Retail Rate” means the maximum charges assessed to customers for Construction Waste collection services provided by the Contractor under this Contract, as listed in Section 100 and Attachment 1.

“Reuse” means using waste materials again, either for its original purpose or for a similar purpose, without significantly altering the physical form of the material.

“Self-Haul Construction Waste” means the transportation of Construction Waste through the streets in the City by (a) a business concern hauling Construction Waste originating within their own establishments, (b) residential customers hauling Construction Waste originating within their own residences, or (c) a demolition or construction contractor hauling Construction Waste that it generates from a Job Site where it is performing construction and/or demolition services.

“SMC” means Seattle Municipal Code.

“Solid Waste” means all putrescible and non-putrescible solid and semisolid wastes, including but not limited to garbage, recyclables, rubbish, yard waste, ashes, industrial wastes, infectious wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof. The term includes all liquid, solid and semisolid materials, which are not the primary products of public, private, industrial, commercial, mining and agricultural operations. Solid Waste includes, but is not limited to, sludge from wastewater treatment plants, seepage from septic tanks, wood waste, dangerous waste, and problem wastes.

“Special Waste” means contaminated soils, asbestos and other waste requiring special handling or disposal procedures.

“Unacceptable Waste” means all waste not authorized for disposal at the Columbia Ridge Landfill and Recycling Center or successor site designated by the City, by those governmental entities having jurisdiction or any waste the disposal of which would constitute a violation of any governmental requirement pertaining to the environment, health or safety. Unacceptable Waste includes any waste that is now or hereafter defined by federal law or by the disposal jurisdiction as radioactive, dangerous, hazardous or

extremely hazardous waste and vehicle tires in excess of those permitted to be disposed of by the laws of the disposal jurisdiction.

“Waste Container” means a Container used by the customer for non-Recyclable Wastes.

Section 40. City Responsibilities.

The City shall be responsible for:

1. Establishing maximum Retail Rates to be charged to customers;
2. Directing all collected Construction Waste to a C&D Facility in accordance with the terms of this Contract;
3. Inspecting Contractor service delivery and mediating and adjusting customer grievances. The City may require special and other services as contemplated in this Contract;
4. Evaluating Contractor performance and adjusting payment for performance incentives and fees; and,
5. Notifying and educating customers as to the requirements of this Contract and the Construction Waste recycling requirements under the SMC, including providing written instructional materials for distribution by the City and Contractor to customers.
6. Taking enforcement action, as necessary, against unauthorized collection of Construction Waste, consistent with SMC 21.36.

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 and utility services required for providing all services in accordance with this Contract;
2. All actions and activities of its subcontractors;
3. Supplying all records and information required by this Contract;
4. Performing all work in a timely, thorough and professional manner;
5. Securing at Contractor's expense all governmental permits and licenses and required regulatory approvals (including those required by City ordinance);
6. Collecting and delivering all collected Construction Waste to a C&D Facility as directed by the City in accordance with this Contract;
7. Except as provided in Section 1370 (Remedies for Customer Non-Payment), serving all customers in the Collection Area and assisting customers with service issues;
8. Billing customers for collection services in accordance with Retail Rates and procedures established by the City;
9. Assuming the risk of bad debts of customers related to billings for collection services;
10. Paying and remitting applicable taxes which are impacted by a taxing authority, including, but not limited to, sales taxes, waste collection taxes, transfer taxes, and B&O taxes, to the proper taxing authority;
11. Paying tipping fees at the C&D Facility and paying the City's contract fee;
12. Complying with all applicable laws and regulations, including meeting all pertinent local, state and federal health and environmental laws, regulations, and standards applying to collection of Construction Waste; and
13. All wage increases for Contractor's collectors or other employees, any benefits or added costs resulting from changes in technology, laws and regulations, labor practices, availability of equipment, and other business risks that may affect the performance of this Contract, except as otherwise provided in this Contract.

Section 65. Incorporation of Contractor's Proposal.

The Contractor's Proposal, dated October 10, 2018, submitted in response to the City's Request for Proposals, is fully incorporated by this reference, including but not limited to

collection vehicles, containers, performance systems and approach, outreach and assistance staffing and approach, customer service approach and response, 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 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.

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.

Section 80. Control of Waste.

Pursuant to its authority under Washington State law, the City by this Contract authorizes the Contractor to act as its agent for the collection and delivery of Construction Waste in the City to C&D Facilities as directed by the City. The City's rights of ownership and control over the Construction Waste collected under this Contract vest upon the collection of the Construction Waste; provided, however, that the original owner has the right of recovery to any valuable items inadvertently discarded that can be reasonably retrieved prior to delivery to a C&D Facility.

Section 85. Excluded Services.

This Contract does not include collection or disposal of Special Waste, Unacceptable Waste, Excluded Recyclable Loads, or Solid Waste other than Construction Waste.

This Contract does not necessarily include service to federal facilities, the Seattle Housing Authority, the Seattle School District or the University of Washington. These entities, however, may elect, at any time during the term of this Contract, to receive collection services from the City under this Contract and the Contractor agrees that upon request by the City, those collection services shall be governed by this Contract as long as such request remains in effect. The Contractor shall be free to solicit and contract for collection services to such excluded facilities independent of this Contract if they are not being served under this Contract.

This Contract does not include intermodal containers directly hauled to rail yards or landfills, Construction Waste that is collected in containers other than Drop Boxes, waste that is loose and not in a container, or Self-Haul Construction Waste.

COMPENSATION

Section 100. Contractor's Retail Rates.

The maximum Retail Rates for the first year of collection (April 2019 – March 2020) are listed in Attachment 1. The maximum Retail Rates include the City Contract Fee but do not include tipping fees or local and state taxes. The Contractor may charge less but shall not exceed the rates contained in Attachment 1, nor may the Contractor charge customers other fees other than specifically authorized by the City.

Section 110. Inflation Adjustment.

The City will compute inflation-adjusted maximum Retail Rates annually for the Contract year beginning in April 2020 and later Contract years as described below.

The “Inflation Adjustment Factor” will be a weighted composite of three federal prices indices: 1) the second-half annual consumer price index for Urban Wage Earners and Clerical Workers for the Seattle-Tacoma-Bellevue Area, Series ID No. CWURS49DSA0 , or successor indices, which will have a weight of **42%**, 2) the Alternative Fuels Data Center, Average Retail Fuel Prices in the U.S. for CNG, or successor index, which will have a weight of **8%**, and 3) the Employment Costs Index for Total Compensation for Private industry workers in administration and support and waste management and remediation services (National), Series ID No. CIU20156000000001 (B), or successor index, which will have a weight of **50%**. If the Contractor’s primary fuel is not CNG, then the City will identify a similar fuel index to align with the primary fuel use.

The Inflation Adjustment Factor, for the Contract year beginning in April 2020, and for each subsequent Contract year, will be calculated by taking the weighted average, based on the weights above, of the percentage difference between the three indices’ most recent prior year values and the corresponding values for the year ending December 2018, and adding the result to 1.0.

This annual Inflation Adjustment Factor will be applied to all rates under the Contract, unless otherwise noted herein.

Section 150. Performance Fees.

The City may assess the following performance fees for the service delivery omissions or acts as described below. Performance fees will be reasonably applied and may be appealed by the Contractor. The individual deductions for performance fees will be documented and will be applied with consideration of specific circumstances and related events as well as the Contractor’s overall performance.

Performance Requirement	Penalty
<u>Collection Failure</u>	
1) Failure to deliver a Container within two (2) business days of a customer’s request.	\$100 each Container
2) Failure to collect a Container (a) within 24 hours of a customer’s request, if the request is made before 12:00 noon, or (b) by 12:00 noon on the second business day, if the request is made after 12:00 noon.	\$100 each Container
3) Failure to return an emptied Container to a continuing customer (a) within three hours of collection, if the Container is collected before 12:00 noon, or (b) by 12:00 noon on the next business day if the Container is collected is collected after 12:00 noon.	\$100 each Container

Manner of collection

- | | |
|---|--|
| 4) Collection outside of the hours as specified in Section 720. | \$200 each incident, to a maximum of \$600 per truck per day |
| 5) Failure to collect spillage consistent with Section 820. | \$100 per incident |
| 6) Collection trucks exceeding weight limits. | \$250 each incident |

Container Maintenance

- | | |
|---|--|
| 7) Failure to remove or repaint graffiti on Containers within five (5) business days of notice. | \$50 per Container per day (after 5 business days) |
|---|--|

Section 160. City Contract Fee Payment Procedure.

No later than the 15th of each month, the Contractor will submit a City Contract Fee payment for collection services provided during the prior month. The City Contract Fee shall be \$16 per Container haul and either listed as a separate charge on customer invoices or embedded (included) in the service rates, as directed by the City. After the first Contract year, and each Contract year thereafter, the Contract Fee shall be adjusted by 50% of the annual percentage change in second-half annual consumer price index for Urban Wage Earners and Clerical Workers for the Seattle-Tacoma-Bremerton Area, Series ID No. CWURA423SAO, or successor indices.

EMPLOYEES, SUBCONTRACTORS AND NON-DISCRIMINATION

Section 200. Prevailing Rate of Wage.

The Contractor shall ensure that all Contractor and subcontractor collectors performing work under this Contract are paid not less than the prevailing rate of wage for the same trade or occupation as set by the City. The term “collectors” includes drivers, swampers, and others working on Construction Waste collection; it excludes office workers and management.

The term, “prevailing rate of wage” includes the hourly wage, usual benefits and overtime paid in the locality as defined in RCW 39.12.010(b). The Contractor's duty to pay the prevailing rate of wage and to ensure that subcontractors pay the prevailing rate of wage is absolute and mandatory. No worker may waive full compliance or accept a lesser sum.

The current prevailing rate of wage for waste collectors is listed in Attachment 2. This Attachment will be updated and reissued, to reflect any changes in effect on April 1, 2019. The prevailing wage will then be updated on a yearly basis thereafter.

Within thirty (30) days of starting collections on this Contract and thereafter on a yearly basis, the Contractor shall supply to each collector (including employees of the

subcontractor) a copy of the prevailing wage. The Contractor shall also supply a copy to each new employee or temporary employee. The information shall be in both Spanish and English.

Should an employee prevail in suit against the Contractor for wages or benefits due and establish that his or her wages paid were less than the prevailing rate of wage set forth in Attachment 2, the Contractor shall pay to the employee, in addition to the wages or benefits due and accrued interest, a reasonable attorney's fee, expert witness' fee, and court costs, as well as any other damages that may be awarded.

Under-payment of prevailing wages shall be a material default of the Contract.

Section 205. 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 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.

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. Wage Increases for Employees.

All wage increases for collectors or any other 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 each collector 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 by City staff during office hours at the Contractor's Seattle office.

The Contractor and subcontractor shall submit electronic copy of payroll records, with personally-identifying information removed, 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 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 230. Hiring Preference.

For initial hiring under this Contract, the Contractor and subcontractors shall give hiring preference to any Construction Waste collection workers who have been displaced as a result of the City awarding this Contract.

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 SMC 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, set forth on Attachment 4 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 Contractor an opportunity to be heard with ten business 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 SMC 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 SMC Section 20.70 (Debarment).

Section 250. Equal Benefits

The Contractor shall comply with the requirements of SMC Chapter 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 City's request, the Contractor shall provide complete information and verification of the Contractor's compliance with SMC Chapter 20.45. Failure to cooperate with such a request shall constitute a material breach of this Contract.

Remedies for Violations of SMC Chapter 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 Chapter 20.45 during the term of the Contract; or
2. Terminate the Contract; or
3. Disqualify Contractor from bidding on or being awarded a City contract for a period of up to five (5) years; or
4. Impose such other remedies as specifically provided for in SMC Chapter 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. 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.

During the term of this Contract, 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 shall be in the amount of \$190,000 and must be in place prior on or before April 1, 2019.

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, 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 which 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. Fails to perform ninety percent (90%) of the collections required by this Contract and appears, to the City, to have abandoned the work, or to be unable to resume collections within forty-eight hours;
2. Has failed on three or more occasions of three (3) business days duration each, in any year, or fifteen (15) business days in a calendar year to perform the collections required by the Contract; except as provided in Section 570 or 750;
3. Underpays prevailing wages per Section 200;
4. Fails to comply with the terms of any of the Employee Sections 205-270;

5. Fails to furnish and maintain a Performance and Payment Bond per Section 300;
6. Fails to furnish and maintain the Insurance requirements per Section 340; or
7. Fails to pay the City Contract Fee per Section 160 on time;
8. Fails to pay disposal or processing fees on time; or
9. Repeatedly neglects, fails, or refuses to comply with any of the terms of the Contract, after having received 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 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 General Manager, why the Contractor should not be declared to be in default of this Contract, the General Manager may make a declaration of default. In evaluating whether to make such a declaration of default, the 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 General Manager 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 and equipment described in the most recent inventory submitted to the City pursuant to Sections 1020 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 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 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 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 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.

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

Section 320. Ownership of Equipment.

All vehicles, 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 vehicles, facilities, equipment 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, 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, or equipment without the prior written approval of the City.

Section 330. Commitment of Equipment.

Unless a replacement or substitute is provided, all vehicles, facilities, equipment and property identified in the Contractor's inventory under Section 1020 for use in the performance of this Contract (called "such property") shall be available for use in collecting Construction Waste in the Collection Area. When provided, this Section applies to the replacement and substitute.

For the duration of this Contract, any document (including a lease to or by the Contractor, financing contract, acquisition over time, mortgage, or other instrument establishing a security interest) that encumbers or limits the Contractor's interest in such property shall:

1. Allow the surety on the Contractor's performance bond to take over the Contractor's obligations and to continue the use of the equipment in service for performance of the Contract;
2. In event the Contractor is in default, allow the City to use without further documentation all or a portion of such property and without requiring the City to post any bond, pledge, deposit or other security for such equipment and materials, at the City's discretion, for a period of up to six months following the date of the City's declaration of default, to provide such collection services on the condition that the City pays to the City's lessor a market rental for the equipment or property actually used in an amount no greater than the monthly lease in event of a lease, the installment payment in event of a purchase contract, or the monthly interest and principal in event of a financing arrangement;
3. Exempt the City from liability during its usage of such property for arrearages, balloon payments, accrued interest, accelerated charges on account of a default, or other extraordinary payments, and not make satisfaction thereof a condition of the City's or the Substitute Contractor's interim usage; and
4. Forbid any foreclosure, trustee's sale or other dispossession of the Contractor's interest in such property without giving both the City and the Surety on the Contractor's performance bond sixty days' prior notice, and then make any termination of the Contractor's interest in such property pursuant to such action or the enforcement thereof subject to the requirements of subsections (1), (2) and (3) of this Section.

To assure compliance with this Section, the Contractor shall submit to the City for its review and approval or disapproval prior to execution all contracts, leases, or other documents for acquisition of, or encumbering or limiting the Contractor's interest in, such property or for replacements thereof and any proposed agreement that would encumber or transfer any interest of the Contractor in such property before the Contractor's execution of such agreement. The City's approval shall not be unreasonably withheld.

Section 340. Insurance Limits.

At all times during the term of this Contract, 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:

\$1,000,000	each occurrence Combined Single Limit bodily injury and property damage (CSL)
\$2,000,000	Products/completed operations aggregate
\$2,000,000	General aggregate
\$1,000,000	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. 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

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

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.

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 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.

Section 370. Liquidated Damages.

This Section is independent of Section 310. 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. Liquidated Damages shall be owing only if the Contractor has been provided written notice of the default by the City and has been afforded seven-day period to cure such default and has failed to do so. Liquidated Damages shall be invoiced to the Contractor monthly and shall be paid by the Contractor within thirty (30) days of the date of the City invoice.

	<u>OMISSION</u>	<u>LIQUIDATED DAMAGE</u>
1.	Failure to pay City Contract Fees or Tipping Fees for collection services to the City in the time frames expressly established herein.	\$5000 each incident
2.	Submitting false data, information or reports to the City.	\$5000 each incident

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 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 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 Contractor. Promotional items worth less than \$25 may be distributed by the vendor to City employees if the Contractor 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.

Upon request of the City, the Contractor shall provide annual list of workers who spend more than 1,000 hours in any twelve-month period providing services to a City agency under this Contract and any other contract. The Contractor shall advise such workers that they are subject to the City Ethics Code (SMC 4.16).

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 Solid Waste collection with the City. The parties acknowledge that the Contractor has other contracts for Solid Waste collection with the City and agree that the preceding sentence does not apply to these other contracts.

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 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 are for convenient reference only. A caption 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 or registered mail (return receipt requested) to the parties at the following respective addresses:

To the City:

Hans VanDusen
Seattle Public Utilities
Seattle Municipal Tower, Suite 4900
700 Fifth Avenue
P.O. Box 34018
Seattle, Washington 98124-4018
Phone: (206) 684-4657

To the Contractor:

Area Director, Public Sector Solutions
Waste Management of WA, Inc.
720 4th Avenue, Suite 400
Kirkland, WA 98033

Either party may from time to time designate a new address for notices. Unless a return receipt or other document establishes otherwise, a notice sent by U.S. Mail shall be presumed to be received the second business day after its mailing.

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 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 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, provided the Contractor has been provided written notice of the default by the City, and has been afforded thirty-day period to cure such default and has failed to do so, or if the default cannot reasonably be cured within such period, has failed to commence to cure such default to the reasonable satisfaction of the City. 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 as a result 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.

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 activity or any combination of the above (except as provided in Sections 750 and 760). 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. Except as otherwise directed by local, state, or federal emergency response authorities, the Contractor shall use commercially reasonable efforts to make the City its first priority, and its efforts to provide the City with emergency and priority services shall, to the extent commercially reasonable, 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 City and Contractor shall jointly develop a Contingency Plan addressing the above.

Section 590. Adjustment - Change of Law or Due to a Force Majeure Event.

This section applies in the event a change in federal, state, or local laws or a prolonged change in circumstances due to a Force Majeure Event results in a substantial increase (or decrease) in costs to the Contractor in the performance of its obligations under this Contract. To qualify as a substantial increase in costs under this section, Contractor must demonstrate to the satisfaction of the City that the change in law or prolonged change in circumstances due to a Force Majeure Event has resulted in an increase of more than fifteen percent (15%) over the actual costs incurred by the Contractor for the same services provided under this Contract. A change in law under this section shall not include changes in law with respect to any form of taxes, including but not limited to property, income, business, payroll, franchise, employment, excise, sales or use taxes.

The Contractor may request an adjustment under this section. Any adjustment the City decides to grant under this section shall be prospective only. If the Contractor decides to request an adjustment under this section, the Contractor shall file with the City an adjustment request setting forth the Contractor's calculation of its increase in costs and documenting how the increase qualifies as a substantial increase in costs under this section. The burden of demonstrating that the Contractor has suffered a substantial increase in costs of 15% or more under this section rests with the Contractor. The Contractor shall provide the City with documentation and data reasonably necessary to evaluate the request. The City shall act within 90 days of receipt of a properly filed request and may either grant, grant in part, or deny the request, which shall not be unreasonably denied.

In the event a change in federal, state, or local law results in a decrease of more than fifteen percent (15%) from the actual costs incurred by the Contractor for the same services provided under this Contract, and upon 60 days prior notice from the City, the Contractor shall accept an adjustment to reflect such decrease in its costs.

COLLECTION SERVICES

Section 710. Scheduling of Collection.

The Contractor shall maintain sufficient Container inventory and truck capacity to meet the following Container delivery and collection standards:

- 1) Deliver a Container within two (2) business days of a customer's request.
- 2) Collect a Container (a) within 24 hours of a customer's request, if the request is made before 12:00 noon, or (b) by 12:00 noon on the second business day, if the request is made after 12:00 noon.
- 3) Return an emptied Container to a continuing customer (a) within three hours of collection, if the Container is collected before 12:00 noon, or (b) by 12:00 noon on the next business day if the Container is collected after 12:00 noon.

Notwithstanding any other provision in this Contract, Contractor shall not be required to collect or deliver a Container to a Job Site when the Job Site is closed or otherwise inaccessible.

Section 720. Time of Collection.

The Contractor is authorized to collect in residential districts between 7 am and 7 pm, Monday through Saturday. The Contractor is authorized to collect from both sides of parallel streets or alleys bordering commercial and industrial districts between 7 am and 10 pm for Monday through Friday and 9 am to 9 pm for Saturday or Sunday. The Contractor is authorized to collect in commercial and industrial districts, as defined in SMC 25.08.100 (B) and (C), 24 hours per day. The Contractor may request a temporary extension of hours. Such authorization shall not be unreasonably withheld.

Section 740. Holiday Collections.

The Contractor shall provide collection services on all legal holidays except Thanksgiving Day, Christmas Day and New Year's Day. Material regularly scheduled to be collected Thanksgiving Day shall be collected on Friday, the day after Thanksgiving. Friday's material shall be collected on Saturday. If Christmas Day or New Year's Day falls on a regularly scheduled workday, collection will be delayed one day, and Friday's material shall be collected on Saturday.

Section 750. Service Disruptions Due to Weather.

When snow or ice or other weather conditions prevents collection on the scheduled day, the Contractor shall make collection on the next business day. The Contractor shall notify the customer as soon as possible of any non-collection days due to snow or ice.

Section 760. Service Disruptions – Non-Weather.

When closure of roadways providing access, blocked alleys or streets or other disruption beyond Contractor's control prevents timely collection on the scheduled day, the Contractor shall make collection either later that collection day, or the next business day.

The Contractor may directly contact City of Seattle Parking Enforcement to request assistance to clear streets or blocked alleys, notify them of illegally parked cars, or request other assistance.

When labor disruptions prevent collection on the scheduled day, the Contractor shall make collections on the next possible business day.

MANNER OF COLLECTION

Section 810. Monitoring for Recycling Compliance.

The Contractor shall use commercially reasonable efforts to monitor Waste Containers for Prohibited Recyclables and to monitor Job Sites for the presence of Recycling Containers. The Contractor will notify non-compliant customers. The Contractor shall provide a monthly list of non-compliant customers to the City. Related customer outreach is described in Section 1310.

Section 820. Spillage.

The Contractor shall pick up any material spilled during collection and clean up the area affected within three (3) business hours of notification of the incident. Each truck shall carry equipment (such as a broom and a shovel) for this purpose.

The Contractor shall immediately, or within one (1) hour of notification, commence cleanup of any hydraulic, transmission, or other oil spill, or commence cleanup of any spillage which creates a hazardous condition (such as a spillage involving glass).

Section 850. Employee Conduct.

The Contractor is responsible for providing the supervision necessary to ensure that collection employees are courteous, exercise due care, do their work without delay, minimize noise, avoid damage to private property, close and relock all gates and doors that they open, replace lids on collection Containers and firmly close them, and, if on private property, follow the regular pedestrian walkways and paths; and not cross flower beds or through hedges. While collecting, employees shall wear or carry identification supplied by the Contractor. The identification shall be subject to approval of the City.

When the Contractor identifies unsatisfactory conduct by an employee or when the City notifies the Contractor of such conduct, the Contractor shall take remedial action. The remedial action shall be appropriate to the level of unsatisfactory conduct, provided that if the City requests of the Contractor by letter that an employee be suspended from further work on the Contract for Level Three unsatisfactory conduct or an uncorrected pattern of Level Two unsatisfactory conduct, the Contractor will permanently remove the employee from further work on the Contract.

Level One: Examples of Level One unsatisfactory conduct are single isolated incidents such as spillage of materials, leaving gates open, not relocking doors, walking through flower beds, not returning Containers to their proper location, not replacing lids, etc.

Level Two: Examples of Level Two unsatisfactory conduct are continued incidents of Level One unsatisfactory conduct, as well as rude or abusive language to customers, inappropriate behavior in customer's presence, purposeful damage of customer property, or acceptance of a cash payment or gratuity for ignoring a Contract provision.

Level Three: Examples of Level Three unsatisfactory conduct are continued incidents of Level Two unsatisfactory conduct, as well as appearing on the job under the influence of alcohol or drugs, fighting or menacing, throwing rocks, endangering customers or driving dangerously.

Under Level One, the City will send a written notice, informing the Contractor of the unsatisfactory conduct. Under Level Two and Three, the City will notify the Contractor by telephone within five (5) business days of becoming aware of the incident and send a written notice, within ten (10) business days. Written notices will identify the level of the notice, and the specifics of the incident.

The Contractor will notify the City of remedial action taken in its monthly reports.

Section 860. Customer Grievances and Service Disputes.

The Contractor will designate a representative to adjudicate customer grievances. At the City's request, the representative will join the City in meeting with an aggrieved customer within 24 hours of notification or the next business day, whichever is later, to resolve a

complaint about spillage, a refusal to serve or a missed pick-up, and/or other deficiency in service or a need for special service. The decision of the City shall be final and binding.

Any disagreement between a customer and Contractor regarding the services which can reasonably be accommodated at the customer's site shall be resolved by the City, including availability of collection and ancillary services, Container placement, level of service or any other issue related to collection services. The City will attempt to mediate and, if necessary, decide the issues, taking into consideration safety of the customer and the Contractor as well as the convenience of the customer and the efficient operation of the Contractor.

Section 870. 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 collection method, and/or a different type of service or schedule, that covers no more than ten percent (10%) of the Collection Area and continues no more than eighteen (18) months, unless both parties agree to an extension. A pilot test may require additional record keeping. The City and the Contractor shall sign a letter of agreement covering the expected cost and the pilot program duration prior to commencing any such test.

The parties shall negotiate an adjustment of the Contract payment to reflect the benefits and/or burdens of the pilot test. The adjustment shall be set to capture any increase or decrease in the Contractor's direct operating costs as a result of the pilot test. "Direct operating cost" includes planning costs; labor expense, including supervision (wages, employment taxes, and fringe benefits); materials, supplies and fuel; and amortized costs of new equipment purchased for the pilot test, or equipment modified for the test.

"Direct operating cost" excludes depreciation of equipment usable elsewhere. The parties shall agree before the start of the pilot test on what equipment is usable elsewhere by the Contractor. Any equipment that is agreed to be not usable elsewhere by the Contractor shall become the property of the City, at cost, at the conclusion of the pilot test.

Increases in "direct operating costs" must be established as out-of-pocket payments by the Contractor and be capable of verification by an independent auditor.

FLEETS AND DESTINATIONS

Section 1000. Vehicles Used in Collection.

All vehicles used for collection shall be registered with the State of Washington Department of Motor Vehicles, shall be kept in a clean and sanitary condition and a state of good appearance and repair, and shall be painted in a uniform manner.

Collection vehicles shall be painted in Contractor's color or colors subject to approval by the City, and shall have painted in a contrasting color, at least four inches high, on each side of each vehicle and on the rear of the vehicle, a four-digit vehicle number. Collection

vehicles must be registered with the City prior to use and have City-provided RFID mounted on driver door.

No advertising shall be permitted other than the name of the Contractor. All collection trucks shall display a Contractor customer service telephone number. All vehicles shall be thoroughly washed at least once each week.

The number of collection vehicles (including spares) shall be sufficient to provide the collection services under this Contract.

All vehicles used by management personnel, including route supervisors, shall be equipped with cell phones with voice mail so that they can be contacted by the City.

All such vehicles shall be operated in conformity with Washington State traffic laws and where applicable the Seattle Traffic Code, SMC Title 11.

The Contractor (and subcontractors) shall not park or store any collection vehicles on City property for more than a two-hour period, regardless of the signage, without the permission of the City.

Section 1010. Vehicle Specifications.

The Contractor's primary collection fleet shall have engines that meet or exceed 2007 federal emission requirements for diesel or natural gas engines. The fleet shall be fueled with Renewable Natural Gas (RNG).

All collection equipment used under this Contract shall meet all applicable state and federal safety standards and Contractor shall obtain all required operating permits. All collection trucks used on this Contract shall meet existing street weight limits in the City. The Contractor shall not exceed any collection truck weight limit at any time.

All collection vehicles shall be equipped with ambient noise back-up alarms and GPS locating units.

Section 1020. Vehicle Maintenance and Inventory.

The Contractor shall provide to the City, by March 1, 2019, a complete inventory showing each vehicle (type, capacity) used for performing the Contract. The Contractor may change equipment from time-to-time but shall notify the City of new or temporary replacements prior to their use on this Contract. The Contractor shall maintain a vehicular fleet during the performance of this Contract at least equal to that described in the inventory.

Section 1030. Traffic Laws; Noise Control.

All vehicles shall be operated in conformity with the Seattle Traffic Code, SMC Chapter 11. The maximum noise level of motor vehicles during travel shall not exceed the levels set forth in SMC 25.08.430. The maximum noise level while collecting Construction Waste shall not exceed the levels set forth in SMC 25.08.410.

Section 1040. Disposal.

All Construction Waste shall be delivered to a C&D Facility located in the DIA as approved by the City in accordance with this Section. Notwithstanding the City's right to direct Construction Waste to a particular C&D Facility, the Contractor may deliver collected Construction Waste to a different C&D Facility preferred by the Contractor and customer under the following conditions:

1. The tipping fee at the preferred C&D Facility (including the City Transfer Tax) shall be no greater than prevailing tipping fees charged by other C&D Facilities within the Seattle Metropolitan Area for similar types, mixes, and quantities of materials. The evaluation of 'prevailing tipping fees' is intended to establish a reasonable market rate by comparing the tipping fees at multiple facilities.
2. The preferred C&D Facility is achieving diversion results for Recycling, Reuse, and Beneficial Use, similar or better than other C&D Facilities within the Seattle Metropolitan Area for similar types, mixes, and quantities of materials.

For Containers containing Recyclable Materials, the City supports opportunities to divert these materials, either through processing or recovery of Recyclable Materials at C&D Facilities.

If the City directs the Contractor to an alternate C&D Facility that is outside of the DIA, the City will adjust the Contractor's maximum rates. The driving distance from the center of the north, central and south collection sub-areas to the alternative C&D Facility – based on most direct route available to collection trucks – will be compared to the distance from the center of each collection sub-area to the normal C&D Facility in the DIA. The difference in trip distance will be multiplied by \$1.00 per ton-mile. A distance surcharge or credit will be established for each collection sub-area and separately itemized on customer invoices.

CONTAINERS

Section 1100. Supplying Drop Boxes for Collection.

During the term of this Contract the Contractor shall provide Drop Boxes for storage and collection of Construction Wastes to Job Sites within two (2) business days after request from a customer.

Drop Boxes shall be located on the Job Site in a manner satisfactory to the customer and convenient for collection by the Contractor and shall meet the provisions of the Seattle Fire Code. Contractor may refuse to provide Drop Boxes or service Drop Boxes if it deems the location of the Drop Box to be a health or safety hazard. Any Drop Boxes located in the public right of way should have appropriate permits. Any disagreements over Container placement and collection shall be mediated by the City, whose decision shall be final and binding.

The Contractor is not responsible for any damage to paved areas, including driveways, caused by the weight of a collection vehicle, or other damage to private property not caused by the negligence or misconduct of the Contractor. The Contractor shall be responsible for informing customers of the possibility of property damage if the Contractor reasonably believes that the weight of their collection trucks will damage paved areas.

Section 1110. Drop Box Standards.

Drop boxes shall be all-metal and, if requested by the customer, equipped with a tight-fitting screened or solid cover operated by a winch in good repair. They shall be painted a uniform color, bear the name and telephone number of the Contractor, and bear a serial number coded for Container size. Drop Boxes shall be painted once or more during the term of this Contract and shall be pressure washed once during the term of this Contract.

The Contractor is responsible for removing graffiti from its Drop Boxes. Collection drivers shall regularly note Containers containing graffiti. Contractor personnel shall then remove reported graffiti. The Contractor shall remove any graffiti reported by the City within five (5) business days of notification. The Contractor shall supply Container paint to any customer who requests it for graffiti removal.

Section 1130. Drop Box Repair or Replacement.

Damage to Drop Boxes on customers' Job Site is at the Contractor's risk, rather than the City's, as between those parties and without affecting the risk or liability of others. The Contractor shall be responsible for the repair of all customer-owned Drop Boxes damaged due to the Contractor's negligence.

The Contractor shall replace or repair any damaged Drop Box within five (5) business days of notification by the customer, collector or the City. The Contractor shall repair or replace within one business day any Drop Box that the City or a Health Department determines does not comply with ordinance standards or constitutes a health or safety hazard.

CUSTOMER SERVICES, BILLING AND OUTREACH

Section 1300. Customer Outreach During Transition.

Prior to April 1, 2019, the Contractor shall deliver to all current and recent Construction Waste customers information on the future services and the service transition. Annually, the Contractor will send a brochure to all customers that includes construction and demolition waste information and updates.

Section 1310. Recycling Outreach and Assistance.

The Contractor shall provide outreach and Job Site assistance to support successful segregation of Recyclable Materials from non-Recyclable Materials at customer Job Sites.

- At the outset of service, the Contractor will provide customers with a list of Recyclable vs. non-Recyclable materials for their Job Site and to share with crews.

- The Contractor will provide an online diversion tracking tool that customers can use to track their progress, improve compliance, and adopt Lean construction principles across projects.
- To limit contamination, the Contractor will
 - provide education and/or follow-up to customers that have continued co-mingling of Recyclable and non-Recyclable Materials;
 - provide the City with names of customers and Job Sites out-of-compliance monthly and/or as identified;
 - include construction and demolition information in annual mailing to commercial customers; and
 - provide workshops and/or other training opportunities to the construction waste sector.

Section 1320. Customer Service.

In addition to other customer service provisions in this Contract, the Contractor shall provide the following services to Construction Waste customers:

1. Set up of new accounts for each customer to be serviced by the Contractor in the Collection Area, including acceptance of hauling and disposal deposits.
2. Provision of Containers for each customer.
3. Provision of itemized monthly invoices to each customer.
4. Provision of on-line payment and service request capability for commercial business customers.
5. Receipt and processing of payments from all customers serviced by the Contractor.
6. Provision and maintenance of systems and personnel for managing customer inquiries and complaints.
7. Provide regular information to customers on the procedures for appealing disputes to the City.
8. Provide a monthly record of all customer service requests, complaints and misses, categorized by type of request, complaint or miss.
9. The Contractor shall maintain a customer service operation with average wait time under 20 seconds, a Telephone Service Factor (TSF) of 80% of calls answered within one minute, and abandoned calls under 5% per month.
10. The Contractor's telephone system shall have the capacity to monitor and report the number of incoming calls received during the business day, and during the month; the average holding time for all calls received in a period, and the average holding time for all calls received. This information shall be available to the City on

a daily basis and the Contractor shall provide a monthly report showing total calls accepted, average call wait times, number of abandoned calls, and TSF performance.

11. Routine customer contact and services shall be handled by the Contractor's local customer contact center, unless otherwise agreed by the City. Customer contact overflow and backup services may be provided by other Contractor regional service centers.
12. A dispatch telephone number will be available to customers 24 hours per day, 7 days per week (or when the regular customer service operation is not operating). Staff and telephone equipment shall be sufficient to handle the volume of calls typically handled during these hours.
13. The Contractor's customer service operations will provide on demand translation services for non-English speakers.
14. Upon request from the customer and subject to availability, the Contractor will provide a web-enabled Service Button for roll-off Containers that allows customers to schedule hauls from their Job Sites without having to make a call.

Section 1340. Billing to Business Customers.

Construction Waste customers shall be billed on an occurrence (for one-time hauls) or a monthly basis at rates not to exceed the maximum Retail Rates. The Contractor will have authority to bill customers for services performed, including applicable taxes. The billing format shall be approved by the City prior to use. The Contractor will incorporate City customer service messages as text on bills and/or as an additional insert in the bill on request from the City. Billing procedures and forms of invoices will be established in the Operations Plan, as appropriate. Contractors will provide electronic billing and online customer service options.

Section 1350. Payment Receipt and Remittance to City.

The Contractor shall receive all customer payments and out of those payments, pay the City Contract Fee, tipping fees and all applicable payments.

Section 1360. Bad Debts.

The Contractor shall be responsible for collecting overdue payments due to the Contractor. The Contractor shall use the procedures outlined in their operations plan (Attachment 3) to pursue the collection of bad debt. The Contractor shall pay disposal costs and City Contract Fees by the required date regardless of the collection status of the account and shall collect the necessary deposit from customers to meet these obligations.

Section 1365. Remedies for Customer Non-Payment.

The Contractor shall have all rights and remedies provided by law to recover all amounts owed by customers for the collection services hereunder, including lien rights, late payment fees, and suspension or termination of service.

Section 1370. Financial Record Keeping and Reporting.

The Contractor shall maintain complete and accurate books of account and records with respect to the performance of its obligations under this Contract including, but not limited to, all correspondence and invoices, transaction tickets, or receipts documented by books and records kept at Contractor's principal place of business. Contractor also agrees to maintain a system of internal accounting controls sufficient to ensure that all transactions are properly authorized, recorded, processed, summarized and reported and that all assets of the Contractor and the City are adequately safeguarded. The Contractor will provide an annual report of an internal or third-party review of the Contractors' current corporate financial controls. The City shall have the right during reasonable business hours to inspect and audit such books, records and internal accounting controls. All books, accounts, and records required to be maintained under this Section shall be preserved intact without alteration during the term of this Contract and for a period of twelve (12) months following the termination of this Contract.

PERFORMANCE, COORDINATION AND BEST PRACTICES

Section 1400. Performance Expectations.

The following expectations are established for services under this Contract:

1. 95% of Container deliveries within two (2) business days of a customer's request;
2. 95% of Containers collected (a) within 24 hours of a customer's request, if the request is made before 12:00 noon, or (b) by 12:00 noon on the second business day, if the request is made after 12:00 noon;
3. 95% of emptied Containers returned to a continuing customer (a) within three hours of collection, if the Container is collected before 12:00 noon, or (b) by 12:00 noon on the next business day if the Container is collected is collected after 12:00 noon;
4. 80% of calls answered within one minute;
5. Customer abandoned calls to be under 5% per month; and
6. Other items as mutually agreed.

The Contractor is also expected to provide consistent service, submit all required data and reports within the time periods specified and consistently provide correct information.

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 agree to meet on a monthly basis, unless otherwise mutually agreed.

Section 1430. Contractor's Office.

The Contractor shall maintain an office within King County for coordination with City staff. All management and office staff, collection supervisors and foreman shall have phone and email accessibility to City staff. Management personnel and supervisors shall have cell phones and be available during work hours. Any voice mail messages shall be returned by the Contractor's office staff, management and/or supervisors within two hours during office hours. Office hours shall be 8am to 5pm, Monday through Friday.

Section 1440. Operations Plan.

A schedule of activities and detailed procedures related to the effective implementation and operation of the Contract will be developed by the Contractor and the City after the Contract is signed and prior to beginning collections under the Contract. This plan shall include the procedures and activities listed below and shall include completion dates for each activity:

1. Procedures for notifying customers of any billing format changes or procedures;
2. Procedures for transmitting reporting information to and from the City to the Contractor;
3. Procedures for transmitting City Contract Fee from the Contractor to the City;
4. Procedures for City monitoring of Contractor collection activities;
5. Procedures for measuring and applying rewards/penalties for Contractor activities;
6. Process for customer and Contractor appeals to billings, services and/or payments;
7. Protocol and communications for service interruptions due to weather, construction and other factors;
8. Standards for the transfer of electronic information and for data quality control and accuracy;
9. Designation of implementation leads by both City and Contractor;
10. Process for collecting bad debt and for cancelling or suspending services for non-payment;
11. Other items identified by the parties.

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 products to perform City services, including Green Seal, Eco Logo or other certified cleaning products, where applicable, in performance of cleaning work. The Contractor shall use of 100% post-consumer recycled content, chlorine-free paper where possible. Contractors shall 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 1520. Service Data and Reports.

The Contractor shall submit the following monthly records to the City, by the 10th of the month:

1. Electronic service detail flat files, as specified by the City. These 'SVC' files provide detailed data on all Construction Waste accounts; services performed; and retail billing.
2. Summary of total services performed and tons collected.
3. Customer contact summary per Section 1320, with a record of Construction Waste service contacts, including requests, complaints, and misses.
4. Call center performance with the number of incoming calls and electronic requests for Construction Waste services; the percent of calls abandoned; the percent answered in under one-minute; and the average holding time for all calls received.
5. Per Section 810, a list of Containers or Job Sites not complying with City Construction Waste recycling requirements.
6. A listing of any overweight trucks. The listing to include the date, time, truck number, total truck weight and weight over the legal limit;
7. List of education and follow-up activities (e.g., workshops or training) provided to customers who continue to commingle recyclables and non-recyclables.

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.

WASTE MANAGEMENT OF
WASHINGTON, INC.

THE CITY OF SEATTLE

By _____
Jason Rose
President

By _____
Mami Hara
General Manager/CEO
Seattle Public Utilities

Date

Date

Authorized by City Ordinance _____

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Attachment 1 –Maximum Retail Rates for Year 1

(April 2019 – March 2020)

Attachment 1 - Maximum Retail Fees for Year 1

(April 2019 - March 2020)

	South (Zone 4)	Central (Zone 3)	North (Zone 1 and 2)
Delivery fee (empty)	\$85	\$115	\$115
Hauling fee (full)	\$130	\$160	\$160

	Daily	Monthly
10-20 yard box	\$4	\$120
25-40 yard box	\$5	\$150
Solid lid	\$2	\$60
Lock	\$1	\$30

Maximum overweight container charge: \$300

Maximum late payment fee: Up to 1.5%

*Prices include City Contract Fee, and do not include taxes or tipping fees.
Delivery fees are not charged for container swaps (when a full container is hauled and an empty container is delivered).*

North zone = North of the Ship Canal

Central zone = South of the Ship Canal and north of I-90

South zone = South of I-90

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Attachment 2 - Prevailing Wages

Wages for Construction Waste Collection

1. **Hourly Wages:** Effective dates listed below, the prime and subcontractors shall pay all employees on work under this Contract not less than the following rate of hourly wages:

a.) <u>Classification</u>	<u>Per Hour</u>
Drivers Effective 4/1/18	\$32.09
b.) <u>New Employees</u>	
1 to 1000 hours of employment	70% of above rate
1001 to 2000 hours of employment	80% of above rate
2001 to 3000 hours of employment	90% of above rate
3000+ hours of employment	100% of above rate

“New employees” do not include employees who have collected refuse and/or compostable waste on a City of Seattle contract for 3000 or more hours since October 1, 2007.

- c.) Overtime
All time worked over forty (40) hours in any workweek, or eight (8) hours in any workday (for employees on a 5/8 schedule) or ten (10) hours in a day (for employees on a 4/10 schedule) shall be compensated at time and one-half (1 ½).

Employees shall be guaranteed four (4) hours work or pay at the applicable rate when reporting for duty as scheduled on any day outside of their regularly scheduled workweek.

Saturday work following Thanksgiving Day, Christmas Day or New Year’s Day shall be straight time unless Christmas Day or New Year’s Day falls on a Saturday or Sunday.

- d.) Work Week
Regular employees shall be guaranteed five (5) consecutive days of work (for employees on a 5/8 schedule), or four (4) days of work, with two (2) consecutive days off, (for employees on a 4/10 schedule), and forty (40) hours per week, when work is available.

2. **Health and Retirement Benefits:** For each employee, the following rate of contribution shall be made to either: (1) a trustee or to a third person pursuant to a fund, plan or program; (2) additional wages to each employee, or; (3) additional wages

minus any contribution to a trustee or to a third person pursuant to a fund, plan or program.

a) Health Benefits

All new employees who have completed five hundred twenty (520) hours of employment, and who were compensated for eighty (80) hours in the previous month, shall be eligible to have contributions made on their behalf.

Effective April 1, 2010, the Employer agrees to pay \$1,108.95 per month.

The Employer will pay any increases required to maintain benefits under the Plans identified to a maximum total contribution of eight percent (8%) annually for all benefits as follows:

<u>Effective Date</u>	<u>Cap</u>
Effective 01/01/18	additional \$164.00/month
Effective 01/01/19	additional \$177.00/month

b) Retirement

Effective May 2, 2010, the Employer shall pay a pension contribution of six dollars and eighty-six (\$6.86) per hour for each member of the bargaining unit for each hour for which compensation is paid, not to exceed one hundred eighty-four (184) hours per month, and two thousand eighty (2080) hours per calendar year. The pension contribution shall increase as follows:

<u>Effective Date</u>	<u>Pension Contribution</u>
October 1, 2018	\$8.46

3. Vacation, Holiday and Sick Leave Benefit Days: For each regular employee, the following shall be provided in either: (1) actual benefit days; (2) additional wages to each employee, or; (3) additional wages minus any actual benefit days:

a) Vacation

Non-probationary employees shall receive paid vacations as follows:

- One (1) week after one (1) year.
- Two (2) weeks after two (2) years.
- Three (3) weeks after eight (8) years.
- Four (4) weeks after fifteen (15) years.
- Five (5) weeks after twenty (20) years.

The Employer may pro rate vacations for employees with less than one thousand seven hundred fifty (1,750) worked hours during an employment year (i.e., anniversary date to anniversary date). Formula shall be: All employees with one thousand seven hundred fifty (1,750) or more worked hours during an employment

year shall be entitled to full vacation benefits. Formula for employees with less than one thousand seven hundred fifty (1,750) worked hours shall be: worked hours, divided by two thousand (2,000), equals percentage earned vacation due employee.

b) Holidays

The following days are holidays:

- January 1st — New Year's Day
- Martin Luther King Day or a Floating Holiday (at the Employer's option)
- Washington's Birthday (3rd Monday of February)
- Memorial Day (last Monday of May)
- July 4th
- Labor Day (first Monday of September)
- Thanksgiving Day
- Christmas Day
- Floating Holiday

All non-probationary employees shall be paid for all holidays. In order to be eligible for holiday pay, the employee must work the last scheduled workday immediately preceding and the first scheduled workday immediately following the holiday, and must also work on the holiday if scheduled.

No work shall be performed on Christmas Day. Further, no work shall be performed on Thanksgiving Day or January 1st unless such work is necessary.

All eligible non-probationary employees shall receive eight (8) hours of holiday pay for each of the nine (9) above-listed holidays. In the event an employee working a 4/10 schedule uses a floating holiday the employee shall receive ten (10) hours holiday pay. Work performed on holidays shall be compensated at the straight-time rate, with the exception that all work on Thanksgiving Day and New Year's Day and overtime on other holidays shall be time and one-half (1 1/2).

c) Sick Leave

Regular employees shall accumulate forty-eight (48) hours of sick leave benefits a year, on the basis of one (1) hour per forty (40) hours of compensation. Benefits shall be payable for bona fide absences caused by illness or accident commencing the first scheduled working day of sickness. Sick leave is not to be paid for holidays.

Employees collecting Workers' Compensation temporary disability benefits may not receive sick leave as herein provided; however, if Workers' Compensation benefits are less than the amount of sick leave otherwise provided, employees shall, in addition to Workers' Compensation benefits, receive sick leave benefits sufficient to equal the amount of sick leave that would otherwise have been received, by deducting from the bank the hours required to make up the difference, taking into account the tax-free status of Workers' Compensation payments.

Unused sick leave shall accumulate in a bank, to a maximum of four hundred twenty-five (425) hours. Sick leave shall be deducted from the bank on an hourly basis. Benefits for days off must be for eight (8) hours for employees working 5/8 schedules and ten (10) hours for those employees working 4/10 schedules and must be for scheduled workdays.

- 4. Combined Compliance:** The Contractor shall be deemed to be in compliance with Sections 1, 2, and 3 if its payments to or for the benefit of its employees are at least equal to the total amount derived by adding each of the required wage and benefit components described herein (overpayments in one category may be used as offsets in another category).

Wages for Waste Reduction Specialists

- 1. Hourly Wages:** Effective the dates listed below, the prime and subcontractors shall pay all employees on work under this Contract not less than the following rate of hourly wages:

a. Classifications

Waste Reductions Specialist (WRS)

April 1, 2018	Top rate \$32.59
April 1, 2019	Top rate \$33.34
April 1, 2020	Top rate \$34.34

b. New Employees

New WRS employees shall be paid as follows:

I	II	III	IV	V
12 mos.	6 mos.	12 mos.	6 mos.	Thereafter
80%	85%	90%	Top Rate	Top rate

The Employer will consider credit for experience in the industry, although the ultimate determination will be made by the Employer. The above scales are minimums.

c. Overtime

All time worked over forty (40) hours in any workweek, and/or eight (8) hours in any day (10 hours if a 4/10 workweek) shall be compensated at time and one-half (1 ½). Overtime and premium pay shall not be compounded or pyramided.

All Sunday work and work on days other than the employees' regularly scheduled workweek is time and one-half with an eight (8) hour guarantee.

If a holiday that is not worked falls on an employee's normal workday and is not worked by the employee, the following Saturday [first (1st) regular day off except Sunday for employees working four (4) ten (10) shifts] shall be a normal workday (guarantees apply) and be paid at time and one half the normal

straight-time rate of pay. An employee must work the Saturday [first (1st) regular day off except Sunday for employees working four (4) ten (10) shifts] in order to receive holiday pay, unless excused by the Employer.

d. Work Week

WRS employees with seniority shall be guaranteed five (5) consecutive days of work (for employees on a 5/8 schedule), or four (4) days of work (for employees on a 4/10 schedule), and forty (40) hours per week, when work is available.

2. Health and Retirement Benefits: For each employee, the following rate of contribution shall be made to either: (1) a trustee or to a third person pursuant to a fund, plan or program; (2) additional wages to each employee, or; (3) additional wages minus any contribution to a trustee or to a third person pursuant to a fund, plan or program.

a. Health Benefits

All employees who have five hundred twenty (520) compensable hours of employment and who were compensated for eight (80) hours in the previous month, shall be eligible to have contributions made on their behalf. For eligible employees, the Employer shall pay the following effective January 1, 2016:

\$1,553.80

Effective January 1, 2016, The Employer agrees to pay \$1553.80 per month for the above listed plans well as any increases required to maintain the above listed plans and the RWT Plus Plan, as well as any increases to maintain the RWT Plus Plan:

b. Retirement

Effective October 1, 2016, the Employer shall pay eight dollars and six cents (\$8.06) per hour for each WRS member of the bargaining unit and those WRS probationary employees who have been continuously employed for more than ninety (90) calendar days for each hour for which compensation is paid not to exceed the first 2080 hours in a calendar year.

Base: \$6.92 PEER: \$1.14 Total: \$8.06

Effective October 1, 2017, the Employer shall pay eight dollars and 31 cents (\$8.31) per hour for each WRS and CD member of the bargaining unit and those WRS probationary employees who have been continuously employed for more than ninety (90) calendar days for each hour for which compensation is paid not to exceed the first 2080 hours in a calendar year.

Base: \$7.13 PEER: \$1.18 Total: \$8.31

Effective October 1, 2018, the Employer shall pay eight dollars and fifty-six cents (\$8.56) per hour for each WRS and CD member of the bargaining unit and those WRS probationary employees who have been continuously employed for more than ninety (90) calendar days for each hour for which compensation is paid not to exceed the first 2080 hours in a calendar year.

Base: \$7.35 PEER \$1.21 Total: \$8.56

Effective October 1, 2019, the Employer shall pay nine dollars and six cents (\$9.06) per hour for each WRS and CD member of the bargaining unit and those WRS probationary employees who have been continuously employed for more than ninety (90) calendar days for each hour for which compensation is paid not to exceed the first 2080 hours in a calendar year.

Base: \$7.78 PEER:\$1.28 Total: \$9.06

Effective October 1, 2020, the Employer shall pay nine dollars and fifty-six cents (\$9.56) per hour for each WRS and CD member of the bargaining unit and those WRS probationary employees who have been continuously employed for more than ninety (90) calendar days for each hour for which compensation is paid not to exceed the first 2080 hours in a calendar year.

Base: \$8.21 PEER: \$1.35 Total: \$9.56

3. Vacation, Holiday and Sick Leave Benefit Days: For each regular employee, the following shall be provided in either: (1) actual benefit days; (2) additional wages to each employee, or; (3) additional wages minus any actual benefit days.

a. Vacation

Employees shall accrue paid vacations each pay period based on the following formula:

One (1) week during the first year.

Two (2) weeks during years two (2) through seven (7).

Three (3) weeks during years eight (8) through fourteen (14).

Four (4) weeks during years fifteen (15) through nineteen (19).

Five (5) weeks during year twenty (20) and thereafter.

The Employer may prorate vacations for employees with less than one thousand seven hundred fifty (1,750) compensated hours during an employment year. Formula shall be: All employees with one thousand seven hundred fifty (1,750) or more compensated hours during an employment year shall be entitled to full vacation benefits. Formula for employees with less than one thousand seven hundred fifty (1,750) compensated hours shall be: Compensated hours, divided by two thousand (2,000), equals percentage earned vacation due employee.

b. Holidays

The following eleven (11) days are holidays:

January 1

Memorial Day (Last Monday of May)

July 4

Labor Day (First Monday of September)

Thanksgiving Day

Christmas Day

(4) Floating Holidays

(1) Floating Holiday (Effective January 1, 2017)

All employees with seniority shall be paid for all holidays. In order to be eligible for holiday pay, employees must work their last scheduled workday immediately preceding and their first scheduled workday immediately following the holiday, as well as the holiday if scheduled, unless excused in advance by the Employer.

No work shall be performed on Thanksgiving Day, Christmas Day and January 1 unless such work is necessary in drop box or commercial lines of business.

c. Sick Leave

All employees as of the date of ratification shall accumulate forty-eight (48) hours of sick leave benefits per year, on the basis of one (1) hour per forty (40) hours of compensation. All Helpers hired after ratification shall be eligible to accrue sick leave described herein after one year of employment. Benefits shall be payable for bona fide absences caused by illness or accident commencing the first scheduled working day of sickness Sick leave is not to be paid for holidays.

Employees collecting Workers' Compensation temporary disability benefits may not receive sick leave as herein provided; however, if Workers' Compensation benefits are less than the amount of sick leave otherwise provided, employees shall, in addition to Workers' Compensation benefits, receive sick leave benefits sufficient to equal the amount of sick leave that would otherwise have been received, by deducting from the Bank the hours required to make up the difference, taking into account the tax-free status of Workers' Compensation payments.

Unused sick leave shall accumulate in a bank, to a maximum of four hundred twenty-five (425) hours. The bank shall be available for future use. Sick leave shall be deducted from the bank on an hourly basis. Benefits for days off must be for eight (8) hours and must be for scheduled workdays.

4. Combined Compliance – The Contractor shall be deemed to be in compliance with Sections 1, 2, and 3 if its payments to or for the benefit of its employees are at least

equal to the total amount derived by adding each of the required wage and benefit components described herein (overpayments in one category may be used as offsets in another category).

Attachment 3 – Operations Plan

Operations Plan developed jointly by Contractor and City after Contract signing.

Attachment 4 – WMBE Inclusion Plan