

Ordinance No. 122760

Council Bill No. 116280

AN ORDINANCE authorizing the Director of Seattle Public Utilities to enter into a contract with Waste Management of Washington, Inc. to provide construction waste collection services in the city of Seattle.

CF No. \_\_\_\_\_

Date Introduced: <u>7-21-08</u>		
Date 1st Referred:	To: Environment, Emergency Mgmt & Utilities (EEMU)	
Date Re - Referred:	To: (committee)	
Date Re - Referred:	To: (committee)	
Date of Final Passage: <u>8-4-08</u>	Full Council Vote: <u>8-0</u>	
Date Presented to Mayor: <u>8-5-08</u>	Date Approved: <u>8-12-08</u>	
Date Returned to City Clerk: <u>8-12-08</u>	Date Published: <u>2</u>	T.O. <input checked="" type="checkbox"/> F.T. <input type="checkbox"/>
Date Vetoed by Mayor:	Date Veto Published:	
Date Passed Over Veto:	Veto Sustained:	

The City of Seattle - Legislative Department

*Richard Conlin*

Council Bill/Ordinance sponsored by: \_\_\_\_\_

Councilmember

### Committee Action:

7/29/08 Pass RC, TB

8-4-08 Passed 8-0 (Excused: McIver)

This file is complete and ready for presentation to Full Council. Committee: \_\_\_\_\_ (initial/date)

*Law Department*

Law Dept. Review

OMP Review

City Clerk Review

Electronic Copy Loaded

Indexed



# City of Seattle

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Gregory J. Nickels, Mayor

## Office of the Mayor

July 8, 2008

Honorable Richard Conlin  
President  
Seattle City Council  
City Hall, 2<sup>nd</sup> Floor

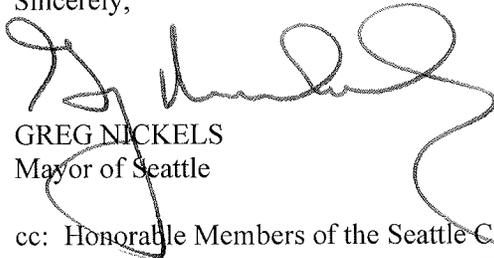
Dear Council President Conlin:

I am pleased to transmit the attached proposed Council Bill that authorizes a new collection contract for construction and demolition waste beginning in April 2009, when the current service agreements end.

The new contract with Waste Management of Washington, Inc. will continue a vital waste removal service while improving service performance and adding flexibility to adapt to customer needs. New contract terms will enhance customer response, improve service flexibility, and provide incentives for increased recycling, while reducing vehicle pollution and supporting local employment.

This innovative agreement is a key element in the City's efforts to reduce impacts and capture resources from local construction activities. Thank you for your consideration of this legislation. Should you have questions, please contact Hans Van Dusen, SPU Solid Waste Contract Manager at 684-4657.

Sincerely,



GREG NICKELS  
Mayor of Seattle

cc: Honorable Members of the Seattle City Council





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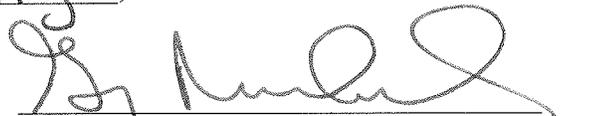
Section 2. Any act taken after the passage but prior to the effective date of this ordinance and consistent with its authority is hereby ratified and confirmed.

Section 3. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

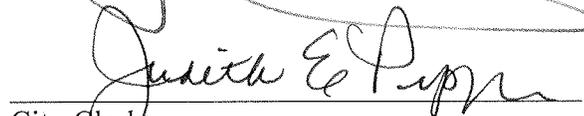
Passed by the City Council the 4<sup>th</sup> day of August, 2008, and signed by me in open session in authentication of its passage this 4<sup>th</sup> day of August, 2008.

  
\_\_\_\_\_  
President \_\_\_\_\_ of the City Council

Approved by me this 12<sup>th</sup> day of August, 2008.

  
\_\_\_\_\_  
Gregory J. Nickels, Mayor

Filed by me this 12<sup>th</sup> day of August, 2008.

  
\_\_\_\_\_  
City Clerk

(Seal)

Attachment 1: Construction/Demolition Waste Collection Contract between the City of Seattle and Waste Management of Washington, Inc.



**Construction/Demolition Waste  
Collection  
Contract Between the City of Seattle  
and Waste Management of  
Washington, Inc.**



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- Attachment 3** -- Rates for Containers and Ancillary Services
- Attachment 4** -- Sample Payment Adjustments



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

**THIS CONSTRUCTION /DEMOLITION 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/Demolition Waste from Job Sites.**

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

**A. GENERAL PROVISIONS**

**Section 10. Purpose and Intent.**

The purpose of this Contract is to provide for the collection of Construction/Demolition Wastes in the City through this Contract with the Contractor. The City intends for the Contractor to be the only providers of Construction/Demolition Waste Collection services in the City.

Collected material shall be tipped at disposal or processing facilities as set forth herein.

The City reserves the right to engage in and support product stewardship, waste reduction and/or recycling activities. These activities could result in a reduction in available business to the Contractor.

**Section 15. Contract Term.**

This Contract is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2008. Actual collection services will begin April 1, 2009 and continue for a term of five years, ending at midnight March 31, 2014. The City shall have the unilateral right to extend this Contract for a three year term to March 31, 2017 and an additional two year term to March 31, 2019 by notifying the Contractor on or before June 30, 2013 and June 30, 2016, respectively. The City will meet with the Contractor annually to discuss future contracting plans. If the City extends this Contract, the same terms, conditions, and method of payment shall apply during the extension period.

**Section 20. Definitions.**

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

"A&E Services" means ancillary and elective services associated with collection.

"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, Seattle Municipal Code Chapter



3.02, and Seattle Municipal Code Section 3.32.020, the Director of Seattle Public Utilities shall adopt rules designating those uses of solid waste that constitute beneficial use.

"City" means the City of Seattle.

"City Contract Fee" means a per-container haul fee the Contractor pays to the City monthly.

"Collection Area" means all areas within the City in which the Contractor provides collection services as described in Section 100.

"Compacted Material" means material which has been compressed by any mechanical device either before or after it is placed in the receptacle handled by the collector.

"Compactor Disconnect/Reconnect Cycle" means the service of disconnecting a compactor from a Drop Box or container prior to taking it to be dumped and then reconnecting the compactor when the Drop Box or container is returned to the customer's site.

"Container" means a metal or plastic receptacle used for Construction/Demolition Waste collection.

"Container Collection" means collection of Construction/Demolition Wastes from Drop Box containers.

"Construction Waste" means wood, concrete, drywall, masonry, roofing, siding, structural metal, wire, insulation and other building material; and plastics, styrofoam, twine, baling and strapping materials, cans, buckets, and other packaging materials and containers. It also includes sand, rocks and dirt that are used in construction. In no event shall construction waste include dangerous or extremely hazardous waste of any kind, garbage, sewerage waste, animal carcasses or asbestos.

"Construction/Demolition Waste" means Construction Waste and/or Demolition Waste, mixed or separately.

"Contractor" means Waste Management of Washington, Inc., a Washington corporation.

"CPI-W" means the Consumer Price Index computed by the United States Department of Labor, Bureau of Labor Statistics, for Urban Wage Earners and Clerical Workers for the Seattle-Tacoma-Bremerton Area, Series ID No. CWURA423SAO, or successor indices, covering the period January through December of each year.



"Cycle Time" is the elapsed time from scale weigh in to scale weigh out at a Disposal Facility.

"Demolition Waste" means concrete, drywall, asphalt, wood, masonry, roofing (including composition roofing), siding, structural metal, wire, insulation and other materials found in demolished buildings roads and other structures. It also includes sand, rocks and dirt that result from demolition. In no event shall demolition waste include dangerous or extremely hazardous waste, liquid waste, garbage, sewerage waste, animal carcasses or asbestos.

"Director" means the Director of Seattle Public Utilities or her/his authorized representative.

"Disposal Facility" means both Public and Private Processing/Transfer Facilities designated by the City for the tipping of Construction/Demolition Waste, as set forth more fully in Section 180.

"Drop Box" (also at times referred to as "rolloff" or "lugger" or "dino") means a metal container, with 3-40-cubic-yard-capacity capable of being mechanically loaded onto a collection vehicle for transport to a Disposal Facility.

"Drop Box Collection" means the collection of Construction/Demolition Waste by means of a Drop Box.

"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.

"Job Site" means the location where a Construction/Demolition Waste Drop Box container is placed.

"Private Processing/Transfer Stations" means transfer stations or facilities located within the City that a private entity may operate at present and in the future for handling the City's Solid Waste and/or Construction/Demolition Waste.

"Public Transfer Stations" means transfer stations or facilities located within the City that the City may operate in the future for handling the City's Solid Waste and/or Construction/Demolition Waste.

"Rate" means the maximum charges assessed to customers for Construction/Demolition Waste collection services provided by the Contractor under this Contract, as provided for in Section 800 and Attachment 3.



"Recyclable Materials" means those Solid Wastes that are source separated for Recycling or reuse, such as cardboard, metals and wood, that are identified as recyclable material pursuant to the City's Comprehensive Solid Waste Plan, and that are intended for recycling by the customer and delivered to a recycling facility.

"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.

"SMC" means Seattle Municipal Code.

"Solid Waste" means all putrescible and nonputrescible solid and semisolid wastes, including but not limited to garbage, rubbish, yardwaste, ashes, industrial wastes, infectious wastes, swill, construction, demolition and landclearing wastes, abandoned vehicles or parts thereof, and recyclable materials. This 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 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.

### **Section 25. City Responsibilities.**

The City shall be responsible for:

- 1) Establishing maximum Rates to be charged customers;
- 2) Directing all collected Construction/Demolition Waste to Public or Private Processing/Transfer Stations in accordance with the terms of this Contract;
- 3) Inspecting Contractor performance, mediating and adjusting customer grievances. The City may require special and other services as contemplated in this Contract;
- 4) Evaluating performance per Sections 850 and 1050; and

- 5) Taking enforcement action, as necessary, against unauthorized collection of Construction/Demolition Waste, consistent with SMC 21.36.

**Section 30. 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 35. 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/Demolition Waste to a Public or Private /Processing Transfer Station as directed by the City in accordance with this Contract;
- 7) Serving all customers in the Collection Area and assisting customers with service issues;



- 8) Billing customers for City collection services in accordance with Rates and procedures established by the City;
- 9) Paying all tipping fees for Construction/Demolition Waste delivered by Contractor to the specified Public or Private Processing/Transfer Station;
- 10) Assuming bad debts of customers related to billings for City collection services;
- 11) Paying and remitting applicable taxes which are imposed by a taxing authority on Construction/Demolition Waste customers to the proper taxing authority;
- 12) Paying and remitting applicable taxes which are imposed for waste transfer for any Construction/Demolition Waste collected and tipped under this Contract by the Contractor;
- 13) Remitting B&O taxes levied against the Contractor to the appropriate taxing authority;
- 14) Paying disposal fees for Private or Public Processing/Transfer facilities and paying the City's contract fee;
- 15) Complying with all applicable laws and regulations; and
- 16) 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 provided in Section 1295.

**Section 40. 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. The Contractor affirms that within the Collection Area it is aware of the prevailing placement practices of collection Containers for Construction/Demolition Wastes. The Contractor represents and warranties that it is capable of continuing to collect these Containers from their present locations.

**Section 45. OSHA/WISHA, Health and Environmental Laws.**

The Contractor agrees to comply with conditions of the Federal Occupational Safety and Health Acts of 1970 (OSHA), as may be amended, and the Washington Industrial Safety and Health Act of 1973 (WISHA), as may be amended, and the standards and regulations issued thereunder.

The Contractor is also responsible for meeting all pertinent local, state and federal health and environmental laws, regulations, and standards applying to collection of Construction/Demolition Wastes.

**Section 50. Vehicles Used in Collection.**

All vehicles used for collection shall be registered with the State of Washington Department of Motor Vehicles, and 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 shall be labeled with Contractor's customer service phone number. All vehicles shall be kept in a clean and sanitary condition, and shall be thoroughly washed at least once each week.

The number of collection vehicles (including spares) shall be sufficient to provide timely response to all customers requesting service.

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 55. Vehicle Specifications.**

At the start of this Contract, all primary vehicles used in collection shall have engines that meet or exceed 2007 federal engine emission requirements for diesel, Compressed Natural Gas (CNG) or Liquefied Natural Gas (LNG). All collection trucks shall use at least 20% biodiesel (B20) or operate on CNG or LNG unless otherwise authorized by the City.

If the per-gallon price of B20 is more than 15% above the cost for straight diesel fuel, then the Contractor may, after first notifying the City, reduce the percentage of biodiesel used in the fuel blend to maintain costs at the 15% cost threshold.

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. The Contractor's monthly report, Section 710, shall include the date, time, truck number, total weight and weight exceeding weight limits for any overweight truck.

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

Additional collection trucks necessary to respond to a major disruption are not required to meet the above fuel or emission standards; however, such trucks shall be equipped with



diesel oxidation catalysts and have emissions no greater than 1998 federal diesel engine requirements.

**Section 60. Ownership of Equipment.**

All vehicles, facilities, collection containers, 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 is allowed with the prior written approval of the City.

**Section 65. Vehicle Maintenance and Inventory.**

The Contractor shall provide to the City, by March 1, 2009, 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 70. 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/Demolition Wastes shall not exceed the levels set forth in SMC 25.08.410.

**Section 75. 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/Demolition Wastes in the City to Processing/Disposal Facilities as directed by the City in accordance with this Contract. The City's rights of ownership and control over the Construction/Demolition Wastes collected under this Contract vest upon the collection of the Construction/Demolition Wastes; provided, however, that the original owner has the right of recovery to any valuable items inadvertently discarded that can be reasonably retrieved prior to final disposal.

**Section 80. Excluded Services.**

This Contract does not include collection or disposal of Special Waste, Unacceptable Waste, wastes destined for Recycling or other Beneficial Uses, or Solid Waste other than Construction/Demolition Wastes. Material destined for Recycling or Beneficial Use shall contain no more than ten (10) percent non-recyclable or non-beneficially used material, by volume, consistent with SMC 21.36.012.

This Contract does not necessarily include service to military facilities, the Seattle Housing Authority, 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. Where no such request is made by the City, the Contractor shall be free to solicit and contract for collection services to such excluded facilities independent of this Contract.

This Contract does not include rail containers directly hauled to rail yards and does not necessarily include residential Construction/Demolition Wastes to the extent such waste may be collected in containers other than Drop Boxes.

**Section 85. Contractor's Office.**

The Contractor shall maintain within King County an office with local telephone service and such staff as needed to take care of complaints, requests for missed collections, and other coordination with City staff. Phone service shall include multiple lines and voice mail. All management and office staff, collection supervisors and foreman shall have email addresses and 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 sixty (60) minutes. Office hours shall be 8:00 a.m. to 5:00 p.m., Monday through Friday. The Contractor shall maintain a dispatch line 24-hours per day capable of taking requests for container hauls. A third-party answering service is acceptable for the dispatch line after regular office hours.

**B. COLLECTION SERVICES**

**Section 100. Collection Area.**

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

**Section 105. Scheduling of Collection.**

The Contractor shall maintain sufficient container inventory and truck capacity to delivery a container to a requesting customer within forty-eight (48) hours (including Saturdays and Sundays, to the extent provided in the Operations Plan) of the initial request for service and shall collect full containers within twenty-four (24) hours (including Saturdays and Sundays, to the extent provided in the Operations Plan). Customers with ongoing service shall have their emptied containers replaced within three (3) hours of collection.

**Section 110. Container Location.**

All Drop Box container placements shall be located on the Job Site in a manner satisfactory to the customer and for collection by the Contractor and shall meet the provisions of the Seattle Fire Code. Any disagreements over Container placement and collection shall be mediated by the City. The City's decision shall be final and binding.

Any Drop Boxes located in the public right of way should have appropriate permits.

**Section 155. Time of Collection.**

The Contractor is authorized to collect Drop Boxes in, or adjacent to, residential districts between 7:00 a.m. and 7:00 p.m., Monday through Saturday. The Contractor is

authorized to collect Drop Boxes located in commercial and industrial districts, as defined in SMC 25.08.100 (C) and (D), 24 hours per day. The Contractor may request a temporary or occasional extension of hours. Such authorization shall not be unreasonably withheld.

**Section 160. Holiday Collections.**

The Contractor shall provide collection services on all legal holidays except Thanksgiving Day, Christmas Day and New Year's Day.

**Section 165. 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 day.

The Contractor shall notify the City as soon as possible of any non-collection days due to snow or ice. The notification shall be made the previous day or by 6:00 a.m. of the collection day. The City will notify the media of such non-collection days.

**Section 170. 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 on that collection day, or the next business day including Saturday.

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 day.

**Section 180. Disposal.**

All Construction/Demolition Wastes shall be delivered to a Public or Private Transfer Station located in the DIA as directed by the City in accordance with this Section. The Contractor's collection vehicles must be capable of being dumped at the designated Public or Private Transfer Stations.

Notwithstanding the City's right to direct that Construction/Demolition Waste be delivered to a particular facility, the Contractor may deliver collected Construction/Demolition Waste to its own Private Transfer Stations under the following conditions:

1. The Contractor shall charge customers a tipping fee no greater than a 'maximum tipping fee' of \$80 per ton (including the City Transfer Tax) and no greater than the 'prevailing tipping fees' charged by other Private Transfer Stations 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 Contractor's Private Transfer Station is achieving diversion results, for Recycling and Beneficial Use, similar or better than other Private Transfer Stations within the Seattle Metropolitan Area for similar types, mixes, and quantities of materials.

The 'maximum tipping fee' will be adjusted for inflation annually beginning in April 2010 by 70% of the change in the 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, as measured in December of the prior year.

If the City directs the Contractor to an alternate transfer station 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 transfer location – 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 transfer location 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.

The Contractor will also be compensated via rate adjustment for additional travel time for collections north of the Ship Canal in the event that for one-week or more the Alaskan Way viaduct is closed to truck traffic. The City will estimate the additional haul time using the Seattle Department of Transportation (SDOT) Travel Analysis Model or successor City model. The model will be used to calculate the difference between the one-way haul time from Interstate-5 & North 85<sup>th</sup> Street (the geographic center of the North Seattle collection sub-area) to designate transfer facilities when the Alaskan Way Viaduct is closed to collection vehicles (or all vehicles), compared to when the Alaskan Way Viaduct is open to all vehicles.

The Contractor's haul rates itemized in Attachment 3 of this Contract shall be adjusted by the change in City-calculated haul time and an hourly rate of \$90/hour. The adjustment shall only apply to the portion of the round trip where the Contractor is unable to use the Alaskan Way Viaduct. For example, if weight limits restrict the use of the Viaduct by full trucks, but allow empty trucks, then the rate shall be changed by only the time differential required by one half of the round trip haul charge. If the Viaduct is completely unavailable to the Contractor, the rate shall be changed by the time differential required by the entire route-trip haul charge.

The Viaduct closure surcharge shall be separately itemized on customer invoices and shall indicate whether the surcharge is one-way or round-trip, based on the actual travel route at the time of the haul.

The additional time rate of \$90/hour shall be effective in the first Contract year. The per-hour rate for any compensation in later Contract years will be calculated by applying the Inflation Adjustment Factor defined in **Section 820**.



In the event that the City enacts disposal bans applicable to the materials collected under this contract, the Contractor shall use commercially reasonable efforts to enforce the disposal restrictions and shall work with the City to develop effective operating policies and communication methods to enforce and communicate disposal requirements to the Contractor's customers.

**Section 185. Program Information During Contract Start-up.**

The Contractor shall submit their start-up plan and draft public information to the City for approval by December 1, 2008. The City shall approve all customer information materials, promotion and educational activities and materials developed by the Contractor in advance of their production or implementation. All public information material will conform to City promotional guidelines and include the City's program identity.

**Section 193. 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 shall be known as the "Operations Plan." 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) Procedures for orientation of collection staff including route coordination/cooperation with City staff; and;
- 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 195. 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.

**C. CONTAINERS**

**Section 210. Supplying Drop Boxes for Collection.**

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

Customers may elect to own or secure Drop Boxes from sources other than the Contractor, and shall not be subject to discrimination by the Contractor in collection services on that account. Drop Boxes owned or secured by customers will be regulated by the City to ensure that they are standard Containers capable of being serviced by front, rear load or tilt frame collection vehicles.

Drop Boxes shall be located on the premises in a manner satisfactory to the customer and convenient for collection by the Contractor and shall meet the provisions of the Seattle Fire Code. 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 230. Drop Box Container 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 during the term of this Contract and shall be pressure washed once during the term of this Contract. Any additional pressure washing

requested by the City or customers shall be billed in accordance with the ancillary fees established in Attachment 3.

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 240. Drop Box Installation and Maintenance.**

If the City so requires, a Drop Box shall be cleaned or repainted within thirty (30) days, subject to the ancillary fees established in Attachment 3.

If appropriate to serve a customer's needs and/or location, the City may require the Contractor to install and service a Drop Box.

**Section 250. Drop Box Repair or Replacement.**

Damage to Drop Boxes on customers' premises 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 repair or replace within one business day any contractor-owned Drop Box that the City or a Health Department inspector determines does not comply with ordinance standards or constitutes a health or safety hazard.

The Contractor shall replace or repair any damaged Drop Box within five (5) business days of notification by the collector or the City.

**D. MANNER OF COLLECTION**

**Section 300. Service Expectations.**

The following expectations are established for collection services under this Contract:

- 1) 95% of container deliveries within 48 hours of customers' request;
- 2) 95% of container pick-ups within 24 hours of customer's request;
- 3) 75% of container pick-ups on the same day if called by 10:00 AM;
- 4) 95 % of container returns within 3 hours of collection;
- 5) 80% of calls answered within one minute;
- 6) Customer abandoned calls to be under 5% per month; and
- 7) 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 305. Contractor's Responsibilities.**

The Contractor shall be responsible for furnishing all labor, containers, materials, equipment, and supervision necessary to perform the collection described in this Contract.

**Section 310. 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 and close and relock all gates and doors that they open. 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, 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) working days of becoming aware of the incident and send a written notice, via U.S. mail or fax, within ten (10) working 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 320. Spillage.**

The Contractor shall pick up any material scattered or 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 clean up of any hydraulic, transmission, or other oil spill, or commence clean up of any spillage which creates a hazardous condition (such as a spillage involving glass).

**Section 330. Customer Grievances.**

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 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.

**Section 340. Resolution of Availability of Service Disputes.**

Any disagreement between a customer and Contractor regarding the services which can reasonably be accommodated at the customer's site shall be resolved by Seattle Public Utilities, including availability of collection and A&E 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 350. 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 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.

If a pilot test affects regular collections, the parties shall negotiate a rate adjustment to reflect the benefits and/or burdens of the pilot test. The adjustment shall be set so as 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.

## **E. RATES TO CUSTOMERS**

### **Section 500. Maximum Rates to Customers.**

The Contractor shall charge customers Rates not to exceed the maximum charges provided under this contract, as listed in Section 800 and Attachment 3. The maximum charges to customers allowed under this contract shall be adjusted annually in step with the Contract Rate adjustment provided for in Section 820. Contractors may provide discounted hauling rates to any customer based on customer volumes, competitive pressures or other reasons, provided that the City Contract Fee component of each haul shall not be reduced.

### **Section 520. Construction/Demolition Recycling.**

The City reserves the right to promote and contract for Recycling of any other component of the Construction/Demolition Waste stream at any time during the term of the Contract. The City shall be under no obligation to contract with the Contractor for the collection of any other such Recyclable Materials. The City reserves the right to establish rates for Recyclable collection.

## **G. CUSTOMER SERVICE, BILLING, CASH TRANSFERS**

### **Section 600. Customer Services.**

In addition to other customer service provisions in this Contract, the Contractor shall provide the following services to Commercial Business 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) Receipt and processing of payments from all customers serviced by the Contractor;
- 5) Provision and maintenance of systems and personnel for managing customer inquiries and complaints;
- 6) Provide regular information to customers on the procedures for appealing disputes to the City;
- 7) The Contractor shall provide a monthly record of all customer service

requests, complaints and misses, categorized by type of request, complaint or miss;

- 8) 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 weekly basis and the Contractor shall provide a monthly report showing total calls accepted, average call wait times, number of abandoned calls, and Telephone Service Factor (TSF) performance; and
- 9) 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.

**Section 610. Billing to Customers.**

Commercial Business customers will be billed on an occurrence (for one-time hauls) or monthly basis at rates not to exceed Contract Rates. The Contractor shall have the responsibility and authority to bill customers for services performed, including applicable taxes. The billing format shall be approved by the City prior to use. The Contractor shall 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.

**Section 620. Payment Receipt and Remittance to City.**

The Contractor shall receive all customer payments and out of those payments, pay the City Contract Fee, processing/transfer facilities fees and City, County and State taxes.

**Section 630. 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 1) 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 640. 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 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.

## **H. REPORTING REQUIREMENTS**

### **Section 720. Service Data.**

The Contractor shall submit monthly, by the 10<sup>th</sup> of the month, electronic customer account flat files, as specified by the City. The files will include detailed data on all commercial accounts; detailed data on all services performed; detailed billing data; and detailed invoice data.

### **Section 730. Monthly Reports.**

The Contractor shall submit monthly electronic reports for the length of the Contract period commencing upon Contract signing. These reports shall be due by the 10<sup>th</sup> of the month. At a minimum, the reports shall include:

1. A listing of the previous month's customer activity, in an electronic flat file format specified by the City, for all services provided each day by the Contractor in the Collection Area. Information must include date, customer name, address, container size, gross and net weights, and disposal facility used. The Contractor shall keep as back-up a paper copy of each weight transaction. False or altered weight slips shall be cause for Contract termination;
2. Summary of service performance and trends;
3. A listing of any overweight trucks. The listing to include the date, time, truck number, total truck weight and weight over the legal limit;
4. Summary of collected tonnages;
5. A listing of all repeat collection complaints received by the Contractor the previous month (a repeat collection complaint is an initial collection complaint that was not resolved, or a reoccurrence of a collection complaint from the same customer during a six (6) month period). This listing shall include a detailed description of steps taken by the Contractor to ensure that these particular repeat complaints do not recur;
6. The number of incoming calls from Seattle accounts received per day by the Contractor's customer service section; the percent of calls abandoned; the percent answered in under one-minute; and the average holding time for all calls received;

7. Per Section 600, a listing of all customer service contacts, including requests, complaints and misses. Included shall be the service and billing address, date and nature of request, complaint or miss, and action taken; and
8. Status of all complaints or Contract violation notices forwarded to the Contractor by letter from the City or from customers during the month and recent actions taken earlier violations including, but not limited to:
  - a. replacement of Containers;
  - b. employee misconduct; and
  - c. Contractor responses to citizen's damage claims.

**Section 750. Annual Reports.**

The Contractor shall submit an electronic annual report within fifteen (15) working days of the end of the year providing a listing of the Contractor's fleet inventory, including truck numbers, licensed and permitted gross vehicle weight, number of axles, year, make and model, and other detail as specified.

Per Section 875, on an annual basis, the Contractor and subcontractor shall file with the City an electronic copy of each payroll together with an electronic listing of time clock records and other information required by Section 875.

**I. COMPENSATION**

**Section 800. Contractor's Rates.**

The maximum rate for the first year of collections (April 2009 – March 2010) is \$135.00 per haul, with a maximum additional distance charge of \$15.00 per haul for locations 10 miles or more from the nearest designated transfer station (or the Contractor's nearest Private Transfer Station, if the Contractor satisfies the requirements of Section 180). The maximum collection rate includes the City Contract Fee, but does not include disposal fees or local and state taxes. Attachment 3 contains the maximum rates the Contractor may charge customers for hauling, container rental and ancillary services. Contractor's may charge less, but shall not exceed the rates contained in Attachment 3, nor may the Contractor charge customers other fees other than specifically authorized by the City.

**Section 820. Adjustments in 2010 – 2014.**

The City will compute inflation-adjusted customer charges (rates) to the Contractor for the contract year beginning in April 2010 and later contract years as follows:

**Inflation Adjustment Factor:** The "Inflation Adjustment Factor" will be based on three indices computed by the United States Department of Labor, Bureau of Labor Statistics. The three indices and their weights are: 1) the 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, which will have a weight of **42%**, 2)

a CNG fuel index, which will have a weight of **8%**, and 3) the Employment Compensation Cost Index for Private Industry, in current dollars, December 2005=100, for Electric, Gas and Sanitary Services, Series ID No. ECU12542i,, which will have a weight of **50%**.

The Inflation Adjustment Factor, for the contract year beginning in April 2010, 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 year-end values and the corresponding values for the year ending December 2008, and adding the result to 1.0.

This annual Inflation Adjustment Factor will be applied to all customer charges made under the Contract, unless otherwise noted herein. See Attachment 4 for a sample customer charge adjustment.

In the event the Contractor uses diesel engines rather than CNG, then a diesel fuel index shall be substituted for the CNG index in the formula above.

**Section 850. 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.

<b>Performance Requirement</b>	<b>Penalty</b>
<u>Collection Failure</u>	
1) Failure to <b>deliver</b> a container within 48 hours of a customer's request.	\$100 each Drop Box Container
2) Failure to <b>collect</b> a container within 24 hours of a customer's request, except requests received after noon Friday which may be collected by noon Monday.	\$100 each Drop Box Container
3) Failure to <b>return</b> an emptied container to a continuing customer within three hours of collection	\$100 each Drop Box Container
<u>Manner of collection</u>	
4) <b>Collection</b> outside of the <b>hours</b> as specified in Section 155.	\$200 each incident, to a maximum of \$600 per truck per day

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- 5) Failure to collect **spillage** consistent with Sections 125, 135, 140 and 320. \$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 855. City Contract Fee Payment Procedure.**

No later than the 10<sup>th</sup> 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 \$14 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 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.

The Contractor shall receive a monthly diversion credit equivalent to the percent of collected waste that is diverted for Recycling and Beneficial Use multiplied by the Contract Fee for the month. For example, if the Contractor diverts 30% of the waste collected under the Contract for the month, then the Contractor shall receive a credit of 30% of the total Contract Fee for the month. The Contractor shall not be compensated for unverified diversion and shall cooperate fully with the City's review and audit of waste diversion results. The diversion credit shall be calculated based on tons of waste materials delivered to the facility for disposal and shall not be based upon tons collected and delivered to the facility for Recycling or Beneficial Use. The parties agree to periodically and in good faith, re-visit the best means of calculating the diversion credit under this section.

**Section 860. 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, except as provided in Section 1295.

**Section 865. 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/Demolition 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 prevailing rate of wage, as of 4/1/2009, for garbage (also applicable to Construction/Demolition Waste) is listed in Attachment 2. This Attachment will be updated and reissued as needed.

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 870. Hiring Preference.**

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

**Section 875. 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 in connection with this Contract:

1. Name and residence address;
2. Classification of work;
3. Truck 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.

On an annual basis the Contractor and subcontractor shall file with the City an electronic copy of each payroll together with an electronic listing of time clock records and other above information.

**Section 885. Withholding and Payment to Workers.**

If any worker doing collection work for the Contractor (or any subcontractor) shall be paid by a postdated check, a check presented and dishonored for insufficient funds on account, or other negotiable instrument or promissory note that is not payable on the worker's regular payroll date or paid when presented, the worker may present the unpaid document to the City and request payment directly from the City. The City shall contact the Contractor, and if payment is not made within twenty-four hours, the City may issue a warrant drawn on the City for the amount of the unpaid wages and the City shall invoice the Contractor the amount paid, together with a service charge of Fifty Dollars (\$50.00) per warrant. The Contractor shall paid this invoice within 30 days of the date of the City invoice.

**J. NON-DISCRIMINATION/EMPLOYMENT PROVISIONS**

**Section 900. Nondiscrimination - Employment Actions.**

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

The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, age, color, sex, national origin, marital status, political ideology, ancestry, sexual orientation, gender identity, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to employment, upgrading, promotion, demotion, or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training.

**Section 910. Recordkeeping for Employment Actions.**

The Contractor shall furnish to the Director of Seattle Public Utilities an annual report outlining the action taken by the Contractor in implementing the requirements of affirmative efforts in employment actions, including documented reasonable attempts in good faith to contact and employ women and minorities.



**Section 920. Affirmative Efforts in Subcontracting.**

In accordance with Seattle Municipal Code Chapter 20.42, Contractor shall actively solicit the employment and subcontracting of women and minority group members when necessary and commercially useful for purposes of fulfilling the scope of work required for this Contract. Contractors shall actively solicit subcontracting bids from subcontractors as needed to perform the work of this contract, from qualified, available and capable women and minority businesses. Contractors shall consider the grant of subcontracts to women and minority bidders on the basis of substantially equal proposes in the light most favorable to women and minority businesses. At the request of Seattle, Contractor shall promptly furnish evidence of the Contractor's compliance with these requirements.

**Section 930. Record-Keeping for Subcontracts.**

The Contractor shall furnish to the Director of Seattle Public Utilities an annual report outlining the Contractor's affirmative efforts to achieve women and minority business participation. The report shall also identify any subcontracting opportunities which may arise during the next 12 month period, and shall outline the affirmative steps that the Contractor intends to take to recruit and hire women and minority subcontractors for these subcontracting opportunities.

**Section 950. Investigation.**

If upon investigation, the Director of Executive Administration finds probable cause to believe that the Contractor has failed to comply with any of the requirements of Sections 900, 910, 920, or 930, the Contractor shall be so notified in writing. The Director of Executive Administration shall give the Contractor an opportunity to be heard, after ten calendar days' notice. If, after the Contractor's opportunity to be heard, the Director of Executive Administration still finds probable cause, he/she 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.

**Section 960. Sanctions for Violation.**

Any violation of the mandatory requirements of Sections 900, 910, 920, 930, or 950, or a violation of Seattle Municipal Code Chapter 14.04 (Fair Employment Practices), Chapter 14.10 (Fair Contracting Practices), Chapter 20.45 (City Contracts – Non-Discrimination in Benefits), or other local, state, or federal non-discrimination laws, shall be a material breach of the Contract for which the Contractor may be subject to damages and sanctions provided for by this Contract and by applicable law.

**Section 970. Equal Benefits/Compliance with SMC Ch. 20.45.**

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

Ch. 20.45 and the Equal Benefits Program Rules call (206) 684-0430 or review information at [http://cityofseattle.net/contract/equalbenefits/.](http://cityofseattle.net/contract/equalbenefits/))

**Section 980. Remedies for Violations of SMC Ch. 20.45.**

Any violation of Section 970 shall be a material breach of Contract for which the City may:

- 1) Require Contractor to pay actual damages for each day that the Contractor is in violation of SMC Ch. 20.45 during the term of the Contract; 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 Ch. 20.45 and the Equal Benefits Program Rules promulgated thereunder.

**Section 990. 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. In particular, 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 on the basis of such disability. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Contract.

**K. SECURITY; LIABILITY; DAMAGES**

**Section 1000. Performance Bond.**

The Contractor shall provide and maintain at all times a valid Contractor's Performance and Payment Bond ("Bond") for twenty percent (20%) of the estimated annual compensation to the Contractor under the Contract. The Bond shall be issued for a period of not less than one year and the Contractor shall provide a new bond, or evidence satisfactory to the City of the renewability of the current bond at least 90 calendar days before it expires.

The initial Bond must be in place prior on or before April 1, 2009.

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 is in conflict with the conditions and requirements of this Section is void.

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

**Section 1010. Default of Contractor.**

This Section is independent, notwithstanding any other provisions of this Contract. Except as provided in the last paragraph of this Section 1010, the Contractor may be held in default of the Contract in the event the Contractor:

- 1) Fails to perform ninety percent (90%) 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) working days duration each, in any year, or fifteen (15) days in a calendar year to perform the collections required by the Contract; except as provided in Section 153;
- 3) Under pays prevailing wages per Section 865;
- 4) Fails to comply with the terms of any of the Sections in Chapter J;
- 5) Fails to furnish and maintain a Performance and Payment Bond per Section 1000;
- 6) Fails to furnish and maintain the Insurance requirements per Section 1030;
- 7) Fails to pay the City Contract Fee per Section 855 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 Director 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 Director, why the Contractor should not be declared to be in default of this Contract, the Director may make a declaration of default. In evaluating whether to make such a declaration of default, the Director shall, in her/his discretion, consider the severity of the alleged violations, and the overall performance of the Contractor under the Contract.

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

Upon receipt of a notice that the work has been transferred to the surety without termination of the Contract, the surety shall take possession of all materials and equipment described in the most recent inventory submitted to the City pursuant to Section 65 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 65 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 1020. Commitment of Equipment.**

Unless a replacement or substitute is provided, all vehicles, facilities, equipment and property identified in the Contractor's inventory under Section 65 for use in the performance of this Contract (called "such property") shall be available for use in collecting Construction/Demolition 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 and the surety on the Contractor's performance bond fails to assume or continue performance within 48 hours after notice to do so, allow the City to use without further documentation all or a portion of such property, 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 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 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 ensure 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 1030. Insurance.**

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

1) COVERAGES AND LIMITS

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

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

- i) Premises/Operations
- ii) Products/Completed Operations
- iii) Pollution – On-Site and Off-Site\*
- iv) Personal/Advertising Injury
- v) Contractual
- vi) Independent Contractors
- vii) Stop Gap/Employers Liability

Such Insurance must provide the following minimum limits of liability:

\$ 10,000,000	each occurrence Combined Single Limit bodily injury and property damage (CSL)
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\* Pollution Liability Insurance minimum limits of liability may be evidenced with separate coverage.



\$ 1,000,000	each Offense Personal/Advertising Injury,
\$ 5,000,000	each accident/disease/policy limit

- b) AUTOMOBILE LIABILITY INSURANCE for owned, non-owned, hired, and leased vehicles, as applicable, with MCS 90 and CA 99 48 endorsements. Such insurance must provide a minimum limit of liability of \$10,000,000 CSL.
- c) WORKERS' COMPENSATION INSURANCE as required by the Industrial Insurance laws of the state of Washington.

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

2) GENERAL REQUIREMENTS

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



- g) The Contractor shall not begin work under the contract until the required Insurance has been obtained and approved by the City.
  - h) Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five (5) business days notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such Insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the Contracting Agency on demand, or at the sole discretion of the Contracting Agency, offset against funds due the Contractor from the Contracting Agency.
  - i) Any self-insured retention (S.I.R.) in excess of \$250,000 must be disclosed and is subject to City's approval. The Contractor shall furnish financial information that the City shall reasonably require for performing a risk retention analysis and Contractor shall protect the City against any claim within the S.I.R. to the same extent that coverage would be afforded under the relevant excess of loss commercial insurance policy. The cost of any claims payments for defense and indemnity falling within the S.I.R. shall be the responsibility of the Contractor.
  - j) All costs for Insurance shall be incidental to and included in the unit or lump sum prices of the contract and no additional payment will be made.
- 3) NO LIMITATION OF LIABILITY; ADDITIONAL INSURED  
The limits of liability specified herein are minimum limits only. Such minimum limits of liability requirements shall not be construed to limit the liability of the Contractor, any subcontractor of any tier or of any of their respective insurers or reinsurers. Any provision in any Contractor or subcontractor Insurance policy that limits available limits of liability to those specified in a written agreement or contract shall not apply and all Insurance policies, with the exception of Workers Compensation Insurance, shall include the City of Seattle as an additional insured for primary and non-contributory limits of liability for the full valid and collectible limits of liability maintained by the Contractor, whether primary, excess, contingent or otherwise. This provision shall apply regardless of whether such limits maintained by the Contractor are greater than those required by this Contract, and regardless whether the certification of Insurance provided by a subcontractor of any tier pursuant to 4) below specifies lower minimum limits than those specified for or maintained by the Contractor.
- 4) EVIDENCE OF INSURANCE (DOES NOT APPLY TO STATE OF WASHINGTON STATUTORY WORKERS' COMPENSATION)

The Contractor shall deliver to the City certification of Insurance meeting the requirements set forth herein when the Contractor delivers the signed Contract for the work. The certification of Insurance must include the following:

- a) An ACORD certificate or equivalent form fully disclosing all coverages and limits of liability maintained.
- b) A copy of the additional insured endorsement or blanket additional insured language to the Commercial General Liability Insurance documenting that the City of Seattle is an additional insured for primary and non-contributory limits off liability. A statement of additional insured status on an ACORD or other form of certificate of Insurance will not satisfy this requirement.
- c) A copy of each policy's declarations page and schedule of forms and endorsements.
- d) Any other amendatory endorsements to document compliance with the requirements herein.

**Section 1040. Indemnity.**

To the extent permitted by law, the Contractor shall protect, defend, indemnify and hold the City (and the City's officers, employees and agents) harmless from and against all claims, demands, damages, costs, actions and causes of actions, liabilities, judgments, expenses and attorney fees, resulting from the injury or death of any person (including but not limited to the Contractor, its agents, employees, subcontractors and their successors and assigns as well as the City or the City's agents, and all third parties) or the damage to or destruction of property of any kind, whether tangible or intangible, including loss of use resulting therefrom, or the infringement of any patent, copyright, or trademark, or trade secret, arising out of, in connection with or related to the work performed under this Contract, or arising out of, in connection with or related to (in whole or in part by reason of) the presence of the Contractor or its subcontractors, or their property (or property subject to their use and control), employees or agents, upon or in proximity to the property of the City, or any other property (upon which the Contractor is performing any work called for), or arising out of, in connection with or related to the Contractor's violation of any law, ordinance or regulation, except for damages resulting from the sole negligence or willful misconduct of the City. As to the City of Seattle, and for purposes of the Contractor's indemnification obligations under this Section 1040 only, 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 specifically and mutually negotiated by them.

**Section 1050. Liquidated Damages.**

This Section is independent of Section 1010. 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 invoice 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.

#### **L. PROPRIETARY AND CONFIDENTIAL INFORMATION**

##### **Section 1100. 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 1110. 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 42.17.330 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 1120. 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.

## **M. ANCILLARY PROVISIONS**

### **Section 1200. 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 1210. 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 (Sections 970 and 980). Contractor shall ensure that all subcontractors comply with the obligations and requirements of the subcontract, except for Equal Benefit provisions (Sections 970 and 980).

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 Construction/Demolition Waste collection with the City.

### **Section 1220. 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 performance of services 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 1225. 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 1230. 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.

Administration 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 1240. 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.



**Section 1250. 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 1260. Notices.**

All official notices or approvals shall be in writing. Unless otherwise directed, notices shall be delivered by messenger, by certified or registered mail, return receipt requested, or by fax to the parties at the following respective addresses:

To the City:

Hans VanDusen  
The City of Seattle  
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:

Susan Robinson  
Waste Management of Washington, Inc.  
Director of Public Services  
801 2<sup>nd</sup> Avenue  
Seattle, WA 98104  
Phone: (206) 264-3073

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 1270. 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 1280. 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 a 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 1285. 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 severely compromises the party's ability to perform its obligations under the Contract. Such events

may include, but are not limited to, a natural or man-made disaster, an act of war or terrorism, or an action or decree of a superior governmental body, which prevents the party from performing its obligations under the Contract.

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 reasonably possible. When notice has been properly provided, the obligations of both parties shall be suspended to the extent that and for the period of time the Force Majeure Event prevents the party from resuming performance of all its obligations under the Contract.

**Section 1290. Emergency and Priority Services – 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 165 and 170). In such an event:

- 1) The City may 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 and work with the City to develop strategies and tactics to manage the emergency and provide services to restore the City to normal operating conditions as soon as possible. Certain disaster scenarios will be modeled and planned for in advance, to the extent possible. The Contractor shall exercise its best efforts in providing the emergency and priority services as requested by the City in as timely a manner as possible.
- 3) The Contractor shall use commercially reasonable efforts to make the City and the City's customers its first priority, and its efforts to provide the City and the City's customers 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 work in good faith to develop a mutually acceptable Contingency Plan, as part of the Operations Plan. The Contingency Plan shall serve as a planning and operations tool to allow the Parties to respond effectively and responsibly to emergencies and disasters in accordance with this section.

**Section 1295. Adjustment – Change of Law or Prolonged Change in Circumstances 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 ten percent over the actual costs incurred by the Contractor for the same services provided under this Contract (provided that all such increased costs shall be eligible for adjustment hereunder). A change in law under this section does not include changes in law with respect to property, income, business, payroll, franchise, employment, excise, sales or other general use taxes, but does include any solid waste or fuel taxes or fees enacted or amended during the term of this Contract (including any federal or state “carbon tax” or “gas tax”), provided such taxes or fees are not otherwise passed through directly to customers or are otherwise covered by the fuel index adjustment in Section 820.

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 under this section rests with the Contractor. The Contractor shall provide the City with any and all 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 or a prolonged change in circumstances due to a Force Majeure Event has resulted in a substantial decrease of more than ten percent from the actual costs incurred by the Contractor for the same services provided under this Contract (provided that all such decreased costs shall be delivered for adjustment hereunder), then the City may make an adjustment under this section. The burden of demonstrating that the Contractor has enjoyed a substantial decrease in costs under this section rests with the City. The Contractor shall provide the City with any and all documentation and data reasonably necessary to determine whether the Contractor has enjoyed a substantial decrease in costs, and upon 60 days prior notice from the City, the Contractor shall accept an adjustment to reflect such decrease in its costs.

IN WITNESS WHEREOF, the parties hereto have executed this Contract by having their representatives affix their signatures below.

WASTE MANAGEMENT OF WASHINGTON, INC.

THE CITY OF SEATTLE

By \_\_\_\_\_  
Signature

By \_\_\_\_\_  
Chuck Clarke, Director  
Seattle Public Utilities

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Authorized by Ordinance Number \_\_\_\_\_

## **Attachment 1 – Operations Plan**

Operations Plan developed jointly by Contractor and City after Contract signing and inserted in this section.

## Attachment 2 - Prevailing Wages

### **Wages for Construction/Demolition Waste Collection**

**1. Hourly Wages** -- Effective April 1, 2009, The prime and subcontractors shall pay all employees on work under this contract not less than the following rate of hourly wages:

<u>a) Classifications</u>	<u>Per Hour</u>
Drivers	\$25.77
Helper	70% of Driver rate

**b) New Employees**

1 - 1000 hours of employment	-	70% of above rate
1001 – 2000 hours of employment	-	80% of above rate
2001 – 3000 hours of employment	-	90% 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 (over ten (10) for 4/10 employees) shall be compensated at time and one-half.

All Saturday or Sunday work is time and one-half, with an eight (8) hour guarantee, except employees regularly assigned to work Saturday on centralized routes. Employees who work Saturday or Sunday due to a special event are guaranteed four (4) hours.

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 Saturday or Sunday.

**d) Work Week**

Regular employees assigned to a five (5) day route and who appear for work on assigned days shall be paid for five (5) consecutive days of eight (8) consecutive hours.

**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 -- Provided or paid to all employees after one thousand (1000) hours of employment, and who were compensated for eighty (80) hours in the previous month.

Health, Dental and Vision                      \$1,224.77 per month

- b) Retirement -- Retirement payments do not need to exceed one hundred eighty four (184) hours per month per employee.

Retirement                                      \$5.57 per hour

**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

- One (1) week after one (1) year of employment
- 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 eight hundred (1,800) compensated hours during an employment year (i.e., anniversary date to anniversary date). Formula shall be: All employees with one thousand eight hundred (1,800) or more compensated hours during an employment year shall be entitled to full vacation benefits. Formula for employees with less than one thousand eight hundred (1,800) compensated hours shall be: Compensated hours, divided by two thousand (2,000), equals percentage earned vacation due employees.

- b) Holidays -- Eight paid holidays shall be provided. To be eligible for a paid holiday, the employee must work the last scheduled day immediately preceding and the first scheduled work day immediately following these days:

The following eight (8) days are holidays (unless the employer selects another day(s)):

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

ATTACHMENT 2 TO ATTACHMENT 1 to SPU Construction Contract ORD

Prevailing Wages

76  
67  
0-2

Contractors will provide collection services on all holidays except New Year's Day, Thanksgiving, and Christmas.

- c) Sick Leave -- If sick leave is provided in actual benefit days, the following applies:

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 second scheduled working day of sickness; however, when an employee suffers a job-related injury and is taken to the hospital or ordered or required to leave work, benefits shall commence the first day. Employees collecting Workmen's Compensation temporary disability benefits may not receive sick leave as herein provided, however, if Workmen's Compensation benefits are less than the amount of sick leave otherwise provided, employees shall, in addition to Workmen's Compensation benefits, receive sick leave benefits sufficient to equal the amount of sick leave that would otherwise have been received.

A maximum of three hundred fifty (350) hours of sick leave can be accumulated. Sick leave shall be used on an hourly basis. Benefits for days off must be for eight (8) hours and must be for scheduled work days.

**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

#### 2009 Contract Year Rates for Containers and Ancillary Services

All rates listed below are for the maximum allowable fees for 2009 Contract Year. Each subsequent Contract Year the rates below will be adjusted per the inflation adjustment provisions in Section 820.

<b>Container Rental</b>	<b>Daily</b>	<b>Monthly</b>
10 – 15 yard	\$4.00	\$80.00
20 -25 yard	\$5.00	\$100.00
30 – 40 yard	\$7.50	\$120.00
Solid Lid	\$1.50	\$20.00
Lock	\$1.00	\$15.00

<b>Ancillary Service</b>	<b>Per Event</b>
Initial delivery	\$50.00
Reorient/redeliver container	\$40.00
Return trip	\$60.00
Stand-by time	\$1.90
Container pressure washing	\$20.00

## Attachment 4 – Sample Payment Adjustments

### Haul Rate Adjustment Example April 2010 - March 2011 Rates

*Haul Rate Payment Adjustment Components and Weights*

Inflation Adjustment Component	2008 Value	2009 Value	Ratio to Base Year	Adjustment Factor
Fuel [1]	225.0	270.0	1.2000	
Labor [2]	110.0	120.0	1.0909	
CPI-W [3]	205.0	217.0	1.0585	<b><u>1.02927</u></b>
<b>Weighted Index</b>				<b><u>1.0860</u></b>

Initial Maximum Haul rate: \$135.00  
 \* Index Adjustment: (from above) 1.0860  
 = **New Maximum Haul rate: \$146.62**

Initial City Contract Fee: \$14.00  
 \* Index Adjustment: (50% of CPI-W) 1.02927  
 = **New City Contract Fee: \$14.41**

Initial Net Haul Rate: \$135.00 - \$14.00 = \$121.00

**New Net Haul rate: \$146.62 - \$14.41 = \$132.21**

**Notes:**

- [1] CNG Price Index, to be determined (weight = 8%)
- [2] Employment Cost Index Series ID No. ECU12542i, Bureau of Labor Statistics  
(weight = 50%)
- [3] Consumer Price Index Series ID No. CWURA423SAO, Bureau of Labor Statistics, second-half annual index for Urban Wage Earners and Clerical Workers, Seattle-Tacoma-Bremerton Statistical Area. (weight = 42%)



**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>DOF Analyst/Phone:</b>
Seattle Public Utilities	Hans Van Dusen/4-4657	John McCoy/5-0768

**Legislation Title:**

AN ORDINANCE authorizing the Director of Seattle Public Utilities to enter into a contract with Waste Management of Washington, Inc. to provide collection services for construction waste in the city of Seattle.

- **Summary of the Legislation:** This legislation allows SPU to enter into a service agreement with Waste Management of Washington, Inc. to collect construction and demolition waste in the city of Seattle.
- **Background:** *(Include brief description of the purpose and context of legislation and include record of previous legislation and funding history, if applicable):*  
SPU currently has commercial collection contracts with Waste Management of Washington, Inc. and Rabanco, Ltd. to collect commercial solid waste in Seattle. These contracts include the collection of construction waste, and expire in March 2009.

SPU completed two (Request for Proposal) processes in 2007: the first for residential and commercial garbage, recycling and yard waste collection; and the second for construction waste collection services. The Council authorized the new garbage/recycling collection contracts in April 2008. SPU completed negotiations for the construction waste contract and requests authority to sign the agreement.

The new construction waste contract is with Waste Management of Washington for services beginning in April 2009. Waste Management submitted the only response to the RFP. Over the last six months, SPU successfully negotiated favorable terms with Waste Management. The contract terms are described in the attachment to this fiscal note.

- *Please check one of the following:*

**This legislation does not have any financial implications.** *(Stop here and delete the remainder of this document prior to saving and printing.)*

**This legislation has financial implications.** *(Please complete all relevant sections that follow.)*

**Appropriations:** *This table should reflect appropriations that are a direct result of this legislation. In the event that the project/programs associated with this ordinance had, or will have, appropriations in other legislation, please provide details in the Notes section below.*



Fund Name and Number	Department	Budget Control Level*	2008 Appropriation	2009 Anticipated Appropriation
<b>TOTAL</b>				

\*See budget book to obtain the appropriate Budget Control Level for your department.

**Notes:** Appropriation adjustments for the new contracts will be contained in forthcoming budget and rate documents.

**Anticipated Revenue/Reimbursement: Resulting From This Legislation:** *This table should reflect revenues/reimbursements that are a direct result of this legislation. In the event that the issues/projects associated with this ordinance/resolution have revenues or reimbursements that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below the table.*

Fund Name and Number	Department	Revenue Source	2008 Revenue	2009 Revenue
Solid Waste Fund (45010)	SPU	Contract payments		\$75,000
<b>TOTAL</b>				\$75,000

**Notes:** The revenue in the table above represents nine months' worth of contract fee payments to SPU, expected to total approximately \$100,000 annually. Under the contract, the approximately \$1.8 million in expected revenues for collection services is billed and retained by the contractor, so it is not reflected as an SPU revenue above.

The City, under its current collection contracts, provides approximately \$1.5 million annually in construction waste collection services, which is organized in two different ways. Waste Management delivers approximately one third of these services. Waste Management remits customer revenues to SPU, and SPU pays Waste Management for its services. Both revenues and expenses are approximately \$600,000 per year. Rabanco delivers the remaining two thirds of the collection services. However, unlike Waste Management, Rabanco retains all customer revenues and remits to SPU only the difference between those revenues and Rabanco's costs per its contract.

The new contract will operate in a different manner, a franchise-type arrangement that establishes service terms and maximum retail rates. The contractor will not submit customer revenue to the City or bill the City for services, and the Contractor will pay all taxes associated with its operations. Cost of the construction collection services will increase to approximately \$1.8 million under the new contracts to cover increased operating and capital costs for the contractor.

This transition will result in reduction of Solid Waste Fund expenses *and* revenues of \$600,000 per year (\$450,000 for the nine of months of the contract in 2009). All future construction waste



expenses will be covered directly by the contractor with no payment from the City. Waste Management will pay SPU an annual contract fee of \$14 per haul to SPU (approximately \$100,000 per year). These adjustments will be incorporated in the 2009 proposed rates and budget.

**Total Regular Positions Created, Modified, Or Abrogated Through This Legislation, Including FTE Impact:** *This table should only reflect the actual number of positions affected by this legislation. In the event that positions have been, or will be, created as a result of other legislation, please provide details in the Notes section below the table.*

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2008 Positions	2008 FTE	2009 Positions*	2009 FTE*
<b>TOTAL</b>							

\* 2009 positions and FTE are total 2009 position changes resulting from this legislation, not incremental changes. Therefore, under 2009, please be sure to include any continuing positions from 2008.

**Notes:** There are no direct FTE impacts resulting from this legislation.

- **Do positions sunset in the future?** (If yes, identify sunset date):

**Spending/Cash Flow:** *This table should be completed only in those cases where part or all of the funds authorized by this legislation will be spent in a different year than when they were appropriated (e.g., as in the case of certain grants and capital projects). Details surrounding spending that will occur in future years should be provided in the Notes section below the table.*

Fund Name & #	Department	Budget Control Level*	2008 Expenditures	2009 Anticipated Expenditures
<b>TOTAL</b>				

\* See budget book to obtain the appropriate Budget Control Level for your department.

**Notes:** N/A

- **What is the financial cost of not implementing the legislation?** (Estimate the costs to the City of not implementing the legislation, including estimated costs to maintain or expand an existing facility or the cost avoidance due to replacement of an existing facility, potential conflicts with regulatory requirements, or other potential costs if the legislation is not implemented.)

Without these new contracts, SPU would have no mechanism to collect and transfer the City's construction and demolition waste beginning in 2009.



- **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** *(Include any potential alternatives to the proposed legislation, such as reducing fee-supported activities, identifying outside funding sources for fee-supported activities, etc.)*

The current contracts expire in March, 2009. If the City fails to provide contracted services, then the services would revert to state-regulated franchises, without City-specified service quality, environmental performance, or contracting and labor practices.

- **Is the legislation subject to public hearing requirements:** *(If yes, what public hearings have been held to date, and/or what plans are in place to hold a public hearing(s) in the future.)*

No.

- **Other Issues** *(including long-term implications of the legislation):*

**Please list attachments to the fiscal note below:**

Exhibit A: Construction Waste Collection Overview



## New Construction Waste Collection Contracts Overview

### Background

- SPU currently collects approximately 50,000 tons per year of construction and demolition waste under commercial garbage and construction waste contracts with Waste Management of Washington, Inc. and Rabanco, Ltd. These contracts will expire in March 2009.
- The City's contracts provide exclusive third-party construction waste removal. However, some demolition firms, construction contractors, businesses, and residents also perform their own construction waste hauling. This *self-hauled* waste represents another 130,000 to 150,000 tons of construction waste per year. In addition, private recycling and salvage operations haul another 100,000 to 200,000 tons per year for processing.
- SPU released an RFP for future construction waste services in August 2007. *(SPU also released an RFP for basic garbage, recycling and yard waste services in 2007 that produced new contracts for those services with Waste Management and CleanScapes.)*
- SPU received a single response to the construction waste RFP from Waste Management of Washington and successfully negotiated a final contract for citywide services.

### New Terms

- **Contract length** – Service will begin in April 2009 and end in March 2014, with City options to extend to 2017 or 2019. This initial five-year term provides the City with more options for managing this dynamic waste stream over time.
- **Services** – The agreement covers all third-party construction waste roll-off services. Roll-off services include all large volume waste containers removed for unloading at the disposal station. Services not included in this contract include recycling, self-hauled wastes, rail container hauling, and small-scale dumpster or cart services for residential customers.
- **New low-emission trucks** –The agreement requires the contractors to purchase all-new trucks with state-of-the-art emissions controls. Most of these will be fueled with compressed natural gas (CNG). Key pollutants will be reduced by ninety percent.

### Financial Impacts

- New service prices are approximately 15% above current fees and in line with regional pricing. Billing is handled by the contractor, which keeps the revenue, and these increases do not affect other Solid Waste rates.
- The primary drivers for the cost increases are the inflation impacts from rising labor and health care costs, operating expenditures (including fuel), and capital costs (including both new engine and emission technology and increased return on investment criteria).

- The agreement is a franchise-type arrangement, setting maximum retail rates for the duration of the contract and allowing the contractor to retain all revenues.
- The City would receive a \$14 per haul contract fee and provide a credit on a portion of this fee if the contractor is successful in recycling wastes that were destined for disposal.



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**STATE OF WASHINGTON – KING COUNTY**

--SS.

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227923  
CITY OF SEATTLE, CLERKS OFFICE

No. TITLE ONLY

**Affidavit of Publication**

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12<sup>th</sup> day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

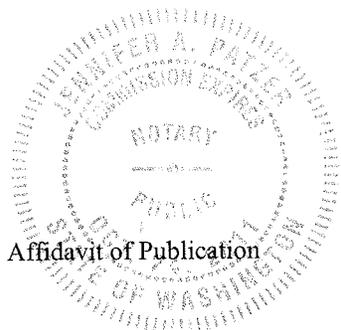
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:122760 & 122762

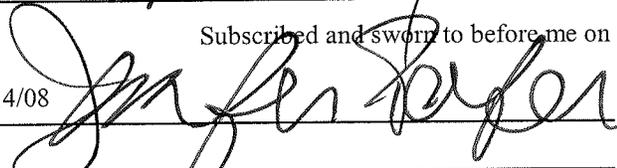
was published on

08/14/08

The amount of the fee charged for the foregoing publication is the sum of \$ 42.15, which amount has been paid in full.



Affidavit of Publication

  
\_\_\_\_\_  
Subscribed and sworn to before me on  
08/14/08   
\_\_\_\_\_  
Notary public for the State of Washington,  
residing in Seattle

## State of Washington, King County

### City of Seattle

#### TITLE-ONLY PUBLICATION

The full text of the following ordinances, passed by the City Council on August 4, 2008, and published here by title only, will be mailed, at no cost, on request for two months after this publication. For further information, contact the Seattle City Clerk at 684-8344.

#### ORDINANCE NO. 122762

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

#### ORDINANCE NO. 122760

AN ORDINANCE authorizing the Director of Seattle Public Utilities to enter into a contract with Waste Management of Washington, Inc. to provide construction waste collection services in the city of Seattle.

Publication ordered by JUDITH PIPPIN,  
City Clerk

Date of publication in the Seattle Daily  
Journal of Commerce, August 14, 2008.  
8/14(227923)