

Ordinance No. 122525

Council Bill No. 116028

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: Richard Conlin

Councilmember

AN ORDINANCE authorizing the Director of Seattle Public Utilities to enter into a contract with Rabanco, Ltd. to provide recycling processing services in the City of Seattle.

Committee Action:

9/25/07 - passed 20 yes Conlin, Clark

10-1-07 Passed 8-0 (Excused: McIver)

CF No. _____

Date Introduced:	<u>Sept. 24, 2007</u>	
Date 1st Referred:	To: (committee) <u>Environment, Emergency Management + Utilities</u>	
Date Re - Referred:	To: (committee)	
Date Re - Referred:	To: (committee)	
Date of Final Passage:	Full Council Vote: <u>8-0</u>	
Date Presented to Mayor:	Date Approved: <u>10-11-07</u>	
Date Returned to City Clerk:	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:	

This file is complete and ready for presentation to Full Council.

Committee: RC 9/25/07
(initial/date)

Law Department

Law Dept. Review

OMP Review

City Clerk Review

Electronic Copy Loaded

Indexed



City of Seattle

Gregory J. Nickels, Mayor

Office of the Mayor

September 18, 2007

Honorable Nick Licata
President
Seattle City Council
City Hall, 2nd Floor

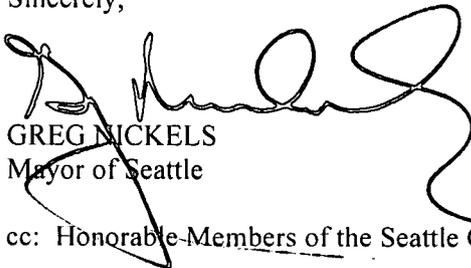
Dear Council President Licata:

I am pleased to transmit the attached proposed Council Bill authorizing a new recycling processing contract with the City's existing service provider, Rabanco, Ltd. The contract continues Seattle's tradition of recycling leadership and sets new standards for recycling processing performance.

In 2006, Seattle Public Utilities (SPU) issued a Request for Proposals for future recycling services to which Rabanco responded and was selected as the successful vendor. The proposed contract will become effective when SPU's existing agreement with Rabanco expires in April 2009. The terms of the contract will maintain a vital component of City services while improving on Seattle's recycling efforts. The agreement will allow the City to add new recyclable materials, commit the contractor to the highest processing standards, and ensure that all contract employees receive livable wages and benefits.

Passage of this legislation will help us dramatically improve recycling and waste reduction in the Seattle area. 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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ORDINANCE 122525

AN ORDINANCE authorizing the Director of Seattle Public Utilities to enter into a contract with Rabanco, Ltd. to provide recycling processing services in the City of Seattle.

WHEREAS, Rabanco, Ltd., under contract with Seattle Public Utilities, processes and sells approximately 85,000 tons of recyclable material annually from single and multi-family residences and small businesses in Seattle; and

WHEREAS, the contract under which Rabanco, Ltd. performs these services will expire on March 31, 2009; and

WHEREAS, the City will continue to need recycling processing services and desires to expand the materials recycled, raise the standards for recycling processing, and improve wages and benefits of processing workers; and

WHEREAS, Seattle Public Utilities issued a Request for Proposals in 2006 for future recycling processing services; and

WHEREAS, Seattle Public Utilities selected Rabanco, Ltd. as the finalist and negotiated a new contract with Rabanco, Ltd. to provide recycling processing services in the City; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

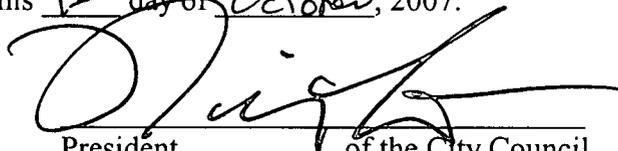
Section 1. The Director of Seattle Public Utilities is authorized to execute, for and on behalf of the City of Seattle, a new contract with Rabanco, Ltd. substantially in the form attached as Attachment 1.



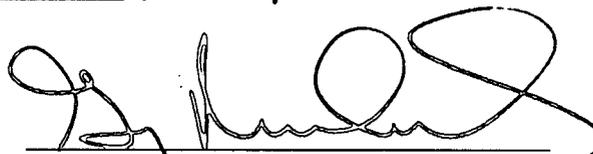
1 Section 2. Any act taken after the passage but prior to the effective date of this ordinance
2 and consistent with its authority is hereby ratified and confirmed.

3 Section 3. This ordinance shall take effect and be in force thirty (30) days from and after
4 its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days
5 after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.
6

7
8 Passed by the City Council the 12th day of October, 2007, and signed by me in open
9 session in authentication of its passage this 12th day of October, 2007.

10
11 
12 President _____ of the City Council

13 Approved by me this 11th day of October, 2007.

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15 
16 Gregory J. Nickels, Mayor

17 Filed by me this 11th day of October, 2007.

18
19 
20 City Clerk

21 (Seal)

22
23
24 Attachment 1: Contract between the City of Seattle and Rabanco, Ltd. for Recycling Processing
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Recycling Processing Contract Between the City of Seattle and Rabanco, Ltd.



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APPENDIX 1 – RECYCLING MARKET BASE UNIT PRICES



**RECYCLING PROCESSING CONTRACT
BETWEEN THE CITY OF SEATTLE
AND RABANCO, LTD.**

THIS RECYCLING PROCESSING CONTRACT is entered into by and between THE CITY OF SEATTLE, a municipal corporation of the State of Washington by and through Seattle Public Utilities ("City"), and RABANCO, LTD. ("Contractor"), to provide for the processing of Recyclables collected from Residential Structures and Commercial Establishments within the City of Seattle (each capitalized term as hereinafter defined).

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

A. GENERAL PROVISIONS

Section 10. Purpose and Intent.

This Contract engages Rabanco, Ltd. Industries to accept and process Recyclables into marketable products.

Section 20. Contract Term.

This Contract is entered into on this ____ day of _____, 20___. Actual processing services will begin, and this Contract shall commence, on April 1, 2009 and continue for a term of four years, ending at midnight March 31, 2013. The City, at its option, may extend this Contract for a three-year period to March 31, 2016, by notifying the Contractor on or before June 30, 2012. The City has a second option of extending the Contract for an additional three-year period to March 31, 2019, by notifying the Contractor on or before June 30, 2015. However, the Contractor has the ability to nullify the second option by notifying the City by April 1, 2013 of its intent to nullify. If the Contract is extended, the same terms, conditions, and method of payment shall apply during the extension period.

Section 30. Definitions.

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

"City" means the City of Seattle.

"Commercial Establishment" means any non-Residential location from which the Recyclables are collected by collection firms under contract to the City.

"Commercial Recyclables" means Recyclables collected from Commercial Establishments.

"Contract Wage" means the hourly wage, benefits and overtime as set by the City and listed in Section 350. This wage is the minimum wage and benefit package to be paid to all workers in the processing facility.

"Contractor" means Rabanco, Ltd., a Washington corporation.

"CPI" means the second-half annual 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.

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

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

"Electronics" means televisions, computer equipment, radios, calculators, video and audio equipment, phones, cameras, and similar electronic devices which contain circuit boards. Electronics are further defined as "hand-held" Electronics, which are Electronics that are held in the hand such as phones, cameras, hand-held music players, etc; "screened" Electronics, which are Electronics with screens such as TV's, computer monitors, etc.; and "other" Electronics which are Electronics that are not held-held or screened, such as CPU's, keyboards, table radios, DVD players, etc. Electronics do not include speakers, small appliances or other household products. Electronics cannot exceed 2'x2'x2' or weigh over 60 pounds.

"Recyclables" means mixed waste paper; cardboard; newspaper; tin cans; aluminum cans, pots, pans, foil and food containers; glass bottles and jars; plastic bottles, jars, cups, food containers (excluding styrofoam), planter pots and five (5) gallon buckets; plastic bags; polycoated paper; aseptic packaging; and scrap metal less than two (2) feet in any direction and less than 35 pounds. The City may add used motor oil, and/or Electronics to this definition at any time during the term of this Contract by giving the Contractor six months prior notice.

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

"Recycling Processing Facility" or "Processing Facility" means the processing facility owned and operated by Rabanco, Ltd. and located at 3rd Avenue South and South Lander Street, Seattle, Washington, and which is covered by this Contract.

"Residence" or "Residential" means any house, dwelling, multiunit residence, apartment house, trailer court or any building put to residential use. The term does not include Mixed Use Buildings.

"Residential Recyclables" means Recyclables collected from a Residence.

"Residuals" means Recyclables and non-recyclables too small to be effectively recovered through mechanical and/or manual methods.

Section 40. City Responsibilities.

The City shall be responsible for:

- 1) Making payments contemplated by this Contract;
- 2) Inspecting Contractor performance; and
- 3) Ensuring that Recyclables collected under separate City contracts are delivered to the Contractor's processing facility.
- 4) Coordinating recycling education efforts with City-contracted haulers to ensure Recyclables are delivered to the Processing Facility with minimal contamination.

Section 50. City Representations and Warranties.

The City represents and warrants to the Contractor as follows:

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

Section 60. Contractor Responsibilities.

The Contractor shall be responsible for:

- 1) Furnishing all skill, labor, equipment, materials, supplies 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) Securing at Contractor's expense all governmental permits and licenses and required regulatory approvals (including those required by City ordinance);
- 5) Paying all applicable taxes;
- 6) Complying with applicable laws and regulations;
- 7) Performing all work in a timely, thorough and professional manner; and
- 8) All wage increases for Contractor's processors 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.

Section 70. Contractor Representations and Warranties.

The Contractor represents and warrants to the City as follows:

- 1) Organization and Qualification. The Contractor is duly incorporated, validly existing and in good standing under the laws of the state of [Washington], and has all requisite corporate power and authority to enter into and to perform its obligations under this Contract.
- 2) Authority.
 - a) The Contractor has the authority to execute this Contract, to make the representations and warranties set forth in it and to perform the obligations of Contractor under this Contract in accordance with its terms.
 - b) This Contract has been validly executed by an authorized representative of the Contractor and constitutes a valid and legally binding and enforceable obligation of Contractor.
- 3) Government Authorizations and Consents. The Contractor has or will obtain prior to the commencement date such licenses, permits and other authorizations from federal, state and other governmental authorities, as are necessary for the performance of its obligations under this Contract.

- 4) Compliance With Laws. The Contractor is not in violation of any applicable law, ordinance, or regulation the consequence of which will or may materially affect Contractor's ability to perform its obligations under this Contract. The Contractor is not subject to any order or judgment of any court, tribunal, or governmental agency which materially and adversely affects its operations or assets in the state of Washington, or its ability to perform its obligations under this Contract.
- 5) Accuracy of Information. None of the representations or warranties in this Contract, and none of the documents, statements, certificates or schedules furnished or to be furnished by Contractor pursuant hereto or in connection with the performance of the obligations contemplated under this Contract, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements of fact contained therein not misleading.
- 6) Independent Examination. In accepting these responsibilities, the Contractor represents and affirms that it has made its own examination of all conditions, facilities, and properties affecting the performance of this Contract and of the quantity and expense of labor, equipment, material needed, and of applicable taxes, permits, and laws.
- 7) Statements in Response to RFP Binding. The Contractor hereby agrees to be bound by all statements made in its Response to the Request for Proposals, including all answers to Proposal Questions, all Background information submitted in Forms 3 and 4, all Operations information submitted in Forms 5 and 6, and all Pricing information submitted in Forms 7A, 7B and 8.

Section 80. 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 laws, regulations, and standards applying to processing Recyclables, including without limitation environmental and health laws, regulations and standards.

Section 90. Ownership of Equipment.

All facilities, equipment, and property used in the performance of this Contract shall be wholly owned by the Contractor, provided, that leases, conditional sale contracts, mortgages, or other agreements for the use or financing the purchase of facilities, equipment, and property may be allowed with the prior written approval of the City. All such leases, conditional sale contracts, mortgages, or other agreements shall provide that in the event of the Contractor's failure to perform its obligations under this Contract, the Recycling Processing Contract

City, at its option, shall have the right to take possession of and operate facilities, equipment, and property covered by such lease or agreement for the unexpired term of this Contract. No further encumbrance shall be placed upon any such facilities, equipment, and property without the prior written approval of the City.

Section 95. Contractor's Office.

The Contractor shall maintain an office within King County with local telephone service and such staff as needed to coordinate with City staff. Office hours shall be 8:00 a.m. to 5:00 p.m., Monday through Friday.

B. PROCESSING SERVICES

Section 100. Recycling Processing Facility.

The Contractor shall be responsible for processing and marketing all Recyclables collected under City contracts. The Processing Facility shall be located in an area zoned for this type of activity.

The Contractor shall accept Recyclables, collected under City collection contracts, at the 3rd Avenue South and South Lander Street processing (or tip) facility between the hours of 7:00 am to 7:00 pm., Monday through Saturday. This Processing Facility shall be located within the City. The processing (or tip) facility will, if necessary, remain open later during periods of inclement weather if the collection trucks are collecting Recyclables after 5:00 pm. This Contract does not preclude the Contractor from accepting recyclables from other sources or from accepting Recyclables at the processing (or tip) facility before 7:00 am or after 7:00 pm.

The City retains an option for the Contractor to process used motor oil and/or Electronics any time during the term of this Contract. The City will give the Contractor 180 days notice prior to initiation of used motor oil and/or Electronics processing. In such event, residents will be instructed to place Used motor oil, contained in plastic bottles with secure lids and Electronics will be delivered to the Contractor separated from other material.

The Contractor will also process and market retired plastic collection carts and cans on a periodic basis if requested by the City. The carts will be delivered to the contractor separate from other commingled materials. The Contractor can decline to process this material if less than 2,000 used carts or cans are supplied in a one-month period.

The Processing Facility shall be capable of processing the Recyclables in accord with Section 130. The Processing Facility shall have sufficient capacity to receive, process, and store all materials collected in one week.

The Processing Facility shall conform to all applicable zoning, Health Department and Puget Sound Air Pollution Control Agency regulations and any other applicable rules, regulations, or ordinances. If the Contractor is unable to meet Health Department regulations, or other pertinent state or local regulations and/or Contract stipulations, the
Recycling Processing Contract

Contractor shall arrange for processing of collected Recyclables at a back-up facility that meets all such regulations and/or stipulations. In such event, all requirements of Section 120 shall be met.

The Contractor's arrangements for processing Recyclables, at both the primary and back-up Recycling Processing Facilities, shall be subject to review and approval before the Contractor begins processing Recyclables, and the facilities shall be subject to inspection by City staff during business hours to determine compliance with this Contract and all the rules and regulations pertaining to processing.

Section 110. Primary Recycling Processing Facility.

The Contractor's primary processing facility shall be its recycling facility, located at 3rd Avenue South and South Lander Street, Seattle, Washington.

Section 120. Back-up Recycling Processing Facility.

To avoid disruption of the Recycling collection program through a temporary shutdown in processing, the Contractor shall have an agreement with another permitted processing facility(s) for processing Recyclables. The Contractor represents and warrants that as of the date hereof each of the following facilities is so permitted and that each has agreed to process Recyclables as a back-up facility pursuant to this Section 120:

SP Recycling Corporation Tacoma
4109 192nd East
Tacoma, WA 98446
253.846.9010

If the Contractor is unable to meet Health Department regulations or other pertinent state, local or other regulations, or is unable for any reason whatsoever to receive Recyclables for processing at its specified primary Processing Facility, the Contractor, at its own initiative or upon notification from the City, shall direct the City to one of the back-up Recycling processing facilities identified above, or if the back-up facility is located outside the City, shall direct the City to a transfer site located within the City.

The Contractor shall be responsible for all payments required to contract for use of the back-up facility. The City shall deduct Contractor payments for any increase in transport costs (i.e., collection contractor operational costs) charged to the City as a result of delivery of the Recyclables to a back-up facility or transfer site. The City will document the increased operational costs, and shall bill the Contractor for them. The amount owed in the bill will appear as a deduction on that month's compensation from the City. The Contractor will receive no payment adjustment for decreases in transport or operational costs.

Section 130. News, Cardboard, HDPE-PET, and Glass Cullet Processing.

The Contractor shall process Recyclables in such a manner that at least 50% of the processed newspaper shall be sold as newsprint bales (News 6), 50% of received cardboard shall be sold as cardboard bales (OCC), 50% of received HDPE and PET
Recycling Processing Contract

plastic shall be sold as HDPE and PET bales, and 50% of received glass shall be sold as glass cullet. The City will approve variances to this requirement if relevant markets become unavailable.

Section 135. Processing Plant Residuals.

The Contractor's Residuals from the overall processing operations at the facility (including both City and non-City material) shall not exceed 5%-7%. Recyclables in residual stream shall not exceed 2% of inbound Recyclables.

Section 140. Bale Contamination.

The Contractor shall process Recyclables in such a manner as to minimize out-throws and prohibitives in baled material. Out-throws shall be less than 5%-8%, prohibitives less than 1%-2% by weight of outgoing recyclables. The Contractor shall remove 70% or more of the inbound contaminates for disposal.

City staff shall be provided access to the Contractor's Processing Facilities at any time for the purposes of periodically monitoring the facilities' performance under this Section.

Monitoring may include, but not be limited to, breaking selected bales and measuring out-throws and prohibitives by weight, taking samples of processed glass and metals, reviewing actual markets and use of processed materials, and other activities to ensure the Contractor's performance under this Section and to ensure that misdirected recyclables and contamination are minimized.

Section 150. Handling/Disposal of Contamination.

The Contractor is responsible for the disposal of any City material (Contract and/or non-contract) that is the result of (1) residuals from processing and (2) any contamination received at the Processing Facility. This material shall be delivered to a City transfer station or disposal rail-yard. The Contractor is responsible for the cost of transport. However, the Contractor will be allowed to tip Contract collected contamination at no cost to the Contractor.

Section 155. Litter Control.

The Contractor shall ensure that litter from the Recycling Processing Facility is minimized and contained.

Section 160. Cycle Time.

The Contractor shall weigh collection trucks in and out of the processing or tip facility in a timely manner. The Cycle Time from the inbound to the outbound scale shall not exceed 15 minutes.

Section 170. Marketing of Material.

The Contractor is responsible for establishing transportation and marketing arrangements for the processed material. All electronics shall be processed and marketed consistent with relevant standards developed by Washington Department of Ecology. The City has the option of having a third party process and market Used Motor Oil and/or Electronics.

If requested, the Contractor shall store the Used Motor Oil or Electronics for up to 1 week at no charge to the City. Equipment utilized for storage and transport of materials to markets may be owned or leased by the Contractor or other parties.

Section 180. Disposal Prohibition.

The Contractor is prohibited from disposing, composting, or incinerating any Recyclables received under this Contract, unless authorized by the City. The Contractor is further prohibited from marketing materials that the Contractor knows, or has reason to know, will be disposed of. Violation of this Contract provision shall be cause for termination.

Section 185. Safety and Training Plan; Safety Meetings.

Prior to beginning operations under this Contract, the Contractor shall develop a safety and training plan for the Processing Facility. This plan shall include standard operating procedures (SOP's) for employees working at the facility, as well as SOP's for the trucks and drivers/swampers using the facility. The Contractor shall develop the SOP's relating to the trucks and drivers/swampers using the facility by working in cooperation with those firms.

The Contractor shall hold regular quarterly safety meetings with their own personnel, as well as with representatives of those collection firms that are tipping material at the Processing Facility. City representatives shall be informed of these meetings and given the opportunity to attend.

Section 190. Pilot Tests.

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

C. REPORTING REQUIREMENTS

Section 200. Weight Receipts.

The Contractor shall provide to the City each week, in an electronic format specified by the City, a listing of the previous week's weight receipts for all materials received each day by the Contractor at the Processing Facility. Information must include gross and net weights (tare weights are not allowed), truck number, route number, and the date and time of the weight slip. The Contractor shall keep as back-up a paper copy of each weight transaction. Weights must be obtained from certified private scales approved by the City, or other scales approved by the City. The City has the option of requiring any private scales to be certified as frequently as monthly.

Falsified or altered weight information shall be cause for Contract termination.

Section 210. Monthly, Quarterly and Annual Reports.

The Contractor shall submit monthly reports for the length of the Contract period commencing with initiation of Recyclable processing. These reports shall be due within ten working days after the end of the month. The Contractor shall not receive its monthly compensation until all items required in the report are submitted to the City. At a minimum, the reports shall include:

- 1) Summary of tonnages of all received material by source type;
- 2) Summary of tonnages, and an electronic listing of individual weight receipts for all contamination delivered to the City for disposal;
- 3) Summary of tonnages of all processed material sold, by type of product, grade of material, and buyer/destination; and
- 4) Summary of tonnages and individual trip data for all residuals disposed.

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

- 1) Summary of monthly data for quarter and contract year to date;
- 2) Detailed data to allow analysis of processing efficiencies including average number of trucks tipped per day, average tons processed per day, and the practicality of making changes to processing system;
- 3) Discussion of problems and noteworthy experience in program operation; and
- 4) Contractor recommendations for improvements.

D. COMPENSATION; CONTRACT RATE OF WAGE; PAYROLL RECORDS

Section 300. Payment for Processing Services.

The City shall pay the Contractor monthly for all tons of Recyclables delivered to the Contractor's receiving facility during the month documented per Section 210. From April 1, 2009 through March 31, 2010, the City will pay the Contractor a rate of \$25 per ton glass-separate processing or \$27 per ton for fully commingled processing. The rate will be reduced by \$1 per ton if plastic bags are no longer processed.

The City will pay the contractor \$0.25 per pound for processing electronics. Used motor oil shall be processed at no cost to the City.

Section 310. Adjustments in Subsequent Contract Years.

The City will compute compensation payable for the second and subsequent Contract years as follows:

The **per ton rate from the preceding year** shall be multiplied by 1.0 plus **80%** of the percentage difference between the second-half annual consumer price index for Urban Wage Earners and Clerical Workers for the Seattle-Tacoma-Bremerton Area (CPI), Series ID No. CWURA423SAO, or successor indices and the previous year's CPI.

Section 320. Recycling Market Price Payments/Credits.

During the term of the Contract, the City shall pay 100% of any decrease in the market price indicators per Appendix 1. The City shall receive a credit from the Contractor of 100% of any increase in these market price indicators. If the market price indicator for any material falls below \$0, the City may at any time direct the Contractor to deliver the material to a City transfer station or other location within the City rather than pay the additional differential below \$0.

The percentage breakdown of the individual collected materials will be determined by a random sampling conducted every four years, or more often if the City finds that further sampling is required, by the City at the Contractor's Processing Facility. The Contractor shall fully cooperate with the City in this sampling effort, including collecting a random sampling of structures with a separate truck and providing space at the Processing Facility to conduct the sorting.

The percentage breakdown of materials determined through this random sampling shall be applied to the total tons collected each month for the purpose of determining the payments under this Section.

Payments and credits (price adjustments) shall be calculated as follows:

- 1) The market price quotations for the commodities in Appendix 1 shall be taken from the publications in Appendix 1 that are published closest to the first working day of each month.
- 2) Price adjustments come into effect only if the market price for any commodity deviates from the base unit price for the month. (Assume, for example, that the base unit price for OCC, as established in Appendix 1, is \$90/ton. A market price adjustment would only apply if the market price for the month went above or below the base price of \$90/ton.)
- 3) The dollars per ton by which the market price deviates from the base unit price per ton is then calculated. (For example, if the market price for OCC is \$95.50/ton then the number to be applied in the calculation is \$5.50/ton [$\$95.50/\text{ton} - \$90.00/\text{ton} = \$5.50/\text{ton}$].)

- 4) The number (in \$/ton) calculated in 3) above is multiplied by the total tons collected during the month for the material. For example, if 545 tons of OCC were collected during the month, a deduction of \$2997.50 would be applied to the monthly payment (545 tons x \$5.50/ton = \$2997.50).
- 5) If the market price in 3) above were \$84/ton (rather than \$90/ton), and 545 tons of OCC were collected during the month, the City would add \$3270 to the monthly payment (\$90.00/ton - \$84/ton = \$6.00/ton x 545 tons = \$3270).

Section 330. Payment Procedure.

No later than the 10th of each month, the Contractor will submit an invoice and copies of weight information required pursuant to Section 200. This invoice will be paid by the City to the Contractor by wire transfer on or before the 30th of the same month (or 20 calendar days after the invoice date, if the invoice/weight information is presented late).

Section 340. Wage Increases for Employees.

All wage increases for employees of the Contractor granted during the term of this Contract shall be the sole responsibility of the Contractor. Any benefits or added costs resulting from changes in technology, laws and regulations, labor practices, availability of equipment, and other foreseeable business risks that may affect the performance of this Contract shall be to the Contractor's advantage or expense respectively, except as may be noted herein.

Section 350. Contract Rate of Wage.

The Contractor shall ensure that all processing workers performing work in the Processing Facility are permanent employees of the Contractor and paid not less than the Contract Wage as set by the City, unless authorized by the City. The term "processing workers" includes 40 primary sorters on the processing line, fork lift and equipment operators, mechanics and all other workers in the processing plant; it excludes supplemental sorters, office workers and management. The processing workers in the facility shall be paid the Contract Wage whether they are processing material received under this Contract, or from other sources.

Prior to April 1, 2009, the Contractor shall create and hire 40 new primary sorter positions as permanent employees. These 40 primary sorter positions will be maintained throughout the term of this Contract.

The phrase "Contract Wage" includes the hourly wage, usual benefits, and overtime. The Contractor's duty to pay the Contract Wage is absolute and mandatory. No worker may waive full compliance or accept a lesser sum.

The Contract Wage, as of 4/1/2009 and all subsequent contract years, for recycling processing workers is as follows:

- 1) **Hourly Wages** -- The Contractor shall pay all workers doing work in the processing facility not less than the following rate of hourly wages beginning on Recycling Processing Contract

April 1st of each contract year:

a) Wages

Contract Year	New Employees	After 2080 Hours of Employment	After 4160 Hours of Employment
2009	\$12.55	\$14.12	\$15.69
2010	\$12.74	\$14.33	\$15.92
2011	\$12.93	\$14.54	\$16.16
2012	\$13.12	\$14.76	\$16.40
2013	\$13.32	\$14.98	\$16.65
2014	\$13.52	\$15.21	\$16.90
2015	\$13.72	\$15.44	\$17.15
2016	\$13.93	\$15.67	\$17.40
2017	\$14.14	\$15.90	\$17.67
2018	\$14.35	\$16.14	\$17.93

b) Overtime

All time worked over forty (40) hours in any workweek shall be compensated at time and one-half.

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.

2) **Health, Dental And Vision Benefits** –All employees shall be allowed to participate in the Contractor's default medical plans, or successor plans, as described below.

Default plans and monthly premiums (2006 dollars per month)

	Cigna PPO	Cigna HMO	Cigna Dental	Cigna Vision
Employee Only	\$329.00	\$280.00	\$26.34	\$7.04
Employee + Spouse	\$740.00	\$630.00	\$55.93	\$12.66
Employee + Children	\$592.00	\$504.00	\$57.37	\$12.93
Employee + Family	\$987.00	\$840.00	\$81.93	\$19.00

Employee contributions to premiums shall be no greater than 26%. Medical plans offered during the Contract shall provide benefits at or above these plans. Monthly premiums shall increase or decrease at rates similar to the percentage change in premiums purchased by the State of Washington for state employees, unless authorized by the City.

3) **Retirement** -- Employees are allowed to participate in Contractor's 401(k) plan with the Contractor providing a 50% match on employee contributions of the first 5% of wages;



4) Vacation, Holiday and Sick Leave Benefit Days – For each employee, the following shall be provided in actual benefit days:

a) Vacation -- All regular employees shall receive the following vacation benefits:

- One (1) week in the first (1st) year of employment
- Two (2) weeks after one (1) year
- Three (3) weeks after four (4) years
- Four (4) weeks after eleven (11) years

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

- January 1st -- New Year's Day
- Washington's Birthday (3rd Monday of February)
- Memorial Day (last Monday of May)
- Independence Day (July 4th)
- Labor Day (1st Monday of September)
- Thanksgiving Day
- Christmas Day
- Floating Holiday

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

c) Sick Leave -- The employees shall receive 48 paid sick leave hours per work year to a maximum accrual of 240 hours.

5) Disability Coverage – The Contractor shall provide paid short-term and long-term disability and accidental death and dismemberment coverage for employees at no cost to those employees. The Contractor shall have supplemental dependent disability coverage available to employees.

Within thirty (30) days of starting processing on this Contract and thereafter on a yearly basis, the Contractor shall supply to each recycling processing worker a copy of the Contract Wage. The Contractor shall also supply a copy to each new permanent sorter. The information shall be in both Spanish and English.

Should an employee prevail in a suit against the Contractor for wages or benefits due and establish that his or her wages paid were less than the Contract Wage, 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 Contract Wages shall be a material breach of the Contract.

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Section 360. Payroll Records and Reports.

The Contractor shall keep complete and accurate payrolls containing the following information with respect to each permanent recycling process worker employed upon or in connection with this Contract:

- 1) Name and residence address;
- 2) Classification of work;
- 3) Number of hours employed each day, as verified by a time clock record;
- 4) Total number of hours employed each payroll period, as verified by a time clock record;
- 5) Rate of wages;
- 6) Total amount earned;
- 7) All deductions;
- 8) Net amount paid; and
- 9) 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 payroll records shall be available for inspection by City staff during office hours at the Contractor's Seattle office.

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

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

Section 370. Withholding and Payment of Tax Liens and Judgments.

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

Section 380. Withholding and Payment to Workers.

If any worker doing recycling processing 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 deduct the amount paid, together with a service charge of Thirty Dollars (\$30.00) per warrant from the next succeeding payment to be made to the Contractor.

E. NONDISCRIMINATION/EMPLOYMENT PROVISIONS

Section 400. 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 the following: 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, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices as provided by the City setting forth the provisions of this nondiscrimination clause.

Section 410. Recordkeeping for Employment Actions.

The Contractor shall furnish to the Director of Executive Administration (or his/her designee), upon request and on such form as may be provided therefore, a report of the affirmative action taken by the Contractor in implementing the requirements of affirmative efforts in employment actions, and will permit access to the Contractor's records of employment, employment advertisements, application forms, other pertinent data and records requested by the Director of Executive Administration for the purposes of investigation to determine compliance with the requirements of affirmative efforts in employment actions. In addition, the Contractor shall furnish to the Director of Seattle Public Utilities an annual report outlining such affirmative efforts, including documented reasonable attempts in good faith to contact and employ women and minorities.

Section 420. Affirmative Efforts in Subcontracting.

The Contractor shall utilize affirmative efforts to promote and encourage participation by women-owned and minority-owned businesses on subcontracting opportunities within this



Contract. The Contractor agrees to such efforts as a condition of this Contract. Affirmative efforts shall include those included in the Contractor's Proposal.

Section 430. Record-Keeping for Subcontracts.

The Contractor shall maintain, for at least 12 months after expiration or earlier termination of the term of this Contract, relevant records, and information necessary to document the Contractor's affirmative efforts to achieve women and minority business participation, including solutions to subcontractors and suppliers, all subcontractor and supplier proposals received, and all subcontractors or suppliers utilized under this Contract. The City shall have the right to inspect and copy such records. Additionally, the Contractor shall furnish to the Director of Executive Administration (or his/her designee), upon request and on such form as may be provided therefore, a report of the affirmative action taken by the Contractor in implementing the requirements of affirmative efforts in subcontracting for the purposes of investigation to determine compliance with the requirements affirmative efforts in subcontracting. Upon request, the Contractor shall furnish to the Director of Seattle Public Utilities a 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 440. Nondiscrimination in Providing Services.

The Contractor shall not create barriers to open and fair opportunities for women-owned and minority-owned businesses to participate in any City contract and to obtain or compete for contracts and subcontracts as sources of supplies, materials, equipment, and services. The Contractor shall ensure that all of its employees, particularly supervisors, are aware of and adhere to their obligations to maintain a working environment free from discriminatory conduct, including but not limited to harassment and intimidation of minorities, women, and women-owned and minority-owned businesses.

Section 450. 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 400, 410, 420, 430, or 440, 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 455. Sanctions for Violation.

Any violation of the mandatory requirements of this Section, or a violation of Seattle Municipal Code Chapter 14.04 (Fair Employment Practices), Chapter 14.10 (Fair Contracting Practices), Chapter 20.45 (City Contracts – Non-Discrimination in Benefits), or other local, state, or federal non-discrimination laws, shall be a material breach of



contract for which the Contractor may be subject to damages and sanctions provided for by this Contract and by applicable law.

Section 460. 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 465. Remedies for Violations of SMC Ch. 20.45.

Any violation of Section 460 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 470. 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.

F. SECURITY; LIABILITY; DAMAGES

Section 500. Performance Bond.

The Contractor shall provide and maintain at all times a valid, irrevocable Contractor's Performance and Payment Bond ("Bond") for One Million Two Hundred Fifty Thousand Dollars (\$1,250,000). The Bond shall be issued for the Contract term. The Contractor shall be named as Principal and The City of Seattle shall be named as Obligee.

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

The Bond shall be conditioned upon full performance of all obligations imposed upon the Contractor in this Contract. The Bond shall be subject to approval by the City Recycling Processing Contract

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 breach of this Contract and grounds for its immediate termination at the option of the City.

Section 510. Default of Contractor.

This Section is independent, notwithstanding any other provisions of this Contract. Except as provided in the last paragraph of this Section 510, the Contractor may be held in default of the Contract in the event that the Contractor:

- 1) Is unable to accept, for more than a 48 hour period of time, excluding Sunday, Recyclables for processing at the primary or back-up Processing Facility;
- 2) Fails to pay a Contract Wage per Section 350;
- 3) Fails to comply with the terms of any of the Sections in Chapter E (Section 400 – Section 470);
- 4) Fails to furnish and maintain a Performance and Payment Bond per Section 500;
- 5) Fails to furnish and maintain the Insurance Requirements per Section 520; or
- 6) Repeatedly neglects, fails, or refuses to comply with any material term 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

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meeting with the Director at which the Contractor may show cause why it should not be declared in default or why it should be given the opportunity to cure said default. In the event the Contractor fails to show, to the reasonable satisfaction of the Director, why the Contractor should not be declared to be in default of this Contract, the Director may make a declaration of default. In evaluating whether to make such a declaration of default, the Director shall, in his/her discretion, consider the severity of the alleged violations, and the overall performance of the Contractor under the Contract.

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

Upon receipt of a notice that the work has been transferred to the surety without termination of the Contract, the surety shall take possession of all materials and equipment 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 Bond fails to assume or continue performances within 48 hours after its receipt of notice that the work has been transferred to such surety, the Contractor shall lease, sublease or otherwise license the City to use all, or whatever portion is desired by the City, the materials and equipment necessary for processing purposes for a period of up to six months following the date of the declaration of default by the City, without requiring the City to execute any other document whatsoever to accomplish such lease, sublease, or license and without requiring the City to post any bond, pledge, deposit or other security for such equipment and materials, but upon the condition that the City pay for the equipment and materials actually used for such processing a market rental that is no greater than (i) the monthly lease, in the event such property is leased by the Contractor, (ii) the periodic installment, in the event such property is being acquired under a purchase contract, (iii) the periodic financing interest and principal, in the event such property is being acquired under a purchase contract, or (iv) the periodic interest and principal, in the event such property is being acquired under a financing arrangement; provided, that under no circumstances shall the City be liable during its use of such property for any arrearages, balloon payment, accrued interest, accelerated charges in the event of a default, or other extraordinary payment; nor shall the satisfaction thereof be a condition of the City's interim use of such property; provided, further, that such lease, sub-lease, or license shall be suspended the date the surety on the Contractor's bond or its agent accepts the transfer of work under the Contract.

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

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

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

Section 520. Insurance.

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

1) COVERAGES AND LIMITS

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

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

- i) Premises/Operations
- ii) Products/Completed Operations
- iii) Personal/Advertising Injury
- iv) Contractual
- v) Independent Contractors
- vi) Stop Gap/Employers Liability

Such Insurance must provide the following minimum limits of liability:

\$ 5,000,000	each occurrence Combined Single Limit bodily injury and property damage (CSL)
\$10,000,000	general aggregate
\$ 1,000,000	each Offense Personal/Advertising Injury,
\$ 5,000,000	each accident/disease/policy limit

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



- b) AUTOMOBILE LIABILITY INSURANCE for owned, non-owned, hired, and leased vehicles, as applicable, with MCS 90 and CA 99 48 endorsements if pollutants are to be transported. Such insurance must provide a minimum limit of liability of \$1,000,000 CSL.
- c) WORKERS' COMPENSATION INSURANCE as required by the Industrial Insurance laws of the state of Washington.

2) GENERAL REQUIREMENTS

- a) Each insurer must either be (1) authorized to do business in the state of Washington and maintain A.M. Best's ratings of A-: VII or higher, or (2) procured as surplus lines under the provisions of chapter 48.15 RCW ("Unauthorized Insurers"). The City reserves the right to reject insurance including based on the insurer, terms and coverage, the certification of insurance, and/or policy provisions.
- b) The Contractor shall keep this Insurance in force during the term of the contract
- c) The liability Insurance policies for which there is a requirement to include the City as an additional insured shall contain a "cross liability" provision.
- d) The 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) In the event that the City tenders a claim to any Contractor insurer for defense and indemnity, and the insurer declines to accept the tender or accepts it under a reservation of rights, upon the City's request the Contractor shall forward to the City a true and certified copy of any relevant Insurance policy(ies).
- g) The Contractor shall not begin work under the contract until the required Insurance has been obtained and approved by the City.
- h) Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five (5) business days notice to the

Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such Insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the Contracting Agency on demand, or at the sole discretion of the Contracting Agency, offset against funds due the Contractor from the Contracting Agency.

- i) Any self-insured retention (S.I.R.) in excess of \$50,000 must be disclosed and is subject to City's approval. The Contractor shall furnish financial information that the City shall reasonably require for performing a risk retention analysis and shall, in addition, provide a written statement that the Contractor will protect the City against any claim within the S.I.R. to the same extent that coverage would be afforded under the relevant excess of loss commercial insurance policy. The cost of any claims payments for defense and indemnity falling within the S.I.R. shall be the responsibility of the Contractor.
- j) All costs for Insurance shall be incidental to and included in the unit or lump sum prices of the contract and no additional payment will be made.

3) NO LIMITATION OF LIABILITY; ADDITIONAL INSURED

The limits of liability specified herein are minimum limits only. Such minimum limits of liability requirements shall not be construed to limit the liability of the Contractor, any subcontractor of any tier or of any of their respective insurers. Any provision in any Contractor or subcontractor Insurance policy that limits available limits of liability to those specified in a written agreement or contract shall not apply and all Insurance policies, with the exception of Workers Compensation Insurance, shall include the City of Seattle as an additional insured for primary and non-contributory limits of liability for the full valid and collectible limits of liability maintained by the Contractor, whether primary, excess, contingent or otherwise. This provision shall apply regardless of whether such limits maintained by the Contractor are greater than those required by this Contract, and regardless whether the certification of Insurance provided by a subcontractor of any tier pursuant to 4) below specifies lower minimum limits than those specified for or maintained by the Contractor.

4) SUBCONTRACTORS

Contractor shall contractually require that each subcontractor, providing work or services in support of this Contract, of every tier maintain at a minimum the Insurance coverages specified in paragraph 1) a) and b). Upon request of the City, the Contractor shall cause evidence of such Insurance to be provided.

5) EVIDENCE OF INSURANCE (DOES NOT APPLY TO STATE OF WASHINGTON STATUTORY WORKERS' COMPENSATION)

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

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

Section 530. 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, 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 530 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 540. Penalties, Rewards.

The Contractor shall pay the City \$1.25 per minute for every individual truck trip at the processing or tip facility that exceeds a Cycle Time of 15 minutes. The Contractor shall receive a credit from the City of \$1.25 per minute for every individual truck trip at the processing or tip facility that is less than a Cycle Time of 10 minutes.

Recycling Processing Contract

Section 550. Liquidated Damages.

This Section is independent of Section 510. Liquidated Damages pursuant to this Section shall be deducted from the monthly payment to the Contractor.

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.

1. Failure to meet the processing guarantees as described in Section 130.	\$15,000 per quarterly occurrence
2. Failure to maintain overall plant Residual levels below 7% per quarter.	\$15,000 per quarterly occurrence
3. Failure to accept, for more than a 3-hour period during the hours described in Section 100, Recyclables for processing at the primary or back-up Processing Facility. These damages do not apply in the event that a major disaster or emergency causes a disruption in the facility operations.	\$500 per inbound truck per hour

G. PROPRIETARY AND CONFIDENTIAL INFORMATION

Section 600. 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 610. 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 disclosure request, and the Contractor believes records are exempt from disclosure, it is the Contractor's responsibility to make its own determination and pursue a lawsuit under RCW 42.56.540 to enjoin disclosure. The Contractor must obtain the injunction and serve it on the City before the close of business on the tenth business day after the City sent notification to the Contractor. It is the Contractor's discretionary decision whether to file the lawsuit.

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

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

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

Section 620. 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 disclosure 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 disclosure 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 disclosure 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.

H. ANCILLARY PROVISIONS

Section 700. 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 710. Assignment; Subcontracting; Delegation of Duties.

The Contractor shall not assign or subcontract or transfer any of the work or delegate any of its duties under the Contract except as expressly permitted by this 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 460 and 465). Contractor shall ensure that all subcontractors comply with the obligations and requirements of the subcontract, except for Equal Benefit provisions (Sections 460 and 465).

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.

Section 720. 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 time, with reasonable advanced notice. Such audit will be conducted by

City staff or by a certified public accounting firm with experience in auditing public service companies selected by the City.

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

Section 730. Contract Rights.

The parties reserve the right to amend this Contract from time to time by mutual agreement in writing.

Rights under this Contract are cumulative, and in addition to rights existing at common law.

Payment by the City and performance by the Contractor do not waive their contract rights.

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

Section 740. 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 750. 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 760. Notices.

All official notices or approvals shall be in writing.

To the City:
Seattle Public Utilities
Seattle Municipal Tower, Suite 4900
700 Fifth Avenue
P.O. Box 34018
Seattle, Washington 98124-4018
Phone: (206) 684-4657
Fax: (206) 386-0096

To the Contractor:
Rabanco, Ltd.
54 South Dawson Street
Seattle, Washington 98134
Phone: (206) 332-7700
Fax: (206) 332-7600

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 770. Severability.

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

Section 780. Termination.

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

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

RABANCO, LTD

THE CITY OF SEATTLE

By _____
Signature

By _____
Chuck Clarke, Director
Seattle Public Utilities

Type or Print Name

Date

Title

Date



Authorized by Ordinance Number _____



APPENDIX 1

RECYCLING MARKET
BASE UNIT PRICES



APPENDIX 1 – RECYCLING MARKET BASE UNIT PRICES

The base unit prices below were established from the average monthly index prices from the various listed publications for the period January 2006 through December 2006.

Base Unit Prices / Market Price Indicators.

Mixed Waste Paper - The base price per ton is \$57.50 reflecting the average monthly quotation for San Francisco-Los Angeles for Soft Mixed Paper (1) from the weekly publication Pulp & Paper Week.

Newspaper - The base price per ton is \$60.00 reflecting the average monthly quotation for San Francisco-Los Angeles for News (6) from the Pulp & Paper Week.

Old Corrugated Containers (OCC) – The base price per ton is \$84.50 reflecting the average monthly quotation for San Francisco-Los Angeles for Corrugated Containers (11) from the weekly publication Pulp & Paper Week.

Glass - The base price per ton is \$22.50 - brown, \$27.50 - clear and \$2.50 - green reflecting the average monthly quotation for West Coast prices for unprocessed Glass from the weekly publication Mill Trade Journal, Recycling Markets.

PET and HDPE - The base price per ton is \$625.00 reflecting the average monthly quotation for West Coast prices for Mixed HDPE from the weekly publication Mill Trade Journal, Recycling Markets.

Aluminum Cans - The base price per ton is \$1,700.00 reflecting the average monthly quotation for a domestic price for Aluminum Used Beverage Containers from the daily publication, American Metals Market.

Tin Cans - The base price per ton is \$210.00 reflecting the average monthly quotation for Chicago for Clean Used Densified Cans from the daily publication American Metals Market.

Note: In case of a quotation of a range in prices, the mid point of the range serves as the market price indicator.



FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
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 Rabanco, Ltd. to provide recycling processing services in the City of Seattle.

• **Summary of the Legislation:**

This legislation allows SPU to enter into a new contract with Rabanco, Ltd. to process and market recyclable materials beginning in 2009.

• **Background:** *(Include brief description of the purpose and context of legislation and include record of previous legislation and funding history, if applicable):*

The City of Seattle collects approximately 85,000 tons of recyclables annually from single-family residences, apartments/condos, and small businesses. SPU has a contract with Rabanco, Ltd. to process and market recyclable materials collected within Seattle. That contract expires in March 2009. SPU issued a Request for Proposals in 2006 for future processing services. Rabanco, Ltd., which operates the sole recycling facility in Seattle, submitted the only response. SPU has completed negotiations with Rabanco, Ltd. to determine the final contract terms. The proposed contract would begin in April 2009 and run through March 2013. (See Exhibit A)

• *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 have appropriations that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below.*

Fund Name and Number	Department	Budget Control Level*	2007 Appropriation	2008 Anticipated Appropriation
TOTAL				



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

Notes:

This legislation does not require any new appropriations. The services under this contract will begin in 2009 with no expenditures in 2007 and 2008. The contract is estimated to cost approximately \$2.1 million annually, depending on the market credits received. The anticipated costs will be included in the 2009 proposed solid waste budget and rates.

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	2007 Revenue	2008 Revenue
TOTAL				

Notes: There is no new fee or rate revenue associated with this legislation.

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

Position Title and Department*	Fund Name	Fund Number	Part-Time/ Full Time	2007 Positions	2007 FTE	2008 Positions**	2008 FTE**
TOTAL							

* List each position separately

** 2008 positions and FTE are total 2008 position changes resulting from this legislation, not incremental changes. Therefore, under 2008, please be sure to include any continuing positions from 2007.

Notes: There are no new positions associated with this legislation.

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



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 and Number	Department	Budget Control Level*	2007 Expenditures	2008 Anticipated Expenditures
TOTAL				

* 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 this new contract, SPU would have no mechanism to process and market recyclables beginning April 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.)

SPU could attempt to extend the current service agreement, which would also require legislation, increase costs, and not provide the service and contract improvements provided under the new agreement.

- **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 – Contract Summary



SPU Recycling Processing Contract Overview

Key new provisions

- **Term** - Service begins in April 2009 and ends in March 2013, with options to extend to 2016 and 2019. Rabanco will continue to process and market all recyclables delivered by City collection contractors.
- **New labor requirements** - The agreement will create 40 new, full-time sorter positions at the facility. These new employees will have a 'living wage' and full medical benefits. This is an improvement over nearly all local and national processing facilities – where the practice is to fill these line-sorter positions with temporary employees that are paid below living wages and without real benefits.
- **New materials** - The agreement includes processing of additional materials desired by customers, including *all* plastic food containers except foam, plastic plant containers and buckets, and metal pots and foil.
- **Glass mixed or separate** – The City included terms for processing glass as a separate stream – as is the current practice – or mixing it in with the other materials. *(The City will decide on the future collection system after new collection agreements are finalized in early 2008.)*
- **Processing for special wastes** – The City has the option to collect and process used motor oil and electronics at the facility.
- **New residual targets and enforcement** – The agreement adopts criteria for best practices with new requirements for the amount of plant residuals and the quality of the sold products. The contractor is also prohibited from disposing of recyclables.
- **New high grade and closed-loop commitments** – The terms include new contractor commitments for processing a portion of the materials for markets that will reprocess the commodities into the original material and not down-grade them to lower value mixed materials. Rabanco has also committed to a multi-million dollar upgrade of the facility with state-of-the-art sorting equipment and worker safety enhancements.
- **Neighborhood improvements** – Rabanco has committed to additional measures to reduce neighborhood litter.

Costs

- The current processing price is \$19 per ton (approximately \$1.6M/yr). The price has not changed since 2000. The new processing prices will be \$25 per ton (approximately \$2.1M/yr).



- The new agreement updates the market revenue sharing and retains the risk/benefit for the City. This provides an additional approximately \$1M to the contractor over current terms – due to increased commodity values - and allows the City to continue to share in market increases.
- The new contractor revenues cover increases in operating and capital costs, facility improvements, new wage and benefit requirements for sorters, and future labor increases.
- These processing costs will continue to be far below the cost of disposal – approximately \$55 per ton to transfer and dispose of material as garbage.



STATE OF WASHINGTON – KING COUNTY

--SS.

216477
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 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

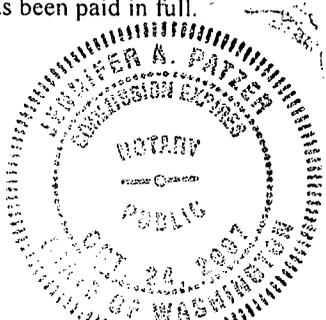
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:122519-21,25-27,34-36

was published on

10/17/07

The amount of the fee charged for the foregoing publication is the sum of \$ 118.58, which amount has been paid in full.



Affidavit of Publication

McDevaney

Subscribed and sworn to before me on
10/17/07 *John Carter*

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 October 1, 2007, and published here by title only, will be mailed upon request, or can be accessed electronically at <http://clerk.ci.seattle.wa.us>. For further information, contact the Seattle City Clerk at 684-8344.

ORDINANCE NO. 122535

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

ORDINANCE NO. 122534

AN ORDINANCE relating to the City Light Department, removing a budget proviso that limits spending of an appropriation in City Light's Customer Service and Energy Delivery CIP Budget Control Level in the 2007 Adopted Budget.

ORDINANCE NO. 122527

AN ORDINANCE relating to the Community Notification System for the City of Seattle, adopting usage policies and providing direction on implementation guidelines for the use of the system.

ORDINANCE NO. 122528

AN ORDINANCE relating to the water system of Seattle Public Utilities, declaring property in the City of Shoreline known as the Hamlin Park Reservoir Site to be surplus to the City of Seattle's needs, authorizing the Director of Seattle Public Utilities to execute an Option and Purchase and Sale agreement for the property with the City of Shoreline, and designating the disposition of sale proceeds.

ORDINANCE NO. 122525

AN ORDINANCE authorizing the Director of Seattle Public Utilities to enter into a contract with Rabanco, Ltd. to provide recycling processing services in the City of Seattle.

ORDINANCE NO. 122520

AN ORDINANCE relating to the Seattle Center Department, authorizing the execution of easement agreements with Experience Music Project regarding existing roof overhang encroachments and utility installations.

ORDINANCE NO. 122536

AN ORDINANCE relating to the Department of Transportation Corridor Projects Capital Improvement Program project, amending a budget proviso that restricts spending on the Corridor Projects project, amending the 2007-2012 Adopted Capital Improvement Program, authorizing the Mayor to submit to King County Metro a Direct Financial Partnership and Speed and Reliability Partnership Proposal, and authorizing the Mayor to execute a Transit Partnership Agreement with King County.

ORDINANCE NO. 122521

AN ORDINANCE relating to the Office of Economic Development, removing a budget proviso that restricted an appropriation in the 2007 budget of the Office of Economic Development.

ORDINANCE NO. 122519

AN ORDINANCE declaring three properties under the jurisdiction of the Fleets and Facilities Department to be surplus to the City's needs, approving the sale of the properties by public bid, authorizing execution of a Quit Claim Deed with respect to each such property, and designating the disposition of sales proceeds.

Publication ordered by JUDITH PIRPIN,
City Clerk

Date of publication in the Seattle Daily
Journal of Commerce, October 17, 2007.

10/17(2164-7)