#1

Hans Van Dusen
SPU Organics Contract ORD
February 6, 2013
Version #2

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL 117726

AN ORDINANCE authorizing the Director of Seattle Public Utilities to enter into contracts with Lenz Enterprises, Inc. and PacifiClean, LLC to provide organics processing services for the City of Seattle; and ratifying and confirming certain prior acts.

WHEREAS, the City contracts with Cedar Grove Composing Inc. to process organic wastes under a contract scheduled to expire March 31, 2014; and

WHEREAS, the City will continue to need organics processing services and desires to expand the types of organic products accepted in City collection services; and

WHEREAS, Seattle Public Utilities issued a Request for Proposals in 2012 for future processing services; and

WHEREAS, Seattle Public Utilities selected Lenz Enterprises, Inc. and PacifiClean, LLC as the finalists and negotiated new contracts to provide processing services; 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, contracts with Lenz Enterprises, Inc. and PacifiClean, LLC, substantially in the form of the contracts attached hereto and identified as Attachments 1 and 2.

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

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

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Passed by the City Council the 11th day of March, 2013, and signed by me in open session in authentication of its passage this 11th day of March, 2013.

_____
President _____ of the City Council

Approved by me this ____ day of _____, 2013.

_____
Michael McGinn, Mayor

Filed by me this ____ day of _____, 2013.

_____
Monica Martinez Simmons, City Clerk

(Seal)

Attachment 1 – Contract with Lenz Enterprises, Inc.
Attachment 2 – Contract with PacifiClean, LLC

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SPU Organics Contract ORD ATT 1
Hans VanDusen
January 29, 2013
Version #1

ATTACHMENT 1

Organics Processing Contract between the City of Seattle and Lenz Enterprises, Inc.

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SPU Organics Contract ORD ATT 1
Hans VanDusen
January 29, 2013
Version #1

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ORGANICS PROCESSING CONTRACT

BETWEEN THE CITY OF SEATTLE

AND

LENZ ENTERPRISES, INC.

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

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

A. OVERVIEW

Section 10. Purpose and Intent

This Contract engages Lenz Enterprises, Inc. to process Organic Waste into marketable products.

Section 15. Contract Term

This Contract is entered into as of this ____ day of _____, 2013. Actual Organic Material processing services will begin April 1, 2014 and continue through March 31, 2020.

The City, at its option, may extend this Contract for a two successive two-year periods to March 31, 2022 or March 31, 2024 by notifying the Contractor on or before June 30, 2019 and June 30, 2021 respectively. If the City extends this Contract, the same terms, conditions, and method of payment shall apply during the extension period.

Section 20. Definitions

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

"City" means the City of Seattle.

"City Approved Compostable Bags" means bags approved by the City for collection in City services that meet ASTM D6400, ASTM D6868, or successor testing standards and have been

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approved by current or previous processor.

"City Approved Single-Use Food Service Ware" means single-use service ware and food service packaging approved by the City for collection in City services that meet ASTM D6400, ASTM D6868, or successor testing standards and have been approved by current or previous processor.

"Contractor's Share" means the portion of the City's Organic Waste to be processed by the Contractor as described in Section 210.

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

"Food Waste" means all food scraps, including meat, dairy products, grease and bones; paper which has been contaminated with food, fat or grease; and soiled cardboard and paper including paper towels, paper plates, bags, tissue and waxed paper.

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

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

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

Section 30. City Responsibilities

The City shall be responsible for:

1. Making payments contemplated by this Contract;
2. Inspecting Contractor performance;
3. Maintaining its collection contracts;
4. Ensuring that the Contractor's Share of Organic Waste collected under the City's collection contracts or collected at City transfer stations is loaded to the Contractor's Organic Waste

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trailers;

5. In accordance with Section 240, disposing of Contaminants returned to the City's transfer facilities;

6. Coordinating and implementing customer education and enforcement efforts with City – contracted collectors to minimize contamination; and

7. Monitoring loads of Organic Waste at City stations to minimize contamination.

Section 40. 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 50. 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;

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6. Complying with all applicable laws and regulations, including without limitation relevant environmental and health laws, regulations and standards related to organics processing;

7. Performing all work in a timely, thorough and professional manner;

8. All wage increases for Contractor's employees; and

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

Section 60. 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 first date on which any materials will be processed under this Contract, such licenses, permits and other authorizations from federal, state and other governmental authorities, as are necessary for the performance of its obligations under this Contract.

4. Compliance with Laws. The Contractor is not in violation of any law, ordinance or regulation, the consequence of which violation will or may materially affect Contractor's ability to perform its obligations under this Contract. The Contractor is not subject to any order or judgment of any court, tribunal or governmental agency which materially and adversely affects its operations or assets in the state of Washington, or its ability to perform

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its obligations under this Contract.

5. Accuracy of Information. None of the representations or warranties in this Contract, and none of the documents, statements, certificates or schedules furnished or to be furnished by Contractor pursuant hereto or in connection with the performance of the obligations contemplated under this Contract, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements of fact contained therein not misleading.

6. Independent Examination. In accepting these responsibilities, the Contractor represents and affirms that it has made its own examination of all conditions, facilities and properties affecting the performance of this Contract and of the quantity and expense of labor, equipment, material needed, and of applicable taxes, permits, and laws.

7. Statements in Response to RFP Binding. The Contractor hereby agrees to be bound by all statements made in its Response to the Request for Proposals, including all answers to Proposal Questions and completed Forms.

Section 70. Ownership of Equipment

All essential facilities, equipment, and property used in the performance of this Contract shall be wholly owned by the Contractor, provided, that leases, conditional sale contracts, mortgages, or other agreements for the use or financing the purchase of essential facilities, equipment, and property may be allowed with the prior written approval of the City. The City's approval shall not be unreasonably withheld.

All such leases, conditional sale contracts, mortgages, or other agreements shall provide that in the event of the Contractor's failure to perform its obligations under this Contract, the City, at its option, shall have the right to take possession of and operate facilities, equipment, and property covered by such lease or agreement for the unexpired term of this Contract. No further encumbrance shall be placed upon any such facilities, equipment, and property that would compromise the City's rights under this Contract.

Section 80. Contractor's Office

The Contractor shall maintain an office with local telephone service, email, 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.

Section 90. Operations Plan.

The Contractor and the City shall develop an 'Operations Plan' after the Contract is signed and prior to beginning services. This 'Operations Plan' will include further details and protocol

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regarding trailer coordination and other operations, data and communications elements shared by the Contractor and the City. The Operations Plan will be up dated as needed during the Contract term.

B. TRANSPORTION SERVICES

Section 100. Organic Waste Trailers.

The Contractor shall supply and maintain sufficient number of Organic Waste trailers to accommodate the shipment of the Contractor's Share of Organic Waste. This requirement shall include a sufficient number of trailers so that an empty trailer is available at all times when needed at each operating City transfer station, including during periods of peak volumes and/or transportation interruptions.

The trailers shall be compatible with the City operations, including the compactors, top load stations, and shuttling operations at City facilities. The trailers shall be capable of carrying loads up to 30 tons and be constructed and sealed so as to prevent leakage of solid or liquid waste during storage and transport. The Contractor shall sweep and/or wash each trailer, internally and externally, as frequently as necessary to avoid public nuisance. Additional details on trailer maintenance will be captured in the Operations Plan.

Section 120. Organic Waste Transportation.

The Contractor shall transport the Contractor's Share of Organic Waste from the City transfer station trailer yards to the Primary or Back-up Processing Facilities. Contractor long-haul trucks used for this contract will meet or exceed 2010 federal diesel or compressed natural gas emission standards. Contractor truck drivers performing under this contract will be permanent employees with medical, dental and pension benefits and a minimum wage of $22 per hour, after a 6-month probationary period.

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

Section 130. City Responsibilities for Trailers.

The City will provide on-site storage for up to five Contractor trailers at the City's north transfer station trailer yard and five Contractor trailers at the City south transfer station trailer yard. The Contractor will have access to the trailer yard at the City's north station daily between 7am to 6:30 pm. The Contractor will have 24 hour access to the trailer yard at the City's south station. Access hours can be modified by mutual agreement in the Operations Plan.

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The City north transfer station is expected to be closed for rebuilding approximately 2014 – 2016. The City will provide additional trailer parking at the south station trailer yard during this period.

The City will retrieve empty trailers from the trailer yard at each City facility, load the trailers, and return full trailers to the same trailer yard. The City will load trailers from the Contractor and the City's other Organic Waste Processing contractor at a frequency that fulfills the Contractor's Share of Organic Waste each month. The City will notify the Contractor immediately when a Contractor empty trailer leaves the trailer yard for loading and when the trailer is full and ready for removal.

The City shall use reasonable care in the handling and security of trailers and shall be responsible for repair or replacement of trailers if the City damages or destroys a trailer. The Contractor is responsible for maintaining the trailers and ordinary wear and tear.

Section 140. Transportation from City Contractor Stations.

The Contractor shall also provide trailers and transportation services for a City contracted transfer facility trailer yard, if directed by the City, in lieu of providing trailers and transportation from the City's North or South station trailer yard, The City will provide 30 days notice prior to directing the Contractor to transport from City contract station and 30 days notice prior to discontinuing the service.

C. PROCESSING SERVICES

Section 200. Organic Waste Receiving and Processing

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

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

Section 210. Contractor Share of City Organic Waste

The Contractor shall provide all transportation and processing services called for in this Contract for a minimum of 35% and maximum of 45% of the City's Organic Waste each month, as collected through the City's collection contracts and transfer stations. These limits can be

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adjusted by mutual agreement of the City and the Contractor. The total tons processed by the Contractor shall not exceed 36,000 tons per year, unless mutually agreed by the City and the Contractor.

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

Section 220. Primary Organic Waste Receiving and Processing Facility

The Contractor's primary processing facility shall be its Lenz Enterprises Compost Facility located at 5210 SR 532, Stanwood, Washington.

Section 230. Back-up Organics Processing Facility

To avoid disruption of the organics collection program through a temporary shutdown in receiving or processing, the Contractor shall have an agreement with other permitted receiving and processing facilities for processing the organic materials accepted under this contract. The Contractor represents and warrants that as of the date hereof each of the following facilities is so permitted and that each has agreed to receive or process Organic Waste as a back-up facility pursuant to this Section 230:

Skagit Soils, Mount Vernon, Washington

Green Earth Technology, Lynden, Washington

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

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

Section 240. Handling/Disposal of Contaminants

The City will be responsible for the disposal of Contaminants delivered to Contractor by the City or any other City contractor. The Contractor will, without cost to the City, segregate the Contaminants (segregating tires separately) at the primary or back-up facilities, as the case may be, and transport the Contaminants to a City transfer facility. The Contractor shall record and track the tons of Contaminants returned to the City. The maximum amount of contaminants for disposal by the City shall be based on Organic Waste composition studies conducted by the City approximately every four years. The contractor will provide adequate space and access at

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their receiving facility for the periodic waste composition studies. Specifics for contaminant tracking and disposal and for the periodic composition studies will be contained in the Operations Plan.

Section 250. End Products

The Contractor will process Organic Wastes into marketable products such as soil amendments, mulch, animal feed product or gaseous and liquid byproducts from anaerobic digestion. The Contractor is responsible for transporting and marketing all end products. Marketing of the product is at the Contractor's risk, expense and profit (or loss). The contractor is responsible for marketing of any electrical energy or fuel produced from anaerobic digestion technologies.

Section 260. Promotional Partnerships

The Contractor will support outreach partnerships with the City to increase diversion and reduce contamination. The contractor will provide retail product available for purchase by Seattle residents and provide annual discounted product opportunities for Seattle residents.

Section 270. Testing Programs

The Contractor will routinely test end products to ensure that they meet relevant regulatory standards.

The Contractor shall also maintain a testing program to verify that various consumer materials, including compostable bags and single-use food service ware and packaging are compostable at the Contractor's Processing Facility. The testing program will follow established and transparent protocol relevant to the technology at the Processing Facility. The Contractor shall initiate testing and related trials for individual consumer products within 30 days of requests from the City, a manufacturer, distributor or food service business. The Contractor shall notify the City and the applicant within 15 days of the completion of testing and shall maintain a website or web pages accessible to the public where all manufactured products approved compostable are listed and, when possible, pictured.

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

Section 280. Disposal Prohibition.

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

Section 290. Pilot Tests.

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

D. REPORTING REQUIREMENTS

Section 300. Scale and Trip Records

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 from the City by the Contractor at the Processing Facility. Information include gross and net weights, truck number, route number, source, date, time entering and leaving, and other trip and load data. The Contractor shall keep as back-up a paper copy of each weight transaction. Weights must be obtained from certified private scales approved by the City, or other scales approved by the City. The City has the option of requiring any private scales to be certified as frequently as quarterly.

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

Section 310. Monthly and Quarterly Reports

The Contractor shall submit monthly reports for the length of the Contract period commencing with initiation of Organic Waste processing. These reports shall be 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 and type;
2. Contaminants summary and listing of individual weight receipts for Contaminants delivered to the City for disposal;

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

1. Summary of monthly data for quarter and contract year to date;
2. Summary of end products sold;
3. Discussion of problems and noteworthy experience in program operation; and

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4. Contractor recommendations for improvements.

E. COMPENSATION AND EMPLOYMENT WAGES AND RECORDS

Section 400. Payment for Transportation Services

The City shall pay the Contractor monthly for all tons of Organic Waste transported by the Contractor during the month documented per Sections 300 and 310. From April 1, 2014 through March 31, 2016 the City will pay the Contractor a rate of $403 per load from the City's North transfer station and $473 per load from the City's South transfer stations or from a City Contractor transfer station for transportation services.

Section 405. Payment for Processing Services

The City shall pay the Contractor monthly for all tons of Organic Waste processed by the Contractor during the month documented per Sections 300 and 310. From April 1, [2014 or 2015]_through March 31, 2016 the City will pay the Contractor a rate of $31.60 per ton for processing services.

Section 410. Adjustments in Subsequent Contract Years

The City will compute compensation payable for the Contract year beginning April 1, 2016 and subsequent Contract years as follows:

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

In addition, the payment for transportation services from the City's South transfer station will be reduced by $28 beginning April 1, 2016,

Section 420. Performance Adjustments

The Contractor shall pay the City $1 per each minute over 15 minutes if an empty Contractor trailer is not available at City transfer facility when needed for duration of more than 15 minutes.

Section 430. Payment Procedure

No later than the 10th of each month, the Contractor will submit an invoice and copies of weight information required pursuant to Sections 300 and 310. 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 440. Wage Increases for Employees

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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 470. 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 480. Withholding and Payment to Workers

If any worker doing transportation or 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) per warrant from the next succeeding payment to be made to the Contractor.

Section 490. Workers Right to Know

"Right to Know" legislation required the Department of Labor and Industries to establish a program to make employers and employees more aware of the hazardous substances in their work environment. WAC 296-800-108 requires among other things that all manufacturers/distributors of hazardous substances, including any of the items listed on this ITB, RFP or contract bid and subsequent award, must include with each delivery completed Material Safety Data Sheets (MSDS) for each hazardous material. Additionally, each container of hazardous material must be appropriately labeled with: the identity of the hazardous material, appropriate hazardous warnings, and the Name and Address of the chemical manufacturer, importer, or other responsible party. Labor and Industries may levy appropriate fines against employers for noncompliance and agencies may withhold payment pending receipt of a legible copy of the MSDS. OSHA Form 20 is not acceptable in lieu of this requirement

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unless it is modified to include appropriate information relative to "carcinogenic ingredients: and "routes of entry" of the product(s) in question.

F. AFFIRMATIVE EFFORTS AND NON-DISCRIMINATION

Section 500. Employment Actions

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

Section 510. Affirmative Effort Implementation

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

In the event Subcontracting is considered appropriate and feasible to contract performance, the Contractor shall develop a Subcontracting Plan, which also may be referred to as an Outreach Plan. The Subcontracting (Outreach) Plan shall specify the Contractor's affirmative efforts and an agreement to the City for subcontracting to women and minority businesses, and/or diverse employment. The Subcontracting (Outreach) Plan, as submitted and/or as agreed upon with the City thereafter, shall be incorporated as a material part of the Contract. In preparing the Subcontracting (Outreach) Plan, Contractors shall actively solicit qualified, available and capable women and minority-owned businesses to perform the subcontracting work for the contract. The Contractor shall submit the Subcontracting (Outreach) Plan to the City with the solicitation and/or prior to contract execution. At the request of the City, Contractor shall promptly furnish evidence of the Contractor's compliance with these requirements, which may include a list of all subcontractors and/or WMBE subcontractors, and may include a request for copies of the executed agreements between the Contractor and subcontractors, invoices and/or performance reports.

Section 520. Investigation of Employment and Affirmative Efforts

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

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

Section 540. Key Persons and Subcontractors

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

Section 560. Equal Benefits

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

Any violation of this section shall be a material breach of Contract for which the City may:

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1. Require the 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 the 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 there under.

G. Federal Provisions

Section 600. Equal Employment Opportunity

All Contractors must comply with federal Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.

Section 610. Civil Rights Act Title VI

The Contractor must comply with the provisions of the Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.). The law provides that no person in the United States shall, on the grounds of race, color or national origin, be denied the benefits of, be excluded from participation in, or be subjected to, discrimination under any program or activity receiving federal financial assistance.

Section 620. 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.

Section 630. OSHA/WISHA

Contractor agrees to comply with conditions of the Federal Occupational Safety and Health Acts of 1970 (OSHA), as may be amended, and, if it has a workplace within the State of Washington, the Washington Industrial Safety and Health Act of 1973 (WISHA), as may be amended, and the standards and regulations issued thereunder and certifies that all items furnished and purchased under this order will conform to and comply with said standards and regulations. Contractor further agrees to indemnify and hold harmless purchaser from all damages assessed

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against purchaser as a result of Contractor's failure to comply with the acts and standards thereunder and for the failure of the items furnished under this order to so comply.

Section 640. Contract Work Hours and Safety Standards

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

Section 670. Clean Air Act and Federal Water Pollution Control Act

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

Section 680. Energy Efficiency

All Contractors and subcontractors must comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

H. SECURITY; LIABILITY; DAMAGES

Section 700. Performance Bond

The Contractor shall provide and maintain at all times a valid Contractor's Performance and Payment Bond ("Bond") for Five Hundred Thousand Dollars ($500,000). The Bond shall be issued for a period of not less than one year and the Contractor shall provide a new bond, or evidence satisfactory to the City of the renewability of the current bond at least 90 calendar days before it expires. The Contractor shall be named as Principal and The City of Seattle shall be named as Obligee.

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

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

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company, form, and sufficiency of surety. If the instrument is found by the City Attorney to be flawed, the Contractor must correct the flaw promptly prior to contract execution or the award may be terminated.

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

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

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

Section 710. Default of Contractor

This Section is independent, notwithstanding any other provisions of this Contract. Except as provided in the last paragraph of this Section 610, the Contractor may be held in default of the Contract in the event that the Contractor:

1. Is unable to accept Organic Waste, for more than a 48 hour period for processing at the primary or back-up Processing Facility or alternate facility approved by the City;

2. Fails to comply with the terms of any of the Sections in Chapter E (Section 400 – Section 460);

3. Fails to furnish and maintain a Performance and Payment Bond per Section 700;

4. Fails to furnish and maintain the Insurance Requirements per Section 720; or

5. Repeatedly neglects, fails, or refuses to comply with any material term of the Contract, after having received written notice of its obligation to do so.

To initiate proceedings under this Section, the City shall give notice to the Contractor and its surety of the location, time, and date within the following seven calendar days of a meeting with the Director of Seattle Public Utilities at which the Contractor may show cause why it should not

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

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

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

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

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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 720. 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

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

b) AUTOMOBILE LIABILITY INSURANCE for owned, non-owned, hired, and leased vehicles, as applicable, with MCS 90. Such insurance must provide a minimum limit of liability of $1,000,000 CSL.

c) WORKERS' COMPENSATION INSURANCE as required by the Industrial Insurance laws of the state of Washington.

2. GENERAL REQUIREMENTS

a) Each insurer must either be (1) authorized to do business in the state of Washington and maintain A.M. Best's ratings of A-: VII or higher, or (2) procured as surplus lines under the provisions of chapter 48.15 RCW ("Unauthorized Insurers"). The City reserves the right to reject insurance including based on the insurer, terms and coverage, the certification of insurance, and/or policy provisions.

b) The Contractor shall keep this Insurance in force during the term of the contract

c) The liability Insurance policies for which there is a requirement to include the City as an additional insured shall contain a "cross liability" provision.

d) The insurance for the Contractor and any subcontractor performing services under this Contract shall include general liability insurance coverage that includes the City as an additional insured shall be primary and non-contributory as respects the City's self-insurance and/or insurance.

e) All Insurance shall include a requirement providing for a minimum of thirty (30) days prior written notice to the Contracting Agency of any cancellation in any Insurance, except a minimum of ten (10) days as respects cancellation for non-payment.

f) In the event that the City tenders a claim to any Contractor insurer for defense and indemnity, and the insurer declines to accept the tender or accepts it under a reservation of rights, upon the City's request the Contractor shall forward to the City a true and certified copy of any relevant Insurance policy(ies).

g) The Contractor shall not begin work under the contract until the required Insurance has

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been obtained and approved by the City.

h) Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five (5) business days notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such Insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the Contracting Agency on demand, or at the sole discretion of the Contracting Agency, offset against funds due the Contractor from the Contracting Agency.

i) Any self-insured retention (S.I.R.) in excess of $50,000 must be disclosed and is subject to City's approval. The Contractor shall furnish financial information that the City shall reasonably require for performing a risk retention analysis and shall, in addition, provide a written statement that the Contractor will protect the City against any claim within the S.I.R. to the same extent that coverage would be afforded under the relevant excess of loss commercial insurance policy. The cost of any claims payments for defense and indemnity falling within the S.I.R. shall be the responsibility of the Contractor.

j) All costs for Insurance shall be incidental to and included in the unit or lump sum prices of the contract and no additional payment will be made.

3. NO LIMITATION OF LIABILITY; ADDITIONAL INSURED

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

4. SUBCONTRACTORS

Contractor shall contractually require that each subcontractor performing services under this

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

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

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

a) An ACORD certificate or equivalent form fully disclosing all coverages and limits of liability maintained.

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

c) Any other amendatory endorsements to document compliance with the requirements herein.

Section 730. Indemnity

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

Section 750. Liquidated Damages

This Section is independent of Section 710. Liquidated Damages pursuant to this Section shall be deducted from the monthly payment to the Contractor. These damages do not apply in the event that a major disaster or emergency causes a disruption in the facility operations or transportation services. The acts or omissions in the left hand column are a breach of this

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Contract; the amounts in the right hand column are set as Liquidated Damages.

Failure to provide an empty Organic Waste trailer when needed, for more than a 3-hour period at the City's transfer facilities.	$500 per trailer per hour
Failure to remove a full trailer from the City's transfer facilities for more than 24-hour period.	$500 per trailer per hour

I. PROPRIETARY AND CONFIDENTIAL INFORMATION

Section 800. 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 810. Contractor's Understanding and Obligations

Contractor understands that any records (including but not limited to bid or proposal submittals, the Agreement, 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.

If the City receives a public disclosure request made pursuant to RCW 42.56, the City will not assert an exemption from disclosure on behalf of the Contractor. For materials that the Contractor has properly marked, the City will notify the Contractor of the request and postpone disclosure for ten business days to allow the Contractor to file a lawsuit seeking an injunction preventing the release of documents pursuant to RCW 42.56.540. Any notification is provided as a courtesy and is not an obligation on behalf of the City. Unless the Contractor obtains and serves an injunction upon the City before the close of business on the tenth business day after the date of the notification, the City may release the documents. It is the Contractor's

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discretionary decision whether to file the lawsuit.

In order to request that material not be disclosed until receipt of notification of a public disclosure request, you must identify the specific materials and citations very clearly on the City Contractor Questionnaire that you believe are exempt from disclosure. The City will not withhold material for notification if the Contractor simply marked confidential on the document header, footer, stamped on all pages, or offered a generic statement that the entire document is protected. Only material specifically listed and properly cited on the Contractor Questionnaire will be temporarily withheld until the City provides notification of a public disclosure request.

If the Contractor does not obtain and serve an injunction upon the City within 10 business days of the date of the City's notification of the request, the Contractor is deemed to have authorized releasing the record.

If the Contractor does not submit a request within the Contractor Questionnaire, the Contractor is deemed to have authorized releasing any and all information submitted to the City.

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 Agreement or (b) the Contractor's obligations under this Agreement.

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

Section 820. 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

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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.

J. ANCILLARY PROVISIONS

Section 900. 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 910. 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 (Section 560). Contractor shall ensure that all subcontractors comply with the obligations and requirements of the subcontract, except for Equal Benefit provisions (Section 560).

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 920. Audit

Upon request, Contractor shall permit the City or it's designee to inspect and audit all pertinent books and records of Contractor, any subcontractor, or any other person or entity that

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performed work in connection with or related to the 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 930. Compliance with Law

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

Section 940. Licenses and Similar Authorizations

The Contractor, at no expense to the City, shall secure and maintain in full force and effect during the term of this Contract all required licenses, permits, and similar legal authorizations, and comply with all related requirements.

Section 950. Taxes

The Contractor shall pay, before delinquency, all taxes, import duties, levies, and assessments arising from its activities and undertakings under this Contract; taxes levied on its property, equipment and improvements; and taxes on the Contractor's interest in this Contract.

Section 960. Disputes

Seattle and Contractor shall maintain business continuity to the extent practical while pursuing disputes. Any dispute or misunderstanding that may arise under this Contract concerning Contractor's performance shall first be resolved, if mutually agreed to be appropriate, through negotiations between the parties' Contract representatives as listed in Section 985, or if mutually agreed, referred to the City's named representative and the Contractor's senior executive(s). Either party may decline or discontinue such discussions and may then pursue other means to resolve such disputes, or may by mutual agreement pursue other dispute alternatives such as alternate dispute resolution processes. Nothing in this dispute process shall in any way mitigate the rights, if any, of either party to terminate the contract in accordance with the termination provisions herein.

Notwithstanding above, if Seattle believes in good faith that some portion of work has not been completed satisfactorily, Seattle may require Contractor to correct such work prior to Seattle payment. In such event, Seattle must clearly and reasonably provide to Contractor an explanation of the concern and the remedy that Seattle expects. Seattle may withhold from any

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payment that is otherwise due, an amount that Seattle in good faith finds to be under dispute, or if the Contractor does not provide a sufficient remedy, Seattle may retain the amount equal to the cost to Seattle for otherwise correcting or remedying the work not properly completed.

Section 970. 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 975. 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 980. 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 985. Notices

All official notices or approvals shall be in writing.

To the City:
Hans Van Dusen
Seattle Public Utilities
700 Fifth Avenue, 49th floor
P.O. Box 34018
Seattle, Washington 98124-4018
Phone: (206) 684-4657
Fax: (206) 386-0096

To the Contractor:
Jason Lenz
Lenz Enterprises
510 SR 532
P.O. Box 868
Stanwood, Washington 98292
Phone: (360) 629-2933
Fax: (360) 629-6213

Either party may from time to time designate a new address for notices. Unless otherwise

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agreed, notices shall be sent by certified mail with return receipt requested.

Section 990. 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 995. 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.

LENZ ENTERPRISES, INC.	THE CITY OF SEATTLE
By_____	By _____
Jason Lenz	Ray Hoffman, Director
Vice President	Seattle Public Utilities
_____	_____
Date	Date

Authorized by Ordinance Number _____

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SPU Organics Contract ORD ATT2
Hans VanDusen
January 29, 2013
Version #1

Attachment 2

Organics Processing Contract between the City of Seattle and PacifiClean Environmental of Washington, LLC

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SPU Organics Contract ORD ATT2
Hans VanDusen
January 29, 2013
Version #1

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ORGANICS PROCESSING CONTRACT

BETWEEN THE CITY OF SEATTLE

AND

PACIFICLEAN ENVIRONMENTAL OF WASHINGTOIN, LLC

THIS ORGANICS PROCESSING CONTRACT is entered into by and between THE CITY OF SEATTLE, a municipal corporation of the State of Washington acting by and through Seattle Public Utilities("City"), and PacifiClean Environmental of Washington, LLC ("Contractor") to provide for transportation and processing of Organic Waste (as hereinafter defined) collected through the City's residential, commercial and transfer station services.

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

A. OVERVIEW

Section 10. Purpose and Intent

This Contract engages PacifiClean Environmental of Washington, LLC to process Organic Waste into marketable products.

Section 15. Contract Term

This Contract is entered into as of this ____ day of _____, 2013. Actual Organic Material processing services will begin April 1, 2014 and continue through March 31, 2020.

The City, at its option, may extend this Contract for a two successive two-year periods to March 31, 2022 or March 31, 2024 by notifying the Contractor on or before June 30, 2019 and June 30, 2021 respectively. If the City extends this Contract, the same terms, conditions, and method of payment shall apply during the extension period.

Section 20. Definitions

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

"City" means the City of Seattle.

"City Approved Compostable Bags" means bags approved by the City for collection in City services that meet ASTM D6400, ASTM D6868, or successor testing standards and have been

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approved by current or previous processor.

"City Approved Single-Use Food Service Ware" means single-use service ware and food service packaging approved by the City for collection in City services that meet ASTM D6400, ASTM D6868, or successor testing standards and have been approved by current or previous processor.

"Contractor's Share" means the portion of the City's Organic Waste to be processed by the Contractor as described in Section 210.

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

"Food Waste" means all food scraps, including meat, dairy products, grease and bones; paper which has been contaminated with food, fat or grease; and soiled cardboard and paper including paper towels, paper plates, bags, tissue and waxed paper.

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

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

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

Section 30. City Responsibilities

The City shall be responsible for:

1. Making payments contemplated by this Contract;
2. Inspecting Contractor performance;
3. Maintaining its collection contracts;
4. Ensuring that the Contractor's Share of Organic Waste collected under the City's collection contracts or collected at City transfer stations is loaded to the Contractor's Organic Waste

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trailers and providing Contractor access to transfer station trailer yards;

5. In accordance with Section 240, disposing of Contaminants returned to the City's transfer facilities;

6. Coordinating and implementing customer education and enforcement efforts with City – contracted collectors to minimize contamination; and

7. Monitoring loads of Organic Waste at City stations to minimize contamination.

Section 40. 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 50. 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;

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6. Complying with all applicable laws and regulations, including without limitation relevant environmental and health laws, regulations and standards related to organics processing;

7. Performing all work in a timely, thorough and professional manner;

8. All wage and compensation increases for Contractor's employees; and

9. Any 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 60. 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 first date on which any materials will be processed under this Contract, such licenses, permits and other authorizations from federal, state and other governmental authorities, as are necessary for the performance of its obligations under this Contract.

4. Compliance with Laws. The Contractor is not in violation of any law, ordinance or regulation, the consequence of which violation will or may materially affect Contractor's ability to perform its obligations under this Contract. The Contractor is not subject to any order or judgment of any court, tribunal or governmental agency which materially and adversely affects its operations or assets in the state of Washington, or its ability to perform

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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 relevant and material statements made in its Response to the Request for Proposals, including answers to Proposal Questions and completed Forms regarding Prices, Proposed Operations, and Support for Workforce, Diversity and Sustainability.

Section 70. Ownership of Equipment

All essential facilities, equipment, and property used in the performance of this Contract shall be wholly owned by the Contractor, provided, that leases, conditional sale contracts, mortgages, or other agreements for the use or financing the purchase of essential facilities, equipment, and property shall be allowed with the prior written approval of the City. The City's approval shall not be unreasonably withheld or delayed.

All such leases, conditional sale contracts, mortgages, or other agreements shall provide that in the event of the Contractor's failure to perform its obligations under this Contract, the City, at its option, shall have the right to take possession of and operate facilities, equipment, and property covered by such lease or agreement for the unexpired term of this Contract upon the payments as described in Section 710. No further encumbrance shall be placed upon any such facilities, equipment, and property that would compromise the City's rights under this Contract.

Section 80. Contractor's Office

The Contractor shall maintain an office with local telephone service, email, 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.

Section 90. Operations Plan.

The Contractor and the City shall develop and mutually agree on an 'Operations Plan' after the

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Contract is signed and prior to beginning services. This 'Operations Plan' will provide greater detail on implementation and operational protocol for services under this Contract, including trailer tracking and coordination, data files and communications, and other elements shared by the Contractor and the City. The Operations Plan will be updated as needed during the Contract term.

B. TRANSPORTION SERVICES

Section 100. Organic Waste Trailers.

The Contractor shall supply and maintain sufficient number of Organic Waste trailers to accommodate the shipment of the Contractor's Share of Organic Waste. This requirement shall include a sufficient number of trailers so that an empty trailer is available at all times when needed at each operating City transfer station, including during periods of peak volumes and/or transportation interruptions.

The trailers shall be compatible with the City operations, including the compactors, top load stations, and shuttling operations at City facilities. The trailers shall be permitted to carry loads up to 30 tons and be constructed and sealed so as to be leak resistant. The Contractor shall sweep and/or wash each trailer, internally and externally, as frequently as necessary to avoid public nuisance. Additional details on trailer maintenance will be captured in the Operations Plan.

Section 120. Organic Waste Transportation.

The Contractor shall transport the Contractor's Share of Organic Waste from the City transfer station trailer yards to the Primary or Back-up Processing Facilities. Contractor long-haul trucks used for this contract will meet or exceed 2010 federal diesel or compressed natural gas emission standards. Seventy (70%) or more of the Contractor long-haul trucks will have dual-fuel capability (for diesel and natural gas). Contractor truck drivers performing under this contract will be permanent employees with medical, dental and pension benefits and a minimum wage of $22 per hour, after a 6-month probationary period. These wage and benefit requirements also apply to any transportation services performed by subcontractors.

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

Section 130. City Responsibilities for Trailers.

The City will provide on-site storage for up to five Contractor trailers at the City's north transfer

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station trailer yard and five Contractor trailers at the City south transfer station trailer yard. The Contractor will have access to the trailer yard at the City's north station daily between 7am to 6:30 pm. The Contractor will have 24 hour access to the trailer yard at the City's south station. Access hours can be modified by mutual agreement in the Operations Plan.

The City north transfer station is expected to be closed for rebuilding approximately 2014 – 2016. The City will provide additional trailer parking at the south station trailer yard during this period.

The City will retrieve empty trailers from the trailer yard at each City facility, load the trailers, and return full trailers to the same trailer yard. The City will load trailers from the Contractor and the City's other Organic Waste Processing contractor at a frequency that fulfills the Contractor's Share of Organic Waste each month. The City will attempt to load each container with between 24 – 30 tons of Organic Waste. The City will notify the Contractor immediately when a Contractor empty trailer leaves the trailer yard for loading and when the trailer is full and ready for removal.

The City shall use reasonable care in the handling and security of trailers and shall be responsible for repair or replacement of trailers if the City damages or destroys a trailer. The Contractor is responsible for maintaining the trailers and ordinary wear and tear.

Section 140. Transportation from City Contractor Station.

The Contractor shall also provide trailers and transportation services for a City contracted transfer facility trailer yard, if directed by the City, in lieu of providing trailers and transportation from the City's North station trailer yard. The City will provide 30 days notice prior to directing the Contractor to transport from City contract station and 30 days notice prior to discontinuing the service. The City will arrange for trailer parking and 24 hour access at the contracted transfer facility. Access and operational details will be further addressed in the Operation Plan.

C. PROCESSING SERVICES

Section 200. Organic Waste Receiving and Processing

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

The Contractor's arrangements for processing organic material, at both the primary and back-up processing facilities, shall be subject to review and approval before the start of this processing contract, which approval shall not be unreasonably withheld or delayed. All facilities covered

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under this contract shall be subject to inspection by City staff during business hours to determine compliance with this Contract and all of the local, state and regional air authority rules and regulations pertaining facility operations.

Section 210. Contractor Share of City Organic Waste

The Contractor shall provide all transportation and processing services called for in this Contract for a minimum of 55% and maximum of 65% of the City's Organic Waste each month, as collected through the City's collection contracts and transfer stations. These limits can be adjusted by mutual agreement of the City and the Contractor.

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

Section 220. Primary Organic Waste Receiving and Processing Facility

The Contractor's primary processing facility shall be its Elk Heights Integrated Organics Processing Facility located at 860 Thorp Prairie Road, Cle Elum, Washington.

Section 230. Back-up Organics Processing Facility

To avoid disruption of the organics collection program through a temporary shutdown in receiving or processing, the Contractor shall have an agreement with other permitted receiving and processing facilities for processing the organic materials accepted under this contract. The Contractor represents and warrants that as of the date hereof each of the following facilities is so permitted and that each has agreed to receive or process Organic Waste as a back-up facility pursuant to this Section 230:

Cedar Grove Composting, 19819 67th Ave NE, Everett, WA

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

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

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

Section 240. Handling/Disposal of Contaminants

The City will be responsible for the disposal of Contaminants delivered to Contractor by the City

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or any other City contractor. The Contractor will, without cost to the City, segregate the Contaminants (segregating tires separately) at the primary or back-up facilities. The Contactor will transport the Contaminants to a City transfer facility. The City will pay the contractor $5 per ton for this contamination transportation. The Contractor shall record and track the tons of Contaminants returned to the City. The maximum amount of contaminants for disposal by the City shall be based on Organic Waste composition studies conducted by the City approximately every four years. The City will also conduct additional targeted sampling of multifamily customers in 2014 and additional contamination sampling, if the City implements a ban on food waste from landfill disposal. The contractor will provide adequate space and access at their receiving facility for the periodic waste composition studies. Specifics for contaminant tracking and disposal and for the periodic composition studies will be contained in the Operations Plan.

Section 250. End Products

The Contractor will process Organic Wastes into marketable products such as soil amendments, mulch, animal feed product or gaseous and liquid byproducts from anaerobic digestion. The Contractor is responsible for transporting and marketing all end products. Marketing of the product is at the Contractor's risk, expense and profit (or loss). The contractor is responsible for marketing of any electrical energy or fuel produced from anaerobic digestion technologies.

Section 260. Promotional Partnerships

The Contractor will support outreach partnerships with the City to increase diversion and reduce contamination. The Contractor will provide retail product available for purchase by Seattle residents and provide annual discounted product opportunities for Seattle residents.

Section 270. Testing Programs

The Contractor will routinely test end products to ensure that they meet relevant regulatory standards.

The Contractor shall also maintain a testing program to verify that various consumer materials, including compostable bags and single-use food service ware and packaging are compostable at the Contractor's Processing Facility. The testing program will follow established and transparent protocol relevant to the technology at the Processing Facility. The Contractor shall initiate testing and related trials for individual consumer products within 30 days of requests from the City, a manufacturer, distributor or food service business. The Contractor shall notify the City and the applicant within 15 days of the completion of testing and shall maintain a website or web pages accessible to the public where all manufactured products approved compostable are listed and, when possible, pictured. Additional testing protocols and specifics will be described in the Operations Plan.

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Section 280. Disposal Prohibition.

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

Section 290. Pilot Tests.

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

D. REPORTING REQUIREMENTS

Section 300. Scale and Trip Records

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 from the City by the Contractor at the Processing Facility. Information include gross and net weights, truck number, route number, source, date, time entering and leaving, and other trip and load data. The Contractor shall keep as back-up a paper copy of each weight transaction. Weights must be obtained from certified private scales approved by the City, or other scales approved by the City. The City has the option of requiring any private scales to be certified as frequently as quarterly.

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

Section 310. Monthly and Quarterly Reports

The Contractor shall submit monthly reports for the length of the Contract period commencing with initiation of Organic Waste processing. These reports shall be 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 and type;

2. Contaminants summary and listing of individual weight receipts for Contaminants delivered to the City for disposal;

Contractor shall submit a quarterly report within fifteen (15) working days of the close of the

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quarter, which shall include:

1. Summary of monthly data for quarter and contract year to date;
2. Summary of end products sold;
3. Discussion of problems and noteworthy experience in program operation; and
4. Contractor recommendations for improvements.

E. COMPENSATION AND EMPLOYMENT WAGES AND RECORDS

Section 400. Payment for Transportation and Processing Services

The City shall pay the Contractor monthly for all tons of Organic Waste transported and processed by the Contractor during the month documented per Sections 300 and 310. From April 1, 2014 through March 31, 2015 the City will pay the Contractor a rate of $49.50 per ton for transportation and processing services.

The City will pay for a minimum weight of 24 tons per load. The City will receive a credit of $3/ton on all loads transported in any month where the average load weight for that month exceeded 27 tons.

The City will receive a credit of $10,000 for each month that the Contractor's Primary Processing Facility is not operating and accepting material.

Section 410. Adjustments in Subsequent Contract Years

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

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

Section 420. Performance Adjustments

The Contractor shall pay the City $1.00 per each minute over 15 minutes if an empty Contractor trailer is not available at City transfer facility when needed for duration of more than 15 minutes.

Section 430. Payment Procedure

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No later than the 10th of each month, the Contractor will submit an invoice and copies of weight information required pursuant to Sections 300 and 310. 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 440. Wage Increases for Employees

All wage and compensation increases for employees of the Contractor granted during the term of this Contract shall be the sole responsibility of the Contractor.

Section 470. 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 480. Withholding and Payment to Workers

If any worker doing transportation or 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.

Section 490. Workers Right to Know

"Right to Know" legislation required the Department of Labor and Industries to establish a program to make employers and employees more aware of the hazardous substances in their work environment. WAC 296-800-108 requires among other things that all manufacturers/distributors of hazardous substances, including any of the items listed on this ITB, RFP or contract bid and subsequent award, must include with each delivery completed Material Safety Data Sheets (MSDS) for each hazardous material. Additionally, each container of hazardous material must be appropriately labeled with: the identity of the hazardous material, appropriate hazardous warnings, and the Name and Address of the chemical

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

F. AFFIRMATIVE EFFORTS AND NON-DISCRIMINATION

Section 500. Employment Actions

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

Section 510. Affirmative Effort Implementation

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

In the event Subcontracting is considered appropriate and feasible to contract performance, the Contractor shall develop a Subcontracting Plan, which also may be referred to as an Outreach Plan. The Subcontracting (Outreach) Plan shall specify the Contractor's affirmative efforts and an agreement to the City for subcontracting to women and minority businesses, and/or diverse employment. The Subcontracting (Outreach) Plan, as submitted and/or as agreed upon with the City thereafter, shall be incorporated as a material part of the Contract. In preparing the Subcontracting (Outreach) Plan, Contractors shall actively solicit qualified, available and capable women and minority-owned businesses to perform the subcontracting work for the contract. The Contractor shall submit the Subcontracting (Outreach) Plan to the City with the solicitation and/or prior to contract execution. At the request of the City, Contractor shall promptly furnish evidence of the Contractor's compliance with these requirements, which may include a list of all subcontractors and/or WMBE subcontractors, and may include a request for copies of the executed agreements between the Contractor and subcontractors, invoices and/or

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performance reports.

Section 520. Investigation of Employment and Affirmative Efforts

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

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

Section 540. Key Persons and Subcontractors

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

Section 560. Equal Benefits

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

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Any violation of this section shall be a material breach of Contract for which the City may:

1. Require the 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 the 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 there under.

G. Federal Provisions

Section 600. Equal Employment Opportunity

All Contractors must comply with federal Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.

Section 610. Civil Rights Act Title VI

The Contractor must comply with the provisions of the Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.). The law provides that no person in the United States shall, on the grounds of race, color or national origin, be denied the benefits of, be excluded from participation in, or be subjected to, discrimination under any program or activity receiving federal financial assistance.

Section 620. 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.

Section 630. OSHA/WISHA

Contractor agrees to comply with conditions of the Federal Occupational Safety and Health Acts of 1970 (OSHA), as may be amended, and, if it has a workplace within the State of Washington, the Washington Industrial Safety and Health Act of 1973 (WISHA), as may be amended, and the standards and regulations issued thereunder and certifies that all items furnished and

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

Section 640. Contract Work Hours and Safety Standards

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

Section 670. Clean Air Act and Federal Water Pollution Control Act

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

Section 680. Energy Efficiency

All contractors and subcontractors must comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

H. SECURITY; LIABILITY; DAMAGES

Section 700. Performance Bond

The Contractor shall provide and maintain at all times a valid, irrevocable Contractor's Performance and Payment Bond ("Bond") for One Million Dollars ($1,000,000). The Bond shall be issued for a period of not less than one year and the Contractor shall provide a new bond, or evidence satisfactory to the City of the renewability of the current bond at least 90 calendar days before it expires. The Contractor shall be named as Principal and the City shall be named as Obligee.

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

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

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

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

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

Section 710. Default of Contractor

This Section is independent, notwithstanding any other provisions of this Contract. Except as provided in the last paragraph of this Section 610, the Contractor may be held in default of the Contract in the event that the Contractor:

1. Is unable to accept Organic Waste, for more than a 48 hour period for processing at the primary or back-up Processing Facility or alternate facility approved by the City;

2. Fails to comply with the terms of any of the Sections in Chapter E (Section 400 – Section 460);

3. Fails to furnish and maintain a Performance and Payment Bond per Section 700;

4. Fails to furnish and maintain the Insurance Requirements per Section 720; or

5. Repeatedly neglects, fails, or refuses to comply with any material term of the Contract, after

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having received written notice of its obligation to do so.

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

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

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

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

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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. If causes beyond the Contractor's control do cause a delay or interruption by either party in performance under the Contract, then the City and the Contractor will meet and reasonably agree on service and or Contract revisions necessary to allow continued performance to the extent reasonably possible during the period of delay or interruption.

Section 720. 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. <u>COVERAGES AND LIMITS</u>
   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

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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 insurance for the Contractor and any subcontractor performing services under this Contract shall include general liability Insurance coverage that includes the City as an additional insured shall be primary and non-contributory as respects the City's self-insurance and/or insurance.

e) All Insurance shall include a requirement providing for a minimum of thirty (30) days prior

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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. <u>NO LIMITATION OF LIABILITY; ADDITIONAL INSURED</u>

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,

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contingent or otherwise. This provision shall apply regardless of whether such limits maintained by the Contractor are greater than those required by this Contract, and regardless whether the certification of Insurance provided by a subcontractor of any tier pursuant to 4) below specifies lower minimum limits than those specified for or maintained by the Contractor.

4. SUBCONTRACTORS

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

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

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

a) An ACORD certificate or equivalent form fully disclosing all coverages and limits of liability maintained.

b) A copy of the additional insured endorsement or blanket additional insured language to the Commercial General Liability Insurance documenting that the City 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 730. Indemnity

To the extent permitted by law, the Contractor shall protect, defend, indemnify and hold the City harmless from and against all claims, demands, damages, costs, actions and causes of actions, liabilities, fines, penalties, judgments, expenses and attorney fees, resulting from the injury or death of any person or the damage to or destruction of property, or the infringement of any patent, copyright, trademark or trade secret, arising out of the work performed or goods provided under this Contract, or the Contractor's violation of any law, ordinance or regulation, contract provision or term, or condition of regulatory authorization or permit, except for damages resulting from the sole negligence or willful misconduct of the City. As to the City of Seattle, the

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Contractor waives any immunity it may have under RCW Title 51 or any other Worker's Compensation statute. The parties acknowledge that this waiver has been negotiated by them, and that the contract price reflects this negotiation.

Section 750. Liquidated Damages

This Section is independent of Section 710. Liquidated Damages pursuant to this Section shall be deducted from the monthly payment to the Contractor. These damages do not apply in the event that a major disaster or emergency causes a disruption in the facility operations or transportation services. The acts or omissions in the left hand column are a breach of this Contract; the amounts in the right hand column are set as Liquidated Damages.

Failure to provide an empty Organic Waste trailer when needed, for more than a 3-hour period at the City's transfer facilities.	$500 per trailer per hour
Failure to remove a full trailer from the City's transfer facilities for more than 24-hour period.	$500 per trailer per hour

I. PROPRIETARY AND CONFIDENTIAL INFORMATION

Section 800. 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 810. Contractor's Understanding and Obligations

Contractor understands that any records (including but not limited to bid or proposal submittals, the Agreement, 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

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record is exempt from disclosure, the rest of that record generally must be disclosed.

If the City receives a public disclosure request made pursuant to RCW 42.56, the City will not assert an exemption from disclosure on behalf of the Contractor. For materials that the Contractor has properly marked, the City will notify the Contractor of the request and postpone disclosure for ten business days to allow the Contractor to file a lawsuit seeking an injunction preventing the release of documents pursuant to RCW 42.56.540. Any notification is provided as a courtesy and is not an obligation on behalf of the City. Unless the Contractor obtains and serves an injunction upon the City before the close of business on the tenth business day after the date of the notification, the City may release the documents. It is the Contractor's discretionary decision whether to file the lawsuit.

In order to request that material not be disclosed until receipt of notification of a public disclosure request, you must identify the specific materials and citations very clearly on the City Contractor Questionnaire that you believe are exempt from disclosure. The City will not withhold material for notification if the Contractor simply marked confidential on the document header, footer, stamped on all pages, or offered a generic statement that the entire document is protected. Only material specifically listed and properly cited on the Contractor Questionnaire will be temporarily withheld until the City provides notification of a public disclosure request.

If the Contractor does not obtain and serve an injunction upon the City within 10 business days of the date of the City's notification of the request, the Contractor is deemed to have authorized releasing the record.

If the Contractor does not submit a request within the Contractor Questionnaire, the Contractor is deemed to have authorized releasing any and all information submitted to the City.

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 Agreement or (b) the Contractor's obligations under this Agreement.

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

Section 820. 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

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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.

J. ANCILLARY PROVISIONS

Section 900. 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 910. 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 or in the Operations Plan without the prior written approval of the City which approval will not be unreasonably withheld or delayed.

Any subcontract made by Contractor shall incorporate by reference all the terms of this Contract except for Equal Benefit provisions (Section 560). Contractor shall ensure that all subcontractors comply with the obligations and requirements of the subcontract, except for Equal Benefit provisions (Section 560).

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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 920. Audit

Upon request, Contractor shall permit the City or it's designee to inspect and audit all pertinent books and records of Contractor, any subcontractor, or any other person or entity that performed work in connection with or related to the 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 930. Compliance with Law

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

Section 940. Licenses and Similar Authorizations

The Contractor, at no expense to the City, shall secure and maintain in full force and effect during the term of this Contract all required licenses, permits, and similar legal authorizations, and comply with all related requirements.

Section 950. Taxes

The Contractor shall pay, before delinquency, all taxes, import duties, levies, and assessments arising from its activities and undertakings under this Contract; taxes levied on its property, equipment and improvements; and taxes on the Contractor's interest in this Contract.

Section 960. Disputes

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The City and Contractor shall maintain business continuity to the extent practical while pursuing disputes. Any dispute or misunderstanding that may arise under this Contract concerning Contractor's performance shall first be resolved, if mutually agreed to be appropriate, through negotiations between the parties' Contract representatives as listed in Section 985, or if mutually agreed, referred to the City's named representative and the Contractor's senior executive(s). Either party may decline or discontinue such discussions and may then pursue other means to resolve such disputes, or may by mutual agreement pursue other dispute alternatives such as alternate dispute resolution processes. Nothing in this dispute process shall in any way mitigate the rights, if any, of either party to terminate the contract in accordance with the termination provisions herein.

If the City believes in good faith that some portion of work has not been completed satisfactorily, the City may require Contractor to correct such work prior to Seattle payment. In such event, the City must clearly and reasonably provide to Contractor an explanation of the concern and the remedy that the City expects. The City may withhold from any payment that is otherwise due, an amount that Seattle in good faith finds to be under dispute, or if the Contractor does not provide a sufficient remedy, Seattle may retain the amount equal to the cost to Seattle for otherwise correcting or remedying the work not properly completed.

Section 970. 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 975. 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 <u>not</u> limit the scope or add commentary to the text.

Section 980. 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

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County.

Section 985. Notices

All official notices or approvals shall be in writing.

To the City:
Hans Van Dusen
Seattle Public Utilities
700 Fifth Avenue, 49th floor
P.O. Box 34018
Seattle, Washington 98124-4018
Phone: (206) 684-4657
Fax: (206) 386-0096

To the Contractor:
Larry Condon
PacifiClean Environmental
111 N Post Street
Spokane, Washington 99201

Phone: (509) 991-0323
Fax: (509) 838-0933

Either party may from time to time designate a new address for notices. Unless otherwise agreed, notices shall be sent by certified mail with return receipt requested and effective when received.

Section 990. 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 995. 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.

PACIFICLEAN ENVIRONMENTAL OF WASHINGTON, LLC

By_____
Larry Condon
Authorized Member

_____
Date

THE CITY OF SEATTLE

By _____
Ray Hoffman, Director
Seattle Public Utilities

_____
Date

bns CITY CLERK

SPU Organics Contract ORD ATT2
Hans VanDusen
January 29, 2013
Version #1

Authorized by Ordinance Number _____

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Form revised: December 12, 2012

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Seattle Public Utilities	Hans Van Dusen/4-4657	Karl Stickel/4-8085

Legislation Title:
AN ORDINANCE authorizing the Director of Seattle Public Utilities to enter into contracts with Lenz Enterprises, Inc. and PacifiClean, LLC to provide organics processing services for the City of Seattle; and ratifying and confirming certain prior acts.

Summary of the Legislation:
This legislation allows Seattle Public Utilities (SPU) to enter into service agreements with Lenz Enterprises, Inc. and PacifiClean, LLC to process organic wastes from the City of Seattle. These agreements will replace SPU's current processing agreement which is targeted to end in March 2014.

Background:
SPU contracts with Cedar Grove Composting, Inc. to process organic wastes under a service agreement that will at the City's discretion end on either March 31, 2014 or March 31, 2015. SPU completed a competitive Request for Proposal process in 2012 and selected Lenz Enterprises, Inc. and PacifiClean, LLC as finalists. The best combination of providers was 40% of organics processing going to Lenz and 60% to PacifiClean. SPU negotiated contracts with the two vendors to process organic waste for the period April 2014 through March 2020, with City options to extend to 2024. The new contracts expand the types of materials composted and incorporate long distance hauling services.

SPU stations currently transfer and haul approximately 50% of the total organic waste collected from its customers to Cedar Grove. SPU contracts with a private station to transfer and haul the remaining 50% of organic waste, also to Cedar Grove. Under the new contracts, SPU will begin *transferring all* of collected organics waste at City stations, while the new organics processors will handle *all* the *hauling* to their new, more distant facilities. As described in this Fiscal Note, the operational change will result in the sale of SPU hauling equipment no longer needed (organic waste trailers and trucks) and transition of SPU hauling staff to other work.

The projected annual cost of organics transfer, hauling, and processing under the proposed contract is approximately equal to the amounts assumed in the 2013-2016 Solid Waste Fund rate study beginning in 2015. Therefore, adopted rates are sufficient to fund projected organics expense for those years.

The rate study assumes a transition to the new contract in 2015 rather than 2014. The earlier transition to the new contracts adds about $0.2M in operating expense (see appropriations notes for details) not anticipated in 2014 adopted rates. As part of the earlier transition, SPU expects

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to sell hauling equipment that is no longer needed for approximately $0.6M in 2013, a transaction that was also not anticipated in the rate study. This increase in cash revenue is sufficient to fund the increased 2014 expense without any changes to adopted rate levels.

With the earlier contract transition and assuming adopted rate levels, the Solid Waste Fund is projected to still meet all financial policy targets under the rate study, albeit with lower net income in 2013 and 2014 due to the following factors:

- A projected loss on sale of the hauling equipment, due to the anticipated sales revenue being less than the accounting value, would is projected to reduce net income by $0.9M in 2013; and
- A combination of increased operating expense due to the new contract cost, offset by decreased depreciation related to the sale of the equipment, would reduce net income by $0.1M in 2014.

In 2015 and 2016, O&M and financial performance under the new contracts is projected to be in line with rate study assumptions.

Please check one of the following:

____ **This legislation does not have any financial implications.**

_X_ **This legislation has financial implications.**

Appropriations:

Appropriations Notes:
This legislation does not require additional appropriations in 2013 as services under this contract do not begin until April 2014. The 2013 budget appropriation is sufficient for payment of the current contract costs.

In 2014, Solid Waste operating and maintenance costs are expected to be about $210,000 greater than what was assumed in the 2014 Endorsed Budget. The Other Operating Expense BCL (N400B-SW) is projected to be under budget by $522,000 due to reductions in SPU hauling expense. However, the General Expense BCL (N000B-SW) is projected to be over budget by $732,000, on net, due to higher contract expense (+$984,000) offset by lower tax expense (-$252,000) because processing expense is deductible from the taxable revenue base.

SPU will determine whether they can manage this increase within overall BCL spending in 2014. If not, additional appropriations to accommodate this increased contract cost for the General Expense BCL may be requested via a quarterly budget supplemental in 2014.

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Anticipated Revenue/Reimbursement Resulting from this Legislation:

Fund Name and Number	Department	Revenue Source	2013 Revenue	2014 Revenue
Solid Waste Fund 43000	SPU	Non-Operating Revenue (Equipment Sales)	$590,000	$0
TOTAL			**$590,000**	**$0**

Revenue/Reimbursement Notes:
The transition to the new services in 2014 will generate a one-time cash benefit in 2013 due to the sale of surplus City hauling trucks and trailers. This cash revenue will be reported as a loss on the income statement to reflect the difference between the sales value and the net book value of the equipment.

Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact:

Position Notes:
There are no direct FTE impacts resulting from this legislation. There will be a reduction in organic waste hauling performed by SPU staff. Impacted staff will be reassigned to garbage hauling, which will be increasing, and some retiring positions will not be filled.

Other Implications:

a) **Does the legislation have indirect financial implications, or long-term implications?**
The sale of hauling equipment will generate additional cash but reduce net income in the year of sale to reflect any loss on sale.

b) **What is the financial cost of not implementing the legislation?**
Without these new contracts, SPU would not have future processing capacity and would need to dispose of organics as garbage.

c) **Does this legislation affect any departments besides the originating department?**
No.

d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?**
The current contract could be extended to April 2015.

e) **Is a public hearing required for this legislation?**
No.

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f) Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?
No.

g) Does this legislation affect a piece of property?
No.

h) Other Issues:
None.

List attachments to the fiscal note below:

CITY CLERK

City of Seattle
Office of the Mayor

February 12, 2013

Honorable Sally J. Clark
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Clark:

I am pleased to transmit the attached proposed Council Bill that authorizes Seattle Public Utilities (SPU) to enter service agreements with Lenz Enterprises, Inc. and PacifiClean, LLC to process organic wastes from the City of Seattle. These agreements will replace SPU's processing agreement which is targeted to end in March 2014.

SPU contracts with Cedar Grove Composting, Inc. to process organic wastes under a service agreement that will, at the City's discretion, end on either March 31, 2014 or March 31, 2015. SPU completed a Request for Proposals process last year and selected Lenz Enterprises, Inc. and PacifiClean, LLC as finalists. The utility then negotiated contracts with the two firms to process organic waste for the period April 2014 through March 2020. The City would retain the option to extend to the contracts to 2024. The new contracts expand the types of food packaging allowable for compost pickup and incorporate new long distance hauling to state-of-the-art facilities.

The projected annual cost of organics transfer, hauling, and processing under the proposed contracts is approximately equal to the amounts assumed in the 2013-2016 Solid Waste Fund rate study beginning in 2015. Therefore, adopted rates are sufficient to fund projected organics collection costs for those years.

Thank you for your consideration of this legislation that will enhance our composting services and continue our leadership in cost-effective and sustainable services. Should you have questions, please contact Timothy Croll, SPU Solid Waste Director, at 684-7934.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Michael McGinn, Mayor
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