Comprehensive

Garbage, Recyclables, and Compostables Collection services

Contract

City of Federal Way

and

Click here to enter text.

September 1, 2020 – September 30, 2030



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This Comprehensive Garbage, Recyclables, and Compostables Collection Services Contract (hereafter, “Contract”), passed by the Federal Way City Council at its regular meeting on the \_\_\_\_day of \_\_\_\_\_, 2019. This Contract is made and entered into this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 2019 (hereafter the “Date of Execution”), by and between the City of Federal Way, a municipal corporation (hereafter “City”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereafter “Contractor”).

# RECITALS

WHEREAS, the City has conducted a competitive process to select a contractor to provide Garbage, Recyclables, and Compostables collection services to all residents, businesses, and institutions located within the Service Area; and

WHEREAS, the Contractor, having participated in the competitive process, acknowledges that the City conducted a thorough and exhaustive competitive process; and

WHEREAS, the Contractor, having participated in the competitive process, acknowledges that the City had the right at any time during the process to reject any or all of the competitors, regardless of their proposals or prices; and

WHEREAS, having completed the competitive process, the City has selected the best candidate to provide the services outlined in the competitive process; and

WHEREAS, the Contractor represents and warrants that it has the experience, resources, and expertise necessary to perform the services as requested in the competitive process; and

WHEREAS, the City desires to enter into this Contract with the Contractor for the services outlined in the competitive process and included below;

NOW, THEREFORE, in consideration of the mutual covenants, agreements, and promises herein contained, the City and Contractor do agree as follows:

# AGREEMENT

# 1. DEFINITIONS

The following definitions apply to terms used in this Contract:

**Bulky Waste:** Discrete items of Garbage of a size or shape that precludes collection in regular collection containers. Bulky Waste includes: large appliances (such as refrigerators, freezers, stoves, dishwashers, clothes washing machines or dryers), water heaters, furniture (such as chairs or sofas), televisions, mattresses, and other similar large items placed at the Curb as discrete separate items. Bulky Waste does not include piles of debris, car parts, construction or demolition debris, any item that would be considered Hazardous Waste, or stumps.

**Can:** A Customer-owned Container that is a water-tight, galvanized sheet-metal or plastic container, not exceeding four (4) cubic feet or thirty-two (32) gallons in capacity; fitted with two (2) sturdy looped handles, one on each side; and fitted with a tight cover equipped with a handle.

**Cart:**  A Contractor-provided 20-, 32-, 64-, or 96-gallon wheeled Container with attached lid suitable for collection, storage, and Curbside placement of Garbage, Recyclables, or Compostables. Cart size variations up to ten percent (10%) are allowable with prior written permission from the City. Carts shall be rodent and insect resistant.

**Change of Control:** The term “Change of Control” means any single transaction or series of related transactions by which the beneficial ownership of more than fifty percent (50%) of the voting securities of the Contractor is acquired by a person or entity, or by a related or affiliated group of persons or entities, who as of the effective date of the Contract do not have such a beneficial interest; provided, however, that intra-company transfers, such as transfers between different subsidiaries or branches of the parent corporation of the Contractor, or transfers to corporations, limited partnerships, or any other entity owned or controlled by the Contractor upon the effective date of the Contract, and transactions effected on any securities exchange registered with the U.S. Securities and Exchange Commission, shall not constitute a Change in Control.

**City:** The word “City” means the City of Federal Way, in King County, Washington. As used in the Contract, use of the term “City” may include reference to the Mayor or his/her designated representative(s). Where the context makes it apparent, references to staff, streets, rights-of-way, activities and things refer to the staff, streets, rights-of-way and activities of the City, and things belonging to or located within the City.

**Commercial Customer:** Non-Residential Customers, including businesses, institutions, governmental agencies, and all other users of commercial-type Garbage collection services.

**Compostables:** Any organic waste material that is Source-separated for processing or composting, such as Yard Debris and Food Scraps generated by any Residential or Commercial customers.

**Contamination Reduction Plan:** The plan developed by the Contractor and annually approved by the City to address contamination in Recyclables and Compostables placed in Customers’ Containers. Contamination includes improperly prepared Recyclables and/or Compostables, materials that cannot be recycled or composted, and excessive moisture.

**Contractor:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_., which has contracted with the City to provide all Services identified in this Contract, including, but not limited to, collecting, transporting, and disposing of Garbage and collecting, processing, marketing, and transporting Recyclables and Compostables.

**Container:** Any Can, Cart, Detachable Container, or Drop-box Container used in the performance of this Contract.

**Contract:** Refers to this contract for comprehensive Garbage, Recyclables, and Compostable collection services.

**Contract Term:** Refers to the term of this Contract as provided for in Section 2.

**County:** King County in Washington State.

**Curb or Curbside:** Refers to the Customers’ property, within five (5) feet of the Public Street or Private Road (or on the sidewalk without completely obstructing the sidewalk, if there is no Customer property within five (5) feet of the Public Street or Private Road) without blocking driveways or on-street parking. If extraordinary circumstances preclude such a location, Curbside shall be considered a placement suitable to the Customer, convenient to the Contractor’s equipment, and mutually agreed to by the City and Contractor.

**Customer:** All account-holders and users of the Contractor’s services within the City.

**Date of Commencement of Service:** September 1, 2020, which is the date that the Contractor agrees to commence the provision of Services as described throughout this Contract.

**Date of Execution:** The date that this Contract is executed by all signatories.

**Day/Days:** Calendar days unless otherwise specified.

**Detachable Container:** A watertight metal or plastic container equipped with a tight-fitting cover, capable of being mechanically unloaded into a collection vehicle, and that is not less than one (1) cubic yard or greater than eight (8) cubic yards in capacity.

**Driveway:** A privately-owned and maintained way that connects a Single-Family Residence or parking area/garage/carport with a Private Road or Public Street.

**Drop-box Container:** An all-metal loose material or compactor container with ten (10) cubic yards or more capacity that is loaded onto a specialized collection vehicle.

**Environmental Law:** Any applicable federal, state, or local statute, code, or ordinance or federal or state administrative rule, regulation, ordinance, order, decree, or other governmental authority as now or at any time hereafter in effect pertaining to the protection of human health or the environment

**Extra Unit:** Excess material that does not fit in the Customer’s primary Container. In the case of Garbage and Compostables Cart services, an Extra Unit is 32-gallons and may be contained in either a plastic bag or Can. In the case of Garbage Containers one (1) cubic yard or more in capacity, an Extra Unit is 96-gallons.

**Food Scraps:** All compostable pre- and post-consumer food waste, such as whole or partial pieces of produce, meats, bones, cheese, bread, cereals, coffee grounds, or egg shells, and food-soiled paper, such as paper napkins, paper towels, paper plates, coffee filters, paper take-out boxes, pizza boxes, or other paper products accepted by the Contractor’s selected composting site. Food Scraps shall not include dead animals, plastics, diapers, cat litter, liquid wastes, ashes, pet wastes, or other materials prohibited by the selected composting facility. The range of materials handled by the Compostables collection program may be changed from time to time upon the mutual agreement of the Parties to reflect those materials allowed by the jurisdictional health department for the frequency of collection provided by the Contractor.

**Garbage:** All putrescible and non-putrescible solid and semi-solid wastes, including, but not limited to, rubbish, ashes, industrial wastes, swill, demolition and construction wastes, dead small animals completely wrapped in plastic and weighing less than fifteen (15) pounds, and discarded commodities that are placed by Customers in appropriate Containers, bags, or other receptacles for collection and disposal by the Contractor. Needles or “sharps” used for the administration of medication can be included in the definition of “Garbage,” provided that they are placed within a sealed, secure container as agreed upon by the City and the Contractor and this handling is consistent with current County sharps policy. The term “Garbage” shall not include Hazardous Wastes, Source-separated recyclable materials, or Source-separated Compostables.

**Hazardous Waste:**  Any hazardous, toxic, or dangerous waste, or material, or contaminant, pollutant, or chemical, known or unknown, defined or identified as such in any existing or future local, state, or federal law, statute, code, ordinance, rule, regulation, guideline, decree, or order relating to human health or the environment or environmental conditions, including but not limited to any substance that is:

1. Defined as hazardous by 40 C.F.R. Part 261.3 and regulated as hazardous waste by the United States Environmental Protection Agency under Subtitle C of the Resource Conservation and Recovery Act (“RCRA”) of 1976, 42 U.S.C. § 6901 et seq., as amended by the Hazardous and Solid Waste Amendments (“HSWA”) of 1984; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., as may be amended; or any other federal statute or regulation governing the treatment, storage, handling, or disposal of waste imposing special handling or disposal requirements similar to those required by Subtitle C of RCRA;
2. Defined as dangerous or extremely hazardous by WAC 173-303-040, as may be amended, and regulated as dangerous waste or extremely hazardous waste by the Washington State Department of Ecology under the State Hazardous Waste Management Act, Chapter 70.105 RCW, or any other Washington State statute, regulation or rule governing the treatment, storage, handling, or disposal of wastes and imposing special handling requirements similar to those required by Chapter 70.105 RCW; and
3. Any substance that comes within the scope of this definition as determined by the City after the Date of Execution of this Contract.

Any substance that ceases to fall within this definition as determined by the City after the Date of Execution of this Contract shall not be deemed to be Hazardous Waste.

**King County Disposal System:**  The facilities owned, leased, or controlled by King County, Washington for the disposal of Garbage, or such other site as may be authorized by the current King County Comprehensive Solid Waste Management Plan and the Interlocal Agreement between the City and King County.

**Mixed-Use Building:** A structure inhabited by both Residential and Commercial Customers.

**Multifamily Complex:** A multiple-unit Residence with four (4) or more attached or unattached dwellings billed collectively for collection service.

**Office Hours:** The hours of 8:00 a.m. through 5:00 p.m., Pacific Standard Time, Monday through Friday except for the holiday schedule specified in Section 4.1.6.

**On-call:** The provision of specified services only upon direct telephone, written, or e-mailed request of the Customer to the Contractor.

**Party:** Either the City or the Contractor.

**Parties:** The City and Contractor.

**Private Road:**  A privately-owned and maintained way that allows for access by a collection vehicle.

**Public Street:**  A public right-of-way used for public travel, including public alleys.

**Recycling:** The preparation, collection, transport, processing, and marketing of Recyclables.

**Recyclables:** The materials designated as being part of a Residential or Commercial Recycling collection program, as listed in Exhibit C.

**Residence/Residential:** A single-family and/or multifamily dwelling individually rented, leased, or owned.

**Services:** Refers to the comprehensive Garbage, Recyclables and Compostables collection and processing services provided by the Contractor pursuant to this Contract.

**Service Area:** The service boundaries indicated in Exhibit A as of the Date of Commencement of Service, which shall be the City’s corporate boundaries.

**Single-Family Residence:**  All one-unit houses, duplexes, triplexes, four-plexes, and mobile homes that are billed for collection service individually and located on a Public Street or Private Road.

**Source-separated:** Certain reclaimable materials that are separated from Garbage by the generator for recycling or reuse, including but not limited to Recyclables, Compostables, and other materials.

**Strike Contingency Plan:** The plan the Contractor will develop pursuant to Section 4.1.19 of this Contract.

**Transition and Implementation Plan**: The plan that the Contractor will develop pursuant to Section 4.1.22 of this Contract.

**Unacceptable Waste:** Materials not allowed in the City’s collection program, including but not limited to highly flammable substances, Hazardous Waste, liquid wastes, special wastes, certain pathological and biological wastes, explosives, toxic materials, radioactive materials, material that the disposal facility is not authorized to receive and/or dispose of, and other materials deemed by state, federal or local law, or in the reasonable discretion of the Contractor, to be dangerous or threatening to health or the environment, or which cannot be legally accepted at the applicable disposal facility.

**WUTC:** The Washington Utilities and Transportation Commission.

**Yard Debris:** Leaves, grass, prunings, branches and small trees. Materials larger than four (4) inches in diameter or four (4) feet in length are excluded. Bundles of Yard Debris up to two (2) feet in diameter by four (4) feet in length and no more than fifty (50) pounds, shall be allowed, and shall be secured by degradable string or twine, not nylon or other synthetic materials. Un-flocked, undecorated whole Christmas trees cut to less than six (6) feet in height are acceptable. Kraft paper bags or Cans labeled “Yard Debris” may also be used to contain extra Yard Debris.

# 2. TERM OF CONTRACT

The Term of this Contract is ten (10) years and one month starting on the Date of Commencement of Service. The City and Contractor, may, at the sole option of the City, extend the Contract for one extension not to exceed two (2) years in duration. The extension shall be under the original terms and conditions of this Contract or as the Contract may have been amended at the time of the extension. To exercise the option to extend this Contract, written notice shall be given by the City to the Contractor not less than one hundred eighty (180) days prior to the expiration of the Contract Term or the expiration of a previous extension. With the Parties’ written consent, the requirement of one hundred and eighty days prior notice may be waived. At the time the City provides the Contractor with written notice of extension the Contractor may provide the City with a written proposal detailing services, terms, and rates for a longer contract extension or renegotiation of this Contract. The City shall review the proposal and may, at its sole discretion, determine whether to enter into negotiations regarding the proposal.

# 3. CONTRACTOR REPRESENTATIONS AND WARRANTIES

The Contractor represents and warrants to the City as follows:

* *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.
* *Authority*. 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 the Contractor under this Contract in accordance with its terms. This Contract has been validly executed by an authorized representative of the Contractor, with the authority to sign on behalf of and bind the Contractor, and this Contract constitutes a valid and legally binding and enforceable obligation of Contractor.
* *Government Authorizations and Consents*. The Contractor has or will obtain at its sole cost prior to the Date of Commencement of Service any 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.
* *Compliance with Laws*. The Contractor is not in violation of, and will not knowingly violate, any applicable laws, ordinances, or regulations, which may impact the Contractor’s ability to perform its obligations under this Contract or which may have any impact on the City. The Contractor is not subject to any order or judgment of any court, tribunal, or governmental agency that impacts its operations or assets or its ability to perform its obligations under this Contract.
* *Accuracy of Information*. None of the representations or warranties in this Contract, and none of the documents, statements, reports, certificates, or schedules furnished or to be furnished by the Contractor pursuant to this Contract or in connection with the performance of the obligations contemplated under this Contract, at any time contain or will contain untrue statements of a material fact or omissions of material facts.
* *Independent Examination*. In accepting and fulfilling responsibilities established by this contract, the Contractor represents and affirms that it has made its own examination of all conditions affecting the performance of this Contract, currently and into the future, and of the quantity, quality, and expense of labor, equipment, vehicles, facilities, properties, materials needed, and of applicable taxes, permits, and applicable laws. The Contractor affirms that within the Service Area it is aware of the present placement and location of in-place Containers. The Contractor represents and warrants that it is capable of servicing Containers at their present locations, and that it is capable of providing service to Customers in any areas of the Service Area that may be built out or developed during the term of this Contract.

# 4. SCOPE OF WORK

## 4.1 General Collection System Requirements

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### 4.1.1 Service Area

The Contractor shall provide all Services pursuant to this Contract throughout the entire Service Area.

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Any areas annexed into the City during the term of this Contract shall be addressed outside of this Contract through separate franchise or other arrangement.  Unless the Contractor is providing solid waste collection service within the annexed area under a WUTC certificate at the time of annexation, the City shall have no obligation to offer such annexed areas to be served by the Contractor nor shall the Contractor have an obligation to service such areas.  If the Contractor is providing solid waste collection service within the annexed area under a WUTC certificate at the time of annexation, then RCW 35A.14.900 shall govern the respective rights and obligations of the parties with respect to solid waste collection service.

### 4.1.2 Service to Residences on Private Roads and Driveways

The Contractor shall provide Curbside service to all Residences located on Private Roads, except as noted in this Section. Drive-in charges are to be used only for requested service on Driveways and are prohibited on Private Roads. The Contractor shall use smaller limited-access service vehicles as necessary to provide service to those Customers.

In the event that the Contractor believes that a Private Road cannot be safely negotiated or that providing walk-in service on Driveways for Single-Family Residence Customers is impractical due to distance or unsafe conditions, the Contractor may request that the City evaluate on-site conditions and make a determination of the best approach for providing safe and appropriate service to the Customer. The City’s determination shall be final, provided that the Contractor shall not be required to endanger workers, equipment, or property.

If the Contractor believes that there is a probability of Private Road or Driveway damage, the Contractor shall inform the respective Customer(s) and may require a road damage waiver agreement in a form previously approved by the City. In such event, if the Customer(s) refuse to sign such a road damage waiver, the Contractor may decline to provide service on those Private Roads or Driveways, and the Customer(s) will only be serviced from the closest Public Road access. Such determination that damage is probable must be approved in writing by the City prior to any action or refusal of service by the Contractor.

### 

### 4.1.3 Hours/Days of Collection

All collections from Single-family Residential Customers and Residential zones, including mixed-use areas shall be made between the hours of 7:00 a.m. and 6:00 p.m. on a consistent weekday, unless the City authorizes a temporary extension of hours or days. Saturday collection is allowed to the extent consistent with holiday and inclement weather schedules.

All collections from Commercial Customers shall be made between the hours of 6:00 a.m. and 6:00 p.m., Monday through Saturday, provided that service to those Customers shall neither disturb Residential Customers in adjoining Residential zoned areas, nor violate the noise provisions of the Federal Way Revised Code, as it currently exists and as amended in the future. Collections from Commercial Customers within audible distance of Residential Customers shall be made only between the hours of 7:00 a.m. and 6:00 p.m., and no earlier than 9:00 a.m. on Saturday. In case of complaint, Contractor shall adjust routes to eliminate noise impacts. Exemptions to the hour requirements may be granted in writing in advance by the City to accommodate the special needs of Commercial Customers where allowed by the Federal Way Revised Code. The City’s noise ordinance, as it currently exists and as amended in the future, may further restrict these terms and hours of collection.

### 

### 4.1.4 Employee Conduct

The Contractor’s employees collecting Garbage, Recyclables, or Compostables shall at all times be courteous, refrain from loud, inappropriate or obscene language, exercise due care, perform their work without delay, minimize noise, and avoid damage to public and private property. If on private property, Contractor employees shall follow the regular pedestrian walkways and paths, returning to the street after replacing empty Containers. Contractor employees shall not trespass or loiter, cross flowerbeds, hedges, or property of adjoining premises, or meddle with property that does not concern them or their task at hand. While performing work under the Contract, Contractor employees shall wear a professional and presentable uniform with a company emblem visible to the average observer, and carry photo identification on their person. At the City’s option and direction, Contractor employees shall work with groups or organizations, such as neighborhood community organizations, homeowner associations, or the City’s Utilities, Police, or Fire Departments, for training to recognize and call the appropriate agency when suspicious activities are observed.

If any person employed by the Contractor to perform collection services is, in the opinion of the City, incompetent, disorderly, or otherwise unsatisfactory, the City shall promptly document the incompetent, disorderly, or unsatisfactory conduct in writing and transmit the documentation to the Contractor with a demand that such conduct be corrected. The Contractor shall promptly investigate any written complaint from the City regarding any unsatisfactory performance by any of its employees and take immediate corrective action. The City reserves the right to request at any time that the employee be removed from all performance of additional work under this Contract. The Contractor shall remove the employee from Contract work within four hours of City notification.

### 4.1.5 Disabled Persons Service

The Contractor shall provide Single-Family carryout service from an exterior location convenient for the Customer for Garbage, Recyclables, and Compostables in cases where no household member has the ability to place Containers at the Curb, at no additional charge. The Contractor shall use criteria that are fair and meet the needs of the City’s disabled residents. These criteria shall comply with all local, state, and federal regulations, and shall be subject to City review and approval prior to program implementation, which shall not be unreasonably withheld by the City.

### 

### 4.1.6 Holiday Schedules

The Contractor shall observe the same holiday schedule as the King County Transfer Stations. When observed holidays fall on a regular collection day, the Contractor shall reschedule the remainder of the week of regular collection to the next succeeding business day, which shall include Saturdays. The Contractor may not collect Single-Family Residence and Multifamily Complex Garbage, Recyclables, or Compostables earlier than the regular collection day due to a holiday. Commercial collections may be made one (1) day early only with the consent of the Commercial Customer. Holiday scheduling information shall be included in written program materials, on the Contractor’s web site, and by press releases to general news media in the Federal Way area by the Contractor the week prior to the holiday affecting service.

### 4.1.7 Inclement Weather

The Contractor shall provide all collection services unless weather conditions are such that the Contractor determines continued operation would result in danger to the Contractor’s staff, area residents, or property. In that event, the Contractor shall collect only in areas that do not pose a danger. When inclement weather occurs, the Contractor shall notify the City by telephone or email of operation plans by collection sector by 6:00 a.m. for that business day. Once Contractor vehicles are on-route, all areas missed due to hazardous conditions shall be confirmed by a route supervisor, and an update of missed collections by Customer type and vicinity shall be reported to the City not later than 6:00 p.m. that business day. To the extent practical, the Contractor shall coordinate missed collections in Single-Family Residence areas so that either all or none of their materials are collected. The Contractor shall provide automated notification calls, texts, or e-mails (at Customers’ preference) to all Customers missed that day by 6:00 p.m., with information about the planned make-up service schedule by material type.

As conditions change, the Contractor will also promptly update its website with collection status and detailed Customer instructions specific for each impacted service day. On each inclement weather day, the Contractor shall release notices to local newspapers and radio stations notifying residents of the modification to the collection schedule.

For all Customers, the Contractor shall collect reasonable accumulated volumes of materials equal to what would have been collected on the missed collection day(s) from Customers at no extra charge. Following notification to the City, the Contractor will be provided temporary authorization to perform collection services after regular collection hours and/or on Saturdays following disruptions due to weather in order to finish collection routes.

The Contractor shall handle weather-related service interruptions as follows:

1. Single Family Customers: Make-up collection for Garbage, Recyclables, and Compostables shall occur on that Customer’s service day the following week.
2. The Contractor shall provide make-up collection service for Garbage, Recyclables, and Compostables from Multifamily Complex and Commercial Customers as soon as weather conditions allow safe operations.

In the event inclement weather prevents service on the same scheduled Single-family Residence collection day(s) two or more weeks in a row (for example, no collection service for Tuesday Customers two weeks running), make-up collection will be made on the next possible day. In these cases, the Contractor shall not wait for the regularly scheduled collection day the following week to service that area.

The Contractor and City will develop and implement a weather-related operations and communications protocol to more specifically address management of service disruptions. This protocol will detail pre-event and post-event inclement weather designation and recovery plans, as well as identifying potential temporary collection sites. The inclement weather/disruption in service requirements in the preceding paragraphs may be changed upon mutual written agreement of the Contractor and City at any time during the term of this Contract to better serve Customers.

Weather policies shall be included in program information provided to Customers and on the Contractor’s city-specific webpage.

### 4.1.8 Suspending Collection from Problem Customers

The City and Contractor acknowledge that, in rare cases, some Customers may cause disruptions or conflicts that make continued service to that Customer unreasonable. Those disruptions or conflicts may include, but not be limited to, repeated damage to Contractor-provided containers, repeated suspect claims of timely set-out followed by demands for return collection at no charge, repeated unsubstantiated claims of Contractor damage to a Customer’s property, repeated contamination of Recyclables or Compostables, repeated instances of Unacceptable Waste included in Garbage, or other such problems.

The Contractor shall make every reasonable effort to provide service to those problem Customers; however, the Contractor may deny or discontinue service to a problem Customer after prior written notice is given to the City of the intent to deny or discontinue service, including the name, service address, reason for such action, and whether reasonable efforts to accommodate the Customer and provide services have occurred and failed. If the Customer submits a written appeal to the City objecting to the Contractor decision, the City may, at its discretion, intervene in the dispute. In this event, the decision of the City shall be final. The City may also require the denial or discontinuance of service to any Customer who is abusing the service or is determined to be ineligible.

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### 4.1.9 Missed Collections

If Garbage, Recyclables, or Compostables are set out inappropriately, improperly prepared, or contaminated with unacceptable materials, the Contractor shall place in a prominent location a written notification tag in accordance with the Contractor’s Contamination Reduction Plan that identifies the specific problem(s) and reason(s) for rejecting the materials for collection. Failure to provide proper written notification to Customers, per the Contamination Reduction Plan referenced in Section 4.1.11, of the reason for rejecting materials for collection shall be considered a missed collection and subject to performance fees due to lack of proper Customer notification.

The failure of the Contractor to collect Garbage, Recyclables, or Compostables that have been set out by a Customer in the proper manner on the appropriate day shall be considered a missed collection, and the Contractor shall collect the materials from the Customer within one business day of the Contractor’s receipt of notification of the missed pick-up. The Contractor shall maintain an electronic record of all calls related to missed collections and the response provided by the Contractor. Such records shall be made available for inspection upon request by the City, and the information shall be included in monthly reports. (See Reporting requirements set forth in Section 4.3.4).

If the Contractor is requested by the Customer to make a return trip due to no fault of the Contractor, which the Contractor can prove through documentation (e.g., the Containers were not placed at the curb on time and the driver documented that fact in a log, with a photograph, etc.), the Contractor may charge the Customer an additional return trip fee for this service, provided the Contractor notifies the Customer of this charge in advance and the Customer agrees to payment of the return trip fee. The Contractor will not be liable for a missed collection in such case.

### 4.1.10 Same Day Collection

Garbage, Recyclables, and Compostables collection shall occur on the same regularly scheduled day of the week for Single-Family Residence Customers. The collection of Garbage, Recyclables, and Compostables from Multifamily Complexes and Commercial Customers need not be scheduled on the same day.

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### 4.1.11 Requirement to Recycle and Compost and Quality Assurance

The Contractor shall recycle or compost all Source-separated Recyclables and Compostables collected, unless express prior written permission is provided by the City. The Contractor shall use facilities that:

* Process materials to a high standard to maximize the recovery and recycling of all incoming recyclable and compostable materials;
* Are operated to minimize cross-contamination of materials that would result in otherwise Recyclable materials being misdirected to a market or disposal where they would not be recovered;
* Are designed and operated to minimize the residual stream of otherwise recoverable materials destined for disposal.
* Have sufficient preprocess and screening staff and equipment to ensure that otherwise recoverable materials are not cross-contaminated and rendered non-recyclable due to the nature of the processing facility.

The City and Contractor agree that the Contractor is being fully compensated to recycle or compost these collected materials, and that maximum cost-effective diversion of Recyclables and Compostables from disposal is a primary objective of the services provided under this Contract.

Concurrently with the start of this Contract, the Contractor shall implement a Contamination Reduction Plan for Recyclables and Compostables for tagging, probationary periods, material rejection, and suspension of service. Contamination Reduction Plan elements will be highlighted that differ between collection sectors (Single-Family, Multifamily, Commercial, and Drop-box). The Contamination Reduction Plan will address thresholds for when contamination levels trigger Customer contact, when to place a Customer on service probation for possible discontinued collection, when to suspend collection service and remove the subject Carts or Containers, and finally but not limited to, procedures to allow a Customer to reinstate and resume service after it has been suspended after following established contamination reduction protocols. The Contractor shall implement the Contamination Reduction Plan for all Customers and shall notify the City via email of any Customer being charged contamination fees or facing service suspension. Specific actions are listed in Section 4.3.5 for the Contractor to address contamination issues at Multifamily Complexes.

The Contractor and City shall annually update these procedures to ensure that contamination problems are addressed promptly and fairly for all sectors. No later than November 1 of each year of the Contract, the Contractor and/or City shall propose any desired changes to the Contamination Reduction Plan for the following calendar year. The Contractor and City shall mutually agree upon changes to the plan by December 31 of each year to continuously improve Recyclables and Compostables material quality.

The City reserves the right to engage in product stewardship and/or waste prevention activities, and Contractor acknowledges that product stewardship systems may alter the composition or quantity of Recyclables set out for collection. Based on waste prevention, product stewardship efforts, or changed market conditions, the City may elect to remove one or more materials from the Exhibit C list.  The Parties agree to determine if such removal from the Exhibit C list creates significant costs or savings, and to explore changes in compensation per Section 5.3.

### 4.1.12 Routing, Notification, and Approval

The Contractor shall indicate, on a map acceptable to the City, the day of the week Garbage, Recyclables, and Compostables shall be collected from each Single-family Residence.

The Contractor may change the day of collection by giving notice at least thirty (30) days prior to the effective date of the proposed change and obtaining written approval from the City. On the City’s approval, the Contractor shall provide affected Customers with at least fourteen (14) days written, telephone, and/or e-mail notice of pending changes of collection day. The Contractor shall obtain the prior written approval from the City of the notice to be given to the Customer; such approval shall not be unreasonably withheld.

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### 4.1.13 Vehicle and Equipment Type/Age/Condition/Use

The Contractor shall use new 2020 or later model year collection vehicles for Garbage, Recyclables, and Compostables collection services performed under this Contract. Back-up vehicles used fewer than thirty (30) operating days a calendar year shall not be subject to the age that apply to regularly-used vehicles, but shall be presentable, shall be in safe working order, and shall be subject to all other conditions of this section. The accumulated annual use of individual back-up vehicles shall be reported in the Contractor’s monthly report.

Vehicles used in the performance of this Contract shall be of sufficient size and dimension to provide service to all Customers, regardless of location. In some cases, this may mean that a small collection vehicle, capable of servicing narrow and/or tight locations must be used, and the Contractor shall procure, maintain, and operate those vehicles to ensure collection services are provided throughout the Service Area.

Vehicles shall be maintained in a clean and sanitary manner, and shall be thoroughly washed at least once each week. All collection equipment shall have appropriate safety markings, including all highway lighting, flashing and warning lights, clearance lights, and warning flags, all in accordance with current statutes, rules, and regulations. Equipment shall be maintained in good condition at all times. Vehicles shall be repaired and/or have damaged areas repainted upon showing rust on the body or chassis or at the request of the City. All parts and systems of the collection vehicles shall operate properly and be maintained in a condition compliant with all federal, state, and local safety requirements and be in a condition satisfactory to the City. All vehicles shall be equipped with variable tone or proximity activated reverse movement back-up alarms.

The Contractor shall maintain collection vehicles and Containers to ensure that no liquid wastes (e.g., Garbage or Compostables leachate) or oils (e.g., lubricating, hydraulic, or fuel) are discharged to Customer premises or streets. Any equipment not meeting these standards shall not be used within the Service Area until repairs are made. All collection and route supervisor vehicles used by the Contractor shall be equipped with a minimum 10-gallon capacity spill kit. Clean-up of any discharge of liquid wastes or oils that may occur from Contractor’s vehicles or Containers shall be initiated within three (3) hours of being noticed/notified by route staff, customers, or the City, and shall be performed by the Contractor at its sole expense. Such clean-up or removal shall be documented with pictures, and notice of such clean-up shall be provided to the City in writing. The Contractor shall notify the City-designated spill reporting telephone number of any spills that enter drainages within four (4) hours. Failure by the Contractor to clean-up the discharge in a timely fashion to the satisfaction of the City shall be cause for performance fees, as described in Section 6.1. The Contractor shall notify the City and the Customer of any leakage from non-Contractor-owned Containers within four (4) hours of observation so that repairs may be made in a timely manner.

No advertising shall be allowed on Contractor vehicles other than the Contractor’s name, logo, customer service telephone number, and website address, unless otherwise previously approved in writing by the City. Special promotional messages may be permitted by the City; provided they are either painted directly on vehicles or on placards attached to vehicles. The City’s approval must be granted in writing. Vehicle inventory numbers shall be displayed on the passenger (right) door and rear panel of the vehicle body and shall show, in lettering at least 12” high, an abbreviated truck designation number specific to the City. For example, FW-1, FW-2, etc., limited to a two digit letter and numeral to aid in rapid identification of vehicles to allow more precise reporting and correction of any unsatisfactory condition related to specific vehicles. The City may approve a different numbering system proposed by the Contractor provided that it meets the objective of rapid and memorable truck identification

All Contractor route, service, and supervisory vehicles shall be equipped with properly licensed two-way communication equipment, capable of communicating within the entire Service Area. Collection vehicles shall also be equipped with back-up cameras, as well as route-recording cameras integrated with their on-board route management system.

All collection vehicles shall be equipped with global positioning systems (“GPS”), as well as an on-board computer and data tracking system to track route progress and log non-set-outs, extras, and other service issues. The system shall incorporate photo documentation of all persistent on-route service issues for a particular Customer with repeated complaints. The Contractor’s drivers shall be fully trained and required to use these systems. The resulting data shall be uploaded to the Contractor’s Customer service database no less than hourly to allow Customer service and route management personnel to be fully apprised of route progress, and be able to address misses and other Customer inquiries in near real-time.

### 4.1.14 Container Requirements and Ownership

Contractor Garbage fees in Exhibit B include all costs of the associated Containers unless Container rental for a particular service is specifically listed in Exhibit B, such as rent for Drop-box Containers.

Single-Family Residence, Multifamily Complex, and Commercial Customers must use Contractor-provided Containers for their initial Container of Garbage collection service, with the exception of compacting Drop-box Containers, which may be Customer-owned or leased from other parties. Plastic bags or Cans may be used for excess volumes of Garbage, but not as a Customer’s primary container.

In the event the Customer uses a Can for Extra Units, the Contractor shall handle the Customer-owned Garbage Container in such a way as to prevent undue damage. The Contractor shall be responsible for rectifying all Contractor-caused unnecessary or unreasonable damage to Customer-owned Containers.

All Contractor-provided Containers shall be permanently, clearly, and prominently molded-in, molded-on, imprinted, or otherwise labeled in a fashion that any reasonable person can readily determine the size capacity and material preparation requirements of the Container. Contractor-provided Containers shall not be screened, molded-in, molded-on, imprinted, or otherwise permanently labeled with the Contractor’s logo or company name.

All Contractor-provided Containers shall be delivered in fully working condition without needed maintenance, repairs, and/or painting, and free of residue and odors from prior use.

In the event that a particular Customer repeatedly damages a Container or requests more than one replacement Container during the term of the Contract or due to negligence or misuse, the Contractor may charge the Customer for the depreciated value of the Container and shall forward in writing the Customer’s name and address to the City with a full explanation of incident(s). In the event that the problem continues, the Contractor may discontinue service to that Customer, provided the City provides prior written approval.

#### **4.1.14.1 Garbage, Recyclables, and Compostables Carts**

The Contractor shall provide a 20-, 35-, 64-, and 96-gallon Garbage Carts for the respective level of Garbage collection, 35-, 64-, and 96-gallon Carts for Recyclables collection, and 35-, 64-, and 96-gallon Compostables Carts for Compostables collection. All Carts shall be manufactured from a minimum of fifteen percent (15%) post-consumer recycled plastic, with a lid that will accommodate a label. Carts shall be provided to requesting Customers within seven (7) days of the Customer’s initial request.

All Contractor-provided Carts shall be maintained by the Contractor in good condition for material storage and handling; contain no jagged edges or holes; contain wheels or rollers for movement and be equipped with an anti-skid device or sufficient surface area on the bottom of the container to prevent unwanted movement. Carts shall contain instructions for proper use, including any Customer actions that would void manufacture warranties (such as placement of hot ashes in the container causing the container to melt), and procedures to follow to minimize potential fire problems.

Collection personnel shall proactively note damaged hinges, holes, poorly functioning wheels, and other similar repair needs for Contractor-provided Carts (including those for Garbage, Recyclables, and Compostables), and forward written or electronic repair notices that business day to the Contractor’s service personnel. Repaired or replacement carts shall be provided within seven (7) days at the Contractor’s expense. Any Cart that is damaged or missing due to an accident, collection truck mechanical error, act of nature or the elements, fire, or theft or vandalism by a third party shall be replaced no later than three (3) business days after notice from the Customer or the City at the Contractor’s expense. In the event that a Cart is inadvertently lost into a collection vehicle during collection due to mechanical or operator error, the Contractor shall inform the Customer that business day.  All Cart repairs and replacements shall be at no charge to the Customer unless the Customer’s negligence has caused the damage.

#### **4.1.14.2 Detachable Containers and Drop-box Containers**

The Contractor shall furnish and install 1-, 1.5-, 2-, 3-, 4-, 6-, and 8-cubic yard Detachable Containers, and 10-, 20-, 25-, 30-, and 40-cubic yard un-compacted Drop-box Containers to any Customer who requires their use for storage and collection of Garbage or Recyclables within three (3) days of the Customer’s request. Containers shall be located on the premises in compliance with any related ordinance, and a manner satisfactory to the Customer and for collection by the Contractor**.**

The Contractor shall charge rent for temporary and permanent Drop-box Container service in accordance with Exhibit B. The Contractor may not charge Customers any additional fees, charges, rates, or any expenses in connection with Drop-box Container service other than the applicable fees listed in Exhibit B.

Detachable Containers shall be watertight and equipped with tight-fitting metal or plastic covers; have four (4) wheels for Containers 4-cubic yards and under unless site-specific conditions (slope or service access) dictate the use of a non-wheeled Container; be in good condition for Garbage, Compostables, or Recyclables storage and handling; be safe for the intended use; and, have no leaks, jagged edges, or holes. Drop-box Containers shall be all-metal, and if requested by a Customer, equipped with a tight-fitting screened or solid cover operated by a winch in good repair.

The Contractor shall contact the City’s Fire Marshal and obtain a determination concerning the conditions under which plastic Detachable Containers may be used. The Contractor may use plastic Detachable Containers at all locations where allowed by the City’s Fire Marshal. Each plastic Detachable Container shall be marked with an additional sticker warning Customers and the Contractor’s staff where the Container may be placed as determined by the City’s Fire Marshal.

Detachable Containers shall be cleaned, reconditioned, and repainted (if necessary), at the Contractor’s expense before being delivered to a Customer. Steel Containers shall be repainted as needed, or upon notification from the City. The Contractor shall provide a fee-based On-call Container cleaning service to Customers.

All Containers on Customers’ premises are at the Contractor’s risk and not the City’s. The Contractor shall repair or replace within one (1) business day any Container that was supplied by or taken over by the Contractor and was in use if the City personnel, King County Health Department inspector, or other agent having safety or health jurisdiction determines that the Container fails to comply with reasonable standards or constitutes a surface water contamination, health, or safety hazard.

The Contractor shall place Detachable Containers in areas mutually agreed upon by the Contractor and Customer with the least slope and best vehicle access possible. For Customers that must stage their Detachable Containers on Public Streets or on significantly sloped hills, the Contractor shall make a good faith effort to work with the Customer to ensure that Detachable Containers are not left unattended in potentially problematic staging areas and are sufficiently restrained such that the Container may not roll and cause harm to persons or property. The Contractor may require a Customer to attend to the Containers immediately prior to and after collection. Any disputes arising between the Contractor and a Customer as to what constitutes a “significantly sloped hill” or a “safety hazard” shall be submitted in writing to the City, and the City’s decision shall be final. Containers shall be replaced after emptying in the same location as found, with all lids closed.

Customers may elect to use Containers from other sources, and shall not be subject to discrimination by the Contractor regarding collection services, provided that such Containers are compatible with the Contractor’s collection equipment; however, Containers owned or secured by Customers must be properly labeled with Contractor-provided stickers to be eligible for collection (except in the case of compactor Containers). The Contractor is not required to service Customer Containers that are not compatible with the Contractor’s equipment.

#### **4.1.14.3 Ownership**

At the end of the Contract Term or in the event the Contract is terminated for any reason, any or all Containers used by Contractor to provide Contract Services, shall, at the option of the City, revert to City ownership without further compensation to the Contractor. Containers that do not revert to City ownership shall by removed from Customer locations by the Contractor within thirty (30) days of the expiration of this Contract. Temporary Containers, Compactor Drop-boxes leased to Customers outside of this Contract, and all Containers held in reserve at the Contractor’s yard and not actively in service at a Customer location are excluded from this provision.

The City may elect to assign this potential ownership of said Containers to a third-party, and shall provide written notice to the Contractor. Any remaining warranties associated with the Containers described herein shall be transferred to the City or the City’s assignee.

The City in advance accepts all such Containers in their “as-is, where-is” condition and without any express or implied warranty by the Contractor of any kind, including but not limited to any warranty of fitness for any particular purpose or any warranty of merchantability. As between the City and the Contractor, the City assumes all risks of loss or liability on account of the City’s exercising of its rights under this Section 4.1.14.3 or any use made of any such Containers after they become the property of the City or assignee of the City.

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#### **4.1.14.4 Container Colors and Labeling**

Contractor-provided Carts and Detachable Containers for Recyclables shall be blue, Compostables Carts shall be green, and Carts and Detachable Containers for Garbage shall be grey. Specific Container colors shall be approved in writing by the City prior to the Contractor’s initial order of new Containers.

All Carts, including new and those in place at the beginning of this Contract, shall be labeled with material preparation, and contact information that includes both the (253) 833-3333 customer service phone number and the City’s website address. All Carts shall be embossed or labeled with the type of material to be placed in the cart with lettering no less than two inches high on both sides of the Cart. All label messaging and embossed lettering shall be approved by the City prior to ordering by the Contractor. Label location and label placement guidelines on Carts shall be subject to the City’s prior approval. Labels shall be reapplied when faded, damaged, or upon the City or customer request. If the Garbage, Recycling, or Compostables collection program instructions on affixed labels becoming obsolete, the Contractor at their sole expense shall produce and affix labels featuring current information on all Carts.

All Detachable Containers and Drop-box Containers to be used for Garbage or Recyclables collection shall have materials preparation instructions and telephone/contact information, including both a customer service phone number and a website address, printed on a sticker, and subject to the prior written approval of the City. All Detachable Containers and Drop-box Containers to be used for Garbage or Recyclables shall have a sticker affixed that states: “Leaky dumpster? Damaged Lid?” and provides the Contractor’s applicable phone number to call for repair or replacement. Information shall be printed in a size that is easily read by the users, on durable UV-resistant label stock squarely affixed to each Container. All labels shall be approved in writing by the City prior to ordering by the Contractor. Label location and label placement guidelines on Containers shall be subject to the City’s prior written approval.

All Contractor-provided Containers shall be relabeled by the Contractor if labels fade or are unreadable, or upon City’s request for any individual Container.

#### **4.1.14.5 Container Weights**

The Contractor shall not be required to lift or remove materials from any Container exceeding the safe working capacity of the Container, lifting mechanism or collection vehicle. For Drop-box Containers, the combined weight of the Drop-Box and contents must not cause the collection vehicle to exceed legal road weight limits.

Any loose Extra Units that are not placed in a Container and must be manually loaded shall be limited to fifty (50) pounds per bag or bundle unless otherwise authorized by the Contractor.

#### **4.1.14.6 Container Removal Upon City or Customer Request**

The Contractor shall remove all Containers upon service cancellation within seven (7) days after the final service date for which Customer payment is anticipated, or upon three (3) days of specific Customer, property manager, property owner, or the City’s request. Failure to remove Containers within the specified timeline shall be subject to the same performance fees as delayed Container delivery for that Customer sector. The contents of removed Containers shall be managed as if they were collected on a regular route (e.g., Recyclables shall be recycled, Compostables shall be delivered for composting). The disposal or recycling of materials accumulating in the Contractor’s Container at the former Customer’s location after the final Customer-paid collection shall be at the Contractor’s cost, not the former Customer’s cost.

### 4.1.15 Inventory of Vehicles and Facilities

The Contractor shall provide to the City, on the Date of Commencement of Service of this Contract, a complete initial inventory of the vehicles and facilities to be used in the performance of this Contract. The inventory shall include each vehicle (including chassis model year, type of body, material collected, capacity, model, and vehicle identification number) and each facility to be used in performance of this Contract (including address and purpose of the facility). The Contractor may change vehicles and facilities from time to time, and shall include the revised inventory in the monthly report provided for in Section 4.3.4.1. The Contractor shall maintain vehicles and facilities levels during the performance of this Contract at least equal to those levels described in the initial inventory. The City reserves the right to request maintenance history logs for vehicles or equipment during the performance of this Contract.

### 4.1.16 Spillage and Leakage of Vehicle Contents

All materials collected by the Contractor shall be completely contained in collection vehicles at all times. Hoppers on all collection vehicles shall be cleared or emptied frequently to prevent blowing or spillage of debris. All Drop-Box loads (both open and compactor) shall be properly and thoroughly covered or tarped to prevent any spillage of material prior to Contractor vehicle entering any Private Road or Public Street.

Any Contractor-caused spillage or leakage of materials, whether reported by Customers, Contractor employees, or the City, shall be cleaned up or removed by the Contractor within four (4) hours of occurrence at Contractor’s sole expense. Such spillage or leakage shall be contained immediately by Contractor employees, including immediate deployment of on-board “spill kits” to prevent or limit any materials from entering the City’s municipal stormwater system.

The Contractor shall develop spill response procedures for review and approval by the City before initiating any work under this Contract. Prior to operating any vehicle in the City, all Contractor vehicle drivers shall be provided with hands-on training on the location, maintenance, and use of “spill kits” and associated containment and notification procedures. Such training shall be provided to all vehicle drivers at least annually.

The Contractor shall be responsible for reimbursement of all City-incurred costs in the event that City staff or agents subsequently provide spill containment or clean-up of spillage or leakage caused by the Contractor.

In the event of leakage from Contractor vehicles or any Containers, the Contractor shall notify the designated City contact and provide documentation including pictures taken before and after clean-up or removal, along with incident description and location, how and when Contractor learned of the incident, and a summary of measures used to correct the incident. This information will be reported via e-mail to the Contract administrator within one (1) business day of the incident.

If the leakage is due to faulty door or gate seals on Contractor’s equipment, repairs shall be completed before the equipment returns to operation in the City. Any Contractor-supplied Container reported to be leaking by the City, Contractor employees, or Customers shall be replaced by the Contractor within one (1) business day of notification.

Leakage or spillage not cleaned up or removed by the Contractor within the required time frame shall be cause for performance fees as described in Section 6.1, and may also be subject to fines and penalties pursuant to City municipal code. Contractor expressly acknowledges it is solely responsible for any local, state, or federal violations which may result from leakage or spillage resulting from Contractor’s operations.

Failure of the Contractor to comply with all clauses in this Section shall be cause for performance fees, as described in Section 6.1.

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### 4.1.17 Disruption Due to Construction

The City reserves the right to construct any improvement or to permit any such construction in any Public Street in such manner as the City may direct, which may have the effect for a time of preventing the Contractor from traveling the accustomed route or routes for collection; However, the Contractor and the City shall develop a reasonable workaround to enable the Contractor to continue to collect Garbage, Recyclables, and Compostables to the nearest extent possible as though no interference existed upon the streets or alleys normally traversed. These services shall be performed at no extra fee or cost to the City or the Contractor’s Customers.

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### 4.1.18 Contractor Labor Negotiations, Strike Contingency Planning, and Performance During Labor Disruption

No later than ninety (90) days prior to the expiration of any labor agreement associated with services performed under this Contract, the Contractor shall provide the City in writing with its planned response to labor actions that could compromise the Contractor’s performance under this Contract. The Contractor-prepared Strike Contingency Plan shall address in detail:

1. The Contractor’s specific staffing plan to cover Contract services, including identification of staff resources moved from out-of-area operations and the use of local management staff to provide basic services. The staffing plan shall be sufficient to provide recovery of full operations within one (1) week following the initiation of the disruption.
2. Contingency training plans to ensure that replacement and management staff operating routes are able to continue to collect route data and follow collection and material delivery procedures for all material streams collected from Customers.
3. Identification of staffed temporary Drop-box Containers or staffed packer truck locations for all material streams. For all sites identified in the Contractor-prepared Strike Contingency Plan, the Contractor shall list the property owner/lessee’s contact information and the date on which permission for temporary use was received. The City shall review these locations, after which the City shall approve or deny in writing use of specific locations.
4. A recovery plan to address how materials will be collected in the event of a short-notice disruption (e.g., a wildcat strike) that does not allow the Contractor to collect all materials on their regular schedule within one (1) week following the initiation of the disruption.

The Contractor shall keep the City informed of the status of active labor negotiations on a timely basis. During the period active negotiation phase near the end of labor contracts with Contractor employees or at any time when strike authorization is under active consideration by Contractor’s employees, the Contractor shall keep the City informed on a daily basis. In the event that labor disruptions of any kind result in reductions in service delivery, the Contractor shall inform the City within three (3) hours by phone and e-mail of the nature and scope of the disruption, as well as the Contractor’s plans for activating Strike Contingency Plan elements. The Contractor shall report to the City via e-mail the areas (per a detailed map) and customer counts of served and un-served customers by material stream and service sector at the close of each service day on which collection operations have been impacted.

During recovery from the impacts of an active Labor Disruption, the Contractor shall provide make-up collection on Saturday for all Single-family Garbage, Compostables, and Recyclables collection Customers missed as a result of the Labor Disruption.

In the event that a disruption lasts more than one (1) week for Garbage and Compostables or two (2) weeks for Recyclables for Single-family Residential Customers, the Contractor with approval of the City shall provide staffed Drop-box Containers and/or staffed packer trucks for Customer use for each affected material stream in approved locations throughout the affected service areas. The Contractor will also provide the collection of the equivalent volume of each material that would normally have been collected if no Labor Disruption had occurred, at no additional charge on the next regular collection day for each material.

The City and Contractor agree that the following special compensation and performance fees reflect the best estimate of the impacts of the Labor Disruption to Customers and the City. (In addition to any regularly due Administrative fee) The Contractor shall pay the City monthly by the tenth day of the following month:

1. A performance fee of two thousand five hundred dollars ($2,500) a day for each day of Labor Disruption from the 1st day to the 7th day of the Labor Disruption;
2. A performance fee of five thousand dollars ($5,000) a day for each day of Labor Disruption from the 8th day to 14th day of the Labor Disruption; and
3. A performance fee of ten thousand dollars ($10,000) a day for each day of Labor Disruption for every day beyond the 14th day of Labor Disruption.

The performance fees listed as 1 through 3, above, are intended to apply to any complete work stoppage where alternative but substantially equivalent service by non-striking employees is not provided by the Contractor or otherwise. In the event substantially equivalent service is provided by the Contractor through the employment of non-striking employees at any point during the course of the labor disruption, the Contractor is entitled to reduce the amount of the performance fees that otherwise would be due on a pro-rata basis, based on the percentage of Contract service provided to Customer provided on that day. Given the nature of the array of pervasive service interruptions arising from labor disruptions, the Contractor shall not be allowed any cure period opportunity; provided, however, that the City may elect to receive the equivalent value of additional services, as negotiated, in lieu of some or all of these labor disruption-specific performance fees.

The Contractor’s failure to comply with the Contractor-prepared Strike Contingency Plan of this section shall be subject to a special fee of five hundred dollars ($500) per day for its non-compliance during the Labor Disruption event as determined solely by the City. This special fee is separate compensation to the City for the Contractor’s failure to plan and execute the provisions of this section. The special fee shall be paid to the City within thirty (30) days of the Contractor’s receipt of the City’s invoice.

Fees paid by the Contractor under the terms of this Section 4.1.19 are not regular performance fees for the purposes of Section 6 and shall not be counted in the cumulative performance fee default threshold referenced in Section 6.2 (6).

### 4.1.19 Site Planning and Building Design Review

The Contractor shall, upon request and without additional cost, make available site planning assistance to either the City and/or property owners or their representatives. The site planning assistance shall be available for all new construction or remodeling of buildings and structures within the Service Area, and shall address the design and planning of Garbage, Recyclables, and Compostables container storage and Contractor service access areas and their location upon the site of the proposed construction or remodeling project. Contractor planning assistance for optimizing loading docks and other areas shall also be available for existing building managers when realigning Garbage, Recyclables, and Compostables services. Contractor planning assistance shall be provided within five (5) working days of request.

Assistance shall include, but not be limited to, reviewing and providing comments on building designs and site plans to ensure that those designs and plans incorporate:

* Garbage, Recyclables, and Compostables removal areas and their location upon the site of the proposed construction or remodeling project;
* Adequate floor and vertical space for the storage and collection of Containers for all materials;
* adequate access for vehicles to collect and empty Containers, including overhead clearance, turning radius, and access that does not require backing across sidewalks or violating any City code;
* Avoidance of surface water drains and ditches when considering Container locations and developing strategies for containment of any potential leaks; and,
* Strategies to reduce interior and exterior noise and emissions.

All communications regarding this process shall be conducted electronically via email.

### 4.1.20 Safeguarding Public and Private Facilities

Contractor shall protect all public and private improvements, facilities, and utilities whether located on public or private property, including, but not limited to, streets, curbs, signs/posts, light poles, and planting strips. If such improvements, facilities, utilities, or streets are damaged as a result of Contractor’s operations, Contractor shall notify the City in writing of all damage within four (4) hours, and Contractor shall repair or replace the same or pay the City for the costs of repairs, including overhead and administrative costs. If the damage creates a public safety issue that requires an immediate response, Contractor shall, along with notifying the City in writing, call the City to inform them of such matter. If Contractor fails to do so within seven (7) days unless mutually agreed, the City shall cause repairs or replacement to be made, and the cost, including overhead and administrative costs, of doing so shall be paid by the Contractor.

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### 4.1.21 Transition and Implementation of Contract

The Contractor shall develop, with the City’s input and prior written approval, and submit to the City no later than one hundred and twenty days (120) days after the Date of Execution of this Contract, a Transition and Implementation Plan for introducing the new and revised services to the different Customer sectors (i.e., Single-family, Multifamily Complex, and Commercial Customers), and detailing a specific timeline as to when different activities and events will occur, including details of Container delivery, how different events impact other events in the timeline and the process to be used to ensure that implementation occurs with no disruption. The Transition and Implementation Plan shall cover the entire period following the Date of Execution of this Contract, up through and including the six (6) month period following the Date of Commencement of Service. The Contractor shall separately describe in detail what is involved with each of the activities and events listed in the timeline. The Transition and Implementation Plan shall specifically address how the Contractor intends to proceed in the event of inclement weather and what contingency plans will be in place to accelerate implementation if Container delivery or other planned activities are impacted by inclement weather.

The Contractor shall be responsible for funding all the design, development, printing, sorting, mail prep, delivery, and mailing costs, including the cost of the postage-prepaid mail-back cards and any costs associated with the website ordering services, and of all new and continuing service and educational materials described above and needed to comply with the Transition and Implementation Plan outreach described in this section of the Contract.

Unless otherwise directed by the City, any additional promotional, educational, informational, and outreach materials provided by the Contractor to Customers in connection with the initial transition and implementation of the Contract shall be designed, developed, printed, and delivered by the Contractor, at the Contractor’s cost, and subject to the City’s prior review and written approval and the City’s final approval as to method of delivery. The City will be provided a minimum of two (2) weeks to review the outreach materials included in the Contractor’s Transition and Implementation Plan schedule to allow sufficient time for the City’s prior review and written approval.

### 4.1.22 Hiring Preference

For initial hiring under this Contract, the Contractor and subcontractors shall give hiring preference to any Garbage, Recyclables, or Compostables collection workers who serviced City routes for the previous hauler at the time that the previous collection contract expired and have been displaced as a result of the City awarding this Contract, provided that such workers are fully qualified and meet the Contractor’s standards for employment. Nothing in this section is intended to create any third party rights under this Contract.

Upon the hiring of a displaced collection worker the Contractor shall be required to keep the displaced worker whole in regard to the combined value of workers’ wages and benefit accruals earned as of the date of displacement. To the extent application of the Contractor’s collective bargaining agreement (if applicable) would otherwise result in a reduction in pay or benefits, the existing pay/benefit accrual will be maintained at the current rate until such time as the applicable bargaining agreement provision(s) provides for an increase. Any displaced worker must be reimbursed by the company for any required COBRA payment made in order to retain health care coverage during the time period between displacement and when the worker would become eligible for such benefits under the Contractor’s bargaining agreement.

### 4.1.23 Performance Review

The City may, at its option, and upon reasonable notice to the Contractor, conduct a review of the Contractor’s performance under this Contract. If conducted, the performance review shall include, but is not limited to, a review of the Contractor’s performance relative to requirements and standards established in this Contract, including Customer service standards. The Contractor agrees to fully cooperate with the performance review and work with City staff and consultants to ensure a timely and complete review process.

The results of the performance review shall be presented to the Contractor within thirty (30) days of completion. Should the City determine that the Contractor fails to meet the Contract performance requirements and standards, the City shall give the Contractor written notice of all deficiencies. The Contractor shall have sixty (60) days from its receipt of notice to correct deficiencies to the City’s satisfaction. If the Contractor fails to correct deficiencies within sixty (60) days, the City may allow the Contractor additional time to comply, accept other remedies for the service failure, or proceed with the contract default process pursuant to Section 6.2 of this Contract, at the City’s sole option.

The costs of the development and implementation of any action plan required under this Section 4.1.24 or Section 6.1 for the purpose of addressing failures on the part of the Contractor to perform in accordance with the terms and conditions of this Contract shall be paid for solely by the Contractor, and the costs of developing or implementing such action plan shall not be passed on to Customers or the City, or included in rates or fees charged to Customers.

The City may, at its option, and upon reasonable notice to the Contractor, design and implement an alternative annual Contract compliance monitoring program with or without Contractor performance incentives. If such a program is desired by the City, the City and Contractor agree to negotiate in good faith the monitoring methodologies used to ensure accurate and unbiased sampling of performance data. The City shall bear the costs of City staff, City-retained consultants and performance incentives (if used) and the Contractor shall bear the costs of Contractor staff and route costs to perform the monitoring.

### 4.1.24 Continual Monitoring and Evaluation of Operations

The Contractor’s supervisory and management staff shall be available to meet with the City at either the Contractor’s office or City’s offices, at the City’s option, on a weekly basis during the period three (3) months before and two (2) months after the Date of Commencement of Service and monthly throughout the term of the Contract to discuss operational and Contract issues.

The Contractor shall continually monitor and evaluate all operations to ensure that compliance with the provisions of this Contract is maintained.

The City may periodically monitor collection system parameters such as participation, Container condition, contents weights, and waste composition. The Contractor shall assist and fully cooperate with the City by coordinating the Contractor’s operations with the City’s periodic monitoring to minimize inconvenience to Customers, the City, and the Contractor. The Contractor also shall provide full access to equipment, processing facilities, route and Customer service data, safety records, and other applicable information. The City’s review of Contractor activities and records shall occur during normal Office Hours and shall be supervised by the Contractor’s staff.

### 4.1.25 Collection/Disposal Restrictions

Unless otherwise directed by the City, all Garbage collected under this Contract, as well as residues from processing Recyclables and Compostables (to the extent required for the City to comply with its Solid Waste Interlocal Agreement with King County), shall be delivered to the King County Disposal System in compliance with all King County rules regarding such disposal. On any particular route, the Contractor shall collect Garbage and deliver it directly to the King County Disposal System, without adding material from routes or customers in other jurisdictions.

Garbage containing obvious amounts of yard debris shall not knowingly be collected from Customers and instead prominently tagged with a written notice informing the Customer that King County does not accept yard debris mixed with Garbage for collection.

The Contractor shall not knowingly collect or dispose of Unacceptable Waste or other materials that are either restricted from disposal or would pose a danger to collection employees. Whenever Contractor rejects or does not collect materials for this reason, the Contractor shall leave a written notice in a prominent location with the rejected materials to describe why rejected materials were not collected and providing the Customer with a contact for further information about proper disposal options for such materials.

Title to and liability for any Unacceptable Wastes that are included with any materials collected under this Contract by Contractor despite the City’s and Contractor’s attempts to prevent the inclusion of such materials shall not pass to Contractor, but shall remain with the party from whom such Unacceptable Waste or any such other materials or substances is received.

Garbage collected by the Contractor may be processed by the Contractor to recover recyclable material; provided, however, that the residual is appropriately disposed of within the King County Disposal System. The processing of such recyclable material shall only be undertaken with the prior written approval of King County and the City and in accordance with the Solid Waste Interlocal Agreement between King County and the City. Contractor in all such instances shall charge Customers no more than the equivalent Garbage disposal fee within the King County Disposal System or such other disposal fee as the City reasonably directs the Contractor to charge. In addition, hauling fees charged by the Contractor in such instances shall be no higher than those provided for in Exhibit B.

In the event that the City wishes to conduct a waste composition analysis, the Contractor, upon reasonable notice from the City, shall deliver collected Garbage from one or more routes to the designated sorting site and shall coordinate with the City to ensure successful sampling. In the event that the sorted Garbage requires delivery to a County authorized disposal site, the City shall pay the Contractor for that delivery based on the Contractor’s standard Container rental and hauling rates.

### 4.1.26 Emergency Response

Contractor shall assist the City in the event of a disaster or emergency declaration. Contractor services shall be provided as soon as practical upon City direction and paid at the Contract rates in Exhibit B.

Contractor shall keep full and complete records and documentation of all costs incurred in connection with disaster or emergency response, and include such information in the monthly and annual reports required under Section 4.3.4. Contractor shall maintain such records and documentation in accordance with the City’s prior written approval and any standards established by the Federal Emergency Management Agency, and at the City’s request, shall assist the City in developing any reports or applications necessary to seek federal assistance during or after a federally-declared disaster.

## 4.2 Collection Services

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### 4.2.1 Single-Family Residence Garbage Collection

#### **4.2.1.1 Subject Materials**

The Contractor shall collect all Garbage placed at Curbside for disposal by Single-Family Residence Customers all properly prepared and contained materials in and adjacent to Garbage Carts, Cans, and bags.

#### **4.2.1.2 Containers**

The Contractor shall provide collection Containers to Customers at no additional charge as part of the Customer-chosen service level. Micro-can and Garbage Carts shall be delivered by the Contractor to Single-Family Residence Customers within seven (7) days of the Customer’s initial request. Each Customer’s initial Container must be Contractor-provided Container, provided that Garbage in excess of the Customer’s initial Container may be bundled or placed in a Customer-owned Can or plastic bag.

#### **4.2.1.3 Specific Collection Requirements**

The Contractor shall offer regular weekly collection of the following service levels:

1. One 20-gallon Garbage Cart;
2. One 32 gallon Garbage Cart;
3. One 64-gallon Garbage Cart; and
4. One 96-gallon Garbage Cart.

The Contract shall also offer a service of once per month collection of non-putrescible waste in a 35-gallon Cart.

Once each year through the use of an on-demand call-based service, the Contractor shall provide a curbside collection service to handle bulky materials at no additional charge to Single-Family Residence Customers. Each service shall accept two categories of bulky household items: (A) up to one (1) cubic yard of individual small items not larger than three (3) feet by three (3) feet, with each individual item weighing not more than fifty (50) pounds; and (B) up to three (3) larger items, including all appliances (white goods), mattresses, sofas, furniture, barbecues, carpet (in rolls no larger than six (6) feet in length and one (1) foot in diameter) and hot water tanks. The Contractor shall have discretion to refuse any Unacceptable Waste items, if instructions are provided to the Customer for proper disposal.

Carry-out charges shall be assessed only to those Customers who choose to have the Contractor move Containers to reach the collection vehicle at its nearest point of access. Carry-out charges shall be assessed in twenty-five (25) foot increments only to those Customers for whom the Contractor must move a Container over five (5) feet to reach the curb at the collection vehicle’s nearest point of access. Carry-out service Customers must place their Containers in a location visible from a collection vehicle at street level and along a fully paved access way. Garbage in excess of Container capacity or the subscribed service level shall be collected and properly charged as Extra Units to the Customer; with the exception of excess Garbage collection otherwise required under this Contract at no additional charge to the Customer. The Contractor shall maintain route lists in sufficient detail to allow accurate recording and charging of all Extra Units. Customers shall be allowed to specify that no Extra Units be collected without prior Customer notification (colloquially referred to as a “take no extra” account), which shall be provided by the Single-Family Residence Customer no less than one (1) business day prior to that Customer’s regular collection.

Collections shall be made from Single-Family Residences on a regular schedule on the same day and as close to a consistent time as possible. The Contractor’s employees shall make collections in an orderly and quiet manner, and shall return all Containers, in an upright position, with lids closed and attached, to their original set out location.

Extra charges may be assessed for materials loaded so as to lift the Can, or Garbage Cart lid in excess of six (6) inches from the normally closed position. Overweight Containers shall be left at the Curb and tagged with written notification as to why it was not collected. Customers may specify to the Contractor that they may not be charged for Extra Units, in which case any such Containers shall be left at the Curb uncollected and tagged with written notification as to why it was not collected.

### 4.2.2 Single-Family Residence Recyclables Collection

#### **4.2.2.1 Recyclable Materials**

Residential Recyclables shall be collected from all participating Single-Family Residences Customers as part of basic Garbage collection services, without extra charge. If operational or recycling processing improvements are made that allow additional materials to be recycled at no additional cost to the Contractor, the Contractor agrees to expand the defined list of Residential Recyclables to cover such materials, subject to prior written approval by the City. The Contractor shall collect Curbside prepared and either called-in or set-out Recyclables as described in Exhibit C.

#### **4.2.2.2 Containers**

The Contractor shall provide collection Containers to Customers at no charge. The default Recycling Cart size shall be 96-gallons, provided that the Contractor shall offer and provide 35- or 64-gallon Recycling Carts on request to those Single-Family Residence Customers requiring less capacity than provided by the standard 96-gallon Recycling Cart.

Recycling Carts shall be delivered by the Contractor to new Single-Family Residence Customers, those Customers requesting replacements, or Customers that had previously rejected their Recycling Cart, within seven (7) days of the Customer’s request.

#### **4.2.2.3 Specific Collection Requirements**

Single-Family Residence Recyclables collection shall occur weekly on the same day as each household’s Garbage and Compostables collection. Collections shall be made from Residences on a regular schedule on the same day and as close to a consistent time as possible. The Contractor shall collect on Public Streets and Private Roads in the same location as Garbage collection service is provided. The Contractor’s employees shall make collections in an orderly, non-disruptive and quiet manner, and shall return Containers with their lids closed and attached to their set out location, and out of any Public Street, in an orderly manner.

The defined list of Residential Recyclables in Exhibit C shall be collected from all participating Single-Family Residences as part of basic Garbage collection services, without extra charge. The Contractor shall collect all Residential Recyclables from Single-Family Residences that are placed in Contractor owned Carts or are boxed or placed in a paper bag next to the Customers’ Recycling Cart. Recyclables must be prepared as described in Exhibit C and uncontaminated with food or other residues. No limits shall be placed on set-out volumes for Curbside Recyclables, other than those specifically listed in Exhibit C. In the event that large quantities of commercially-generated materials are consistently set out at a Single-Family Residence, the Contractor shall request the resident to use a larger Recycling Cart or use commercial recycling services for the excess volumes. If the resident continues to set out commercial quantities of Recyclables, the Contractor shall notify the City for further action.

### 4.2.3 Single-Family Residence Compostables Collection

#### **4.2.3.1 Subject Materials**

Properly-prepared Compostables shall be collected from all Single-Family Residence Customers.

#### **4.2.3.2 Containers**

The Contractor shall provide one Compostables Cart to each Single-Family Garbage Customer at no additional charge and shall provide additional Compostable Carts and service at the additional Compostable Cart fee provided in Exhibit B. The default Compostables Cart size shall be 96-gallons, provided that the Contractor shall offer and provide 35- or 64-gallon Compostables Carts on request to those Single-Family Residence Customers requiring less capacity than provided by the default Compostables Cart.

Excess Yard Debris material that does not fit in a Compostables Cart shall be bundled or placed in Kraft paper bags or properly labeled Customer-owned Cans. Customers choosing to use their own Can for excess Yard Debris shall be provided durable stickers by the Contractor that clearly identify the container’s contents as “Yard Debris.” Excess Yard Debris shall be charged at the Extra Compostables Unit rate specified in Exhibit B.

Compostables Carts shall be delivered by the Contractor to new Customers and Customers requesting a replacement Compostables Cart within seven (7) days of the Customer’s request. The Contractor shall include instructional materials regarding Food Scrap recycling via Compostables Carts, subject to the City’s prior written approval.

The Contractor shall provide an on-call fee-based Compostables Container cleaning service to Customers at the rate provided in Exhibit B.

#### **4.2.3.3 Specific Collection Requirements**

Properly prepared Compostables shall be collected weekly on the same day as each household’s Garbage and Recyclables collection from all subscribers. Collections shall be made from Single-Family Residence Customers on a regular schedule on the same day and as close to a consistent time as possible. Compostables in excess of 96 gallons may be charged at the additional Cart rate (if that Customer has ordered one or more additional Compostables Carts) or as Compostables Extra Units in 32 gallon increments in accordance with Exhibit B.

Upon direction from the City, for two collection cycles immediately following a City-designated storm event, up to 96 additional gallons of loose or bagged storm debris shall be accepted with regular quantities of Compostables without extra charge, provided that the materials are prepared and set-out as described for excess Yard Debris in the prior section. The City shall designate no more than three (3) storm events each calendar year.

Compostables may be placed in Carts, paper bags, bundles, or relabeled Cans next to the initial Compostables Cart, provided that Food Scraps shall be contained in the initial Cart and only Yard Debris shall be placed in bags, bundles, or open cans.

The Contractor shall collect on Public Streets and Private Roads in the same location as Garbage collection is provided. The Contractor’s employees shall make collections in an orderly and quiet manner, and shall return Containers in an upright position, with lids attached, to their set out location and out of the public street.

### 4.2.4 Multifamily Complex and Commercial Customer Garbage Collection

#### **4.2.4.1 Subject Materials**

The Contractor shall collect all Garbage set out for disposal by Multifamily Complex and Commercial Customers in or properly prepared and contained materials next to Containers.

#### **4.2.4.2 Containers**

Multifamily Complex and Commercial Customers shall be offered a full range of Container and service options, including Garbage Carts, one (1) through eight (8) cubic yard non-compacted Detachable Containers, and collection from one (1) through six (6) cubic yard Customer-owned or leased compacted Detachable Containers. Containers shall be provided to Customers at no charge, except for compacting Containers or unless otherwise set forth in this Contract and directed by the City.

Materials in excess of Container capacity or the subscribed service level shall be collected and properly charged as Extra Units as directed by the City. The Contractor shall develop and maintain route lists in sufficient detail to allow accurate recording and charging of all Extra Units.

The Contractor may use either or both front-load or rear-load Detachable Containers to service Multifamily Complex and Commercial Customers. However, not all collection sites within the City Service Area may be appropriate for front-load collection due to limited maneuverability or overhead obstructions. The Contractor shall provide Containers and collection services capable of servicing all Customer sites, whether or not front-load collection is feasible.

Containers shall be delivered by the Contractor to requesting Multifamily Complex and Commercial Customers within three (3) days of the Customer’s initial request.

#### **4.2.4.3 Specific Collection Requirements**

Collections from both Multifamily Complex and Commercial Customers shall be made on a regular schedule on the same day and as close to a consistent time as possible to minimize Customer confusion.

The Contractor shall provide locks for Containers upon request and remove and replace Containers from enclosures and position (roll-out) Containers up to twenty-five (25) feet for Garbage (and Recycling and Compostable) collection at no additional charge. Additional roll-out charges may be assessed in twenty-five (25) foot increments only to those Multifamily Complex and Commercial Customers for whom the Contractor must move a Container over twenty-five (25) feet to reach the collection vehicle at its nearest point of access. Extra charges may be assessed for materials loaded so as to lift the Container lid in excess of six (6) inches from the normally closed position. The Contractor shall not charge fees for either opening gates or unlocking containers. Customers with hard-to-access Containers requiring the Contractor to wait for Customer Container relocation or requiring Contractor’s use of specialized equipment for Container relocation may charge those Customers additional access fees and/or hourly fees consistent with Exhibit B.

Multifamily Complex and Commercial Garbage may request extra collections and shall pay a proportional amount of their regular monthly rate for that service as established by the City.

### 4.2.5 Multifamily Complex and Commercial Recyclables Collection

#### **4.2.5.1 Subject Materials**

All properly prepared Recyclables listed in Exhibit C for Multifamily Complex and Commercial Customers, shall be collected as part of the basic Garbage collection services, up to the specified quantity limit in Section 4.2.5.3 without extra charge.

#### **4.2.5.2 Containers**

The Contractor shall provide Recycling Containers at no additional charge to all Multifamily Complex and Commercial Customers requesting Containers.

The Contractor shall encourage and promote participation in Recyclables and Compostables services and shall recommend appropriate relative Container sizes through its site visit and evaluation process. The Contractor shall encourage the use of Detachable Containers or Drop-box Containers instead of multiple Carts at locations where more than one cubic yard of Recycling capacity is provided, unless constraints favor the use of Carts. Containers used for the collection of Recyclables shall be delivered by the Contractor to requesting Customers within three (3) days of the Customer’s initial request. The Contractor may decline to collect Recyclables if the Container in which they are placed by the Customer contains Excluded Materials or other materials that do not conform to the definition of Recyclables or that do not meet specifications.

For Multifamily Complex Customers, Recyclables contamination reduction elements will be provided by the Contractor upon request or whenever contamination levels exceed established thresholds. Contractor-supplied contamination reduction elements specifically for Detachable Containers shall include: specialized lids with slots for depositing Recyclables, and functional lock bars and locks. Sufficient inventory specialized lids with slots shall be maintained to enable Container delivery standards set in Section 6.1.

Multi-lingual recycling instruction decals shall be affixed to Detachable Containers upon request.

#### **4.2.5.3 Specific Collection Requirements**

Multifamily Complex and Commercial Recyclables collection shall occur at least weekly or more frequently (but not more than three times per week) if space constraints preclude providing sufficient weekly capacity. Commercial Customers shall be subject to a two 96-gallon Recycling Cart limit. In cases where multiple tenants share Garbage service, each tenant shall be considered and set-up as a separate Customer for the purposes of receiving up to two 96-gallon Recycling Carts. Multifamily Customers shall be collected without limit.

Commercial Customers requiring additional capacity may select any vendor (including the Contractor) and procure those services outside of this Contract. In the event that the Contractor provides those additional services at rates negotiated between the Contractor and the Commercial Customer, the following fee cap will apply: the combined fee for separate Garbage, Recyclables, and Compostables collection services may not be any greater than the equivalent monthly Garbage fee for that same volume of material. The provision of fee-based Commercial Recycling shall comply with the service and billing standards of this Contract, but at market rates subject to the combined fee cap described above.

Collections shall be made on a regular schedule on the same day(s) of the week and as close to a consistent time as possible to minimize Customer and tenant confusion. The Contractor’s employees shall make collections in an orderly, non-disruptive, and quiet manner, and shall return Containers after emptying to the same location as found, with their lids closed.

The Contractor shall provide suitable locks for all Container types upon request at no charge. The Contractor shall remove and replace Containers from enclosures and position (roll-out) Containers up to twenty-five (25) feet for Garbage (and Recycling and Compostable) collection at no additional charge. Additional roll-out charges may be assessed in twenty-five (25) foot increments only to those Multifamily Complex and Commercial Customers for whom the Contractor must move a Container over twenty-five (25) feet to reach the collection vehicle at its nearest point of access.

The Contractor shall not charge fees for either opening and closing gates, or unlocking and relocking gates and lids on Containers.

### 4.2.6 Multifamily Complex and Commercial Customer Compostables Collection

The Contractor shall provide subscription-based Compostables collection services to requesting Multifamily Complexes and Commercial Customers.

#### **4.2.6.1 Subject Materials**

The Contractor shall provide collection of Compostables from any requesting Multifamily Complex or Commercial Customer, subject to that Customer’s continued compliance with material preparation requirements. Contaminated or oversized Compostables materials rejected by the Contractor shall be tagged in writing in accordance with the Contamination Reduction Plan with an appropriate problem notice explaining why the material was rejected.

#### **4.2.6.2 Containers**

Carts shall be provided to subscribers as part of the service at no additional charge. Compostables Containers shall be delivered by the Contractor to Multifamily Complex and Commercial Customers within three (3) days of a Customer’s request.

The Contractor shall offer regular weekly and twice-weekly collection of the following service levels, at the rates set forth in Exhibit B:

1. One 35-gallon cart (weekly)
2. One 64-gallon cart (weekly or twice-weekly)
3. One 96-gallon cart (weekly or twice-weekly)

#### **4.2.6.3 Specific Collection Requirements**

Multifamily Complex and Commercial Customer Compostables collection shall occur weekly or twice-weekly, as subscribed for and requested by the Customer. Collections shall be made on a regular schedule on the same day(s) of the week and as close to a consistent time as possible to minimize Customer confusion. The Contractor’s employees shall make collections in an orderly and quiet manner, and shall return Containers after emptying to the same location as found, with their lids closed.

Customers may, at their sole option, direct the Contractor to routinely re-line Compostables Carts with approved biodegradable liners for the per unit rate specified in Exhibit B.

### 4.2.7 Drop-Box Container Garbage Collection

#### **4.2.7.1 Subject Materials**

The Contractor shall provide Drop-Box Container Garbage collection services to Customers, in accordance with the service level selected by the Customer.

#### **4.2.7.2 Containers**

The Contractor shall pay the cost of procuring and providing Containers for Garbage meeting the standards described in Section 4.1.14. Both Customer-owned and Contractor-owned Drop-box Containers shall be serviced, including Customer-owned compactors.

The Contractor shall maintain a sufficient Drop-box Container inventory to provide delivery of empty containers by the Contractor to new and temporary Customers within three (3) business days after the Customer’s request.

#### **4.2.7.3 Specific Collection Requirements**

The Contractor shall provide dispatch service and equipment capable of collecting full Drop-box Containers on the same business day if the Customer’s initial request is received by the call center before 10:00 a.m., and no later than the next business day if the Customer’s initial call is received by the call center after 10:00 a.m. Drop-box Containers shall be delivered to new Customers within one business day of their request.

The Contractor shall detach, remove and replace Drop-Box Containers from locked or unlocked enclosures at no additional charge. The Contractor may charge additional time and/or mileage only if (1) the Customer requests that Contractor deliver material to a facility other than the closest King County disposal facility, (2) the facility is one to which the Contractor is allowed to deliver the material under this Contract, and (3) Contractor delivers the material to such facility after advising the Customer in writing (e-mail is acceptable) as to the basis of the additional time and/or mileage charges to be payable by the Customer on account of such delivery(ies).

### 4.2.8 Temporary (Non-Special Event) Container Customers

The Contractor shall maintain a sufficient Container inventory, including Detachable Container and Drop-box Containers, to provide delivery of empty Containers by the Contractor to temporary Customers within three (3) business days after the Customer’s initial request. The charges for temporary Detachable Container service as listed in Exhibit B shall include delivery, collection, distance, and disposal or processing for Recyclables or Compostables. No additional fees other than those included in Exhibit B may be charged. Temporary Garbage services do not include collection and shall not exceed ninety (90) days in duration. Customers requiring service for more than ninety (90) days shall subscribe for regular combined Garbage, Recycling, and Compostables service.

### 4.2.9 Special Event Services

Contractor shall provide temporary Garbage, Recyclables, and Compostables Containers and signage for Customers’ special events within the Service Area at the rates listed in Exhibit B. Contractor shall provide such Customers with assistance in determining Container needs and signage for Garbage, Recyclables, and Compostables at the special events, including site visits and technical assistance to ensure that the maximum Recyclables and Compostables diversion is achieved. Contractor shall coordinate their efforts with the City, and provide such Customers and the City with a summary of the volumes and tonnages of materials disposed of and diverted for recycling and composting.

Contractor shall provide these special event services as a bundle, with each event providing collection of Recyclables and Compostables as part of the event Garbage collection service. The provision of Garbage-only service for special events shall only be provided on a case-by-case basis upon prior written approval of the City.

### 4.2.10 City Services

The Contractor shall provide Garbage, Recyclables and Compostables collection to all City-owned municipal facilities, parcels, and parks as a part of this Agreement at no additional charge. The service levels for each City facility listed may be changed at the City’s discretion and at no additional cost to the City. Of the Parks Facilities listed below, those with an “\*” shall receive seasonal and/or year-round collection services on site, using Detachable Containers or Carts at the City’s direction. Contractor shall not be anticipated to provide scheduled collection services at the other listed Parks. At the City’s discretion and at no additional cost to the City, any City-owned facilities or parcels may receive occasional temporary Compostables, Recyclables, or Garbage services (typically via Drop-Box Container) in support of City maintenance of these sites.

Facilities and parks include, but are not limited to, the following:

| **FACILITY** | **ADDRESS** |
| --- | --- |
| **City Facilities:** | |
| Federal Way City Hall | 33325 8th Avenue S |
| Brooklake Community Center | 726 S 356th Street |
| Celebration Park Maintenance Site | 1095 S 324th Street |
| Dumas Bay Centre/Knutzen Theatre | 3200 SW Dash Point Road |
| Evidence Building/SWR Storage | 600 S 333rd Street |
| Federal Way Community Center | 876 S 333rd Street |
| Steel Lake Maintenance Facility | 31132 28th Avenue S |
| Town Center Parcels | 2141 S 314th Street |
| Performing Arts & Events Center | 31510 Pete von Reichbauer Way South |
| Historical Society facility | 2645 S. 312th St |

| **City Parks:** | |
| --- | --- |
| Adelaide | 30619 16th Avenue SW |
| Alderbrook | 32730 17th Avenue SW |
| Alderdale | 2700 SW 340th Place |
| BPA Trail | 1100 S 324th Street |
| Camelot Open Space | 29200 45th Avenue S |
| Cedar Grove | 2200 S 333rd Street |
| \*Celebration | 1095 S 324th Street |
| Coronado | 2501 SW 349th Place |
| Dash Point Highlands | 5300 SW 324th Street |
| Dash Point Triangle | 31200 SW Dash Point Road |
| Dumas Bay Sanctuary | 30844 44th Avenue SW |
| Federal Way Entry Sign | 2800 S 320th Street |
| Fisher’s Pond | 31850 7th Avenue SW |
| \*French Lake | 31531 1st Avenue S |
| Heritage Woods | 28200 24th Place S |
| Hylebos / Blueberry Farm | 630 S 356th Street |
| Hylebos / Historic Cabins | 34915 4th Avenue S |
| Lake Grove | 833 SW 308th Street |
| Lake Killarney | 3500 Weyerhaeuser Way S |
| \*Lakota | 31334 SW Dash Point Road |
| Laurelwood | 2301 S 292nd Street |
| Madrona | 1500 SW 356th Street |
| Mirror Lake | 915 S 315th Street |
| Olympic View | 2900 SW 330th Street |
| Palisades | 5039 SW Dash Point Road |
| Panther Lake Open Space and Trail | 550 SW Campus Drive |
| Poverty Bay Open Space | 2500 SW 301st Street |
| \*Sacajawea | 1401 S Dash Point Road |
| \*Saghalie | 33914 19th Avenue SW |
| Sculpture Park | 2031 S 316th Street |
| Spring Valley Open Space | Various Parcels |
| \*Steel Lake / Steel Lake Annex | 2410 S 312th Street |
| SW 312th Sports Court | 100 SW 312th Street |
| \*Town Square | 31600 Pete von Reichbauer Way South |
| Wedgewood | 3913 SW 337th Street |
| West Campus Trail | 200 S 320th Street |
| \*West Hylebos Wetlands Park | 411 S 348th St |
| \*Westway Substation/Tract | 33400 21st Ave SW |
| Wildwood | 2315 S 300th Street |
| Winco Park | 106 SW Campus Drive |

At any time during the Term of this Contract, the City may add up to five City facilities and up to five additional City parks to be subject to the service specifications in the section, in addition to those listed above.

In cases in which Garbage, Recyclables, or Compostables are generated through the performance by third parties of services for the City outside of the normal operation of a municipal facility, Contractor may charge for the collection of such materials in accordance with charges listed in Exhibit B. Garbage, Recyclables, and Compostables generated at all City facilities in the ordinary course of their operations, however, whether generated by City staff or affiliated personnel, facility users, or third parties (e.g., janitorial contractor or site management contractor) will be collected by the Contractor without charge to the City. Tenants or other occupants of a municipal facility, other than those who operate the facility as a City contractor of municipal services, may be charged by Contractor in accordance with this Contract for collection services for Garbage, Recyclables and Compostables as a typical customer.

The Contractor shall provide collection of designated on-street Litter and Recyclables receptacles within the City, as directed by the City and paid by the City at the per collection rate in Exhibit B. Collection shall occur not less than one (1) time each week and up to three (3) times each week, depending on season and need, at the direction of the City. Uncontaminated Recyclables collected from these receptacles will be separated, processed, and recycled. Contractor shall line all of these receptacles after each collection, with liners supplied by the Contractor.

### 4.2.11 Community Events

The Contractor shall provide support for up to five (5) City-sponsored events each year. That support shall include Garbage, Recyclables, and Compostables collection as necessary, including delivery, placement, collection, disposal/diversion of materials, and removal of Containers after the event.

Additional event services for public (above the five (5) provided at no cost each year) or all events conducted by private Customers shall be charged at the rate listed in Exhibit B. Rates are all-inclusive for delivery, setup, collection services, and removal of event containers, similar to specifications in Section 4.2.9.

### 4.2.12 On-call Bulky Waste Collection

The Contractor shall provide on-call fee-based Bulky Waste collection to any Customer, including Multifamily and Commercial Customers.

On-call collection of Bulky Waste shall be provided by the Contractor to Customers by appointment for no more than the charge set forth in Exhibit B to this Contract, with collection occurring no later than five (5) business days after a Customer initial request.

Customers must place Bulky Waste at the regular Garbage collection location no more than twenty-four (24) hours prior to collection. The Contractor shall notify the Customer of the specific date that their item will be collected, the charge that will be made to their next bill, and where the item should be placed for collection.

The Contractor shall recycle all metal appliances, unless another arrangement is approved in writing by the City, and to make a reasonable effort to recycle all other materials collected. The Contractor shall direct Customers to remove doors from refrigerators and freezers before collection and not to place Bulky Waste at the Curb prior to twenty-four (24) hours before scheduled collection.

On-call Bulky Waste collection must occur during the hours and days specified in Section 4.1.3, with the exception that Saturday collection is permissible if it is more convenient for Customers.

### 4.2.13 Excluded Services

This Contract does not include the collection or disposal of Unacceptable Waste.

## 4.3 COLLECTION SUPPORT AND MANAGEMENT

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### 4.3.1 General Customer Service

The Contractor shall be responsible for providing all Customer service functions, including, but not limited to:

* Answering Customer telephone calls and e-mail or electronically communicated requests;
* Requesting at start of service Customer’s preference for notification of service changes via robo-calls, texts, or emails, and confirming and updating these preferences periodically;
* Informing Customers of current, new, and optional services and charges;
* Handling Customer subscriptions and cancellations;
* Receiving and resolving Customer complaints;
* Dispatching Drop-box Containers, temporary containers, and special collections;
* Billing;
* Maintaining and updating regularly as necessary a user-friendly internet website; and
* Maintaining and updating regularly as necessary a user-friendly mobile application.

### 4.3.2 Specific Customer Service Requirements

The Contractor shall maintain a service base for storing and/or maintaining collection vehicles within twenty-five (25) miles of the City’s corporate limits. Operations and management staff shall be located at that site, provided that call center operations may be remotely provided. The Contractor’s call center shall be open at a minimum from 7:00 a.m. to 7:00 p.m. weekdays, and no less than four (4) hours on Saturdays. Customer service representatives shall be available through the Contractor’s call center during these hours for communication with the public and City representatives. During these hours, customer calls shall be handled by Contractor’s staff, not by voice mail. Outside of the call center’s open hours, the Contractor shall have an answering or voice mail service available to record messages from all incoming telephone calls. The holiday collection schedule described in Section 4.1.6 shall also apply to Customer service coverage.

The Contractor shall maintain a twenty-four (24) emergency telephone number for use by the City. The Contractor shall have a representative, or an answering service to contact such representative, available at such emergency telephone number for City-use during all hours, including normal Office Hours. Inability to reach the Contractor’s staff via the emergency telephone number shall be cause for performance fees in accordance with Section 6.1.2.

#### **4.3.2.1 Customer Service Representative Staffing**

During call center hours, the Contractor shall maintain sufficient staff to answer and handle complaints and service requests from all Customers without delay. If incoming telephone call volumes necessitate, the Contractor shall increase staffing levels as necessary to meet Customer service demands. The Contractor shall proactively recruit, train, and schedule customer service staff to avoid underperforming during periods of high call volume, and to replace in a timely manner customer service staff lost due to attrition.

The Contractor shall maintain sufficient staffing to answer and handle all Customer complaints and service requests in a timely manner, whether made by telephone, letter, e-mail, mobile message, or webpage/“chat” message. If staffing is deemed to be insufficient by the City to handle Customer complaints and service requests in a timely manner, the Contractor shall increase staffing levels to meet and maintain performance criteria as established in Section 4.3.2.4.

To manage the anticipated temporary increase of customer contacts, the Contractor shall provide additional customer service staffing during the transition and implementation period, specifically from six (6) weeks prior to the Date of Commencement of Service, through the end of the fourth month after the Date of Commencement of Service, to ensure that sufficient staffing is available to minimize Customer waits and inconvenience. The Contractor shall receive no additional compensation for increased staffing levels during the transition and implementation period. Staffing levels during the transition and implementation period shall be subject to the City’s prior review and approval.

#### **4.3.2.2 City Access to Contractor’s Customer Service Information**

The Contractor shall maintain staff that has management level authority to provide a point of contact for all City inquiries, requests, and coordination covering the full range of Contractor activities related to this Contract. Contractor duties include, but are not limited to:

* Promotion and outreach to Single-Family Residences, Multifamily Complexes, Commercial, and community event Customers;
* Serving as an ombudsperson, providing quick resolution of all Customers’ issues, complaints, and inquiries; and
* Assisting the City with program development and design, research, response to inquiries, and troubleshooting issues.

Contractor shall employ a designated service expert team, which shall be accessible by the City and City-designated representatives to address emerging problems as needed. This service expert team shall be available during regular Office Hours and, if not responding immediately to a City inquiry, a service expert team employee is required to return City-initiated messages (whether originated via telephone, mobile messaging, or e-mail) within four (4) working hours of receipt.

#### **4.3.2.3 Service Recipient Complaints and Corrective Requests**

The Contractor shall record all complaints and corrective requests made to Contractor to resolve issues related to establishing service or subsequent issues arising once service is established, regardless of how received. The Contractor’s records shall including nature of complaint or request, date, time, Customer’s name and address, method of transmittal, and nature, date and manner of resolution of the complaint or service request in a computerized daily log. Any complaints received through the Contractor's voice mail or answering service shall be entered in the log no later than the following business day. The Contractor shall dedicate adequate resources and shall make a conscientious effort to respond directly to all Customers and resolve all complaints within one business day of the original phone call, letter, or electronic communication, and shall complete all service requests within the time limits as established throughout this Contract. If a longer response time is necessary to resolve complaints or related corrective requests, the circumstances that have caused the delay shall also be noted in the log to document the Contractor’s efforts to resolve the complaint or request.

The Customer service log shall be managed via software and be available for inspection by the City, or its designated representatives, during the Contractor’s Office Hours, and shall be in a format approved by the City. The Contractor shall provide a copy of this log in an electronic format from the Microsoft Office suite (or other City-approved format) of software to the City with the monthly report.

#### **4.3.2.4 Handling of Customer Calls**

All incoming telephone calls shall be answered promptly and courteously, with an average speed of answer of less than thirty (30) seconds. No telephone calls shall be placed on hold for more than two (2) minutes per occurrence, and on a monthly basis, no more than ten percent (10%) of incoming telephone calls shall be placed on hold for more than twenty (20) seconds. Contractor shall include aggregated weekly call volume data for the Service Area in the monthly reporting that tracks ongoing compliance with these specifications. A Customer shall be able to talk directly with a Customer service representative when calling the Contractor’s Customer service telephone number during call center operating hours without navigating an automated phone answering system through more than one level of menus. An automated voice mail service or phone answering system may be used outside of call center operating hours.

A Customer calling into the Customer service phone lines and placed on hold shall hear on-hold information consisting solely of City-specific information or Contractor promotional information that is applicable and not misleading to Customers.

#### **4.3.2.5 Corrective Measures**

Upon the receipt of Customer complaints in regard to busy signals or excessive delays in responding to customer service requests, the City may request the Contractor submit a plan to the City for correcting the problem. Contractor shall submit this plan within five (5) working days of the City’s request. Once the City has approved the plan, the Contractor shall immediately begin implementation of these corrective measures and shall report on implementation at least weekly. Contractor shall have thirty (30) days to fully implement the corrective measures, except during the transition and implementation period from one (1) month prior to the Date of Commencement of Service, through the end of the fourth month after the Date of Commencement of Service, during which upon City notification, the Contractor shall have five (5) working days to fully implement corrective measures. Failure to provide corrective measures shall result in performance fees for the Contractor as specified in Section 6.1.

#### **4.3.2.6 Contractor Internet Website**

The Contractor shall maintain a website containing information specific to the City’s collection programs, including at a minimum contact information, collection schedules, current day of collection map, material preparation requirements, available services and options, rates and fees, inclement weather service changes with updates several times per day in the event of inclement weather, as well as updates that apply to those Customers whose services were impacted by inclement weather on prior days, and other relevant service information for its Customers. The website shall include live contact function for Customer communication with the Contractor, and the ability for Customers to submit service requests and manage their services on-line. Electronic Customer service requests shall be answered within one (1) business day of receipt.

The website shall be professionally designed, including usability testing prior to submittal to the City for approval a minimum of three (3) months prior to the Date of Commencement of Service of this Contract. The website will be maintained and continually updated by Contractor. Significant website reformatting shall be subject to the City’s prior approval throughout the term of this Contract. The Contractor shall provide among its local staff a knowledgeable and proficient website manager that is responsive to the City’s request(s) for changes to the Contractor’s website. Changes requested by the City consisting of textual messages only shall be uploaded to the website within seventy-two (72) hours of the time of the request(s). Changes requested by the City, of a textual nature, that are related to an emergency or time-sensitive situation (such as an inclement weather event, windstorm, or event preventing access to a Customer’s regular place of container set-out) shall be uploaded to the website as soon as possible and not more than six (6) hours from of the time of request. Changes requested by the City that include a graphical component must be uploaded to the website within five (5) working days of the time of the request.

The Contractor shall provide timely updates to the website, and provide links to the City’s website, and Contractor shall check on a monthly basis to ensure that all links are current and correct any that no longer function. The website shall include core information (including at a minimum: how to establish service, preparation and set-out instructions, and rate information) in English and Spanish. The website shall also provide statements on its City-specific homepage in other commonly used non-English languages within the City referring Customers to the Contractor’s translation helpline or a separate webpage with an appropriate translation function. Upon the City’s request, the Contractor shall provide a website utilization report indicating the usage of various website pages and e-mail option.

#### **4.3.2.7 Full Knowledge of Garbage, Recyclables, and Compostables Programs Required**

The Contractor’s Customer service representatives shall be fully knowledgeable of all collection services available to Customers, including the various services available to Single-Family Residence, Multifamily Complex, and Commercial Customers. For new Customers, Customer service representatives shall explain all Garbage, Recyclables, and Compostables collection options available depending on the sector the Customer is calling from. For existing Customers, the representatives shall explain new services and options, and resolve recycling issues (including providing support for Contamination Reduction Plan inquires), collection concerns, missed pickups, container deliveries, and other Customer concerns. Customer service representatives shall be trained to inform Customers of Recyclables and Compostables preparation specifications. Customer questions related to City policy shall be forwarded to the City for response.

The Contractor’s Customer service representatives shall have instantaneous electronic access to Customer service data and history to facilitate providing excellent customer service. The Contractor shall provide the City with a comprehensive outline of the Contractor’s internal customer service representative training and support information specific to the City, and allow the City to periodically review and check Contractor’s internal information accessed by customer service representatives to provide to Customers. Routine revisions to these materials shall be made by the Contractor on an ongoing basis, but any substantial revisions to this internal information shall be approved in writing by the City prior to being used by customer service representatives.

The Contractor shall also provide the City with up to ten (10) dormant (non-serviced) accounts in various sectors and service modes to facilitate City monitoring of Customer communications and billing protocols. These non-serviced accounts shall be established in conjunction with the City and related data shall be fully accessible by the City. Contractor will manage these accounts as if the City were a typical Customer.

#### **4.3.2.8 Customer Communications**

All Customer communications (other than routine service and billing interactions with individual Customers) shall be reviewed and approved in writing by the City before distribution.

The City and Contractor recognize that Customer preferences for their method of communication may change during the Term of this Contract and agree to adjust customer service expectations to match Customer preferences. For example, if call traffic to the Contractor’s telephone-based call center reduces over time and is supplanted by an increase in texting, the Contractor shall shift staff resources accordingly to ensure sustained high levels of customer service. The City and Contractor agree to review Contract requirements periodically and negotiate in good faith any desired improvements to the Contract service standards related to customer service delivery.

### 4.3.3 Contractor’s Customer Billing Responsibilities

The Contractor shall be responsible for all billing functions related to the collection services required under this Contract. All Customers shall be billed monthly. In no case shall a Customer’s invoice be past due prior to the receipt of all services covered by the billing period. The Contractor’s billing cycle parameters include, but are not limited to the service period, invoice date, due date, late fee date, reminder date(s), Container removal and stop-service date. The City reserves the right to review and provide feedback on the bill template used by the Contractor as to format and design to ensure Customer satisfaction. The Contractor shall evaluate and may incorporate the City’s recommendations in good faith. Billing and accounting costs associated with Customer invoicing, including credit card fees, shall be borne by the Contractor, and are included in the service fees in Exhibit B. The Contractor may charge deposits for temporary services and bill to Customers late payments and “non-sufficient funds” check charges, as well as the costs of bad debt collection, under policies and amounts that have been previously approved in writing by the City.

The Contractor shall offer paperless billing, including an autopay/electronic notification function that allows Customer to set up autopay and receive an e-mail or text notification of the amount and draw date of the payment, without requiring the Customer to navigate to the Contractor’s website to obtain that information.

Customers may temporarily suspend collection services due to vacations or other reasons for as long and as often as desired with an initial two (2) week minimum plus additional one (1) week increments and be billed pro-rata for actual services received. The Contractor may charge an extended vacation hold/standby fee as listed in Exhibit B instead of retrieving Carts for those Customers who request a vacation hold greater than one month in duration.

The Contractor shall be responsible for the following:

* Generating combined Garbage, Recyclables, and Compostables collection bills for all Customers;
* Generating bills printed double-sided, on at least thirty percent (30%) post-consumer recycled-content paper;
* Generating bills that include at a minimum a statement indicating the Customer’s current service level, current charges and payments, appropriate taxes and fees, Customer service contact information and website information;
* Generating bills that clearly state the date at which late fees will be assessed for non-payment;
* Generating bills that have sufficient space on the front or back of the bill for educational or informational messaging, as directed by the City;
* Accepting automatic ongoing payments from Customers via debit or credit card, checking or savings account withdrawal, or by wire transfer. No transaction fees may be levied on any Customer payments;
* Accepting, processing, and posting payment data each business day;
* Printing and inserting bill inserts designed by the City for Customer sectors – with paper copies added to mailed invoices, and hyperlinked versions for on-line/paperless accounts;
* Maintaining a system to monitor Customer subscription levels, record excess Garbage or Compostables collected, place an additional charge on the Customer’s bill for the excess collection, and charge for additional services requested and delivered. This system shall maintain a Customer’s historical account data for a period of not less than six (6) years from the end of the fiscal year in accordance with the City’s record retention policy, and in a manner that is instantaneously accessible to Customer service representatives needing to refer to Customer service data and history;
* Accepting and responding to Customer requests for service level changes, missed or inadequate collection services, and additional services;
* Collecting unpaid charges from Customers for properly invoiced services; and
* Implementing rate changes as specified in Section 5.3.

The Contractor shall be required to maintain procedures to backup and minimize the potential for the loss or damage of the account servicing (e.g., Customer service, service levels, and billing history) database. The Contractor shall ensure that at a minimum a daily backup of the account servicing database is made and stored off-site. The Contractor shall also provide the City with a copy of the account servicing database (excluding Customer financial information such as credit card or bank account numbers) sorted by Customer sector via e-mail, FTP site or electronic media upon request. The City shall have unlimited rights to use such account servicing database for the purpose of developing targeted educational and outreach programs, analyzing service level shifts or rate impacts, and/or providing information to successor contractors.

Within one (1) business day of request, the Contractor shall provide the City with a paper and/or software compatible copy (at the City’s discretion) of City-requested Customer information and history, including but not limited to Customer names, service and mailing addresses, contact information, service levels, and current account status.

### 4.3.4 Reporting

The Contractor shall provide monthly, annual, and ad hoc reports to the City. The Contractor report formats may be modified from time to time at the City’s request at no cost to the City. In addition, the Contractor shall allow City staff access to pertinent operations information related to compliance with the obligations of this Contract, including, but not limited to, vehicle route assignment and maintenance logs, Garbage, Recyclables, and/or composting facility certified weight slips, and Customer charges and payments.

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#### **4.3.4.1 Monthly Reports**

On a monthly basis, by the last working day of each month, the Contractor shall provide a report containing the following information for the previous month. Reports shall be submitted in an electronic format approved by the City and shall be certified as accurate by the Contractor. At minimum, reports shall include:

1. A billing summary that provides the number of Customers billed at each service level (e.g., by container size, extra services) for each service sector (e.g., Single-family Residence, Multifamily Complex, Commercial Customers, and Drop-box hauls by Container size), the total number of Customers for each type of service by sector, Customer receipts by each service level, and total billings.
2. A log of all Customer requests, complaints, inquiries, and site visits, including Customer name, property name and address, date of contact or site visit, reason for site visit, and a summary of the resolution or results of these Customer requests, complaints, and inquiries.
3. Reports from the Contractor’s customer service telephone system summarizing daily data for total call volume, total calls answered, and average speed of answer.
4. Website utilization report showing total number of Customers managing their services on-line, total number of e-mails received via website, data on website usage, and other data or information as the City may require.

1. A summary of total Garbage, Recyclables, and Compostables quantities collected (in tons) for each collection sector by month and year-to-date. The summary shall include program participation statistics including: a summary of Multifamily Complex and Commercial participation in recycling programs and set-out statistics for Residential Garbage, Compostables, and Recyclables collection services. Where item counts are more appropriate for certain Recyclables or Bulky Wastes (e.g., appliances, bulky materials, etc.), reporting item counts is acceptable. The summary shall include the names of facilities used for all materials and the total monthly tonnage delivered to each facility.
2. A summary of Recyclables quantities, contamination levels and processing residues disposed as Garbage.
3. A description of any vehicle accidents, infractions, and reported leaks.
4. A description of any changes to collection routes, Containers, vehicles (including back-up vehicles with the truck number and date of use to track limits on vehicle use), customer service provision, or any other related activities affecting the provision of services.
5. A description of any promotion, education, and outreach efforts, including Contamination Reduction Plan outcomes and including samples of distributed materials, and summary of any feedback or response received from Customers.
6. A description of Contractor activities and tonnages for City services and events.

If collection vehicles are used to service more than one Customer sector per route or per load, the Contractor shall develop an apportioning methodology that allows the accurate calculation and reporting of collection volumes and quantities from the different sectors. The apportioning methodology shall be subject to the prior review and written approval of the City, and shall be periodically verified through field-testing by the Contractor.

#### **4.3.4.2 Annual Reports**

On an annual basis, by the first working day of March, the Contractor shall provide a report containing the following information for the previous year:

1. A consolidated summary and tabulation of the monthly reports, described above.
2. A discussion of highlights and other noteworthy experiences, along with measures taken to resolve problems, increase efficiency, and increase participation in, and volume of, Recyclables and Compostables collection programs.
3. A discussion of opportunities and challenges expected during the current year, including steps planned to take advantage of opportunities and resolve the challenges.
4. A discussion of promotion, education, and outreach efforts, and accomplishments for each sector.
5. An inventory of current collection vehicles and other major equipment, including model, year, make, serial or VIN number, assigned vehicle number, mileage (if vehicle), and collection sector.
6. A list of Multifamily Complexes eligible for Recycling and Compostables collection service but not receiving one or both services, with the results of required contacts made by Contractor during the year to promote the Recycling and/or Compostables service to those complexes, including the reason why the Multifamily Complex is not receiving Recycling and/or Compostables service.
7. A list of Commercial Customers eligible for Recycling and Compostables collection service but not receiving one or both services, with the results of required contacts made by Contractor during the year to promote the Recycling and/or Compostables service to those sites, including the reason why the Commercial Customer is not receiving Recycling and/or Compostables service.
8. A summary of the monthly logs of Customer requests, complaints, inquiries, site visits, and resolutions or results, as required in Section 4.3.4.1. The summary shall organize Customer requests, complaints, inquiries, and site visits by category (e.g., missed pickups, improper set-ups).

The annual report shall be specific to the City’s operations, written in a format appropriate for contract management and shall not be a generalized listing of Contractor activities in the region or elsewhere.

#### **4.3.4.3 Ad Hoc Reports**

The City may request and receive from the Contractor up to twelve (12) ad hoc reports each year, at no additional cost to the City. These reports may include customer service database tabulations to identify specific service level or participation patterns or other similar information. Reports shall be provided in a City-defined format and with Microsoft software (or other City-approved software) compatibility. These reports shall not require the Contractor to expend more than one hundred (100) staff hours per year to complete. Contractor shall respond to Ad Hoc Report requests within five working days.

#### **4.3.4.4 Other Reports**

If requested by the City, the Contractor shall provide daily route information for all service sectors and collection streams for the purpose of evaluating potential collection system changes during the Term of the Contract.

### 4.3.5 Promotion and Education

The Contractor, at its own cost and at the direction of the City, shall have primary responsibility for developing, designing, executing, and distributing public promotion, education, and outreach programs. The Contractor shall also have primary responsibility for Customer recruitment, providing annual service-oriented information and outreach to Customers, distributing City-developed promotional and educational pieces at the City’s direction, and implementing on-going recycling promotion, education, and outreach programs at the direction of the City. The Contractor shall also coordinate and work cooperatively with City staff and/or consultants hired to conduct outreach and education, and otherwise provide technical assistance.

The City and Contractor shall jointly plan the Contractor’s specific promotion and education program for the following year, including updating outreach materials and/or refining targeted audiences. The City may elect to assist the Contractor with development of promotional material layout and text, as staff time allows, otherwise the Contractor shall be responsible for all design and production. All promotional, educational, and informational materials provided by the Contractor to Customers in connection with the Contract shall be designed, developed, printed, and delivered by the Contractor, at the Contractor’s cost, and subject to the City’s final written approval as to form, content, and method of delivery. The City shall review and approve all materials with a minimum review period of two (2) weeks provided in all cases by the Contractor to allow sufficient time for review and approval.

Each year, the Contractor shall produce and deliver an annual comprehensive service packet to all Single-Family and Multifamily Residences in the Service Area (including non-subscribers) which shall include, at a minimum, information on the proper disposal of Garbage, Recyclables, and Compostables; rate information; disposal options for difficult-to-recycle items and hazardous wastes; the annual service schedule calendar; contact information; and any other pertinent information. The annual packet may be distributed in print or electronic format at the option of the resident.

Each year, the Contractor shall produce and deliver an annual comprehensive service packet to all Multi-family and Commercial Customers in the Service Area which shall include, at a minimum, information on the proper disposal of Garbage, Recyclables, and Compostables; rate information; disposal options for difficult-to-recycle items and hazardous wastes; contact information; and any other pertinent information. The annual packet may be distributed in print or electronic format at the option of the Customer. Upon request, Customers shall be provided with sufficient printed materials to distribute to tenants or lessees.

**Specific procedures for Multifamily Complexes:**

The Contractor shall coordinate with the site manager or owner of Multifamily Complexes, either upon request and/or to facilitate coming into compliance with recycling volume thresholds or contamination thresholds. This may include door-to-door education, training of residents and/or property management staff, signage and posted information, addressing space and capacity constraints. The Contractor shall also coordinate and work cooperatively with City staff and/or consultants hired to conduct outreach and education, and otherwise provide technical assistance. Although subject to change over the term of this contract, the intial recycling volume thresholds are established as 0.12 cubic yards per week per unit (approximately 96 gallons per month) and a target of 5% or less contamination by volume.

The following actions will be taken by Contractor whenever responding to contamination of Recyclables or Compostables at Multifamily Complexes. A combination of these actions shall be appropriate in cases where contamination is readily apparent prior to emptying Containers at the complex (which upon discovery by Contractor, or following a field determination made by the City, is termed a “Haul or Call” event). Failure to implement these actions will result in damages as specified in Section 6.1.

* Immediately providing the City with photo documentation of the contamination, along with a record of container size, location within the Complex, and other pertinent information.
* Specifically-tailored recycling service plans (establishing service volume and container location/access needs, auditing service levels/frequency/schedule, and verifying and monitoring related changes), as well as providing follow-up outreach as needed to achieve optimal participation and compliance with recycling participation regulations.
* Monitoring tenant access to collection containers at the Complex, and the resulting contamination levels of recyclable materials, then implementing appropriate remedies by identifying the source or cause of contamination and then planning, assigning, and promoting corrective actions for: property management and site maintenance personnel, valet-style recycling service providers, and/or individual tenants as appropriate. This will then be followed by ongoing monitoring to ensure implementation of appropriate remedies.
* Installation and/or use of lock bars/locks, specialized lids with slots for Detachable Container lids, and adjusting container size, placement/location, or service frequency in manners intended to reduce or eliminate contamination of Recyclables.
* Distribution of outreach materials including: reusable tote bags for Recyclables, printed outreach materials, container decals, and instructional signage installation as needed.
* Door-to-door canvassing and related on-site assistance to property management, maintenance staff, and residents as needed.
* Pertinent training of on-site personnel including maintenance staff, volunteers, users of recycling services, and valet-style recycling service provider(s).
* On-site visual surveys, tracking, and documentation as needed.
* Other related assistance to encourage Multifamily Complex participation in ongoing recycling practices, focusing on the reduction and elimination of contamination sources and/or changing behaviors that result in contamination of recyclables.

**Specific procedures for Commercial Customers:**

The Contractor shall coordinate with Commercial Customer site managers or owners to provide outreach to tenants in multi-tenant buildings, office parks, and strip malls and similar situations where Contractor services are shared among tenants. Contractor shall do this either upon request and/or to facilitate coming into compliance with recycling volume thresholds or Recyclables and/or Compostables contamination reduction goals. This may include door-to-door education, training of tenants and/or property management staff, signage and posted information, and addressing space and capacity constraints.

**4.3.6 Transition to Next Contractor**

The Contractor shall work with the City and any successive contractor in good faith to ensure minimal Customer disruption during the transition period from the City’s previous contractor to the City’s new Contractor. Container removal and replacement shall be coordinated between the Contractor and a successive contractor to occur simultaneously in order to minimize Customer inconvenience. In the event that the City does not elect to retain all Contractor’s Containers pursuant to Section 4.1.15.3, the Contractor shall remove any Containers for all services or any portion of services provided under this Contract upon sixty (60) days’ written notice from the City.

Upon written request of the City at any time during the term of this Contract, the Contractor shall provide a detailed customer list, including customer name, service address, mailing address, and collection and container rental service levels to the City in Microsoft Excel format (or other City-approved format) within seven (7) days of the City’s request.

The parties recognize that a failure to comply with this provision will damage the City, but that determination of such damage will be difficult and burdensome; therefore, the parties agree that in the event of a breach of this provision the Contractor shall pay the City five hundred thousand dollars ($500,000) for the material breach of this Contract provision. Payment shall be made within twenty (20) business days of the end of this Contract.

The provisions of this section shall survive the termination or expiration of this Contract.

# 5. COMPENSATION

## 5.1 Compensation to the Contractor

**5.1.1 Rates**

The Contractor shall be responsible for billing and collecting funds from Single-family Residence, Multifamily Complex, and Commercial Customers in accordance with the charges for services listed in Exhibit B. The Contractor may reduce or waive at its option, but shall not exceed, the charges listed in Exhibit B. The payment of charges for services listed in Exhibit B by Customers shall comprise the entire compensation due to the Contractor.

In the event that a Customer places Unacceptable Wastes in a Container, and the Contractor collects those materials inadvertently and incurs extraordinary expenses dealing with those materials, the Contractor may charge the Customer the actual costs of managing those materials, as approved by the City. Actual costs shall include additional transportation, handling, and disposal costs incurred by the Contractor for handling only those specific materials traceable to that Customer.

The City is not required under this Contract to make any payments to the Contractor for the Services performed, or for any other reason, except as specifically described in this Contract, or for services the City obtains as a Customer.

In the event that Contractor or a Customer desires solid waste-related services not specifically addressed in this Contract, the Contractor shall propose service parameters and a rate to the City in writing based on an average of adjacent WUTC tariffs. Upon the City’s written approval, the Contractor may provide the requested services. In no case shall the Contractor provide unauthorized services or charge unauthorized rates.

**5.1.2 Itemization on Invoices**

All applicable City, County, and Washington State solid waste or household hazardous waste taxes or fees, utility taxes, and (if allowed under the last paragraph of Section 5.1.2) sales taxes shall be itemized separately on Customer invoices and added to the charges listed in Exhibit B, except that the City Administrative Fees shall be included in Exhibit B rates and shall not be itemized separately on Customer invoices.

Paragraph Reserved for addressing how base recycling revenues and excess credit/debit amounts are addressed on customer bills. To be addressed during contract finalization.

Charges for excess Garbage or Compostables, Single-family, Multifamily Complex, and Commercial Compostables collection, Drop-box Container, On-call collection services, On-call fee-based Bulky Waste collection services, Container rentals, or temporary Container services shall be itemized on the Customer invoices separately by the Contractor, and may at no time exceed the charges set forth in Exhibit B.

The County disposal fee as it exists on the date of execution or as thereafter modified shall be itemized separately on Customer invoices with charges for Drop-box Container service. The Contractor shall charge Drop-box Customers the actual disposal cost.

The Contractor shall not separately charge sales tax for services that include any Container as part of the overall service package. Only Services that separate and itemize optional container rental (specifically Drop-box Container rental) shall have sales tax charged and listed on Customer invoices. The Contractor shall pay appropriate sales tax upon purchase of all equipment and Containers, and those costs are included in the rates provided in Exhibit B. In no case shall Customers be separately charged sales taxes paid by the Contractor on its equipment and Containers.

Except as otherwise expressly provided for by the Contract, the Contractor shall not adjust or modify rates due to employee wage increases, changes in Compostables processing fees, Garbage collection service level shifts, or other changes affecting the collection system.

## 5.2 Compensation to the City

The Contractor shall pay to the City an Administrative Fee on or before the fifteenth day of each month during the term of this Contract, starting on November 15, 2019. The Administrative Fee shall be based on the gross revenues received by the Contractor from all Customers under this Agreement, excluding Drop-box disposal or processing fees. The initial Administrative Fee shall be assessed at (**TBD**%) of gross revenues received by the Contractor from those Customers since the last Administrative Fee payment period, consistent with the administrative fee calculations shown in Exhibit D. The Contractor’s obligations to pay the Administrative Fee shall survive the termination date of this Contract until the Contractor is no longer receiving payments from Customers for services provided under this Contract.

The rates included in Exhibit B, as modified during the term of this Contract, include the Administrative Fee, and Customers shall not be separately charged an itemized Administrative Fee. Exhibit D contains an example of how the Administrative Fee is included in rates, and lists the Contractor’s service rate, the City’s share of the retail rate, the State excise tax associated with the Administrative Fee, and the combined retail rate. Any adjustments to the Administrative Fee rate shall be calculated in a manner consistent with the example shown in Exhibit D.

The Contractor shall fully participate with any City billing audit to confirm the Contractor’s Customer receipts during any accounting period during the term of the Contract. The audit shall be confined to confirming Customer billing rates, Contractor receipts for services provided under this Contract and bad debt recovery.

The City may change the Administrative Fee level in any year, provided that the change is synchronized with the annual Contractor rate modification described in Section 5.3.1. The City shall notify the Contactor of the new Administrative Fee for the following year by September 1, and the Contractor shall itemize and include the appropriate adjustment in its Rate Adjustment Statement provided October 1 of each year. In the event that the Administrative Fee is adjusted, either up or down, the Contractor shall add or subtract an amount equivalent to the state excise tax (1.5% in 2019), as may be adjusted from time to time by the State of Washington.

In addition, the Contractor shall be responsible for payment of all applicable permits, licenses, fees, and taxes as described in Section 8.10, Permits and Licenses.

## 5.3 Compensation Adjustments

### 5.3.1 Annual CPI Service Component Modification

The Contractor’s collection service charges and miscellaneous fees and Contract options contained in Exhibit B, excluding waste disposal fees, for each level of service shall increase each year by one hundred percent (100%) of the annual percentage change in the Consumer Price Index (“CPI”) for the Seattle-Tacoma-Bellevue Metropolitan Area for the U.S. City Average Urban Wage Earners and Clerical Workers, all items (Revised Series) (CPI-W1982-84=100) prepared by the United States Department of Labor, Bureau of Labor Statistics, or a replacement index. Adjustments shall be based on the twelve (12) month period ending June 30 of the previous year that the request for increase is made. For example, an adjustment to the Contractor’s collection service charge for 2022 will be based on the CPI for the twelve (12) month period ending June 30, 2021.

In the event that the CPI index series decreases year-to-year, the service component of Contractor rates shall remain unchanged, and the successive year’s adjustment shall be based on the most recent June 30 CPI index value. In the event that the CPI index series increases over five percent (5%) year-to-year, the actual adjustment used shall be capped at five percent (5%), and the successive year’s adjustment shall be based on the most recent June 30 CPI index value

Adjustments to the Contractor’s collection service charge shall be made in units of one cent ($0.01). Fractions less than one cent ($0.01) shall not be considered when making adjustments.

Beginning January 1, 2022, Contractor’s compensation shall be adjusted annually pursuant to this section. The Contractor shall submit in writing and electronic form to the City for review and verification a Rate Adjustment Statement, calculating the new rates for the next year, on or by October 1 of each year, starting October 1, 2021. In the event that the Contractor does not submit a Rate Adjustment Statement by October 1, the City shall calculate and unilaterally implement a rate adjustment based on the best available information as of October 1 of that year for the applicable period and the Contractor may not appeal this action. Upon completion of the City’s review and verification, absent any City exception to the Contractor’s calculations, the new rates shall take effect on January 1 of the following year. An example of rate adjustments due to CPI changes is provided in Exhibit D.

### 5.3.2 Changes in Disposal Fees

Periodic adjustments shall be made to Contractor collection rates to reflect increases or decreases in County disposal fees for Garbage. In the event of a change in disposal fees, the disposal fee component of rates charged to Customers shall be adjusted, based on percentage increase or decrease in disposal fee applied to the disposal components included in Exhibit B of this Contract. Disposal fee changes shall be effective on the date of the County’s implementation, provided that the Contractor has provided Customers 45-days’ notification.

An example of rate modifications due to disposal fee changes is provided in Exhibit D.

### 5.3.3 Changes in Disposal or Compostables Processing Sites

If the Contractor is required by the City or other governmental authority to use Garbage disposal or Compostables processing sites other than those being used at the initiation of this Contract, the Contractor shall submit a detailed proposal for the adjustment of the rates to reflect any additional cost or savings to the Contractor. It is intended that the Contractor’s rates pursuant to this Contract in such a case will be adjusted so as to pass through any resulting additional costs incurred by the Contractor to the Contractor or any additional savings to the Contractor to the City. The City and Contractor agree to negotiate in good faith to make any changes to the rates to accomplish a pass-through of any such costs or savings.

If the Contractor is no longer able to find a processing site for all collected Compostables, after a good faith effort to locate a processing facility acceptable to the City, the City reserves the right to drop the collection of affected components of Compostables, such as Food Scraps, from the Contract and the City and the Contractor shall negotiate rate reduction in good faith to reflect the reduction in service. If the Contractor is subsequently able to find a processing site for Compostables or the site that was originally used for processing Compostables is able to resume taking the dropped materials, the City reserves the right to reinstate the collection of those materials and to reverse the previously agreed rate reduction for the reduction in service.

### 5.3.4 Recycling Market Adjustments

This section will be completed at contract finalization based on the successful proponent’s preferred recycling index or combination of indices. Generally, any increase above the base commodity value specified above the value provided by the proponent on their RFP Form 2 will be rebated to the customer (or city) and any decrease below that same value will be charged to the customer (or city), in proportion to the average amount of monthly recyclables attributed to the Customer or container size (for commercial).

### 5.3.5 New or Changes in Existing Taxes

If new municipal, county, regional, or Washington State taxes or fees are imposed, the rates of existing taxes (excluding changes to the rates for federal taxes) or fees are changed, or new road or bridge tolls necessarily affecting the Contractor’s operations under this Contract imposed after the Date of Execution of this Contract, and the impact of these changes results in increased or decreased Contractor costs in excess of five thousand dollars ($5,000) in the aggregate annually, the Contractor shall submit a detailed proposal for the adjustment of the rates to reflect any additional costs or savings to the Contractor. The Contractor and City shall enter into good faith negotiations to determine whether compensation adjustments are appropriate for the amount exceeding the five thousand dollar ($5,000) aggregated threshold (in cases in which the threshold applies) and if so, to determine the amount and the method of adjustment.

## 5.4 Change in Law

Except to the extent addressed otherwise in this Contract, changes in federal, state, or local laws or regulations (that do not apply to tax or fee rates) that result in a detrimental change in circumstances or a material hardship for the Contractor in performing this Contract may be the subject of a request by the Contractor for a rate adjustment, subject to review and approval by the City. If the City requires review of financial or other information in conducting its rate review under this provision, then the City may retain a third-party to review such information at the Contractor’s expense, taking whatever steps are reasonably feasible, appropriate and lawful to protect the Contractor’s documents identified as confidential and proprietary by the Contractor.

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# 6. FAILURE TO PERFORM, REMEDIES, TERMINATION

The City expects high levels of Customer service and collection service provision. Performance failures shall be discouraged, to the extent possible, through specific performance fees for certain infractions and through Contract default for more serious lapses in service provision. Section 6.1 details infractions subject to performance fees and Section 6.2 details default provisions and procedures.

## 6.1 Performance Fees

The City reserves the right to make periodic, unscheduled inspection visits to determine the Contractor’s compliance with the provisions and requirements of this Contract. In the event that the City’s inspection reveals that the Contractor has failed to satisfactorily perform any duties of this Contract, the City shall present an incident report to the Contractor detailing such unsatisfactory performance. The Contractor and the City agree that upon receiving such report, the Contractor shall pay the following dollar amounts, not as a penalty, but as performance fees for failure to satisfactorily perform its duties under this Contract. The City and the Contractor agree that the City’s damages would be difficult to prove in any litigation and that these dollar amounts are a reasonable estimate of the damages sustained by the City as a result of the Contractor's failure to satisfactorily perform its duties under this Contract. The performance fees in this Section 6.1 shall not apply to the service impacts of Labor Disruptions, as separate performance fees shall apply under those circumstances, as described in Section 4.1.19.

Performance fees shall include:

|  | **Action or Omission** | **Performance fees** |
| --- | --- | --- |
| 1 | Collection before or after the times specified in Section 4.1.3, except as expressly permitted in writing. | Five hundred dollars ($500) per incident (each vehicle on each route is a separate incident). |
| 2 | Repetition of complaints on a route after City notification, including, but not limited to, failure to replace Containers in designated locations, spilling, not closing gates, not replacing lids, crossing planted areas, or similar violations. | Fifty dollars ($50) per incident, not to exceed five hundred dollars ($500) per vehicle per day. |
| 3 | Failure to clean-up or collect leaked or spilled materials and/or failure to notify the City within three (3) hours of incident. | The cost of cleanup to the City, plus five hundred dollars ($500) per incident. |
| 4 | City Observed leakage or spillage from Contractor vehicles or of vehicle contents. | Five hundred dollars ($500) per vehicle, per inspection, plus clean-up costs (and potential code fines/penalties). |
| 5 | Failure to replace a leaking Container within one (1) business day of notification. | One hundred dollars ($100) per incident, and then one hundred dollars ($100) per day that the Container is not replaced. |
| 6 | Failure to collect missed materials within one (1) business day after notification. $50.00 each incidence business day after notification | Fifty dollars ($50) per incident to a maximum of five hundred dollars ($500) per vehicle per day. |
| 7 | Missed collection of a block segment of Single-Family Residences (excluding collections prevented by inclement weather, but not excluding collections prevented by inoperable vehicles). A block segment is defined as one side of a street, between cross-streets, not to exceed fifty (50) houses. | Two hundred fifty dollars ($250) per block segment if collection is performed the following day; one thousand dollars ($1,000) if not collected by the following day. |
| 8 | Collection as Garbage of non-contaminated Source-separated Recyclables, Yard Debris, or Compostables in clearly identified containers, bags, or boxes. | One thousand dollars ($1,000) per incident. |
| 9 | Rejection of Garbage, Recyclables, Yard Debris or Compostables without providing documentation to the Customer of the reason for rejection. | One hundred dollars ($100) per incident. |
| 10 | Failure to deliver Containers within three (3) days of request to Multifamily Complex or Commercial Customers requesting service after the Date of Commencement of Service. | One hundred dollars ($100) per incident. |
| 11 | Failure to deliver Garbage, Recyclables or Compostables Containers within seven (7) days of request to Single-Family Residence Customers requesting service after the Date of Commencement of Service. | Twenty-five dollars ($25) per incident. |
| 12 | Misrepresentation by Contractor in records or reporting. | Five thousand dollars ($5,000) per incident. |
| 13 | Failure to provide the required monthly and annual reports on time. Failure to provide adequate or timely response to a request for an Ad Hoc report. | Five hundred dollars ($500) per day past deadline. |
| 14 | Failure to maintain clean, sanitary and properly painted Containers. Failure to replace or repair broken lids on Containers. | Fifty dollars ($50) per incident, up to maximum of one thousand dollars ($1,000) per inspection. |
| 15 | Failure to maintain contract-compliant vehicles. | Fifty dollars ($50) per incident, up to maximum of one thousand dollars ($1,000) per inspection. |
| 16 | Failure to meet Customer service answer and on-hold time performance requirements specified in Section 4.3.2.4. | One hundred dollars ($100) per day. |
| 17 | Failure to meet the service and performance standards listed in Section 4.3.2 (inclusive of subsections) of this Contract for a period of two (2) consecutive months. | Two hundred and fifty dollars ($250) per day until the service standards listed in Section 4.3.2 are met for ten (10) consecutive business days. |
| 18 | Failure to ensure that all Customers have contract compliant Garbage, Recycling, and Compostables Containers on or before the Date of Commencement of Service. | Five thousand dollars ($5,000) per day, plus twenty-five dollars ($25) per Container for each incident occurring after the Date of Commencement of Service. |
| 19 | Failure to include City-authorized instructional/promotional materials when a new Garbage, Recycling, and/or Compostables account is established. . | Fifty dollars ($50) per incident, with no maximum. |
| 20 | Failure to separate collection of materials from Service Area Customers from non-service area customers. | Five thousand dollars ($5,000) per route per day. |
| 21 | Inability to reach the Contractor’s staff via the emergency telephone number. | Two hundred-fifty dollars ($250) per incident. |
| 22 | The use of outdated, or non-City-approved stickers, or lack of required stickers on Contractor provided Containers. | Fifty dollars ($50) per Container. |
| 23 | Failure to have correct rates for all Customer sectors and service levels listed on the Contractor’s website. | Two hundred-fifty dollars ($250) per day, with no maximum. |
| 24 | Failure to maintain, or reduction of, Recyclables or Compostables service volume below established thresholds for Multi-Family Customers without prior City permission. | $500 per Complex |
| 25 | Failure to close lids on Detachable Containers after emptying. | Fifty dollars ($50) per incident, up to maximum of one thousand dollars ($1,000) per inspection. |
| 26 | Failure to investigate, follow-up, and rectify, a “Haul or Call” event at a Multifamily Complex as described in Section 4.3.5. | $250 per Complex |

Nothing in this Section shall be construed as providing an exclusive list of the acts or omissions of the Contractor that shall be considered violations or breaches of the Contract, and the City reserves the right to exercise any and all remedies it may have with respect to these and other violations and breaches. The performance fees schedule set forth here shall not affect the City’s ability to terminate this Contract as described in Section 6.2.

Performance fees, if assessed during a given month, shall be invoiced in writing by the City to the Contractor. The Contractor shall be required to pay the City the invoiced amount within thirty (30) days of billing. Failure to pay performance fees shall be considered a breach of this Contract, and shall accrue penalty charges of eight percent (8.0%) per month of the amount of any delinquent payments.

Any performance fees assessed against the Contractor may be appealed by the Contractor to the City within ten (10) days of being invoiced for assessed performance fees. The Contractor shall be allowed to present evidence as to why the amount of the assessed performance fees should be lessened or eliminated, including the provision of incorrect information provided by a previous contractor for contract failures during the initial transition period. The City’s decision shall be final and not subject to appeal.

## 6.2 Contract Default

The Contractor shall be in default of this Contract if it violates any material provision of this Contract. In addition, the Contractor shall be in default of the Contract should any of the following occur, including, but not limited to:

1. The Contractor fails to commence the collection of Garbage, Recyclables, or Compostables, or fails to provide any portion of service under the Contract on the Date of Commencement of Service, or for a period of more than five (5) consecutive days at any time during the term of this Contract, except as provided pursuant to Section 4.1.19;
2. The Contractor fails to obtain and maintain any permit, certification, authorization, or license required by the City, County, or any federal, State, or other regulatory body in order to collect materials under this Contract, or comply with any environmental standards and regulations;
3. The Contractor’s noncompliance creates a hazard to public health or safety or the environment;
4. The Contractor causes uncontaminated Recyclables or Compostables to be disposed of in any way, such as in a landfill or incinerated at an incinerator or energy recovery facility, without the prior written permission of the City;
5. The Contractor fails to make any required payment to the City, as specified in this Contract;
6. The Contractor is assessed performance fees pursuant to Section 6.1 in excess of fifteen thousand dollars ($15,000) during any consecutive six (6) month period; or
7. The Contractor fails to resume full service to Customers within twenty-one days following the initiation of a labor disruption pursuant to Section 4.1.19.

The City reserves the right to pursue any remedy available at law or in equity for any default by the Contractor. In the event of default, the City shall give the Contractor ten (10) days’ prior written notice of its intent to exercise its rights, stating the reasons for such action; however, if an emergency shall arise (including but not limited to a hazard to public health or safety or the environment) that does not allow ten (10) days prior written notice, the City shall promptly notify the Contractor of its intent to exercise its rights. If the Contractor cures the stated reason within the stated period, or initiates efforts satisfactory to the City to remedy the stated reason and the efforts continue in good faith, the City may opt not to exercise its rights for the particular incident. If the Contractor fails to cure the stated reason within the stated period, or does not undertake efforts satisfactory to the City to remedy the stated reason, then the City may at its option terminate this Contract effective immediately.

If Contractor abandons or violates any material provision of this Contract, fails to fully and promptly comply with all its obligations, or fails to give any reason satisfactory to the City for noncompliance, and fails to correct the same, the City, after the initial ten (10) days’ notice, may then declare the Contractor to be in default of this Contract and notify the Contractor of the termination of this Contract. A copy of said notice shall be sent to the Contractor and surety on the Contractor’s performance bond. Upon receipt of such notice, the Contractor agrees that it shall promptly discontinue the services provided under this Contract. The surety of the Contractor’s performance bond may, at its option, within ten (10) days from such written notice, assume the services provided under this Contract that the City has ordered discontinued and proceed to perform same, at its sole cost and expense, in compliance with the terms and conditions of the Contract, and all documents incorporated herein.

In the event that the surety on the Contractor’s performance bond fails to exercise its option within the ten (10) day period, the City may complete the Services provided under this Contract or any part thereof, either through contract with another party or any other means.

The City shall be entitled to recover from Contractor and the surety on Contractor’s performance bond as damages for all expenses incurred, including reasonable attorneys’ fees, together with all such additional sums as may be necessary to complete the services provided under this Contract, together with any further damages sustained or to be sustained by the City. A surety performing under this Contract shall be entitled to payment in accordance with this Contract for Contract services provided by the surety, and shall otherwise be subject to the same rights and obligations with respect to the Contract services furnished by the surety as would be applicable if the Contract services were to be performed by the Contractor. The City’s obligation to pay for such Contract services shall be subject to satisfactory performance by the surety as well as to setoffs or recoupments for sums, if any, owed by Contractor to City on account of Contractor’s abandonment or default.

# 7. NOTICES

Routine communications between the Contractor and the City’s contract manager shall be conducted via e-mail unless otherwise required. All notices referencing change of ownership, penalties, rate requests, performance fees, or Contract default shall be in writing and personally served or mailed (postage-prepaid and return receipt requested), addressed to the Parties as follows, or as amended by the City:

To the City:

**Public Works Director**

City of Federal Way

33325 8th Ave S

Federal Way, WA 98003

To Contractor:

# 8. GENERAL TERMS

## 8.1 Collection Right

Throughout the Contract Term, the Contractor shall be the exclusive provider with which the City shall contract to collect Garbage, Compostables, and Recyclables placed in designated Containers and set out in the regular collection locations within the City Service Area subject to this Contract. When asked by the Contractor, the City shall make a good faith effort to protect the exclusive rights of the Contractor under this Contract; however, The City shall not be obligated to join or instigate litigation to protect the right of the Contractor. The Contractor may independently enforce its rights under this Contract against third party violators, including, but not limited to, seeking injunctive relief, and the City shall use good faith efforts to cooperate in such enforcement actions brought by the Contractor (without obligating the City to join any such litigation, except for as provided in this paragraph). Such efforts may include but not be limited to cease and desist letters, assistance with documenting violations, and other activities as City staff time reasonably allows.

This Contract provision shall not apply to Garbage, Recyclables, or Compostables self-hauled by the generator; to Source-separated materials hauled by common or private carriers (including drop-off recycling sites); or to construction/demolition waste hauled by self-haulers or construction or demolition contractors in the normal course of their business.

The Contractor shall retain the right and cover all costs to dispose of or process and market the Garbage, and Compostables once those materials are placed in Contractor-provided or City-owned containers. The Contractor shall cover all costs to process Recyclables once those materials are placed in Contractor-provided or City-owned containers.

## 8.2 Access to Records

The Contractor shall maintain in its local office full and complete operations, Customer, financial, and service records that at any reasonable time shall be open for inspection and copying for any reasonable purpose by the City. In addition, the Contractor shall, during the Contract term, and at least seven (7) years thereafter, maintain in an office in King County, reporting records and billing records pertaining to the Contract that are prepared in accordance with Generally Accepted Accounting Principles, reflecting the Contractor’s services provided under this Contract. Those Contractor’s accounts shall include, but shall not be limited to, all records, invoices, and payments under the Contract, as adjusted for additional and deleted services provided under this Contract. The City shall be allowed access to these records for audit and review purposes, subject to the same protections of the Contractor’s financial or other proprietary information set forth in Section 5.3.

The Contractor shall make available copies of certified weight slips for Garbage, Recyclables, and Compostables on request within two (2) business days of the request. The weight slips may be requested for any period during the Term of this Contract.

## 8.3 Insurance

NOTE TO PROPONENTS: The City understands that various companies have different insurance arrangements and possibly have partial self-insurance. The insurance terms in the executed Contract will be adjusted to match the specifics of a particular firm’s arrangements, provided that the underlying amounts, scope and overall coverage are consistent with this section, the coverage is occurrence-based, and that the City approves the changes at its sole option.

The Contractor shall procure and maintain, for the Term of the Contract, insurance that meets or exceeds the coverage set forth below, as determined in the sole reasonable discretion of the City. The cost of such insurance shall be paid by the Contractor.

Contractor’s maintenance of insurance as required by this Contract shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the City’s recourse to any remedy available at law or in equity.

### 8.3.1 Minimum Scope of Insurance

The Contractor shall obtain insurance that meets or exceeds the following of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be written on Insurance Services Office (“ISO”) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage. The policy shall include the ISO CA 9948 Form (or its equivalent) for transportation of cargo and a MCS 90 Form in the amount specified in the Motor Carrier Act. The policy shall include a waiver of subrogation in favor of the City. The City shall be named as an additional insured under the Contractor’s Automobile Liability insurance policy.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01, or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse, or underground property damage. The City shall be named as a Primary-Non Contributory Additional Insured under the Contractor’s Commercial General Liability insurance policy with respect to the work performed for the City, using ISO additional insured endorsements CG 2010 0704 and CG 2037 0704.
3. Workers’ Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Contractor’s Pollution Liability insurance coverage covering any occurrence of bodily injury, personal injury, property damage, cleanup costs, and legal defense expenses applying to all work performed under the contract, including that related to transported cargo. The City shall be named as a Primary-Non Contributory Additional Insured under the Contractor’s Pollution Liability insurance policy.

### 8.3.2 Minimum Amounts of Insurance

Contractor shall maintain at a minimum the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of Ten million dollars ($10,000,000) for each accident. Limits may be achieved by a combination of primary and umbrella policies.
2. Commercial General Liability insurance shall be written with limits no less than ten million dollars ($10,000,000) for each occurrence, Twenty million dollars ($20,000,000) general aggregate, and a twenty million dollar ($20,000,000) products-completed operations aggregate limit. Limits may be achieved by a combination of primary and umbrella policies.
3. Workers’ Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Contractor’s Pollution Liability insurance shall be written with limits no less than ten million dollars ($10,000,000) combined single limit for each pollution condition for bodily injury, personal injury, property damage, cleanup costs, and legal defense expense.

### 8.3.3 Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Commercial General Liability, and Contractor’s Pollution Liability coverage:

1. The Contractor’s insurance coverage shall be the primary insurance with respect to the City, its officials, employees, and volunteers. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of the Contractor’s insurance and shall not contribute with it. The City, its officials, employees, agents, and volunteers shall be named as Primary-Non Contributory Additional Insured’s on the Contractor’s Automobile Liability, Commercial General Liability, and Pollution Liability insurance policies, via blanket-form endorsement.
2. Coverage shall state that the Contractor’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.
3. Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be canceled except after thirty (30) days’ prior written notice has been given to the City. Such notice shall be sent directly to the City. If any insurance company refuses to provide the required notice, the Contractor or its insurance broker shall notify the City of any cancellation of any insurance immediately on receipt of insurers’ notification to that effect.
4. All Deductibles or Self Insured Retentions shall be the full responsibility of the Contractor.

5. Insurance Limits required are minimum limits and do not reduce the Defense, Indemnity, Hold Harmless Liability or any other liabilities of the Contractor.

### 8.3.4 Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:XII.

### 8.3.5 Verification of Coverage

The Contractor shall furnish the City with original certificates and a copy of the blanket-form amendatory endorsements as required herein, including, but not necessarily limited to, the additional insured endorsement, evidencing the insurance requirements of the Contractor at least one (1) month before the Date of Commencement of Service of this Contract.

### 8.3.6 Subcontractors

The Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the same insurance requirements as stated herein for the Contractor, including the requirement that the City, its officials, employees, and volunteers be named Primary-Non Contributory Additional Insured’s on the Contractor’s insurance policy and shall provide applicable endorsements in a form acceptable and approved by the City.

## 8.4 Performance Bond

The Contractor shall provide and maintain at all times a valid Contractor’s Performance and Payment Bond or bonds in a form provided by the City in the amount of two million dollars ($2,000,000). The bond(s) shall be issued for a period of not less than one (1) year, and the Contractor shall provide new bond(s) to the City no less than sixty (60) calendar days prior to the expiration of the bond(s) then in effect. The City shall have the right to call the bond(s) in full in the event its renewal is not confirmed prior to five (5) calendar days before its expiration.

## 8.5 Indemnification

### 8.5.1 Defend, Indemnify and Hold Harmless

Contractor shall indemnify, defend, protect, and hold harmless the City, its elected and appointed officials, officers, employees, representatives, volunteers, and agents, from any and all third party claims or suits, and any damages, costs, judgments, awards or liability resulting from such claims or suits:

(a) for injury or death of any person or damage to property to the extent the same is caused by the actual or alleged negligent acts or omissions, or willful misconduct, of Contractor, its agents, servants, representatives, officers, or employees in the performance of this Contract and any rights granted hereunder, or

(b) to the extent such claim or demand is caused by Contractor’s unlawful release of Hazardous Waste in violation of any Environmental Law in its performance of Services and exercise of any rights granted hereunder.

This indemnity under subsection 8.5.1.(1)(b) includes each of the following to the extent the same is caused by Contractor’s unlawful release of Hazardous Substances in violation of applicable Environmental Laws: (i) liability for a governmental agency’s costs of removal or remedial action for such release by Contractor of Hazardous Waste; (ii) damages to natural resources caused by Contractor’s release of Hazardous Waste, including reasonable costs of assessing such damages; (iii) liability for any other person’s costs of responding to such release by Contractor of Hazardous Waste; and (iv) liability for any costs of investigation, abatement, correction, cleanup, fines, penalties, or other damages arising under any Environmental Laws that are caused by Contractor’s release of Hazardous Waste. Provided, however, such indemnification shall not extend to any claims, demands, liability, loss, cost, damage or expense of any nature whatsoever including all costs and attorneys’ fees caused by the sole negligence of the City, its agents, employees, official, officers, contractors or subcontractors.

### 8.5.2 Process

In the event any claim for such damages be presented to or filed with the City, the City shall promptly notify Contractor thereof, and Contractor shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim, provided further, that in the event any suit or action is filed against the City based upon any such claim or demand, the City shall likewise promptly notify Contractor thereof, and Contractor shall have the right, at its election and its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election. The indemnification obligations set forth herein shall extend to claims which are not reduced to a suit and any claims which may be compromised, with Contractor’s written consent, prior to the culmination of any litigation or the institution of any litigation. The City has the right to defend or participate in the defense of any such claim at its own cost and expense, provided that Contractor shall not be liable for such settlement of other compromise unless it has consented thereto in writing.

The provisions contained herein have been mutually negotiated by the Parties. Solely to the extent required to enforce the indemnification provisions of this Section 8.5.1, Contractor waives its immunity under Title 51 RCW, Industrial Insurance; provided; however, the foregoing waiver shall not in any way preclude Contractor from raising such immunity as a defense against any claim brought against Contractor by any of its employees.

Inspection or acceptance by the City of any Services performed under this Contract shall not be grounds for avoidance of any of these covenants of indemnification, defense, and hold harmless. Said indemnification, defense, and hold harmless obligations shall extend to claims that are not reduced to a suit and any claims which may be compromised, with Contractor’s prior written consent, prior to the culmination of any litigation or the institution of any litigation.

The provisions of this section shall survive the termination or expiration of this Contract.

## 8.6 Confidentiality of Information

Pursuant to the Washington Public Records Act (“PRA”), Chapter 42.56 RCW, public records, as defined by the PRA, may be subject to disclosure upon request by any person, unless the documents are exempt from public disclosure by a specific provision of law.

If the City receives a request for inspection or copying of any such documents, it shall promptly notify the Contractor in writing regarding the public records request. The City will give the Contractor ten (10) business days after such notification within which to obtain a court order prohibiting the release of the documents. The City assumes no contractual obligation to enforce any exemption under the PRA.

## 8.7 Assignment of Contract

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### 8.7.1 Assignment or Pledge of Money by the Contractor

The Contractor shall not assign or pledge any of the money due under this Contract without securing the prior written approval of the surety of the Contractor’s performance bond and providing at least thirty (30) days’ prior written notice to the City of such assignment 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. The requirements of this section shall not apply to the grant of a general security interest in the Contractor’s assets to secure the Contractor’s obligations under any loan or credit facility entered into by the Contractor or the Contractor’s lawfully organized corporate affiliates.

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### 8.7.2 Assignment, Subcontracting, Delegation of Duties

The Contractor shall not assign or sub-contract any of the services provided under this Contract or delegate any of its duties under this Contract without the prior written approval of the City, which may be granted or withheld in the City’s sole discretion.

In the event of an assignment, sub-contracting, or delegation of duties, the Contractor shall remain responsible for the full and faithful performance of this Contract and the assignee, subcontractor, or other obligor shall also become responsible to the City for the satisfactory performance of the services to be provided under this Contract. The City may impose conditions of approval on any such assignment, subcontracting, or Change of Control, including but not limited to requiring the delivery by the assignee, subcontractor, or other obligor of its covenant to the City to fully and faithfully complete the services to be provided under this Contract or responsibilities undertaken. In addition, the assignee, subcontractor, or obligor shall sign a separate statement agreeing to abide by all terms and conditions of this Contract. The City may terminate this Contract if the assignee, subcontractor, or obligor does not comply with this clause.

For the purposes of this Contract, any change of control of the Contractor shall be considered an assignment subject to the requirements of this section. Nothing herein shall preclude the City from executing a novation, allowing the new ownership to assume the rights and duties of the Contract and releasing the previous ownership of all obligations and liability.

## 8.7.3 Change of Trade Name

In the event the Contractor wishes to change the trade name under which it does business under this Contract, the Contractor shall provide the name, logo, and colors under which it will be doing business in writing to the City at least thirty (30) days prior to the effective date of its change of trade name. Within a reasonable period following a change of trade name by the Contractor, all items, logos, articles, and implements seen by the public shall be changed, including but not limited to letterhead, signs, promotional materials, website pages, billing statements, envelopes, and other items. Vehicles are the only exception; vehicles must be repainted with new trade name, and any new logo or colors, within two (2) years of the effective date of the change of trade name. Failure to comply with the terms of this section shall result in penalties assessed against the Contractor in accordance with Section 6.1.

## 8.8 Laws to Govern/Venue

This Contract shall be governed by the laws of the State of Washington both as to interpretation and performance. Venue shall be in Superior Court in the State of Washington for King County.

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## 8.9 Compliance with Applicable Laws and Regulations

The Contractor shall comply with all federal, state, and local regulations and ordinances applicable to the work to be done under this Contract. Any violation of the provisions of this section shall be considered a violation of a material provision of this Contract and shall be grounds for cancellation, termination, or suspension of the Contract by the City, and may result in ineligibility for further work for the City.

The Contractor agrees not to discriminate against any employee or applicant for employment or any other persons in the performance of this Contract because of race, religion, creed, color, national origin, marital status, gender, age, disability, sexual orientation, gender identity, or other circumstances as may be defined by federal, state, or local law or ordinance, except for a bona fide occupational qualification. Without limiting the foregoing, Contractor agrees to comply with the provisions of the Affidavit of Equal Opportunity & Title VI Compliance requirements incorporated herein by this reference. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contractor setting forth the provisions of this nondiscrimination clause.

Conditions of the Federal Occupational Safety and Health Act of 1970, the Washington Industrial Safety and Health Act of 1973, and standards and regulations issued under these Acts from time-to-time must be complied with, including ergonomic and repetitive motion requirements. The Contractor must defend, indemnify, and hold harmless the City from all damages, injuries or losses assessed for the Contractor’s failure to comply with the Acts and Standards issued therein. The Contractor is also responsible for meeting all local, state, and federal health and environmental regulations and standards applying to the operation of the collection and processing systems used in the performance of this Contract.

The Contractor is specifically directed to observe all weight-related laws and regulations in the performance of these services, including axle bridging and loading requirements.

## 8.10 Permits and Licenses

The Contractor and subcontractors shall secure a City business license and pay all fees and collect and remit all taxes levied by the City. The Contractor shall obtain all permits, certifications, authorizations, and licenses necessary to provide the services required herein prior to the Date of Execution of this Contract at its sole expense.

The Contractor shall be solely responsible for all taxes, fees, and charges incurred, including, but not limited to, license fees and all federal, state, regional, county, and local taxes and fees, including income taxes, property taxes, excise taxes, permit fees, operating fees, surcharges of any kind that apply to any and all persons, facilities, property, income, equipment, materials, supplies, or activities related to the Contractor’s activities under the Contract, business and occupation taxes, workers’ compensation, and unemployment benefits.

## 8.11 Relationship of Parties

The City and Contractor intend that an independent contractor relationship shall be created by this Contract. The implementation of services shall lie solely with the Contractor. No agent, employee, servant, or representative of the Contractor shall be deemed to be an employee, agent, servant, or representative of the City.

## 8.12 Contractor’s Relationship with Customers

The Contractor shall not separately contract with Customers for any services covered under this Contract; however, the Contractor may negotiate separate agreements with Customers for the sole purpose of compactor leasing, payment for recyclables, or other related services only when not included or specified in this Contract, provided that Customers are provided separate invoices for those services and that the Contractor makes it clear to Customers that those services are not provided under this Contract. These separate agreements must be in writing and shall in no way expressly or by application supersede this Contract. The Contractor agrees these separate agreements shall not contain durations any longer than the final date of this Contract’s Term. These separate agreements shall not have terms that automatically renew past the expiration of this Contract. These separate agreements must terminate prior to the expiration of this Contract. The Contractor shall provide to the City a detailed list of all such separate agreements with Customers upon the City’s request. The City may, at its sole option, regulate similar or identical services in the successor to this contract.

## 8.13 Bankruptcy

It is agreed that if an order for relief with respect to the Contractor is entered in any bankruptcy case, either voluntarily or involuntarily, in which the Contractor is a debtor, then this Contract, at the option of the City, may be terminated effective on or after the day and time the order for relief is entered.

## 8.14 Right to Renegotiate/Amend

The City shall retain the right to renegotiate this Contract or negotiate contract amendments at its discretion or based on policy changes, state statutory changes, or County rule changes, Washington State, or federal regulations regarding issues that materially modify the terms and conditions of the Contract, including but not limited to any modifications to contracting terms or policies as they relate to County disposal services. The City may also renegotiate this Contract should any Washington State, County, or City rate or fee associated with the Contract be held illegal or any increase thereof be rejected by voters. In addition, the Contractor agrees to renegotiate in good faith with the City in the event the City wishes to change disposal locations or add services to the Contract, and to provide full disclosure of existing and proposed costs and operational impacts of any proposed changes.

This Contract may be amended, altered, or modified only by a written amendment or addendum executed by authorized representatives of the City and the Contractor.

## 8.15 Force Majeure

Provided that the requirements of this section are met, Contractor shall not be deemed to be in default and shall not be liable for failure to perform under this Contract if Contractor’s performance is prevented or delayed by Acts of Nature, including landslides, lightning, forest fires, storms, floods, freezing and earthquakes, terrorism, civil disturbances, acts of the public enemy, wars, blockades, public riots, explosions, governmental restraint or other causes, whether of the kind enumerated or otherwise, that are not reasonably within the control of the Contractor, and are not the result of the willful or negligent act, error or omission of the Contractor; and that could not have been prevented by the Contractor through the exercise of reasonable diligence (“Force Majeure”). The Contractor’s obligations under this Contract shall be suspended, but only with respect to the particular component of obligations affected by the Force Majeure and only for the period during which the Force Majeure exists.

The following events do not constitute Force Majeure: strikes, other than nationwide strikes or strikes that by virtue of their extent or completeness make the particular goods or services effectively unavailable to the Contractor; work stoppages or other labor disputes or disturbances occurring with respect to any activity performed or to be performed by the Contractor; accidents to machinery, equipment or materials; unavailability of required materials or disposal restrictions; or general economic conditions.

If as a result of a Force Majeure event, Contractor is unable wholly or partially to meet its obligations under this Contract, the Contractor shall notify the City by telephone and email, on or promptly after the Force Majeureis first known, followed within seven (7) days by a written description of the event and cause thereof to the extent known; the date the event began, its estimated duration, the estimated time during which the performance of the Contractor’s obligations will be delayed; the likely financial impact of the event; and whatever additional information is available concerning the event and its impact on the City and its Customers. The Contractor shall provide prompt written notice of the cessation of the Force Majeure. Whenever such event shall occur, the Contractor, as promptly and as reasonably possible, shall use its best efforts to eliminate the cause, reduce the cost, and resume performance under the Contract. In addition, if as a result of a Force Majeure event, Contractor is unable wholly or partially to meet its obligations under this Contract, the Contractor shall notify all Customers regarding the disruption in collection service in a manner similar to the notification required in the case of inclement weather under Section 4.1.7.

## 8.16 Severability

If any provision of this Contract shall be declared illegal, void, or unenforceable, the other provisions of the Contract shall remain in full force and effect.

## 8.17 Waiver

No waiver of any right or obligation of either party hereto shall be effective unless in writing, specifying such waiver, and executed by the party against whom such waiver is sought to be enforced. A waiver by either party of any of its rights under this Contract on any occasion shall not be a bar to the exercise of the same right on any subsequent occasion or of any other right at any time.

## 8.18 Incorporation of Contractor’s Proposal in Response to City’s RFP

The Contractor’s Proposal, dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, submitted in response to the City’s Request for Proposals, is fully incorporated by this reference, including but not limited to collection vehicle types, customer service staffing and approach, processing abilities and other commitments made in the Contractor’s proposal and all associated clarifications and supplemental proposal materials or attachments. In the case of conflict between the Contractor’s proposal and this Contract, the provisions of this Contract shall prevail.

## 8.19 Dispute Resolution

The Parties shall attempt to resolve any and all disputes to the mutual satisfaction of both Parties by good faith discussions. Throughout the duration of a dispute, the Contractor shall continue providing all Services included in this Contract. Disputes not resolved in accordance with other provisions of this Contract or through good faith discussions shall be submitted to non-binding mediation before a mediator acceptable to both the City and the Contractor. All costs of mediation, including the City’s attorneys’ fees and expert witness fees, shall be paid for by the Contractor. Neither party may initiate or commence legal proceedings prior to completion of the non-binding mediation.

## 8.20 Entirety

This Contract and the exhibits affixed hereto and herein incorporated by reference represent the entire agreement between the City and the Contractor with respect to the services to be provided under this Contract. No prior written or oral statement or proposal shall alter any term or provision of this Contract.

WITNESS THE EXECUTION HEREOF on the day and year first herein above written.

CITY OF FEDERAL WAY

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Print) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Jim Ferrell, Mayor

Approved as to Form:

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

J. Ryan Call, City Attorney

**EXHIBITS**

EXHIBIT A: Service Area

EXHIBIT B: Contractor Rates

EXHIBIT C: Recyclables List

EXHIBIT D: Rate Modification Example

**EXHIBIT A:**

Service Area

**EXHIBIT B**

Contractor Rates

[to be completed based on Contractor’s RFP Form 2]

| Exhibit C: Recyclables List | | | | |
| --- | --- | --- | --- | --- |
| Recyclable Item | Curb |  | Handling Instructions | imitations |

|  |  |  |  |
| --- | --- | --- | --- |
| **Aluminum** – All clean aluminum cans, trays, pie tins, and clean food containers | X | Place in recycling Container. |  |
| **Corrugated Cardboard** – All corrugated cardboard boxes | X | All corrugated cardboard boxes placed in or next to recycling Container. | No larger than 3’ x 3’ in size, larger boxes shall be cut down to size. |
| **Glass Containers** – All colored or clear jars and bottles, rinsed, with lids removed | X | Empty, remove lids, and place in recycling Container. |  |
| **Paper** – All clean mixed paper, colored paper, magazines, phone books, catalogues, advertising supplements | X | Place in recycling Container. |  |
| **Plastic Containers** – All plastic bottles, jugs, and tubs. | X | Empty, clean, place in recycling Container. | Plastic bottles, jugs, tubs or containers that have hazardous or toxic products, such as motor oil or pesticides are excluded. |
| **Scrap Metal** – All ferrous and non-ferrous scrap metal, including lids > 3” free of wood, rubber, and other contaminants | X | Small items: Place in recycling Container or secure (e.g. bundle or box) next to recycling Container. | Less than 2’ x 2’ and 35 lbs. Less than 5% non-metal parts. |
| **Tin Cans** – All clean food and beverage tin cans and tin lids 3” or larger | X | Place in recycling Container. |  |
| **Used Cooking Oil** | X | Seal uncontaminated oil (no large solids) in clean, clear, screw-top plastic jugs. Label jugs with name and address and place next to recycling Cart. | Limit: Three (3) gallons per pick-up and ten (10) gallons per year. Single family only. |
| **Used Motor Oil** | X | Seal uncontaminated oil in clean, clear, screw-top plastic jugs. Label jugs with name and address and place next to recycling Cart. | Limit: Three (3) gallons per pick-up and ten (10) gallons per year. Single family only. |

EXHIBIT D

Fee Modification Examples

NOTE TO READERS: ALL AMOUNTS ARE PLACEHOLDERS AND WILL BE REVISED WITH THE CONTRACTOR’S FINAL RATES.

The collection and disposal components of the Customer charges listed in Exhibit B will be adjusted separately, as appropriate. The collection component of Customer charges will be adjusted annually, pursuant to this Section and as described below. The disposal component of the Customer charges listed in Exhibit B will be adjusted only if the City receives notification from the County of a pending disposal fee adjustment, and will not become effective until the new disposal charges become effective and are actually charged to the Contractor. Formulas for both collection and disposal rate adjustments are provided as follows:

**Collection Component Adjustment**

The sum of the collection and Administrative Fee components listed in Exhibit B will be increased or decreased by the amount of the CPI change:

NCC = PCC x [1 + nCPI – oCPI ]

oCPI

Where NCC = The new collection and Administrative Fee components, adjusted for excise tax on the Administrative Fee, of the customer rate for a particular service level; and

PCC = The previous collection and Administrative Fee components, adjusted for excise tax on the Administrative Fee, of the Customer rate for a particular service level; and

nCPI = The most recent June CPI value; and

oCPI = The CPI value used for the previous rate adjustment or, in the case of the first contract adjustment, the CPI value reported at the end of June 2019.

**Disposal Component Adjustment**

In the case of a disposal fee modification at County disposal facilities, the disposal component of each service level will be adjusted as follows:

**Step 1:**



**Step 2:**



Where NDC = The new disposal charge component of the customer rate for a particular service level; and

NTF = The new disposal fee, dollars per ton; and

ODC = The old disposal charge component of the customer rate for a particular service level;

OTF = The old disposal fee, dollars per ton; and

A = Pre-excise tax adjusted disposal component; and

CETR = Current excise tax rate (the current State excise tax rate; 0.015 used for this example).

For example, using an initial one 32-gallon cart rate of $31.35 per month: if the previous CPI is 143.2, the new CPI is 144.3 and the disposal fee will increase from $130 to $140 per ton starting on January 1, 2021, the old disposal component is $4.94, and the State Excise Tax rate is 0.015, the January 2021 Customer charge for one 32-gallon cart per week Residential Curbside service would be:

(144.3-143.2)

New Collection Component = $26.41 x [1+ ----------------] = **$26.61**

(143.2)

New Disposal Component Step A calculation (as on previous page):

[$4.94 x (140/130)] = $5.32

Step B calculation (as on previous page):

$5.32 + [(5.32-4.94) x 0.015] = **$5.33**

Thus, the new Customer charge for one 32-gallon cart per week Residential Curbside service will be the $**26.61** collection component plus the $**5.33** disposal component, equaling $**31.94**.

**Administrative Fee Adjustment**

The Contractor’s Commercial and Multifamily rates shown in Exhibit B include an embedded Administrative Fee, which may be adjusted from time to time, pursuant to Section 5.2. The initial contract rates have incorporated an Administrative Fee corresponding to a x.x% fee on gross receipts from those Customers, as follows (1 yard, 1 pickup per week as example):

Collection Fee ($48.26) + Disposal Fee ($29.35) + Administrative Fee ($10.87) + Excise Tax at 1.5% on Administrative Fee ($0.16) = Customer rate of $88.64.

In the event the City Administrative Fee is adjusted, the Administrative Fee portion of the Contractor’s Customer rates shall be adjusted in a manner that retains the Contractor’s underlying compensation to ensure that the Contractor remains whole.