

City of Seattle
CONTRACT FOR ORGANIC PROCESSING SERVICES
Contract #16-216-B

This Contract is made effective this 30th day of AUGUST, 2017 (the "Effective Date"), and entered into by and between the City of Seattle ("City"), a Washington municipal corporation; and **Cedar Grove Composting, Inc.** ("Contractor"), a corporation of the State of Washington, and authorized to do business in the State of Washington.

WHEREAS, the purpose of this contract is to provide for the processing of organic material produced by Seattle's residential, commercial and transfer station services and;

WHEREAS, the processing can include composting and/or anaerobic digestion into marketable end products such as compost, mulch, biogas for energy generation or fuel and digestate for composting and/or land application;

WHEREAS, Contractor was selected as a result of a Request for Proposal process initiated December 20, 2016 as required by Seattle Municipal Code since costs are anticipated to exceed \$50,000 in value; and

WHEREAS, funds for this purpose are authorized through the City of Seattle's annual budget;

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance of the scope of work contained herein, as attached and made a part hereof, the City and Contractor mutually agree as follows:

1. **Entire Agreement.** This Contract including all attachments and future Contract amendments comprises the entire agreement between the City and the Contractor. The Contract is defined to explicitly include the City's Request for Proposals and all Addenda and Contractor's Proposal. Where there are conflicts between these documents, the controlling documents will be in that same sequence, with the first taking priority over the last listed: this Contract with all attachments and future amendments; the Request for Proposals; and the Contractor's Proposal.
2. **Term of Contract.** Actual Organic Material processing services will begin September 1, 2017 and continue through March 31, 2020. The City, at its option, may extend this Contract for two successive two-year periods to March 31, 2022 or March 31, 2024 by notifying the Contractor on or before September 1, 2019 and August 1, 2021 respectively. If the City extends this Contract, the same terms, conditions, and method of payment shall apply during the extension period.
3. **Scope of Work.** Contractor shall provide the services as specified in Exhibit A, Scope of Work. These services shall be termed "Work" herein.
4. **Definitions**
In addition to capitalized terms that are defined elsewhere, the following meanings apply:
 - A. "City" means the City of Seattle.
 - B. "City Approved Compostable Bags" means bags approved by the City for collection in City services that meet ASTM D6400, ASTM D6868, or successor testing standards and have been approved by current City processors.

- C. "City Approved Single-Use Food Service Ware and Food Service/Food Packaging" means single-use service ware and food service packaging approved by the City for collection in City services that meet ASTM D6400, ASTM D6868, or successor testing standards and have been approved by current City processors.
- D. "Contractor's Share" means the portion of the City's Organic Waste to be processed by the Contractor as described in Exhibit A.
- E. "Contaminants" means any materials outside the definition of Organic Waste that are commingled in processing loads. Contaminants also include compostable items that are not distinguishable from similar petroleum-based items.
- F. "Food Waste" means all food scraps, including meat, dairy products, grease and bones; paper which has been contaminated with food, fat or grease; and food soiled cardboard and paper, including kitchen paper towels and compostable paper plates, bags, tissue and waxed paper.
- G. "Organic Waste" includes Food Waste, Yard Waste, Wood Waste, City Approved Compostable Bags, City Approved Single-Use Food Service Ware, and other organic materials as mutually agreed by the City and the Contractor.
- H. "Yard Waste" means plant material (leaves, grass clippings, branches, brush, flowers, roots, wood waste, etc.); debris commonly thrown away in the course of maintaining yards and gardens, including sod and a small number of incidental rocks not over two (2) inches in diameter. Yard Waste does not include loose soils, Food Waste; plastics and synthetic fibers; Wood Waste; human or animal excrement; noxious weeds and soil contaminated with hazardous substances.
- I. "Wood Waste" means urban wood derived from clean, discarded, unpainted and untreated pallets, wooden crates and lumber; wood industry manufacturing residuals such as sawdust, planer or shaper shavings, barky or clean chips, chip screen fines and overs, bark, trim blocks, and the like collected from curbside residential sources. Wood Waste does not include the following which are expressly excluded: processed or "engineered" wood; construction and fabrication products containing bonding agents/adhesives such as fiberboard, oriented-strand board, plywood, "gluelam", "microlam", particle board and other partially synthetic wood-based materials; wood treated or exposed to preservatives, paint and chemicals (including CCA, "Sun Wood", creosote treated regimes, railway ties or timbers, painted demolition wood, pre-primed construction materials, and "Chec" pallets); materials exposed to and contaminated by sea or brackish water; fiber residual "sludge" such as those from pulp/paper manufacturing or water treatments.

5. **Payment and Payment Procedures**

A. **Payment for Processing Services.**

The City shall pay the Contractor monthly for all tons of Organic Waste processed by the Contractor during the month documented per Exhibit A. From September 1, 2017 to August 30, 2018 the City will pay the Contractor a rate of **FIFTY-FIVE DOLLARS (\$55.00)** per ton for processing services ("Processing Fee").

B. **Adjustments in Subsequent Contract Years**

The City will compute the Processing Fee payable for the Contract year beginning September 1, 2018 and subsequent Contract years as follows:

The per ton rate starting September 1, 2018 and every September 1 of subsequent years shall be multiplied by 1.0 plus **80%** of the percentage difference between the second-half annual consumer price index for Urban Wage Earners and Clerical Workers for the Seattle-Tacoma-Bremerton Area (CPI), Series ID No. CWURA423SAO, or successor indices and the previous year's CPI.

C. **Invoices and Payment Procedure**

No later than the 10th of each month, the Contractor will email a monthly invoice to SPU General Accounting with copies of weight information required pursuant to Exhibit A. This invoice will be paid by the City to the Contractor by wire transfer on or before the 30th of the same month (or 20 calendar days after the invoice date, if the invoice/weight information is presented late).

6. **Liquidated Damages**

Liquidated Damages pursuant to this Section shall be deducted from the monthly payment to the Contractor.

The act or omissions in Column A are a breach of this Contract; the amounts in Column B are set as Liquidated Damages.

Column A	Column B
Failure to accept, for more than a 3-hour period during the regular open hour hours described in Exhibit A, Organic Waste delivered by the City at the primary or back-up Receiving or Processing Facility. These damages do not apply if a force majeure, major disaster or emergency causes a disruption in the facility operations under Sections 46 and 47 of this Contract.	\$250 per inbound truck per hour

7. **Performance Bond.**

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

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

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

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

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

8. **Taxes, Fees and Licenses.**

A. Fees and Licenses: Contractor shall pay for and maintain in a current status, any license fees, assessments, permit charges, etc., which are necessary for contract performance. It is the Contractor's sole responsibility to monitor and determine any changes or the enactment of any subsequent requirements for said fees, assessments, or charges and to immediately comply with said changes during the entire term of this Contract. Contractor must pay all custom duties, brokerage or import fees where applicable as part of the contract price. Contractor shall take all necessary actions to ensure that materials or equipment purchased are expedited through customs.

B. Taxes: Where required by state statute, ordinance or regulation, Contractor shall pay for and maintain in current status all taxes that are necessary for contract performance. Unless

otherwise indicated, the City agrees to pay State of Washington sales or use taxes on all applicable consumer services and materials purchased. No charge by the Contractor shall be made for federal excise taxes and the City agrees to furnish Contractor with an exemption certificate where appropriate.

- C. Withholding payment for taxes/business license fees due the City of Seattle: If specified by Seattle Municipal Code the Director of the Department of Finance and Administrative Services may withhold payment due a City contractor pending satisfactory resolution of unpaid taxes and fees due the City.
- D. Contractor is to calculate and enter the appropriate Washington State and local sales tax on the invoice. Tax is to be computed on new items after deduction of any trade-in, in accordance with WAC 458-20-247.

9. Wage Increases for Employees

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

10. Contract Notices and Materials Delivery

Official Contract notices shall be delivered to the following addresses:

City of Seattle	Contractor
<p>Contact Manager Hans VanDusen (206) 684-4657 Hans.VanDusen@seattle.gov</p>	<p>Contract Contact Ron Westmoreland (206) 450-6182 ronw@cgcompost.com</p>
<p>U.S. Postal Service: Seattle Public Utilities P.O. Box 34018 Seattle, WA 98124-4018</p>	<p>U.S. Postal Service: 7343 E. Marginal Way S. Seattle, WA, 98108</p>
<p>Courier Delivery: Seattle Public Utilities 700 5th Ave, Suite 4900 Seattle, WA 98104-5017</p>	<p>Courier Delivery: 7343 E. Marginal Way S. Seattle, WA, 98108</p>

11. Representations.

Contractor represents and warrants that it has the requisite training, skill and experience necessary to provide Work and is appropriately accredited and licensed by all applicable agencies and governmental entities.

12. Warranties.

The Contractor represents and warrants to the City as follows:

- A. 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.

- B. Authority.
- 1) The Contractor has the authority to execute this Contract, to make the representations and warranties set forth in it and to perform the obligations of Contractor under this Contract in accordance with its terms.
 - 2) This Contract has been validly executed by an authorized representative of the Contractor and constitutes a valid and legally binding and enforceable obligation of Contractor.
- C. Government Authorizations and Consents. The Contractor has or will obtain prior to the first date on which any materials will be processed under this Contract, such licenses, permits and other authorizations from federal, state and other governmental authorities, as are necessary for the performance of its obligations under this Contract.
- D. Compliance with Laws. The Contractor is not in violation of any law, ordinance or regulation, the consequence of which violation will or may materially affect Contractor's ability to perform its obligations under this Contract. The Contractor is not subject to any order or judgment of any court, tribunal or governmental agency which materially and adversely affects its operations or assets in the state of Washington, or its ability to perform its obligations under this Contract.
- E. Accuracy of Information. None of the representations or warranties in this Contract, and none of the documents, statements, certificates or schedules furnished or to be furnished by Contractor pursuant hereto or in connection with the performance of the obligations contemplated under this Contract, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements of fact contained therein not misleading.
- F. Independent Examination. In accepting these responsibilities, the Contractor represents and affirms that it has made its own examination of all conditions, facilities and properties affecting the performance of this Contract and of the quantity and expense of labor, equipment, material needed, and of applicable taxes, permits, and laws.
- G. Statements in Response to RFP Binding. The Contractor hereby agrees to be bound by all statements made in its Response to the Request for Proposals, including all answers to Proposal Questions and completed Forms, except those expressly modified by this Contract, including Exhibit A.

13. City's Obligations.

The City's obligations under this Contract are as follows:

- A. Maintaining its solid waste collection contracts.
- B. Ensuring that Contractor's Share of Organic Waste collected under the City's solid waste collection contracts or collected at City transfer stations is properly delivered to a Contractor facility in accordance with Exhibit A.
- C. Removing from Contractor's facility and disposing of Contaminants in accordance with Exhibit A.
- D. Coordinating and implementing consumer education and enforcement efforts with City's contracted solid waste collectors to minimize Contaminants.
- E. Monitoring loads of Organic Waste at City transfer stations to minimize contamination and the possible rejection of loads.

14. Independent Contractor.

It is the intention and understanding of the Parties that Contractor shall be an independent contractor and that the City shall be neither liable for nor obligated to pay sick leave, vacation pay or any other benefit of employment, nor to pay any social security or other tax that may arise as an incident of employment. The Contractor shall pay all income and other taxes as due. Industrial or other

insurance that is purchased for the benefit of the Contractor shall not be deemed to convert this Contract to an employment contract. It is recognized that Contractor may or will be performing work during the term for other parties and that the City is not the exclusive user of the services that Contractor provides.

15. Inspection.

The Work shall be subject, at all times, to inspection by and with approval of the City, but the making (or failure or delay in making) such inspection or approval shall not relieve Contractor of responsibility for performance of the Work in accordance with this Contract, notwithstanding the City's knowledge of defective or noncomplying performance, its substantiality or the ease of its discovery. Contractor shall provide sufficient, safe, and proper facilities and equipment for such inspection and free access to such facilities.

16. Performance.

Acceptance by the City of unsatisfactory performance with or without objection or reservation shall not waive the right to claim damage for breach, or terminate the contract, nor constitute a waiver of requirements for satisfactory performance of any obligation remaining to be performed by Contractor.

17. Affirmative Efforts for Utilization of Women and Minority Subcontracting and Employment, Non discrimination in providing services

- A. Employment Actions: Contractor shall not discriminate against any employee or applicant for employment because of race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin, honorably discharged veteran or military status or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. Contractor shall affirmatively try to ensure applicants are employed, and employees are treated during employment, without regard to race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin, honorably discharged veteran or military status or the presence of any sensory, mental or physical handicap. Such efforts include, but are not limited to: employment, upgrading, demotion, transfer, recruitment, layoff, termination, rates of pay or other compensation, and training.
- B. In accordance with Seattle Municipal Code Chapter 20.42, Contractor shall actively solicit the employment and subcontracting of women and minority group members when there are commercially useful purposes for fulfilling the scope of work.
- C. If a WMBE Inclusion Plan is requested by and submitted to the City, the WMBE Inclusion Plan is material to the contract. The requirements and conditions stated in the WMBE Inclusion Plan shall be enforced as a contract requirement.
- D. If upon investigation, the Director of Purchasing and Contracting Services finds probable cause to believe that the Contractor has failed to comply with the requirements of this Section, the Contractor shall be notified in writing. The Director shall give Contractor an opportunity to be heard with ten calendar days' notice. If, after the Contractor's opportunity to be heard, the Director still finds probable cause, s/he may suspend the Contract and/or withhold any funds due or to become due to the Contractor, pending compliance by the Contractor with the requirements of this Section.
- E. Any violation of the mandatory requirements of this Section, or a violation of Seattle Municipal Code Chapter 14.04 (Fair Employment Practices), Chapter 14.10 (Fair Contracting Practices), Chapter 20.45 (City Contracts – Non-Discrimination in Benefits), or other local, state, or federal non-discrimination laws, shall be a material of contract for which the Contractor may be subject to damages and sanctions provided for by this Contract and by applicable law. In the event the Contractor is in violation of this Section shall be subject to debarment from City contracting activities in accordance with Seattle Municipal Code Section 20.70 (Debarment).

18. **Assignment:** Contractor shall not assign any of its obligations under this Contract without the City's written consent, which may be granted or withheld in the City's sole discretion. The Contractor shall not assign or pledge any of the monies due under this Contract without securing the written approval of the surety on the performance bond and providing at least thirty (30) calendar days' prior notice to the City of such assignments or pledge together with a copy of the surety's approval thereof. Such assignment or pledge, however, shall not release the Contractor or its sureties from any obligations or liabilities arising under or because of this Contract.

19. **Subcontracting:** Contractor shall not subcontract any of its obligations under this Contract without the City's written consent, which may be granted or withheld in the City's sole discretion. Contractor shall ensure that all subcontractors comply with the obligations, requirements and terms and conditions of the subcontract, except for Equal Benefit provisions. The City's consent to subcontract shall not release the Contractor from liability under this Contract, or from any obligation to be performed under this Contract, whether occurring before or after such consent to subcontract.

20. **Equal Employment Opportunity.**

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

21. **Civil Rights Act Title VI.**

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

22. **Equal Benefits.**

Compliance with SMC Ch. 20.45: The Contractor shall comply with the requirements of SMC Ch. 20.45 and Equal Benefits Program Rules implementing such requirements, under which the Contractor is obligated to provide the same or equivalent benefits ("equal benefits") to its employees with domestic partners as the Contractor provides to its employees with spouses. At the City's request, the Contractor shall provide complete information and verification of the Contractor's compliance with SMC Ch. 20.45. Failure to cooperate with such a request shall constitute a material breach of this Contract. (For further information about SMC Ch. 20.45 and the Equal Benefits Program Rules, go to review information at <http://www.seattle.gov/city-purchasing-and-contracting/social-equity/equal-benefits>.)

Remedies for Violations of SMC Ch. 20.45: Any violation of this Section shall be a material breach of Contract for which the City may:

- A. Require Contractor to pay actual damages for each day that the Contractor is in violation of SMC Ch. 20.45 during the term of the Contract; or
- B. Terminate the Contract; or
- C. Disqualify Contractor from bidding on or being awarded a City contract for a period of up to five (5) years; or
- D. Impose such other remedies as specifically provided for in SMC Ch. 20.45 and the Equal Benefits Program Rules promulgated thereunder.

23. **Publicity.**

No news release, advertisement, promotional material, tour, or demonstration related to the City's purchase or use of the Contractor's product or services performed pursuant to this Contract shall be produced, distributed, or take place, without the prior, specific written approval of the City's Project Manager or his/her designee and Contractor.

24. Proprietary and Confidential Information

The State of Washington's Public Records Act (Release/Disclosure of Public Records) Under Washington State Law (reference RCW Chapter 42.56, the Public Records Act) all materials received or created by the City of Seattle are considered public records. These records include but are not limited to bid or proposal submittals, agreement documents, contract work product, or other bid material.

The State of Washington's Public Records Act requires that public records must be promptly disclosed by the City upon request unless that RCW or another Washington State statute specifically exempts records from disclosure. Exemptions are narrow and explicit and are listed in Washington State Law (Reference RCW 42.56 and RCW 19.108).

As mentioned above, all City of Seattle offices ("the City") are required to promptly make public records available upon request. However, under Washington State Law some records or portions of records may be considered legally *exempt from disclosure*. A list and description of records identified as exempt by the Public Records Act can be found in RCW 42.56 and RCW 19.108.

If the City receives a public disclosure request for any records or parts of records that Contractor has properly and specifically listed on the City Non-Disclosure Request Form (Form) submitted with Contractor's bid/proposal, or records that have been specifically identified in this contract, the City will notify Contractor in writing of the request and will postpone disclosure. While it is not a legal obligation, the City, as a courtesy, will allow Contractor up to ten business days to obtain and serve the City with a court injunction to prevent the City from releasing the records (reference RCW 42.56.540). If you fail to obtain a Court order and serve the City within the ten days, the City may release the documents.

The City will not assert an exemption from disclosure on Contractor's behalf. If Contractor believes that its records are exempt from disclosure, Contractor is obligated to seek an injunction under RCW 42.56.540. Contractor acknowledges that the City will have no obligation or liability to Contractor if the records are disclosed.

25. General Legal Requirements.

- A. General Requirement: Contractor, at no expense to the City, shall comply with all applicable laws of the United States and the State of Washington; the Charter and ordinances of Seattle; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof. Without limiting the generality of this paragraph, the Contractor shall specifically comply with the following requirements of this section.
- B. Licenses and Similar Authorizations: Contractor, at no expense to the City, shall secure and maintain in full force and effect during the term of this Contract all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.
- C. Taxes: The Contractor shall pay, before delinquency, all taxes, import duties, levies, and assessments arising from its activities and undertakings under this Contract; taxes levied on its property, equipment and improvements; and taxes on the Contractor's interest in this Contract.

26. American with Disabilities Act.

Contractor shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this Contract. In particular, if the Contractor is providing services, programs or activities to the City employees or members of the public as part of this Contract, the Contractor shall not deny participation or the benefits of such services, programs, or activities, to people with disabilities on the basis of such disability. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Contract.

27. OSHA/WISHA.

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

28. Contract Work Hours and Safety Standards.

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

29. Clean Air Act and Federal Water Pollution Control Act.

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

30. Byrd Anti-Lobbying Amendment.

Contractors executing contracts with the City shall sign the Vendor Questionnaire, providing certification of compliance to the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 13652. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the City.

31. Indemnification.

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

32. Insurance.

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

A. COVERAGES AND LIMITS

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

- 1) COMMERCIAL GENERAL LIABILITY (CGL) Insurance including coverage for:
 - a. Premises/Operations
 - b. Products/Completed Operations
 - c. Personal/Advertising Injury
 - d. Contractual
 - e. Independent Contractors
 - f. Stop Gap/Employers Liability

Such Insurance must provide the following minimum limits of liability:

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

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

- 2) AUTOMOBILE LIABILITY INSURANCE for owned, non-owned, hired, and leased vehicles, as applicable, with MCS 90. Such insurance must provide a minimum limit of liability of \$1,000,000 CSL.
- 3) WORKERS' COMPENSATION INSURANCE as required by the Industrial Insurance laws of the state of Washington.

B. GENERAL REQUIREMENTS

- 1) Each insurer must either be (1) authorized to do business in the state of Washington and maintain A.M. Best's ratings of A-: VII or higher, or (2) procured as surplus lines under the provisions of chapter 48.15 RCW ("Unauthorized Insurers"). The City reserves the right to reject insurance including based on the insurer, terms and coverage, the certification of insurance, and/or policy provisions.
- 2) The Contractor shall keep this Insurance in force during the term of the contract
- 3) The liability Insurance policies for which there is a requirement to include the City as an additional insured shall contain a "cross liability" provision.
- 4) The insurance for the Contractor and any subcontractor performing services under this Contract shall include general liability insurance coverage that includes the City as an additional insured shall be primary and non-contributory as respects the City's self-insurance and/or insurance.
- 5) All Insurance shall include a requirement providing for a minimum of thirty (30) days prior written notice to the Contracting Agency of any cancellation in any Insurance, except a minimum of ten (10) days as respects cancellation for non-payment.
- 6) In the event that the City tenders a claim to any Contractor insurer for defense and indemnity, and the insurer declines to accept the tender or accepts it under a reservation of rights, upon the City's request the Contractor shall forward to the City a true and certified copy of any relevant Insurance policy(ies).

- 7) The Contractor shall not begin work under the contract until the required Insurance has been obtained and approved by the City.
- 8) Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five (5) business days notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such Insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the Contracting Agency on demand, or at the sole discretion of the Contracting Agency, offset against funds due the Contractor from the Contracting Agency.
- 9) Any self-insured retention (S.I.R.) in excess of \$50,000 must be disclosed and is subject to City's approval. The Contractor shall furnish financial information that the City shall reasonably require for performing a risk retention analysis and shall, in addition, provide a written statement that the Contractor will protect the City against any claim within the S.I.R. to the same extent that coverage would be afforded under the relevant excess of loss commercial insurance policy. The cost of any claims payments for defense and indemnity falling within the S.I.R. shall be the responsibility of the Contractor.
- 10) All costs for Insurance shall be incidental to and included in the unit or lump sum prices of the contract and no additional payment will be made.

C. NO LIMITATION OF LIABILITY; ADDITIONAL INSURED

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

D. SUBCONTRACTORS

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

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

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

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

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

33. Audit.

Upon request, Contractor shall permit the City, and any other governmental agency involved in the funding of the Work ("Agency"), to inspect and audit all pertinent books and records of Contractor, any subcontractor, or any other person or entity that performed work in connection with or related to the Work, at any and all times deemed necessary by the City or Agency, including up to six years after the final payment or release of withheld amounts has been made under this Contract. Such inspection shall not include any inspection of data regarding or related to any other parties dealing with Contractor or matters regarding or related to financial records not directly related to the performance of the Work. Such inspection and audit shall occur in King County, Washington or other such reasonable location where such books and records are located as the City or Agency selects. After consultation with Contractor to assure such a request is necessary, the Contractor shall supply the City with, or shall permit the City to make, a copy of any books and records and any portion thereof. The Contractor shall ensure that such inspection, audit and copying right of the City and Agency is a condition of any subcontract, agreement or other arrangement under which any other person or entity is permitted to perform work under this Contract.

34. Contractual Relationship

The relationship of Contractor to the City by reason of this Contract shall be that of an independent contractor. This Contract does not authorize Contractor to act as the agent or legal representative of the City for any purpose whatsoever. Contractor is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City or to bind the City in any manner or thing whatsoever.

35. Federal Debarment for Primes and all Subcontractors.

Contractor shall immediately notify the City of any suspension or debarment or other action that excludes the Contractor and any subcontractor from participation in Federal contracting. Contractor shall verify all subcontractors that are intended and/or used by the Contractor for performance of City work are in good standing and are not debarred, suspended or otherwise ineligible by the Federal Government. Debarment shall be verified at <https://www.sam.gov/portal/public/SAM/#1> The Contractor shall keep proof of such verification within the Contractor records.

36. Supervision and Coordination.

Contractor shall:

- Competently and efficiently, supervise and direct the implementation and completion of all contract requirements specified herein.
- Designate a representative(s) with the authority to legally commit Contractor's firm. All communications given or received from the Contractor's representative shall be binding on the Contractor.

37. Involvement of Current and Former City Employees

If a Contractor has any current or former City employees, official or volunteer, working or assisting on solicitation of City business or on completion of an awarded contract, you **must** provide written notice to City of the current or former City official, employee or volunteer's name. The Vendor Questionnaire within your bid documents prompts you to answer that question. You must continue to update that information to City during the full course of the contract. The Contractor is to be aware and familiar with the Ethics Code, and educate Contractor workers accordingly.

38. Anti-Trust Overcharges.

The City maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, the Contractor hereby assigns to the City any and all claims for such overcharges except overcharges which result from antitrust violations commencing after the price is established under this contract and which are not passed on to the City under an escalation clause.

39. No Conflict of Interest.

Contractor confirms that Contractor does not have a business interest or a close family relationship with any City officer or employee who was, is, or will be involved in the Contractor selection, negotiation, drafting, signing, administration, or evaluating the Contractor's performance.

40. No Gifts or Gratuities.

Contractor shall not directly or indirectly offer anything of value (such as retainers, loans, entertainment, favors, gifts, tickets, trips, favors, bonuses, donations, special discounts, work or meals) to any City employee, volunteer or official, that is intended, or may appear to a reasonable person to be intended, to obtain or give special consideration to the Contractor. Promotional items worth less than \$25 may be distributed by the vendor to City employees if the Contractor uses the items as routine and standard promotions for business. Any violation of this provision may result in termination of this Contract. Nothing in this Contract prohibits donations to campaigns for election to City office, so long as the donation is disclosed as required by the election campaign disclosure laws of the City and of the State.

41. Contract Workers with 1,000 Hours

Throughout the life of the Contract, Contractor shall provide written notice to City and the City Contract Manager of any contract worker that shall perform more than 1,000 hours of contract work for the City within a rolling 12-month period. Such hours include those that the contract worker performs for the Contract, and any other hours that the worker performs for the City under any other contract. Such workers are subject to the requirements of the City Ethics Code, Seattle Municipal Code 4.16. The Contractor shall advise their Contract workers as applicable.

42. Errors & Omissions: Correction.

Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by or on the behalf of the Contractor under this Contract. The Contractor, without additional compensation, shall correct or revise any errors or omissions in the designs, drawings, specifications, and/or other Contractor services immediately upon notification by the City. The obligation provided for in this section with respect to any acts or omissions during the term of this Contract shall survive any termination or expiration of this Contract and shall be in addition to all other obligations and liabilities of the Contractor.

43. Default of Contractor.

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

- A. Is unable to accept Organic Waste, for more than a 48 hour period for processing at the primary or back-up Processing Facility or alternate facility approved by the City;
- B. Fails to comply with the terms of any of the Scope of Work;
- C. Fails to furnish and maintain a Performance and Payment Bond
- D. Fails to furnish and maintain the Insurance Requirements,
- E. Repeatedly neglects, fails, or refuses to comply with any material term of the Contract, after having received written notice of its obligation to do so.

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

make such a declaration of default, the Director shall, in his/her discretion, consider the severity of the alleged violations, and the overall performance of the Contractor under the Contract.

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

If there is a transfer to the surety, payments shall be made to the surety or its agent for all work performed under the Contract subsequent to such transfer, in amounts equal to those that would have been made to the Contractor had it performed in the manner and to the extent of the surety's performance, and the Contractor shall have no claim upon the same.

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

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

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

44. Disputes.

The parties shall endeavor to resolve any dispute or misunderstanding that may arise under this Contract concerning Contractor's performance, if mutually agreed to be appropriate, through negotiations between the Contractor and the City's Contract Manager, or if mutually agreed, referred to the City's named representative and the Contractor's senior executive(s). Either party may decline or discontinue such discussions and may then pursue other means to resolve such disputes including termination as allowed for within the contract, or may by mutual agreement pursue other dispute alternatives such as alternate dispute resolution processes. Nothing in this dispute process shall in any way mitigate the rights, if any, of either party to terminate the contract for cause or convenience.

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

45. Termination.

- A. **For Cause:** The City may terminate this Contract if the Contractor is in material breach of any of the terms of this Contract, and such breach has not been corrected to the City's reasonable satisfaction in a timely manner.
- B. **Acts of Insolvency:** The City may terminate this Contract by written notice to Contractor if the Contractor becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or is wound up or liquidated, voluntarily or otherwise.

- C. Termination for Gratuities: The City may terminate this Contract by written notice to Contractor if The City finds that any gratuity in the form of entertainment, a gift, or otherwise, was offered to or given by the Contractor or any agent therefor to any City official, officer or employee.
- D. Notice: The City is not required to provide advance notice of termination. Notwithstanding, the Buyer may issue a termination notice with an effective date later than the termination notice itself. In such case, the Contractor shall continue to provide products and services as required by the Buyer until the effective date provided in the termination notice.

46. Force Majeure – Suspension and Termination.

This section applies in the event that either party is unable to perform the obligations of this contract because of a Force Majeure event as defined herein, to the extent that the Contract obligations must be suspended in part or in full. A Force Majeure event is an event that prohibits performance and is beyond the control of the party. Such events may include natural or man-made disasters, or an action or decree of a superior governmental body, which prevents performance.

Should either party suffer from a Force Majeure event and is unable to provide performance, such party shall give notice to the remaining party as soon as practical and shall do everything possible to resume performance.

Upon receipt of such notice, the party shall be excused from such performance as is affected by the Force Majeure Event for the period of such Event. If such Event affects the delivery date or warranty provisions of this Agreement, such date or warranty period shall automatically be extended for a period equal to the duration of such Event.

47. Major Emergencies or Disasters.

The City may undergo an emergency or disaster that may require the Contractor to either increase or decrease quantities from normal deliveries, or that may disrupt the Contractor's ability to provide normal performance. Such events may include, but are not limited to, a storm, high wind, earthquake, flood, hazardous material release, and transportation mishap, loss of any utility service, fire, terrorist activity or any combination of the above. In such events, the following shall apply.

- A. The City shall notify the Contractor that the City is experiencing an emergency or disaster, and will request emergency and priority services from the Contractor.
- B. The City may request that the Contractor provide either increased or decreased quantities from traditional orders, or may request Contractor provide additional products or services.
- C. Upon such notice by the City, the Contractor shall make reasonable efforts to provide the City the materials in the quantities requested and within the schedule specified by the City, adhering to the conditions in this Section.
- D. The City of Seattle shall be the customer of first priority for the Contractor, except where preceded by State or Federal government mandates or provided to other Contractor customers in agreements prior to the Effective Date of this Contract. The Contractor shall provide its best and priority efforts to provide the requested goods and/or services to the City of Seattle in as complete and timely manner as possible. Such efforts by the Contractor are not to be diminished as a result of Contractor providing service to other customers, except as mandated by State or Federal governments.
- E. If the Contractor is unable to respond in the time and/or quantities requested by the City, the Contractor shall promptly assist the City to the extent practicable, to gain access to alternative materials and/or services. This may include:

- 1) Coordinating with other distributors or subsidiaries beyond those in the local region to fulfill order requests;
- 2) Offering the City substitutions provided the Contractor obtains prior approval from the City for such substitution.

48. City Debarment.

In accordance with SMC Ch. 20.70, the Director of Executive Administration or designee may debar a Contractor from entering into a Contract with the City or from acting as a subcontractor on any Contract with the City for up to five years after determining that any of the following reasons exist:

- A. Contractor has received overall performance evaluations of deficient, inadequate, or substandard performance on three or more City Contracts.
- B. Contractor failed to comply with City ordinances or Contract terms, including but not limited to, ordinance or Contract terms relating to small business utilization, discrimination, prevailing wage requirements, equal benefits, or apprentice utilization.
- C. Contractor abandoned, surrendered, or failed to complete or to perform work on or in connection with a City Contract.
- D. Contractor failed to comply with Contract provisions, including but not limited to quality of workmanship, timeliness of performance, and safety standards.
- E. Contractor submitted false or intentionally misleading documents, reports, invoices, or other statements to the City in connection with a Contract.
- F. Contractor colluded with another contractor to restrain competition.
- G. Contractor committed fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Contract for the City or any other government entity.
- H. Contractor failed to cooperate in a City debarment investigation.
- I. Contractor failed to comply with SMC 14.04, SMC Ch. 14.10, SMC Ch. 20.42, or SMC Ch. 20.45, or other local, State, or federal non-discrimination laws.

The Director may issue an Order of Debarment following the procedures specified in SMC 20.70.050. The rights and remedies of the City under these provisions are in addition to any other rights and remedies provided by law or under the Contract.

49. Workers Right to Know.

“Right to Know” legislation required the Department of Labor and Industries to establish a program to make employers and employees more aware of the hazardous substances in their work environment. WAC 296-62-054 requires among other things that all manufacturers/distributors of hazardous substances, including any of the items listed on this ITB, RFP or contract bid and subsequent award, must include with each delivery completed Material Safety Data Sheets (MSDS) for each hazardous material. Additionally, each container of hazardous material must be appropriately labeled with: the identity of the hazardous material, appropriate hazardous warnings, and the Name and Address of the chemical manufacturer, improper, or other responsible party.

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

50. Paid Sick Time and Safe Time Ordinance

Be aware that the City has a Paid Sick Time and Safe Time ordinance that requires companies to provide employees who work more than 240 hours within a year inside Seattle, with accrued paid sick and paid safe time for use when an employee or a family member needs time off from work due to illness or a critical safety issue. The ordinance applies to employers, regardless of where they are located, with more than four full-time equivalent employees. This is in addition and additive to

benefits a worker receives under prevailing wages per WAC 296-127-014(4). City contract specialists may audit payroll records or interview workers as needed to ensure compliance to the ordinance. Please see <http://www.seattle.gov/laborstandards>, or may call the Office of Labor Standards at 206.684.4500 with questions.

50. Other Labor Standards Requirements:

Contractor shall comply to the extent applicable with the City's Minimum Wage labor standards as required by SMC 14.19, setting wage standards for employees working within city limits as well as the Wage Theft labor standards as required by SMC 14.20, setting basic requirements for payment of wages and tips for employees working within city limits and providing various payment documentation to employees.

51. Campaign Contributions (Initiative Measure No. 122)

Elected officials and candidates are prohibited from accepting or soliciting campaign contributions from anyone having at least \$250,000 in contracts with the City in the last two years or who has paid at least \$5,000 in the last 12 months to lobby the City. Please see Initiative 122, or call the Ethics Director with questions. For questions about this measure, contact: Polly Grow, Seattle Ethics and Elections, 206-615-1248 or polly.grow@seattle.gov.

52. Miscellaneous Provisions.

- A. Amendments: No modification of this Contract shall be effective unless in writing and signed by an authorized representative of the City, except as otherwise authorized herein
- B. Conflict: In the event of conflict between contract documents and applicable laws, codes, ordinances or regulations, the most stringent or legally binding requirement shall govern and be considered a part of this contract to afford the City the maximum benefits.
- C. Liens, Claims and Encumbrances: All materials, equipment, or services shall be free of all liens, claims or encumbrances of any kind and if the City requests a formal release of same shall be delivered to the City.
- D. Binding Contract: This Contract shall not be binding until signed by both parties. The provisions, covenants and conditions in this Contract shall bind the parties, their legal heirs, representatives, successors, and assigns.
- E. Applicable Law/Venue: This Contract shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought hereunder shall be in the Superior Court for King County, Washington
- F. Remedies Cumulative: Rights under this Contract are cumulative and nonexclusive of any other remedy at law or in equity.
- G. Captions: All titles, including sections or subsections, are for convenience only and do not define or limit the contents.
- H. Severability: Any term or provision of this Contract found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the Contract.
- I. Waiver: No covenant, term, or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Neither the acceptance by City of any performance by the Contractor after the time the same shall have become due nor payment to the Contractor for any portion of the Work shall constitute a waiver by the City of the breach or default of any covenant, term or condition unless otherwise this is expressly agreed to by City, in writing. Neither party's failure to insist on performance of any of the terms or conditions herein or

to exercise any right or privilege or the party's waiver of any breach hereunder shall not thereafter waive any other term, condition, or privilege, whether of the same or similar type.

- J. Contract Representations: This Contract as described in Item 1 constitutes the entire Agreement. No verbal agreement or conversation between any officer, agent, associate or employee of the City and any officer, agency, employee or associate of the Contractor prior to the execution of this Contract shall affect or modify any of the terms or obligations contained in this Contract.
- K. Negotiated Contract: The parties acknowledge that this is a negotiated Contract, that they have had the opportunity to have this Contract reviewed by respective legal counsel, and that terms and conditions are not construed against any party on the basis of such party's draftsmanship thereof.
- L. No personal liability: No officer, agent or authorized employee of the City shall be personally responsible for any liability arising under this Contract, whether expressed or implied, nor for any statement or representation made herein or in any connection with this Contract.

IN WITNESS WHEREOF, in consideration of the terms, conditions, and covenants contained herein, or attached and incorporated and made a part hereof, the parties have executed this Contract by having their authorized representatives affix their signatures below.

CONTRACTOR

CITY OF SEATTLE

By J. Stephan Banchemo / 8/24/17
Signature Date

J. Stephan Banchemo Jr., CEO
Cedar Grove Composting, Inc.

By Mami Hara / 8.30.17
Signature Date

Mami Hara, General Manager/CEO
Seattle Public Utilities

City of Seattle Business License Number:	159692
Washington State Unified Business Identifier Number (UBI):	601-345-102

Exhibits:

- Exhibit A: Scope of Work
- Exhibit B: Inclusion Plan

Exhibit A: Scope of Work

Contract for Organics Processing Services

1. PROCESSING SERVICES

1.1 Organic Waste Receiving and Processing

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

The facility shall be open for City organics deliveries from 7 a.m. to 10 p.m. Monday through Friday. The facility shall be open Sunday 10 a.m. to 2 p.m. during May and November if a minimum of four loads are delivered by the City per day and the City provides two weeks' notice. The backup facility shall be open on Saturdays from 8 a.m. to 4 p.m. if a minimum of four loads are delivered by the City per day. The facility and the backup facility will not be open on the following holidays: Thanksgiving, Christmas, and New Year's Day.

The Contractor's arrangements for processing organic material, at both the primary and back-up processing facilities, shall be subject to review and approval before the start of this processing contract. All facilities covered under this contract shall be subject to inspection by City staff during business hours to determine compliance with this Contract and all of the local, state solid waste, stormwater management, and regional air authority rules and regulations pertaining composting facility operations. The rules and regulations of the Washington State Department of Agriculture may apply in addition to the transport and receiving of organic material depending on the location of the composting facility or any of its backup facilities.

1.2 Contractor Share of City Organic Waste

The Contractor shall provide all processing services called for in this Contract for a minimum of 25% and maximum of 35% of the City's Organic Waste each month, up to a maximum share of 4,000 tons per month, as collected through the City's collection contracts and transfer stations. These limits can be adjusted by mutual agreement of the City and the Contractor.

The City will continue to maintain and enforce its Solid Waste collection contracts and ensure the collected Organic Waste is delivered to its Organic Waste processors.

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

1.3 Primary Organic Waste Receiving and Processing Facility

The Contractor's primary processing facility shall be Cedar Grove Composting, 3620 36th Pl SE, Everett, WA 98201.

1.4 Back-up Organics Processing Facility

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

Name of Facility (or Facilities): Cedar Grove Composting, 17825 Cedar Grove SE, Maple Valley, WA 98038

If the Contractor is unable to meet pertinent local or state, local or other regulations, or is unable for any reason whatsoever to accept for processing at its specified primary processing facility, the Contractor, at

Exhibit A: Scope of Work

its own initiative or upon notification from the City, shall deliver Organic Waste to the back-up Organics receiving and/or processing facilities identified above.

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

2. CONTAMINANTS

2.1 Disposal of Contaminants

The City will be responsible for the disposal of Contaminants delivered to Contractor by the City or any other City contractor. The Contractor will, without cost to the City, segregate the contaminants (segregating tires separately) at the primary or back-up facilities, for the City to transport back to a City transfer station or other disposal facility. The Contractor may reject loads or partial loads with excessive or high risk contamination prior to processing, including loads with Moderate Waste, Dangerous Waste, marijuana debris, or similar waste under special classification.

The maximum amount of contaminants by the City shall be based on organic waste composition studies conducted by the City approximately every four years. The contractor will provide adequate space and access at their receiving facility for the periodic waste composition studies. Specifics for contaminant tracking and disposal and for the periodic composition studies will be contained in the Operations Plan.

2.2 Education and Monitoring

The City will coordinate and implement customer education and enforcement efforts, in conjunction with City-contracted collectors to minimize contamination. The City will monitor loads of Organic Waste at City stations to minimize contamination.

3. TESTING AND END PRODUCTS

3.1 End Products

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

3.2 Promotional Partnerships

The Contractor will support outreach partnerships with the City to increase diversion and reduce contamination. The Contractor will provide retail product available for purchase by Seattle residents and provide annual discounted or free product opportunities for Seattle residents and discounted product for City facilities or projects. Product opportunities will include annual 2 for 1 bag promotion for all City residents and annual free bulk compost for City-give away to residents within reasonable limits. The City will support use of compost products by City departments and the Solid Waste division will work with other City purchasing departments to buyback compost in accordance with the City's Sustainable Purchasing Policy and City Standard Plans and Specifications

3.3 Testing Programs

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

The Contractor shall also maintain a field testing program, directly or through a third party, offered at least on a quarterly basis, to verify that various consumer materials, including compostable bags and single-use food service ware and packaging are compostable at the Contractor's Processing Facility. The testing program will follow established and transparent protocol relevant to the technology at the Processing Facility. The Contractor shall initiate quarterly testing and related trials, as needed, for individual

Exhibit A: Scope of Work

consumer products at the request of the City, a manufacturer, distributor or food service business authorized to request testing. The Contractor shall notify the City or the applicant within 15 days of the completion of testing. The Contractor is not required to conduct field tests at its own location and can rely on third party testing services and/or results from field testing at facilities utilizing similar composting practices. The party requesting the testing must sign a testing application form and pay an application fee.

In consultation with the Contractor, the City will determine if a Contractor-tested product, that is shown in field testing to compost, or other manufactured products meeting appropriate standards and/or with relevant certifications, will be accepted in Seattle collection services. The Contractor will maintain an updated list of City of Seattle accepted products and will provide this list to the City annually. The Contractor shall accept all City of Seattle approved products for composting and shall maintain an updated website or web pages accessible to the public where all manufactured products approved compostable are listed and, when possible, pictured.

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

3.4 Disposal Prohibition.

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

4. REPORTING REQUIREMENTS

4.1 Scale and Trip Records

The Contractor shall provide to the City each week, in an electronic format specified by the City, a listing of the previous week's weight receipts for all materials received from the City by the Contractor at the Processing Facility. Information include gross and net weights, truck number, route number, source, date, time entering and leaving, and other trip and load data. The Contractor shall keep as back-up a paper copy of each weight transaction. Weights must be obtained from certified private scales approved by the City, or other scales approved by the City. The City has the option of requiring any private scales to be certified as frequently as quarterly.

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

4.2 Monthly and Quarterly Reports

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

1. Summary of tonnages of all received material by source and type;
2. Contaminants and rejected loads summary and listing of individual weight receipts for Contaminants delivered to the City for disposal;

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

1. Summary of monthly data for quarter and contract year to date;
2. Summary of end products sold;
3. Any changes in approved and tested products acceptable for composting;

Exhibit A: Scope of Work

4. Discussion of problems and noteworthy experience in program operation; and Contractor recommendations for improvements.

5. OPERATIONS PLAN AND PILOT TESTS

5.1 Operations Plan

The Contractor and the City shall develop an "Operations Plan" after the Contract is signed and prior to beginning services. It will include the details and protocol regarding trailer deliveries and other operations, data and communications elements. The Operations Plan shall be updated as needed during the Contract term.

5.2 Pilot Tests

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



Section 6: Inclusion Plan



City of Seattle **Purchasing Inclusion Plan**

(SMC CH. 20.42)

Solicitation Number & Title: #16-216-B Seattle Organics Processing
Your Company Name: Cedar Grove

Bidders must complete and submit this form with their RFP response. Carefully read the attached instructions.
For questions, call Miguel Beltran, 206-684-4525 Miguel.Beltran@seattle.gov
The RFP instructions for this project identify how many points this Inclusion Plan is given during RFP evaluation.

Aspirational WMBE Goals

Propose WMBE utilization goals in the spaces below. These goals represent WMBE utilization the Bidder intends to achieve during contract performance. The goals should represent a realistic and achievable commitment. WMBE Bidders may indicate your self-performance as well as work you intend to subcontract to other WMBE firms. See page 4 for instructions. These goals do not need to match, and are not expected to match WMBE Guarantees.

Project Goals	
Specify the percentage participation by woman owned firms.	%0
Specify the percentage participation by minority owned firms.	%0
TOTAL	%0

Strategies

Describe strategies you intend to use to achieve the aspirational WMBE utilization for this contract. This may include such strategies as negotiated award to a WMBE firm in lieu of competitive subcontract bids, using WMBE as a tiebreaker per RCW 35.22.650, strategies for self-performance and subcontracting, providing mobilization payments, and offering rapid invoice payments.

As we do not intend to utilize subcontractors in the service of this work, we do not have an opportunity to hire WMBE partners for this particular project. If we should need to use any subcontractors as back-up on this work, we will seek out and hire WMBE firms.

Past Performance

As evidence of your good faith intentions to achieve the WMBE aspirational goals you provide on page 1, describe your past performance on contracts with similar work. The City may review your past performance on previous City contracts. Your response should concentrate on achievement when your effort was voluntary (i.e. goals were not mandatory such as a federally-funded DBE requirement), or where you exceeded the regulatory minimum requirement.



Section 6: Inclusion Plan

WMBE Guarantees

This section gives the option to guarantee utilization of certain WMBE firms as evidence of good faith efforts. If you choose to list WMBE firms, you guarantee to the City and WMBE firm they will be used. Provide the percentage of total contract value that you guarantee. Please see instructions on page 5.

WMBE Business Name	Percent of Contract

Diverse Employment

If you have a mission or program uniquely committed to hiring workers with employment barriers, veterans, disabled, the chronically unemployed or low income individuals, or woman and minority (if they are underutilized in your profession such as. construction trades), please describe. The City expects a substantive and highly integrated program, instead of a standard EEO or Affirmative Action policy

Describe how this mission or commitment would translate directly into placement of such workers to perform the scope of work for this City contract opportunity.

Cedar Grove has a strong commitment to providing a diverse workplace. However, we currently do not have a program outside of our EEO policy. As diversity and acceptance become more necessary than ever, we are interested in developing a substantive and integrated plan in the near future.



Section 6: Inclusion Plan

Inclusion Plan Instructions

WMBE firms include any self-identified or state-certified firm that is at least 51% woman or minority owned (per SMC 20.42). The following may assist bidders:

<https://wald1.seattle.gov/dea/registration/> and

http://www.omwbe.wa.gov/certification/certification_directory.shtml). A WMBE does not need to be self-identified and registered within the City's on-line business registration at time of bid, but must do so before contract execution.

1. When the City places the Inclusion Plan into the solicitation requirements, the "Bidder" must complete and submit this WMBE Inclusion Plan as part of the RFP response. If the form is not completed and submitted as part of the response, the bid will be considered non-responsive.
2. The RFP provides the evaluation scoring matrix, which includes how many points this Inclusion Plan will be given in RFP evaluation. Notes below provide you the context of how points will be considered. The Plan will be evaluated by the City based upon the strength of the good faith efforts to utilize WMBE-owned firms
3. A Prime (i.e. the Bidder, Vendor, the company submitting the proposal) who self-identifies (or is state certified) as a WMBE firm, must complete this form. even if it intends to self-perform.
4. If you are a WMBE Prime and chose to self-perform elements that are eligible for subcontracting (i.e. work that is discretionary, which a prime may chose to self-perform or subcontract) , you may include your self-performance as part of your aspirational goal, and may name your self-performance for such discretionary work within your Guaranteed WMBE utilization.
5. All work identified in the Plan to be performed by a WMBE firm must be a commercially useful function for the contract scope.
6. The City may discuss the Plan with the apparent successful bidder before incorporating into the contract; the Plan may be amended by mutual consent.
7. For phased work, (for example, an IT project), provide responses as thorough as possible given the scope known. If future phases require, the City will review the Plan for mutually-agreed upon updates.

Aspirational WMBE Goals (Page 1)

8. These goals are a serious commitment the Prime (i.e. Bidder or Proposer) can reasonably and realistically achieve given good faith efforts.
9. These aspirational goals, good faith efforts, progress reports, and collaboration with the City are material to the contract.
10. The Bidder is to provide an Aspirational Goal that is achievable. Failure to achieve the goal itself is not a material breach, but substantial variance below the Aspirational goal volunteered by the Bidder may measure failed good faith efforts, to establish a reasonable goal and/or build an appropriate effort to achieve the aspirational goal.
11. The Aspirational Goal percentage applies to the entire contract cost. If change to the contract requires a modification to the percentage, then the City and Prime will discuss whether a greater or lesser goal is appropriate and modify the Plan.
12. The bidder should enter a total WMBE goal on page 1 where indicated. The City seeks a separate percentage WBE and MBE goal. If the bidder does not provide such goals separately and only gives a total, then the City may seek the two separate percentages after bid opening and rely upon the total for scoring. If the Bidder provides a WBE and MBE goal, but does not total the percentage, the City shall total those percentages to become the total.



Section 6: Inclusion Plan

WMBE Guarantee (Page 2)

13. The Prime has the option to list WMBE firms with whom the Prime commits to contract. This does not need, and is not expected, to equal your aspirational goal on page 1. You may have WMBE firms you can commit at time of bid, but may have other opportunities you are not yet prepared to guarantee.
14. A WMBE Guarantee should be secured with the WMBE firm in advance of listing on the form. The City does not require a signed contract in place with the WMBE.
15. Changes to named WMBE Guarantees:
 - a. A named firm includes any WMBE named in the Inclusion Plan with whom the Bidder would Contract if awarded the Contract.
 - b. Any such WMBE that the Prime wishes to substitute during the course of the project must have City Buyer consent through a change order and a demonstrated "good cause." "Good cause" shall include the following:
 1. Failure of the WMBE to execute a written contract after a reasonable period of time.
 2. Bankruptcy of the WMBE.
 3. Failure of the WMBE to provide the required bond.
 4. The WMBE is unable to perform the work because they are debarred, not properly licensed, or in some other way is ineligible to work.
 5. Failure of the WMBE to comply with a requirement of law applicable to subcontracting.
 6. The death or disability of the WMBE (if the WMBE is an individual)
 7. Dissolution of the WMBE (if the WMBE is a corporation or partnership).
 8. If there is a series of failures by the WMBE to perform in accordance with previous contracts.
 9. Failure or refusal of the WMBE to perform the work.
 - c. If the Prime is making a change to a named WMBE Subcontractor, then the Prime shall use good faith efforts to recruit another WMBE to do the Work.

Diverse Employment (Page 3)

- a. Corporate EEO policies and affirmative action policies are not indicative of a unique employment mission.

A response is not required, if you have no such program within your company and/or you do not have a unique mission as part of your business purpose.