



**PACIFIC CITY COUNCIL AGENDA**  
Council Chambers - City Hall. 100 3<sup>rd</sup> Ave. SE

**July 20, 2015**  
**Monday**

**Workshop**  
**6:30 p.m.**

- 1. CALL TO ORDER/PLEDGE OF ALLEGIANCE**
- 2. ROLL CALL OF COUNCIL MEMBERS**
- 3. ADDITIONS TO/APPROVAL OF AGENDA**
- 4. EXECUTIVE SESSION:**
  - A. For Collective Bargaining per RCW 42.30.140 (4)(a) for 10 minutes (Uniformed Union).**
- 5. DISCUSSION ITEMS**
  - (2) A. AB 15-105: Resolution No. 2015-276:** Authorizing the execution of an agreement with Infrastructure Management Services (IMS) for pavement management inspection, condition rating and reporting services. (10 min.)  
(Lance Newkirk)
  - (19) B. AB 15-106: Resolution No. 2015-277:** Authorizing the surplus of equipment that has been or is in need of being replaced. (5 min.)  
(John Calkins)
  - (22) C. AB 15-107: Resolution No. 2015-270:** Authorizing the execution of an agreement with Waste Management for solid waste services in the City of Pacific. (20 min.)  
(Richard Gould)
  - (62) D. AB 15-108: Discussion:** Setting the date for a City Council Budget Workshop on August 31, 2015 at 6:30 p.m. (10 min.)  
(Richard Gould)
- 6. ADJOURN**



Agenda Bill No. 15-105

**TO:** Mayor Guier and City Council Members

**FROM:** Public Works

**MEETING DATE:** July 20, 2015

**SUBJECT:** Pavement Management Inspection, Condition Rating and Reporting Services

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**ATTACHMENTS:**

- Resolution 2015 – 276
- Professional Services Contract Form

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**Previous Council Review Date:** N/A

**Summary:** The City desires to develop a multi-year pavement management program for street maintenance and improvements. In order to accomplish this tasking a current pavement condition rating is required. The proposed pavement condition rating survey will provide the City with a compilation of precise and accurate numerical values, or “grades,” for every public road section. This collected information will be analyzed and compiled into an overall street condition report that will provide the City with:

- An inventory of all roadway surfaces owned and maintained by the City.
- Current pavement conditions for all public streets and a list of the locations requiring maintenance, rehabilitation or reconstruction.
- A recommended maintenance and repair plan based on cost-effectiveness.
- Anticipated annual pavement maintenance costs to include in the City’s Capital Improvement Plan.

Staff solicited Requests for Proposals (RFP) on June 9, 2015. The only firm to provide a response to the City’s request was Infrastructure Management Services (IMS). IMS has a long history of successful completion of pavement condition rating studies for municipalities in Washington State including Bainbridge Island, Bellevue, Monroe, SeaTac and Tacoma.

IMS’s proposal was discussed with the Public Works Committee (PWC) on July 1, 2015. The PWC recommended approval of IMS’s cost proposal for the base-line pavement condition rating of \$29,975.00 and discussion with Council for inclusion of Optional Services to include a Sign and Support Database for \$8,580.

**Recommendation/Action:** Staff recommends Council approve Resolution No. 2015-276 for a Pavement Management Inspection, Condition Rating and Reporting Services with Infrastructure Management Systems.

**Motion for Consideration:** Move to approve Resolution No. 2015-276, FOR A PAVEMENT MANAGEMENT INSPECTION, CONDITION RATING, AND REPORTING SERVICES AND AUTHORIZING THE MAYOR TO SIGN A CONTRACT WITH INFRASTRUCUTURE MANAGEMENT SYSTEMS FOR SAID SERVICES IN THE AMOUNT OF \$Xx,xxx.00.

**Budget Impact:** \$Xx,xxx.00

**Alternatives:** Do not authorize the professional services contract and continue to select streets for maintenance preservation treatments and/or reconstruction without the benefit of a systematic street improvement plan.

**CITY OF PACIFIC  
WASHINGTON**

**RESOLUTION NO. 2015 - 276**

**A RESOLUTION OF THE CITY OF PACIFIC, WASHINGTON, FOR A PAVEMENT MANAGEMENT INSPECTION, CONDITION RATING, AND REPORTING SERVICES AND AUTHORIZING THE MAYOR TO SIGN A CONTRACT WITH INFRASTRUCTURE MANAGEMENT SYSTEMS FOR SAID SERVICES IN THE AMOUNT OF \$Xx,xxx.00.**

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**WHEREAS**, the City of Pacific advertised for Requests for Proposals for Pavement Management Inspection, Condition Rating and Reporting Services on June 9, 2015; and

**WHEREAS**, the City received a proposal from Infrastructure Management Services (IMS), dated June 23, 2015, to conduct a Pavement Management Inspection, Condition Rating and Reporting Services study; and

**WHEREAS**, IMS has provided a scope of work and fee for the project; and

**WHEREAS**, the City has reviewed the submitted proposal and has determined that it is in the best interest to enter into an agreement with IMS in an amount not to exceed \$Xx,xxx.00.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PACIFIC, WASHINGTON, DOES RESOLVE AS FOLLOWS:**

Section 1. The Pacific City Council hereby authorizes the Mayor to execute an Agreement for Pavement Management Inspection, Condition Rating and Reporting Services in the amount of \$Xx,xxx.00.

Section 2. This Resolution shall take effect and be in full force upon passage and signatures hereon.

PASSED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 27<sup>th</sup> DAY OF July, 2015.

CITY OF PACIFIC

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LEANNE GUIER, MAYOR

ATTEST/AUTHENTICATED:

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AMY STEVENSON-NESS, CITY CLERK

APPROVED AS TO FORM:

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JAMES KELLY, ASSISTANT CITY ATTORNEY

City of Pacific

Scope of Work – 2015 Pavement Management Inspection, Condition Rating and Reporting Services

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<b>To:</b> Lance Newkirk, Public Works Manager	<b>Date:</b> July 8, 2015
<b>From:</b> Jim Tourek, Manager of Client Services	<b>Project:</b> City of Pacific, WA
<b>Subject:</b> Scope of Work Document	<b>Project No:</b> TBD

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Defined below is the anticipated scope of services for the City of Pacific **2015 Pavement Management Inspection, Condition Rating and Reporting Services** project. Each task and description listed below can also be found in the project Cost Schedule (Exhibit A). The scope of work document defines the task, associated activities and project deliverables.

**DETAILED PROJECT SCOPE:**

Task	Description	Activities	Deliverables
<b>Base Project Activities:</b>			
1.	Project Initiation	<ul style="list-style-type: none"> <li>Introduction of the project team, roles and relationships. Confirm goals and objectives.</li> <li>Review project documentation including insurance requirements, permits, safety, Project Information Form, and any other client documentation.</li> <li>Conduct an introductory information seminar with key project participants.</li> <li>Review existing PMP data, level of implementation, current configuration, and user skill set.</li> <li>Develop and submit quality assurance plan, review and edit the document accordingly.</li> <li>Identify and confirm existing database quality.</li> <li>Confirm preferred delivery methodology for City of Pacific and deliverable format.</li> <li>Confirm roadways to be surveyed, as well as referencing, length and directional issues.</li> <li>Work with City staff so they are comfortable with the overall project and data collection.</li> </ul>	Technical memo detailing scope of work, budget and deliverables.
2.	Network Referencing & GIS Linkage	<ul style="list-style-type: none"> <li>Complete a brief review of the City's current GIS environment and assess suitability for pavement management purposes.</li> <li>Using the City's existing GIS centerline topology, update existing street inventory and create a fixed link between the inventory and GIS using a unique identifier.</li> <li>Include street number and block order in referencing.</li> <li>Harmonize street names between GIS and City's roadway inventory (If any - note: GIS wins any differences).</li> <li>Link each segment to its parent GIS section.</li> <li>Obtain roadway attributes from GIS for functional class, traffic, width, length, pavement type, curb type, etc. If not available, devise plan to obtain them.</li> <li>Create survey maps for use by the RST and client review.</li> </ul>	Survey maps and inventory for use on the project.

	Calibration	<ul style="list-style-type: none"> <li>equipment to project.</li> <li>Crew to review the survey maps with the City.</li> <li>Demonstrate the equipment to the City.</li> <li>Calibrate equipment.</li> </ul>	
4.	Pavement Condition Field Data Collection w/Laser RST	<ul style="list-style-type: none"> <li>Collect ASTM D-6433 distresses and attributes at 100-foot intervals on a block by block basis. IMS will survey approximately 17.5 centerline miles of arterials &amp; 11.3 CL of collectors (2-pass tested) and 20.7 centerline miles of residential roadways (1-pass) for a survey total of 78 test miles.</li> <li>Expansion of distresses to include longitudinal, transverse, alligator, and block cracking, raveling, bleeding, patches/potholes, rutting, roughness, and distortions.</li> <li>Laser based RST will incorporate the use of 11 lasers and rate gyroscopes, digital images, touch screen event board, and GPS acquisition.</li> <li>Dual wheel path testing collecting International Roughness Index (IRI) data at no additional charge.</li> </ul>	Complete two passes on major roadways. Approximately 78 test miles.
5.	Data QA/QC, Processing, & Format	<ul style="list-style-type: none"> <li>For each data stream (surface distress, roughness, GPS), aggregate &amp; process the data at segment level.</li> <li>Develop individual index scores for surface distress and roughness as appropriate.</li> <li>Develop a pavement condition score for each section.</li> <li>Process the same data to the segment level.</li> <li>Shape files of the processed data.</li> <li>Develop exceptions report for lengths that do not match GIS.</li> <li>Complete QA of data.</li> </ul>	Excel spreadsheet of the 100 foot, sectional data, and index values containing all assigned GIS ID's. Shape files of the condition data at the 100 foot and segment levels.
6.	Interactive Excel Spreadsheet	<ul style="list-style-type: none"> <li>The spreadsheet has the ability to prioritize and optimize the multi-year plan.</li> <li>It will be programmed to develop a multi-year maintenance and rehabilitation plan using "cost of deferral".</li> <li>It will also have referenced deterioration curves for each functional classification, pavement type, and even pavement strength rating.</li> <li>The parameters of the analysis (Priority Weighting Factors) can also be modified and reprioritized on the fly.</li> </ul>	Excel spreadsheet with "Hot" cells (highlighted in yellow) that City can use to generate differing budget scenarios.
7.	Pavement Analysis & Report	<p>Following the field surveys and data processing, complete the following analysis:</p> <ul style="list-style-type: none"> <li>Present status and PCI report in Excel format c/w PCI charts and backlog.</li> <li>Develop analysis operating parameters and performance curves.</li> <li>Develop prioritization, critical set points, and begin running analysis routines.</li> <li>Present budget scenarios and results of analysis to City staff.</li> <li>Summarize the analysis in a draft report for City review.</li> <li>Make modifications to draft reports based on client review.</li> <li>Finalize report and supply electronic files in Excel, PDF, KMZ, and shape file format.</li> <li>Deliver condition data, analysis results, prioritized 5-year plan, and analysis operating parameters in an interactive Excel Spreadsheet. Excel will be supplemented with an appropriate GIS geodatabase.</li> <li>Deliver draft report to City and incorporate any modifications to the analysis or reporting methodology.</li> <li>Deliver 2 final reports plus electronic files.</li> </ul>	Draft analysis: Up to 5 models/ budget analysis options will be completed.  Final report and shape/ KMZ files – both hard copy and electronic.
8.	Council Presentation	<ul style="list-style-type: none"> <li>Present report to City in a working meeting format.</li> <li>Create a PowerPoint presentation to showcase the results of the condition survey.</li> </ul>	Report meeting and PowerPoint presentation.

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|-----|--|---|---|
|     |  | <ul style="list-style-type: none"> <li>• Meetings to be completed on-site and by conference calls.</li> <li>• Complete project administration and invoicing.</li> </ul>   |   |
| 10. | Interactive Spreadsheet - Annual Maintenance Fee | <ul style="list-style-type: none"> <li>• Conference call "Training" in the effective use of the spreadsheet will be provided as needed.</li> <li>• Conference call "Assistance" with updating the spreadsheet with its annual maintenance.</li> </ul> | Assist the City with updating the spreadsheet with its annual maintenance in non-testing years. |

**Optional Project Activities of Interest:**

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|-----|--|---|---|
| 11. | Right of Way Asset Data Collection (GPS & Video Acquisition) | <ul style="list-style-type: none"> <li>• On all roadways (as noted), collect GPS coordinates and video for asset database development.</li> <li>• Develop a Master Asset List to include all street sign attributes to be inventoried.</li> <li>• Prep video library used in the asset inventory development</li> </ul>   | Required Task with ROW Asset                          |
| 12. | Asset Database Development                                   | <ul style="list-style-type: none"> <li>• Develop a Master Asset List used to define Signs &amp; Supports attributes.</li> <li>• Utilizing the right of way digital images and GPS data, develop a detailed asset inventory for the arterial, collector &amp; local roadway network.</li> <li>• Utilize RST imagery, aerial photos and in-house GIS tools to place assets in a positional-correct manner.</li> </ul> | Personal geodatabase with Signs & Supports inventory. |

Thank you for considering IMS as a viable solution to your pavement management and we will strive to become an asset and extension of the City of Pacific staff and team. If any questions arise please do not hesitate to call.

Regards,



Jim Tourek  
West Region Manager of Client Services

# Exhibit A:

# Cost Schedule



IMS Infrastructure Management Services  
 1820 W. Drake Dr. Suite 108, Tempe, AZ 85283  
 Phone: (480) 839-4347 Fax: (480) 839-4348  
 www.ims-rst.com

**To:** Lance Newkirk, Public Works Manager  
**From:** Jim Tourek, Manager of Client Services  
**Subject:** Cost Schedule Document

**Date:** July 8, 2015  
**Project:** City of Pacific, WA  
**Project No:** TBD

Defined below is the anticipated scope of services for the City of Pacific **2015 Pavement Management Inspection, Condition Rating and Reporting Services** project. Each task and description listed below can also be found in the project Scope of Work document (Exhibit B). The cost schedule document defines the task and associated costs.

### DETAILED PROJECT BUDGET:

#### Pacific WA - 2015 Base Scope of Services

Task	Activity	Quant	Units	Unit Rate	Total
<b>Project Initiation</b>					
1	Project Initiation	1	LS	\$3,000.00	\$3,000.00
2	Network Referencing & GIS Linkage	78	T-Mi	\$25.00	\$1,950.00
<b>Field Surveys</b>					
3	Mobilization/Calibration	1	LS	\$3,000.00	\$3,000.00
4	RST Field Data Collection	78	T-Mi	\$110.00	\$8,580.00
<b>Data Management</b>					
5	Data QA/QC, Processing, & Formatting	78	T-Mi	\$20.00	\$1,560.00
6	Excel Spreadsheet, KML & geodatabase (no software)			Included in Base Activities	
6a	Interactive Spreadsheet Pavement Cost Benefit Analysis			Included in Base Activities	
6b	Online Interactive Spreadsheet Training			Included in Base Activities	
7	Pavement Analysis and Report	1	LS	\$7,000.00	\$7,000.00
8	Final Council Presentation	1	LS	\$3,000.00	\$3,000.00
9	Project Management	1	LS	\$1,885.00	\$1,885.00
10	Interactive Spreadsheet - Annual Maintenance Fee	1	LS	\$0.00	\$0.00

<b>Project Sub-Total:</b>	<b>\$29,975.00</b>
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#### Optional Service Items and Activities

11	Right of Way Assets Data Collection (GPS & Camera Configuration)	78	T-Mi	\$30.00	\$2,340.00
12	Sign & Support Database Development	78	T-Mi	\$110.00	\$8,580.00
12b	Sidewalk Database Development	78	T-Mi	\$50.00	\$3,900.00
12c	Sidewalk Obstruction Survey for ADA Compliance	78	T-Mi	\$55.00	\$4,290.00
12d	ADA Ramp & Compliance Survey	78	T-Mi	\$70.00	\$5,460.00
12e	Curb & Gutter Database Development	78	T-Mi	\$60.00	\$4,680.00
13	Sign Nighttime Retro-reflectivity Survey	78	T-Mi	Pricing Available Upon Request	
14	Collection of Digital Images @ 25 Foot Intervals (Per View)	78	T-Mi	\$17.50	\$1,365.00
15	Dynaffect Mobilization	1	LS	\$3,000.00	\$3,000.00
15a	Deflection Testing: 2-pass Arterials & Collectors only	58	T-Mi	\$134.00	\$7,772.00
15b	Traffic Control/Deflection Testing (City to provide; IMS Est. 24 Hrs.)	0	HR	\$108.00	\$0.00

## CITY OF PACIFIC PROFESSIONAL SERVICES AGREEMENT

THIS Agreement is made effective as of the 29 day of July, 2015, by and between the City of Pacific, a municipal corporation, organized under the laws of the State of Washington, whose address is:

CITY OF PACIFIC, WASHINGTON (hereinafter the “CITY”)  
100 – 3<sup>rd</sup> Avenue S.E.  
Pacific, Washington 98047  
Contact: Mayor Leanne Guier Phone: 253-929-1100 Fax: 253-939-6026

and Infrastructure Management Services, L.L.C. a limited liability company organized under the laws of the State of Arizona, doing business at:

Infrastructure Management Services, L.L.C (hereinafter the “CONSULTANT”)  
1820 West Drake Drive, Suite 108  
Tempe, AZ 85283

Contact: Jim Tourek Phone: 480.839.4347 Fax: 480.839.4348

for professional services in connection with the following Project:

Pavement Management Inspection, Condition Rating and Reporting Services

### TERMS AND CONDITIONS

#### 1. Services by Consultant.

A. Consultant shall perform the services described in the Scope of Work attached to this Agreement as Exhibit "A." The services performed by the Consultant shall not exceed the Scope of Work without prior written authorization from the City.

B. The City may from time to time require changes or modifications in the Scope of Work. Such changes, including any decrease or increase in the amount of compensation, shall be agreed to by the parties and incorporated in written amendments to the Agreement.

#### 2. Schedule of Work.

A. Consultant shall perform the services described in the scope of work in accordance with the Schedule attached to this contract as Exhibit “A.” If delays beyond Consultant's reasonable control occur, the parties will negotiate in good faith to determine whether an extension is appropriate.

B. Consultant is authorized to proceed with services upon receipt of a written Notice to Proceed.

3. **Terms.** This Agreement shall commence on July 29, 2015, (“Commencement Date”) and shall terminate on December 31, 2015 unless extended or terminated in writing as provided herein.

**4. Compensation.**

- LUMP SUM. Compensation for these services shall be a Lump Sum of \$\_\_\_\_\_.
- TIME AND MATERIALS NOT TO EXCEED. Compensation for these services shall not exceed \$Xx,xxx.00 without written authorization and will be based on billing rates and reimbursable expenses attached hereto as Exhibit A.
- TIME AND MATERIALS. Compensation for these services shall be on a time and material basis according to the list of billing rates and reimbursable expenses attached hereto as Exhibit “\_\_\_\_\_.”
- OTHER. \_\_\_\_\_

**5. Payment.**

A. Consultant shall maintain time and expense records and provide them to the City monthly after services have been performed, along with monthly invoices in a format acceptable to the City for work performed to the date of the invoice.

B. All invoices shall be paid by City warrant within sixty (60) days of receipt of a proper invoice. If the City objects to all or any portion of any invoice, it shall so notify the Consultant of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

C. Consultant shall keep cost records and accounts pertaining to this Agreement available for inspection by City representatives for three (3) years after final payment unless a longer period is required by a third-party agreement. Copies shall be made available on request.

D. On the effective date of this Agreement (or shortly thereafter), the Consultant shall comply with all federal and state laws applicable to independent contractors, including, but not limited to, the maintenance of a separate set of books and records that reflect all items of income and expenses of the Consultant’s business, pursuant to Revised Code of Washington (RCW) 51.08.195, as required by law, to show that the services performed by the Consultant under this Agreement shall not give rise to an employer-employee relationship between the parties, which is subject to Title 51 RCW, Industrial Insurance.

E. If the services rendered do not meet the requirements of the Agreement, Consultant will correct or modify the work to comply with the Agreement. City may withhold payment for such work until the work meets the requirements of the Agreement.

**6. Discrimination and Compliance with Laws**

A. Consultant agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.

B. Even though the Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the

approval of the City and shall be subject to the City's general right inspection to secure the satisfactory completion thereof. The Consultant agrees to comply with all federal, state and municipal laws, rules and regulations that are now effective or become applicable within the terms of this Agreement to the Consultant's business, equipment and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

C. Consultant shall obtain a City of Pacific business license prior to receipt of written Notice to Proceed.

D. Violation of this Paragraph 6 shall be a material breach of this Agreement and grounds for cancellation, termination, or suspension of the Agreement by City, in whole or in part, and may result in ineligibility for further work for City.

**7. Relationship of Parties.** The parties intend that an independent contractor-client relationship will be created by this Agreement. As the Consultant is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or sub-consultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or sub-consultant of the City. In the performance of the work, the Consultant is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives or sub-consultants of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and sub-consultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

## **8. Suspension and Termination of Agreement**

A. Termination without cause. This Agreement may be terminated by the City at any time for public convenience, for the Consultant's insolvency or bankruptcy, or the Consultant's assignment for the benefit of creditors.

B. Termination with cause. The Agreement may be terminated upon the default of the Consultant.

C. Rights Upon Termination.

1. *With or Without Cause.* Upon termination for any reason, all finished or unfinished documents, reports, or other material or work of Consultant pursuant to this Agreement shall be submitted to City, and Consultant shall be entitled to just and equitable compensation for any satisfactory work completed prior to the date of termination, not to exceed the total compensation set forth herein. Consultant shall not be entitled to any reallocation of cost, profit or overhead. Consultant shall not in any event be entitled to anticipated profit on work not performed because of such termination. Consultant shall use its best efforts to minimize the compensation payable under this Agreement in the event of such termination. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise.

2. *Default.* If the Agreement is terminated for default, the Consultant shall not be entitled to receive any further payments under the Agreement until all work called for has been

fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to the Consultant. The Consultant shall bear any extra expenses incurred by the City in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the City by reason of such default.

D. Suspension. The City may suspend this Agreement, at its sole discretion. Any reimbursement for expenses incurred due to the suspension shall be limited to the Consultant's reasonable expenses, and shall be subject to verification. The Consultant shall resume performance of services under this Agreement without delay when the suspension period ends.

E. Notice of Termination or Suspension. If delivered to the Consultant in person, termination shall be effective immediately upon the Consultant's receipt of the City's written notice or such date as stated in the City's notice of termination, whichever is later. Notice of suspension shall be given to the Consultant in writing upon one week's advance notice to Consultant. Such notice shall indicate the anticipated period of suspension. Notice may also be delivered to the Consultant at the address set forth in Section 15 herein.

**9. Standard of Care.** Consultant represents and warrants that it has the requisite training, skill and experience necessary to provide the services under this agreement and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant under this agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

**10. Ownership of Work Product.**

A. All data materials, reports, memoranda, and other documents developed under this Agreement whether finished or not shall become the property of City, shall be forwarded to City at its request and may be used by City as it sees fit. Upon termination of this agreement pursuant to paragraph 8 above, all finished or unfinished documents, reports, or other material or work of Consultant pursuant to this Agreement shall be submitted to City.

B. All written information submitted by the City to the Consultant in connection with the services performed by the Consultant under this Agreement will be safeguarded by the Consultant to at least the same extent as the Consultant safeguards like information relating to its own business. If such information is publicly available or is already in Consultant's possession or known to it, or is rightfully obtained by the Consultant from third parties, the Consultant shall bear no responsibility for its disclosure, inadvertent or otherwise.

**11. Work Performed at the Consultant's Risk.** The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents and sub-consultants in the performance of the work hereunder, and shall utilize all protection necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be responsible for any loss or damage to materials, tools, or other articles used or held by the Consultant for use in connection with the work.

**12. Indemnification.** The Consultant shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorneys' fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The City's

inspection or acceptance of any of the Consultant's work when completed shall not be grounds to avoid any of these covenants of indemnification.

Should a court of competent jurisdiction determine that this Agreement is Subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, agents and Volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER. THE CONSULTANT'S WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION DOES NOT INCLUDE, OR EXTEND TO, ANY CLAIMS BY THE CONSULTANT'S EMPLOYEES DIRECTLY AGAINST THE CONSULTANT.

**13. Insurance.** The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

A. Minimum Scope of Insurance

Consultant shall obtain insurance 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.
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 and personal injury and advertising injury. The City shall be named by endorsement as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington and Employer's Liability Insurance.
4. Professional Liability insurance appropriate to the Consultant's profession.

B. Minimum Amounts of Insurance

Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.
4. Employer's Liability insurance each accident \$1,000,000; Employer's Liability Disease each employee \$1,000,000; and Employer's Liability Disease – Policy Limit \$1,000,000.

C. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The Consultant's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.
2. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
3. The City will not waive its right to subrogation against the Consultant. The Consultant's insurance shall be endorsed acknowledging that the City will not waive their right to subrogation. The Consultant's insurance shall be endorsed to waive the right of subrogation against the City, or any self-insurance, or insurance pool coverage maintained by the City.
4. If any coverage is written on a "claims made" basis, then a minimum of a three (3) year extended reporting period shall be included with the claims made policy, and proof of this extended reporting period provided to the City.

D. Acceptability of Insurers

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

E. Verification of Coverage

Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

**14. Assigning or Subcontracting.** Consultant shall not assign, transfer, subcontract or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the City, which consent may be withheld in the sole discretion of the City.

**15. Notice.** Any notices required to be given by the City to Consultant or by Consultant to the City shall be in writing and delivered to the parties at the following addresses:

Leanne Guier  
Mayor  
100 – 3<sup>rd</sup> Avenue S.E.  
Pacific, WA 98047

Phone: 253-929-1100  
Fax: 253-939-6026

Infrastructure Management Services  
Attn: Jim Tourek  
1830 West Drake Drive, Suite 108  
Tempe, AZ 85283

Phone: 480.839.4347  
Fax: 480.839.4348

## **16. Resolution of Disputes and Governing Law.**

A. Should any dispute, misunderstanding or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the Mayor, who shall determine the term or provision's true intent or meaning. The Mayor shall also decide all questions which may arise between the parties relative to the actual services provided or to the sufficiency of the performance hereunder.

B. If any dispute arises between the City and the Consultant under any of the provisions of this Agreement which cannot be resolved by the Mayor or Administrator's determination in a reasonable time, or if the Consultant does not agree with the Mayor or Administrator's decision on a disputed matter, jurisdiction of any resulting litigation shall be filed in King County Superior Court, King County, Washington.

C. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorney's fees from the other party.

## **17. General Provisions.**

A. Non-waiver of Breach. The failure of either party to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein contained in one or more instances, shall not be construed to be a waiver or relinquishment of said covenants, agreements, or options, and the same shall be in full force and effect.

B. Modification. No waiver, alteration, modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and the Consultant.

C. Severability. The provisions of this Agreement are declared to be severable. If any provision of this Agreement is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other provision.

D. Entire Agreement. The written provisions of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner whatsoever, the Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and the Exhibits attached hereto, which may or may not have been dated prior to the execution of this Agreement.

All of the above documents are hereby made a part of this Agreement and form the Agreement document as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, then this Agreement shall prevail.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year set forth above.

CITY OF PACIFIC, WASHINGTON

CONSULTANT

By: \_\_\_\_\_  
Leanne Guier  
Mayor

By: \_\_\_\_\_  
Name: Jim Tourek

Date: \_\_\_\_\_

Title: Manager of Client Services

Date: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
Amy Stevenson-Ness  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
James Kelly  
Assistant City Attorney

# EXHIBIT A

(IMS Scope of Work and Cost Schedule for Services Attached)



Agenda Bill No. 15-106

**TO:** Mayor Guier and City Council Members  
**FROM:** John Calkins  
**MEETING DATE:** July 20, 2015  
**SUBJECT:** Surplus of Police Department Property

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**ATTACHMENTS:**

- **Resolution No. 2015-277**

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**Previous Council Review Date:** N/A

**Summary:** The Police Department has replaced seven desk top computers and five monitors and needs to destroy the seven old computers and monitors. There are two Dodge Chargers that need to be surplused due to poor condition and cost to maintain.

The Police Department seized a stolen dump trailer and the Washington State Patrol has inspected it and licensed the trailer to the Pacific Police Department. The department has no use for the trailer and the money from the sale will be placed in the Police seizure fund.

The method of sale for the dump trailer and surplused cars has not been determined. Previously the methods used were a sealed bid auction done by the police department as well as sale of the surplused items at Whitey's Auction. A method of disposal will be determined before the resolution for surplus is passed by Council, tentatively scheduled for July 27.

**Recommended Action:** Surplus the computers, monitors, vehicles, and dump trailer.

**Motion for Consideration:** "I move to approve Resolution No. 2015-277 authorizing the surplus of the equipment listed in the resolution and remove it from the Police Department as the equipment has outlived its useful life and been replaced."

**Budget Impact:** None

**Alternatives:** None

**City of Pacific  
Washington**

**RESOLUTION NO. 2015-277**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFIC,  
WASHINGTON AUTHORIZING THE SURPLUS OF VEHICLES AND  
COMPUTERS FROM THE PACIFIC POLICE DEPARTMENT.**

---

**WHEREAS**, the Police Department purchased computers, accessories, and miscellaneous equipment as needed; and

**WHEREAS**, the Police Department had seized a dump trailer but there is no use for the trailer by the department; and

**WHEREAS**, the computers, accessories and equipment were used until such time as they were not in working condition; and

**WHEREAS**, the computers, accessories, and equipment have been replaced or are of no use to the City; and

**WHEREAS**, the Police Department has prepared an inventory of vehicles and equipment that the City of Pacific no longer has need of;

**THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE  
CITY OF PACIFIC, WASHINGTON**

**Section 1.** The City Council hereby declares as surplus:

Description	Brand	Model #	Pacific Equip #	Serial #
<b>Police:</b>				
2008 Dodge Charger			Car #81	VIN#2B3KA43H28H280155
2009 Dodge Charger			Car #82	VIN#2B3KA43T99H506567
2003 Manufactured Dump Trailer				VIN#WA98239981
Computer Tower	OMNIX		PUBLICSAFETY13	
Computer Tower			PAOFC3WSX	
Computer Tower			PAOFC1WSX	
Computer Tower			PADET1WSX	
Computer Tower			PALIEUT1WSX	
Computer Tower			PASPEC1WSX	
Computer Tower			PASGT2WSX	
Monitor	ViewSonic	VG930m		QC2092223374
Monitor	Dell			CN-07GPK9-74261-261-1VKL

Description	Brand	Model #	Pacific Equip #	Serial #
Monitor	ViewSonic	VE710s	Pacific 001814	P1R044900041
Monitor	ViewSonic	VE710s	Pacific 001806	P1R044301745
Monitor	ViewSonic	VE710s	Pacific 001833	P1R04470128

**Section 2.** The equipment shall be disposed of by the Public Safety Director in a manner most beneficial to the City of Pacific.

**Section 3.** This Resolution shall take effect and be in full force upon passage and signatures hereon.

**PASSED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 27<sup>th</sup> DAY OF JULY, 2015.**

---

**Leanne Guier, Mayor**

---

**Amy Stevenson-Ness, City Clerk**

---

**Carol Morris, City Attorney**



Agenda Bill No. 15-107

**TO:** Mayor Guier and City Council Members  
**FROM:** Richard Gould, City Administrator  
**MEETING DATE:** July 20, 2015  
**SUBJECT:** Authorization to Enter into Contract for Solid Waste and Recycling Collection Services

---

**ATTACHMENTS:**

- Resolution No. 2015-270
- Solid Waste Collection Contract with Waste Management, Inc. version 20

---

**Previous Council Review Date:** June 15, 2015, June 22, 2015

**Summary:** The City has been in negotiations with Waste Management, Inc., as the preferred provider of solid waste collection services for the City of Pacific pursuant to a Request for Proposal process. The terms of the negotiated contract represent the best interest of the city subject to public input on the proposed contract.

**Recommended Action:** Authorize the Mayor to enter into the Solid Waste Collection Contract with Waste Management, Inc.

**Motion for Consideration:** I move to approve Resolution No. 2015-270 authorizing the Mayor to enter into the Solid Waste Collection Contract with Waste Management, Inc. under the negotiated terms.

**Budget Impact:** None.

**Alternatives:** Renegotiate terms with a solid waste provider, but risk a disruption in solid waste collection services.

**CITY OF PACIFIC  
WASHINGTON  
RESOLUTION NO. 2015 - 270**

**A RESOLUTION OF THE CITY OF PACIFIC, WASHINGTON, AUTHORIZING  
A CONTRACT WITH WASTE MANAGEMENT, INC., FOR SOLID WASTE  
AND RECYCLING COLLECTION SERVICES.**

---

**WHEREAS**, the City of Pacific's current contract for solid waste and recycling services expires on June 30, 2015; and

**WHEREAS**, the City published a request for proposals on April 3, 2015, and received proposals from Waste Management and DM/Murrey Disposal ; and

**WHEREAS**, after reviewing and considering all proposals, the proposal from Waste Management was determined to be the most beneficial to the City; and

**WHEREAS**, the contract with Waste Management shall be in effect from July 1, 2015 through June 30, 2025;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PACIFIC, WASHINGTON, DOES HEREBY RESOLVE AS FOLLOWS:

**Section 1.** The Mayor is authorized to enter into a contract with Waste Management for solid waste and recycling collection services, in the form as attached hereto as Exhibit A.

**Section 2.** This Resolution shall take effect and be in full force upon passage and signatures hereon.

PASSED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 27<sup>th</sup> DAY OF JULY, 2015.

CITY OF PACIFIC

\_\_\_\_\_  
LEANNE GUIER, Mayor

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
AMY STEVENSON-NESS, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
CAROL MORRIS, City Attorney

**CONTRACT FOR SOLID WASTE  
SERVICES  
BETWEEN THE  
CITY OF PACIFIC, WASHINGTON  
AND  
WASTE MANAGEMENT OF  
WASHINGTON, INC.**

August 1, 2015 – July 31, 2025

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**CONTRACT FOR SOLID WASTE SERVICES  
BETWEEN  
THE CITY OF PACIFIC, WASHINGTON  
AND  
WASTE MANAGEMENT OF WASHINGTON, INC.**

This CONTRACT FOR SOLID WASTE SERVICES (hereafter, “**Contract**”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2015, by and between the City of Pacific, a Washington municipal corporation (the “**City**”), and Waste Management of Washington, Inc., a Washington corporation (“**Contractor**”), to provide for Solid Waste Services in the City Service Area. The parties shall be collectively referred to herein as the “**Parties**” and individually as a “**Party**,” unless specifically identified otherwise.

**RECITALS**

WHEREAS, the City has negotiated with Contractor for collection, disposal, recycling and other services regarding solid waste; and

WHEREAS, solid waste collection service is a fundamental municipal function, with uniform, managed collection necessary for the preservation of public health; and

WHEREAS, Contractor represents that it has the experience, resources, and expertise necessary to perform solid waste collection services; and

WHEREAS, pursuant to RCW 35.21.120, the City enacted ordinances codified in the City’s Municipal Code which created a system for the orderly collection and disposal of Garbage within the City of Pacific; and

WHEREAS, the City agrees to adopt such modifications to its solid waste ordinances as are necessary to enter into this agreement; and

WHEREAS, the City Council finds that by entering into this Contract for Solid Waste Services, the citizens of the City will receive a greater variety of solid waste services at more stable rates.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL BENEFITS AND COVENANTS STATED HEREIN, THE PARTIES AGREE AS FOLLOWS:

**DEFINITIONS**

For the purposes of this Contract, the following terms shall have the following meanings:

**Adjustment Date:** The date that occurs annually on September 1<sup>st</sup> during this Contract.

**Bulky Waste/Items:** Couches, chairs, mattresses, appliances and other large items that do not fit into the standard Residential or Commercial Garbage Collection truck.

**Cart:** A Contractor-owned wheeled cart that is a plastic container with 20, 35, 64 or 96 gallons of capacity; designed for and used with a hydraulic lifting mechanism; fitted with a sturdy handle and a cover; is rodent and insect resistant; and is capable of holding collected liquids without spilling when in an upright position. Where appropriate, Carts can be used for Garbage, Recyclables and Compostables Collection.

**Carry-Out Service:** The servicing of Carts by Contractor which are not placed Curbside by the Residential Customer for collection, but rather require the Contractor to enter onto Residential Customer's property and roll-out or carry-out Carts to Contractor's collection vehicle. Customers may request a carry-out service for an additional fee, as set forth in Exhibit B, and such fees are charged based upon the distance from Contractor's collection vehicle. Carry-out service for Physically Disabled Persons is set forth in Section 2.1.4.

**City:** The City of Pacific, Washington.

**City Solid Waste:** All putrescible and nonputrescible solid, semi-solid, and liquid wastes, including Residential, Commercial and municipal garbage, trash, refuse, paper, rubbish, ashes, demolition and construction wastes, discarded home and industrial appliances, manure, vegetable or animal solid and semi-solid wastes, and other discarded solid and semi-solid wastes generated or coming to exist in the Service Area.

**Collection:** The process by which City Solid Waste is removed from Premises and transported to an appropriate facility for disposal, recycling, composting, or processing.

**Commercial:** Means of, from or pertaining to non-Residential Premises where business activity is conducted, including, but not limited to, retail sales, services, wholesale operations, manufacturing, and industrial operations, but excluding businesses conducted upon Residential Premises which are permitted under applicable zoning regulations and are not the primary use of the property.

**Commercial Recycling Customers:** Commercial Customers who voluntarily receive Recyclables Collection services.

**Compostables:** Food Waste, Yard Debris and other materials mutually agreed upon by the Parties.

- **Food Waste:** All compostable pre- and post-consumer food scraps, such as whole or partial pieces of produce, meats, bones, cheese, bread, cereals, coffee grounds and 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 large dead animals, plastics, diapers, cat litter, liquid wastes, pet wastes or other materials prohibited by the selected composting facility.

- **Yard Debris:** Leaves, grass and clippings of woody, as well as fleshy plants. Unflocked whole holiday trees, if cut in half, are acceptable. 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 by two (2) feet by four (4) feet in dimension shall be allowed and shall be secured by degradable string or twine, not nylon or other synthetic materials. Kraft paper bags and untied reusable bags may be used to contain Yard Debris.

**Compostables Cart:** A Cart suitable for Residential collection, storage and Curbside placement of Compostables.

**Composting:** The controlled degradation of organic solid waste, yielding a product for use as a soil conditioner.

**Containers:** A detachable container or drop-box container suitable for storage and Collection of City Solid Waste. For purposes of this Agreement: (i) “detachable container” means 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; and (ii) “drop-box container” means an all-metal container with ten (10) cubic yards or more capacity that is loaded onto a specialized Collection vehicle.

**Contractor:** Waste Management of Washington, Inc.

**County:** King County, Washington.

**Contract Administrator:** The City’s Mayor, or a person designated by the Mayor.

**Curb or Curbside:** The area within five (5) feet of the Public Street or alley where regular Collection from Residential Premises occurs. If safe access is difficult or 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 Contract Administrator and Contractor.

**Customer:** A Person receiving Solid Waste Services from Contractor pursuant to the terms of this Contract.

**Disposal:** The ultimate disposition of City Solid Waste at a landfill.

**Effective Date:** August 1, 2015

**Garbage:** City Solid Waste that is placed by Customers in appropriate bags, cans, Carts, Containers, or other receptacles for Collection and Disposal by the Contractor. The term “Garbage” shall not include Hazardous Wastes, Special Wastes, Source-Separated Recyclables or Compostables.

**Disposal Fee:** The fee charged to the Contractor for the Disposal of any City Solid Waste.

**Hazardous Waste:** Any substance that is:

- A. Defined as hazardous by 40 C.F.R. Part 261 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.; 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.
- B. Defined as dangerous or extremely hazardous by Chapter 173-303 WAC 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 or regulation governing the treatment, storage, handling or disposal of wastes and imposing special handling requirements similar to those required by Chapter 70.105 RCW.

**Inaccessible Area:** Any road that does not allow safe access, turn-around, clearance or does not meet the weight requirements for Contractor trucks.

**Paper:** Office paper, copy paper, construction paper; newspaper and paper inserts; magazines and paper inserts; catalogs, mail and paper inserts; envelopes; paper bags; food boxes (cereal, cookie, cracker, etc.); juice boxes; milk, juice and ice cream cartons; aseptic containers, e.g. soup, broth, soy milk, almond milk; paper towel tubes; toilet paper tubes; tissue boxes; non-foil and non-cello wrapping paper; kraft paper bags or boxes; hot or cold cups.

**Multi-Family Premises:** A Premises with three (3) or more Residences, irrespective of whether residence therein is transient, temporary or permanent.

**Multi-Family Residence:** A Residence within a Multi-Family Premises.

**Non-Regular Scheduled/Temporary Service:** Any non-permanent, temporary service requested by a Customer and available from Contractor, for a fee. These requested services will be provided by the Contractor and billed directly to the Customer by Contractor.

**Person:** An individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of Washington, King County, cities, and special purpose districts.

**Physically Challenged Persons:** Disabled persons or any other Residential Customer who is not physically able to move Carts out to the Curbside, as determined based upon criteria reasonably established by the Contractor, with input from the City. Requests must be made to the Contractor in writing for such designation, and the Customer household cannot have another able-bodied person living in the home who is capable of rolling Carts out to the Curbside.

**Premises:** Any land or building in the Service Area where City Solid Waste is generated, deposited, accumulated or otherwise coming to exist.

**Public Street:** A public right of way used for public travel and owned by the City.

**Recycling:** The processing of City Solid Waste for the purpose of returning it to the economy in the form of raw materials for new, reused, or reconstituted products, or other uses resulting in diversion from Disposal.

**Recyclables:** Glass: food or beverage containers; Paper; Cardboard: boxes, packaging and beverage ‘flats’ or nursery ‘flats’; Metal: tin, aluminum and steel food or beverage containers (labels okay); empty aerosol cans; scrap metal (limit: 2’x2’x2’, 35 lbs.); metal appliances (cords removed); Plastic: food and beverage containers; PET/PETE bottles; HDPE bottles and jugs; dairy tubs, e.g. butter, yogurt, cottage cheese; cups; rigid plant pots; 5-gallon buckets. All recyclables must be clean and free of liquids, food or any other debris. The City and the Contractor can negotiate deletions or additions to the Recyclables list.

**Residence:** A living space with a kitchen, individually rented, leased or owned, and located in the Service Area.

**Residential:** Means of, from, or pertaining to Single-Family Premises and Multi-Family Premises, including single-family homes, apartments, condominiums, townhouse complexes, mobile home parks, and cooperative apartments.

**Recycling Carts:** A Contractor-provided 20-, 35-, 64- or 96-gallon (default size) Cart suitable for Residential storage, Curbside placement and Collection of Recyclables.

**Service Area:** The municipal boundaries of the City, both now and as they may be expanded by annexation during the life of the Contract, subject to the provisions of RCW 35.13.280.

**Single-Family Premises:** A Premises with one (1) Residence, irrespective of whether residence therein is transient, temporary or permanent.

**Single Stream Recycling:** A system in which various types of Recyclables are separated from Garbage by the generator and placed together in a Cart or Container for Collection.

**Solid Waste Services:** Any and all Collection, Disposal, Recycling and Composting services regarding City Solid Waste.

**Special Waste:** Polychlorinated biphenyl (“PCB”) wastes, industrial process wastes, asbestos containing materials, petroleum contaminated soils, treated/de-characterized wastes, incinerator ash, medical wastes, demolition debris and other materials requiring special handling in accordance with applicable federal, state, county or local laws or regulations.

**White Goods:** Large household appliances such as washers, dryers, stoves, refrigerators (not containing CFCs), dishwashers, and other similar appliances.

**WUTC:** The Washington Utilities and Transportation Commission, which regulates solid waste collection in the unincorporated areas of the County.

## **ARTICLE I - AGREEMENT, TERM**

### 1.1 Agreement

The City hereby agrees that Contractor shall have the exclusive right to perform all of the Solid Waste Services, to the extent allowed by State and Federal law, upon the terms and conditions set forth below.

### 1.2 Term

The initial term of this Contract is ten (10) years, starting on the Effective Date, and expiring at 11:59 p.m. on July 31, 2025. The Parties may, by mutual written agreement signed by the duly authorized representatives of the Parties, extend the Contract for two (2) successive periods of two (2) years each. Any such extension shall be under the terms and conditions of this Contract. To exercise the option to extend this Contract, the Parties shall agree in writing not less than 180 days prior to the then expiring Contract term.

### 1.1 Exclusive Right; Franchise Enforcement

The City does hereby grant to Contractor the exclusive duty, right and privilege to perform the Solid Waste Services, except regarding Collection of Recyclables and Compostables, from Commercial Premises. When asked by the Contractor, the City shall use reasonable efforts to protect this right of the Contractor; however, the City shall not be obligated to join or instigate litigation to protect the right of the Contractor. The Contractor may independently enforce the exclusive 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 with Contractor in Contractor's actions to enforce such rights (without obligating the City to join any litigation initiated by Contractor).

### 1.2 Mandatory Services

Pursuant to Section 14.02.070 of the City's Municipal Code, Garbage Collection services are mandatory for all Residential and Commercial Premises. Commercial Recycling and Compostables Collection services are optional for Commercial Premises, and will be provided by Contractor on a subscription basis.

## **ARTICLE II - GENERAL OPERATIONS**

### 2.1 Collection

#### 2.1.1 General

Contractor shall perform the Solid Waste Services as provided in this Contract. Contractor shall have sixty (60) days from the Effective date to perform any new services. The collection of Hazardous Waste is not included within the scope of this Contract, and Contractor shall be under no obligation to collect any Hazardous Waste. Customers shall remain responsible for any Hazardous Waste or other unacceptable materials placed in collection containers, even if such materials are inadvertently collected by Contractor, and to the extent such Customers can be identified, Contractor may seek to impose upon such Customers any and all costs and expenses

associated with managing such Hazardous Waste or unacceptable materials. However, nothing herein is intended to prevent Contractor from collecting, transporting and/or disposing of any Hazardous Waste in accordance with applicable federal and state requirements and regulations, so long as such actions are performed separate and apart from any action taken in the performance of this Contract.

#### 2.1.2 Collection Schedule and Hours of Operations

Collection from Residential Customers shall be between the hours of 6:00 AM and 6:00 PM, Monday through Friday. Collection from Commercial Customers may be made without restriction as to collection time or day or week, provided that Commercial Customers adjacent to Residences shall be collected during the Residential times. Recyclables and Compostables will be collected at least every other week, whereas Garbage will be collected at least weekly.

#### 2.1.3 Collection Locations

Contractor shall collect Garbage, Recyclables and Compostables at Curbside from all Single-Family and Multi-Family Premises Customers with Cart-based services. Contractor shall collect Garbage, Recyclables and Compostables from Customers with Container-based services at locations determined by Contractor and the Customer. Contractor may refuse to pick up materials at locations identified by Contractor and approved by the City, acting reasonably, where, because of the conditions of the streets, alleys or roads, it is impractical to operate vehicles, and may refuse to drive into private property where driveways or roads are without adequate turnarounds or have other unsafe conditions.

#### 2.1.4 Collection from Physically Challenged Persons

The Contractor shall offer Carry-Out Service for Garbage, Recyclables and Compostables Carts up to fifty (50) feet from Contractor's vehicle to qualifying Physically Challenged Persons lacking the ability to place Carts at the Curb, at no additional charge. The Contractor shall use qualification criteria that comply with all local, state and federal regulations, and shall be subject to City review and approval prior to program implementation.

#### 2.1.5 Dangerous Animals

Contractor will not be required to enter into private property to pick up materials while an animal considered or feared to be vicious is loose.

#### 2.1.6 Employees to Use Walks if Carry-Out Service Directed

Contractor employees, in performing collections, shall follow the regular walks for pedestrians (if available) while on Customer property, returning to the street or alley after replacing empty containers. They shall also close all gates opened by them. All employees shall wear clean clothing or uniforms.

#### 2.1.7 Employees Not to Trespass

Contractor Employees shall not trespass or loiter, cross property to an adjoining premises, or meddle with property which does not concern them.

### 2.1.8 Annual Spring Clean-Up Day

Each year, on a date mutually agreed upon by the City and Contractor, the Contractor shall provide one Residential Customer curbside collection of extra household garbage in bags or cans, limited to five (5) – 32 gallon cans and/or household items measuring no more than one (1) square foot. The curbside clean up will exclude large bulky items; white goods; tires; building materials; rocks; cement; bricks; sod or dirt; recyclable materials; wood pallets, fencing, decking, planter boxes and any hazardous waste.

In conjunction with the annual Spring clean-up day, the Contractor shall collect one (1) select item, such as polystyrene blocks, used cooking oil, or electronic waste from each residential customer who chooses to participate in the clean-up. Materials to be collected, location and date/time of collection shall be mutually agreed on by the City and Contractor. The Contractor shall notify Residents of details for both the curbside collection and select item collection.

### 2.2 Contractor to Make Examination

Contractor shall make its own examination and investigation regarding the proper method of doing the work and all conditions affecting the work to be done, and the labor, equipment and materials needed therefore and the quantity of work to be performed. Contractor agrees that it is satisfied with its own investigation and research, and will make no claim against City because of any of the estimates, statements, or interpretations made by any officer or agent of the City. This Contract is for the benefit of the Parties thereto, and is not intended to inure to the benefit of any third party.

### 2.3 Employees

All workers employed by Contractor shall be competent and skilled in the performance of the work to which they may be assigned. All drivers must have a C.D.L. “B” or “A” license and a current medical card.

#### 2.3.1 Non-Discrimination

The Contractor will not discriminate against any employee or applicant for employment because of age, race, religion, creed, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based on a bona fide occupational qualification. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: Employment upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and, selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment any required notices setting forth the provisions of this nondiscrimination clause. Contractor understands and agrees that a violation of this nondiscrimination provision shall constitute a breach of this Contract, and that such breach, if uncured, shall cause the Contractor to be barred from performing any services for the City now or in the future, unless a showing is made satisfactorily to the City that discriminatory practices have terminated and that recurrence of such action is unlikely.

### 2.3.2 OSHA/WISHA

Conditions of the Federal Occupational Safety and Health Act of 1970 (OSHA), the Washington Industrial Safety and Health Act of 1973 (WISHA), and standards and regulations issued under these Acts from time-to-time must be complied with. The Contractor shall indemnify and hold harmless the City from all damages assessed for the Contractor's failure to comply with the acts and standards issued there under. The Contractor is also responsible for meeting all pertinent local, state and federal health and environmental regulations and standards applying to the Solid Waste Services.

### 2.3.3 Compliance with Laws

Contractor agrees to comply, at its own expense, with all applicable City, state, federal and local laws, rules and regulations, including, but not limited to, all applicable laws regarding wages. Contractor shall comply with all applicable local, state and federal regulations and laws regarding the collection, transfer and disposal of Garbage, Recyclables, and Compostables pursuant to this Contract.

### 2.3.4 Employees to be Courteous, Etc.

Employees of Contractor shall be courteous at all times and not use loud or profane language and shall do their work as quietly as reasonable.

### 2.4 Company Name

Contractor shall not use a firm name containing any words implying municipal ownership or including the name of the City.

### 2.5 Contractor's Offices

Contractor shall be required to maintain a local access telephone number or a toll-free number, and such attendants as may be necessary to take care of complaints, as well as orders for special service or to receive instruction. The attendant shall be on duty between the hours of 8:00 a.m. and 5:00 p.m. PST, Monday through Friday, except holidays.

### 2.6 Permits

Contractor shall take out and pay for any business license or other fee required by the City or any other governmental authority which may be required to provide the services under this Contract.

### 2.7 Public Utilities

Contractor shall be obligated to protect all public and private utilities whether occupying street, public or private property. If such utilities are damaged by reason of Contractor's operations under this Contract, it shall repair or replace same, or failing to do so promptly as determined by the City, the City shall cause repairs or replacement to be made and the cost of doing so shall be billed to the Contractor. The City shall not be liable for any damage to property or injuries to any person(s) caused by Contractor, as provided in Section 4.3.1.

## 2.8 Loading

Extra care shall be taken in the loading and transporting of Garbage, Recyclables, Compostables and other wastes so that the material to be collected is not left either on private property or on the streets or alleys. Any Garbage, Recyclables, Compostables or other wastes left on private property or on streets or alleys spilled by Contractor shall be cleaned up within 24 hours of received complaint.

## 2.9 Cleanup of Spills

All loads collected by the Contractor shall be completely contained in collection vehicles at all times, except when material is actually being loaded. Hoppers on all collection vehicles shall be operated so as to prevent blowing or spillage of materials. Any blowing or spillage of materials either caused by Contractor or that occurs during collection shall be immediately cleaned up by the Contractor at its expense. Prior to any collection vehicle leaving a collection route and/or operating on any roads with a speed limit higher than 25 miles per hour, Contractor shall completely close any collection vehicle openings where materials may blow out, and thoroughly inspect for and remove any collected materials inadvertently spilled on top of the collection vehicle to prevent release or littering of this material.

All vehicles used in the performance of this Contract shall be required to carry and regularly maintain spill kits. At a minimum, spill kits shall include absorbent pads or granules, containment booms, storm drain covers, sweepers and other similar materials sufficient to contain, control and, for minor events, appropriately clean-up, blowing materials, litter, leaks and spillage of Contractor vehicle fluids and leachate. Spill kits shall also include employee spill containment instructions and procedures as well as a regularly updated list of emergency contacts. The Contractor shall develop spill response procedures for review and approval (if requested) by the City before initiating any work under this Contract. All Contractor vehicle drivers shall be provided with annual hands-on training on the location, maintenance, and use of spill kits and associated containment and notification procedures.

All drop-box Container 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.

## 2.10 Disruption of Collection

### 2.10.1 Disruption of Collection Due to Weather and/or Road Conditions

When weather conditions are such that continued operation would result in danger to the Contractor's staff, area residents, or property, or when road conditions such as flooding or weight restrictions affect road use, the Contractor shall collect only in areas that do not pose a danger or are not subject to road use restrictions. The Contractor shall notify the City, on the same business day, of the areas not served. Following notification to the City, the Contractor will be provided temporary authorization to perform collection services after 6:00pm and/or on Saturdays following disruptions due to weather in order to finish collection routes.

The Contractor shall collect Garbage, Recyclables and Compostables from Customers with interrupted service on their next scheduled service day. Extras will not be charged for as long as it does not exceed double their normal service.

### 2.10.2 Holiday Schedules

The Contractor shall observe the same holiday schedule as do King County Transfer Stations (New Year's Day, Thanksgiving Day, and Christmas Day). When the day of regular collection is a legal holiday, the Contractor may reschedule the service to the next day, example: Monday to Tuesday, Tuesday to Wednesday, Wednesday to Thursday, Thursday to Friday and Friday to Saturday. The Contractor may not collect Residential Garbage, Recyclables or Compostables earlier than the regular collection day due to a holiday. Commercial collections may be made one day early only with the consent of the Commercial Customer.

### 2.10.3 Missed and Makeup Collections

If the Contractor fails to collect a Customer's Garbage, Recyclables or Compostables which have been properly and timely set out for collection during a regularly scheduled collection, other than as provided in Section 2.10.1 or 2.10.2, the Contractor shall make a special make up collection within 24 hours (or one business day) of notification by the City or Customer. This section applies to omitted collections of a single residence, a row of residences, or an entire route. If Contractor fails to provide a special pickup for a missed collection within twenty-four (24) hours (or one business day) after notification by the Contract Administrator or Customer, the Contract Administrator may cause the work to be done and the Contractor shall fully reimburse the City for its collection expenses.

### 2.11 Collection Equipment

All collection vehicles regularly used by the Contractor during the term of this Contract shall be Compressed Natural Gas (CNG) vehicles, less than ten (10) years old and shall have been used for fewer than two hundred thousand (200,000) miles. Should any such vehicles exceed these limits and yet, in the Contractor's opinion, still be in safe working order, the Contractor must receive prior written approval from the City to continue operating the subject vehicle. Back-up vehicles used less than thirty (30) days per year shall not be subject to the age and mileage limits that apply to regularly-used vehicles, but shall be presentable, in safe working order and shall be subject to all other conditions of this section.

Contractor shall maintain all trucks and equipment used within the City and the same shall be clean, numbered and uniformly painted. All truck bodies used by Contractor shall be constructed of metal and shall be watertight and leak proof. In addition to spill cleanup materials referenced above, each vehicle used by Contractor shall carry at all times a broom and shovel or other item appropriate for use in the prompt removal of any spilled material. All vehicles used by Contractor shall have adequate coverage at all times to prevent the spillage of City Solid Waste.

### 2.12 Reserve Equipment

The number and type of collection vehicles furnished by Contract, including back up or reserve equipment in the event of equipment failure, shall be sufficient for the collection of all Customer Garbage, Recyclables and Compostables. Contractor shall make available for rental Containers which meet all applicable safety requirements.

#### 2.12.1 Painting and Cleaning of Vehicles

Collection vehicles shall be painted and numbered and shall have the Contractor's name and number of the vehicles painted in letters of a contrasting color, at least four (4) inches high

on each side of each vehicle. No advertising shall be permitted other than the name of the Contractor. All vehicles shall be kept in a clean and sanitary condition.

#### 2.13 Method of Processing and Disposal

Contractor shall deliver all Garbage collected under the Contract to the King County Disposal System, unless otherwise negotiated with the City. If the King County Disposal System is not available, then Contractor shall dispose of all Garbage at any permitted and licensed site or facility where such disposal is lawful, as selected by Contractor in its sole discretion. Contractor shall deliver all Recyclables and Compostables collected under the Contract to permitted facilities of its choosing for the processing or disposal of such materials.

#### 2.14 Service to City Facilities

As partial consideration for this Contract, Contractor shall provide free collection of Garbage, Recyclables and Compostables to those City-owned facilities listed in Exhibit A (“**City Facilities**”). Such free collection shall not apply to material which (i) is other than Garbage, Recyclables and Compostables generated at such City Facility through its normal operations and regular weekly service at the facilities listed in Exhibit A (e.g., construction and demolition waste), (ii) is not generated by the City, or (iii) is collected by third parties and delivered to a City Facility.

If the City requests collection services for additional City Facilities, or the volume of a category of material generated by City Facilities increases by 10% or more, then the Parties shall meet and confer in good faith to negotiate an appropriate adjustment to Contractor’s rates set forth herein.

#### 2.15 Carts and Containers

The Contractor shall provide each Single-Family Premises and Residents in appropriate Multi-Family Premises (e.g., duplexes and tri-plexes) with one (1) Cart for Garbage, one (1) Cart for Recyclables, and one (1) Cart for Compostables. Cart sizes available are 20, 35, 64, and 96 gallons (96-gallons is the default size for Recycling and Compostables), at the election of the Customer. Contractor may require a Customer to utilize larger or additional Carts if the Customer’s volume of materials exceeds the Cart capacity. Contractor shall retain ownership of any Carts or other containers provided by Contractor in performing the services under this Contract. Cart deliveries (for new, replacement, and/or re-delivered Carts) shall be subject to the service rate schedule in Exhibit B. Contractor shall deliver Carts necessary to meet the service requirements set forth under this Contract upon a delivery schedule to be mutually agreed upon by the Contractor and the City.

Contractor shall provide each Commercial Premises, City Facility and Multi-Family Premises without Cart-based services with suitable detachable and/or drop-box Containers for Garbage, Recyclables (if desired with respect to Commercial Customers) and Compostables (if desired), as determined by Contractor. Available Container sizes and types are described in Exhibit B.

## **ARTICLE III - REPORTING REQUIREMENTS**

### **3.1 Reporting Requirements**

Contractor shall make available to the City for review monthly and annual reports regarding the number of customers for each class and level of service. The City shall have the right, during normal business hours and upon reasonable (at least three (3) business days') advance notice given to Contractor by the City, to inspect the books of Contractor. Contractor shall maintain billing records, customer lists, compliance records and customer complaints for a period of three (3) years or as required by law, whichever is the greater.

### **3.2 Contractor's Records; Access Inspection**

The City shall have the right to inspect and copy all books, records and documents, and to interview any person, and to review any evidence in Contractor's possession and control that may assist the City in determining whether the Contractor is in compliance with the Contract. However, all financial, commercial, personnel, trade secret and technical information relating to the business of Contractor ("**Confidential Information**") acquired directly or indirectly by the City, including pursuant to any rate review or performance review hereunder, shall be kept by the City in strict confidence. The City shall not use Confidential Information for any reason or in any manner other than as expressly provided in this Article III. The Contractor acknowledges that the City is subject to chapter 42.56, the Public Records Act, and is required to disclose certain public records in the City's possession. If the City receives a third party request for any public record that the City has obtained from the Contractor under this Section, the City shall notify the Contractor of the receipt of such request, and the Contractor may, consistent with RCW 42.56.540, request court protection of such record(s).

## **ARTICLE IV - INSURANCE AND SAFEGUARDS**

### **4.1 Insurance**

Contractor shall procure and maintain for the duration of the Contract insurance for claims for injuries to persons or damage to property that may arise from or in connection with the performance of the services provided under this Contract by Contractor, its agents, representatives, employees or subcontractors. The cost of such insurance shall be paid by the Contractor. Failure to make insurance payments and to keep policies current shall be cause for Contract termination under Section 10.1.

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 to limit the City's recourse to any remedy available at law or in equity.

#### **4.1.1 Minimum Scope of Insurance**

Contractor shall obtain insurance that meets or exceeds the following:

- (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. The policy shall be endorsed to provide contractual liability coverage. The City shall be named as an additional

insured under the Contractor's Automobile Liability policy with respect to the work performed for the City, using ISO additional insured endorsement CG 20 48 02 99 or a substitute endorsement providing equivalent coverage.

(2) Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 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 by endorsement as an additional insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO additional insured endorsement CG 20 10 11 85 or a substitute endorsement providing equivalent coverage.

(3) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

(4) Pollution Legal Liability insurance covering losses caused by pollution conditions that arise from the operations of the Contractor.

(5) Hazardous Waste Hauling. To the Automobile Liability Minimum Scope of Insurance, add Pollution Liability coverage at least as broad as that provided under ISO Pollution Liability – Broadened Coverage for Covered Autos Endorsement CA 99 48 and the Motor Carrier Act Endorsement (MCS 90) shall be attached.

#### 4.1.2 Minimum Amounts of Insurance

Contractor shall maintain the following insurance limits:

(1) Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$5,000,000 per accident.

(2) Commercial General Liability insurance shall be written with limits no less than \$5,000,000 each occurrence, \$5,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit. The general aggregate shall apply per project or per location.

(3) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

(4) Pollution Legal Liability. The Pollution Legal Liability shall be written in an amount of at least \$3,000,000 per loss, with an annual aggregate of at least \$3,000,000. Coverage may be written on a claims made basis.

(5) Employer's Liability each accident \$1,000,000. Employer's Liability Disease each employee \$1,000,000 and Employer's Liability Disease – Policy Limit \$1,000,000.

#### 4.1.3 Deductibles and Self-Insured Retention

Any deductibles or self-insured retentions shall be for the account of Contractor and payment of such shall be made by Contractor without contribution from the City.

#### 4.1.4 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.

(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) The Contractor's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice has been given to the City.

(4) The City will not waive its right to subrogation against the Contractor. . The Contractor's insurance shall be endorsed to waive the right of subrogation against the City, or any self-insurance or insurance pool coverage maintained by the City.

#### 4.1.5 Acceptability of Insurers

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

#### 4.1.6 Verification of Coverage

The Contractor shall furnish the City with original certificates including but not necessarily limited to, the additional insured endorsement, evidencing the insurance requirements of the Contractor within ten (10) days of the date of execution of this Agreement by both parties.

#### 4.1.7 Subcontractors

The Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor before commencement of work. All coverages for subcontractors shall be subject to all of the same insurance requirements as stated herein for the Contractor.

#### 4.1.8 Contractor's Insurance Primary

The Contractor's insurance coverage shall be primary insurance as respects the City, but only as respect the liabilities assumed by Contractor under this Contract. Any insurance, self-

insurance, or insurance pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

#### 4.2 Performance Bond

Contractor shall furnish to the City a proper performance bond to be approved by the City Attorney, conditioned that Contractor shall faithfully perform all the provisions and terms of the contract and related documents and pay all laborers, mechanics and subcontractors and material persons, and all persons who shall provide such Contractor with provisions and supplies for the carrying on of such work; which bond shall be signed by Contractor and two or more good and sufficient sureties or with Surety Company as Surety, and shall be in the amount of Fifty-Six Thousand Dollars (\$56,000.00). Said bond shall at all times be kept in full force and effect during the term of this Agreement. Contractor agrees to pay all costs, including attorney's fees, associated with the enforcement of said bond.

#### 4.3 Indemnification and Hold Harmless Agreement

##### 4.3.1 Indemnification

The Contractor shall defend, indemnify and hold the City and its volunteers, agents, employees, officials and/or officers, harmless from any and all claims, injuries, damages, losses or suits including attorneys' fees arising out of or resulting from or in connection with the performance of this Agreement, except for injuries or damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. The provisions of this section shall survive the expiration or termination of this Agreement.

##### 4.3.2 Waiver of RCW Title 51

It is further and specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

## **ARTICLE V - GARBAGE COLLECTION**

### 5.1 Garbage Collection

For Residential Premises with Cart-based Solid Waste Services, Garbage shall be collected by the Contractor on a weekly basis, at the service levels and rates set forth in Exhibit B. Commercial and Multi-Family Premises not receiving Cart-based Solid Waste Services shall have its Garbage collected by Contractor in accordance with the frequency, service levels and rates set forth in Exhibit B.

### 5.1.1 Carts; Containers

For Residential Premises with Cart-based Solid Waste Services, Garbage will be collected in Contractor provided Carts. Extra materials which do not fit neatly within the Customer's primary Cart/can shall be collected for an additional fee as set forth in Exhibit B and may be placed adjacent to the primary Cart in customer provided plastic bags which can be safely collected by Contractor's personnel and equipment. All Garbage from Commercial Premises, City Facilities and Multi-Family Premises with Container-based services will be collected in Contractor provided Containers, and extra materials which do not fit neatly within the Customer's primary Container shall be collected for an additional fee as set forth in Exhibit B and may be placed adjacent to the primary Container in Customer provided plastic bags which can be safely collected by Contractor's personnel and equipment.

## **ARTICLE VI - RECYCLABLES COLLECTION**

### 6.1 General Recycling Provisions

For Residential Premises with Cart-based Solid Waste Services, Recyclables shall be collected on a Single Stream basis every other week, on the same days as Garbage collection. The cost of such Residential Recyclables collection shall be included in the rates for Residential Garbage collection set forth in Exhibit B.

For Multi-Family Premises with Cart/Container-based Solid Waste Service, Recyclables shall only be offered as Cart-based service and shall be collected on a Single Stream basis every other week. The cost of such Multi-Family Recyclables collection shall be included in the rates for Multi-Family Garbage collection set forth in Exhibit B.

Recyclables Collection services will be provided to Commercial Customers pursuant to separate agreements.

Contractor becomes the owner of Recyclables when they are placed in the Contractor's collection vehicle and, thereafter, the Contractor may market or manage them in any manner the Contractor deems to be economically feasible. The Contractor shall be responsible for all marketing and sale of Recyclables collected hereunder and shall be entitled to all proceeds therefrom.

### 6.2 Recycling Carts/Containers

Contractor will provide a 35, 64 or 96 gallon Cart to all Residential Customers with Cart-based Solid Waste Service. The default Cart size shall be 96 gallons, unless a Customer requests a different size.

Upon customer request, the Contractor will provide a 96 gallon Cart to Multi-Family Premises Customers with Cart/Container-based Solid Waste Service.

For each City Facility, Contractor will provide an appropriate sized Cart(s)/Container(s) to store Recyclables generated between collections by Contractor. Alternatively, the City may provide its own Container(s), so long as they are compatible with Contractor's collection vehicles.

## **ARTICLE VII - COMPOSTABLES COLLECTION**

### **7.1 General Compostables Provisions**

For Residential Premises with Cart-based Solid Waste Services, Compostables shall be collected every other week, on the same days as Garbage collection. The cost of such Residential Compostables collection shall be included in the rates for Residential Garbage collection set forth in Exhibit B.

Yard Waste and Food Waste may be commingled by such Residential Customers in the Compostables Cart. Small Commercial and Multi-Family Premises Customers with Cart/Container-based Solid Waste Services may participate in the Compostables collection program for the fees set forth in Exhibit B. Such Customers shall be provided a 96 gallon Cart(s).

Contractor becomes the owner of Compostables when they are placed in the Contractor's collection vehicle and, thereafter, the Contractor may market or manage them in any manner the Contractor deems to be economically feasible. Contractor shall be responsible for all marketing and sale of Compostables collected hereunder and shall be entitled to all proceeds therefrom.

### **7.2 Holiday Tree Collection**

At no additional cost to the customer, the Contractor shall collect unflocked, undecorated, natural holiday trees (Christmas trees) during the first full week of regularly scheduled Compostable materials collection in January of each calendar year from all Single Family and Multi-Family Residences within the city limits. The Contractor shall not be obligated to collect holiday trees that are not properly placed at the curb, next to the compostables cart.

## **ARTICLE VIII - COMPENSATION**

### **8.1 Contractor Rates**

The Contractor shall charge the rates set forth in Exhibit B, as adjusted over time under this Contract, for all services performed (excluding those for which this Contract allows direct negotiation with Customers). The Contractor shall be responsible for billing and collecting funds from Residential and Commercial Customers in accordance with the rates listed in Exhibit B. There shall be a 15% low income senior citizens and/or low income disabled customer discount on residential rates afforded to qualifying customers in accordance with Pacific Ordinance No. 12-1831 and Pacific Municipal Code section 14.02.120. The City shall provide notification to the Contractor of qualifying customers and shall annually review the application process to ensure the integrity of those accounts receiving the discount.

The Contractor may occasionally provide services outside the scope of this Contract which are related to solid waste collection in the City. If pricing for such services are set forth in the otherwise applicable WUTC tariff, such WUTC rates shall apply. Otherwise, the Contractor shall propose to the City a customer rate for the service. Upon approval of the City, the Contractor may proceed to offer that service.

The Contractor shall notify customers of any rate changes via a billing/invoice note

#### 8.1.1 CPI Adjustments to Collection Component

Commencing on September 1, 2016 and on the same date annually thereafter (the “**Adjustment Date**”), the collection component of Contractor’s rates set forth in Exhibit B (as adjusted hereunder) shall be automatically increased by 100% of the annual percent increase in the Consumer Price Index (“**CPI**”) - for Seattle, Tacoma, Bremerton (1982-84 = 100) for Water and Sewer and Trash Collection that is seasonally adjusted (Series ID: CUSR0000SEHG) or successor indices as published by the Bureau of Labor Statistics, for the twelve month period ending in February. At least sixty (60) days prior to the Adjustment Date, Contractor shall notify the City of the CPI adjustment to take effect on the Adjustment Date and shall provide the City with its computations therefor. Adjustments to the Contractor’s rates shall be made in units of one cent (\$0.01). Fractions less than one cent (\$0.01) shall not be considered when making adjustments. Annual CPI adjustments shall neither be negative nor greater than 4.75% percent. In the event the CPI index series increases year-on-year more than 4.75% percent, that portion of the CPI adjustment exceeding 4.75% percent shall carry forward to the next year, so long as the current year CPI adjustment does not exceed a total of 4.75% percent after application of the carry forward amount. Contractor shall notify customers of any rate increases via a billing/invoice note.

#### 8.1.2 Pass Through Adjustment to Disposal Component

The disposal fee component of Contractor’s rates set forth in Exhibit B (as adjusted hereunder) shall be automatically adjusted to reflect increases in King County disposal fees for solid waste and increases in tip fees for compostables. Such adjustments shall be effective the date on which the modified fees go into effect, and based on Cart/Container content weights specified in Exhibit B of this Contract. The business and occupation tax shall be applied to these fees.

#### 8.1.3 Periodic Adjustment Due to Extraordinary Circumstances:

The Contractor’s rates set by this Contract are calculated to pay certain expenses and costs that are of a contingent and uncertain nature. Therefore, in addition to the adjustments set forth in Section 8.1.1, 8.1.2 and 8.1.3, the Contractor’s rates under this Contract shall, upon written request of Contractor or City, be further adjusted for increased expenses associated with performance of the services hereunder due to any one or more of the following causes:

- (a) material changes in Contractor’s costs resulting from a Force Majeure event;
- (b) changes in the scope or method of services provided by Contractor or other changes or fees required, initiated, or approved by the City;
- (c) any change in law, statute, rule, regulation, ordinance, order or requirement of any federal, state, regional or local government that is effective after the Effective Date of this Contract;
- (d) any increase in surcharges, fees, assessments or taxes levied by federal, state or local regulatory authorities or other governmental entities upon the collection or disposal of

City Solid Waste (excluding increases in King County disposal fees, for which Contractor receives an adjustment under Section 8.1.3);

- (e) a material fluctuation in the markets or market price for Recyclables, unforeseen increases in the cost of collection, handling, storing, transporting, marketing, or sale or other disposition of Recyclables, the need for increased promotional or educational activities pertaining to recycling or any changes to the definition of “Recyclables” set forth herein;
- (f) any other extraordinary circumstances or causes or reasons that are not within the reasonable control of Contractor.

If Contractor requests an adjustment due to the extraordinary circumstances set forth above, Contractor shall prepare a rate adjustment request setting forth its calculation of the increase costs and accompanying rate adjustment necessary to offset such increased costs. The City may request any and all documentation and data reasonably necessary to evaluate such request by Contractor, and may retain, at its own expense, an independent third party to audit and review such documentation and such request. If such third party is retained, the City shall take reasonable steps, consistent with state law, to protect the confidential or proprietary nature of any data or information supplied by Contractor. The City shall act within ninety (90) days of receipt of the request from Contractor, and shall either approve or disapprove the request, provided that approval shall not be unreasonably withheld. The Contractor shall notify customers of any rate changes via a billing/invoice note.

## 8.2 City Administrative Fee

Contractor shall pay City 4% of gross revenues collected each complete calendar quarter during the term of this Contract (“**Quarterly Fee**”). Such payments shall be made by Contractor on or before the twentieth (20<sup>th</sup>) day of the month following the applicable quarter. The term “gross revenues” means any and all revenue or compensation actually collected by Contractor from Customers under this Agreement for the exclusive collection, transportation, processing, recycling and disposal of City Solid Waste, in accordance with Generally Accepted Accounting Principals (GAAP), net of Quarterly Fees. The term gross revenues, for purposes of this Agreement, shall not include any: a) City, or other federal, state, or local taxes or surcharges; b) any Customer late fees, NSF charges, interest, or reactivation charges; or c) any revenues generated from the sale of Recyclables or any recycling rebates received from the State.

The City Administrative Fee amount may be changed by the City in any year, provided that the change is synchronized with the annual Contractor rate modification described in Section 8.1.1 and that the Contractor’s rates are adjusted accordingly to pass through any changes in the City Administrative Fee such that the Contractor remains whole. The City shall notify the Contractor of the new City Administrative Fee for the following year by March 1st, and the Contractor shall itemize and include the appropriate adjustment in its rate modification notice to the City each year. In the event that the City Administrative Fee is adjusted, either up or down, the Contractor shall add or subtract an amount equivalent to the state business and occupations tax, as may be adjusted from time to time by the State of Washington, to the rate adjustment calculation to keep the Contractor whole.

## ARTICLE IX - BILLING SERVICES AND CUSTOMER EDUCATION

### 9.1 Contractor Billing

Contractor shall be responsible for billing and collection of all charges, fees and taxes for the collection of City Solid Waste pursuant to this Contract. Contractor shall also perform all customer service functions related to billing and responding to any Customer inquiries. If City ever levies a utility tax or other gross receipts tax, Contractor agrees to collect and remit such taxes to the City without any additional charge for the administrative expense incurred in collection and remitting such taxes.

### 9.2 Collection for Non-Payment

The Contractor may bill to Customers a late payment fee, interest, NSF check charges, as well as all costs associated with bad debt collection. Interest shall accrue on delinquent charges at the rate set forth by the Contractor until paid in full, but shall not exceed usury rates established in Chapter 19.52 RCW. If a Customer becomes sixty (60) days delinquent on a Contractor invoice, Contractor shall reduce their service to the minimum service level within their class of service. The Contractor may make arrangements for third party collection and/or lien the property for the debt and may petition the City to discontinue service to any delinquent customer. The City shall not unreasonably withhold approval. In the event of discontinued service, the Contractor may charge a redelivery fee of \$25.00 should the Customer request to reinstate their service after paying all overdue balances. The redelivery fee in Exhibit B includes all three carts for Single-family Customers.

The Contractor shall provide the City with a listing of all delinquent customers on a monthly basis, by the thirtieth (30<sup>th</sup>) day of each month for the month preceding. The listing shall include customer name, address, regular subscription level, amount due on the account and number of days delinquent.

### 9.3 Suspending Collection from Problem Customers

The City and Contractor acknowledge that, from time to time, 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-owned Carts/Containers, repeated refusal to position Garbage, Recyclables and Compostables containers properly for automated collection, repeated suspect claims of timely set-out followed by demands for return collection at no charge, repeated claims of Contractor damage to a Customer's property, or other such problems.

The Contractor shall make reasonable efforts to provide service to those problem Customers. However, the Contractor may deny or discontinue service to a problem Customer if reasonable efforts to accommodate the Customer and to provide services fail and the City has provided approval. The City may not unreasonably withhold approval. 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.

#### 9.4 Promotion, Education, and Outreach

The Contractor shall have primary responsibility for developing, designing and executing general waste reduction/recycling public education and outreach programs, with the assistance and cooperation of the City. The Contractor shall have primary responsibility for providing service-oriented information and outreach to Customers and implementing ongoing recycling promotion, at the direction of the City.

The Contractor shall keep the public informed of programs and encourage participation through an Annual Service Update. The Contractor shall provide an Annual Service Update for the Residential and Multi-Family sector, the format, content and timeframe of which shall be subject to prior review and approval by the City. The Annual Service Update shall be mailed to all Residential Customers and Multi-Family Property Managers and, at a minimum, shall include an informational brochure indicating all services available, preparation and other service requirements, contact information, inclement weather and other policies, a collection calendar, resources for customer education on hazardous waste and stating that hazardous waste is not accepted and that additional fees may be incurred, and other useful Customer information.

The Contractor shall develop, print, periodically update and maintain sufficient quantities of new Customer information materials, the format and content of which shall be subject to prior review and approval by the City. Upon approval, materials shall be delivered in a manner agreeable to the City to every new Residential Customer prior to the Customer's first billing and shall, at a minimum, include a statement of applicable rules and service policies, rates, services and preparation requirements, collection days in calendar format, Contractor customer service information and City contact information.

The Contractor shall annually contact all Commercial Customers to promote recycling services and conduct, as necessary, onsite audits, education, and options to reduce garbage service levels through various recycling programs.

### **ARTICLE X - DEFAULTS**

#### 10.1 Termination

Except for the occurrence or existence of Force Majeure, in the event of any material failure or refusal of Contractor to comply with any obligation or duty under this Contract, the City and Contractor shall meet and confer in good faith in an effort to agree on a resolution of the breach. If the Parties are unable to agree on the informal resolution the breach, and the Contractor has violated a material provision of this Contract, the City may provide Contractor with written notice of the default, stating the specific reasons for default and the provisions of the Contract which have been violated. The Contractor shall then have thirty (30) days to cure such default, or commence to cure such default if it is of a nature that cannot be cured within the prescribed timeframe. If the Contractor fails to cure the default within the stated period, or fails to commence such cure in a manner reasonably satisfactory to remedy the stated reason, then the City may at its option terminate all or a portion of this Contract. The City reserves the right to pursue any remedy available at law for any default of the Contractor, including enforcement of the Bond.

The City shall be in default of this Contract if it violates any material provision of this Contract. The Contractor reserves the right to pursue any remedy available at law for any default by the City. In the event of default, the Contractor shall give the City written notice of the default, stating the specific reasons for default and the provisions of the Contract which have been violated. The City shall then have thirty (30) days to cure such default, or commence to cure such default if it is of a nature that cannot be cured within the prescribed timeframe. If the City fails to cure the default within the stated period, or fails to commence such cure in a manner reasonably satisfactory to the Contractor to remedy the stated reason, then the Contractor may at its option terminate this Contract.

#### 10.2 Liquidated Damages

As a breach of the mandatory Collection service provided by this Contract would cause serious and substantial damage to City and its residents, and the nature of this Contract would render it impracticable or extremely difficult to fix the actual damage sustained by City by such breach, it is agreed that in case of breach of service, City may elect to collect liquidated damages for each such breach and Contractor shall pay City as liquidated damages and not as penalty, the amounts set forth in Exhibit C, such sums being the amount which City will be damaged by the breach of such services. An election to seek such remedy shall not be construed as a waiver of any remedies City may have as to any subsequent breach of services under this Contract. Liquidated damages shall not apply if the breach caused by a force majeure event.

Fines may be levied only with respect to Residential Collections and Commercial Garbage Collections. Fines may be levied if documented in an incident report presented by the City to the Contractor. The City reserves the right to make periodic, unscheduled inspection visits to determine the Contractor's compliance with the Contract terms. For multiple or continuous violations not falling within the previous sections, the City may assess a cumulative maximum fine of up to one thousand dollars (\$1,000.00). Any fine may be appealed by the Contractor to the City Council whose decision in the matter will be final.

Liquidated damages will be reasonably applied and may be levied only if documented in an incident report presented by the City to the Contractor. The Contractor shall be notified and provided a copy of an incident report and shall be given 24 hours to cure the problem (if applicable) before liquidated damages are invoiced to the Contractor, except in the case of incidents for which, due to the nature of the event, a "cure" is not possible. Such liquidated damages as City shall elect to collect shall be billed to Contractor and be paid within twenty (20) days. Application of these damages may be appealed within ten (10) days by Contractor to the Contract Administrator, whose decision shall be final.

## **ARTICLE XI - ANNEXATION**

11.1 Franchise Rights/Annexations

If the City annexes any property during the term of this franchise, then the provisions of RCW 35A.14.900 shall apply.

**ARTICLE XII - MISCELLANEOUS**

12.1 Non-Waiver

The failure of any Party to enforce any Contract provision is not and shall not be construed as a waiver of that provision. The payment or acceptance of compensation subsequent to any breach is not and shall not be construed as an acceptance of that breach. All waivers must be in writing.

12.2 Notices

Any notices to be sent to the City shall be sent to the Contract Administrator at the following address:

Attn: City Administrator  
City of Pacific  
100 3<sup>rd</sup> Avenue SE  
Pacific, WA 98047

Any notices sent to Waste Management of Washington, Inc. shall be sent to:

Mary S. Evans, Area Director of Public Sector Services  
Waste Management of Washington, Inc.  
720 4<sup>th</sup> Avenue, Suite 400  
Kirkland, WA 98033

12.3 Severability

If any provision of this Contract is held to be void, invalid or unenforceable under any applicable law by a court of competent jurisdiction, the remaining provisions of the Contract shall remain in effect and bind the parties.

12.4 Entire Agreement

This Contract and all Exhibits hereto constitute the entire agreement between City and Contractor, and there are no promises, conditions, terms, obligations, statements, or guarantees other than those contained herein. No modifications or amendments shall be valid unless in writing and fully executed by both parties.

12.5 Attorneys' Fees

In the event of any action or proceeding to enforce, interpret, construe, or otherwise resolve a dispute between the parties arising from any term, condition or provision of this Contract, the substantially prevailing party in such action or proceeding shall be entitled to recover, in addition to all other relief, from the other party, reasonable attorneys' fees incurred by the substantially prevailing party in connection with such action or proceeding, including but not limited to any appeal thereof.

12.6 Change in Service

Contractor shall give sixty (60) days written notice to the Contract Administrator of any change which affects the date of collection, provided that no change in the terms of this Contract may be made unless agreed to in writing by the Contract Administrator.

12.7 Assignment

This Contract may not be assigned or transferred by Contractor, without the prior written consent of the City Council, as evidenced by a City Resolution and the signature of the Mayor. The City may withhold its consent to assignment or transfer of this Contract, in its sole discretion. In the event of an unauthorized assignment or transfer, the City reserves the right to cancel or terminate the Contract.

12.8 Force Majeure

Provided that the requirements of this section are met, Contractor shall be excused from performance and shall not be liable for failure to perform under this Contract if Contractor's performance is prevented or delayed by acts of terrorism, acts of God, landslides, lightning, forest fires, storms, floods, typhoons, hurricanes, severe weather, freezing, earthquakes, volcanic eruptions, other natural disasters or the imminent threat of such natural disasters, pandemics, quarantines, civil disturbances, acts of the public enemy, wars, blockades, public riots, strikes, lockouts, or other labor disturbances, acts of government or governmental restraint or other causes, whether of the kind enumerated or otherwise, and whether foreseeable or unforeseeable, that are not reasonably within the control of the Contractor ("**Force Majeure**"). If as a result of a Force Majeure event, Contractor is unable wholly or partially to meet its obligations under this Contract, it shall give the City promptly written notice of the Force Majeure event, describing it in reasonable detail. 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 City and Contractor will engage in disaster preparedness planning to address service response in the event of an emergency or Force Majeure in an effort to minimize interruptions in performance under this Agreement.

12.9 Applicable Law / Venue

This Contract shall be governed by the laws of the State of Washington. Venue for any action hereunder shall be in King County Superior Court.

12.10 Independent Contractor

The Parties agree and acknowledge that Contractor is an independent Contractor and not an agent or employee of the City, and that no liability (except as provided herein) shall attach to the City as a result of the acts or omissions of Contractor, its employees, agents, or assigns. Contractor shall have no authority to execute agreements or to make commitments on behalf of the City, and nothing contained in this Contract shall be deemed to create the relationship of employer and employee or principal and agent between the City and Contractor.

12.11 Subcontracting

The Parties intend that Contractor shall perform pursuant to the terms of this Contract with its own employees. However, in the event any incidental subcontractor services are

necessary, Contractor agrees to be responsible for the standards of performance of any subcontractor. Contractor agrees that no subcontractor shall relieve Contractor of any obligations under this Contract.

#### 12.12 Taxes and Fees

Contractor acknowledges that it is responsible for the payment of any local, state, or federal taxes or fees with respect to Contractor's agents and employees, and any taxes or licenses applicable to Contractor's business activity.

#### 12.13 Insolvency; Right to Terminate Contract

In addition to other terms of this Contract, any or all of the following shall be considered events of default of this Contract, allowing the City to terminate the Contract if such events are not cured within 10 days of written notice: a) if Contractor petitions any court to be adjudged a bankrupt; b) if a petition in bankruptcy is filed in any court against Contractor; c) if Contractor is adjudged to be insolvent; d) if Contractor is adjudged to be bankrupt; e) if a receiver or other officer is appointed to take charge of the whole or any part of Contractor's property or to wind up or liquidate its affairs; f) if Contractor seeks reorganization under the Federal Bankruptcy Code, as amended; or g) if Contractor admits in writing its inability to pay its debts as they become due.

#### 12.14 Reservation of Municipal Authority

The City specifically reserves the right to enact general municipal ordinances and resolutions affecting all businesses and persons in the City. Should the City make changes to their general municipal ordinance and resolutions which impact the solid waste business, the Contractor shall be notified at least thirty (30) days in advance of the date for which the ordinance or resolution is noted as an agenda item at a city council meeting.

#### 12.15 Successors and Assigns

This Contract shall be binding upon the Parties and their successors and assigns.

#### 12.16 Corporate Authority

Each individual executing this Contract on behalf of a corporation or entity represents and warrants that he/she is duly authorized to execute and deliver this Contract on behalf of the corporation or entity.

#### 12.17 Dispute Resolution

In order to have an administrative mechanism for promptly mediating Customer complaints regarding billing for or the collection of Garbage, Recyclables, or Compostables, the City and the Contractor agree as follows: 1) the Contractor shall first make a good faith effort to resolve a Customer's complaint; 2) in the event the Customer is not satisfied with the Contractor's resolution, the complaint shall be forwarded to the City's Mayor or Mayor's designee who shall resolve the complaint after discussing the matter with the Customer and the Contractor.

Agreed to as of this \_\_\_\_\_ day of \_\_\_\_\_, 2015:

City of Pacific

Waste Management of Washington, Inc.

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

**EXHIBIT A**

**LIST OF CITY FACILITIES**

- 1). Pacific City Hall-100 3rd Avenue S.E.  
1 - 4 yard MSW 1x/week  
1 - 2 yard REC 1x/week  
1-64 gallon REC 1x/week
- 2). Pacific Fire and Police -133 3rd Avenue S.E.  
2-96gallon REC Carts 1x/week  
1-3yard MSW 1x/week  
1-64gallon REC 1x/week
- 3). Well – 521 Ellington Rd, Algona
- 4). Reservoir – 331 County Line Rd
- 5). All City Park Facilities
  - 5a). City of Pacific Blueberry Park – 117 5<sup>th</sup> Avenue SW  
Serviced at 1 Milwaukee Boulevard & 5<sup>th</sup>  
1-35gallon MSW 1x/week
  - 5b). City of Pacific Strawberry Park – 124 Strawberry Court SW  
Serviced at Yakima Boulevard and Otter Dr.
  - 5c). City of Pacific Sunset Park – 240 Sunset Drive
  - 5d). Pacific City Park – 600 3<sup>rd</sup> Avenue SE  
1-6yard MSW 1x/week
  - 5e). City of Pacific Rhubarb Park – xxx Rhubarb Street SW  
Serviced at Rhubarb Street SW & Yakima  
1-35gallon MSW 1x/week
  - 5f). City of Pacific Beaver Park – 550 Beaver Boulevard  
Serviced at Coyote Dr. & Beaver Boulevard  
1-35gallon MSW 1x/week
- 6). Pacific Algona Community Center Gymnasium – 305 Milwaukee Ave.
- 7). Pacific Algona Community Senior Center – 100 3<sup>rd</sup> Ave SE

**EXHIBIT B**  
**SERVICE RATE SCHEDULE**

## EXHIBIT C

### LIQUIDATED DAMAGES

Missed collection that is not collected within a 24 hour period after being notified:	\$50.00 per incident to a maximum of \$500 per truck per day
Repetition of complaints on a route after notification to replace can or detachable container in designated locations, spilling, not closing gate, crossing planted areas, or similar violations:	\$25.00 per incident to a maximum of \$500 per truck per day
Commencement of residential collection prior to 6:00 a.m. or after 10:00 p.m. Also applies in other areas within 300 feet of residential sections.	\$100.00 per incident (each truck on each route is a separate incident)
Failure to collect spillage consistent with the provisions of this Contract (except where caused by overloading by the customer).	\$25.00 per incident
Collection from residential premises on other than the day specified without appropriate notice as specified in this Contract.	\$25.00 per structure, to a maximum of \$750.00 per truck, per day.
Failure to collect within twenty-four (24) hours after notification of a missed collection of an entire block segment of 1-4 unit residences. (This excludes collection days prevented by snow and ice, holiday rescheduling and construction).	\$150.00 per block segment.
Collection of material set out for pick up under different collection program, if clearly marked for recycling or charitable purposes if self-evident.	\$25.00 per incident, up to a maximum of \$750.00 per truck per day.
Failure to deliver recyclable materials or yard waste containers within seven (7) business days of notice.	\$10.00 per container, per day.
Misrepresentation by Contractor of records.	\$250.00 per incident report.
Failure to clean or replace detachable containers within seven (7) business days of notification by City.	\$25.00 per container per day.
Failure to maintain clean and sanitary cleaning facilities and vehicles.	\$25.00 per vehicle to a maximum of \$100.00 per visit.
Landfilling uncontaminated recyclables or yard waste.	\$100.00 per ton with no maximum; minimum of \$100.00 per incident.

Pursuant to Section 12.8 of the Contract, labor disturbances, such as strikes and lockouts, are Force Majeure events. However, notwithstanding Section 12.8, the City may assess the first liquidated damage item listed above for missed collections due to labor disturbance Force Majeure events if make-up collections are not performed within seven (7) days from the 24-hour make-up collection deadline. In the event that a labor disturbance causes Contractor to miss more than one regular service cycle/pick-up, the Contractor shall provide each such affected Customer credit for all service missed due to the labor disturbance including the first missed cycle. The credit shall be equal to or exceed the pro rata portion of the Customers' regular rate that is attributable to the missed service minus the average cost of disposal attributable to the missed service. The credit shall be placed on the Customer's next regular invoice.

**EXHIBIT D**  
**CITY SERVICE AREA**



Agenda Bill No. 15-108

**TO:** Mayor Guier and City Council Members  
**FROM:** Richard Gould, City Administrator  
**MEETING DATE:** July 20, 2015  
**SUBJECT:** City Council Budget Workshop

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**ATTACHMENTS:**

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**Previous Council Review Date:** N/A

**Summary:** Budget season will be ramping up very soon. Department heads have already submitted early budget numbers for 2016 and budget objectives and priorities need to be set. The suggested date of the workshop is August 31 – the fifth Monday of August – at 6:30.

**Recommendation/Action:** Schedule the first Council budget workshop for August 31.

**Motion for Consideration:**

**Budget Impact:**

**Alternatives:**