

## DRAFT AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2015 by and between the \_\_\_\_\_ hereinafter called "Agency" and South Bayside Waste Management Authority hereinafter called "SBWMA".

### RECITALS

This Agreement is entered into with reference to the following facts and circumstances:

- A. The SBWMA is a joint powers authority established under Government Code 6500 et seq.
- B. That SBWMA desires to engage AGENCY to render certain financial services to the SBWMA related to carrying on the day to day financial operations of the SBWMA;
- C. That AGENCY is qualified to provide such services to the SBWMA and;

THEREFORE, the SBWMA has elected to engage the services of AGENCY upon the terms and conditions as hereinafter set forth.

1. Services. The services to be performed by AGENCY under this Agreement shall include those services set forth in Exhibit A, which is, by this reference, incorporated herein and made a part hereof as though it were fully set forth herein.

Performance of the work specified in said Exhibit is hereby made an obligation of AGENCY under this Agreement, subject to any changes that may be made subsequently hereto upon the mutual written agreement of the said parties.

Where in conflict, the terms of this Agreement supersede and prevail over any terms set forth in Exhibit A.

2. Term. (a) The term of this Agreement is for three years and shall commence upon the date hereinabove written and shall expire upon completion of performance of services hereunder by AGENCY. (b) Notwithstanding the provisions of (a) above, either party may terminate this Agreement with cause by giving written notice not less than thirty (30) days prior to the effective date of termination, which date shall be included in said notice. In the event of such termination, SBMWA shall compensate AGENCY for services rendered, and reimburse AGENCY for costs and expenses incurred, to the date of termination, calculated in accordance with the provisions of paragraph 3. In ascertaining the services actually rendered to the date of termination, consideration shall be given both to completed work and work in process of completion. Nothing herein contained shall be deemed a limitation upon the right of SBWMA to terminate this Agreement for cause, or otherwise to exercise such rights or pursue such remedies as may accrue to SBWMA hereunder. Reasons of cancelation for cause would include: lack of adequate internal controls, failure to provide services and meet performance standards, and awareness of unethical behavior. Cost is not a factor in cancellation for cause.

Cancellation or termination of this contract without cause requires nine-months (270 days) advance notice so that adequate time is given to finding a new service provider. If the service provider cancels in less than three years without cause, then the service provider will continue to perform the services until a new service provider is found. In addition, the service

provider will pay for all costs, as identified by the new service provider, to transfer the service to a new service provider.

3. Compensation; Expenses; Payment. SBWMA shall compensate AGENCY for all services performed by AGENCY hereunder in an amount based upon terms set forth in Exhibit A and Exhibit B.

Compensation and reimbursement of costs and expenses hereunder shall be payable upon quarterly billing therefore by AGENCY to SBWMA.

4. Additional Services. In the event SBWMA desires the performance of additional services not otherwise included within the services described in Exhibit A, such services shall be authorized in advance of the performance thereof by SBWMA's Executive Director (for contracts less than \$50,000 or authorized by SBWMA Board action for contracts \$50,000 or more by motion duly made and carried). Such amendment to this Agreement shall include a description of the services to be performed thereunder, the maximum compensation and reimbursement of costs and expenses payable therefor, the time of performance thereof, and such other matters as the parties deem appropriate for the accomplishment of such services. Any additional services causing the total contract price to exceed \$50,000, shall require approval by the SBWMA Board. Except to the extent modified by written amendment, all other terms and conditions of this Agreement shall be deemed incorporated in each such amendment.
5. Records. AGENCY shall keep and maintain accurate records of all time expended and costs and expenses incurred relating to services to be performed by AGENCY hereunder. Said records shall be available to SBWMA for review and copying during regular business hours at AGENCY's place of business or as otherwise agreed upon by the parties.
6. Authorization. This Agreement becomes effective when endorsed by both parties in the space provided below.
7. Reliance on Professional Skill of AGENCY. AGENCY represents that it has the necessary professional skills to perform the services required and the SBWMA shall rely on such skills of the AGENCY to do and perform the work. In performing services hereunder AGENCY shall adhere to the standards generally prevailing for the performance of expert consulting services similar to those to be performed by AGENCY hereunder. AGENCY acknowledges the importance to SBWMA of the skill, competency, ability to appropriately work with SBWMA staff and expertise of individual staff assigned to the project, and accordingly the individuals assigned to the Project must be acceptable to SBWMA.
8. Documents. All documents, plans, drawings, renderings, and other papers, or copies thereof, as finally rendered, prepared by AGENCY pursuant to the terms of this Agreement, shall, upon preparation and delivery to SBWMA, become the property of SBWMA.
9. Relationship of Parties. It is understood that the relationship of AGENCY to the SBWMA is that of an independent contractor and all persons working for or under the direction of AGENCY are its agents or employees and not agents or employees of the SBWMA.
10. Schedule. AGENCY shall adhere to the schedule set forth in Exhibit A; provided, that SBWMA shall grant reasonable extensions of time for the performance of such services occasioned by governmental reviews of AGENCY's work product or other unavoidable

delays; provided, further, that such unavoidable delay shall not include strikes, lockouts, work stoppages, or other labor disturbances conducted by, or on behalf of, AGENCY's officers or employees.

AGENCY acknowledges the importance to SBWMA of SBWMA's Project schedule and agrees to put forth its best professional efforts to perform its services under this Agreement in a manner consistent with that schedule.

11. Indemnity. AGENCY hereby agrees to defend, indemnify, and save harmless SBWMA, its boards, commissions, officers, attorneys, employees and agents, from and against any and all claims, suits, actions liability, loss, damage, expense, cost (including, without limitation, costs of litigation and attorney's fees) of every nature, kind or description, which may be brought against, or suffered or sustained by, SBWMA, its boards, commissions, officers, attorneys, employees or agents arising or resulting directly or indirectly from any act or omission of AGENCY, its officers, employees or agents in the performance of any services or work pursuant to this Agreement.

The duty of AGENCY to indemnify and save harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code; provided, however, that nothing herein contained shall be construed to require AGENCY to indemnify SBWMA, its boards, commissions, officers, employees and agents against any responsibility or liability in contravention of Section 2782 of the California Civil Code.

12. Insurance. AGENCY shall acquire and maintain Workers' Compensation, employer's liability, commercial general liability, owned and non-owned and hired automobile liability, and professional liability insurance covering risks relating to AGENCY's services to be performed hereunder in form subject to the approval of the Authority's Attorney and/or Authority's Risk Manager. The minimum amounts of coverage corresponding to the aforesaid categories of insurance per insurable event, shall be as follows:

<u>Insurance Category</u>	<u>Minimum Limits</u>
Workers' Compensation	statutory minimum
Employer's Liability	\$1,000,000 per accident for bodily injury or disease
Commercial General Liability	\$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, personal injury and property damage
Automobile Liability	\$1,000,000 per accident for bodily injury and property damage (coverage required to the extent applicable to AGENCY's vehicle usage in performing services hereunder)
<sup>1</sup> Professional Liability	\$1,000,000 per claim and \$2,000,000 aggregate

Concurrently with the execution of this Agreement, AGENCY shall, on the Insurance Coverage form provided in Exhibit C, furnish SBWMA with certificates and copies of information or declaration pages of the insurance required hereunder and, with respect to

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<sup>1</sup> Note: Professional liability insurance coverage is not required if the contractor/vendor/consultant is not providing a service regulated by the state. (Examples of service providers regulated by the state are insurance agents, professional engineers, doctors, certified public accountants, lawyers, etc.) Please check and initial the following if professional liability is **NOT** required for this agreement.  Recommended \_\_\_\_\_ [Project Manager]  Approved \_\_\_\_\_ [Risk Manager]

evidence of commercial general liability and automobile liability insurance coverage, original endorsements:

- (a) Precluding cancellation or **reduction in per occurrence limits** before the expiration of thirty (30) days (10 days for nonpayment) after SBWMA shall have received written notification of cancellation in coverage or **reduction in per occurrence limits** by first class mail;
- (b) Naming the South Bayside Waste Management Authority its officers, boards, commissions, attorneys, employees, and agents, as additional insureds; and
- (c) Providing that AGENCY's insurance coverage shall be primary insurance with respect to SBWMA, its officers, boards, commissions, attorneys, employees, and agents, and any insurance or self-insurance maintained by SBWMA for itself, its officers, boards, commissions, employees, or agents shall be in excess of AGENCY's insurance and not contributory with it.

#### Claims Made Policies

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the AGENCY must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

#### Verification of Coverage

AGENCY shall furnish the SBWMA with original certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the SBWMA before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the AGENCY's obligation to provide them. The SBWMA reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

#### Waiver of Subrogation

AGENCY hereby grants to SBWMA a waiver of any right to subrogation which any insurer of said Consultant may acquire against the SBWMA by virtue of the payment of any loss under such insurance. This provision applies regardless of whether or not the SBWMA has requested or received a waiver of subrogation endorsement from the insurer.

#### Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the SBWMA.

#### Special Risks or Circumstances

SBWMA reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

13. WORKERS' COMPENSATION. AGENCY certifies that he is aware of the provisions of the Labor Code of the State of California which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and AGENCY certifies that he will comply with such provisions before commencing the performance of the work of this agreement.
14. NON-DISCRIMINATION. The AGENCY will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The AGENCY will take affirmative action to insure that applicants are employed and the employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, advancement, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The AGENCY shall at all times be in compliance with the requirements of the Federal Americans With Disabilities Act (Public Law 101-336) which prohibits discrimination on the basis of disability by public entities. The AGENCY agrees to post in conspicuous places available to employees and applicants for employment any notices provided by the SBWMA setting forth the provisions of this non-discrimination clause.
15. Notice. All notices required by this Agreement shall be given to the SBWMA and AGENCY in writing, by first class mail, postage prepaid, addressed as follows:

SBWMA:                      South Bayside Waste Management Authority  
                                    610 Elm Street #202  
                                    San Carlos, CA 94070  
                                    Attention: Kevin McCarthy

AGENCY:                    Name  
                                    Address

16. Non-Assignment. This Agreement is not assignable either in whole or in part.
17. Amendments. This Agreement may be amended or modified only by written agreement signed by both parties.
18. Validity. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
19. Governing Law. This Agreement shall be governed by the laws of the State of California and any suit or action initiated by either party shall be brought in the County of San Mateo, California. In the event of litigation between the parties hereto to enforce any provision of the Agreement, the unsuccessful party will pay the reasonable attorney's fees and expenses of litigation of the successful party.
20. Mediation. Should any dispute arise out of this Agreement, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. Neither party shall be permitted to file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution. The costs of the mediator, if any, shall be paid equally by the parties. If a mediated settlement is reached neither party shall be deemed the prevailing party for purposes of the settlement and each party shall bear its own legal costs. If a party refuses or fails to participate in mediation in good faith prior to filing a lawsuit, then that party shall be barred from recovery of attorney's fees and costs of suit.

21. Conflict of Interest. AGENCY may serve other clients, but none who are active within the South Bayside Waste Management Authority or who conduct business that would place AGENCY in a "conflict of interest" as that term is defined in State law.
22. Entire Agreement. This Agreement, including Exhibits A and B comprise the entire Agreement between the SBWMA and AGENCY.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first above written by their respective officers duly authorized in that behalf.

AGENCY OF \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_, AGENCY Manager

SBWMA

Dated: \_\_\_\_\_

\_\_\_\_\_  
Kevin McCarthy, Executive Director

APPROVED AS TO FORM

Dated: \_\_\_\_\_

\_\_\_\_\_, AGENCY Attorney

APPROVED AS TO FORM

Dated: \_\_\_\_\_

\_\_\_\_\_  
Robert J. Lanzone, Legal Counsel

## EXHIBIT A

### SCOPE OF WORK AND SCHEDULE AND FEES

#### A. SCOPE OF SERVICES

1. The agency will perform all necessary steps to set up the SBWMA as a separate legal entity within their accounting systems. Agency will provide all hardware, software, and training of staff to perform these services. Start-up of these services and coordination with the current service provider will be managed solely by the agency. All costs associated with starting up these services will be borne by the Agency unless otherwise disclosed and agreed upon.
2. The Agency will perform Financial Services for the SBWMA, including the following specific items:
  - a. Establish and maintain bank and investment accounts. Currently, SBWMA uses Wells Fargo, San Mateo Investment Pool and LAIF, for cash and investment activity.
  - b. Process vendor invoices for payment; sign vendor disbursements. The Agency will process bi-weekly disbursements of accounts payable checks once the payment requests have been properly authorized for payment by the appropriate SBWMA representative. All invoices will be paid either by electronic payment or check.
  - c. Deposit receipts and manage receivables. All receipts and deposits (cash, check or wire) will be made into the SBWMA's separate bank account. Receivables will be reviewed on a quarterly basis with the SBWMA Finance Manager and any delinquent accounts will be contacted. All reports related to receivables will be available to SBWMA management.
  - d. Input budget into accounting system. Once the SBWMA Board has adopted the budget, the budget will be uploaded into the Agency's accounting system. The system will provide on-demand YTD actual to budget variance reporting.
  - e. Establish and implement internal financial controls. The Agency maintains a robust internal control system. Part of the annual audit process includes a review of these systems, in conjunction with the preparation of the Agency's Comprehensive Annual Financial Report (CAFR).
  - f. Recommend and review financial policies and procedures. Part of the Agency's continuing operation includes review of financial policies and procedures.
  - g. General ledger account reconciliation and review. Every balance sheet account is reviewed and reconciled on a monthly basis. In addition, the financial system automatically reviews every transaction for completeness and will not post an unbalanced entry. By the 15<sup>th</sup> of the following month the prior period is closed and reviewed. Any significant variances are reviewed and corrections applied as needed.
  - h. Fixed asset sub ledger system. The Agency uses a separate robust fixed asset module to track fixed assets and capitalization of projects as mandated by GASB 34.
  - i. Manage the bond accounts, bond bank accounts, and make bond payments (semi- annually). Bond payments are made in accordance with the debt schedules via wire transfers. Bond accounts are managed as part of the investment policies and procedures.
  - j. Recommend investment policies for Board approval. On a quarterly basis, the Agency prepares and provides a quarterly investment report to the SBWMA Finance Manager for his review. On an annual basis, the Agency provides the Annual Investment Policy to the SBWMA Finance Manager for his review prior to submission to the Board.
  - k. Manage the investment of surplus cash and reserve funds. Surplus cash is reviewed on a weekly basis and all surplus funds are invested with the primary objective of safety of principal, while meeting the cash flow needs of the Authority, through prudent investment of unexpended cash. The portfolio will at all times contain enough liquidity to meet the next six months of expected expenditures by the Authority, as well as by other third parties.
  - l. Provide detailed information as requested from SBWMA staff on vendor payment issues, general ledger accounts, etc.

Specific financial statement and auditing services include:

- a. Work with auditors to report fiscal year audited financial results. The Agency understands that the fiscal year may change to a calendar year if the JPA agreement is amended. The cost for such change will need to be discussed in more detail as it may involve the purchase of additional financial software and the conversion of existing financial records.
  - b. Manage the fiscal year-end audit process and prepare all work schedules as needed by auditor (currently on a fiscal year but may change to a calendar year). The Agency will work closely with the auditors to prepare all financial schedules required for the audit.
  - c. Select and provide the audit firm to perform audit functions. All costs associated with the audit would be directly billed to SBWMA and the estimate is included in the cost section to follow.
  - d. Prepare unaudited calendar year financial statements issued by the audit firm, including review of bond covenants. The Agency will assist the Authority in the preparation of the calendar year financial reports as required by the bond covenant.
3. In performing the Services under this Agreement, the Agency employees assigned to provide SBWMA services shall comply with the SBWMA's Bylaws and other rules, principles, and laws applicable specifically to the SBWMA, including without limitation, the SBWMA's Financial Policy and Procedures, as may be amended from time to time. All financial transactions (payments, deposits and transfers) performed by Agency Employees will have been pre-approved by the SBWMA Executive Director or SBWMA Finance Manager.
  4. Nothing herein shall prohibit or otherwise limit the SBWMA's right to enter into further agency agreements and/or work order arrangements with other public agencies for the provision of these or other services.

#### **A. COMPENSATION**

1. The SBWMA agrees to pay to Agency the full cost of providing financial services as shown in this Exhibit A, as the same may be amended from time to time by agreement between the Parties.
2. SBWMA and Agency acknowledge and agree that compensation paid by SBWMA to Agency under this Agreement is based upon Agency's cost of providing the services required hereunder, including salaries and benefits of employees.
3. The SBWMA agrees to reimburse the Agency for Financial Services. Direct external costs are borne by the SBWMA. Financial services costs are those expenses necessary to administer this Agreement and are included in the fixed rate. Agency will provide these services for a fixed annual fee for FY1516 (July 1, 2015 to June 30, 2016) of \$ [REDACTED]. This fixed rate will be adjusted on an annual basis.
4. Terms of Payment. The Agency shall submit invoices quarterly for the prior quarter's services. Invoices shall be submitted 30 days prior to the end of the first quarter and shall be delinquent if not paid within 30 days of receipt. Each invoice will detail the quarterly cost of services and prior quarter's direct external costs. Delinquent payments will be subject to a late payment carrying charge computed at a periodic rate of 1% per month, which is an annual percentage rate of 12%, which will be applied to any unpaid balance owed commencing seven (7) days after the payment due date.
5. Charges for other services and special projects requested of the Agency will be at a rate of \$ [REDACTED]/hour not including expenses. External vendor charges, such as independent auditor, postage, storage and legal fees, will be paid directly by the SBWMA or reimbursed by the SBWMA if paid by the Agency, and be without Agency overhead fees. The Agency will manage the outside audit process (and SBWMA's costs for this management service are included in the annual Administrative Charge).

**EXHIBIT B**

**AGENCY'S FEE SCHEDULE**

<b>Service Provided</b>	<b>FTE #</b>	<b>FY 2016 Cost</b>
Establish and maintain bank and investment accounts.		\$ -
Accounting, general ledger and financial system set up		\$ -
Process vendor invoices for payment; sign vendor disbursements		\$ -
Deposit receipts and manage receivables		\$ -
Input budget into accounting system		\$ -
Establish and implement internal financial controls		\$ -
Recommend and review financial policies and procedures		\$ -
General ledger account reconciliation and review (including financial reporting)		\$0
Fixed asset sub ledger system		\$ -
Manage the bond accounts, bond bank accounts, and make bond payments (semi-annually)		\$0
Recommend investment policies for Board approval		\$ -
Management of surplus cash and reserve funds		\$ -
Provide detailed information as requested from SBWMA staff on vendor Payment issues, general ledger accounts, etc.		
Work with auditors to report fiscal year audited financial results		\$ -
Manage the fiscal year-end audit process and prepare all work schedules as needed by auditor		\$ -
Select and provide the audit firm to perform audit functions		\$ -
Prepare unaudited calendar year financial statements issued by the audit firm including review of bond covenants		\$ -
<b>Total for fiscal year ended June 30, 2016</b>		\$0

## **EXHIBIT C**

### **INSURANCE FORMS**

CONSULTANT shall provide, in addition to the Certificates of Insurance, original Endorsement affecting the coverage specified in Section 11 - INSURANCE of the Agreement on the attached form. No substitute form will be accepted.

#### **ATTACHED**

1. Insurance Coverage Form - attach