



A Public Agency

SHOREWAY OPERATIONS AND CONTRACT MANAGEMENT

STAFF REPORT

To: SBWMA Board Members
From: John Mangini, Senior Finance Manager
Hilary Gans, Sr. Operations & Contracts Manager
Date: September 26, 2019 SBWMA Board of Directors Meeting
Subject: Resolution Approving the South Bay Recycling 2020 Compensation Application and the Final SBWMA Report

Recommendation

Staff recommends the Board approve of Resolution 2019-52 attached hereto authorizing the following action:

- Approval of 2020 South Bay Recycling (SBR) Compensation Application. **Exhibit A** contains the SBWMA Final Report - Review of 2020 South Bay Recycling Compensation Application for Board consideration.

Summary

The SBWMA has reviewed the SBR 2020 Compensation Application and SBR has modified the application as necessary to address comments and concerns. Staff has verified that the Compensation Application is complete and meets the requirements of the Facility Operations Agreement. The Total Compensation for SBR in 2020 is recommended to be \$19,779,506 which is \$397,347 (2.1%) higher than in 2019.

Analysis

Total Compensation for SBR in 2020 is recommended to be \$19,779,506 which is \$397,347 (2.1%) higher than in 2019. Notable variances include: 1) a decrease in non-CBA Labor (VRS) of 3.11% effecting the MRF service element, 2) a scheduled reduction in Interest Expense that is 64.1% lower than prior year and, 3) a 18.8% increase in the fuel index. **Table 1** provides a summary of the specific dollar amounts of the major elements impacting the increase from SBR's 2019 compensation.

The decrease in non-CBA Labor (VRS) is the result of a modification to SBR's 2020 Compensation Application related to applying profit to the VRS Program costs twice in the Compensation Application. This modification also applies the compensation in prior years to the benefit of the SBWMA - The SBWMA and SBR will make corrections to prior year compensation and Staff will report the results of the compensation modification to the Board at a subsequent Board Meeting.

Table 1.

2019 Costs & Fees vs. 2020 Costs & Fees					
SOUTH BAY RECYCLING	2019		Adjustment	2020	
	Total Cost	Fee/Ton	%	Total Cost	Fee/Ton
Operating Cost					
Transfer Station	\$ 4,844,789	\$ 13.54	3.0%	\$ 4,990,800	\$ 13.95
Recyclable Materials Processing, net of Residue	\$ 6,817,455	\$ 92.10	1.0%	\$ 6,887,583	\$ 93.05
Transportation (cost/ton-mile)	\$ 6,834,758	\$ 1.13	3.2%	\$ 7,054,511	\$ 1.16
Transport (cost/ton)	-	\$ 19.11	3.2%	-	\$ 19.72
Total Operating Cost	\$ 18,497,002		2.4%	\$ 18,932,894	
Contractor Pass-Through Costs					
Total Interest	\$ 60,158		-64.1%	\$ 21,612	
Buyback Payments	\$ 825,000		0.0%	\$ 825,000	
Total Contractor Pass-Through Cost	\$ 885,158		-4.4%	\$ 846,612	
Total Compensation	\$ 19,382,160		2.1%	\$ 19,779,506	

(Note: the total costs shown in the above table are for illustration purposes and that the actual payment to SBR is based on the approved payment per ton times the actual number of tons received at the Shoreway facility).

Background

Each year, the SBR Compensation Application is brought forward to the TAC and Board simultaneously with the Recology San Mateo County (RSMC) report (this application was reviewed at the joint 9/12/19 BOD/TAC meeting and there were no questions).

On July 5, 2019 SBR submitted a 2020 Compensation Application to the SBWMA, as required under the Shoreway Operations Agreement (Article 7.12 prescribes the process by which this application is reviewed and the company's compensation is approved). The SBWMA staff reviewed the SBR 2020 Compensation Application for completeness, accuracy and consistency and issued a SBWMA Draft Report Review of 2020 South Bay Recycling Compensation Application on August 15th. The SBWMA staff requested that Member Agencies provide input on the Draft Report by August 26th. The County of San Mateo submitted questions on the August 15 Draft Report. Their questions were addressed by the SBWMA and resulted, in part, to the VRS modification noted in this staff report.

Rate Setting and Approval Process

It is important to note that the approved compensation for SBR will be part of the 2020 Shoreway tip fees to be charged at the Shoreway facility. (The Shoreway tip fees are based on all the SBWMA operating costs that include SBR's compensation, off-site disposal and processing expense, fees paid to San Carlos, and SBWMA program budget, less commodity revenue). SBWMA operating cost, based on Shoreway tipping fees, are included as a pass-through expense in the calculation of each Member Agency's total Collection Revenue Requirement (shown as "Disposal and Processing Fees" the SBWMA Report Reviewing the 2020 Recology San Mateo County Compensation Application) for setting solid waste collection rates.

Fiscal Impact

The SBR 2020 Compensation Application indicates that the company's Total Compensation will increase by \$397,347 or 2.1% over prior year (compared to last year's adjustment of 2.8%). Details of SBR compensation can be found in Exhibit A: SBWMA Report - Review of 2020 South Bay Recycling Compensation Application.

Attachments:

Resolution 2019-52

Exhibit A – SBWMA Final Report Reviewing the 2020 South Bay Recycling Compensation Application



A Public Agency

RESOLUTION NO. 2019-52
RESOLUTION OF THE SOUTH BAYSIDE WASTE
MANAGEMENT AUTHORITY BOARD OF DIRECTORS
APPROVING THE SOUTH BAY RECYCLING 2020 COMPENSATION APPLICATION AND
THE FINAL SBWMA REPORT

WHEREAS, The South Bayside Waste Management Authority (SBWMA) prepared and issued to the SBWMA Board of Director's on September 26, 2019 the SBWMA Final Report on Review of 2020 South Bay Recycling (SBR) Compensation Application (Report); and

WHEREAS, SBWMA staff requested Board Member and Member Agency review of a Draft Report (concurrent with review of the Draft Report on 2020 RSMC Compensation Application) and requested comments, questions and concerns to be submitted by August 26, 2019; and

WHEREAS, SBWMA revised the Draft Report based on any comments received from Board Members and Member Agencies and additional information provided by SBR and issued the Final Report (**Exhibit A**) to the Board of Directors; and

WHEREAS, the Final Report recommends adjustments to SBR's compensation from its 2019 base costs to 2020.

NOW, THEREFORE BE IT RESOLVED that the South Bayside Waste Management Authority hereby approves the SBWMA Final Report on Review of 2020 South Bay Recycling Compensation Application.

PASSED AND ADOPTED by the Board of Directors of the South Bayside Waste Management Authority, County of San Mateo, State of California on the 26th day of September, 2020, by the following vote:

Agency	Yes	No	Abstain	Absent	Agency	Yes	No	Abstain	Absent
Atherton					Menlo Park				
Belmont					Redwood City				
Burlingame					San Carlos				
East Palo Alto					San Mateo				
Foster City					County of San Mateo				
Hillsborough					West Bay Sanitary Dist.				

I HEREBY CERTIFY that the foregoing Resolution No. 2019-52 was duly and regularly adopted at a regular meeting of the South Bayside Waste Management Authority on September 26, 2019.

 Jess E. (Jay) Benton, Chairperson of SBWMA

ATTEST:

 Cyndi Urman, Board Secretary

Exhibit A



SBWMA **FINAL**
REPORT REVIEWING THE
2020 SOUTH BAY RECYCLING
COMPENSATION APPLICATION

September 5, 2019

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SECTION 1. OVERVIEW

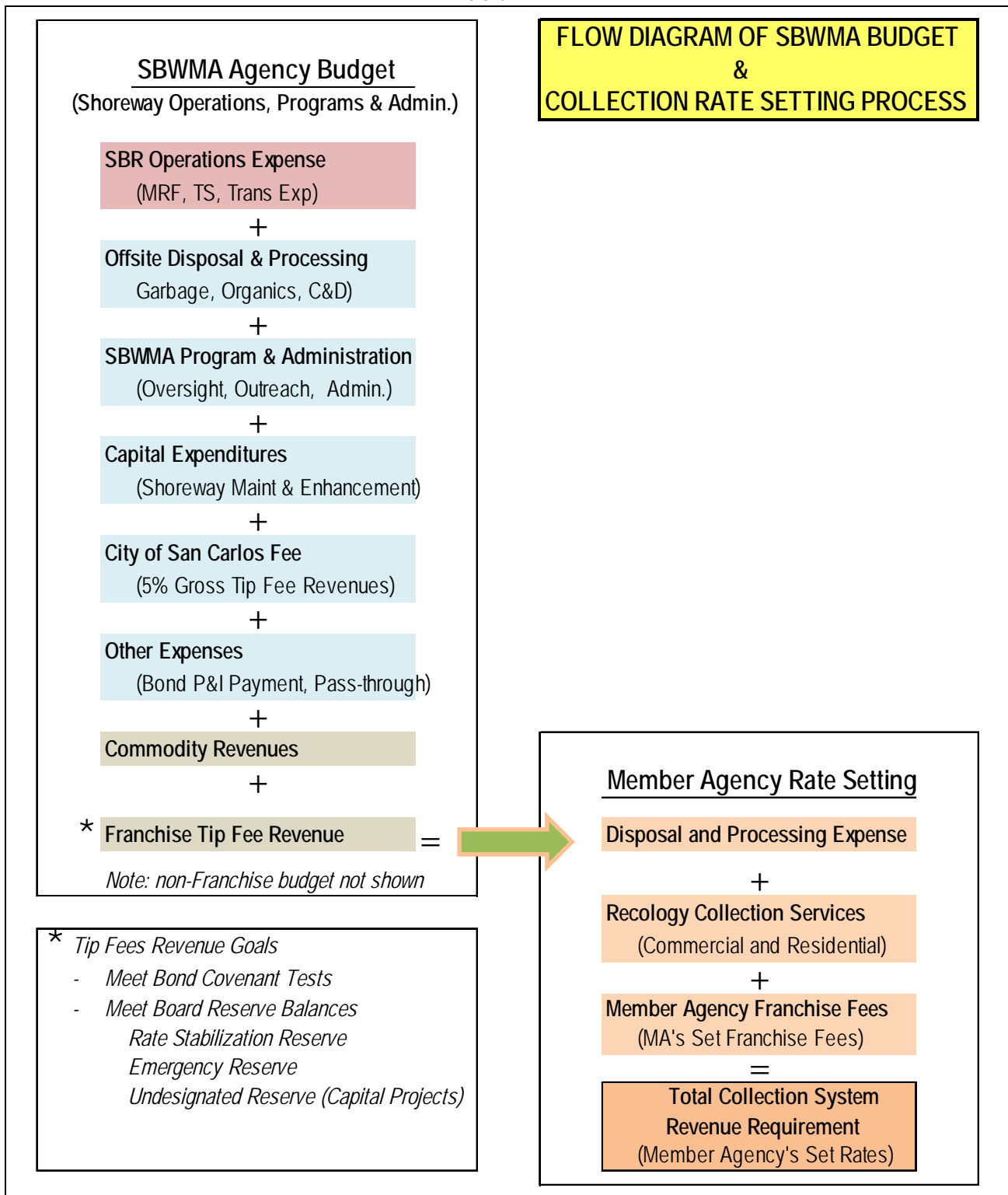
A. Shoreway Operations Agreement Terms

South Bay Recycling, LLC (SBR) was selected as the facility operator in 2009 and is paid on a fee per ton basis for three services: processing materials at the Transfer Station (TS), processing materials at the Materials Recovery Facility (MRF) and transporting materials to the disposal and processing facilities. The Shoreway Operations Agreement (“Agreement”) with SBR prescribes that the SBWMA is responsible for conducting the annual review and analysis of SBR’s compensation application which sets the fees each year. The application is reviewed for completeness, accuracy and that the prescribed compensation adjustment methodology is followed to arrive at the recommended 2020 fees per ton contained in this report. The SBR Compensation Application is also reviewed and approved by the SBWMA Board of Directors.

B. Calculation of Total Collection Revenue Requirement

The approved 2020 compensation for SBR will be bundled with all other SBWMA operating budget expenses (e.g., disposal expense, franchise fees paid to the City of San Carlos, debt service, SBWMA program budget, etc.) to set the 2020 Shoreway Tip Fees. The 2020 Shoreway Tip Fees are the basis for setting the Shoreway Disposal and Processing expense that becomes part of the total Revenue Requirement for each Member Agency upon which solid waste rates are set for 2020. SBR compensation is approximately 18% of the total Revenue Requirement. These costs are the result of the Shoreway tipping fees charged on the solid waste and organics tons delivered to Shoreway. The Flow Diagram of SBWMA Budget and Collection Rate Setting Process, **Table 1** below, describes this process and relationship.

Table 1



C. Description of SBR Fees and Cost Components

The process for adjusting SBR's compensation is detailed in the Operations Agreement in Article 7.03 and Attachment 13-A of the Agreement. All costs are adjusted based on various US Department of Labor indices (except depreciation which is not adjusted).

The fees for the three services are each comprised of distinct cost components:

- A. Labor Costs
- B. Fuel and Power Costs
- C. Depreciation Cost
- D. Other Operating and Maintenance Costs

The above cost components have the following subcomponents:

- A. Labor Costs
 - Wages for CBA labor (*index*)
 - Benefits for CBA labor (*index*)
 - Workers' compensation insurance (CBA labor) (*index*)
 - Payroll taxes (CBA labor) (*non-index*)
 - Outside contracted workers from third-party sources (VRS) (*index*)
- B. Fuel and Power Costs
 - Electricity (*based on actuals/non-index*)
 - Fuel (*index*)
- C. Depreciation Cost (*no adjustment*)
- D. Other Operating and Maintenance Costs (*index*)
 - Wages and benefits for non-CBA employees
 - Wages and benefits for CBA clerical
 - Repair and maintenance expenses
 - Equipment rental expenses
 - Other vehicle-related expenses (e.g. licensing, taxes)
 - Insurance, safety and claims
 - Other general & administrative expense

D. Compensation Adjustment Process

The compensation adjustment methodology is the basis for SBR's Rate Application submittal and the SBWMA staff's subsequent review. The compensation adjustment process uses the approved 2019 SBR fees as the basis for the adjustment to the new 2020 fees. As detailed in the Agreement, the adjustment process for the 2020 fees is illustrated in **Table 2** below.

Table 2

SBR ANNUAL COST ADJUSTMENT PROCESS				
BASE COST - 2019		ADJUSTMENT		2020 CONTRACTORS COMPENSATION
CBA: TS/MRF, Mechanics, Drivers, & Clerical (wages and benefits)	+	Index	=	Base plus Adjustment
Other Cost	+	Index	=	Base plus Adjustment
Power	+	Blend of actual PG&E rate & ISH Solar rate	=	Base plus Adjustment
Depreciation	+	No Change	=	Last Year's Depreciation
Profit	+	Based on operating ratio in Proposal	=	Base plus Adjustment
Pass-Through Cost				
Interest	+	Interest is fixed on sliding scale	=	Annual Interest Expense per Interest Schedule
Other	+	Actual cost reimbursed to Buyback customers	=	Actual Cost
Total 2019 Compensation	+	Total Adjustments	=	Total 2020 Compensation

E. Commodity Revenue Sharing

A portion of SBR's compensation comes from the sale of commodities through the "Commodity Revenue Share" program where the commodity revenue from the recyclable materials processed at the Shoreway MRF are split between SBWMA and SBR above the Revenue Guarantee of \$5,555,409. The Revenue Share available to SBR is an incentive to maximize recovery and obtain the best commodity sale prices. The current Commodity Revenue Share above the Guarantee is 25% to SBR and 75% to the SBWMA.

Note: the actual value of the revenue share is not shown in this report, since it is based on the actual tonnage and commodity revenue for the full calendar year of 2020.

SECTION 2. SBR 2020 COMPENSATION APPLICATION

A. Analysis of SBR 2020 Compensation Application

SBWMA staff conducted the review of the Compensation Application submitted by SBR and worked closely with the company to ensure that questions and concerns were answered. Their application was modified as necessary to address any changes. Staff has verified that the SBR Compensation Application is complete and meets the requirements of the Operations Agreement. As shown in Table 3 below, Total Compensation for SBR in 2020 is estimated to be \$19,779,506 which is \$397,347 (2.1%) higher than in 2019.

One modification to SBR's 2020 Compensation Application also applies the compensation in prior years to the benefit of the SBWMA. The SBWMA and SBR have agreed meet in an effort to remedy prior year compensation. Staff will report the results of the meeting and the compensation modification to the Board at a subsequent Board Meeting. The specific modification is related to the application of profit to the VRS Program costs twice in the Compensation Application.

Table 3

2019 Costs & Fees vs. 2020 Costs & Fees					
SOUTH BAY RECYCLING	2019		Adjustment	2020	
Operating Cost	Total Cost	Fee/Ton	%	Total Cost	Fee/Ton
Transfer Station	\$ 4,844,789	\$ 13.54	3.0%	\$ 4,990,800	\$ 13.95
Recyclable Materials Processing, net of Residue	\$ 6,817,455	\$ 92.10	1.0%	\$ 6,887,583	\$ 93.05
Transportation (cost/ton-mile)	\$ 6,834,758	\$ 1.13	3.2%	\$ 7,054,511	\$ 1.16
Transport (cost/ton)	-	\$ 19.11	3.2%	-	\$ 19.72
Total Operating Cost	\$ 18,497,002		2.4%	\$ 18,932,894	
Contractor Pass-Through Costs					
Total Interest	\$ 60,158		-64.1%	\$ 21,612	
Buyback Payments	\$ 825,000		0.0%	\$ 825,000	
Total Contractor Pass-Through Cost	\$ 885,158		-4.4%	\$ 846,612	
Total Compensation	\$ 19,382,160		2.1%	\$ 19,779,506	

B. Description of 2020 Compensation Adjustments

Costs in the SBR Compensation Application are adjusted primarily based on changes in indexes. The specific results of the index-based cost adjustments for 2020 are presented in Table 4 on the following page.

Cost categories are adjusted based on the following criteria:

- *Labor & Benefits Cost* – adjusted by CPI index (U.S. Department of Labor, Bureau of Labor Statistics, Private Industry Employment Cost Index for Service-Producing Industries (seasonally adjusted, total compensation, series # cis201s000000000i).
- *VRS Labor* – adjusted based on SBR's VRS contract changes with the County of San Mateo. VRS Supervisor costs are adjusted by a predetermined annual schedule agreed upon in a prior year in conjunction with the Living Wage Ordinance as part of the complete VRS compensation package, which provides for a larger percentage increase than CPI. SBR's actual supervisor percentage cost increase is greater than the predetermined schedule by approximately 9 percentage points
- *Power Cost* - adjusted based on the actual change in the blended power rates (PG&E and Solar)

- *Fuel Cost* - adjusted by a fuel index. (U.S. Department of Labor, Bureau of Labor Statistics, Producer Price Index - Commodity Index for #2 diesel fuel (not seasonally adjusted, fuels and related products and power, series# wpu057303).
- *Other Operating Costs* – adjusted by CPI index (U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index – All Urban Consumers, U.S. city average (not seasonally adjusted, all items, base period: 1982-84=100, series# cuur0000sa).
- *Depreciation Cost* - not adjusted
- *Interest Expense* - based on fixed schedule

Pass-Through Costs

Pass-through costs are not subject to profit but are reimbursed to SBR at actual cost. The pass-through costs in the Facility Operations Agreement (Article 7.09) are as follows:

- Payments to Buyback customers for purchase of recyclables based primarily on state CRV rates. (SBR's buyback payments to public customers are reimbursed monthly).
- Interest expense on allowed capital per a fixed schedule for the ten-year life of the contract on a sliding scale.

Member Agency Questions on Draft Report issued on August 15

The County of San Mateo submitted questions on the August 15 Draft Report. The questions were addressed by the SBWMA.

Table 4

Results of Cost Adjustments			
Cost Component	Adjustment	Basis	Description
Labor - (all CBAs)			
Wages & Benefits	3.00%	Index	CBA wages compensation adjustment based on index change.
Worker's Comp Insurance	2.55%	Index	Workers compensation adjustment based on index change.
Payroll Tax	3.00%	Wages & tax rate change	The payroll tax rate changes with any changes in federal or state payroll tax rates.
VRS Labor (non-CBA)	-3.11%	Non-Index	Non-CBA (VRS) compensation adjustment based on VRS contract changes with County.
Power	2.43%	PG&E & Solar Rates	Power is adjusted by the blend of actual PG&E electricity rates and the Solar Power rate.
Fuel	18.8%	Index	Fuel expense is adjusted by the actual change in the fuel index.
Depreciation	0.0%	n/a	There is no adjustment to depreciation.
Other O&M	1.81%	Index	Other O&M expense includes non-CBA personnel, maintenance parts, insurance, general office expense, safety, etc. Other O&M expense is adjusted by 80% of an index.

SECTION 3. SBR FEE PER TON ADJUSTMENTS FOR 2020

After review of the SBR Compensation Adjustment Application, staff recommends the following Fees (shown in **Table 3**, prior page) be paid to SBR on a per-ton basis for 2020:

- o Transfer Station Processing Fee. The 2020 Transfer Station fee is \$13.95 per ton.
- o MRF Processing Fee. The 2020 MRF Processing fee is \$98.98 per ton (note the Contractor pays for MRF residue transportation and disposal which is deducted from MRF Processing Fee resulting in an *Estimated Net MRF Processing Fee of \$93.05*).
- o Transportation Fee. There are multiple transportation fees for each material type and destinations (i.e., solid waste, inerts, construction and demolition, and organics). The average 2020 Transportation Fee is \$1.16 per ton mile which is 3.2% increase over prior year (the transportation rate detail for each material type and destination are presented in the **Appendix A** – SBR Compensation Adjustment Application Worksheets).

SOUTH BAY RECYCLING, LLC

Compensation Adjustment Application for Rate Year 2020

A. Summary of Fees and Estimated Cost

SUMMARY	Year 9		Year 10
	2019	2020	% Increase
Annual % Change			
TS	2.86%	3.01%	
MRF	3.30%	1.03%	
Transport	3.16%	3.22%	
Cost per Ton Fees			
Transfer Station	\$ 13.54	\$ 13.95	3.0%
MRF (net residue)	\$ 92.10	\$ 93.05	1.0%
Transportation (cost / ton-mile)	\$ 1.13	\$ 1.16	3.2%
Total Cost Estimate by LOB			
Transfer Station	\$ 4,844,789	\$ 4,990,800	3.0%
MRF (net residue)	\$ 6,817,455	\$ 6,887,583	1.0%
Transportation	\$ 6,834,758	\$ 7,054,511	3.2%
Total Operating Cost	\$ 18,497,002	\$ 18,932,894	2.4%
Pass-Through Costs			
Total Interest	\$ 60,158	\$ 21,612	-64.1%
Buyback Payment (estimate)	\$ 825,000	\$ 825,000	
Total Pass-Through Cost	\$ 885,158	\$ 846,612	-4.4%
Total Estimated Compensation	\$ 19,382,160	\$ 19,779,506	2.1%

Detail Transportation Fees	Year 9		Year 10
	2019	2020	% Increase
Cost/Ton-Mile			
MSW to OX Mtn.	\$ 1.274	\$ 1.314	3.2%
Inert to OX Mtn.	\$ 1.307	\$ 1.348	3.2%
C&D to Zanker Road	\$ 0.947	\$ 0.979	3.4%
Plant Materials to Newby	\$ 0.764	\$ 0.790	3.4%
Plant Materials to Grover	\$ 0.466	\$ 0.484	3.9%
Organics to Newby	\$ 0.937	\$ 0.969	3.4%
Organics to Grover	\$ 0.521	\$ 0.542	3.9%
Plant Materials to Zanker	\$ 0.764	\$ 0.790	3.4%

SOUTH BAY RECYCLING, LLC

Compensation Adjustment Application for Rate Year 2020

B. Cost Detail Transfer Station and MRF

TRANSFER STATION	tons	Year 9		Year 10	
Base Tonnage	357,725	%	2019	%	2020
		Adjustment	Cost / Ton	Adjustment	Cost / Ton
Direct Labor - CBA					
Wages		2.6%	\$ 5.25	3.0%	\$ 5.41
Benefits		2.6%	\$ 2.65	3.0%	\$ 2.73
W/C		2.3%	\$ 0.71	2.6%	\$ 0.73
PR Tax		2.6%	\$ 0.46	3.0%	\$ 0.47
Total CBA Labor Cost		2.6%	\$ 9.06	3.0%	\$ 9.33
Power		2.8%	\$ 0.83	2.4%	\$ 0.85
Fuel		31.5%	\$ 0.26	18.8%	\$ 0.30
Depreciation		0.0%	\$ 0.29	0.0%	\$ 0.29
Other O&M		1.7%	\$ 1.82	1.8%	\$ 1.85
Clerical CBA Wages & Benefits		2.6%	\$ 0.40	3.0%	\$ 0.41
Total Operating		2.9%	\$ 12.67	3.0%	\$ 13.05
Profit		2.9%	\$ 0.88	3.0%	\$ 0.90
Profit %			6.9%		6.9%
Total Transfer Station Fee		2.9%	\$ 13.54	3.0%	\$ 13.95

MATERIALS RECOVERY FACILITY (MRF)	tons	Year 9		Year 10	
Base Tonnage	74,022	%	2019	%	2020
		Adjustment	Cost / Ton	Adjustment	Cost / Ton
Direct Labor - CBA					
Wages		2.6%	\$ 19.76	3.0%	\$ 20.35
Benefits		2.6%	\$ 10.47	3.0%	\$ 10.78
W/C		2.3%	\$ 2.80	2.6%	\$ 2.87
PR Tax		2.6%	\$ 1.90	3.0%	\$ 1.96
Total CBA Labor Cost		2.6%	\$ 34.91	3.0%	\$ 35.95
Non-CBA Wages		5.5%	\$ 24.03	-3.1%	\$ 23.28
Power		2.8%	\$ 4.86	2.4%	\$ 4.98
Fuel		31.5%	\$ 0.55	18.8%	\$ 0.66
Depreciation		0.0%	\$ 1.91	0.0%	\$ 1.91
Other O&M		1.7%	\$ 17.32	1.8%	\$ 17.64
Clerical CBA Wages & Benefits		2.6%	\$ 1.94	3.0%	\$ 2.00
Total Operating		3.3%	\$ 85.53	1.0%	\$ 86.41
Profit		3.3%	\$ 6.57	1.0%	\$ 6.64
Profit %			7.7%		7.7%
Total MRF Fee		3.3%	\$ 92.10	1.0%	\$ 93.05

SOUTH BAY RECYCLING, LLC

Compensation Adjustment Application for Rate Year 2020

C. Compensation Adjustment - Transfer Station

	Year 9		Year 10	
	2019		2020	
	Cost / Ton		Cost / Ton	
SUMMARY OF ANNUAL FEE ADJUSTMENTS				
Direct Labor - CBA				Increase
Wages	\$ 5.25	\$ 5.41		3.00%
Benefits	\$ 2.65	\$ 2.73		3.00%
W/C	\$ 0.71	\$ 0.73		2.55%
PR Tax	\$ 0.46	\$ 0.47		3.00%
Total CBA Labor Cost	\$ 9.06	\$ 9.33		2.96%
Power	\$ 0.83	\$ 0.85		2.43%
Fuel	\$ 0.26	\$ 0.30		18.81%
Depreciation	\$ 0.29	\$ 0.29		0.00%
Other O&M	\$ 1.82	\$ 1.85		1.81%
Clerical CBA Wages & Benefits	\$ 0.40	\$ 0.41		3.00%
Total Operating	\$ 12.67	\$ 13.05		3.01%
Profit	\$ 0.88	\$ 0.90		3.01%
Profit %	6.9%	6.9%		0.00%
Total TS Fee	\$ 13.54	\$ 13.95		3.01%
% Increase	2.86%	3.01%		

DETAIL OF ANNUAL FEE ADJUSTMENTS				
Labor Cost Component Adjustment Factors				
Wages for Direct Labor				
Updated direct labor cost per ton	\$ 5.25	\$ 5.41		
Adjustment Factor for Wages Direct Labor	1.026	1.030		
% Increase	2.61%	3.00%		
Benefits for Direct Labor				
Updated annual benefit cost per ton	\$ 2.65	\$ 2.73		
Adjustment Factor for Benefits	1.026	1.030		
% Increase	2.61%	3.00%		
Workers Compensation Insurance for Direct Labor				
Updated annual benefit cost per ton	\$ 0.71	\$ 0.73		
Adjustment Factor	1.023	1.026		
% Increase		2.55%		

SOUTH BAY RECYCLING, LLC

Compensation Adjustment Application for Rate Year 2020

C. Compensation Adjustment - Transfer Station

	Year 9		Year 10	
	2019		2020	
	Cost / Ton		Cost / Ton	
<u>Payroll Taxes for Direct Labor</u>				
Updated Payroll Tax cost per Ton	\$ 0.46		\$ 0.47	
Adjustment Factor for payroll taxes shall equal the change	8.70%		8.70%	
Federal Social Security & Medicare Tax Cost	7.65%		7.65%	
Adjustment Factor	1.000		1.000	
% Increase			0.00%	
<u>Fuel and Power Cost Component Adjustment Factors</u>				
Power Adjustment				
Updated Power cost per ton	\$ 0.83		\$ 0.85	
Adjustment Factor	1.028		1.024	
% Increase			2.43%	
<u>Fuel Adjustment</u>				
Updated Fuel cost per ton	\$ 0.26		\$ 0.30	
Adjustment Factor	1.315		1.188	
% Increase			18.81%	
<u>Depreciation</u>				
Updated Depreciation cost per ton	\$ 0.29		\$ 0.29	
Adjustment Factor (No adjustment after Year 1)	1.000		1.000	
% Increase			0.00%	
<u>Other Operating & Maintenance</u>				
Updated Other cost per ton	\$ 1.82		\$ 1.85	
Adjustment Factor @ 80% of Index	1.017		1.018	
% Increase			1.81%	

SOUTH BAY RECYCLING, LLC

Compensation Adjustment Application for Rate Year 2020

D. Compensation Adjustment - Materials Recovery Facility (MRF)

	Year 9		Year 10	
	2019	2020	2019	2020
	Cost / Ton	Cost / Ton		
SUMMARY OF ANNUAL FEE ADJUSTMENTS				
Direct Labor - CBA				Increase
Wages	\$ 19.76	\$ 20.35		3.00%
Benefits	\$ 10.47	\$ 10.78		3.00%
Workers Comp	\$ 2.80	\$ 2.87		2.55%
PR Tax	\$ 1.90	\$ 1.96		3.00%
Total CBA Labor Cost	\$ 34.91	\$ 35.95		2.96%
Third Party Wages & Benefits (VRS)	\$ 24.03	\$ 23.28		-3.11%
Power	\$ 4.86	\$ 4.98		2.43%
Fuel	\$ 0.55	\$ 0.66		18.81%
Depreciation	\$ 1.91	\$ 1.91		0.00%
Other O&M	\$ 17.32	\$ 17.64		1.81%
Clerical CBA Wages & Benefits	\$ 1.94	\$ 2.00		3.00%
Total Operating	\$ 85.53	\$ 86.41		1.03%
Profit	\$ 6.57	\$ 6.64		1.03%
Profit %	7.7%	7.7%		0.00%
Total MRF Fee (excluding residue)	\$ 92.10	\$ 93.05		1.03%
<i>% Increase</i>	3.30%	1.03%		
MRF Residue Paid by SBR				
MRF Residue Tons	6,800	6,800		
Disposal Tip Fee @ Ox Mtn.	\$ 42.73	\$ 52.57		23.03%
Disposal Fees	\$ 3.93	\$ 4.83		23.03%
Transfer & Haul	\$ 1.07	\$ 1.11		3.15%
Total MRF Residue Fee	\$ 5.00	\$ 5.94		18.76%
Total Cost with MRF Residue	\$ 97.10	\$ 98.98		1.94%

DETAIL OF ANNUAL FEE ADJUSTMENTS				
Labor Cost Component Adjustment Factors				
Updated annual labor for direct labor	\$ 19.76	\$ 20.35		
Adjustment Factor	1.026	1.030		
% Increase	2.61%	3.00%		
Benefits for Direct Labor				
Updated annual benefit cost per ton	\$ 10.47	\$ 10.78		
Adjustment Factor	1.026	1.030		
% Increase	2.61%	3.00%		
Workers Compensation Insurance for Direct Labor				
Updated annual benefit Costs	\$ 2.80	\$ 2.87		
Adjustment Factor	1.023	1.026		
% Increase		2.55%		
Payroll Taxes for Direct Labor				
Updated Payroll Tax cost per ton	\$ 1.90	\$ 1.96		
Total Payroll Tax Rate %	9.6%	9.6%		
Federal Social Security & Medicare tax rates	9.61%	9.61%		
Adjustment Factor	1.000	1.000		
% Increase		0.00%		

SOUTH BAY RECYCLING, LLC

Compensation Adjustment Application for Rate Year 2020

D. Compensation Adjustment - Materials Recovery Facility (MRF)

	Year 9		Year 10	
	2019	2020	2019	2020
	Cost / Ton	Cost / Ton	Cost / Ton	Cost / Ton
<u>Labor & Benefits Component Adjustment Factor - non-CBA labor (VRS)</u>				
Updated annual costs	\$ 24.03	\$ 23.28		
% Increase	6%	-3.11%		
<u>Fuel and Power Cost Component Adjustment Factors</u>				
Power Adjustment				
Updated Power cost per ton	\$ 4.86	\$ 4.98		
Adjustment Factor	1.028	1.024		
% Increase		2.43%		
<u>Fuel Adjustment</u>				
Updated Fuel Costs	\$ 0.55	\$ 0.66		
Adjustment Factor	1.315	1.188		
% Increase		18.81%		
<u>Depreciation</u>				
Updated Depr cost per ton	\$ 1.91	\$ 1.91		
Adjustment Factor (No adjustment after Year 1)	1.000	1.000		
% Increase		0.00%		
<u>Other Operating & Maintenance</u>				
Updated Other cost per ton	\$ 17.32	\$ 17.64		
Adjustment Factor @ 80% of Index	1.017	1.018		
% Change in underlying index	2.07%	2.26%		
% Increase		1.81%		
<u>MRF Load Contamination</u>				
Plant Materials & Organics Contamination	\$ 34.64	\$ 35.00		
% Increase	\$ 9.70	\$ 9.80		1.03%

SOUTH BAY RECYCLING, LLC

Compensation Adjustment Application for Rate Year 2020

E. Compensation Adjustment - Transportation

	Year 9		Year 10	
	2019	2020		
	Per Ton-Mile	Adjustment Factor	Per Ton-Mile	
SUMMARY OF ANNUAL FEE ADJUSTMENTS				
Solid Waste Transport Fee - Ox Mtn.	\$ 1.27	3.2%	\$ 1.31	
Inert Transport Fee - Ox Mtn.	\$ 1.31	3.2%	\$ 1.35	
C&D Transport Fee - Zanker	\$ 0.95	3.4%	\$ 0.98	
Plant Matls Trans Fee - Newby	\$ 0.76	3.4%	\$ 0.79	
Plant Matls Trans Fee - Grover	\$ 0.47	3.9%	\$ 0.48	
Organic Matl Trans Fee - Newby	\$ 0.94	3.4%	\$ 0.97	
Organic Matl Trans Fee - Grover	\$ 0.52	3.9%	\$ 0.54	
Biomass Trans Fee - Biofuel	\$ 0.62		\$ 0.64	
Plant Matls Trans Fee - Zanker	\$ 0.76		\$ 0.79	
Blended Total Fee	\$ 1.13	3.2%	\$ 1.16	
Total Cost Increase %		3.2%		3.2%

DETAIL OF ANNUAL FEE ADJUSTMENTS			
Direct Labor Component for All Transport Fees			
Wages for CBA Labor	\$ 1,749,924	1.030	\$ 1,802,375
Benefits for CBA Labor	\$ 747,114	1.030	\$ 769,507
WC Insurance	\$ 185,451	1.026	\$ 190,184
Payroll Taxes	\$ 148,048	1.000	\$ 152,486
Total Cost Estimate (SW to Ox)	\$ 2,830,537	1.0297	\$ 2,914,552
Cost/Ton	\$ 10.85		\$ 11.18
Adjusted Labor for MSW Transport Fee (cost/ton-mile)	\$ 0.835	1.030	\$ 0.860
Solid Waste Transport Fee (OX)			
Labor component	\$ 0.8348	1.030	\$ 0.8596
Fuel	\$ 0.0429	1.188	\$ 0.0510
Depreciation	\$ 0.0851	1.000	\$ 0.0851
Other O&M Component	\$ 0.1831	1.018	\$ 0.1864
Clerical CBA wages & benefits	\$ 0.0274	1.030	\$ 0.0283
Total Operating Cost	\$ 1.1734		\$ 1.2104
Profit per Operating Ratio	\$ 0.1006		\$ 0.1038
Total SW Transportation Fee	\$ 1.27402	3.2%	\$ 1.31418
Inert Transport Fee - OX Mtn.			
Labor component	\$ 0.796	1.030	\$ 0.820
Fuel	\$ 0.047	1.188	\$ 0.056
Depreciation	\$ 0.085	1.000	\$ 0.085
Other O&M Component	\$ 0.230	1.018	\$ 0.234
Clerical CBA wages & benefits	\$ 0.035	1.030	\$ 0.036
Total Operating Cost	\$ 1.193		\$ 1.231
Profit per Operating Ratio	\$ 0.114		\$ 0.117
Total Inert Transportation Fee	\$ 1.307	3.2%	\$ 1.348

SOUTH BAY RECYCLING, LLC

Compensation Adjustment Application for Rate Year 2020

E. Compensation Adjustment - Transportation

	Year 9		Year 10	
	2019	2020		
	Per Ton-Mile	Adjustment Factor	Per Ton-Mile	
C&D Transport Fee - Zanker Road				
Labor component	\$ 0.6263	1.030	\$ 0.6449	
Fuel	\$ 0.0435	1.188	\$ 0.0517	
Depreciation	\$ 0.0530	1.000	\$ 0.0530	
Other O&M Component	\$ 0.1254	1.018	\$ 0.1277	
Clerical CBA wages & benefits	\$ 0.0188	1.030	\$ 0.0194	
Total Operating Cost	\$ 0.8670		\$ 0.8966	
Profit per Operating Ratio	\$ 0.0795		\$ 0.0822	
Total C&D Transportation Fee	\$ 0.94654	3.4%	\$ 0.97886	
Plant Materials Transport Fee - Newby Is				
Labor component	\$ 0.4925	1.030	\$ 0.5071	
Fuel	\$ 0.0363	1.188	\$ 0.0432	
Depreciation	\$ 0.0442	1.000	\$ 0.0442	
Other O&M Component	\$ 0.1118	1.018	\$ 0.1138	
Clerical CBA wages & benefits	\$ 0.0168	1.030	\$ 0.0173	
Total Operating Cost	\$ 0.7016		\$ 0.7256	
Profit per Operating Ratio	\$ 0.0627		\$ 0.0648	
Total Plant Material Transportation Fee	\$ 0.76431	3.4%	\$ 0.79043	
Plant Materials Transport Fee - Grover				
Labor component	\$ 0.2924	1.030	\$ 0.3011	
Fuel	\$ 0.0363	1.188	\$ 0.0431	
Depreciation	\$ 0.0286	1.000	\$ 0.0286	
Other O&M Component	\$ 0.0613	1.018	\$ 0.0624	
Clerical CBA wages & benefits	\$ 0.0092	1.030	\$ 0.0095	
Total Operating Cost	\$ 0.4278		\$ 0.4447	
Profit per Operating Ratio	\$ 0.0382		\$ 0.0397	
Total Plant Material Transportation Fee	\$ 0.46606	3.9%	\$ 0.48446	
Organic Material Transport Fee - Newby Is				
Labor component	\$ 0.6156	1.030	\$ 0.6339	
Fuel	\$ 0.0399	1.188	\$ 0.0474	
Depreciation	\$ 0.0442	1.000	\$ 0.0442	
Other O&M Component	\$ 0.1211	1.018	\$ 0.1233	
Clerical CBA wages & benefits	\$ 0.0182	1.030	\$ 0.0187	
Total Operating Cost	\$ 0.8390		\$ 0.8675	
Profit per Operating Ratio	\$ 0.0984		\$ 0.1018	
Total Organic Material Transportation Fee	\$ 0.93739	3.4%	\$ 0.96923	

SOUTH BAY RECYCLING, LLC

Compensation Adjustment Application for Rate Year 2020

E. Compensation Adjustment - Transportation

	Year 9		Year 10	
	2019		2020	
	Per Ton-Mile	Adjustment Factor	Per Ton-Mile	
Organic Material Transport Fee - Grover				
Labor component	\$ 0.3187	1.030	\$ 0.3282	
Fuel	\$ 0.0396	1.188	\$ 0.0470	
Depreciation	\$ 0.0313	1.000	\$ 0.0313	
Other O&M Component	\$ 0.0668	1.018	\$ 0.0680	
Clerical CBA wages & benefits	\$ 0.0100	1.030	\$ 0.0103	
Total Operating Cost	\$ 0.4663		\$ 0.4847	
Profit per Operating Ratio	\$ 0.0547		\$ 0.0569	
Total Organic Material Transportation Fee	\$ 0.52101	3.9%	\$ 0.54158	

SOUTH BAY RECYCLING, LLC

Compensation Adjustment Application for Rate Year 2020

F. Indexes

	Year 9 2019	Year 10 2020
<u>Workers Compensation</u>		
Use- Factor	1.023	1.026
<u>Direct Labor</u>		
Use- Factor	1.026	1.030
<u>Fuel</u>		
Use- Factor	1.315	1.188
<u>Other O&M</u>		
Use- Factor	1.021	1.023
<u>Depreciation</u>		
Use- Factor	1.000	1.000

SOUTH BAY RECYCLING, LLC

Compensation Adjustment Application for Rate Year 2020

G. Department of Labor Index Detail

Index: U.S. Department of Labor, Bureau of Labor Statistics, Private Industry Employment Cost Index for Total All workers (not seasonally adjusted, total benefits, series no. (CIU2030000000000i)).

Workers Compensation

	2017	2018	2019
Average Index	127.30	130.28	133.60
% Change	1.78%	2.34%	2.55%
Q1	128.40	131.60	134.70
Q2	129.30	132.90	
Q3	130.00	133.20	
Q4	130.20	133.60	

Index: U.S. Department of Labor, Bureau of Labor Statistics, Private Industry Employment Cost Index for Service-Producing Industries (seasonally adjusted, total compensation, series no. (cis201s000000000i)).

Direct Labor

	2017	2018	2019
Index 1ST QTR	127.63	130.95	134.88
% Change	2.28%	2.61%	3.00%
Q1	128.80	132.50	136.20
Q2	129.60	133.40	
Q3	130.50	134.50	
Q4	131.20	135.40	

Index: U.S. Department of Labor, Bureau of Labor Statistics, Producer Price Index - Commodity Index for #2 diesel fuel (not seasonally adjusted, fuels and related products and power, series no. (wpu057303)).

Fuel

	2017	2018	2019
Avg Index Apr	158.00	207.70	246.76
% Change	-0.26%	31.46%	18.81%
Jan	160.70	231.00	200.80
Feb	163.30	226.40	217.70
Mar	161.60	225.40	245.40
Apr	164.60	230.70	241.80
May	173.60	251.10	
Jun	171.50	261.40	
Jul	179.60	256.90	
Aug	188.90	254.30	
Sep	204.20	262.50	
Oct	213.50	271.70	
Nov	223.70	264.80	
Dec	223.90	232.70	

SOUTH BAY RECYCLING, LLC
Compensation Adjustment Application for Rate Year 2020
G. Department of Labor Index Detail

Index: U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index – All Urban Consumers, U.S. city average (not seasonally adjusted, all items, base period: 1982-84=100, series no. (cuur0000sa0).

Other O&M

Avg Index April
 % Change
 Jan
 Feb
 Mar
 Apr
 May
 Jun
 Jul
 Aug
 Sep
 Oct
 Nov
 Dec

	2017	2018	2019
Avg Index April	241.95	246.97	252.55
% Change	1.72%	2.07%	2.26%
Jan	242.84	247.87	251.71
Feb	243.60	248.99	252.78
Mar	243.80	249.55	254.20
Apr	244.52	250.55	255.54
May	244.73	251.59	
Jun	244.96	251.99	
Jul	244.79	252.01	
Aug	245.52	252.15	
Sep	246.82	252.44	
Oct	246.66	252.89	
Nov	246.67	252.04	
Dec	246.52	251.23	

SOUTH BAY RECYCLING, LLC
Compensation Adjustment Application for Rate Year 2020
H. Electric Power and Solar Cost

PG&E	Actual Use	
	Apr-18	Apr-19
Year		
Total Bill	\$ 23,149	\$ 24,246
KWH Allocation *	109,004	469,044
KWH	109,004	118,236
Rate / KWH	\$ 0.212	\$ 0.052
% increase from Prior Yr.	2.54%	1.93%
Adjustment Factor	1.0254	1.019

ISH (Solar)	Apr-18	Apr-19
	Year	
Total Bill	\$ 21,742	\$ 21,794
KWH	95,834	93,265
Rate / KWH	\$ 0.227	\$ 0.234
% increase vs. Prior Yr.	3.0%	3.0%
Adjustment Factor	1.030	1.03

Blended	Apr-18	Apr-19
	Year	
Total Bill	\$ 44,891	\$ 46,041
KWH Allocation	204,838	562,309.30
Rate / KWH	\$ 0.219	\$ 0.082
% increase vs. Prior Yr.	2.8%	2.4%
Adjustment Factor	1.0276	1.024

* Additional line items charged on the power bill are being allocated across total KWH to arrive at Rate/KWH

SOUTH BAY RECYCLING, LLC

Compensation Adjustment Application for Rate Year 2020

I. Debt Service Schedule

Year one interest rate adjustment per Operations Agreement Article 8.03

Assumed interest rate per SBR 2009 proposal:	5.00%
Ten-year U.S. Treasury note interest rate in March, 2008:	3.50%
Ten-year U.S. Treasury note interest rate in effect on July 1, 2010:	3.50%
Adjustment factor:	100.00%
Fixed interest rate for entire period of Ops Agreement:	5.00%

Year	Financed Purchase - BASE 2009 COST			Adjusted for Capital indexed price change			
	Principal Payment	Interest	Total	Adj. Factor	Depreciation	Interest	Total
Interest Rate %		5.00%				5.00%	
1	\$ 505,441	\$ 308,120	\$ 813,561	1.0000	\$ 505,441	\$ 308,120	\$ 813,561
2	\$ 531,300	\$ 282,260	\$ 813,560	1.0000	\$ 531,300	\$ 282,260	\$ 813,560
3	\$ 558,483	\$ 255,077	\$ 813,560	1.0000	\$ 558,483	\$ 255,077	\$ 813,560
4	\$ 587,055	\$ 226,505	\$ 813,560	1.0000	\$ 587,055	\$ 226,505	\$ 813,560
5	\$ 617,091	\$ 196,470	\$ 813,561	1.0000	\$ 617,091	\$ 196,470	\$ 813,561
6	\$ 648,662	\$ 164,898	\$ 813,560	1.0000	\$ 648,662	\$ 164,898	\$ 813,560
7	\$ 681,849	\$ 131,712	\$ 813,561	1.0000	\$ 681,849	\$ 131,712	\$ 813,561
8	\$ 716,734	\$ 96,827	\$ 813,561	1.0000	\$ 716,734	\$ 96,827	\$ 813,561
9	\$ 753,403	\$ 60,158	\$ 813,561	1.0000	\$ 753,403	\$ 60,158	\$ 813,561
10	\$ 791,948	\$ 21,612	\$ 813,560	1.0000	\$ 791,948	\$ 21,612	\$ 813,560
TOTAL COST	\$ 6,391,966	\$ 1,743,639	\$ 8,135,605		\$ 6,391,966	\$ 1,743,639	\$ 8,135,605

# Years	10	10
Average Interest / Year	\$174,364	\$174,364

SOUTH BAY RECYCLING, LLC
Compensation Adjustment Application for Rate Year 2020
J. CBA Wages & Benefits

BASE						Actual		Actual	
						2019 Rates		2020 Rates	
TRANSFER STATION									
Direct Labor	<u>FTE</u>	<u>Reg Hrs</u>	<u>OT Hrs</u>	<u>Hourly Rate</u>	<u>Annual Cost</u>				
Leads	1.0	2,080	390	\$33.34	\$88,851.10	\$ 45.62	\$ 121,572	\$ 46.99	\$ 125,216
Scale Operator	3.0	6,240	1,170	\$31.75	\$253,841.25	\$ 43.45	\$ 347,349	\$ 44.75	\$ 357,760
Spotter ²	5.0	10,400	780			\$ 30.24	\$ 349,934	\$ 31.15	\$ 360,423
Sorter ²	6.0	12,480	3,120			\$ 24.06	\$ 412,909	\$ 24.78	\$ 425,285
Equipment Operator-Lead	2.0	4,160	624		\$0.00	\$ 47.65	\$ 242,802	\$ 49.07	\$ 250,079
Equipment Operator	3.0	6,240	936	\$33.16	\$253,475.04	\$ 45.37	\$ 346,831	\$ 46.73	\$ 357,227
Personal Day Adjustment							\$ 14,059		\$ 14,481
True Up						\$ -	\$ -	\$ -	\$ -
Total	20.0	74,880	12,480		\$ 1,283,084	\$ 1,835,455		\$ 1,890,470	
						\$ -		\$ -	
						2.61%		3.00%	

MRF									
Direct Labor	<u>FTE</u>	<u>Reg Hrs</u>	<u>OT Hrs</u>	<u>Hourly Rate</u>	<u>Annual Cost</u>				
Scale Operator - Lead	2	4160	0	33.34	138694.4				
Equipment Operator-Lead	2.0	4,160	0		\$0.00	\$ 45.62	\$ 189,771	\$ 46.99	\$ 195,459
Equipment Operator	7.0	14,560	1,456	\$31.75	\$531,622.00	\$ 43.45	\$ 727,456	\$ 44.75	\$ 749,260
MRF Mechanic	1.0	2,080	0	\$33.36	\$69,388.80	\$ 45.65	\$ 94,955	\$ 47.02	\$ 97,801
PM Technician	1.0	2,080	0	\$28.80	\$59,904.00	\$ 39.16	\$ 81,446	\$ 40.33	\$ 83,888
Utility ²	1.0	2,080	0			\$ 30.24	\$ 62,909	\$ 31.15	\$ 64,795
Spotter ²	1.0	2,080	0			\$ 30.24	\$ 62,909	\$ 31.15	\$ 64,795
Buyback Attendant	2.2	4,576	1,664	\$22.20	\$156,998.40	\$ 30.38	\$ 214,838	\$ 31.29	\$ 221,277
Personal Day Adjustment							\$ 12,150		\$ 12,514
True Up						\$ -	\$ -	\$ -	\$ -
Total	15.2	35,776	3,120		\$ 1,048,544	\$ 1,446,435		\$ 1,489,789	
						\$ -		\$ -	
						2.61%		3.00%	

TRANSPORT									
Direct Labor		<u>Reg Hrs</u>	<u>OT Hrs</u>	<u>Hourly Rate</u>	<u>Annual Cost</u>				
Semi-Driver	20.0	41,600	6,344	\$ 34.21	1,748,678	\$ 45.37	\$ 2,319,340	\$ 46.73	\$ 2,388,858
Mechanic	1.6	3,250	-	\$ 33.36	108,407	\$ 43.97	\$ 142,872	\$ 45.28	\$ 147,154
PM Technician	-	-	-	\$ 28.80	-	\$ 38.78	\$ -	\$ 39.94	\$ -
Personal Day Adjustment							\$ 19,523		\$ 20,109
							\$ 2,481,735		\$ 2,556,121
Total		44,850	6,344		1,857,085				

BENEFITS		/ month	/ hour	/ month	/ hour	/ month	/ hour
Plant & Transportation Operations	Medical	\$1,361.00	\$7.85	\$ 2,175.63	\$ 12.55	\$ 2,240.84	\$ 12.93
	RSP	\$268.62	\$1.55	\$ 564.54	\$ 3.26	\$ 581.47	\$ 3.35
	IP	\$4.90	\$0.03	\$ 5.46	\$ 0.03	\$ 5.62	\$ 0.03
	Peer-84	\$667.33	\$3.85	\$ 1,139.24	\$ 6.57	\$ 1,173.39	\$ 6.77
Total TS & Recycling			\$ 13.28		\$ 22.41		\$ 23.08
					\$ -		\$ -
					2.61%		3.00%

Total Teamster	\$ 13.28	\$ 22.41	\$ 23.08
USE FOR TRANSFER STATION		2.6%	3.0%

Total Teamster	\$ 13.09	\$ 22.41	\$ 23.08
USE FOR MRF		2.6%	3.0%

Notes
¹ In base rate for forward calculation purposes only
² Job Classifications (**not hours**) added due to grievance by Teamsters Local No. 350

SOUTH BAY RECYCLING, LLC
Compensation Adjustment Application for Rate Year 2020
K. Clerical CBA Wages & Benefits

BASE					Actual 2019 Rates		Actual 2020 Rates	
CLERICAL								
G&A Labor (2009)	Reg Hrs	OT Hrs	Hourly Rate	Annual Cost				
Accounting Clerk	2,080.00	390.00	\$15.00	\$39,975.00				
Admin Assistant	2,080.00	390.00	\$16.88	\$44,985.20				
Dispatcher	2,080.00	390.00	\$13.13	\$34,991.45				
	6,240.00	1,170.00						
G&A Labor (2011)								
Payroll Processor	2,080.00	125.00			\$ 35.34	\$ 80,144	\$ 36.40	\$ 82,546
A/P Coordinator	2,080.00	125.00			\$ 28.61	\$ 64,881	\$ 29.47	\$ 66,825
Admin Assistant	2,080.00	125.00			\$ 28.07	\$ 63,649	\$ 28.91	\$ 65,557
Dispatcher	2,080.00	125.00			\$ 29.44	\$ 66,755	\$ 30.32	\$ 68,756
Total Hours	8,320.00	500.00				\$ -		\$ -
					Total	\$ 275,429	Total	\$ 283,684
2009 Base Totals	6,240.00	1,170.00		\$119,951.65		2.61%		3.0%

2009 BASE							
Transfer	33.33%	\$ 39,984	33.33%	\$ 91,810	33.33%	\$ 94,561	
MRF	33.33%	\$ 39,984	33.33%	\$ 91,810	33.33%	\$ 94,561	
Transportation	33.33%	\$ 39,984	33.33%	\$ 91,810	33.33%	\$ 94,561	

BENEFITS		/ month	/ hour	CPI Adjust	/ hour	CPI Adjust	/ hour
Clerical Unit	Medical	\$ 1,139.00	\$ 6.57	\$ 2,122.22	\$ 12.24	\$ 2,185.83	\$ 12.61
	Peer-84	\$ -	\$ -	\$ 590.45	\$ 3.41	\$ 608.15	\$ 3.51
	RSP	\$ -	\$ -	\$ 526.41	\$ 3.04	\$ 542.18	\$ 3.13
	IP	\$ -	\$ -	\$ 5.56	\$ 0.03	\$ 5.73	\$ 0.03
				True Up	\$ -	True Up	\$ -
	Total	\$ 6.57	Total	\$ 18.72	Total	\$ 19.28	
					\$ -	\$ -	
					2.61%	3.0%	

Total H&W, Pension / Hr	\$ 2.19	\$ 6.24	\$ 6.43
USE FOR TRANSFER STATION		2.61%	3.00%

Total H&W, Pension / Hr	\$ 2.19	\$ 6.24	\$ 6.43
USE FOR MRF		2.61%	3.00%

Total H&W, Pension / Hr	\$ 2.19	\$ 6.24	\$ 6.43
USE FOR TRANSPORTATION		2.61%	3.00%

Total Wages + Benefits for G&A Group			
Transfer Station	\$ 53,651.88	\$ 143,723.93	\$ 148,031.80
MRF	\$ 53,651.88	\$ 143,723.93	\$ 148,031.80
Transportation	\$ 53,651.88	\$ 143,723.93	\$ 148,031.80
%		2.61%	3.00%

SOUTH BAY RECYCLING, LLC

Compensation Adjustment Application for Rate Year 2020

L. Vocational Rehabilitation Services Cost

	2019	2020
SEP Clients		
Regular Hours	50,496	50,496
Overtime Hours	6,312	6,312
Holidays	789	790
Production Supervisor		
Regular Hours	2,080	2,080
Overtime Hours	260	260
Bilingual Pay Hours	2,340	2,340
Holiday Hours	96	96
Utility Worker		
Regular Hours	2,080	2,080
Overtime Hours	260	260
Bilingual Pay Hours	2,340	2,340
Holiday Hours	96	96
Client Wages-Regular	\$ 823,680.00	\$ 859,372.80
Client Wages-Overtime	\$ 154,440.00	\$ 161,132.40
Client Wages-Holiday	\$ 12,672.00	\$ 13,221.12
Client Seasonal-Regular	\$ 9,600.00	\$ 9,957.12
Client Seasonal-Overtime	\$ 1,800.00	\$ 1,866.96
Client Seasonal-Holiday	\$ 358.40	\$ 385.66
Subtotal Clients	\$ 1,002,550.40	\$ 1,045,936.06
Supervision	\$ 371,172.30	\$ 399,645.65
Overhead Fee	\$ 123,552.00	\$ 123,552.00
Regulatory Fee	\$ 154,440.00	\$ 154,440.00
Administration Fee	\$ 277,992.00	\$ 277,992.00
Total Program Expense	\$ 1,651,714.70	\$ 1,723,573.70
Total Program Cost/Ton		\$ 23.28
SBR Profit Margin	7.70%	0.00%
Total Program Expense	\$ 1,778,896.74	\$ 1,723,573.70
Total Program Cost/Ton	\$ 24.03	\$ 23.28

OUTH BAY RECYCLING, LLC
Compensation Adjustment Application for Rate Year 2020
Power Allocation Usage Worksheet

	April 2018 Actual			April 2019 Actual		
	KWH	Rate/KWH		KWH	Rate/KWH	
PG&E						
Customer Charge	30.00	\$ 19.7125	\$ 591.38	32.00	\$ 19.7125	\$ 630.80
Max Part Peak	634.80	\$ 0.1200	\$ 76.18	615.60	\$ 0.1300	\$ 80.03
Max Demand	634.80	\$ 17.7400	\$ 11,261.35	615.60	\$ 18.3000	\$ 11,265.48
Partial Peak	79,338.00	\$ 0.1100	\$ 8,730.35	74,908.65	\$ 0.1131	\$ 8,470.67
Off Peak	37,598.00	\$ 0.0940	\$ 3,534.59	34,198.80	\$ 0.0967	\$ 3,305.31
Power Factor Adjustment			\$ 58.47			\$ 43.65
Generation Credit	116,936.00	\$ (0.0820)	\$ (9,588.32)	109,107.45	\$ (0.0841)	\$ (9,180.40)
Power Charge Indifference Adjustment	116,936.00	\$ 0.0210	\$ 2,460.35	109,107.45	\$ 0.0210	\$ 2,295.62
Energy Commission Tax			\$ 71.33			\$ 68.74
Generation Off Peak	37,598.70	\$ 0.0458	\$ 1,721.36	34,198.80	\$ 0.0459	\$ 1,570.07
Generation Part Peak	79,338.00	\$ 0.0610	\$ 4,837.05	74,908.65	\$ 0.0611	\$ 4,579.91
Energy Commission Surcharge			\$ 33.91			\$ 32.73
Total Bill	469,044.30	\$ 0.0507	\$ 23,788.00	437,693.00	\$ 0.0529	\$ 23,162.61
ISH Solar						
Transfer Station (333)	37,041.00	\$ 0.2269	\$ 8,403.49	36,401.00	\$ 0.2337	\$ 8,506.19
MRF (225)	56,224.00	\$ 0.2269	\$ 12,755.54	44,648.00	\$ 0.2337	\$ 10,433.34
Total ISH Solar	93,265.00	\$ 0.2269	\$ 21,159.03	81,049.00	\$ 0.2337	\$ 18,939.53
Blended	562,309.30	\$ 0.0799	44,947.03	518,742.00	\$ 0.0812	42,102.14

April 2019 SBWMA Usage				
PG&E				
Customer Charge	30.00	\$ 19.7125	591.38	
Max Part Peak	634.80	\$ 0.1300	82.52	
Max Demand	634.80	\$ 18.3000	11,616.84	
Partial Peak	79,338.00	\$ 0.1131	8,971.54	
Off Peak	37,598.00	\$ 0.0967	3,633.85	
Power Factor Adjustment			45.75	
Generation Credit	116,936.00	\$ (0.0841)	(9,839.10)	
Power Charge Indifference Adjustment	116,936.00	\$ 0.0210	2,460.33	
Energy Commission Tax			71.39	
Generation Off Peak	37,598.70	\$ 0.0459	1,726.16	
Generation Part Peak	79,338.00	\$ 0.0611	4,850.73	
Energy Commission Surcharge			35.00	
Total Bill	469,044.30	\$ 0.0517	\$ 24,246.38	1.93%
ISH Solar				
Transfer Sta	37,041.00	\$ 0.2337	8,655.75	
MRF	56,224.00	\$ 0.2337	13,138.42	
Total ISH Solar	93,265.00	\$ 0.2337	\$ 21,794.16	3.00%
Blended	562,309.30	\$ 0.0819	46,040.55	2.433%

STAFF REPORT

To: SBWMA Board Members
From: Hilary Gans, Senior Facility and Contracts Manger
Date: September 26, 2019 Board of Directors Meeting
Subject: Resolution Approving Change Order #1 to Contract with Anaergia for Electrical Work on Organics-to-Energy Pilot

Recommendation

It is recommended that the SBWMA Board of Directors approve Resolution No. 2019-50 attached hereto authorizing the following action: **Resolution Approving Change Order #1 to Contract with Anaergia for Electrical Work on Organics-to-Energy Pilot**

Summary

The Organics-to-Energy (O2E) equipment contact with Anaergia includes installation of the equipment at the Shoreway transfer station. At the time the contact was signed, the electrical feed from the PG&E transformer to the equipment was not well understood and was therefore identified in the project as an "allowance" amount of \$300,000, based on engineers estimate of the work, was included in the contract as such. After subsequent onsite evaluation of the electrical work, Anaergia has agreed to complete the power feed work within the original allowance amount via Change Order #1.

Analysis

The purchase of the O2E pilot equipment from Anaergia was intended to be a turn-key project, however, due to unknowns about the PG&E transformer supplying electrical power into the Shoreway facility, the power feed portion of the project was treated as an allowance in Anaergia's cost proposal. After further onsite research including meeting with PG&E technical staff regarding the scope and cost to complete the power feed work, Anaergia has determined that they are, indeed, able to complete the power feed work for the original allowance amount of \$300,000 and they and SBWMA staff have concluded that the O2E pilot project is better served by having Anaergia's technical team handle this work directly. This Change order #1 covers the electrical power feed scope of work and includes running 1,000 amp service from the PG&E transformer to a new equipment subpanel to be located within the Shoreway transfer station building.

In summary, this \$300,000 expenditure has previously been vetted and approved by the Board as part of the O2E pilot project pro forma package. With new information, SBWMA staff and Anaergia have been mutually agreed that this project/cost should managed by Anaergia under the existing contract rather than by the SBWMA as a standalone project. There is no net change in project cost associated with this action.

Background

The Board approved a contract with Anaergia in November 15th 2018 for an amount of \$2,250,000. Anaergia is currently installing the equipment. The power feed project covers the electrical installation necessary to connect the equipment to the PG&E transformer onsite.

Fiscal Impact

The \$300,000 cost of Change Order #1 was anticipated during the contract with Anaergia and a budget allowance of \$300,000 for this work was included in Anaergia's cost proposal, therefore there is no net change to the project budget.

Attachments:

Resolution 2019-50



RESOLUTION NO. 2019-50

**RESOLUTION OF THE SOUTH BAYSIDE WASTE
MANAGEMENT AUTHORITY BOARD OF DIRECTORS
RESOLUTION APPROVING CHANGE ORDER #1 TO CONTRACT WITH ANAERGIA
FOR ELECTRICAL WORK ON ORGANICS-TO-ENERGY PILOT**

WHEREAS, the SBWMA contracted with Anaergia for the manufacture and installation of the Organic-to-Energy pilot equipment.

WHEREAS, the electrical power feed portion of the project was undefined at the time the Anaergia contract was signed and therefore included as a project allowance of \$300,000.

WHEREAS, Anaergia has agreed to complete the power feed scope of work for the originally budgeted allowance amount, and has agreed to include it within their current installation via a change order.

NOW, THEREFORE BE IT RESOLVED that the South Bayside Waste Management Authority hereby approves Resolution Approving Change Order #1 to Contract with Anaergia for Electrical Work on Organics to Energy Pilot.

PASSED AND ADOPTED by the Board of Directors of the South Bayside Waste Management Authority, County of San Mateo, State of California on the 26th day of September, 2019, by the following vote:

Agency	Yes	No	Abstain	Absent	Agency	Yes	No	Abstain	Absent
Atherton					Menlo Park				
Belmont					Redwood City				
Burlingame					San Carlos				
East Palo Alto					San Mateo				
Foster City					County of San Mateo				
Hillsborough					West Bay Sanitary Dist				

I HEREBY CERTIFY that the foregoing Resolution No. 2019-50 was duly and regularly adopted at a regular meeting of the South Bayside Waste Management Authority on September 26, 2019.

ATTEST:

Jess E (Jay) Benton, Chairperson of SBWMA

Cyndi Urman, Clerk of the Board

STAFF REPORT

To: SBWMA Board Members
From: Hilary Gans, Senior Facility and Contracts Manger
Joe LaMariana, Executive Director
Date: September 26, 2019 Board of Directors Meeting
Subject: Resolution Approving Shoreway Operating Contract Extension through December 31, 2023

Recommendation

It is recommended that the SBWMA Board of Directors approve Resolution No. 2019-53 attached hereto authorizing the following action: **Resolution Approving the Shoreway Operating Contract Extension through December 31, 2023.**

Summary

Based on South Bay Recycling's (SBR) strong operational and commodity marketing performance during the first nine (9) years of the current Operating Agreement term's execution, including several notable conditions that confronted them:

- Extraordinary fire recovery activities relating to the September 7th and 11th in 2016 fires at the Shoreway facility. SBR's contributions during the year-long recovery were exemplary in every facet.
- Enthusiastic leadership in Lithium-Ion battery (and other hazardous materials) interception and handling to maximize worker and facility safety and to minimize financial exposure and risks to the SBWMA. This includes conducting a comprehensive six-week battery count annually.
- Expert leadership in moving the SBWMA's recyclable materials to newly emerging end-markets during the international commodity crisis of 2018, and beyond.
- Strong technical leadership in future facility planning to support priority SBWMA capital projects, including the Organics-to-Energy pilot and the two-phased MRF upgrade projects.

Several additional key support points were made during recent Board and TAC meetings to have Staff proceed with this proposed contract extension:

- Based on current Bay Area economic conditions and recent member agency RFP experiences, this is not a favorable time to receive cost-competitive bids or RFP responses.
- It was recognized that with so many CIP projects currently in installation queue, the SBWMA cannot currently prepare a proper RFP document because so many operational metrics can only be determined after the installation of our new Organics-to-Energy pilot and MRF upgrades equipment. These metrics are essential for RFP responders to build there operational and cost assumptions.

- The SBWMA has numerous critical path CIP projects and significant mandated programs currently in progress, including a significant financial Franchise Agreement transition between 2020 and 2021. It was agreed that this proposed contract extension with SBR would allow SBWMA Board, Staff and our contracting partners to focus all resources on these organizational priorities.
- By extending the Operating Agreement termination date at this time, SBR, the SBWMA and our various operational and CIP partners will strongly benefit from this continuity during a critical period of major facility modifications and related agency priorities.

This topic has been thoroughly discussed at recent Board and the TAC meetings, and Staff received strong direction for the aforementioned reasons to prepare this proposal to extend the Shoreway Operations Agreement with SBR. Based on these factors it is recommended that the Board approve a Shoreway Operating Agreement contract extension with SBR through December 31, 2023.

Analysis

The TAC and the Board (On May 9th and on June 27th, 2019 respectively) considered the fact that the Shoreway Operations Agreement will expire on December 31st, 2020 and that the Agency has the option to extend the current agreement with SBR or to conduct an RFP. Specifically, the current Operations Agreement stipulates the following:

1. **Contract Extension:** The option to extend the Operations Agreement and have SBR continue operations of the Shoreway Environmental Center is unilaterally the SBWMA's decision.
2. **Extension Term:** under the current Agreement's Article 2, Section 2.03, the SBWMA can unilaterally extend the term of the existing Operations Agreement for a maximum of 3-years, through a process of 1, 2 or 3-year extension(s).
3. **Contract Extension Noticing:** The SBWMA must provide written notice to SBR before June 2020 regarding its intention to extend the Operations Agreement.

Based on the positive review by the TAC and Board on the Summary of Points Supporting an SBR Contract Extension (see **Attachment A**), staff recommends extending the Operations Agreement with SBR for the full 3-years provided for in the Operating Agreement through December 31, 2023.

Background

It is important to be aware that the Operations Agreement with SBR ends in 15-months on December 31,2020. Due to public procurement requirements and the complicated nature of selecting a contractor for the operations of the Shoreway facilities, it is expected that a full year will be needed to conduct an RFP for this service. Therefore, it is important for the Agency move swiftly and make a determination on whether it intends to extend the current contract or start an RFP process. A "Notice to Extend" must be sent to SBR prior to June 2020 per the Operations Agreement.

It should also be noted that, per SBR Board member and Potential Industries Vice President, Dan Domonoske's letter dated May 17, 2019, SBR has requested that

Fiscal Impact

No unplanned impacts to the Budget are expected from this action.

Attachments:

Resolution 2019-53

Attachment A - Summary of Points Supporting an SBR Contract Extension

Attachment B - SBR Board Member and Potential Industries VP Dan Domonoske Letter dated May 17, 2019



RESOLUTION NO. 2019-53

RESOLUTION OF THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY BOARD OF DIRECTORS RESOLUTION APPROVING THE SHOREWAY OPERATING CONTRACT EXTENSION THROUGH DECEMBER 31, 2023

WHEREAS, the current Shoreway Operations Agreement is due to expire December 31, 2020,

WHEREAS, the SBWMA chooses to exercise the "Notice of Extension" contained within the agreement that allows the agency to unilaterally extend the Operations Agreement with SBR for a total term of 3-years,

NOW, THEREFORE BE IT RESOLVED that the South Bayside Waste Management Authority hereby approves Resolution Approving the Shoreway Operating Contract Extension through DECEMBER 31, 2023.

PASSED AND ADOPTED by the Board of Directors of the South Bayside Waste Management Authority, County of San Mateo, State of California on the 26th day of September, 2019, by the following vote:

Agency	Yes	No	Abstain	Absent	Agency	Yes	No	Abstain	Absent
Atherton					Menlo Park				
Belmont					Redwood City				
Burlingame					San Carlos				
East Palo Alto					San Mateo				
Foster City					County of San Mateo				
Hillsborough					West Bay Sanitary Dist				

I HEREBY CERTIFY that the foregoing Resolution No. 2019-53 was duly and regularly adopted at a regular meeting of the South Bayside Waste Management Authority on September 26, 2019.

ATTEST:

Jess E (Jay) Benton, Chairperson of SBWMA

Cyndi Urman, Clerk of the Board

Attachment A –Summary of Points Supporting an SBR Contract Extension

The following bullet points that speak to the benefit of extending the Shoreway Environmental Center Operations Agreement with SBR were reviewed by the TAC and at the June 27th Board meeting.

1. ***The original procurement was highly competitive:*** The Facility Operations RFP was conducted in 2009 and was a very competitive process with 7 bidders.
2. ***SBR was the low-bidder by over a million dollars:*** SBR was the selected low-bidder and was deemed highly qualified to operate the Shoreway Operation.
3. ***SBWMA maintains a low cost of service:*** SBR is compensated for each ton processed at the MRF, the transfer station and long-haul transportation. These processing rates have increased annually at a rate not greater than CPI.
4. ***Commodity Revenue Share has decreased:*** As commodity prices have eroded the amount paid to SBR at the MRF (as a diversion incentive has decreased, reducing SBR's current Share compensation to an all-time low.
5. ***SBR has provided excellent service:*** SBR has a proven track record of excellent facility operations and there have been no instances where the company has failed to perform a core service. Additionally, SBR has maintained the agency owned Shoreway buildings and equipment well. Prior problems of staff turnover seem to be resolved.
6. ***SBR has been a good partner in facility operations:*** SBR has maintained a cooperative approach with the Authority, and works to protect the SBWMA's interests (e.g., MRF fire recovery).
7. ***SBR has been a good partner in commodity marketing:*** SBR has anticipated and informed the Agency of commodity marketing problems in advance, has worked with the Agency to preemptively prepare for market problems, and has shared in the expenses of additional sorting/shipping costs. During the past 8 years there have been no significant interruptions in marketing/movement of MRF commodities.
8. ***SBR embraces innovations:*** SBR has been highly engaged in design of the MRF Upgrades project and the development of the O2E project for organic diversion. These projects have/will benefit from the collaborative development approach with SBR.
9. ***Other service providers:*** There are no obvious / better companies to provide the operations services and the agency has not been approached by other companies with an interest in providing the operations services.
10. ***Existing Operations Agreement:*** Staff does not see a need to make substantial changes to the existing Operations Agreement - the document is serving the Agency well and needs no major changes.
11. ***Current commodity market conditions:*** The current commodity market crisis is creating uncertainty that would put the Agency at a disadvantage if it were to conduct an RFP process (especially since the Revenue Guaranty and a Commodity Revenue Share are at a low point).
12. ***MRF CIP Projects:*** The Agency is planning major MRF capital investments and changing operations companies currently would increase risk associate these projects.
13. ***2023 RFP Process:*** The SBWMA will likely be in a stronger position to conduct an RFP in 2022 after: 1) the equipment upgrades have been implemented and the benefits are realized and can be incorporated into the RFP process (i.e., reduced sort labor, better commodity quality); 2) the organics to energy project cost of operations are well understood and can be characterized in a scope of services.

May 17, 2019

SBWMA, RethinkWaste
Mr. Joe La Mariani, Executive Director
610 Elm Street, Suite #202
San Carlos, CA 94070

Re: South Bay Recycling (SBR) Operations Agreement

Dear Mr. La Mariani,

The purpose of this letter is to express SBR's interest to formally commence discussions for a possible amendment to the Operations Agreement (Agreement) which would include an extension to the term and service level adjustments.

Earlier this year SBR observed two developments which have set the stage for these discussions: (a) SBWMA BOD Resolution 2019-22 Amendment to the Agreement which states Contractor has been performing the work in a manner which meets or exceeds requirements, would like to enter into discussions regarding a meaningful contract extension beyond 2023 and the parties agree to commence such discussions in 2019; and (b) during the SBWMA Technical Advisory Committee meeting on May 9, 2019 members expressed an interest in having staff follow up with SBR regarding this matter.

SBR hereby suggests these discussions take place as follows:

Q3 2019 – proposal from SBR, review, initial feedback, and preliminary proforma

Q4 2019 - proforma modifications, adjustments, and financial modeling

Q1 2020 – negotiations, evaluations, subcommittee review, and benchmarking

Q2 2020 – BOD reviews and approval

Thank you in advance for considering our request. We look forward to working closely with the SBWMA on this important matter, and hope that as a result we will be able to continue and provide our exemplary service for many years.

Regards,



Daniel J. Domonoske
Vice President

CC: Mario Puccinelli - Recology, Dwight Herring – South Bay Recycling

333 Shoreway Road | San Carlos, California 94070
Tel 650.802.8355 | Fax 650.412.2495 | SBRrecycling.net



STAFF REPORT

To: SBWMA Board Members
From: Hilary Gans, Senior Contracts & Operations Manager
Date: September 26, 2019 Board of Directors Meeting
Subject: Resolution Approving an Agreement with Bulk Handling Systems in the amount of \$5,172,163 for Construction of the MRF Phase I Upgrades

Recommendation:

It is recommended that the SBWMA Board of Directors approve Resolution No. 2019-54, attached hereto, approving the attached Agreement with Bulk Handling Systems in the amount of \$5,172,163 for construction of the MRF Phase I Upgrades.

Summary

In response to a significant two-year fiber market crisis, SBWMA staff developed a capital improvement plan that will upgrade the MRF to provide better materials sorting. The benefits of the upgrades include better marketability of commodities, improved commodity revenues, more diversion, and lower operation expenses. This MRF Phase I project was contemplated in the **2020 Capital Improvement Plan presented to the Board** and will be funded through the **Bond Refunding** process.

In June, the Board approved a Design & Engineering contract with BHS for the MRF Phase I Upgrades. The agreement before the Board today is for the purchase and installation of the equipment designed during the Design & Engineering work, for an amount of \$5,172,163. Including other project costs, total Phase I costs detailed below as associated with this contract are estimated at \$6,073,263.

Analysis

Changes in state regulations, world commodity markets, and materials streams have each placed new demands on the Shoreway MRF infrastructure. Most poignantly, the fiber market crisis has created a clear and compelling need to upgrading the Shoreway MRF sort systems to make higher quality commodities. The MRF's current sort system was originally installed in 2009. Phase I and II MRF upgrades will take advantage of new highspeed optical sorting technology and will separate recyclables to meet the new commodity markets standards.

Peer Review Process

Prior to bringing this agreement to the Board for its consideration, staff conducted a third-party peer review of the project pricing and delivery. Sloan/Vasquez Consulting (S/V) was hired to review the details of BHS's cost proposal. The firm has extensive experience with MRF installation projects and has been involved in several recent projects involving BHS equipment. S/V performed a two-level analysis: 1) a comparison of individual equipment components price to other projects and, 2) a percent-of-total project cost comparison (shown in **Table 1** next page). In both cases BHS's pricing was found to be in-line with other comparison projects (installation cost

on the SBWMA project was higher than other projects, but this was expected due to the fact that this is a retrofit project, is in the Bay Area, and requires prevailing wages be paid).

Table 1. Sloan Vasquez analysis of SBWMA cost compared to other MRF Projects

Contract Cost Item as % of Total Price	BHS Price to SBWMA	Other Project Avg.
Mech-Elec Install as % of Total Price	28.10%	21.70%
Structure as % of Total Price	8.98%	9.12%
Controls as % of Total Price	4.70%	7.43%
Project Mgmt & Startup as % of Total Price	3.81%	3.13%

Project Description

Phase I MRF Upgrade project includes a suite of projects that will: 1) replace obsolete electronics, 2) replace worn equipment, 3) add efficacy upgrades, and 4) install a new highspeed optical sort line that will improve material recovery and marketability. The Phase I MRF upgrades project consists of three specific projects: Glass/Battery Cleanup System, Small-Fraction Optical Sort System, and In-Fee Metering Hopper.

Table 2. BHS Proposal Cost Tracking	BOD Presentation	BHS Quote
	28-Feb	11-Sep
Glass Battery Clean-up System	\$ 684,158	\$ 684,158
Small Fraction Optical Sort System	\$ 4,548,094	\$ 4,548,094
Max AI Robotics & Vis Fiber QC	\$ 1,635,000	\$ -
In-Feed Metering Hopper	\$ -	\$ 515,915
Strategic Partner Discount	\$ (203,667)	\$ (179,294)
Total	\$ 6,663,585	\$ 5,568,873
Shipping Estimate		\$ 109,000
Total		\$ 5,579,463
Less Design & Engineering Deposit (BOD Approved 6/19)		\$ (557,946)
Plus Construction Bond Cost (3% of Contract Subtotal of \$5,021,517)		\$ 150,646
Subtotal - BHS Equipment and Install Contract Amount		\$ 5,172,163

Table 2 above shows the price of each Phase I equipment system: the first column is project costs as proposed to the Board in February 2019; the second column is a revised equipment scope Quote by BHS on September 11. Notable changes include: the Max AI Robotics unit has been removed from Phase I due to uncertainties about the current technology; the In-feed Metering Hopper project has been moved from Phase II to Phase I; and other costs e.g., for shipping and Construction Bond (3% of total value, not including the Design and Engineering Contract cost) have been added. If the Max AI Robotic equipment is developed to meet Staff's industrial-grade performance standards (for a full 10-year depreciation term) in time to include in Phase II of these projects, it will

be included in this project at that time. Subtotal Amount of \$5,172,163 reflects the deducted Design & Engineering cost that was approved by the Board in June.

Table 3 below shows the **Total Project Cost of \$6,073,263 that needs approval by the Board**. It includes tax applied to the subtotal \$5,579,463 cost from Table 2 (prior to subtracting the Designing and Engineering cost and adding the Construction Bond cost), as well as miscellaneous and contingency costs.

Table 3. Total Project Cost	
Subtotal BHS Phase I Equipment	\$ 5,172,163
Tax @ 9.25% (on \$5,579,463 total)	\$ 516,100
Miscellaneous & Contingency (Shown Below)*	\$ 385,000
Total MRF Phase I Project Cost Installed	\$ 6,073,263
<i>*Anticipated Miscellaneous Cost & Contingency</i>	
<i>System Start up Performance Testing</i>	\$ 25,000
<i>Permit and Building Department fees (estimate)</i>	\$ 100,000
<i>Fire Suppression additional</i>	<i>To Be Determined</i>
<i>SBR Operational Impact Pass-through</i>	\$ 60,000
<i>Miscellaneous Project Costs</i>	\$ 200,000
Total	\$ 385,000

There are several additional costs to the project that go beyond to the BHS Equipment manufacture and installation. These have been captured as accurately as possible and include the following:

- Sales and Use Tax to be paid on the equipment at a rate of 9.25%
- Start up and Performance testing to be performed by independent consultants over a period of two days necessary to verify that the equipment operates correctly and meets performance expectations.
- San Carlos Building review fees and Permit fees are expected at \$80,000, and are calculated based off the value of total project at \$6M.
- Fire suppression can only be determined after the project has been installed and contractors are able to do on-site walk of the installed equipment – staff estimates this will add an additional \$250,000 to the

project total. Standard public procurement regulations will be followed before the recommended fire suppression system is presented to Board for consideration in a separate project.

- Operational Impact Pass-through is an estimate of the cost that will need to be paid to SBR for up to 10 days of impacted operations and the cost of shifting operation to weekends to allow for the installer to complete the project.
- Miscellaneous Project Costs is estimated at 3% of the project value to cover other contingency items.

Fiscal Impact

The 2020 Capital Improvement Plan and FY19/20 Budget includes Phase I MRF project at \$7.3M.

The total estimated Phase I Project Cost using the information in **Table 3** has now been estimated at \$6,631,209 (\$6,073,263 + \$557,946 for BHS Design & Engineering already approved by the Board in June, as shown in Table 2), but does not include fire suppression which is likely to add \$250,000. This \$6.6M total is less than the \$7.3M allocated, but if the approximately \$1.6M Max AI robotic package (and fire suppression measures project) had been included as planned originally, the Phase I package cost would have exceeded that budget allocation of \$7.3M for Phase I. This budget exceedance will become actualized if and when as planned that \$1.6M robotic package is included in the 2020 MRF Phase II improvements project, initially budgeted for \$8M as seen in the Attachment 1 CIP Plan. Therefore, while Phase I is currently under budget, the project has decreased in scope, and deferring the Max AI robotic package to Phase II is likely to increase the Phase II costs by at least \$1.6 million.

Attachments:

Resolution 2019-54

Exhibit A - Agreement with Bulk Handling Systems in the amount of \$5,172,163 for Construction of the MRF Phase I Upgrades

Attachment B - Capital Improvement Plan and Source of Funds

Attachment C – [Supplemental Drawings, Flow Charts and Schedules \(available online only at www.rethinkwaste.org\)](http://www.rethinkwaste.org)



RESOLUTION NO. 2019-54

RESOLUTION OF THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY BOARD OF DIRECTORS APPROVING AN AGREEMENT WITH BULK HANDLING SYSTEMS IN THE AMOUNT OF \$5,172,163 FOR CONSTRUCTION OF THE MRF PHASE I UPGRADES.

WHEREAS, SBWMA must upgrade the Shoreway MRF with new automated sorting technology and equipment;

WHEREAS, BHS was the original manufacturer of the MRF, provided design and engineering for the first phase of this MRF upgrade (Phase I), and is uniquely and solely capable of completing the Phase I upgrades;

WHEREAS, BHS and SBWMA have negotiated a contract for MRF Phase I Equipment and Installation and in the amount of \$5,172,163 for Equipment & Installation;

WHEREAS, SBWMA staff has developed cost estimates for Other related Project costs for a Total Project cost of \$6,073,263;

NOW, THEREFORE BE IT RESOLVED that the South Bayside Waste Management Authority hereby approves the attached Agreement with BHS for MRF Phase I Upgrades in the amount of \$5,172,163.

NOW, THEREFORE BE IT FURTHER RESOLVED that the SBWMA Executive Director is authorized to expend an additional \$901,100 in contingency funds to pay taxes and permitting fees associated with this project, to complete miscellaneous work required to comply with all permits, performance testing and operations, and other unforeseen costs associated with the project.

PASSED AND ADOPTED by the Board of Directors of the South Bayside Waste Management Authority, County of San Mateo, State of California, by the following vote:

Agency	Yes	No	Abstain	Absent	Agency	Yes	No	Abstain	Absent
Atherton					Menlo Park				
Belmont					Redwood City				
Burlingame					San Carlos				
East Palo Alto					San Mateo				
Foster City					County of San Mateo				
Hillsborough					West Bay Sanitary Dist				

I HEREBY CERTIFY that the foregoing Resolution No. 2019-54 was duly and regularly adopted at a regular meeting of the South Bayside Waste Management Authority on September 26, 2019.

ATTEST:

Jess E (Jay) Benton, Chairperson of SBWMA

Cyndi Urman, Board Secretary

PROJECT MANUAL
Specifications for Construction

for

**AGREEMENT WITH BULK HANDLING SYSTEMS IN THE AMOUNT OF \$5,172,163 FOR
CONSTRUCTION OF THE MRF PHASE I UPGRADES
PROJECT NO. SBWMA: CIP.600100-17**

at

**225 Shoreway Road
San Carlos, CA 94070**

SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY

South Bayside Waste Management Authority
610 Elm Street
Suite 202
San Carlos, CA 94070

DOCUMENT 00 0110

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TECHNICAL SPECIFICATIONS

END OF DOCUMENT

DOCUMENT 00 0115

LIST OF DRAWINGS, TABLES, SCHEDULES AND TECHNICAL SPECIFICATIONS

<u>Sheet Number</u>	<u>File Number</u>	<u>Description</u>
DRAWINGS (BHS Phase I System Drawings)	1.	Residential Single Stream – All Packages
	2.	RSS – Package 01 ISO View
	3.	RSS - Pkg 01 ISO View
	4.	RSS – Pkg 02 – 2-Bin Bypass Plan View
	5.	RSS – Pkg 02 - 2-Bin Bypass Elevation Views
	6.	RSS - Pkg 02 ISO View
	7.	RSS - Pkg 02 Demo
	8.	RSS - Pkg 03 Views
	9.	RSS - Pkg 03 Demo - ISO View
	10.	RSS - Pkg 05 Container Line Recovery Station
	11.	RSS - Pkg 05 ISO
		RSS And Commercial SS Process Flow Chart
		Dry Waste Mode Process Flow Chart

TABLES

SCHEDULES

BHS Phase Install Schedule
BHS Phase I Milestone Payment Schedule

TECHNICAL SPECIFICATIONS

BHS Phase I Order Confirmation
BHS Phase I Performance and Acceptance Guarantee

REPORTS

- Hazardous Materials/Safety – SBR Safety Manual

Contractor hereby declares that they have read and understood the work conditions described and required within the “SBR Safety Manual” referred to here.

SIGNATURE

TITLE

END OF DOCUMENT

DOCUMENT 00 4330

SUBCONTRACTORS LIST

The Subcontractors List must include the names of all subcontractors for those subcontractors who will perform any portion of Work, including labor, rendering of service, or specially fabricating and installing a portion of the Work or improvement according to detailed drawings contained in the plans and specifications, in excess of one half of one percent (0.5%) of the total contract amount.

Name of Subcontractor and Location of Place of Business	Description of Work	Subcontractor's DIR License No.	DIR Registration Number*	% of Total
Titus MRF Services 11080 Rose Avenue Fontana, CA 92337	Mechanical & Electrical Installation	CSLB: 872945	1000060249	

(attach additional sheets if necessary)

* Pursuant to Division 2, Part 7, Chapter 1 (commencing with section 1720) of the California Labor Code.

Questionnaire

Failure to complete the questionnaire or inclusion of any false statement(s) shall be ground for immediate disqualification.

CONTACT INFORMATION

Company Name: Titus MRF Services _____
 Owner of Company: Michael C Centers _____
 Contact Person: Mike Centers _____
 Address: 11080 Rose Avenue, Fontana, CA 92337 _____
 Phone: 909-357-3156 _____ Fax: 909-357-3166 _____

EXPERIENCE OF DESIGNATED SUBCONTRACTOR

The nature of this Project requires prior similar experience for each of the Designated Subcontractor(s) performing the Work. Summarize similar project experience below and provide the detailed project information requested:

Designated Subcontractor (1). List three (3) projects of similar size and scope to the Work of the Contract, completed in the past two (2) years, and indicate who were the superintendent, project manager and scheduler. NOTE: this listing will be used to assess compliance with the stated minimum qualifications in Paragraph 1.01.

Project Name	Construction Cost (\$)	Year Completed	Name of Project Superintendent	Name of Project Manager	Name of Project Scheduler
Greenwaste optical sorter install	\$1,700,000	2019	Arturo Pacheco	Dean Locke	Miguel Moreno
Pier 96 optical sort install	\$1,500,000	2019	Arturo Pacheco	Mike Centers	Miguel Moreno

Key Personnel.

List Key Personnel that will be assigned to the Work of the current Project and their experience/training with the projects listed above:

Project Manager: Mike Centers _____

Project Superintendent: Arturo Pacheco _____

Project Scheduler: Miguel Moreno _____

Recent Projects.

Provide information about three (3) of its most currently completed projects. Names and references must be current and verifiable. This listing will be used to assess compliance with the stated minimum qualifications in Paragraph 1.01. If a separate sheet is used, it must contain all of the following information:

- 1. Project Name: Greenwaste optical sorter install _____
Location: San Jose, CA _____
Owner: Greenwaste _____
Owner Contact (name and phone): Ricky Lopez, 408-504-6494 _____
Architect/Engineer: Matt Edwards _____
Architect/Engineer Contact (name and phone number): Matt Edwards, 541-760-4562 _____
Const. Mgr. or Project Mgr. (name and phone number): Dean Locke, 541-972-9013 _____
Description of Project, Scope of Work Performed: Install 6 NRT Near-infrared optical sorters without downtime that would have forced customer to divert material _____
Total Construction Cost: \$1,700,000 _____
Total Change Order Amount: \$94,000 _____
Did Change Orders exceed 10% of original contract sum? No _____ If yes, please explain on separate sheet.
Original Scheduled Date of Completion: December 2018 _____
Time Extensions Granted (number of Days): 90 days assuming no installation downtime _____
Actual Date of Completion: March 30, 2019 _____
Number of Stop Notices filed by Subcontractors or Suppliers: None _____

- 2. Project Name: Pier 96 Recology optical sort installation _____
Location: San Francisco, CA _____
Owner: Recology _____
Owner Contact (name and phone): Maurice Quillen, 415-740-6451 _____
Architect/Engineer: Gil _____
Architect/Engineer Contact (name and phone number): _____
Const. Mgr. Or Project Mgr. (name and phone number): _____
Description of Project, Scope of Work Performed: Install 3 fiber optical sorters without shutting down customer where they would have to divert material _____
Total Construction Cost: \$1,500,000 _____

Total Change Order Amount: \$95,000_____

Did Change Orders exceed 10% of original contract sum? No_____ If yes, please explain on separate sheet.

Original Scheduled Date of Completion: December 2018_____

Time Extensions Granted (number of Days): None_____

Actual Date of Completion: December 20, 2018_____

Number of Stop Notices filed by Subcontractors or Suppliers: None_____

3. Project Name: Polk County Installation – 3 Material Stream MRF_____

Location: Fosston, MN_____

Owner: Polk County Solid Waste Management_____

Owner Contact (name and phone): Jon Steiner, 218-289-2384_____

Architect/Engineer: Marlon P Machowick_____

Architect/Engineer Contact (name and phone number): Marlon P Machowick, 701-893-2314_____

Const. Mgr. Or Project Mgr. (name and phone number): Rick Centers, 248-866-1061_____

Description of Project, Scope of Work Performed: Install plant to sort MSW Single Stream and commercial recovery of valuable recyclables_____

Total Construction Cost: \$9,000,000_____

Total Change Order Amount: \$175,000_____

Did Change Orders exceed 10% of original contract sum? No_____ If yes, please explain on separate sheet.

Original Scheduled Date of Completion: October 2018_____

Time Extensions Granted (number of Days): 45 days_____

Actual Date of Completion: December 2018_____

Number of Stop Notices filed by Subcontractors or Suppliers: None_____

FINANCIAL INFORMATION

1. Has Contractor ever reorganized under the protection of bankruptcy laws?
Yes _____ No X_____ If yes, please state when _____

2. If Contractor has had their general liability carrier for less than 5 years, please provide additional information below for balance of the last 5 years:

Agency Name: _____

Contact Name: _____

Phone Number _____

Carrier: _____ A.M. Best Rating: _____

Carrier: _____ A.M. Best Rating: _____

Carrier: _____ A.M. Best Rating: _____

3. Has Contractor ever had insurance terminated by a carrier? Yes _____ No X
If yes, explain on a separate signed sheet marked with correlating cross-reference to this paragraph of the questionnaire.

Contractor hereby declares under penalty of perjury that all the information provided in this questionnaire is true and correct.

SIGNATURE

TITLE

END OF DOCUMENT

**DOCUMENT 00 4546
CERTIFICATIONS**

The undersigned Contractor certifies to Owner as set forth in sections 1 through 7 below.

1. STATEMENT OF CONVICTIONS

By my signature hereunder, I hereby swear, under penalty of perjury, that no more than one final, unappealable finding of contempt of court by a Federal Court has been issued against Contractor within the past two years because of failure to comply with an order of a Federal Court or to comply with an order of the National Labor Relations Board.

2. CERTIFICATION OF WORKER'S COMPENSATION INSURANCE

By my signature hereunder, as the Contractor, I certify that I am aware of the provisions of Labor Code Section 3700 that require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this Contract.

3. CERTIFICATION OF PREVAILING WAGE RATES AND RECORDS

By my signature hereunder, as the Contractor, I certify that I am aware of the provisions of Labor Code Section 1773 that requires the payment of prevailing wage on public projects. Contractor and any subcontractors under the Contractor shall comply with Labor Code Section 1776 regarding wage records, and with Labor Code Section 1777.5 regarding the employment and training of apprentices. Contractor is responsible to ensure compliance by any and all subcontractors performing work under this Contract.

4. CERTIFICATION OF COMPLIANCE WITH PUBLIC WORKS CHAPTER OF LABOR CODE

By my signature hereunder, as the Contractor, I certify that I am aware of Labor Code Sections 1777.1 and 1777.7 and Contractor and Subcontractors are eligible to contract and work on public works projects.

5. CERTIFICATION OF NON-DISCRIMINATION

By my signature hereunder, as the Contractor, I certify that there will be no discrimination in employment with regard to race, color, religion, gender, sexual orientation, age or national origin; that all federal, state, and local directives and executive orders regarding non-discrimination in employment will be complied with; and that the principal of equal opportunity in employment will be demonstrated positively and aggressively.

6. CERTIFICATION OF NON-DISQUALIFICATION

By my signature hereunder, as the Contractor, I swear, under penalty of perjury, that the below indicated Contractor, any officer of Contractor, or any employee of Contractor who has a proprietary interest in such Contractor, has never been disqualified, removed, or otherwise prevented from contracting on, or completing a Federal, State, or local government project because of a violation of law or safety regulation, except as indicated on the separate sheet attached hereto entitled "Previous Disqualifications." If a statement of "Previous Disqualifications" is attached, please explain the circumstances.

7. CERTIFICATION OF ADEQUACY OF CONTRACT AMOUNT

By my signature hereunder, as the Contractor, pursuant to Labor Code Section 2810(a), I certify that, if awarded the Contract based on the undersigned's Contract, the Contract will include funds sufficient to allow the Contractor to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided. I understand that Owner will be relying on this certification if it awards the Contract to the undersigned.

CONTRACTOR:

BHS

(Name of Contractor)

Date: _____, [201] By: _____

(Signature)

Name: _____

(Print Name)

Its: _____

(Title)

END OF DOCUMENT

DOCUMENT 00 5200

AGREEMENT

THIS AGREEMENT, dated this ____ day of _____, 2019, by and between Emerging Acquisitions, LLC, dba Bulk Handling Systems (BHS) whose place of business is located at 3592 West 5th Avenue, Eugene OR 97402 (**Contractor**), and **SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY**, a California Joint Powers Authority (**Owner**), acting under and by virtue of the authority vested in Owner by the laws of the State of California.

WHEREAS, Owner, by its Resolution No. 2019-53 adopted on the ____ day of _____, 2019 awarded to Contractor the following Contract:

PROJECT NUMBER CIP.600100-17

MRF PHASE 1 IMPROVEMENTS PROJECT

At

225 Shoreway Road, San Carlos, CA 94070

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, Contractor and Owner agree as follows:

ARTICLE 1 SCOPE OF WORK OF THE CONTRACT

1.01 Work of the Contract

- A. Contractor shall complete all Work specified in the Contract Documents, in accordance with the Specifications, Drawings, and all other terms and conditions of the Contract Documents (**Work**).

1.02 Price for Completion of the Work

- A. Owner shall pay Contractor the following Contract Sum (**Contract Sum**) of \$5,172,163 for completion of Work in accordance with Contract Documents attached hereto.
- B. The Contract Sum includes all allowances (if any).

COMMENCEMENT AND COMPLETION OF WORK

1.03 Commencement of Work

- A. Contractor shall commence Work within ten days of the date of receiving the Notice to Proceed (**Commencement Date**).
- B. Owner reserves the right to modify or alter the Commencement Date.

1.04 Completion of Work

- A. Contractor shall achieve Substantial Completion of the entire Work within **218** Days from the Commencement Date.
- B. Contractor shall achieve Final Completion of the entire Work **90** Days from the Commencement Date.

ARTICLE 2 PROJECT REPRESENTATIVES

2.01 Owner's Project Manager

- A. Owner has designated SBWMA Senior Facilities and Contract Manager, Hilary Gans, as its Project Manager to act as Owner's Representative in all matters relating to the Contract Documents. If Project Manager is an employee of Owner, Project Manager is the beneficiary of all Contractor obligations to Owner including, without limitation, all releases and indemnities.

- B. Project Manager shall have final authority over all matters pertaining to the Contract Documents and shall have sole authority to modify the Contract Documents on behalf of Owner, to accept work, and to make decisions or actions binding on Owner, and shall have sole signature authority on behalf of Owner.
- C. Owner may assign all or part of the Project Manager's rights, responsibilities and duties to a Construction Manager, or other Owner Representative.

2.02 Contractor's Project Manager and Other Key Personnel

- A. Contractor has designated **Chris Hayes** as its Project Manager to act as Contractor's Representative in all matters relating to the Contract Documents.
- B. Contractor has designated the following other Key Personnel for the Project, for which Owner shall have reasonable ability to offer input and affect decisions as to who is chosen for which role among the following pool of potential PM and other staff:

<u>Name</u>	<u>Position</u>
_Bob Fry_____	BHS PM 2
_Art Oxley_____	BHS PM 3
_Craig McCue_____	BHS Project Engineer
_Bryan Keller_____	BHS Electrical Control Tech

2.03 Architect/Engineer

- A. **JR Miller** furnished the Plans and Specifications and shall have the rights assigned to Architect/Engineer in the Contract Documents.

ARTICLE 3 LIQUIDATED DAMAGES FOR DELAY IN COMPLETION OF WORK

3.01 Liquidated Damage Amounts

- A. As liquidated damages for delay Contractor shall pay Owner \$2,500 dollars for each Day that expires after the time specified herein for Contractor to achieve Substantial Completion of the entire Work, until achieved.
- B. As liquidated damages for delay Contractor shall pay Owner \$10,000 dollars for each Day (prorated by rounded-up hour that the facility is rendered non-operational) that expires after the time specified herein for Contractor to rectify issues that lead to Operational Downtime of the system, until achieved. Five Operational Downtime days have been granted to Contractor, after which these liquidated damages become effective.

3.02 Scope of Liquidated Damages

- A. Measures of liquidated damages shall apply cumulatively.
- B. Limitations and stipulations regarding liquidated damages are set forth in Document 00 7200 (General Conditions).

ARTICLE 4 CONTRACT DOCUMENTS

- 4.01** Contract Documents consist of the following documents, including all changes, Addenda, and Modifications thereto:

Document 00 0101	Title Page
Document 00 0110	Table of Contents
Document 00 0115	List of Drawings, Tables, Schedules and Technical Specifications
Document 00 4330	Subcontractor List
Document 00 4546	Certifications

Document 00 5200	Agreement
Document 00 5500	Notice to Proceed
Document 00 6113.13	Construction Performance Bond
Document 00 6113.16	Construction Labor and Material Payment Bond
Document 00 6325	Substitution Request Form
Document 00 6530	Agreement and Release of Any and All Claims
Document 00 6536	Guaranty
Document 00 7200	General Conditions
Document 00 7316	Supplementary Conditions – Insurance and Indemnification
Document 00 7380	Apprenticeship Program
Document 00 9113	Addenda
Specifications	Divisions 01 (General Requirements) through 02 (Technical Specifications)

4.02 There are no Contract Documents other than those listed above. The Contract Documents may only be amended, modified or supplemented as provided in Document 00 7200 (General Conditions).

ARTICLE 5 MISCELLANEOUS

5.01 Terms and abbreviations used in this Agreement are defined in Document 00 7200 (General Conditions) and Section 01 4200 (References and Definitions) and will have the meaning indicated therein.

5.02 It is understood and agreed that in no instance are the persons signing this Agreement for or on behalf of Owner or acting as an employee, agent, or representative of Owner, liable on this Agreement or any of the Contract Documents, or upon any warranty of authority, or otherwise, and it is further understood and agreed that liability of Owner is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.

5.03 Pursuant to Labor Code Section 1771(a), Contractor represents that it and all of its Subcontractors are currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. Contractor covenants that any additional or substitute Subcontractors will be similarly registered and qualified.

5.04 In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, Contractor or Subcontractor offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. §15) or under the Cartwright Act (Chapter 2 (commencing with §16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time Owner tenders final payment to Contractor, without further acknowledgment by the parties.

5.05 Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, may be obtained from the California Department of Industrial Relations website [<http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>] and are deemed included in the Contract Documents, and shall be made available to any interested party on request. Pursuant to Labor Code Sections 1860 and 1861, in accordance with Labor Code Section 3700, every contractor will be required to secure the payment of compensation to his employees. Contractor represents that it is aware of the provisions of Labor Code Section 3700 that 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 Contractor shall comply with such provisions before commencing the performance of the Work of the Contract Documents.

5.06 This Agreement and the Contract Documents shall be deemed to have been entered into in the County in which the Project is located, State of California, and governed in all respects by California

law (excluding choice of law rules). The exclusive venue for all disputes or litigation hereunder shall be in the Superior Court for the in which the Project is located.

IN WITNESS WHEREOF the parties have executed this Agreement in duplicate the day and year first above written.

CONTRACTOR: BHS

By: _____
(Signature)

By: _____
(Signature)

Its: _____
Title (If Corporation: Chairman, President
or Vice President)

Its: _____
Title (If Corporation: Secretary, Assistant
Secretary, Chief Financial Officer or
Assistant Treasurer)

OWNER: SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY

By: _____
(Signature)

Jay Benton
(Print Name)

Board Chair, SBWMA
(Title)

Attest: _____
Secretary

Cyndi Urman
(Print Name)

APPROVED AS TO FORM
THIS ___ DAY OF _____, 2019

By: _____
Attorney for Owner

Jean Savaree
(Print Name)

RESOLUTION NO. 2019-53_____

END OF DOCUMENT

DOCUMENT 00 5500

NOTICE TO PROCEED

Dated: October 4, 2019

To: BHS (Contractor)

Address: 3592 West 5th Av, Eugene, OR 97402

CONTRACT FOR: **SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY
MRF PHASE 1 IMPROVEMENTS PROJECT
AT 225 SHOREWAY RD, SAN CARLOS, CA 94070**

PROJECT NO: **CIP.600100-17**

You are notified that the Contract Time under the above Contract will commence to run on or within ten days before **October 15, 2019**. On that date, you are to start performing your obligations with respect to Work at the Site under the Contract Documents. In accordance with Article 2 of Document 00 5200 (Agreement), the dates of Substantial Completion and Final Completion for the entire Work are **May 18, 2020** and **August 16, 2020**, respectively (**308** calendar days from October 15, 2019).

Before you may start any Work at the Site, you must:

1. Submit certified Safety Program and related information
2. Submit copies of applicable permits

OWNER: SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY

By: _____ (Staff Signature)

Its: _____ (Name and Title)

END OF DOCUMENT

DOCUMENT 00 6113.13

CONSTRUCTION PERFORMANCE BOND

THIS CONSTRUCTION PERFORMANCE BOND (**Bond**) is dated _____, ____, 201__, in the amount of \$5,021,517 (**Penal Sum**), which is 100% of the Contract Sum and is entered into by and between the parties listed below to ensure the faithful performance of the Contract identified below. This Bond consists of this page and the Bond Terms and Conditions, Paragraphs 1 through 14 attached to this page. Any singular reference to BHS (**Contractor**), OneBeacon Insurance Group, Ltd. (**Surety**), South Bayside Waste Management Authority (**Owner**), or other party shall be considered plural where applicable.

CONTRACTOR:

BHS

3592 West 5th St
Address

Eugene, OR 97402
City/State/Zip

SURETY:

Atlantic Specialty Insurance Company

605 Highway 169 North, Suite 800
Principal Place of Business

Plymouth, MN 55441
City/State/Zip

CONSTRUCTION CONTRACT:

Agreement for the MRF Phase 1 Improvements Project, located at 225 Shoreway Rd, San Carlos, CA 94070, dated 9/26/2019, in the amount of \$5,021,517.

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)

Signature: _____

Name: _____

Title: _____

SURETY

Company: (Corp. Seal)

Signature: _____

Name: _____

Title: _____

BOND TERMS AND CONDITIONS

- 1.** Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to Owner and the State of California for the complete and proper performance of the Construction Contract, which is incorporated herein by reference.
- 2.** If Contractor completely and properly performs all of its obligations under the Construction Contract, Surety and Contractor shall have no obligation under this Bond.
- 3.** If there is no Owner Default, Surety's obligation under this Bond shall arise after:
 - 3.1** Owner provides Surety with written notice that Owner has declared a Contractor Default under the Construction Contract pursuant to the terms of the Construction Contract; and
 - 3.2** Owner has agreed to pay the Balance of the Contract Sum:
 - 3.2.1** To Surety in accordance with the terms of this Bond and the Construction Contract; or
 - 3.2.2** To a Contractor selected to perform the Construction Contract in accordance with the terms of this Bond and the Construction Contract.
- 4.** When Owner has satisfied the conditions of Paragraph3 above, Surety shall promptly (within 40 Days) and at Surety's expense elect to take one of the following actions:
 - 4.1** Arrange for Contractor, with consent of Owner, to perform and complete the Construction Contract (but Owner may withhold consent, in which case the Surety must elect an option described in Paragraphs 4.2, 4.3 or 4.4 below); or
 - 4.2** Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors or Construction entities; provided, that Surety may not select Contractor as its agent or independent contractor or Contractor without Owner's consent; or
 - 4.3** Undertake to perform and complete the Construction Contract by obtaining bids from qualified contractors or Construction entities acceptable to Owner for a contract for performance and completion of the Construction Contract and, upon determination by Owner of the lowest responsive and responsible Contractor, arrange for a contract to be prepared for execution by Owner and the contractor or Contractor selected with Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract; and, if Surety's obligations defined in Paragraph6 below, exceed the Balance of the Contract Sum, then Surety shall pay to Owner the amount of such excess; or
 - 4.4** Waive its right to perform and complete, arrange for completion, or obtain a new contractor or Contractor, and with reasonable promptness under the circumstances and, after investigation and consultation with Owner, determine in good faith its monetary obligation to Owner under Paragraph6 below, for the performance and completion of the Construction Contract and, as soon as practicable after the amount is determined, tender payment therefor to Owner with full explanation of the payment's calculation. If Owner accepts Surety's tender under this Paragraph 4.4, Owner may still hold Surety liable for future damages then unknown or unliquidated resulting from the Contractor Default, as agreed by Owner and Surety at the time of tender. If Owner disputes the amount of Surety's tender

under this Paragraph 4.4, Owner may exercise all remedies available to it at law to enforce Surety's liability under Paragraphs 6 and 7 below.

5. At all times Owner shall be entitled to enforce any remedy available to Owner at law or under the Construction Contract including, without limitation, and by way of example only, rights to perform work, protect Work, mitigate damages, advance critical Work to mitigate schedule delay, and coordinate Work with other consultants or contractors.
6. If Surety elects to act under Paragraphs 4.1, 4.2 or 4.3 above, within the time period provided in Paragraph 4, above, and complies with its obligations under this Bond, Surety's obligations under this Bond are commensurate with Contractor's Construction Contract obligations. Surety's obligations include, but are not limited to:
 - 6.1 Contractor's obligations to complete the Construction Contract and correct Defective Work;
 - 6.2 Contractor's obligations to pay liquidated damages; and
 - 6.3 To the extent otherwise required of Contractor under the Construction Contract, Contractor's obligations to pay additional legal, design professional, and other costs not included within liquidated damages resulting from Contractor Default (but excluding attorney's fees incurred to enforce this Bond).
7. If Surety does not elect to act under Paragraphs 4.1, 4.2, 4.3, or 4.4, above, within the time period provided in Paragraph 4, above, or comply with its obligations under this Bond, then Surety shall be deemed to be in default on this Bond ten Days after receipt of an additional written notice from Owner to Surety demanding that Surety perform its obligations under this Bond. Such Surety default shall be independent of the Contractor Default. To the extent Surety's independent default causes Owner to suffer damages including, but not limited to, delay damages, which are different from, or in addition to (but not duplicative of) damages which Owner is entitled to receive under the Construction Contract, Surety shall also be liable for such damages. In the event any Surety obligation following its independent default is inconsistent or conflicts with California Civil Code Section 2809, or any other law which either prohibits, restricts, limits or modifies in any way any obligation of a surety which is larger in amount or in any other respect more burdensome than that of the principal, Surety hereby waives the provisions of such laws to that extent.
8. If Surety elects to act under Paragraphs 4.1, 4.3 or 4.4 above, within the time period provided in Paragraph 4, above, and complies with all obligations under this Bond, Surety's monetary obligation under this Bond is limited to the Penal Sum.
9. No right of action shall accrue on this Bond to any person or entity other than Owner or its successors or assigns.
10. Surety hereby waives notice of any change, alteration or addition to the Construction Contract or to related subcontracts, design agreements, purchase orders and other obligations, including changes of time, and of any Owner action in accordance with Paragraph 5 above. Surety consents to all terms of the Construction Contract, including provisions on changes to the Contract. No extension of time, change, alteration, Modification, deletion, or addition to the Contract Documents, or of the Work (including services) required thereunder, or any Owner action in accordance with Paragraph 5 above shall release or exonerate Surety on this Bond or in any way affect the obligations of Surety on this Bond, unless such action is an Owner Default.
11. Any proceeding, legal or equitable, under this Bond shall be instituted in any court of competent jurisdiction where a proceeding is pending between Owner and Contractor regarding the Construction Contract, or in the courts of the County of San Mateo, or in a court of competent jurisdiction in the location in which the Work is located. Communications from Owner to Surety

under Paragraph 3.1 above shall be deemed to include the necessary agreements under Paragraph 3.2 above unless expressly stated otherwise.

12. All notices to Surety or Contractor shall be mailed or delivered (at the address set forth on the signature page of this Bond), and all notices to Owner shall be mailed or delivered as provided in Document 00 5200 (Agreement). Actual receipt of notice by Surety, Owner or Contractor, however accomplished, shall be sufficient compliance as of the date received at the foregoing addresses.
13. Any provision in this Bond conflicting with any statutory or regulatory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein.

14. Definitions

- 14.1 **Balance of the Contract Sum:** The total amount payable by Owner to Contractor pursuant to the terms of the Construction Contract after all proper adjustments have been made under the Construction Contract, for example, deductions for progress payments made, and increases/decreases for approved Modifications to the Construction Contract.
- 14.2 **Construction Contract:** The agreement between Owner and Contractor identified on the signature page of this Bond, including all Contract Documents and changes thereto.
- 14.3 **Contractor Default:** Material failure of Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract, limited to "default" or any other condition allowing a termination for cause as provided in Document 00 7200 (General Conditions).
- 14.4 **Owner Default:** Material failure of Owner, which has neither been remedied nor waived, to pay Contractor progress payments due under the Construction Contract or to perform other material terms of the Construction Contract, if such failure is the cause of the asserted Contractor Default and is sufficient to justify Contractor termination of the Construction Contract.

END OF DOCUMENT

DOCUMENT 00 6113.16

CONSTRUCTION LABOR AND MATERIAL PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS:

1.01 THAT WHEREAS, **SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY (Owner)** has awarded to BHS, as Principal, Project Number **CIP.600100-17** dated the ____ day of _____, 2019 (the **Contract**), titled THE MRF PHASE 1 IMPROVEMENTS PROJECT in the amount of \$5,021,517, which Contract is by this reference made a part hereof, for the work of the following Contract:

BHS to install/improve Glass Clean-Up System, Bypass and Residue Reroute Systems, and In-Feed Metering Bin.

1.02 AND WHEREAS, Principal is required to furnish a bond in connection with the Contract to secure the payment of claims of laborers, mechanics, material suppliers, and other persons as provided by law;

1.03 NOW, THEREFORE, we, the undersigned Principal and **Atlantic Specialty Insurance Company**, as Surety, are held and firmly bound unto Owner in the sum of 100% OF THE CONTRACT PRICE **(\$5,021,517)** for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

1.04 THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, or its executors, administrators, successors, or assigns approved by Owner, or its subcontractors shall fail to pay any of the persons named in California Civil Code Section 9100, or amounts due under the State of California Unemployment Insurance Code with respect to work or labor performed under the Contract, or for any amounts required to be deducted, withheld, and paid over to the State of California Employment Development Department from the wages of employees of Principal and subcontractors pursuant to Section 13020 of the State of California Unemployment Insurance Code with respect to such work and labor, that Surety will pay for the same in an amount not exceeding the sum specified in this bond, plus reasonable attorneys' fees, otherwise the above obligation shall become and be null and void.

1.05 This bond shall inure to the benefit of any of the persons named in California Civil Code Section 9100, as to give a right of action to such persons or their assigns in any suit brought upon this bond. The intent of this bond is to comply with the California Mechanic's Lien Law.

1.06 Surety, for value received, hereby expressly agrees that no extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Contract, or to the work to be performed thereunder, shall in any way affect the obligation of this bond; and it does hereby waive notice of any such extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Contract, or to the work to be performed thereunder.

1.07 Surety's obligations hereunder are independent of the obligations of any other surety for the payment of claims of laborers, mechanics, material suppliers, and other persons in connection with Contract; and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing Owner's rights against the other.

1.08 Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

IN WITNESS WHEREOF, we have hereunto set our hands this ____ day of _____, 20__.

CONTRACTOR AS PRINCIPAL

SURETY

Company: (Corp. Seal)

Company: (Corp. Seal)

Signature

Signature

Name

Atlantic Specialty Insurance Company_____
Name

Title

Title

Street Address

605 Highway 169 North, Suite 800_____
Street Address

City, State, Zip Code

Plymouth, MN 55441_____
City, State, Zip Code

END OF DOCUMENT

DOCUMENT 00 6325

SUBSTITUTION REQUEST FORM

To: **SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY, Owner**
[Phone Number (650) 802-3507]

PROJECT: MRF PHASE 1 IMPROVEMENTS	Contractor: BHS
Owner Project No: CIP.600100-17	

Substitution Request By:	Firm:
--------------------------	-------

Transmittal Record	Attn:	Firm:	Date Sent:	Date Rec'd:	Date Due:
Contractor to Owner					
Contractor to Architect					
Owner / Architect to Consultant					
Architect to Owner Representative					
Owner Representative to Contractor					

We hereby submit for your consideration the following product instead of the specified key item (as listed in the Order Confirmation Equipment Detail Cost Table) for the Project:

Section / Drawing	Article	Specified Item
Proposed Substitution:		

We have (a) attached manufacturer's literature, including complete technical data and laboratory test results, if applicable, (b) attached an explanation of why proposed substitution is a true equivalent to specified item, (c) included complete information on changes to Contract Documents that the proposed substitution will require for its proper installation, and (d) filled in the blanks below:

Contractor to complete questions that follow and certifies to the accuracy of all answers:

<p>A. Does the substitution affect dimensions shown on Drawings? Yes ___ / No ___. If No, please explain proposed mitigation and why substitution is equivalent to originally specified item:</p>
<p>B. Will the undersigned pay for changes to the building design, including engineering and detailing costs caused by the requested substitution? Yes ___ / No ___. If No, please state reasons explain why substitution is equivalent to originally specified item:</p>
<p>C. What effect does the substitution have on other trades? No effect: ___ / Some effect ___. If substitution will affect other trades, please explain the effect and why substitution is equivalent to originally specified item:</p>
<p>D. Will substitution cause change to Project Schedule, or to critical delivery dates? Add? Shorten? If the substitution will add to schedule dates or affect critical activities, please explain why substitution is equivalent to originally specified item:</p>
<p>E. Please describe differences between proposed substitution and specified item? Please explain and identify any and all differences, and please explain why substitution is equivalent to originally specified item:</p>
<p>F. What is the Cost Differential to Contractor in original specified item and proposed substitution including all mark-ups? [If substitution requested during contract period, skip this question.]</p>
<p>G. Are Manufacturer's guarantees for the proposed item the same as for item specified? Yes ____; No _____. If No, please explain why substitution is equivalent to originally specified item:</p>

H.	Contractor accepts full responsibility for delays caused by redesign of other items of the Work necessitated by substitution? Yes ___ / No ___. If No, please state reasons and explain why substitution is equivalent to originally specified item:
I.	Contractor states that the function, appearance and quality are equivalent or superior to the specified item? Yes ___ / No ___. If No, please explain why substitution is equivalent to originally specified item:

We certify that the function, appearance, and quality of the proposed substitution are equivalent or superior to those of the specified item, except as we may specifically state otherwise in this request.

Submitted by: _____ Signature: _____

Firm: _____ Date: _____

Address: _____ Phone/ Fax: _____

Remarks: _____

<p>Consultant Response:</p> <p><input type="radio"/> Accepted</p> <p><input type="radio"/> Not Accepted</p> <p><input type="radio"/> Accepted As Noted</p> <p><input type="radio"/> Received Too Late</p>
--

<p>Owner Representative Response:</p> <p><input type="radio"/> Accepted</p> <p><input type="radio"/> Not Accepted</p> <p><input type="radio"/> Accepted As Noted</p> <p><input type="radio"/> Received Too Late</p>
--

Remarks: _____

By: _____

Remarks: _____

By: _____

END OF DOCUMENT

DOCUMENT 00 6530

AGREEMENT AND RELEASE OF ANY AND ALL CLAIMS
[Public Contract Code Section 7100]

THIS AGREEMENT AND RELEASE OF ANY AND ALL CLAIMS (**Agreement and Release**), made and entered into this ___day of _____, **20**__, by and between **SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY (Owner)**, and **BHS (Contractor)**, whose place of business is at 3592 West 5th Av, Eugene, OR 97402.

RECITALS

- A. Owner and Contractor entered into the "**Contract**" for construction of Owner's **MRF Phase 1 Improvements Project** located at **225 Shoreway Rd, San Carlos**, California.
- B. The Work under the Contract has been completed.

AGREEMENT

NOW THEREFORE, it is mutually agreed between Owner and Contractor as follows:

- 1. Contractor will not be assessed liquidated damages except as detailed below:

Original Contract Sum	\$ 5,172,163 _____
Modified Contract Sum	\$ _____
Payment to Date	\$ _____
Liquidated Damages	\$ _____
Payment Due Contractor	\$ _____

- 2. Subject to the provisions of this Agreement and Release, Owner will forthwith pay to Contractor the sum of \$5,172,163 under the Contract, less any amounts withheld under the Contract or represented by any Notice to Withhold Funds on file with Owner as of the date of such payment.
- 3. Contractor acknowledges and hereby agrees that there are no unresolved or outstanding claims in dispute against Owner arising from the Contract, except for the claims described in Paragraph 4 of this Document 00 6530. It is the intention of the parties in executing this Agreement and Release that this Agreement and Release shall be effective as a full, final and general release of all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses and liabilities of Contractor against Owner, and all if its agents, employees, consultants, inspectors, representatives, assignees and transferees, except for the Disputed Claims set forth in Paragraph 4 of this Document 00 6530. Nothing in this Agreement and Release shall limit or modify Contractor's continuing obligations described in Paragraph 6 of this Document 00 6530.
- 4. The following claims submitted under Document 00 7200 (General Conditions), Article 12, are disputed (**Disputed Claims**) and are specifically excluded from the operation of this Agreement and Release.

[Insert information in Chart below, affix attachment if necessary]

CLAIM NO.	DATE SUBMITTED	DESCRIPTION OF CLAIM	AMOUNT OF CLAIM

5. Consistent with California Public Contract Code Section 7100, Contractor hereby agrees that, in consideration of the payment set forth in Paragraph 2 of this Document 00 6530, Contractor hereby releases and forever discharges Owner, and all of its agents, employees, consultants, inspectors, assignees and transferees from any and all liability, claims, demands, actions or causes of action of whatever kind or nature arising out of or in any way concerned with the Work under the Contract.
6. Guarantees and warranties for the Work, and any other continuing obligation of Contractor, shall remain in full force and effect as specified in the Contract Documents.
7. Contractor shall immediately defend, indemnify and hold harmless Owner, any of the Owner's Representatives, Project Manager, and all of their agents, employees, consultants, inspectors, assignees and transferees, from any and all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses and liabilities that may be asserted against them by any of Contractor's suppliers and/or Subcontractors of any tier and/or any suppliers to them for any and all labor, materials, supplies and equipment used, or contemplated to be used in the performance of the Contract, except for the Disputed Claims set forth in Paragraph 4 of this Document 00 6530.
8. Contractor hereby waives the provisions of California Civil Code Section 1542, which provide as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

9. The provisions of this Agreement and Release are contractual in nature and not mere recitals and shall be considered independent and severable, and if any such provision or any part thereof shall be at any time held invalid in whole or in part under any federal, state, county, municipal or other law, ruling, or regulation, then such provision, or part thereof shall remain in force and effect only to the extent permitted by law, and the remaining provisions of this Agreement and Release shall also remain in full force and effect, and shall be enforceable.
10. Contractor represents and warrants that it is the true and lawful owner of all claims and other matters released pursuant to this Agreement and Release, and that it has full right, title and authority to enter into this instrument. Each party represents and warrants that it has been represented by counsel of its own choosing in connection with this Agreement and Release.

11. All rights of Owner shall survive completion of the Work or termination of the Contract, and execution of this Agreement and Release.

***** CAUTION: THIS IS A RELEASE - READ BEFORE EXECUTING *****

OWNER: SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY

By: _____
Signature

Name: Joe LaMariana _____
Print

Its: Executive Director _____
Title

ATTEST:

By: _____
Secretary

Name: Cyndi Urman _____
Print

CONTRACTOR: BHS

By: _____
Signature

Name: _____
Print

Its: _____
Title

[CONTRACTOR]

By: _____
Signature

Name: _____
Print

Its: _____
Title

REVIEWED AS TO FORM:

Dated: _____, [201__]

By: Jean Savaree _____
Counsel for Owner

Name: _____
Print

END OF DOCUMENT

DOCUMENT 00 6536

GUARANTY

TO: The **SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY (Owner)**, for construction of the MRF PHASE 1 IMPROVEMENTS PROJECT, located at 225 Shoreway Rd, San Carlos, California.

The undersigned guarantees all construction performed on this Project and also guarantees all material and equipment incorporated therein.

BHS Standard Warranty Terms

For a period of 12 months or 2,000 hours, whichever occurs first, following Notice of Completion, BHS warrants that its products will reasonably conform to the description contained in this agreement and they have been prepared, manufactured or produced in a good workmanlike manner, are free of defects of workmanship or materials, and are of a standard quality or better as is common in the industry. This warranty is for parts only, and also covers direct damages (to the affected, not adjacent, part) and comprehensive repair to software-related items. At its option and expense, BHS will promptly repair or replace the products and/or component parts sold under this agreement, which do not conform to this warranty. The SBWMA will retain the full BHS warranty (for parts that BHS is building/installing per this Contract) if SBWMA needs to assign work to correct defective parts/subsystems in order to complete work on time/per spec.

NRT optical sorter warranty will be provided for a period of 3 years following Notice of Completion. This warranty covers any defects in material or workmanship of all optic sensor related components inside the detector box including, but not limited to, the lenses, boards, and photo diodes. This warranty does not cover wear items to include, but not limited to, bulbs and glass shields. This warranty does not cover components affected or damaged by external sources including, but not limited to, any damages caused by non-NRT employees, the entry of external liquids and/or other materials into the detector box, and misuse.

As to equipment and/or component parts manufactured by third parties, BHS will pass through any third party warranty to the greatest extent allowed by the warranty and by law, which should last at least one year (per California State Labor Board requirements).

This warranty shall not apply to WEAR PARTS, or any product that has been subjected to misuse, misapplication, neglect (including but not limited to improper maintenance and storage), accident, improper installation, modification (including but not limited to use of unauthorized parts or attachments) that has not been authorized in writing and unauthorized adjustment or repair.

It is expressly agreed and understood that BHS's **SOLE LIABILITY UNDER THIS WARRANTY, WHETHER IN CONTRACT, TORT OR OTHERWISE, AND OWNER'S SOLE REMEDY IS LIMITED TO THE REPAIR OR REPLACEMENT OF THE PRODUCTS, OR THE PARTS THEREOF**, excluding coverage of direct damages (to the affected, not adjacent, part) and comprehensive repair to software-related items. The parties agree that **BHS WILL NOT BE LIABLE FOR** any other injury, loss damage or expense, whether incidental or consequential, including but not limited to loss of use, income, profit or production, in connection with the sale, installation, use of, inability to use, or the repair or replacement of BHS's products. **THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED.**

OWNER shall notify BHS immediately of discovery of any defects, problems, malfunctioning or difficulties or indications thereof, and within ten (10) days of discovery, shall follow up with written notification. Any failure to immediately report, to give written notification, and to **RETURN THE DEFECTIVE PARTS** to BHS, shall subject OWNER to responsibility for any expense or damage that probably could have been prevented, and at the option of BHS may void this warranty. Wear parts are not included in warranty.

If within one year after the date of Notice of Completion, or such other period of time as may be prescribed by laws or regulations, or by the terms of Contract Documents or any extended warranty or guaranty, any Work is found to be Defective, Contractor shall promptly, without cost to Owner and in agreement with the Owner, correct such Defective Work. Contractor shall remove any Defective Work rejected by Owner and replace it with Work that is not Defective, and satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If Contractor fails to develop a plan to comply with the agreed-upon repairs within 10 days of issuance of need for corrective action by the Owner, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the Defective Work corrected or the rejected Work removed and replaced. Contractor shall pay for all claims, costs, losses and damages caused by or resulting from such removal and replacement. Where Contractor fails to correct Defective Work, or defects are discovered outside the correction period, Owner shall have all rights and remedies granted by law.

Date: _____, ____, 2019

BHS
Contractor's name

By: _____
Signature

Print Name

Title

3592 West 5th Av
Street Address

Eugene, OR, 97402
City, State, Zip code

END OF DOCUMENT

DOCUMENT 00 7200

GENERAL CONDITIONS

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GENERAL CONDITIONS

ARTICLE 1 - INTERPRETATION OF CONTRACT DOCUMENTS

1.01 Interpretation Of Documents

- A. Contract Documents are complementary; what is called for by one is as binding as if called for by all.
- B. Individual Contract Documents subdivide at first level into Articles, and then into paragraphs.

1.02 Order Of Precedence Of Documents

- A. In the case of discrepancy or ambiguity in the Contract Documents, the following order of precedence shall prevail:
 - 1. Modifications in inverse chronological order (i.e., most recent first), and in the same order as specific portions they are modifying;
 - 2. Agreement Forms (Document 00 5200 and other 5000 and 6000 series Documents), and terms and conditions referenced therein;
 - 3. Supplementary General Conditions (Document 00 7301 and other 7300 series Documents), if included;
 - 4. General Conditions (Document 00 7200);
 - 5. Division 01 General Requirements, if included;
 - 6. Drawings and Technical Specifications (Division 02 and above);
 - 7. Written words over figures, unless obviously incorrect;
 - 8. Figured dimensions over scaled dimensions;
 - 9. Large-scale Drawings over small-scale Drawings.
- B. Any conflict between Drawings and Technical Specifications (Division 2 and above) will be resolved in favor of the document of the latest date (i.e., the most recent document), and if the dates are the same or not determinable, then in favor of Specifications.
- C. Any conflict between a bill or list of materials shown in the Contract Documents and the actual quantities required to complete Work required by Contract Documents, will be resolved in favor of the actual quantities.
- D. All Technical Specifications included in the Project manual shall be included within the Contract Documents unless identified otherwise.

ARTICLE 2 - INVESTIGATIONS

2.01 Investigations Required

- A. Prior to and as a condition of executing Document 00 5200 (Agreement), Contractor shall make reasonable efforts to investigate fully the Work of the Contract. Contractor shall visit the Site, examine thoroughly and understand fully the nature and extent of the Contract Documents, Work, Site, locality, actual conditions and as-built conditions.
- B. Contractor's investigation shall include, without limitation, requesting and thoroughly examining of all reports of exploration and tests of subsurface conditions, as-built drawings, drawings, product specification(s) or reports, made available by Owner for contracting purposes or during Contractor's pre-Cost Proposal investigations, of existing above ground and (to the extent applicable) below ground conditions (together, **Existing Conditions Data**), including, as applicable, Underground Facilities, which may appear or be referenced in the Project Manual or the in the Contract Documents, and all local conditions, and federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto.
- C. Contractor's investigations shall consider fully the fact that Existing Conditions Data is in many cases based on information furnished to Owner by others (e.g., the prior owner or builders), and that due to their age or their chain of custody since preparation, may not meet current industry standards for accuracy. Contractor shall also: (i.) provide Owner with prompt written notice of all conflicts, errors, ambiguities, or discrepancies of any type, that it discovered in or among the

Contract Documents and the Existing Conditions Data, and (ii.) subject to Owner's approval, conduct any such additional or supplementary examinations, investigations, explorations, tests, studies and data compilations, concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site or otherwise, which Contractor may deem necessary in order to perform and furnish the Work in accordance with the terms and conditions of Contract Documents.

- D. During performance of the Contract, Contractor will be charged with knowledge of all information that it should have learned in performing these investigations and other obligations, and shall not be entitled to Change Orders (time or compensation) due to any information, error, inconsistency, omission, or conditions that Contractor should have known as a part of this Work. Contractor shall be responsible for the resultant losses, including, without limitation, the cost of correcting Defective Work.

2.02 Limited Reliance Permitted On Owner's Existing Conditions Data

- A. Regarding aboveground and as-built conditions shown on the Contract Documents or supplied by Owner, such information has been compiled in good faith, however, Owner does not expressly or impliedly warrant or represent that such information is correctly shown or indicated, or otherwise complete for construction purposes. Contractor must independently verify such information as part of its investigations, and where conditions are not reasonably verifiable or discrepancies are identified, bring such matters to Owner's attention through written questions. In executing Document 00 5200 (Agreement), Contractor shall rely on the results of its own independent investigation and shall not rely on Owner-supplied information regarding aboveground conditions and as-built conditions, and Contractor shall accept full responsibility for its verification work sufficient to complete the Work as intended.
- B. Regarding subsurface conditions other than Underground Facilities shown on the Contract Documents or otherwise supplied by Owner, Contractor may rely only upon the general accuracy of actual reported depths, actual reported character of materials, actual reported soil types, actual reported water conditions, or actual obstructions shown or indicated in the Contract Documents. Owner is not responsible for the completeness of any subsurface condition information, Contractor's conclusions or opinions drawn from any subsurface condition information, or subsurface conditions that are not specifically shown. (For example, Owner is not responsible for soil conditions in areas contiguous to areas where a subsurface condition is shown.)

2.03 Investigation Requirements For Excavation And Utilities Relocation Projects

- A. As part of its investigations for Projects involving excavation and/or relocation of existing utilities, Contractor shall make reasonable efforts to verify information regarding Underground Facilities, including but not limited to, requesting additional information or verification of information as necessary.
- B. Because of the nature and location of Owner and the Project, the existence of Underground Facilities is deemed inherent in the Work of the Contract, as is the fact that Underground Facilities are not always accurately shown or completely shown on as-built records, both as to their depth and location. Contractor shall, therefore, take care to note the existence and potential existence of Underground Facilities, in particular, above and below grade structures, drainage lines, storm drains, sewers, water, gas, electrical, chemical, hot water, and other similar items and utilities. Contractor shall carefully consider all supplied information, request additional information Contractor may deem necessary, and visually inspect the Site for above ground indications of Underground Facilities (such as, for example not by way of limitation, the existence of existing service laterals, appurtenances or other types of utilities, indicated by the presence of an underground transmission main or other visible facilities, such as buildings, new asphalt, meters and junction boxes, on or adjacent to the Site). Contractor shall also consider local underground conditions and typical practices for Underground Facilities, either through its own direct knowledge or through its subcontractors, and fully consider this knowledge in assessing the existing information and the reasonableness of its reliance.

ARTICLE 3 - SUBCONTRACTORS

3.01 Subcontractor Listing Law

- A. Though the selection of Contractor did not use a bidding process subject to Subcontractor Listing law, Public Contract Code Section 4101, et seq., Contractor shall follow the Subcontractor Listing law procedures related to Contractor substitute of any person or firm in place of any mechanical and/or electrical installation Subcontractor listed in the Contract.
- B. Subcontractors shall not assign or transfer their subcontracts or permit them to be performed by any other contractor without Owner's written approval.

3.02 Subcontracts

- A. Subcontract agreements shall preserve and protect the rights of Owner under the Contract Documents so that subcontracting will not prejudice such rights. To the extent of the Work to be performed by a Subcontractor, Contractor shall require the Subcontractor's written agreement (i) to be bound to the terms of Contract Documents and (ii) to assume vis-à-vis Contractor all the obligations and responsibilities that Contractor assumes toward Owner under the Contract Documents. (These agreements include for example, and not by way of limitation, all warranties, claims procedures and rules governing submittals of all types to which Contractor is subject under the Contract Documents.)
- B. Contractor shall provide for the assignment to Owner of all rights any Subcontractor (of any tier) may have against any manufacturer, supplier, or distributor for breach of warranties and guarantees relating to the Work performed by the Subcontractor under the Contract Documents. Subcontracts shall provide and acknowledge Owner as an intended third-party beneficiary of each subcontract and supply contract (of any tier).

ARTICLE 4 - DRAWINGS AND SPECIFICATIONS

4.01 Intent Of Drawings And Specifications

- A. Contractor shall interpret words or phrases used to describe Work (including services), materials, or equipment that have well-known technical or construction industry or trade meaning in accordance with that meaning. Drawings' intent specifically includes the intent to depict construction that complies with all applicable laws, codes and standards.
- B. As part of the "**Work**," Contractor shall provide all labor, materials, equipment, machinery, tools, facilities, services, employee training and testing, hoisting facilities, Shop Drawings, storage, testing, security of the work site, transportation, disposal, the securing of all necessary or required field dimensions, the cutting or patching of existing materials, notices, permits, documents, reports, agreements and any other items required or necessary to timely and fully complete Work described and the results intended by Contract Documents and, in particular, Drawings and Specifications. Divisions and Specification Sections and the identification on any Drawings shall not control Contractor in dividing Work among Subcontractors or suppliers or delineating the Work to be performed by any specific trade.
- C. Contractor shall perform reasonably implied parts of Work as "**incidental work**" although absent from Drawings and Specifications. Incidental work includes any work not shown on Drawings or described in Specifications that is necessary or normally or customarily required as a part of the Work shown on Drawings or described in Specifications. Incidental work includes any work necessary or required to make each installation satisfactory, legally operable, functional, and consistent with the intent of Drawings and Specifications or the requirements of Contract Documents. Contractor shall perform incidental work without extra cost to Owner. Incidental work shall be treated as if fully described in Specifications and shown on Drawings, and the expense of incidental work shall be included in price quoted and Contract Sum.

4.02 Checking Of Drawings And Specifications

- A. Before undertaking each part of Work, Contractor shall carefully study and compare Contract Documents and check and verify pertinent figures shown in the Contract Documents and all applicable field measurements. Contractor shall be responsible for any errors that might have been avoided by such comparison. Figures shown on Drawings shall be followed; Contractor shall not

scale measurements. Contractor shall promptly report to Owner, in writing, any conflict, error, ambiguity or discrepancy that Contractor may discover. Contractor shall obtain a written interpretation or clarification from Owner before proceeding with any Work affected thereby. Contractor shall provide Owner with a follow-up correspondence every ten Days until it receives a satisfactory interpretation or clarification.

4.03 Interpretation Of Drawings And Specifications

- A. A typical or representative detail on Drawings shall constitute the standard for workmanship and material throughout corresponding parts of Work. Where necessary, and where reasonably inferable from Drawings, Contractor shall adapt such representative detail for application to such corresponding parts of Work. The details of such adaptation shall be subject to prior approval by Owner. Repetitive features shown in outline on Drawings shall be in exact accordance with corresponding features completely shown.
- B. Should any discrepancy appear or any misunderstanding arise as to the import of anything contained in Drawings and Specifications, or should Contractor have any questions or requests relating to Drawings or Specifications, Contractor shall refer the matter to Owner, in writing, with a copy to the Architect/Engineer. Owner will issue with reasonable promptness written responses, clarifications or interpretations as Owner may determine necessary, which shall be consistent with the intent of and be reasonably inferable from Contract Documents. Such written clarifications or interpretations shall be binding upon Contractor. If Contractor believes that a written response, clarification or interpretation justifies an adjustment in the Contract Sum or Contract Time, Contractor shall give Owner prompt written notice. If the parties are unable to agree to the amount or extent of the adjustment, if any, then Contractor shall perform the Work in conformance with Owner's response, clarification, or interpretation and may make a written claim for the adjustment as provided in Article 12.
- C. The following general specifications shall apply wherever in the Specifications, or in any directions given by Owner in accordance with or supplementing Specifications, it is provided that Contractor shall furnish materials or manufactured articles or shall do Work for which no detailed specifications are shown. Materials or manufactured articles shall be of standard quality or better as is common in the industry, in quality and workmanship, obtainable in the market from firms of established good reputation. If not ordinarily carried in stock, the materials or manufactured articles shall conform to industry standards for first class materials or articles of the kind required, with due consideration of the use to which they are to be put. Work shall conform to the usual standards or codes, such as those cited herein, for first class work of the kind required. Contractor shall specify in writing to Owner, at least 10 Business Days prior to furnishing such materials (as specified in Order Confirmation) or performing such Work, the materials to be used or Work to be performed under this Paragraph.

4.04 Use Of Drawings And Specifications.

- A. Drawings, Specifications and other Contract Documents were prepared for use for Work of Contract Documents only. No part of Contract Documents applicable to the system level shall be used for any other construction or for any other purpose except with the written consent of Owner. Any unauthorized use of Contract Documents is prohibited and at the sole liability of the user.

ARTICLE 5 - COMMENCEMENT OF THE WORK

5.01 Submission Of Required Schedules

- A. Contractor shall submit to Owner in draft for review and discussion at the Preconstruction Conference, and in final prior to the first payment application, the following schedules:
 - 1. Milestone Schedule
 - 2. Schedule of Submittals.
- B. No progress payment shall be due or owing to Contractor until such schedules are submitted to and acceptable to Owner and/or Architect/Engineer as meeting the requirements of the Contract Documents. In Owner's sole discretion, Owner may elect to instead withhold a portion of any progress payment for unacceptable compliance with contract requirements for such schedules.

- C. Owner's acceptance of Contractor's schedules will not create any duty of care or impose on Owner any responsibility for the sequencing, scheduling or progress of Work nor will it interfere with or relieve Contractor from Contractor's full responsibility therefore.

5.02 Commencement Date Of Contract Time

- A. The Contract Time will commence to run on the 60th Day after the issuance of the Notice of Award or, if a Notice to Proceed is given, on the date indicated in the Notice to Proceed.
- B. Owner may give a Notice to Proceed at any time within 60 Days after the Notice of Award. Contractor shall not do any Work at the Site prior to the date on which the Contract Time commences to run.

ARTICLE 6 - CONTRACTOR'S ORGANIZATION AND EQUIPMENT

6.01 Contractor's Legal Address

- A. Address and facsimile number given in Contractor's Cost Proposal are hereby designated as Contractor's legal address and facsimile number. Contractor may change its legal address and facsimile number by notice in writing, delivered to Owner, which in conspicuous language advises Owner of a change in legal address or facsimile number, and which Owner accepts in writing. Delivery to Contractor's legal address or depositing in any post office or post office box regularly maintained by the United States Postal Service, in a wrapper with postage affixed, directed to Contractor at Contractor's legal address, or of any drawings, notice, letter or other communication, shall be deemed legal and sufficient service thereof upon Contractor. Facsimile to Contractor's designated facsimile number of any letter, memorandum, or other communication on standard or legal sized paper, with proof of facsimile transmission, shall be deemed legal and sufficient service thereof upon Contractor.

6.02 Contractor's Superintendents Or Forepersons

- A. Contractor shall at all times be represented on Site by one or more superintendents or forepersons authorized and competent to receive and carry out any instructions that Owner may give, and shall be liable for faithful observance of instructions delivered to Contractor or to authorized representative or representatives on Site.

6.03 Proficiency In English

- A. Supervisors, security guards, safety personnel and employees who have unescorted access to the Site shall possess proficiency in the English language in order to understand, receive and carry out oral and written communications or instructions relating to their job functions, including safety and security requirements.

6.04 Contractor's And Subcontractors' Employees

- A. Contractor shall employ, and shall permit its Subcontractors to employ, only competent and skillful personnel to do Work. If Owner notifies Contractor that any of its employees, or any of its Subcontractors' employees on Work is incompetent, unfaithful, disorderly or profane, or fails to observe customary standards of conduct or refuses to carry out any provision of the Contract Documents, or uses threatening or abusive language to any person on Work representing Owner, or violates sanitary rules, or is otherwise unsatisfactory, and if Owner requests that such person be discharged from Work, then Contractor or its Subcontractor shall immediately submit a plan for mitigation or discharge such person from Work. If after ten days, the offending employee has not mitigated his or her inappropriate behavior, that person will be discharged from Work and will not be re-employed on the Work except with consent of Owner.

6.05 Contractor's Use Of The Site

- A. Contractor shall not make any arrangements with any person to permit occupancy or use of any land, structure or building within the limits of the Work, for any purpose whatsoever, either with or without compensation, in conflict with any agreement between Owner and any Owner, former Owner or tenant of such land, structure or buildings. Contractor may not occupy Owner-owned

property outside the limit of the Work as indicated on the Drawings unless it obtains prior approval from Owner.

6.06 Contractor's Site Office

- A. Unless expressly provided otherwise in the Contract Documents, Contractor shall provide a site office staffed by a resident project manager or job superintendent.

ARTICLE 7 - OWNER'S ADMINISTRATION OF WORK

7.01 Owner's Representative(s)

- A. Owner's Representative(s) will have limited authority to act on behalf of Owner as set forth in the Contract Documents.
- B. Except as otherwise provided in these Contract Documents or subsequently identified in writing by Owner, Owner will issue all communications to Contractor through Owner's Representative, and Contractor shall issue all communications to Owner through Owner's Representative in a written document delivered to Owner.
- C. Should any direct communications between Contractor and Owner's consultants, architects or engineers not identified in Article 2 of Document 00 5200 (Agreement) occur during field visits or by telephone, Contractor shall immediately confirm them in a written document copied to Owner.

7.02 Owner's Observation Of The Work

- A. Work shall be performed under Owner's general observation and administration. Contractor shall comply with Owner's directions and instructions in accordance with the terms of Contract Documents, but nothing contained in these General Conditions shall be taken to relieve Contractor of any obligations or liabilities under the Contract Documents. Owner's failure to review or, upon review, failure to object to any aspect of Work reviewed, shall not be deemed a waiver or approval of any non-conforming aspect of Work.
- B. Subject to those rights specifically reserved in the Contract Documents, Owner will not supervise, or direct, or have control over, or be responsible for, Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or Contractor's failure to comply with laws and regulations applicable to the furnishing or performance of Work. Owner will not be responsible for Contractor's failure to perform or furnish the Work in accordance with Contract Documents.

7.03 Consultant's Observation Of Work

- A. Owner may engage one or more of the following to assist in administering the Work: an Architect/Engineer, Project Manager, Construction Manager, or any other independent consultant (collectively for purposes of this Article 7, **Consultant**). If so engaged, Consultant will advise and consult with Owner, but will have authority to act on behalf of Owner only to extent provided in the Contract Documents or as set forth in writing by Owner. Consultant will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with Work. Consultant will not be responsible for or have control over the acts or omissions of Contractor, Subcontractors or their agents or employees, or any other persons performing Work.
- B. Consultant may review Contractor's Submittals, such as Shop Drawings, Product Data, and Samples, but only for conformance with design concept of Work and with information given in the Contract Documents.
- C. Consultant may visit the Site at intervals appropriate to stage of construction to become familiar generally with the progress and quality of Work and to determine in general if Work is proceeding in accordance with Contract Documents. Based on its observations, Consultant may recommend to Owner that it disapproves or rejects Work that Consultant believes to be Defective or will not produce a complete Project that conforms to Contract Documents, or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by Contract Documents. Consultant may also recommend to Owner special inspection or testing of Work, whether or not the Work is fabricated, installed, or completed.

- D. Consultant may conduct observations or inspections to recommend to Owner the dates that Contractor has achieved Substantial Completion and Final Completion, and will receive and forward to Owner for review written warranties and related documents required by Contract Documents.

7.04 Owner's And Consultant's Exercise Of Contract Responsibilities

- A. Owner, Consultant, and all Owner's representatives, in performing their duties and responsibilities under the Contract Documents, accept no duties, responsibilities or duty of care, nor may the same be implied or inferred, towards Contractor, any Subcontractor, sub-Subcontractor or supplier, except those set forth expressly in the Contract Documents.

7.05 Owner's Right Of Access To The Work

- A. During performance of Work, Owner, Consultant, and all Owner's representatives may at any time enter upon Work, shops or studios where any part of the Work may be in preparation, or factories where any materials for use in Work are being or are to be manufactured, and Contractor shall provide proper and safe facilities for this purpose, and shall make arrangements with manufacturers to facilitate inspection of their processes and products to such extent as Owner's interests may require. Other contractors performing work for Owner may also enter upon Work for all purposes required by their respective contracts. Subject to the rights reserved in the Contract Documents, Contractor shall have sole care, custody, and control of the Site and its Work areas.

7.06 Owner's Right Of Separate Construction

- A. Owner may perform with its own forces, construction or operations related to the Project, or the Site during Contractor's operations. Owner may also award separate contracts in connection with other portions of the Project or other construction or operations, on the Site or areas contiguous to the Site, under conditions similar to these Contract Documents, or may have utility Owners perform other work.
- B. Contractor shall adjust its schedule and fully coordinate with and shall afford all other contractors, utility districts and Owner (if Owner is performing work with its own forces), proper and safe access to the Site, and reasonable opportunity for the installation and storage of their materials. Contractor shall ensure that the execution of its Work properly connects and coordinates with others' work, do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work, and shall cooperate with them to facilitate the progress of the Work.
- C. To the extent that any part of Contractor's Work is to interface with work performed or installed by other contractors or utility owners, Contractor shall inspect and measure the in-place work. Contractor shall promptly report to Owner in writing any defect in in-place work that will impede or increase the cost of Contractor's interface unless corrected.

ARTICLE 8 - CONTRACTOR'S PROSECUTION AND PROGRESS OF THE WORK

8.01 Contractor To Supervise The Work

- A. Subject to those rights specifically reserved in the Contract Documents, Contractor shall supervise, direct, have control over, and be responsible for, Contractor's means, methods, techniques, sequences or procedures of construction, safety precautions and programs incident thereto, and compliance with laws and regulations applicable to the furnishing or performance of Work.
- B. Contractor shall keep on the Site at all times during Work progress a competent Contractor or Subcontractor staff, designated as Primary Site Contact (for which a change in such Primary Site Contact staff shall prompt immediate notification to the SBWMA). This Contact staff shall be the Contractor's representative at the Site and shall have complete authority to act on behalf of Contractor. All communications to and from the on-site staff shall be as binding as if given to or by Contractor.
- C. Contractor shall supervise, inspect, and direct Work competently and efficiently, devoting the attention and applying such personal skills and expertise as may be required and necessary to perform Work in accordance with Contract Documents. Contractor shall be solely responsible for and have control and charge of construction means, methods, techniques, sequences and

procedures, safety precautions and programs in connection with the Work. Contractor shall be responsible to see that the completed Work complies accurately with Contract Documents.

- D. Contractor is fully responsible for Contractor's own acts and omissions. Contractor is responsible for all acts and omissions of its Subcontractors, suppliers, and other persons and organizations performing or furnishing any of the Work, labor, materials, or equipment under a direct or indirect contract with Contractor.
- E. Contractor shall conduct monthly Contractor Safety Committee meetings, and weekly toolbox safety talks.

8.02 Contractor To Maintain Cost Data

- A. Contractor shall maintain full and correct information as to the number of workers employed in connection with each subdivision of Work, the classification and rate of pay of each worker in form of certified payrolls. Contractor shall provide Owner with monthly summaries of this information. If Contractor maintains or is capable of generating summaries or reports comparing actual Project costs with Cost Proposal estimates or budgets, Contractor shall provide Owner with a copy of such report upon Owner's request.
- B. Contractor shall maintain daily job reports recording all significant activity on the job, including the number of workers on Site, Work activities, problems encountered and delays. Contractor shall provide Owner with copies for each Day Contractor works on the Project, to be delivered to Owner the following morning before starting work at the Site. Contractor shall take pre-construction and monthly progress photographs of all areas of the Work. Contractor shall maintain copies of all correspondence with Subcontractors and records of meetings with Subcontractors.
- C. Owner shall have the right to inspect and obtain copies of all Contract Documents, planning and design documents, Cost Proposal and negotiation documents, cost records and job cost variance reports, design modification proposals, value engineering or other cost reduction proposals, revisions made to the original design, job progress reports, photographs, and as-built drawings maintained by Contractor. Owner and any other applicable governmental entity shall have the right to inspect all information and documents maintained hereunder at any time during the Project and for a period of five years following Final Completion, in accordance with the provisions of the Government Code Section 8546.7. This right of inspection shall not relieve Contractor of its duties and obligations under the Contract Documents. This right of inspection shall be specifically enforceable in a court of law, either independently or in conjunction with enforcement of any other rights in the Contract Documents.

8.03 Contractor To Supply Sufficient Workers And Materials

- A. Unless otherwise required by Owner under the terms of Contract Documents, Contractor shall at all times keep on the Site materials and employ qualified workers sufficient to prosecute Work at a rate and in a sequence and manner necessary to complete Work within the Contract Time. This obligation shall remain in full force and effect notwithstanding disputes or claims of any type.
- B. At any time during progress of Work should Contractor directly or indirectly (through Subcontractors) refuse, neglect, or be unable to supply sufficient materials or employ qualified workers to prosecute the Work as required, then Owner may require Contractor to accelerate the Work and/or furnish additional qualified workers or materials as Owner may consider necessary, at no cost to Owner. If Contractor does not comply with the notice to develop a Plan to Cure Project Delay within 10 days, and then does not initiate the execution that Plan upon Agreement with Owner within three Business Days, Owner shall have the right (but not a duty) to provide materials and qualified workers to finish the Work or any affected portion of Work, as Owner may elect. Owner may, at its discretion, exclude Contractor from the Site, or portions of the Site or separate work elements during the time period that Owner exercises this right. Owner will deduct from moneys due or which may thereafter become due under the Contract Documents, the sums necessary to meet expenses thereby incurred and paid to persons supplying materials and doing Work. Owner will deduct from funds or appropriations set aside for purposes of Contract Documents the amount of such payments and charge them to Contractor as if paid to Contractor. Contractor shall remain liable for resulting delay, including liquidated damages and indemnification of Owner from claims of others.
- C. Exercise by Owner of the rights conferred upon Owner in this subparagraph is entirely discretionary on the part of Owner. Owner shall have no duty or obligation to exercise the rights referred to in

this subparagraph and its failure to exercise such rights shall not be deemed an approval of existing Work progress or a waiver or limitation of Owner's right to exercise such rights in other concurrent or future similar circumstances. (The rights conferred upon Owner under this subparagraph are, like all other such rights, cumulative to Owner's other rights under any provision of the Contract Documents.)

8.04 Contractor To Maintain Project Record Documents

- A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Contract Modifications, Change Orders, Work Directives, Force Account orders, and written interpretations and clarifications in good order and annotated to show all as-built changes made during construction. These Project Record Documents, together with all approved Samples and a counterpart of all approved Shop Drawings, shall be maintained and available to Owner for reference. Upon completion of the Work, Contractor shall deliver to Owner, the Project Record Documents, Samples and Shop Drawings and as-built drawings.
- B. Throughout Contractor's performance of the Work of the Project, Contractor shall maintain construction records to include: shop drawings; product data/material data sheets; samples; submittal; purchases; materials; equipment; inspections; applicable handbooks; applicable codes and standards; maintenance and operating manuals and instructions; RFI Log; Submittal Log; other related documents and revisions which arise out of the Construction Contracts. Contractor shall maintain records of principal building layout lines, elevations for the bottom of footings, floor levels, and key site elevations (certified by a qualified surveyor or professional engineer). Contractor shall make all records available to Owner. At the completion of the Project, Contractor shall deliver all such records to the Owner to have a complete set of record as-built drawings.

8.05 Contractor To Not Disrupt Owner Operation

- A. Contractor shall schedule and execute all Work in a manner that does not interfere with or disrupt Owner operations including, without limitation, parking, utilities (electricity, gas, water), noise, access by employees and administration, access by vendors, physicians, patients and any other person or entity using Owner facilities or doing business with Owner. Contractor shall produce and supply coordination plans and requests to Owner, following Owner procedures, for all necessary interference of construction with Owner, which Owner will reasonably cooperate with.

8.06 Contractor To Provide Temporary Facilities And Controls

Unless expressly provided otherwise in the Contract Documents, Contractor shall provide all temporary utilities (including without limitation electricity, water, natural gas), lighting, heating, cooling and ventilating devices, telephone, sanitary facilities, barriers, fences and enclosures, tree and plant protection, fire protection, pollution, erosion, Storm Water Pollution Prevention controls, noise and traffic control, and any other necessary services required for construction, testing or completion of the Work.

ARTICLE 9 - WARRANTY, GUARANTY, AND INSPECTION OF WORK

9.01 Warranty And Guaranty

- A. General Representations and Warranties: Contractor represents and warrants that it is and will be at all times fully qualified and capable of performing every Phase of the Work and to complete Work in accordance with the terms of Contract Documents. Contractor warrants that all construction services shall be performed in accordance with generally accepted professional standards of good and sound construction practices and all requirements of Contract Documents. Contractor warrants that Work including, without limitation, each item of materials and equipment incorporated therein, shall be new, of suitable grade of its respective kind for its intended use, and free from defects in design, engineering, materials, construction and workmanship. Contractor warrants that Work shall conform in all respects with all applicable requirements of federal, state and local laws, applicable construction codes and standards, licenses, and permits, Drawings and Specifications and all descriptions set forth therein, and all other requirements of Contract Documents. Contractor shall not be responsible, however, for the negligence of others in the specification of specific equipment, materials, design parameters and means or methods of construction where that is specifically shown and expressly required by Contract Documents.

- B. Environmental and Toxics Warranty: The covenants, warranties and representations contained in this Paragraph are effective continuously during Contractor's Work on the Project and following cessation of labor for any reason including, without limitation, Project completion. Contractor covenants, warrants and represents to Owner that:
1. To Contractor's knowledge after due inquiry, no lead or Asbestos-containing materials were installed or discovered in the Project at any time during Contractor's construction thereof. If any lead or Asbestos-containing materials were discovered, Contractor made immediate written disclosure to Owner.
 2. To Contractor's knowledge after due inquiry, no electrical transformers, light fixtures with ballasts or other equipment containing PCBs are or were located on the Project at any time during Contractor's construction thereof.
 3. To Contractor's knowledge after due inquiry, no storage tanks for gasoline or any other toxic substance are or were located on the Project at any time during Contractor's construction thereof. If any such materials were discovered, Contractor made immediate written disclosure to Owner.
 4. Contractor's operations concerning the Project are and were not in violation of any applicable environmental federal, state, or local statute, law or regulation dealing with hazardous materials substances or toxic substances and no notice from any governmental body has been served upon Contractor claiming any violation of any such law, ordinance, code or regulation, or requiring or calling attention to the need for any Work, repairs, construction, alteration, or installation on or in connection with the Project in order to comply with any such laws, ordinances, codes, or regulations, with which Contractor has not complied. If there are any such notices with which Contractor has complied, Contractor shall provide Owner with copies thereof.

9.02 Inspection Of Work

- A. Work and materials, and manufacture and preparation of materials, from beginning of construction until Final Completion and acceptance of Work, shall be subject to inspection by Owner, its agents, representatives or independent contractors retained by Owner to perform inspection services, or governmental agencies with jurisdictional interests. Contractor shall provide them proper and safe conditions for such access, to occur during normal work hours and require accompaniment by one or more authorized BHS employees. Contractor shall advise them of Contractor's Site safety procedures and program so that they may comply therewith as applicable. Upon request or where specified, Owner shall be afforded access for inspection at the source of supply, manufacture or assembly of any item of material or equipment, with reasonable accommodations supplied for making such inspections.
- B. Contractor shall give Owner timely notice of readiness of Work for all required inspections, tests or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- C. If applicable laws or regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, and furnish Owner with the required certificates of inspection, or approval. Owner will pay the cost of initial testing and Contractor shall pay all costs in connection with any follow-up or additional testing. Contractor shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for the acceptance of materials or equipment to be incorporated in the Work, or of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.
- D. If Contractor covers any Work, or the work of others, prior to any required inspection, test or approval without written approval of Owner, Contractor shall uncover the Work at Owner's request. Contractor shall bear the expense of uncovering Work and replacing Work. In any case where Contractor covers Work contrary to Owner's request, Contractor shall uncover Work for Owner's observation or inspection at Owner's request. Contractor shall bear the cost of uncovering Work.

- E. Whenever required by Owner, Contractor shall furnish tools, labor and materials necessary to make examination of Work that may be completed or in progress, even to extent of uncovering or taking down portions of finished Work. Should Work be found unsatisfactory, cost of making examination and of reconstruction shall be borne by Contractor. If Work is found to be satisfactory, Owner, in manner herein prescribed for paying for alterations, Modifications, and extra Work, except as otherwise herein specified, will pay for examination and reconstruction and costs of associated delays and milestone date extensions.
- F. Inspection of the Work by or on behalf of Owner, or Owner's failure to do so, shall not under any circumstances be deemed a waiver or approval of any non-conforming aspect of the Work. Contractor shall have an absolute duty, in the absence of a written Change Order signed by Owner, to perform Work in conformance with the Contract Documents and to correct Defective Work upon Contractor's knowledge after making Plan agreed upon with Owner to do so (required within 10 days of becoming aware of Defective Work).
- G. Any inspection, evaluation, or test performed by or on behalf of Owner relating to the Work is solely for the benefit of Owner, and shall not be relied upon by Contractor. Contractor shall not be relieved of the obligation to perform Work in accordance with the Contract Documents, nor relieved of any guaranty, warranty, or other obligation, as a result of any inspections, evaluations, or tests performed by Owner, whether or not such inspections, evaluations, or tests are permitted or required under the Contract Documents. Contractor shall be solely responsible for testing and inspecting Work already performed to determine whether such Work is in proper condition to receive later Work.
- H. COSTS FOR TESTING: The cost of all testing will be borne by the Owner, except in the following instances: (1) The specifications for a specific project provide for Contractor furnished testing (i.e., up to the stated number of tests); (2) The Contractor shall assume all costs of retesting materials which fail to meet Contract and Acceptance Test requirements. Any costs due from the Contractor for testing will be charged against the Contract and deducted from monies due, or to become due, to the Contractor.
- I. TESTING BY CONTRACTOR
 - 1. Upon failed initial tests, where these specifications require the Contractor to furnish test results, they may be performed by an independent testing service as required and approved by the Owner.
 - 2. Laboratory test reports shall cite the contract requirements, the test of analysis procedures used, the actual test results, and include a statement that the item tested conforms or fails to conform to the specification requirements.
 - 3. All test reports shall be signed by a representative of the testing laboratory authorized to sign certified test reports.
- 4. Original copies of test reports shall be mailed directly to the Owner from the approved testing laboratory.
- J. COST OF OVERTIME CONSTRUCTION INSPECTION: Overtime construction work performed at the option of, or for the convenience of, the Contractor will be at the cost of the Contractor. The work will be inspected by Owner and, as required, city building officials at the expense of the Owner. For any such overtime beyond the regular 8-hour day and for any time worked on Saturday, Sunday, or holidays, the charges for city personnel will be as published by the city.

9.03 Correction Of Defective Work

- A. Owner may direct Contractor to correct any Defective Work or remove it from the Site and replace it with Work that is not Defective and satisfactorily correct or remove and replace/cover any direct damage resulting from the correction or removal. Also, if Contractor fails to supply sufficient skilled workers, suitable materials or equipment, or to furnish or perform the Work in such a way that the

completed Work will conform to Contract Documents, Owner may direct Contractor to perform the Work in accordance with the Contract Documents, correct or replace any such Defective Work, or stop any portion of Work.

- B. Owner may correct and remedy the Defective Work or perform any other work, corrective or otherwise, if, after ten Days' written notice to Contractor, Contractor fails to provide a Plan for correction of Defective Work acceptable to Owner; or perform Work in accordance with Contract Documents. Contractor shall allow Owner, its representatives, agents, employees, and other contractors and consultants' access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.
- C. These Owner rights and remedies are entirely discretionary on the part of Owner, and shall not give rise to any duty on the part of Owner to exercise the rights for the benefit of Contractor or any other party. Owner's rights under this Paragraph shall be in addition to any other rights it may have under the Contract Documents or by law.

9.04 Acceptance of Defective Work

- A. Owner may in its sole discretion elect to accept Defective Work. Contractor shall pay direct claims, costs, losses and damages attributable to Owner's evaluation of and determination to accept such Defective Work. If Owner accepts any Defective Work prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work and the Contract Sum. If the parties are unable to agree to the amount of an appropriate decrease in the Contract Sum, Owner may deduct from monies due Contractor, all claims, costs, losses, damages, expenses and liabilities attributable to the Defective Work. If Contractor disagrees with Owner's calculations, Contractor may make a claim as provided in Article 12 of this Document 00 7200. If Owner accepts any Defective Work after final payment, Contractor shall pay to Owner, an appropriate amount as determined by Owner.

9.05 Rights Upon Inspection, Correction Or Acceptance

- A. Contractor shall not be allowed an extension of Contract Time because of any delay in the performance of Work attributable to the exercise by Owner of its rights and remedies under this Article. Where Owner exercises its rights under this Article, it retains and may still exercise all other rights it has by law or under the Contract Documents including, without limitation, the right to terminate Contractor's right to proceed with the Work under the Contract Documents for cause and/or make a claim or back charge where a Change Order cannot be agreed upon.
- B. Observation or inspection by Owner or its authorized agents or representatives shall not relieve Contractor of its obligation to have furnished material and workmanship in accordance with Contract Documents. Payment for Work completed through periodic progress payments, final payment or otherwise shall not operate to waive Owner's right to require full compliance with Contract Documents and shall in no way be deemed as acceptance of any defective Work paid therefor. Contractor's obligation to complete the Work in accordance with Contract Documents shall be absolute, unless Owner agrees otherwise in writing.

9.06 Proof Of Compliance Of Contract Provisions

- A. In order that Owner may determine whether Contractor has complied or is complying with requirements of Contract Documents not readily enforceable through inspection and tests of Work and materials, Contractor shall at any time, when requested, submit to Owner properly authenticated documents or other proofs (as judged satisfactory by Owner) of compliance with all applicable requirements.
- B. Before commencing any portion of Work, Contractor shall inform Owner in writing as to time and place at which Contractor wishes to commence Work, and nature of Work to be done, in order that proper provision for inspection of Work may occur, and to assure measurements necessary for record and payment. Information shall be given to Owner a reasonable time in advance of time at which Contractor proposes to begin Work, so that Owner may complete necessary preliminary work without inconvenience or delay to Contractor.

9.07 Correction Period And Project Warranty Period:

- A. If within one year after the date of Notice of Completion, or such longer period of time as may be prescribed by laws, regulations or by the terms of Contract Documents or any extended warranty or guaranty, any Work (completed or incomplete) is found to be Defective, Contractor shall promptly without cost to Owner and in accordance with Owner's written instructions, correct such Defective Work. Contractor shall remove any Defective Work rejected by Owner and replace it with Work that is not Defective, and satisfactorily correct or remove and replace any direct damage. If Contractor fails to promptly comply with the terms of such instructions (by developing a Plan, within 10 days notice, in agreement with Owner to correct Defective Work), or in an emergency where delay would cause serious risk of loss or damage, Owner may have the Defective Work corrected or the rejected Work removed and replaced. Contractor shall pay for all direct claims, costs, losses and damages caused by or resulting from such removal and replacement. Where Contractor fails to correct Defective Work, or defects are discovered outside the correction period, Owner shall have all rights and remedies granted by law.
- B. In special circumstances where a part of the Work is occupied or a particular item of equipment is placed in continuous service before Notice of Completion of all the Work, the correction period for that part of Work or that item may start to run from an earlier date if so provided by Change Order.
- C. Where Defective Work or rejected Work (and damage to other Work resulting therefrom) has been corrected, removed, or replaced under this Paragraph after the commencement of the correction period, the correction period hereunder with respect to such Work shall be extended for the one year length of the contract warranty period after such correction or removal and replacement has been satisfactorily completed. No warranty shall extend beyond two years from the start of the original warranty period.

9.08 No Waiver

- A. Neither recordation of Final Acceptance nor final certificate for payment nor provision of the Contract nor partial or entire use or occupancy of premises by Owner shall constitute acceptance of Work not done in accordance with Contract Documents nor relieve Contractor of liability in respect to express warranties or responsibility for faulty materials or workmanship.
- B. If, after installation, operation, or use of materials or equipment to be provided under Contract proves to be Defective to Owner, Owner shall have right to operate and use materials or equipment until said materials and equipment can, without damage to Owner, be taken out of service for correction or replacement. Period of use of Defective materials or equipment pending correction or replacement shall in no way decrease guarantee period required for acceptable corrected or replaced items of materials or equipment.
- C. Nothing in the Contract Documents shall be construed to limit, relieve, or release Contractor's, Subcontractors', and equipment suppliers' liability to Owner for damages sustained as result of latent defects in materials or equipment caused by negligence of Contractor, its agents, suppliers, employees, or Subcontractors.

ARTICLE 10 - MODIFICATIONS OF CONTRACT DOCUMENTS

10.01 Owner's Right To Direct Changed Work.

- A. Owner may, without notice to the sureties and without invalidating the Contract, make changes in the Work (**Changed Work**) including, without limitation: alterations, deviations, additions to, or deletions from Contract Documents; increase or decrease the quantity of any item or portion of the Work; expand, reduce or otherwise change the Contract Time; delete any item or portion of the Work; and require extra Work. Contractor shall perform such Work under applicable provisions of the Contract Documents, unless specifically provided otherwise at the time the change is ordered. In the case of any ordered extra Work, Owner reserves the right to furnish all or portions of associated labor, material, and equipment, which Contractor shall accept and use without payment for costs, markup, profit, or otherwise for such Owner-furnished labor, materials, and equipment.
- B. If Changed Work is of such a nature as to increase or decrease the time or cost of any part of Work, price fixed in Contract shall be increased or decreased by amount as the Contractor and Owner may agree upon as reasonable and proper allowance for increase or decrease in cost of Work using the cost guidelines set forth in this Article, and absent such agreement, then as Owner may direct (with Contractor retaining its rights under Article 12 herein).

10.02 Required Documentation For Changed Work

- A. Changes affecting the Contract Time or Contract Sum of the Work shall be set forth in a written Change Order or Change Directive that shall specify:
 - 1. The Work performed in connection with the change to be made;
 - 2. The amount of the adjustment of the Contract Sum, if any, and the basis for compensation for the Work ordered; and
 - 3. The extent of the adjustment in the Contract Time, if any.
- B. A Change Order or Change Directive will become effective when signed by Owner and agreement has been reached with the Contractor. A.
- C. All changes in any plans and specifications approved by any authority with jurisdiction may also require addenda or change orders approved by that authority.

10.03 Procedures And Pricing Of Changed Work

- A. Procedures for changed work and pricing of changed work, claims and all forms of extra compensation, are set forth in Section 01 2600 (Modification Procedures).

ARTICLE 11 - TIME ALLOWANCES

11.01 Time Allowances

- A. Time is of the essence. Contract Time may only be changed by Change Order, and all time limits stated in the Contract Documents are to mean that time is of the essence.
- B. Float. Float shall be treated as a Project resource. Contractor shall not be entitled to a time extension for impacts that consume float, but do not impact the critical path.
- C. Time extensions will not be granted unless substantiated by the Critical Path Method (**CPM**) Schedule, and then not until the CPM project float becomes zero, or otherwise developed in coordination with the Microsoft Project scheduling system and dates. If Contractor fails to submit a Time Impact Evaluation (TIE) in format approved by Owner within the required time period, then Contractor shall be deemed to have agreed that there is no time impact and that Contractor has irrevocably waived its rights to any additional Contract Time.

11.02 Excusable Delay And Inexcusable Delay Defined.

- A. Excusable Delay. Subject to the provisions on Notice of Delay below, Contract Time may be adjusted in an amount equal to the time lost due to:
 - 1. Changes in the Work ordered by Owner (**Changes**”);
 - 2. Acts or neglect by Owner, Architect, any Owner Representative, utility owners or other contractors performing other work, not permitted or provided for in the Contract Documents, provided that Contractor has performed its responsibilities under the Contract Documents (including, without limitation, pre-Cost Proposal investigations) (**Acts or Neglect**); or
 - 3. Fires, floods, epidemics, abnormal weather conditions beyond the parameters otherwise set forth in this Article, earthquakes, civil, labor or non-traffic transportation disturbances, or acts of God (together, “force majeure events”), provided damages resulting therefrom are not the result of Contractor’s failure to protect the Work as required by Contract Documents (**Force Majeure**).
- B. Inexcusable Delay. Contract Time shall not be extended for any period of time where Contractor (and/or any Subcontractor) is delayed or prevented from completing any part of the Work due to a cause that is within Contractor’s risk or responsibility under the Contract Documents. Delays attributable to or within the control of a Subcontractor, or its subcontractors, or supplier, are deemed delays within the control of Contractor.

11.03 Notice Of Delay

- A. Within seven Days of the beginning of any delay (excepting adverse weather delays), Contractor shall notify Owner in writing, by submitting a notice of delay that shall describe the anticipated delays resulting from the delay event in question. If Contractor requests an extension of time, Contractor

shall submit a TIE within ten days of the notice of delay. Owner will determine all claims and adjustments in the Contract Time. No claim for an adjustment in the Contract Time will be valid and such claim will be waived if not submitted in accordance with the requirements of this subparagraph. In cases of substantial compliance with the seven-day notice requirement here (but not to exceed twenty-one days from the beginning of the delay event), Owner may in its sole discretion recognize a claim for delay accompanied with the proper TIE, provided Contractor also shows good faith and a manifest lack of prejudice to Owner from the late notice.

11.04 Compensable Time Extensions

- A. Subject to other applicable provisions of the Contract Documents, Contractor may be entitled to adjustment in Contract Sum in addition to Contract Time for:
 - 1. Excusable delay caused solely by Changes in the Work ordered by Owner, as provided above, and/or
 - 2. Excusable delay caused solely by Acts or Neglect by Owner or other person, as provided above.

11.05 Non-Compensable Time Extensions

- A. Subject to other applicable provisions of the Contract Documents, Contractor may be entitled to adjustment in Contract Time only, without adjustment in Contract Sum, for
 - 1. Periods of excusable delay caused solely by weather or Force Majeure events as provided above in this Article, or
 - 2. Periods of concurrent delay, where delay results from two or more causes, one of which is compensable (resulting from Changes or Acts or Neglect as set forth above in this Article), and the other of which is non-compensable or unexcusable, such as: acts or neglect of Contractor, Subcontractors or others for whom Contractor is responsible; other acts, omissions and conditions which would not entitle Contractor to adjustment in Contract Time; adverse weather; and/or actions of Force Majeure as provided above in this Article.

11.06 Adverse Weather

- A. Adverse weather delays may be allowed only if Contractor proves that adverse weather actually caused delays to work. Contractor shall give written notice of intent to claim an adverse weather day within three Days of the adverse weather day occurring.
- B. During unfavorable weather, wet ground, or other unsuitable construction conditions, Contractor shall employ best practices to protect the Work, manage the construction site and rainwater during inclement weather. Persons performing the Work shall examine surfaces to receive their Work and shall report in writing to Contractor, with copy to Owner representative and the Architect conditions detrimental to the Work. Failure to examine and report discrepancies makes the Contractor responsible, at no increase in Contract Sum, for corrections Owner may require. Commencement of Work constitutes acceptance of surface.

11.07 Liquidated Damages

- A. Time is of the essence. Execution of Contract Documents by Contractor shall constitute its acknowledgement that Owner will actually sustain damages in the form of Contract administration expenses (such as Project management and consultant expenses) in the amount fixed in the Contract Documents for each and every Day during which completion of Work required is delayed beyond expiration of time fixed for completion plus extensions of time allowed pursuant to provisions hereof.
- B. Contractor and Owner agree that because of the nature of the Project, it would be impractical or extremely difficult to fix the amount of such actual damages incurred by Owner because of a delay in completion of all or any part of the Work. Contractor and Owner agree that specified measures of liquidated damages shall be presumed to be the amount of such damages actually sustained by Owner, and that because of the nature of the Project, it would be impracticable or extremely difficult to fix the actual damages.
- C. Liquidated damages for delay shall cover administrative, overhead, interest on bonds, and general loss of public use damages suffered by Owner as a result of delay. Liquidated damages shall not

cover the cost of completion of the Work, damages resulting from Defective Work, lost revenues or costs of substitute facilities, or damages suffered by others who then seek to recover their damages from Owner (for example, delay claims of other contractors, subcontractors, tenants, or other third-parties), and defense costs thereof. Owner may deduct from any money due or to become due to Contractor subsequent to time for completion of entire Work and extensions of time allowed pursuant to provisions hereof, a sum representing then-accrued liquidated damages.

ARTICLE 12 - CLAIMS BY CONTRACTOR

12.01 Obligation to File Claims for Disputed Work

- A. Should it appear to Contractor that the Work to be performed or any of the matters relative to the Contract Documents are not satisfactorily detailed or explained therein, or should any questions arise as to the meaning or intent of the Contract Documents, or should any dispute arise regarding the true value of any work performed, work omitted, extra work that the Contractor may be required to perform, time extensions, payment to the Contractor during performance of this Contract, performance of the Contract, and/or compliance with Contract procedures, or should Contractor otherwise seek extra time or compensation FOR ANY REASON WHATSOEVER, then Contractor shall first follow procedures set forth in the Contract Documents (including, without limitation, Paragraphs 11.03, 11.04, 13.03 and 13.04 of this Document 00 7200 and Section 01 2600.) If a dispute remains, then Contractor shall give written notice to Owner that expressly invokes this Article 12. Owner shall decide the issue in writing within 15 days; and Owner's written decision shall be final and conclusive. If Contractor disagrees with Owner's decision, or if Contractor contends that Owner failed to provide a decision timely, then Contractor's SOLE AND EXCLUSIVE REMEDY is to promptly file a written claim setting forth Contractor's position as required herein.

12.02 Form And Contents Of Claim

- A. Contractor's written claim must identify itself as a "**Claim**" under this Article 12 and must include the following: (i) a narrative of pertinent events; (ii) citation to contract provisions; (iii) theory of entitlement; (iv) reasonable effort to provide complete pricing of all cost impacts; (v) a time impact analysis of all time delays that shows actual time impact; (vi) documentation supporting items (i) through (v); and (vii) a verification under penalty of perjury of the Claim's accuracy. The Claim shall be submitted to Owner within thirty (30) calendar days of receiving Owner's written decision, or the date Contractor contends such decision was due, and shall be priced like a change order according to Section 01 2600, and must be updated monthly as to cost and entitlement if a continuing Claim. Routine contract materials, for example, correspondence, RFI, Change Order requests, or payment requests shall not constitute a Claim. Contractor shall bear all costs incurred in the preparation and submission of a Claim.

12.03 Administration During/After Claim Submission

- A. Owner may render a final determination based on the Claim or may in its discretion conduct an administrative hearing on Contractor's claim, in which case Contractor shall appear, participate, answer questions and inquiries, and present any further evidence or analysis requested by Owner prior to rendering a final determination. Should Owner take no action or fail to make a final determination on the Claim within 45 days of submission, it shall be deemed denied.
- B. Notwithstanding and pending the resolution of any claim or dispute, Contractor shall diligently prosecute the disputed work to final completion in accordance with Owner's determination.
- C. After their submission, claims less than \$375,000 shall also be subject to the Local Agency Disputes Act.

12.04 Compliance

- A. The provisions of this Article 12 constitute a non-judicial claim settlement procedure that, pursuant to Government Code Section 930.2, shall constitute a condition precedent to submission of a valid Government Code Claim under the Government Code. Contractor shall bear all costs incurred in the preparation, submission and administration of a claim. Any claims presented in accordance with the Government Code must affirmatively indicate Contractor's prior compliance with the claims procedure herein and the previous dispositions under Paragraph 12.03 above of the claims

asserted. No suit may be brought against Owner arising out of or in connection with the Project unless and until Contractor presents to Owner a statutory Government Code Claim, in accordance with Government Code Sections 910, *et seq.* Pursuant to Government Code Section 930.2, the one-year period in Government Code section 911.2 shall be reduced to 150 days from either accrual of the cause of action, substantial completion or termination of the contract, whichever occurs first; in all other respects, the Government Code shall apply unchanged.

- B. Failure to submit and administer claims as required in Article 12 shall waive Contractor's right to claim on any specific issues not included in a timely submitted claim. Claim(s) or issue(s) not raised in a timely protest and timely claim submitted under this Article 12 may not be asserted in any subsequent litigation, Government Code Claim, or legal action.
- C. Owner shall not be deemed to waive any provision under this Article 12, if at Owner's sole discretion, a claim is administered in a manner not in accord with this Article 12. Waivers or modifications of this Article 12 may only be made a signed change order approved as to form by legal counsel for both Owner and Contractor; oral or implied modifications shall be ineffective.

ARTICLE 13 - UNDERGROUND CONDITIONS

13.01 Contractor To Locate Underground Facilities.

- A. During construction, Contractor shall comply with Government Code Sections 4216 to 4216.9, and in particular Section 4216.2 which provides, in part: "Except in an emergency, every person planning to conduct any excavation shall contact the appropriate regional notification center at least two working days, but no more than 14 calendar days, prior to commencing that excavation, if the excavation will be conducted in an area which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the excavator, and, if practical, the excavator shall delineate with white paint or other suitable markings the area to be excavated. The regional notification center shall provide an inquiry identification number to the person who contacts the center and shall notify any member, if known, who has a subsurface installation in the area of the proposed excavation."
- B. Contractor shall also investigate the existence of existing service laterals, appurtenances or other types of utilities, indicated by the presence of an underground transmission main or other visible facilities, such as buildings, new asphalt, meters and junction boxes, on or adjacent to the Site, even if not shown or indicated in Document 00 3132 (Geotechnical Data and Existing Conditions), the Drawings or that provided by USA records. Contractor shall immediately secure all such available information and notify Owner and the utility owner, in writing, of its discovery.

13.02 Contractor To Protect Underground Facilities.

- A. At all times during construction, all operating Underground Facilities shall remain in operation, unless the Contract Documents expressly indicate otherwise. Contractor shall maintain such Underground Facilities in service where appropriate; shall repair any damage to them caused by the Work; and shall incorporate them into the Work, including reasonable adjustments to the design location (including minor relocations) of the existing or new installations. Contractor shall take immediate action to restore any in service installations damaged by Contractor's operations.
- B. Prior to performing Work at the Site, Contractor shall lay out the locations of Underground Facilities that are to remain in service and other significant known underground installations indicated by the Underground Facilities Data. Contractor shall further locate, by carefully excavating with small equipment, potholing and principally by hand, all such utilities or installations that are to remain and that are subject to damage. If additional utilities whose locations are unknown are discovered, Contractor shall immediately report to Owner for disposition of the same. Additional compensation or extension of time on account of utilities not shown or otherwise brought to Contractor's attention, including reasonable action taken to protect or repair damage, shall be determined as provided in this Document 00 7200.
- C. If during construction, an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated in the materials supplied by Owner for quoting or in information on file at USA or otherwise reasonably available to Contractor, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby (and in no event later than seven Days), and prior to performing any Work in connection therewith (except in an

emergency), identify the owner of such Underground Facility and give written notice to that owner and to Owner. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

- D. The cost of all of the following will be included in the Contract Sum and Contractor shall have full responsibility for (a) reviewing and checking all available information and data including, without limitation, information made available for quoting and information on file at USA; (b) locating all Underground Facilities shown or indicated in the Contract Documents, available information, or indicated by visual observation including, without limitation, and by way of example only, engaging qualified locating services and all necessary backhoeing and potholing; (c) coordination of the Work with the owners of such Underground Facilities during construction; and (d) the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.
- E. Consistent with Government Code Section 4215, as between Owner and Contractor, Owner will be responsible for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the Site only if such utilities are not identified in the Contract Documents or information made available for quoting. Owner will compensate for the cost of locating and repairing damage not due to Contractor's failure to exercise reasonable care, removing and relocating such main or trunk line utility facilities not indicated in the Contract Documents or information made available for quoting with reasonable accuracy, and equipment on the Project necessarily idled during such Work. Contractor shall not be assessed liquidated damages for delay in completion of the Project, when such delay was caused by the failure of Owner or the utility to provide for removal or relocation of such utility facilities.

13.03 Concealed Or Unknown Conditions

- A. If either of the following conditions is encountered at Site when digging trenches or other excavations that extend deeper than four feet below the surface, Contractor shall give a written Notice of Differing Site Conditions to Owner promptly before conditions are disturbed, except in an emergency as set forth in this Document 00 7200, and in no event later than seven Days after first observance of:
 - 1. Subsurface or Latent physical conditions which differ materially from those indicated in the Contract Documents; or
 - 2. Unknown physical conditions of an unusual nature or which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.
- B. In response to Contractor's Notice of Differing Site Conditions under this Paragraph, Owner will investigate the identified conditions, and if they differ materially and cause increase or decrease in Contractor's cost of, or time required for, performance of any part of the Work, Owner will negotiate the appropriate change order following the procedures set forth in the Contract Documents. If Owner determines that physical conditions at the Site are not Latent or are not materially different from those indicated in Contract Documents or that no change in terms of the Contract Documents is justified, Owner will so notify Contractor in writing, stating reasons (with Contractor retaining its rights under Article 12 of this Document 00 7200.)
- C. Contractor shall not be entitled to any adjustment in the Contract Sum or Contract Time regarding claimed Latent or materially different Site conditions (whether above or below grade) if Contractor knew or should have known of the existence of such conditions at the time Contractor submitted its Cost Proposal failed to give proper notice, or relied upon information, conclusions, opinions or deductions of the kind that the Contract Documents preclude reliance upon.
- D. Regarding Underground Facilities, Contractor shall be allowed an increase in the Contract Sum or an extension of the Contract Time, or both, to the extent that they are attributable to the existence of any Underground Facility that is owned and was built by Owner only where the Underground Facility:
 - 1. Was not shown or indicated in the Contract Documents or in the information supplied for quoting purposes or in information on file at USA; and
 - 2. Contractor did not know of it; and

3. Contractor could not reasonably have been expected to be aware of it or to have anticipated it from the information available. (For example, if surface conditions such as pavement repairs, valve covers, or other markings, indicate the presence of an Underground Facility, then an increase in the Contract Sum or an extension of the Contract Time will not be due, even if the Underground Facility was not indicated in the Contract Documents, in the information supplied to Contractor for quoting purposes, in information on file at USA, or otherwise reasonably available to Contractor.)
- E. Contractor shall bear the risk that Underground Facilities not owned or built by Owner may differ in nature or locations shown in information made available by Owner for quoting purposes, in information on file at USA, or otherwise reasonably available to Contractor. Underground Facilities are inherent in construction involving digging of trenches or other excavations on Owner's Project, and Contractor is to apply its skill and industry to verify the information available.
 - F. Contractor's compensation for claimed Latent or materially different Site conditions shall be limited to the actual, reasonable, incremental increase in cost of that portion of the Work, resulting from the claimed Latent or materially different Site conditions. Such calculation shall take into account the estimated value of that portion of the Work and the actual value of that portion of the Work, using for guidance Contractor's or its subcontractor's Cost Proposal amount and actual amounts incurred for that portion of the Work and the reasonable expectation (if any) of differing or difficult site conditions in the Work area based on the available records and locale of the Work. For example, if Contractor excavates in an area unexpected, then such costs would be recoverable entirely; while if Contractor extends an existing excavation, then such costs would be recoverable if the resulting excavation costs in that work area exceeded the reasonable expectations therefore.

13.04 Notice Of Hazardous Waste Or Materials Conditions

- A. Contractor shall give a written Notice of Hazardous Materials Condition to Owner promptly, before any of the following conditions are disturbed (except in an emergency as set forth in this Document 00 7200), and in no event later than 24 hours after first observance of any:
 1. Material that Contractor believes may be hazardous waste or hazardous material, as defined in Section 25117 of the Health and Safety Code (including, without limitation, Asbestos, lead, PCBs, petroleum and related hydrocarbons, and radioactive material) that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law (**hazardous material**); or
 2. Other material that may present an imminent substantial danger to persons or property exposed thereto in connection with Work at the Site (**other materials**).
- B. Except as otherwise provided in the Contract Documents or as provided by applicable law, Contractor shall not be required to give any notice for the disturbance or observation of any such hazardous materials or other materials where such matter is disturbed or observed as part of the scope of Work under the Contract Documents (such as hazardous waste or hazardous material investigation, remediation or disposal activities which are identified as the subject of Work under the Contract Documents), where Contractor complies with all requirements in the Contract Documents and applicable law respecting such materials.
- C. Contractor's Notice of Hazardous Materials Condition shall indicate whether the hazardous materials or other materials were shown or indicated in the Contract Documents to be within the scope of Work, and whether the hazardous materials or other materials were brought to the Site by Contractor, its Subcontractors, suppliers, or anyone else for whom Contractor is responsible.
- D. Contractor shall not be entitled to any adjustment in the Contract Sum or Contract Time regarding claimed hazardous waste or materials if:
 1. Contractor knew of the existence of such hazardous materials or other materials at the time Contractor submitted its Cost Proposal; or
 2. Contractor should have known of the existence of such hazardous material or other materials as a result of its having the responsibility to obtain additional or supplementary examinations, investigation, explorations, tests, studies, and data concerning the conditions at or contiguous to the Site prior to submitting its Cost Proposal; or
 3. Contractor failed to give the written notice within the required timeframe set forth below.

- E. If Owner determines that conditions involve hazardous materials or other materials and that a change in Contract Document terms is justified, Owner will issue either a Request for Proposal or Construction Change Directive under the procedures described in the Contract Documents. If Owner determines that conditions do not involve hazardous materials or other materials or that no change in Contract Document terms is justified, Owner will notify Contractor in writing, stating the reasons for its determination.
- F. In addition to the parties' other rights under this Document 00 7200, if Contractor does not agree to resume Work based on a reasonable belief that it is unsafe, or does not agree to resume Work under special conditions, Owner may order the disputed portion of Work deleted from the Work, or performed by others, or Owner may invoke its right to terminate Contractor's right to proceed under the Contract Documents in whole or in part, for convenience or for cause as the facts may warrant.
- G. If Contractor does not agree with any Owner determination of any adjustment in the Contract Sum or Contract Time under this Article, Contractor may make a claim as provided in Article 12 of this Document 00 7200.

ARTICLE 14 - LEGAL AND MISCELLANEOUS

14.01 Laws And Regulations

- A. Contractor shall keep fully informed of and shall comply with all laws, ordinances, regulations and orders of any properly constituted authority affecting the Contract Documents, Work and persons connected with Work, and shall protect and indemnify Owner and its officers, employees, consultants and agents against any claim or liability, including attorney's fees, arising from or based on violation of law, ordinance, regulation or order, whether by Contractor or by Subcontractors, employees or agents. Authorized persons may at any time enter upon any part of Work to ascertain compliance of all applicable laws, ordinances, regulations and orders.

14.02 Permits And Taxes

- A. Owner shall procure all permits (besides Electrical, to be obtained by the Contractor) and licenses applicable to the Work (including environmental matters to the extent applicable); pay all charges and fees, including fees for street opening permits; comply with, implement and acknowledge effectiveness of all permits; initiate and cooperate in securing all required notifications or approvals therefore; and give all notices necessary and incident to due and lawful prosecution of Work, unless otherwise provided herein. Contractor will supply Owner with all necessary information and create design-related submittals needed for Owner to obtain all required permits. Contractor shall make necessary arrangements with proper authorities having jurisdiction over roads, streets, pipelines, navigable waterways, railroads, and other works in advance of operations, even where Owner may have already obtained permits for the Work.

14.03 Communications And Information Distribution

- A. All communications recognized under the Contract Documents shall be in writing, in the form of a serialized document, by type of communication. For example, RFI's shall be serialized beginning with RFI No. 1; payment applications shall be serialized beginning with Payment Application No. 1, submittals shall be serialized per specification section and transmitted with transmittal sheets beginning with Transmittal No. 1; and correspondence shall be serialized beginning with letter No. 1. Contractor may propose other record management and identification systems or protocols, intended to facilitate orderly transmittal of project information, storage and retrieval of such information, which Owner will review consistent with these stated objectives, and accept or reject in its sole discretion.
- B. Documents Requiring Signatures. All documents requiring signatures for approval prior to implementing action, as stipulated in other portions of Contract Documents, shall require a manually signed, serialized letter delivered to the other party at its address for notice otherwise specified in the Contract Documents, either personally or by mail.
- C. Electronic data transfer of such correspondence will serve to expedite preliminary concurrence of information, only. Receipt of "hard copy" signature on forms is required prior to implementing action or work as the conditions may require. For example, change orders and authorizations for extra cost, require signatures. A party may acknowledge receipt of PDF copies of required

correspondence by e-mail, but in the absence of such acknowledgment, mail or personal delivery is required.

- D. All emails shall be copied to Owner's and Contractor's Project Representative. Owner reserves the right to preclude e-mail communication, in whole or in part, as Project needs may require. Communication between Owner and Contractor shall not be via Twitter, Facebook, or other types of instant text message systems. Any such communications shall be inadmissible for any purpose related to this Contract.

14.04 Suspension Of Work

- A. Owner may, without cause, order Contractor in writing to suspend, delay or interrupt Work in whole or in part for such period of time as Owner may determine. An adjustment shall be made for increases in cost of performance of Work of the Contract Documents caused by any such suspension, delay or interruption, calculated using the measures set forth in Section 01 2600 (Modification Procedures). No adjustment shall be made to extent that performance is, was or would have been so suspended, delayed or interrupted by another cause for which Contractor is responsible.

14.05 Termination Of Contract For Cause

- A. The Contractor shall be in default of the Contract Documents and Owner may terminate the Contractor's right to proceed under the Contract Documents, for cause, in whole or in part, should the Contractor commit a material breach of the Contract Documents and not cure such breach within ten (10) calendar days of the date of notice from Owner to the Contractor demanding such cure; or, if such breach is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for the Contractor to avail itself of a time period in excess of 10 calendar days, the Contractor must provide Owner within the ten (10) day period with a written Plan acceptable to Owner that demonstrates actual resources, personnel and a schedule to promptly to cure said breach, and then diligently commence and continue such cure according to the written Plan, with the cure to occur within 10 calendar days following Plan submission).
- B. In the event of termination by Owner for cause as provided herein, the Contractor shall deliver to Owner possession of the Work in its then condition including, without limitation, all designs, engineering, Project records, cost data of all types, plans and specifications and contracts with vendors and subcontractors, all other documentation associated with the Project, and all construction supplies and aids dedicated solely to performing the Work which, in the normal course of construction, would be consumed or only have salvage value at the end of the construction period. The Contractor shall remain fully liable for the failure of any Work completed and materials and equipment provided through the date of such termination to comply with the provisions of the Contract Documents. The provisions of this Section shall not be interpreted to diminish any right which Owner may have to claim and recover damages for any breach of the Contract Documents or otherwise, but rather, the Contractor shall compensate Owner for all loss, cost, damage, expense, and/or liability suffered by Owner as a result of such termination and/or failure to comply with the Contract Documents.
- C. In the event a termination for cause is later determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience, and the Contractor shall have no greater rights than it would have had following a termination for convenience. Any Contractor claim arising out of a termination for cause shall be made in accord with Article 12 herein. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by the Contractor.

14.06 Termination Of Contract For Convenience

- A. Owner may terminate performance of the Work under the Contract Documents in accordance with this clause in whole, or from time to time in part, whenever Owner shall determine that termination is in Owner's best interest. Termination shall be effected by Owner delivering to the Contractor notice of termination specifying the extent to which performance of the Work under the Contract Documents is terminated, and the effective date of the termination.

- B. Contractor shall comply strictly with Owner's direction regarding the effective date of the termination, the extent of the termination, and shall stop work on the date and to the extent specified.
- C. Contractor shall be entitled to a total payment on account of the Contract work so terminated measured by (i.) the actual cost to Contractor of Work actually performed, up to the date of the termination, with profit and overhead limited to twelve percent (12%) of actual cost of work performed, up to but not exceeding the actual contract value of the work completed as measured by the Milestone Schedule and Progress Schedule, (ii.) offset by payments made and other contract credits. In connection with any such calculation, however, Owner shall retain all rights under the Contract Documents including, without limitation, claims, indemnities, or setoffs.
- D. Under no circumstances may Contractor recover legal costs of any nature, nor may Contract recover costs incurred after the date of the termination.

14.07 Contingent Assignment Of Subcontracts

- A. Contractor hereby assigns to Owner each Subcontract for a portion of the Work, provided that:
 - 1. The assignment is effective only after Owner's termination of Contractor's right to proceed under the Contract Documents (or portion thereof relating to that Subcontract) as set forth herein.
 - 2. The assignment is effective only for the Subcontracts which Owner expressly accepts by notifying the Subcontractor in writing;
 - 3. The assignment is subject to the prior rights, if any, of the Surety, obligated by Document 00 6113.13 (Construction Performance Bond) provided under the Contract Documents, where the Surety exercises its rights to complete the Contract;
 - 4. After the effectiveness of an assignment, Contractor shall, at its sole cost and expense (except as otherwise provided in this Document 00 7200), sign all instruments and take all actions reasonably requested by Owner to evidence and confirm the effectiveness of the assignment in Owner; and
 - 5. Nothing in this Paragraph shall modify or limit any of Contractor's obligations to Owner arising from acts or omissions occurring before the effectiveness of any Subcontract assignment including, without limitation, all defense, indemnity and hold-harmless obligations arising from or related to the assigned Subcontract.

14.08 Remedies And Contract Integration

- A. Subject to Contract Documents provisions regarding Contractor claims, claim review, and claim resolution, and subject to the limitations therein, the exclusive jurisdiction and venue for resolving all claims, counter claims, disputes and other matters in question between Owner and Contractor arising out of or relating to Contract Documents, any breach thereof or the Project shall be the applicable court of competent jurisdiction located in the State and County where the Project is located. All Owner remedies provided in the Contract Documents shall be taken and construed as cumulative and not exclusive; that is, in addition to each and every other remedy herein provided; and in all instances Owner shall have any and all other equitable and legal rights and remedies which it would have according to law.
- B. The Contract Documents, any Contract Modifications and Change Orders, shall represent the entire and integrated agreement between Owner and Contractor regarding the subject matters hereof and thereof and shall constitute the exclusive statement of the terms of the parties' agreement. The Contract Documents, and any Contract Modifications and Change Orders, shall supersede any and all prior negotiations, representations or agreements, written or oral, express or implied, that relate in any way to the subject matter of the Contract Documents or written Modifications. Owner and Contractor represent and agree that, except as otherwise expressly provided in the Contract Documents, they are entering into the Contract Documents and any subsequent written Modification in sole reliance upon the information set forth or referenced in the Contract Documents or Contract Modifications; the parties are not and will not rely on any other information, which shall be inadmissible in any proceeding to enforce these documents.
- C. Either party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the Contract Documents at any time shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant,

condition or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding.

- D. Neither acceptance of the whole or any part of Work by Owner nor any verbal statements on behalf of Owner or its authorized agents or representatives shall operate as a waiver or modification of any provision of the Contract Documents, or of any power reserved to Owner herein nor any right to damages provided in the Contract Documents.

14.09 Interpretation.

- A. Should any part, term or provision of this Agreement or any of the Contract Documents, or any document required herein or therein to be executed or delivered, be declared invalid, void or unenforceable, all remaining parts, terms and provisions shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby. If the provisions of any law causing such invalidity, illegality or unenforceability may be waived, they are hereby waived to the end that this Agreement and the Contract Documents may be deemed valid and binding agreements, enforceable in accordance with their terms to the greatest extent permitted by applicable law. In the event any provision not otherwise included in the Contract Documents is required to be included by any applicable law, that provision is deemed included herein by this reference (or, if such provision is required to be included in any particular portion of the Contract Documents, that provision is deemed included in that portion).
- B. Contract Documents shall not be construed to create a contractual relationship of any kind between (i) Project Manager or any Owner's representative and Contractor; (ii) Owner and/or its Representatives and a Subcontractor, sub-Subcontractor, or supplier of any Project labor, materials, or equipment; or (iii) between any persons or entities other than Owner and Contractor.

14.10 Patents

- A. Fees or claims for any patented invention, article or arrangement that may be used upon or in any manner connected with performance of the Work or any part thereof shall be included in the Cost Proposal for doing the Work. Contractor shall defend, indemnify and hold harmless Owner and each of its officers, employees, consultants and agents including, without limitation, the Board and each Owner's Representative, from all damages, claims for damages, costs or expenses in law or equity, including attorney's fees, arising from or relating to any claim that any article supplied or to be supplied under the Contract Documents infringes on the patent rights, copyright, trade name, trademark, service mark, trade secret or other intellectual property right of any person or persons or that the person or entity supplying the article does not have a lawful right to sell the same. Such costs or expenses for which Contractor agrees to indemnify and hold harmless the above indemnities include but are not limited to any and all license fees, whether such fees are agreed by any indemnitee or ordered by a court or administrative body of any competent jurisdiction.

14.11 Substitution For Patented And Specified Articles

- A. Except as noted specifically in the instructions to Contractors or in Contract Documents, whenever in Specifications, material or process is designated by patent or proprietary name or by name of manufacturer, such designation shall be deemed to be used for purpose of facilitating description of material and process desired, and shall be deemed to be followed by the words "or Approved Equal" and Contractor may offer any substitute material or process that Contractor considers "equal" in every respect to that so designated and if material or process offered by Contractor is, in opinion of Owner, Equal in every respect to that so designated, its use will be approved. However, Contractor may utilize this right only by timely submitting Document 00 6325 (Substitution Request Form) as provided in Document 00 2113 (Instructions to Contractors). A substitution will be approved only if it is a true "or equal" item in every aspect of its design and quality including, without limitation, its dimensions, weights, service requirements, durability, functioning, impact on contiguous construction elements, overall schedule and design.

14.12 Interest Of Public Officers

- A. No representative, officer, or employee of Owner no member of the governing body of the locality in which the Project is situated, no member of the locality in which Owner was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with

respect to the Project, during the tenure of the official or for one year thereafter, shall, as principal, agent, attorney or otherwise, be directly or indirectly interested, in the Contract Documents or the proceeds thereof.

14.13 Limit Of Liability

- A. OWNER, AND EACH OF ITS OFFICERS, BOARD MEMBERS, EMPLOYEES, CONSULTANTS AND AGENTS INCLUDING, WITHOUT LIMITATION, PROJECT MANAGER AND EACH OTHER OWNER REPRESENTATIVE, SHALL HAVE NO LIABILITY TO CONTRACTOR FOR SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, EXCEPT TO THE LIMITED EXTENT THAT THESE CONTRACT DOCUMENTS OR APPLICABLE PUBLIC CONTRACTING STATUTES MAY SPECIFY THEIR RECOVERY.

ARTICLE 15 - WORKING CONDITIONS AND PREVAILING WAGES

15.01 Use Of Site/Sanitary Rules

- A. All portions of the Work shall be maintained at all times in neat, clean and sanitary condition. Contractor shall furnish toilets for use of Contractor's and Subcontractors' employees on the Site where needed, and their use shall be strictly enforced. All toilets shall be properly secluded from public observation, and shall be located, constructed and maintained subject to Owner's approval.
- B. Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Site and land areas identified in and permitted by Contract Documents and other land and areas permitted by applicable laws and regulations, rights of way, permits and easements or as designated by Owner, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, any improvement located thereon, or to Owner or occupant thereof resulting from the performance of Work.
- C. During the progress of the Work, Contractor shall keep the Site and the Project free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, Contractor shall clean the site, remove all waste materials, rubbish and debris from and about the Site as well as all tools, appliances, construction equipment and machinery and surplus materials. Contractor shall leave the premises clean and ready for occupancy by Owner at Substantial Completion of Work. Contractor shall restore to original condition all property not designated for alteration by Contract Documents.
- D. Contractor shall not load nor permit any part of any structure or pavement to be loaded in any manner that will endanger the structure or pavement, nor shall Contractor subject any part of Work or adjacent property to stresses or pressures that will endanger it. Contractor shall conduct all necessary existing conditions investigation regarding structural, mechanical, electrical or any other system existing, shall perform Work consistent with such existing conditions, and shall have full responsibility for insufficiencies or damage resulting from insufficiencies of existing systems, equipment or structures to accommodate performing the Work.

15.02 Protection Of Work, Persons, And Property

- A. Contractor shall be responsible for initiating, maintaining and supervising all safety and site security precautions and programs in connection with Work, and shall develop and implement a site security and safety plan throughout construction. Contractor shall comply with all safety requirements specified in any safety program established by Owner, or required by state, federal or local laws and ordinances. Contractor shall be responsible for all theft or damage to Work, property or structures, and all injuries to persons, either on the Site or constituting the Work (e.g., materials in transit), arising from the performance of Work of the Contract Documents from a cause.
- B. Contractor shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify Owners of adjacent property and of Underground Facilities and utility Owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property.

- C. Contractor shall remedy all damage, injury or loss to any property referred to above in this Article, caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, supplier, or any other person or organization directly or indirectly employed by any of them to perform or furnish any Work or anyone for whose acts any of them may be liable. Contractor's duties and responsibility for safety and for protection of Work shall continue until such time as all the Work is completed and Final Acceptance of the Work. Owner and its agents do not assume any responsibility for collecting any indemnity from any person or persons causing damage to Contractor's Work.
- D. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.
- E. Owner may, at its option, retain such moneys due under the Contract Documents as Owner deems necessary until any and all suits or claims against Contractor for injury to persons or property shall be settled and Owner receives satisfactory evidence to that effect.
- F. Work within the right-of-way lines shall be done in accordance with the standards and specifications of the controlling agency. Permit for such work shall be obtained and paid for by the Contractor before executing the work within such right-of-ways.

15.03 Responsibility For Safety And Health

- A. Contractor shall ensure that its and each tier of Subcontractors' employees, agents and invitees comply with applicable health and safety laws while at the Site. These laws include the Occupational Safety and Health Act of 1970 and rules and regulations issued pursuant thereto, and Owner's safety regulations as amended from time to time. Contractor shall comply with all Owner directions regarding protective clothing and gear.
- B. Contractor shall be fully responsible for the safety of its and its Subcontractors' employees, agents and invitees on the Site. Contractor shall notify Owner, in writing, of the existence of hazardous conditions, property or equipment at the Site that are not under Contractor's control. Contractor shall be responsible for taking all the necessary precautions against injury to persons or damage to the property of Contractor, Subcontractors or persons from recognized hazards until the responsible party corrects the hazard.
- C. Contractor shall confine all persons acting on its or its Subcontractors' behalf to that portion of the Site where Work under the Contract Documents is to be performed, Owner-designated routes for ingress and egress thereto, and any other Owner-designated area. Except those routes for ingress and egress over which Contractor has no right of control, within such areas, Contractor shall provide safe means of access to all places at which persons may at any time have occasion to be present.

15.04 Emergencies

- A. In emergencies affecting the safety or protection of persons or Work or property at the Site or adjacent thereto, Contractor, without special instruction or authorization from Owner, is obligated to act to prevent threat and damage, injury or loss, until directed otherwise by Owner. Contractor shall give Owner prompt written notice if Contractor believes that any significant changes in Work or variations from Contract Documents have been caused thereby. If Owner determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Change Order or Construction Change Directive will be issued to document the consequences of such action.

15.05 Use Of Roadways And Walkways

- A. Contractor shall not unnecessarily interfere with use of any roadway, walkway or other facility for vehicular or pedestrian traffic. Before beginning any interference and only with Owner's prior concurrence, Contractor may provide detour or temporary bridge for traffic to pass around or over the interference, which Contractor shall maintain in satisfactory condition as long as interference continues. Unless otherwise provided in the Contract Documents, Owner shall bear the cost of these temporary facilities.

15.06 Nondiscrimination

- A. No person or entity shall discriminate in the employment of persons upon public works because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical

condition, marital status, sexual preference, or gender of such persons, except as provided in Government Code Section 12940. Every contractor for public works violating the provisions of Labor Code Section 1735 is subject to all the penalties imposed for a violation of Chapter 1, Part 7, Division 2 of the California Labor Code.

15.07 Prevailing Wages And Working Hours

- A. Contractor shall pay to persons performing labor in and about Work provided for in the Contract Documents an amount equal to or more than the general prevailing rate of per diem wages for (i) work of a similar character in the locality in which the Work is performed and (ii) legal holiday and overtime work in said locality. The per diem wages shall be an amount equal to or more than the stipulated rates contained in a schedule that has been ascertained and determined by the Director of the State Department of Industrial Relations and Owner to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this Contract. Contractor shall also cause a copy of this determination of the prevailing rate of per diem wages to be posted at each Site.
- B. Contractor shall forfeit, as a penalty to Owner, \$200.00 for each laborer, worker, or mechanic employed in performing labor in and about the Work provided for in the Contract Documents for each Day, or portion thereof, that such laborer, worker or mechanic is paid less than the said stipulated rates for any Work done under the Contract Documents by him or her or by any Subcontractor under him or her, in violation of Articles 1 and 2 of Chapter 1 of Part 7 of Division II of the Labor Code. The sums and amounts that are forfeited pursuant to this Paragraph and the terms of the Labor Code shall be withheld and retained from payments due to Contractor under the Contract Documents, pursuant to this Document 00 7200 and the Labor Code, but no sum shall be so withheld, retained or forfeited except from the final payment without a full investigation by either the State Department of Industrial Relations or by Owner. The Labor Commissioner pursuant to Labor Code Section 1775 shall determine the final amount of forfeiture.
- C. Contractor shall insert in every subcontract or other arrangement which Contractor may make for performance of Work or labor on Work provided for in the Contract, provision that Subcontractor shall pay persons performing labor or rendering service under subcontract or other arrangement not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed in the Labor Code.
- D. Contractor stipulates that it shall comply with all applicable wage and hour laws, including without limitation, Labor Code Sections 1776 and 1810-1815. Failure to so comply shall constitute a default under this Contract.
- E. Contractor and its Subcontractors shall be responsible for compliance with Labor Code Sections 1810-1815.
 - 1. Eight hours of labor performed in execution of the Contract constitutes a legal day's work. The time of service of any worker employed on the Project is limited and restricted to 8 hours during any one calendar day, and 40 hours during any one calendar week.
 - 2. Contractor and its Subcontractors shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by him or her in connection with the Project. The record shall be kept open at all reasonable hours to the inspection Owner and to the Division of Labor Standards Enforcement.
 - 3. Contractor or its Subcontractors shall, as a penalty to Owner, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the Contract Documents by the respective Contractor or Subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of Labor Code Sections 1810-1815.
 - 4. Work performed on the Project by employees of Contractor or its Subcontractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of 8 hours per day at not less than 1 1/2 times the basic rate of pay.

- F. Contractor and its Subcontractors shall be responsible for compliance with Labor Code Section 1776. Further, if this Contract is awarded on or after January 1, 2015, this Project is subject to prevailing wage compliance monitoring and enforcement by the Department of Industrial Relations.
1. Contractor and Subcontractors must keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the Work of the Contract Documents. Each payroll record shall contain or be verified by a written declaration as required by Labor Code Section 1776.
 2. The payroll records enumerated above must be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor as required by Labor Code Section 1776.
 - a. Contractor shall inform Owner of the location of records enumerated above, including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.
 - b. Contractor or Subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated above. In the event that the Contractor or Subcontractor fails to comply with the ten-day period, he or she shall, as a penalty to Owner on whose behalf the contract is made or awarded, forfeit \$100.00 for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. Contractor is not subject to a penalty assessment pursuant to this Paragraph due to the failure of a Subcontractor to comply with this Paragraph.
 3. With each application for payment, Contractor shall also deliver certified payrolls to Owner as set forth above in this Document 00 7200 (General Conditions), and (if this Contract is awarded on or after April 1, 2015 or continues on or after January 1, 2016, or the Labor Commissioner otherwise directs) concurrently therewith (but in no event less frequently than monthly) directly to the Labor Commissioner in the format prescribed by the Labor Commissioner.
 4. Contractor shall post all jobsite notices if and when prescribed by regulation.

15.08 Environmental Controls

- A. Contractor shall comply with all rules, regulations, ordinances, and statutes that apply to any Work performed under the Contract Documents including, without limitation, any toxic, water, stormwater management and soil pollution controls and air pollution controls specified in Government Code Section 11017. Contractor shall be responsible for insuring that Contractor's Employees, Subcontractors, and the public are protected from exposure to airborne hazards or contaminated water, soil, or other toxic materials used during or generated by activities on the Site or associated with the Project.

15.09 Shoring Safety Plan

- A. Any conflict between this Paragraph and the Technical Specifications shall be resolved in favor of the most stringent requirement.
- B. At least five Days in advance of any excavation five feet or more in depth, Contractor shall submit to Owner a detailed plan showing the shoring, bracing and sloping design (including calculations) and other provisions to be made for worker protection from the hazard of caving ground during the excavation, as required by Labor Code Section 6705. A civil or structural engineer registered in California shall prepare and sign any plan that varies from the shoring system standards established by the State Construction Safety Orders.
- C. During the course of Work, Contractor shall be responsible for determining where sloping, shoring, and/or bracing is necessary and the adequacy of the design, installation, and maintenance of all shoring and bracing for all excavation, including any excavation less than five feet in depth.

Contractor will be solely responsible for any damage or injuries that may result from excavating or trenching. Owner's acceptance of any drawings showing the shoring or bracing design or Work schedule shall not relieve Contractor of its responsibilities under this Paragraph.

- D. Appoint a qualified supervisory employee who shall be responsible to determine the sloping or shoring system to be used depending on local soil type, water table, stratification, depth, etc.

END OF DOCUMENT

SUPPLEMENTARY CONDITIONS – INSURANCE AND INDEMNIFICATION

ARTICLE 1 INSURANCE

1.01 At or before the date specified in Document 00 2113 (Instructions to Contractors), Contractor shall furnish to Owner satisfactory proof that Contractor has taken out for the entire period covered by the Contract the following classes of insurance in the form and with limits and deductibles specified below, unless otherwise specified in Contract Documents:

A. Comprehensive General Liability Insurance covering claims for personal injury, bodily injury and property damage arising out of the Work and in a form providing coverage not less than that of a Standard Commercial General Liability Insurance policy (**Occurrence Form**). Such insurance shall provide for all operations and include independent contractors, products liability, completed operations for two years after Final Completion and acceptance of the final payment for the Work, contractual liability, and coverage for explosion, collapse, and underground hazards.

The limits of such insurance shall not be coverage of less than **\$5,000,000** each occurrence, **\$5,000,000** general aggregate limit, and **\$5,000,000** aggregate for products and completed operations. The policy shall be endorsed to provide Broad Form Property Damage Coverage.

B. Comprehensive Automobile Liability Insurance covering all owned, non-owned, and hired vehicles. Such insurance shall provide coverage not less than the standard Comprehensive Automobile Liability policy with limits not less than **\$2,000,000** each person Bodily Injury, **\$2,000,000** each occurrence Bodily Injury, and **\$2,000,000** each occurrence Property Damage.

C. All-Risk Course of Construction Insurance including damage to property owned by Owner, Contractor or third parties caused by fire. Insurance shall be in the amount of 100 percent of the completed value of the Work to be performed under this Contract. Deductible shall not exceed **\$10,000.00**. Each loss shall be borne by Contractor.

D. Workers' Compensation Insurance for all persons whom the Contractor may employ in carrying out Work contemplated under Contract Documents, in accordance with the Act of Legislature of State of California, known as "Workers' Compensation Insurance and Safety Act," approved May 26, 1913, and all acts amendatory or supplemental thereto, in the statutory amount. The Workers' Compensation policy must also include Employers' Liability coverage in amounts not less than **\$2,000,000** per accident, **\$2,000,000** per disease, and **\$2,000,000** aggregate. In the event Contractor is self-insured, it shall furnish Certificate of Permission to Self-Insure signed by Department of Industrial Relations Administration of Self-Insurance, State of California.

1.02 If Contractor normally carries insurance in an amount greater than the minimum amounts required by Owner in Paragraph 1.01 above, that greater amount shall become the minimum required amount of insurance for purposes of the Contract. Therefore, Contractor hereby acknowledges and agrees that all insurance carried by it shall be deemed liability coverage for all actions it performs in connection with the Contract.

The limits of insurance this Contract requires may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the Owner's benefit, to the extent required by the Contract, before the Owner's insurance or self-insurance may be called upon to protect Owner as a named insured.

1.03 All policies of insurance shall be placed with insurers acceptable to Owner. The insurance underwriter(s) for all insurance policies except Workers' Compensation shall have an A. M. Best Company rating of [A-, VIII] or better, unless otherwise specified in Contract Documents.

All self-insured retentions (SIR) must be disclosed to the Owner for approval and shall not reduce the coverage limits. Insurance policies containing an SIR provision shall provide or be endorsed

to provide that the SIR may be satisfied by either the named Contractor/named insured or the Owner.

- 1.04** Required Endorsements: The policies required under Document 00 7200 (General Conditions) and this Document 00 7316 (including any umbrella or excess liability policy(ies)) shall be endorsed as follows (excluding Workers Compensation insurance with respect to Paragraph A below):
- A. Name of Owner and South Bay Recycling LLC, its elected and/or appointed governing body and boards, employees, representatives, consultants, and agents, and Project Manager as additional insureds, but only with respect to liability arising out of the activities of the named insured. Additional insured language must be at least as broad as the Insurance Services Office (ISO) forms GC 20 38 04 13 and GC 20 37 04 13.
 - B. Each such policy shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limit of the insurance company's liability required hereunder. Should any of the policies identified herein contain a "cross-suits" exclusion, such exclusion must not apply to any additional insureds.
 - C. Insurance shall be primary to Owner and no other insurance or self-insured retention carried or held by Owner shall be called upon to contribute to a loss covered by insurance for the named insured.
 - D. Insurance shall contain a provision requiring the insurance carriers to waive their rights of subrogation against Owner and all additional insureds, as well as other insurance carriers for the Work.
 - E. All endorsements shall include the applicable policy number, the named insured(s) and policy terms.
 - F. Contractor or its insurance broker shall submit to Owner a copy of the "**Declarations Page**" for each policy identified under Paragraph 1.01 above. The Declarations Page shall include the name of the insurance carrier, the applicable policy number, the types of coverage and limits of insurance provided, the effective date(s) of the policy, the insurance broker's name and license number, and a list of all coverage forms and endorsements.
- 1.05** Certificates of insurance and endorsements shall have clearly typed thereon Owner Contract Number and title of Contract Documents. Written notice of cancellation, non-renewal, or reduction in coverage of any policy shall be mailed to Owner (Attention: Owner Risk Manager / Purchasing Agent) at the address listed in Document 00 5200 (Agreement), 30 Days in advance of the effective date of the cancellation, non-renewal, or reduction in coverage. Written notice of cancellation for non-payment shall be mailed within 10 Days of cancellation. Contractor shall maintain all insurance in full force and effect during entire period of performance of Contract Documents, including warranty and guarantee periods. However, Contractor may discontinue All-Risk Course of Construction Insurance after Final Payment, and shall maintain General Liability Insurance throughout the entire Extended Term specified Paragraph 1.01 above. At time of making application for extension of time, and during all periods exceeding the Contract Time resulting from any cause, Contractor shall submit evidence that insurance policies will be in effect during requested additional period of time. Upon Owner's request, Contractor shall submit to Owner, within 30 Days, copies of the actual insurance policies or renewals or replacements.
- 1.06** Contractor shall pay all insurance premiums, including any charges for required waivers of subrogation or the endorsement of additional insureds. If Contractor fails to maintain insurance, Owner may take out comparable insurance, and deduct and retain amount of premium from any sums due Contractor under Contract Documents, or require Contractor to reimburse Owner.
- 1.07** If injury occurs to any employee of Contractor, Subcontractor or sub-subcontractor for which the employee, or the employee's dependents in the event of employee's death, is entitled to compensation from Owner under provisions of the Workers' Compensation Insurance and Safety Act, as amended, or for which compensation is claimed from Owner, Owner may retain out of sums due Contractor under Contract Documents, amount sufficient to cover such compensation, as fixed by the Act, as amended, until such compensation is paid, or until it is determined that no compensation is due. If Owner is compelled to pay compensation, Owner may, in its discretion,

either deduct and retain from the Contract Sum the amount so paid, or require Contractor to reimburse Owner.

- 1.08** Nothing herein shall be construed as limiting in any way the extent to which Contractor or any Subcontractor may be held responsible for payment of damages resulting from their operations.
- 1.09** Except for Comprehensive General Liability Insurance, of which Subcontractors need only obtain \$1,000,000 in coverage, all Subcontractors shall maintain the same insurance required to be maintained by Contractor with respect to their portions of the Work unless otherwise indicated in Contract Documents, and Contractor shall cause the Subcontractors to furnish proof thereof to Owner within ten Days of Owner's request.
- 1.10** The following provisions apply to any licensed professional engaged by Contractor to perform portions of the Work (Professional).
- A. Each Professional shall maintain the following insurance, unless otherwise specified in Contract Documents:
- B. Professional Liability Insurance, insuring against professional errors and omissions arising from Professional's Work on the Project, in an amount not less than **\$1,000,000** combined single limit for each occurrence. If Professional cannot provide an occurrence policy, Professional shall provide insurance covering claims made as a result of performance of Work on this Project and shall maintain such insurance in effect for not less than two years following Final Completion of the Project.
1. Professional shall satisfy all other provisions of this Document 00 7316 relating to that insurance, including without limitation providing required insurance certificates (containing the required endorsements) before commencing its Work on the Project.
- 1.11** Contractor shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following completion of this project or service. In the event Contractor fails to obtain or maintain completed operations coverage as required by this Agreement, Owner at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

ARTICLE 2 RESPONSIBILITY OF CONTRACTOR AND INDEMNIFICATION

- 2.01** Owner and each of its officers, employees, consultants and agents including, without limitation, the Board, Project Manager and each Owner's Representative, shall not be liable or accountable in any manner for loss or damage that may happen to any part of the Work; loss or damage to materials or other things used or employed in performing the Work; injury, sickness, disease, or death of any person; or damage to property resulting from any cause whatsoever except their sole negligence, willful misconduct or active negligence, attributable to performance or character of the Work, and Contractor releases all of the foregoing persons and entities from any and all such claims.
- 2.02** To the furthest extent permitted by law (including, without limitation, Civil Code Section 2782), Contractor shall defend, indemnify, and hold harmless, Owner and each of its officers, employees, consultants and agents including, without limitation, the Board, Project Manager and each Owner's Representative, from claims, suits, actions, losses and liability of every kind, nature and description including, without limitation, claims and fines of regulatory agencies and attorney's fees and consultant's fees, directly or indirectly arising out of, connected with, or resulting from performance of the Work, failure to perform the Work, or condition of the Work that is caused in whole or part by any act or omission of Contractor, Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, resulting from any cause whatsoever except the Owner's sole negligence, willful misconduct, or active negligence.
- 2.03** With respect to third-party claims against Contractor, Contractor waives any and all rights to any type of express or implied indemnity including, without limitation, costs of defense, against Owner and each of its officers, employees, consultants and agents including, without limitation, Owner, the Board, Project Manager and each Owner's Representative. Owner shall provide timely notice

to Contractor of any third-party claim relating to the Contract Documents, in accordance with Public Contract Code Section 9201.

- 2.04** Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, its Subcontractors of any tier, or the officers or agents of any of them. The Contractor's defense and indemnification obligations are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained herein.
- 2.05** To the furthest extent permitted by law (including, without limitation, Civil Code §2782), the indemnities, releases of liability and limitations of liability, claims procedures, and limitations of remedy expressed throughout Contract Documents shall apply even in the event of breach of Contract, negligence (active or passive), fault or strict liability of the party(ies) indemnified, released, or limited in liability, and shall survive the termination, rescission, breach, abandonment, or completion of the Work or the terms of the Contract Documents. If Contractor fails to perform any of these defense or indemnity obligations, Owner may in its discretion back charge Contractor for Owner's costs and damages resulting therefrom and withhold such sums from progress payments or other Contract moneys which may become due.
- 2.06** Contractor's obligations to defend and indemnify Owner shall survive the termination or completion of this Contract for the full period of time allowed by law.

END OF DOCUMENT

DOCUMENT 00 7380

APPRENTICESHIP PROGRAM

ARTICLE 1 COMPLIANCE REQUIRED

- 1.01** Contractor and Subcontractors shall comply with the requirements of California Labor Code Sections 1776, 1777.5, and 1777.6 concerning the employment of apprentices by Contractor or Subcontractors. Willful failure to comply may result in penalties, including loss of the right to Bid on or receive public works contracts.

ARTICLE 2 CERTIFICATION OF APPROVAL

- 2.01** California Labor Code Section 1777.5, as amended, requires a Contractor or Subcontractor employing tradespersons in any apprenticeable occupation to apply to the joint apprenticeship committee nearest the site of a public works project and which administers the apprenticeship program in that trade for a certification of approval. The certificate shall also fix the ratio of apprentices to journeypersons that will be used in performance of the Contract. The ratio of work performed by apprentices to journeypersons in such cases shall not be less than one *hour* of apprentices work for every five *hours* of labor performed by journeypersons (the minimum ratio for the land surveyor classification shall not be less than one apprentice for each five journeypersons), except:
- A. When unemployment for the previous three month period in the area exceeds an average of 15 percent;
 - B. When the number of apprentices in training in the area exceeds a ratio of one to five;
 - C. When a trade can show that it is replacing at least 1/30 of its membership through apprenticeship training on an annual basis state-wide or locally; or
 - D. Assignment of an apprentice to any work performed under a public works contract would create a condition which would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyperson.

ARTICLE 3 FUND CONTRIBUTIONS

- 3.01** Contractor is required to make contributions to funds established for administration of apprenticeship programs if Contractor employs registered apprentices or journeypersons in any apprenticeable trade on such contracts and if other contractors on the public works site are making such contributions.

ARTICLE 4 APPRENTICESHIP STANDARDS

- 4.01** Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of the California Department of Industrial Relations, or from the Division of Apprenticeship Standards and its branch offices.

END OF DOCUMENT

DOCUMENT 00 9113

ADDENDA

PROJECT NUMBER CIP.600100-17

SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY

MRF PHASE 1 IMPROVEMENTS PROJECT

225 SHOREWAY RD, SAN CARLOS, CA 94070

BHS Phase I Order Confirmation, BHS Phase I Performance & Acceptance Guarantee, BHS Phase I Payment Schedule, BHS Phase I Schedule of Submittals (attached at end of document)

BHS Phase I other files (Drawings, Tables, Project Schedules, and Technical Specifications) ([included online at www.rethinkwaste.org](http://www.rethinkwaste.org)):

- BHS Phase I Commodity and Residue Sort Flow Chart
- BHS Phase I Dry Mixed Waste Flow Chart
- BHS Phase I Install Schedule
- BHS Phase I Install Outline
- BHS Phase I Operations and Laydown Map
- BHS Phase I System Drawings

END OF DOCUMENT

DIVISION 1 GENERAL REQUIREMENTS

SECTION 01 1100

SUMMARY

PART 1 GENERAL

1.01 Summary.

- A. Section includes Summary of Work and Work Restrictions including:
 - 1. Work Covered By Contract Documents
 - 2. Cost Proposal Item, Allowances and Alternates
 - 3. Work Sequence
 - 4. Work Days and Hours
 - 5. Shutdown for Discovery of Cultural Resources
 - 6. Cooperation of Contractor and Coordination with Other Work
 - 7. Partial Occupancy/Utilization Requirements
 - 8. Contractor Use of Site
 - 9. Air Quality Standards
 - 10. Geotechnical Data and Existing Conditions
 - 11. Protection of Existing Structures and Underground Facilities
 - 12. Permits
 - 13. Actual Damages for Permit Violations
 - 14. Owner-Furnished Products

1.02 Work Covered by Contract Documents.

- A. Work comprises of the construction of Owner's **MRF Phase 1 Improvements Project** located at **225 Shoreway Rd, San Carlos, CA 94070**. Contract Documents fully describe the Work.
- B. The Work of this Contract comprises construction of all the Work indicated, described in the Specifications, or otherwise required by the Contract Documents. Unless provided otherwise in the Contract Documents, all risk of loss to Work covered by Contract Documents shall rest with Contractor until Final Acceptance of the Work. Cost of maintenance of systems and equipment prior to Notice of Completion will be considered as included in prices quoted and no direct or additional payment will be made therefore.
- C. For all Cost Proposal items, furnish and install all Work, including connections to existing systems, indicated and described in Specifications and all other Contract Documents. Work and requirements applicable to each individual Cost Proposal item, or unit of Work, shall be deemed incorporated into the description of each Cost Proposal item (whether Lump Sum or Unit Price). Any Cost Proposal item may be deleted from the Work and Contract Sum, in total or in part, prior to or after award of Contract without compensation in any form or adjustment of other Cost Proposal items or prices therefore.
- D. Allowance Work shall be done as Change Orders and as specified in section 01 2600 (modification procedures).

1.03 Cost Proposal Items, Allowances and Alternates.

- A. Descriptions of Unit Price Items (listed by Cost Proposal item numbers): See **Order Confirmation # 18-0334-DV2**, Equipment Detail listings:
 - Glass Clean-Up System
 - Bypass System
 - Residue Reroute
 - CSS Metering Bin

- B. Descriptions of Lump Sum Items and Basis of Measurement for Payment (listed by Proposal item numbers): See Order Confirmation # 18-0334-DV2, Summary pricing section.

1.04 Work Sequence.

- A. Construct Work in stages and at times to accommodate Owner operation requirements during the construction period; coordinate construction schedule and operations with Owner.
- B. Special operational constraints include the following:
 - 1. BHS will not disrupt normal operations of the MRF, which entails not working during weekday business hours (Monday to Friday, 8 AM to 5 PM).

1.05 Work Days and Hours.

- A. Work Days and hours: Friday 5 PM to Sunday midnight, inclusive.
- B. Work at the Site on weekends or holidays is permitted. Work during other times is not permitted unless Contractor requests otherwise from Owner in writing at least 48 hours in advance and Owner approves in its sole discretion.

1.06 Shutdown for Discovery of Cultural Resources.

- A. If discovery is made of items of historical archaeological or paleontological interest, immediately cease all Work in the area of discovery. Archaeological indicators may include, but are not limited to, dwelling sites, locally darkened soils, stone implements or other artifacts, fragments of glass or ceramics, animal bones, human bones, and fossils. After cessation of excavation, immediately contact Owner. Do not resume Work until authorization is received from Owner. When resumed, excavation or other activities shall be as directed by Owner.

1.07 Cooperation of Contractor and Coordination with Other Work.

- A. Coordinate with Owner and any Owner forces, or other contractors and forces, as required by Document 00 7200 (General Conditions).

1.08 Partial Occupancy/Utilization Requirements. (based on loss of use/interruption, cost of downtime with penalty)

- A. Possession, use of Work, and placement and installation of equipment by Owner shall not in any way evidence the completion of the Work or any part of it.
- B. Contractor shall not be held responsible for damage to the occupied part of the Work/MRF site resulting from Owner occupancy.
- C. Make available, in areas occupied, on a 24 hour per day and 7 day per week basis if required, any utility services, heating, and cooling in condition to be put in operation at the time of occupancy.
 - 1. Responsibility for operation and maintenance of said equipment shall remain with Contractor.
 - 2. Make, and Owner shall certify, an itemized list of each piece of equipment so operated with the date operation commences.
 - 3. Itemized list noted above shall be basis for commencement of warranty period for equipment.
 - 4. Owner shall pay for utility cost arising out of occupancy by Owner during construction.
- D. Use and occupancy by Owner prior to acceptance of Work does not relieve Contractor of its responsibility to maintain insurance and bonds required under the Contract until entire Work is completed and accepted by Owner.
- E. Prior to date of Final Acceptance of the Work by Owner, all necessary repairs or renewals in Work or part thereof so used, not due to ordinary wear and tear, but due to Defective materials or workmanship or to operations of Contractor, shall be made at expense of Contractor, as required in Document 00 7200 (General Conditions).

- F. Use by Owner of Work or part thereof as contemplated by this Section 01 1100 shall in no case be construed as constituting acceptance of Work or any part thereof. Such use shall neither relieve Contractor of any responsibilities under Contract, nor act as waiver by Owner of any of the conditions thereof.
- G. Owner may specify in the Contract Documents that portions of the Work, including electrical and mechanical systems or separate structures, shall be substantially completed on dates described in this Section 01 1100, if any, prior to Substantial Completion of all of the Work. Notify Owner in writing when Contractor considers any such part of the Work ready for its intended use and Substantially Complete and request Owner to issue a Certificate of Substantial Completion for that part of the Work.

1.09 Contractor Use of Site.

- A. Access is available to the Site from Shoreway Road along the route indicated in the Laydown Map. The entrance to the access road is protected with a gate and lock. Contractor shall insert Contractor's own lock in series and ensure that the entrance is locked at the end of each work day and at other times as may be necessary to control unauthorized entry.
- B. Contractor shall contact Owner at least 2 Business Days prior to entering the building and performing Work to allow Owner to arrange access into the building. Access Request forms shall be submitted 48 hours in advance of anticipated on-site Work to gain permission to enter Site and to allow notification to occupants.
- C. Confine operations at Site to areas permitted by Contract Documents, permits, ordinances, and laws. Do not unreasonably encumber Site with materials or equipment.
- D. Assume full responsibility for protection and safekeeping of products stored on premises. Move any stored products that interfere with operations of Owner or other contractor.
- E. Coordinate parking, storage, staging, and Work areas with Owner. Owner will provide a storage area for Contractor's equipment and materials. Do not store construction materials in the dripline of any tree.
- F. Prior to commencement of Work or excavation, Contractor and Owner shall jointly survey the area adjacent to the Project area making permanent note and record of such existing damage such as cracks, sags or other similar damage. This record shall serve as a basis for determination of subsequent damage to structures, conditions or other existing improvements due to Contractor's operations. All parties making the survey shall sign the official record of existing damage. Cracks, sags or damage of any nature to the adjacent Project area, not noted in the original survey but subsequently noted, shall be reported immediately to Owner. Any damage found to be related to Force Majeure events such as earthquakes will not be the responsibility of Contractor.
- G. The Contractor shall follow all city and county ordinances in force during the duration of this Contract.
- H. It is essential that the Contractor perform the Work with as little interference and disturbance as possible to the surrounding neighborhood.
- I. When suspect materials, outside the scope of Work, are encountered during the Work or restoration process, the Contractor shall immediately contact the Project Manager for evaluation and approval of the methods for dealing with the material.

1.10 Air Quality Standards.

- A. Ensure that idling time for all heavy equipment is minimized to reduce on-Site emissions.
- B. Maintain equipment in good mechanical condition.
- C. Cover trucks hauling dirt.
- D. Limit dust emissions during periods of high winds (greater than 15 miles per hour).
- E. Replace ground cover in disturbed areas as soon as possible.

- F. Enclose, cover, water, or apply soil binders to exposed stockpiles.
- G. Remove earth tracked onto neighboring paved roads at least once daily.
- H. Limit equipment speed to 10 miles per hour in unpaved areas.

1.11 Geotechnical Data and Existing Conditions.

Available Documentation: In accordance with, and subject to, the provisions of Document 00 3132 (Geotechnical Data and Existing Conditions), the following documentation (Underground Survey) is available for review. This information is not part of the Contract Documents.

1.12 Protection of Existing Structures and Underground Facilities.

- A. The Drawings may indicate existing above- and below-grade structures, drainage lines, storm drains, sewers, water lines, gas lines, electrical lines, hot water lines, and other similar items and Underground Facilities that are known to Owner. At least 2 Business Days, or as otherwise noted, prior to commencement of excavation, notify the owners of such underground facilities by calling Underground Service Alert of Northern California at telephone number 811 (800-227-2600)
- B. Where overhead service to a structure, known to receive service, does not exist, then underground service shall be assumed to exist.
- C. Attention is also directed to the existence of overhead power and telephone lines.
- D. Perform pot-holing by hand within 24 inches (in any direction) of the Underground Facilities. This may be done on an area-by-area basis, but shall be accomplished at least 7 Days in advance of the date of construction within such area.
- E. Telemetry antennas: Ensure that the telemetry and voice communication antennas located on the [Identify the Building] roof remain operational. Owner's telemetry system is critical to the function and operation of Owner's water supply and distribution system. Coordinate relocation of equipment related to the telemetry and voice communication systems with Owner. Notify Owner 3 Days prior to conducting any Work in the vicinity of the telemetry antenna.
- F. No attempt has been made to locate private utilities on private property such as sprinkler irrigation systems or electrical conduits. Contact the property owners prior to construction.
- G. In addition to reporting, if a utility is damaged, Contractor must take appropriate action as provided in Document 00 7200 (General Conditions).
- H. Additional compensation or extension of time on account of utilities not indicated or otherwise brought to Contractor's attention including reasonable action taken to protect or repair damage shall be determined as provided in Document 00 7200 (General Conditions).

1.13 Permits.

- A. Permits, agreements, or written authorizations that are known by Owner to apply to this Project are listed below:
 1. Storm Water Pollution Prevention
 2. Cal/OSHA Permit. Obtain, as applicable, permit(s) as required by Cal/OSHA for the following:
 - a. Construction of trenches or excavations that are five feet or more in depth and into which a person is required to descend.
 - b. Construction or demolition of any building, structure, or scaffolding for falsework more than three stories high, or the equivalent height (36 feet).
 - c. Erection or dismantling of vertical shoring systems more than three stories high, or the equivalent height (36 feet).
 3. The local Cal/OSHA district office is located at:

1065 E. Hillsdale Blvd, Suite 110, Foster City, CA 94404
 (650) 573-3812 (Phone)
 (650) 573-3817 (Fax)

- B. All other permits that may be required, such as electrical, mechanical, and Building have not been applied for and shall be obtained by Contractor permit at no extra cost, with the Owner responsible for physically conveying the mechanical/Building permitting materials to the relevant City Department. Fire suppression permitting application by Owner shall be assisted by Contractor. Owner will pay applicable building permits, sanitation and water fees for the completed construction, except as otherwise provided in the Contract Documents. Applicable permit fees will be reimbursed to the extent specified in Document 00 7200 (General Conditions).

1.14 Actual Damages for Permit Violations

- A. In addition to damages which are impracticable or extremely difficult to determine, for which liquidated damages will be assessed as described in Document 00 5200 (Agreement) and Document 00 7200 (General Conditions), Owner may incur actual damages, including fines imposed by any regulatory agency, resulting from loss of use of the MRF use in violation of legal or regulatory requirements where the violations result from Contractor's activities. Continuous operation of the MRF in compliance with legal or regulatory requirements is essential to avoid discharges that would violate applicable regulations. Violations or threatened violations may subject Owner to fines per Day or occurrence and/or other costs or civil liabilities.
- B. Contractor shall be liable for liquidated damages for such costs, as reflected within the Liquidated Damages set for Operational Downtime, or other remedies provided by the Contract Documents.

1.15 Owner-Furnished Products

- A. Owner-Furnished Products:
 - 1. None
- B. Owner's Responsibilities:
 - 1. Review Shop Drawings, Product Data, and Samples, and send back to Contractor.
 - 2. Arrange and pay for delivery to Site.
 - 3. On delivery, inspect products jointly with Contractor.
 - 4. Submit claims for transportation damage and replace damaged, Defective, or deficient items.
 - 5. Arrange for manufacturers' warranties, inspections, and service.
- C. Contractor's Responsibilities:
 - 1. Review Owner-reviewed Shop Drawings, Product Data, and Samples.
 - 2. Receive and unload products at Site; inspect for completeness or damage jointly with Owner.
 - 3. Handle, store, install, and finish products.
 - 4. Repair or replace items damaged after receipt.
 - 5. Install into Project per Contract Documents.

END OF SECTION

DIVISION 1 GENERAL REQUIREMENTS

SECTION 01 2000

MEASUREMENT AND PAYMENT

PART 1 – GENERAL

1.01 SUMMARY

- A. Section includes description of requirements and procedures for determining amount of Work performed and for obtaining payment for Work performed.

1.02 REFERENCES

- A. California Public Contract Code
- B. Code of Civil Procedure
- C. Government Code
- D. Civil Code

1.03 COMPOSITION AND SCOPE OF CONTRACT SUM

A. Scope of Contract Sum

1. The Contract Sum for performance of the Work under Contract Documents, or under any Cost Proposal item, allowance, or Alternate, shall include full compensation for all Work required under the Contract Documents, including without limitation, all labor, materials, taxes, transport, handling, storage, supervision, administration, and all other items necessary for the satisfactory completion of the Work, whether or not expressly specified or indicated, incidental work and unexpected expenses, and all terms, conditions, requirements and limitations set forth in the Contract Documents.
2. Contract Sum may be expressed as lump sum, unit price, GMP, allowance, or combination thereof.

B. Unit Price items

1. Quantity of Work to be paid for under any item for which a unit price is fixed in Contract Documents shall be determined by Owner based on, so far as practicable, actual number of units satisfactorily completed, as determined by Owner and certified by Contractor, within prescribed or ordered limits, and no payment will be made for Work unsatisfactorily performed or done outside of limits.
2. Unit Prices shall apply to Work covered by unit prices so long as actual quantities performed on the Project are not less than 75 percent or greater than 125 percent of the estimated quantities quoted or otherwise stated in the Contract Documents. If actual quantities exceed these parameters, then the unit price shall be adjusted by an amount to reflect the Contractor's incremental cost differential resulting from increased or decreased economies of scale.

C. Lump Sum Items

1. When estimated quantity for specific portion of Work is not indicated and/or Work is designated as lump sum, payment will be on a lump sum basis for Work satisfactorily completed in accordance with Contract Documents.
2. Payment for lump sum Work, or items of Work subject to a lump sum (e.g. without limitation, change order work), shall be made on the basis of satisfactory completion of such Work or work item, earned in progressive stages in accordance with the Contract Documents, up to but not exceeding the Contractor's percentage completion of the Work or item.
3. Lump sum items shall be paid based upon the approved Schedule of Values, which shall be used to measure progressive payments based upon satisfactory progress towards completion of the item.

D. Allowance Items

Allowances: Allowance Work will be authorized by Owner in writing, following change order procedures to determine cost, supporting documentation and authorization to proceed. Unused allowance amounts at Contract completion shall reduce the Contract price accordingly.

1.04 PAYMENT PROCEDURES

A. Milestone Schedule:

1. Owner will review the Milestone Schedule payment breakdown to ensure that the dollar amounts are, in fact, reasonable cost allocations for the Work items listed. Upon favorable review by Owner, Owner will accept this Milestone Schedule for use. Owner shall be the sole judge of fair market cost allocations.
2. Owner will reject any attempt to increase the cost of early activities, i.e., "**front loading**," resulting in a complete reallocation of moneys until such front loading is corrected. Repeated attempts at front loading may result in suspension or termination of the Work for default, or refusal to process progress payments until such time as the Milestone Schedule is acceptable to Owner.

B. Payments

1. Each Application for Payment tied to the Milestone Schedule shall list each Change Order and Construction Change Directive (**CCD**) executed prior to date of submission, including the Change Order/CCD Number, and a description of the Work activities, consistent with the descriptions of original Work activities.
2. If Owner requires substantiating data, Contractor shall submit information requested by Owner, with cover letter identifying Project, Application for Payment number and date, and detailed list of enclosures. Contractor shall submit one copy of substantiating data and cover letter for each copy of Application for Payment submitted.

C. Owner's Review of Progress Payment Applications

1. Owner will review Contractor's Application for Payment following receipt.
2. If Owner determines that portions of the Application for Payment are not proper or not due under the Contract Documents, then Owner may approve the other portions of the Application for Payment, and in the case of disputed items or Defective Work not remedied, may withhold up to 150 percent of the disputed amount from the progress payment.
3. Pursuant to California Public Contract Code Section 20104.50, if Owner fails to make any payment within 30 Days after receipt of an undisputed and properly submitted Application for Payment from Contractor, Owner shall pay interest to the Contractor equivalent to the legal rates set forth in subdivision (a) of Section 685.010 of the California Code of Civil Procedure. The 30-Day period shall be reduced by the number of Days by which Owner exceeds the seven-Day return requirement set forth herein.
4. As soon as practicable after approval of each Application for Payment, Owner will pay to Contractor in manner provided by law, the amount due as provided in the Contract Documents, or a lesser amount if so provided in Contract Documents and by law, provided that payments may at any time be withheld if, in judgment of Owner, Work is not proceeding in accordance with Contract, or Contractor is not complying with requirements of Contract, or to comply with stop notices or to offset liquidated damages accruing or expected. In the case of such withholding, the Owner shall provide specific description of why payment is being withheld for the aforementioned reasons.
5. Before final payment is due or made, Contractor shall submit satisfactory evidence that Contractor is not delinquent in payments to employees, Subcontractors, suppliers, or creditors for labor and materials incorporated into Work. This specifically includes, without limitation, conditional lien release forms for the current progress payment and unconditional release forms for past progress payments. This also includes copies of certified payroll from contractor and subcontractors for the current payment period.

1.05 FINAL PAYMENT

A. Final Payment

1. As soon as practicable after all required Work is completed in accordance with Contract Documents, including punchlist, testing, record documents and Contractor maintenance after Final Acceptance, Contractor shall submit its Application for Final Payment.
2. Provided Contractor has met all conditions required for Final payment, Owner will pay to Contractor, in manner provided by law, unpaid balance of Contract Sum of Work (including, without limitation, retentions), or whole Contract Sum of Work if no progress payment has been made, determined in accordance with terms of Contract Documents, less sums as may be lawfully retained under any provisions of Contract Documents or by law.

B. Final Accounting

1. Prior payments and change orders shall be subject to audit and correction in the final payment.
2. Contractor and each assignee under an assignment in effect at time of final payment shall execute and deliver at time of final payment, and as a condition precedent to final payment, Document 00 6530 (Agreement and Release of Claims).

1.06 SUBSTITUTION OF SECURITIES

A. Public Contract Code Section 22300. In accordance with the provisions of Public Contract Code Section 22300, substitution of securities for any moneys withheld under Contract Documents to ensure performance is permitted under following conditions:

1. At request and expense of Contractor, securities listed in Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by Contractor and Owner which are equivalent to the amount withheld under retention provisions of Contract shall be deposited with Controller or with a state or federally chartered bank in California, as the escrow agent, who shall then pay such moneys to Contractor. Upon satisfactory completion of Contract, securities shall be returned to Contractor.
2. Alternatively, Contractor may request and Owner shall make payment of retentions earned directly to the escrow agent at the expense of Contractor. At the expense of Contractor, Contractor may direct the investment of the payments into securities and receive the interest earned on the investments upon the same terms provided for securities deposited by Contractor. Upon satisfactory completion of the work of the Contract Documents, Contractor shall receive from escrow agent all securities, interest, and payments received by the escrow agent from Owner. Consistent with Public Contract Code Section 7107(d), Contractor shall then pay to each Subcontractor, not later than seven Days after receipt of the payment, the respective amount of interest earned, net of costs attributed to retention withheld from each Subcontractor, on the amount of retention withheld to insure the performance of Contractor.
3. Contractor shall be beneficial owner of securities substituted for moneys withheld and shall receive any interest thereon.
4. Contractor may enter into an escrow agreement, form included in Contract Documents, as authorized under Public Contract Code Section 22300, specifying amount of securities to be deposited, terms and conditions of conversion to cash in case of default of Contractor, and termination of escrow upon completion of Contract Documents.
5. Public Contract Code Section 22300, in effect upon signing this Contract, is hereby incorporated in full by this reference and shall supersede anything inconsistent therewith.

END OF SECTION

DIVISION 1 GENERAL REQUIREMENTS

SECTION 01 2600

MODIFICATION PROCEDURES

PART 1 – GENERAL

1.01 SUMMARY

- A. Section includes requirements that supplement the paragraphs of Document 00 7200 (General Conditions).
- B. Description of procedures for modifying the Contract Documents and determining costs for changes in Contract Sum or Contract Time.

1.02 PROCEDURES FOR CONTRACTOR INITIATED CHANGE ORDER

- A. Contractor-Initiated Change Proposal Request (**CPR**) and Procedures:
 - 1. Contractor may initiate changes by submitting a Change Proposal Request (**CPR**).
 - 2. Whenever Contractor elects or is entitled to submit a CPR, Contractor shall prepare and submit to Owner for consideration a CPR using the Cost Proposal Form attached to this Section 01 2600 or otherwise included in this Project Manual. All CPR's must contain a complete breakdown of costs of credits, deducts and extras; itemizing labor, materials, equipment, markup, bonds, insurance and taxes; and any requested changes to Contract Time, as per the Cost Proposal Form. All Subcontractor Work shall be so indicated. After receipt of a CPR with a detailed breakdown, Owner will act promptly thereon.
 - 3. If Owner accepts a CPR, Owner will prepare a Change Order for Owner and Contractor signatures.
 - 4. If CPR is not acceptable to Owner because it does not agree with Contractor's proposed cost and/or time, Owner will provide comments thereto. Contractor will then, within seven (7) Days (except as otherwise provided herein), submit a revised CPR.
 - 5. When necessity to proceed with a change does not allow Owner sufficient time to conduct a proper check of a CPR (or revised CPR), Owner may issue a Change Directive (**CD**) as provided below.
- B. Contractor-Initiated Request for Information (**RFI**) Procedures, Requirements and Limitations:
 - 1. Contractor may submit RFI's for clarifications in Owner-prepared Contract Documents, which may result in the Contractor submitting a CPR.
 - 2. Whenever Contractor requires information regarding the Project or Owner-prepared Contract Documents, or receives a request for such information from a Subcontractor, Contractor may prepare and deliver an RFI to Owner. Contractor shall use RFI format provided on approval by Owner. Contractor shall not issue an RFI to Owner solely to clarify Contractor-prepared Construction Documents. Contractor must submit time critical RFIs at least 30 days before scheduled start date of the affected Work activity. Contractor shall reference each RFI to an activity within the master Schedule and shall note time criticality of the RFI, indicating time within which a response is required. Contractor's failure to reference RFI to an activity on the Schedule and note time criticality on the RFI shall constitute Contractor's waiver of any claim for time delay or interruption to the Work resulting from any delay in responding to the RFI.
 - 3. Contractor shall be responsible for its costs to implement and administer RFIs throughout the Contract duration. Regardless of the number of RFIs submitted, Contractor shall not be entitled to additional compensation for the effort required to submit the RFIs. Contractor shall be responsible for Owner's administrative costs for answering RFIs where the answer could reasonably be found by reviewing the Contract Documents, as determined by Owner; at Owner discretion, such costs may be deducted from progress payments or final payment.
 - 4. Owner will respond within ten (10) days from receipt of RFI with a written response to Contractor. Contractor shall distribute response to all appropriate Subcontractors.

5. If Contractor is satisfied with the response and does not request a change in Contract Sum or Contract Time, then the response shall be executed without a change.
6. If Contractor believes the response is incomplete, Contractor shall issue another RFI (with the same RFI number with the letter "A" indicating it is a follow-up RFI) to Owner clarifying original RFI. Additionally, Owner may return RFI requesting additional information should original RFI be inadequate in describing condition.

C. Time Requirements:

1. If Contractor believes that an Owner response to an RFI, submittal or other Owner direction, results in change in Contract Sum or Contract Time, Contractor shall notify Owner with the issuance of a preliminary CPR within 10 Days after receiving Owner's response or direction, and in no event after starting the disputed work or later than the time allowed under Article 12 of Document 00 7200 (General Conditions). If Contractor also requests a time extension, or has issued a notice of delay or otherwise requests a time extension with a CPR, then Contractor shall submit the TIE required in these Contract Documents, including Section 01 3200 (Progress Schedules and Reports), concurrently with the CPR and in no event later than 10 Days after providing the notice of delay.
2. If Contractor requires more time to accurately identify the required changes to the Contract Sum or Contract Time, Contractor may submit an updated and final CPR and TIE within 14 days of submitting the preliminary CPR.
3. If Owner agrees with Contractor's CPR and/or TIE, then Owner will prepare a Change Order for Owner and Contractor signatures. If Owner disagrees with Contractor, then Contractor may give notice of potential claim as provided in Article 12 of Document 00 7200 (General Conditions), and proceed thereunder.
4. Contractor must submit all CPR's (preliminary and final), notices of potential claim and Claims, and TIE's within the required time periods. Any failure to do so waives Contractor's right to submit a CPR or file a Claim.

1.03 PROCEDURES FOR OWNER INITIATED CHANGE ORDERS

A. Owner Initiated Change Directives (CD):

1. Owner may, by Change Directive (CD) or initially by Instruction Bulletin or by following the procedures for disputed work herein, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with or without adjustment to Contract Sum or Contract Time.
2. If at any time Owner believes in good faith that a timely Change Order will not be agreed upon using the foregoing procedures, or at any other time, Owner may issue a CD with its recommended cost and/or time adjustment (if any). Upon receipt of CD, Contractor shall promptly proceed with the change of Work involved and respond to Owner within ten (10) Days.
3. Contractor's response must be any one of following:
 - a. Return CD signed, thereby accepting Owner response, including adjustment to time and cost (if any).
 - b. Submit a (revised if applicable) Cost Proposal with supporting documentation (if applicable, reference original Cost Proposal number followed by letter A, B, etc. for each revision), if Owner so requests.
 - c. Give notice of intent to submit a claim as described in Article 12 of Document 00 7200 (General Conditions), and submit its claim as provided therein.
4. If CPR or the CD provides for an adjustment to any Contract Sum, the adjustment shall be based on:
 - a. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation.
5. Change Directive signed by Contractor indicates the agreement of Contractor therewith, including adjustment in Contract Sum or the method for determining them. Such agreement

shall be effective immediately and shall be finalized as a Change Order. Where Owner authorizes CD work on a time and materials basis up to a maximum amount, then Contractor shall promptly advise Owner upon reaching 75% of such maximum amount, otherwise Contractor shall accept fully the risk of completing the CD work without exceeding such maximum amount.

6. If Contractor does not respond promptly or disagrees with the method for adjustment (or non-adjustment) in the Contract Sum, the method and the adjustment shall be determined by Owner on the basis of the Contract Documents and the reasonable expenditures and savings of those performing the Work attributable to the change. If the parties still do not agree on the proper adjustment due to a Change Directive, Contractor may file a Claim per Article 12 of Document 00 7200 (General Conditions) and/or Owner may direct the changed work through a unilateral change order. Contractor shall keep and present an itemized accounting in a manner consistent with the Milestone Schedule, together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this paragraph shall be limited to those provided herein.
7. Pending final determination of cost to Owner, Contractor may include amounts not in dispute in its Applications for Payment. The amount of credit to be allowed by Contractor to Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by Owner. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for Markup shall be figured on the basis of net increase, if any, with respect to that change.

B. Owner Initiated Change Order (CO) or Request for Proposal (RFP):

1. Owner may initiate changes in the Work or Contract Time by issuing a Request for Proposal (RFP) or Change Order (CO) to Contractor.
2. Owner may issue an RFP to Contractor. Any RFP will detail all proposed changes in the Work and request a quotation of changes in Contract Sum and Contract Time from Contractor.
3. In response to an RFP, Contractor shall furnish a Change Proposal Request (CPR) within twenty-one (21) Business Days of Owner's RFP. Upon approval of CPR, Owner may issue a Change Directive directing Contractor to proceed with extra Work.
4. If the parties agree on price and time for the work, the Owner will issue a Contact Change Order. If the parties do not agree on the price or time for a CPR, Owner may either issue a CD or decide the issue per Article 12 of Document 00 7200 (General Conditions). Contractor shall perform the changed Work notwithstanding any claims or disagreements of any nature.

1.04 PROCEDURES THAT APPLY TO CONTRACTOR- AND OWNER-INITIATED CHANGE ORDERS

A. Adjustment of Schedules to Reflect Change Orders or CDs:

1. Contractor shall revise Milestone Schedule and Application for Payment forms to record each authorized Change Order or CD as a separate line item and adjust the Contract Sum as shown thereon prior to the next Milestone payment scheduled.
2. Contractor shall revise the schedule prior to the next Milestone Schedule Payment, to reflect CO or CD.
3. Contractor shall enter changes in Project Record Documents prior to the next Milestone Schedule Payment.

B. Required Documentation for Adjustments to Contract Amounts:

1. For all changes and cost adjustments requested, Contractor shall provide documentation of change in Contract Amounts asserted, with sufficient data to allow evaluation of the proposal.
2. In all requests for compensation, Contractor shall supply fixed price cost proposals or estimates and any other calculation of costs made under the Contract Documents, Contractor shall breakout and quantify costs of labor, equipment and materials identified herein, for Contractor and subcontractors of any tier.
3. Contractor shall, on request, provide additional data to support computations for:

- a. Quantities of products, materials, labor and equipment.
- b. Taxes, insurance, and bonds.
- c. Justification for any change in Contract Time and new Schedule showing revision due, if any.
- d. Credit for deletions from Contract, similarly documented.

C. Responses and Disputes:

- 1. For all responses for which the Contract Documents do not provide a specific time period, recipients shall respond within a reasonable time.
- 2. For all disputes arising from the procedures herein, Contractor shall follow Article 12 of Document 00 7200 (General Conditions).

1.05 COST DETERMINATION FOR CHANGES IN CONTRACT AMOUNTS

A. Where a fixed price quote is not available related to a change in the contract scope, Calculation of Total Cost of Extra Work shall be determined:

- 1. Total cost of changed Work, extra Work or of Work omitted shall be the sum of three components defined immediately below as: Component 1 (Direct Cost of Construction or Direct Costs); Component 2 (Markup); and, Component 3 (Bonds, Insurance, Taxes)
- 2. Component 1: Direct Costs of labor, equipment and materials, is calculated based upon actually incurred (or omitted) labor costs, equipment rental costs, and material costs, as defined herein;
- 3. Component 2: Markup on such actually incurred Direct Costs, is applied in the percentages identified below; and
- 4. Component 3: Actual additional costs for any additionally required bonds, insurance, and/or taxes by Contractor, Subcontractors, or other forces, defined herein, is calculated without markup.
- 5. All amounts payable to Subcontractors under Components 1, 2, and 3: must be earned under the terms of the applicable Subcontracts; must be properly requested, documented and permitted under the terms of the applicable subcontract(s) and Contract Documents; and shall be payable only if changed Work complies with terms of Contract Documents.

1.06 MEASUREMENT OF DIRECT COST OF CONSTRUCTION (COST COMPONENT 1)

A. Composition of Component 1 (Direct Cost of Construction):

- 1. Component 1 has three subcomponents, also referred to as labor, equipment, and materials (**LEM**):
 - a. Labor (Component 1A)
 - b. Equipment (Component 1B)
 - c. Materials (Component 1C)

B. Measurement of Cost of Labor (Component 1A):

- 1. Cost of Labor shall be calculated as: Cost of labor for workers (including forepersons when authorized by Owner) used in actual and direct performance of the subject work, whether employer is Contractor, Subcontractor or other forces, in the sum of the following:
 - a. Actual Wages: Actual wages paid shall include any employer payments to or on behalf of workers for health and welfare, pension, vacation, and similar purposes.
 - b. Labor surcharge: Payments imposed by local, county, state, and federal laws and ordinances, and other payments made to, or on behalf of, workers, other than actual wages as defined, such as worker's compensation insurance. Such labor surcharge shall not exceed generally accepted standards in the State for labor rates in effect on date upon which extra Work is accomplished.
 - c. Cost of labor shall include no other costs, fees or charges.
- 2. Labor cost for operators of equipment owned and operated by Contractor or any Subcontractor, shall be no more than rates of such labor established by collective bargaining

agreements for type of worker and location of Work, whether or not owner-operator (i.e., Contractor or Subcontractor) is actually covered by such an agreement.

3. Cost of labor shall be recorded and documented in certified payroll records, maintained in the form customary and/or required in the State, and delivered to Owner weekly.

C. Measurement of Cost of Equipment (Component 1B):

1. Measurement of Component 1B (Cost of Equipment). Cost of Equipment shall be calculated as: Cost of equipment used in actual and direct performance of the subject work, whether by Contractor, Subcontractor or other forces. Cost of Equipment shall be calculated as herein described.
2. For rented equipment, cost will be based on actual rental invoices, appropriate for the use and duration of the work. Equipment used on extra Work shall be of proper size and type. If, however, equipment of unwarranted size or type and cost is used, cost of use of equipment shall be calculated at rental rate for equipment of proper size and type, as determined by Owner.
3. Equipment rental cost for Contractor or Subcontractor-owned equipment, shall be determined by reference to, and not in excess of, the generally accepted standards in the State for equipment rental rates in effect on date upon which extra Work is accomplished. If there is no applicable rate for an item of equipment, then payment shall be made for Contractor or Subcontractor-owned equipment at rental rate listed in the most recent edition of the Caltrans Standard Schedules and Specifications, and absent a rental rate therein, then the Association of Equipment Distributors (**AED**) book.
4. In all cases, rental rates paid shall be deemed to cover cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidentals.
5. Unless otherwise specified, manufacturer's ratings, and manufacturer-approved modifications, shall be used to classify equipment for determination of applicable rental rates. Individual pieces of equipment or tools not listed in said publication and having a replacement value of \$100 or less, whether or not consumed by use, shall be considered to be small tools and no payment will be made therefore as payment is included in payment for labor. Rental time will not be allowed while equipment is inoperative due to breakdowns.
6. For equipment on Site, rental time to be paid for equipment shall be time equipment is in operation on extra Work being performed or on standby as approved by Owner. The following shall be used in computing rental time of equipment:
 - a. When hourly rates are listed, less than 30 minutes of operation shall be considered to be ½ hour of operation.
 - b. When daily rates are listed, less than four hours of operation shall be considered to be ½ Day of operation.
 - c. Rates shall correspond to actual rates paid by Contractor, i.e., if Contractor pays lower weekly or monthly rates, then same shall be charged to Owner.
7. For equipment that must be brought to Site to be used exclusively on extra Work, cost of transporting equipment to Site and its return to its original location shall be determined as follows:
 - a. Owner will pay for costs of loading and unloading equipment.
 - b. Cost of transporting equipment in low bed trailers shall not exceed hourly rates charged by established haulers.
 - c. Cost of transporting equipment shall not exceed applicable minimum established rates of California Public Utilities Commission or appropriate State Dept. of Transportation.
 - d. Owner will not make any payment for transporting and loading and unloading equipment if equipment is used on Work in any other way than upon extra Work.
 - e. Rental period may begin at time equipment is unloaded at Site of extra Work and terminate at end of the performance of the extra Work or Day on which Owner directs Contractor to discontinue use of equipment, whichever first occurs. Excluding Saturdays, Sundays, and Owner legal holidays, unless equipment is used to perform

extra Work on such Days, rental time to be paid per Day shall be four hours for zero hours of operation, six hours for four hours of operation and eight hours for eight hours of operation, time being prorated between these parameters. Hours to be paid for equipment that is operated less than eight hours due to breakdowns, shall not exceed eight less number of hours equipment is inoperative due to breakdowns.

8. Employee vehicles are not part of Component 1A, rather, are included within Component 2 (Markup).
 9. Cost of Equipment shall include no other costs, fees or charges.
- D. Measurement of Cost of Material (Component 1C):
1. Cost of Material shall be calculated as herein described. Cost of such materials will be cost to purchaser (Contractor, Subcontractor or other forces) from supplier thereof, except as the following are applicable:
 2. If cash or trade discount by actual supplier is offered or available to purchaser, it shall be credited to Owner notwithstanding fact that such discount may not have been taken.
 3. For materials salvaged upon completion of Work, salvage value of materials shall be deducted from cost, less discounts, of materials.
 4. If cost of a material is, in opinion of Owner, excessive, then cost of material shall be deemed to be lowest current wholesale price at which material is available in quantities concerned delivered to Site, less any discounts as provided in this Paragraph.
 5. Cost of Material shall include no other costs, fees or charges.

1.07 MEASUREMENT AND PAYMENT OF MARKUP (COST COMPONENT 2)

- A. Markup Percentages for Changed Work (Component 2):
1. Markup on Direct Cost of labor, materials and equipment for extra Work pursuant to the Contract Documents performed by Contractor shall be 15%.
 2. When extra Work is performed by Subcontractors, regardless of the number of tiers, total Markup on Component 1 Direct Costs shall be 20%. Contractor and its Subcontractors shall divide the 20% as they may agree.
 3. Under no circumstances shall the total Markup on any extra Work exceed 20%, stated as a percent of the Direct Cost of labor, equipment and materials. This limitation shall apply regardless of the actual number of subcontract tiers.
 4. On proposals covering both increases and decreases in Contract Sum, Markup shall be allowed on the net increase only as determined above. When the net difference is a deletion, no percentage for Markup shall be allowed, but rather an appropriate percentage deduction shall be issued in the amount of the net difference.
- B. Measurement and Payment of Markup (Component 2):
1. Markup (Component 2) provides complete compensation to Contractor and all Subcontractors for:
 - a. All Contractor and Subcontractor profit;
 - b. All Contractor and Subcontractor home-office overhead;
 - c. All Contractor and Subcontractor assumption of risk assigned to Contractor under the Contract Documents;
 - d. Subject to the qualifications below regarding self-performed work, all General Conditions and General Requirements of Contractor (and, if applicable, Subcontractors).
 2. Profit. Compensation for profit included within Component 2 (Markup), includes without limitation: Fees of all types, nature and description; and Profit and margins of all types, nature and description.
 3. Home Office Expenses. Compensation for home office expenses included within Component 2 (Markup), includes without limitation: Salaries and other compensation of any type of Contractor's and Subcontractor's personnel (management, administrative and clerical), and all direct and indirect operating, travel, payroll, safety, storage, quality control,

maintenance and overhead costs of any nature whatsoever, incurred by Contractor and Subcontractors at any location other than the Project specific site office, including without limitation, Contractor's principal or branch offices; insurance premiums other than those for Project specific insurance directed by the Owner in a change order; all hardware, software, supplies and support personnel necessary or convenient for Contractor's capture, documentation and maintenance of its costs and cost accounting data and cost accounting and control systems and work progress reporting.

4. Assumption of Risk. Compensation for Contractor's and Subcontractor's assumption of risk under the Contract Documents, included within Component 2 (Markup), includes, without limitation, loss, cost, damage, expense or liability resulting directly or indirectly from any of the following causes (**unallowable costs**), for Contractor and Subcontractors of any tier: noncompliance with the Contract Documents, fault or negligence, defective or non-conforming Work, by Contractor or any Subcontractor or Vendor of any tier or anyone directly or indirectly employed by any of them, or for whose acts or omissions any of them are responsible or liable at law or under the Contract Documents; cost overruns of any type; costs in excess of any lump sum, not to exceed amount or GMP; costs resulting from Cost Proposal or "buy out" errors, unallocated scope, or incomplete transfer of scope or contract terms to Subcontractors; any costs incurred by Contractor relating to a Change in the Work without a Change Order or Change Directive in accordance with the Contract Documents; costs for work or materials for which no price is fixed in the Contract Documents, unless it is expressly specified that such work or material is to be paid for as extra work.
5. General Conditions and Division 1 General Requirements. Compensation for Contractor's (and, if applicable Subcontractors') General Conditions and General Requirements Costs included within Component 2 (Markup) includes compensation for: Contractor's direct costs, without overhead or profit, for salaries and related forms of compensation and employer's costs for labor and personnel costs, of Contractor's employees and subconsultant's employees (if any), while and only to the extent they are performing Work at the Project Site, and all "General Requirements Costs" below. Personnel and Work compensated by this Component include, without limitation: All required Project management responsibilities; all on-site services; monthly reporting and scheduling; routine field inspection of Work; general superintendence; general administration and preparation of cost proposals, schedule analysis, change orders and other supporting documentation as necessary; salaries of project superintendent, project engineers, project managers, safety manager, other manager, timekeeper, and secretaries; all cost estimates and updates thereto; development, validation and updates to the project schedule; surveying; and estimating. General Requirements Costs included within Component 2 (Markup) include, without limitation: all scheduling hardware, software, licenses, equipment, materials and supplies; purchase, lease or rental, build out, procurement, supporting equipment and maintenance of temporary on-Site facilities, Project field and office trailers and other temporary facilities, office equipment and supporting utilities; platforms, fencing, cleanup and jobsite security; temporary roads, parking areas, temporary security or safety fencing and barricades, etc.; all Contractor's motor vehicles used by any Contractor's personnel, and all costs thereof; all health and safety requirements, required by law or Owner procedures; all surveying; all protection of Work; handling and disposal fees; final cleanup; repair or maintenance; other incidental Work; all items, activities and function similar to any of those described above; all travel, entertainment, lodging, board and the like.
6. Personnel compensated by the Markup Component do not include workers of foreman level or below in the case of self-performed work; rather, such personnel shall be treated as a Direct Cost of Construction. Costs compensated by Component 2 (Markup) do not include temporary measures specifically required by the changed work, not otherwise required or ongoing in the prosecution of the Work, that commence specifically to support the changed work and conclude with the completion of the changed work. Such costs shall be treated as Direct Costs of Construction. Examples of General Requirements costs that this component

may not cover are the following: temporary barricades or fencing of specific areas required specifically for the changed work; cranes required specifically for the changed work; and extra security required specifically for the changed work.

1.08 MEASUREMENT AND PAYMENT OF BONDS, INSURANCE, TAXES (COMPONENT 3)

- A. Measurement of Bonds, Insurance, Taxes (Component 3):
 - 1. Component 3 (Bonds, Insurance, Taxes) consists of the cost of bonds, insurance and taxes, also referred to as **BIT**. All State sales and use taxes, applicable County and applicable sales taxes, shall be included. Federal and Excise tax shall not be included.
 - 2. There is no markup on BIT.

1.09 EFFECT OF PAYMENT

- A. Change Order Compensation is All Inclusive.
 - 1. Payment of calculated cost of extra work constitutes full and complete compensation for costs or expense arising from the extra Work, and is intended to be all inclusive.
 - 2. Contractor shall recover no other costs or markups on extra work of any type, nature or description.
- B. Limits of Liability/Accord and Satisfaction.
 - 1. The foregoing limits of compensation apply in all cases of claims for changed Work, whether calculating Change Proposal Requests, Change Orders or CDs, or calculating claims and/or damages of all types, and applies even in the event of fault, negligence, strict liability, or tort claims of all kinds, including strict liability or negligence. Contractor may recover no other costs arising out of or connected with the performance of extra Work, of any nature.
 - 2. Under no circumstances may Contractor claim or recover special, incidental or consequential damages against Owner, its representatives or agents, whether arising from breach of contract, negligence, strict liability or other tort or legal theory, unless specifically and expressly authorized in the Contract Documents.
 - 3. No change in Work shall be considered a waiver of any other condition of Contract Documents. No claim shall be made for anticipated profit, for loss of profit, for damages, or for extra payment whatever, except as expressly provided for in Contract Documents.
 - 4. Accord and Satisfaction: Every Change Order and accepted CD shall constitute a full accord and satisfaction, and release, of all Contractor (and if applicable, Subcontractors) claims for additional time, money or other relief arising from or relating to the subject matter of the change including, without limitation, impacts of all types, cumulative impacts, inefficiency, overtime, delay and any other type of claim. Contractor may elect to reserve its rights to disputed claims arising from or relating to the changed Work at the time it signs a Change Order or approves a CD, but must do so expressly in a writing delivered concurrently with the executed Change Order or approved CD, and must also submit a Claim for the reserved disputed items pursuant to Article 12 of Document 00 7200 (General Conditions) no later than thirty (30) days after Contractor's first written notice of its intent to reserve rights. Execution of any Change Order or CD shall constitute Contractor's representation of its agreement with this provision.

1.16 MISCELLANEOUS REQUIREMENTS

- A. Owner-Furnished Materials.

Owner reserves right to furnish materials as it deems advisable, and Contractor shall have no claims for costs and Markup on such materials.

- B. Records And Certification.
 - 1. All charges shall be recorded daily and summarized in Change Proposal Request form attached hereto. Contractor or authorized representative shall complete and sign form each day.

2. Owner shall have the right to audit all records in possession of Contractor relating to activities covered by Contractor's claims for modification of Contract, including CD Work. This right shall be specifically enforceable, and any failure of Contractor to voluntarily comply shall be deemed an irrevocable waiver and release of all claims then pending that were or could have been subject to Article 12 of Document 00 7200 (General Conditions).

END OF SECTION

[COST PROPOSAL FORM FOLLOWS ON NEXT PAGE]

COST PROPOSAL FORM

MRF Phase 1 Improvements Project

Date: _____

Project Number CIP.600100-17

To: SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY
 Attention: **Hilary Gans**
610 Elm Street, Suite 202, San Carlos, CA 94070
 Phone: (650) 802-3507
 Fax: (650) 802-3501

From: BHS _____
3592 West 5th Avenue _____
Eugene, OR 97402 _____

This Cost Proposal is in response to the above-referenced MRF Phase 1 Improvements Project.
 Brief description of change(s): _____

ITEM DESCRIPTION	PRIME CONTRACTOR	SUB 1	SUB 2	SUB 3	SUB 4	TOTAL
INSTALLATION						
EQUIPMENT						
MARKUP FOR PRIME CONTRACTOR'S SELF-PERFORMED WORK (15%)						
MARKUP FOR SUBCONTRACTOR-PERFORMED WORK (20%)						
BONDS, INSURANCE AND TAXES						
GRAND TOTAL						
REQUESTED CHANGE IN CONTRACT TIME (DAYS) (Time Impact Evaluation Enclosed)						

By Contractor: _____

Signature: _____

Date: _____

DIVISION 1 GENERAL REQUIREMENTS

SECTION 01 3119

PROJECT MEETINGS

PART 1 – GENERAL

1.01 SUMMARY

- A. Section includes description of required project meetings.

1.02 PRECONSTRUCTION CONFERENCE

- A. Preconstruction Conference. Owner will call for and administer Preconstruction Conference at time and place to be announced (usually the week prior to start of Work at the Site). Contractor, all major Subcontractors, and major suppliers shall attend Preconstruction Conference. Agenda may include, without limitation, the following items:

1. Schedules
2. Personnel and vehicle permit procedures
3. Use of premises
4. Location of the Contractor's on-Site facilities
5. Security
6. Housekeeping
7. Submittal and RFI procedures
8. Inspection and testing procedures, on-Site and off-Site
9. Utility shutdown procedures
10. Control and reference point survey procedures
11. Injury and Illness Prevention Program
12. Contractor's Initial Progress Schedule
13. Contractor's Schedule of Values
14. Contractor's Schedule of Submittals
15. Jurisdictional agency requirements
16. Owner will distribute copies of minutes to attendees. Attendees shall have seven Days to submit comments or additions to minutes. Minutes will constitute final memorialization of results of Preconstruction Conference.

1.03 WEEKLY PROJECT MEETINGS

- A. Owner will schedule and administer weekly progress meetings throughout duration of Work. Progress meetings will be held weekly unless otherwise directed by Owner. Meetings shall be held at Owner's Offices unless otherwise specified in Contract Documents.

1. Owner's Representative will prepare agenda and distribute it four Days in advance of meeting to Contractor.
2. Participants with agenda items shall present them.
3. The Architect/Engineer and other responsible entities shall attend meetings unless otherwise specified in Contract Documents or provided by Owner.
4. Owner shall record and distribute the meeting minutes. Minutes shall be distributed by the Owner to the Contractor within three business days after the meeting. Contractor shall distribute the minutes to those affected by decisions made at meeting. Attendees shall have five business days to submit comments or additions to the minutes. Minutes shall constitute final memorialization of results of meeting.
5. Progress meetings shall be attended by Contractor's job superintendent, major Subcontractors and suppliers, Owner, and others as appropriate to agenda topics for each meeting.
6. Agenda may contain the following items, as appropriate:

- a. Review, revise as necessary, and approve previous meeting minutes
- b. Review of Work progress since last meeting
- c. Status of Construction Work Schedule, delivery schedules, adjustments
- d. Submittal, RFI, and Change Order status, including report on discovery of any defects or malfunctions in parts and systems used and installed (for which Owner should be immediately notified, with written notification to follow within ten (10) days of discovery).
- e. Review of the Contractor's safety program activities and results, including report on all serious injury and/or damage accidents, for which the Owner should be immediately notified
- f. Other items affecting progress of Work

1.04 PROGRESS SCHEDULE AND BILLING MEETINGS

- A. A meeting will be held on approximately the 20th of each month to review the schedule update submittal and payment application.
- B. At this meeting, at a minimum, the following items will be reviewed:
 - 1. Percent complete of each activity;
 - 2. Time impact evaluations for Change Orders and Time Extension Request;
 - 3. Actual and anticipated activity sequence changes;
 - 4. Actual and anticipated duration changes; and
 - 5. Actual and anticipated Contractor delays.
- C. These meetings are considered a critical component of overall monthly schedule update submittal and Contractor shall have appropriate personnel attend. At a minimum, Contractor's General Superintendent and Scheduler shall attend these meetings.

END OF SECTION

DIVISION 1 GENERAL REQUIREMENTS

SECTION 01 3200

PROGRESS SCHEDULES AND REPORTS

PART 1 – GENERAL

1.01 SUMMARY

- A. Section includes description of requirements and procedures for submitting progress schedules and submittals.

1.02 CONTRACTOR TO SUBMIT BASELINE AND PROGRESS SCHEDULES

- A. Contractor shall submit an Initial Contract Schedule (duration-based) prior to signing the Agreement, and submit full date-based schedule within 10 days after NTP. Contractor's Initial Contract Schedule is subject to Owner's review and comments. The approved Initial Contract Schedule shall be referred to as the **Baseline Schedule**.
- B. Contractor's Baseline Schedule and progress schedules shall show Contractor's construction and procurement activities including, without limitation, key equipment (as listed in the Order Confirmation) procurement and delivery (Contractor and Owner supplied), activities with Subcontractors and suppliers, major submittal reviews, commissioning of systems, use of major equipment on site, and necessary interface with Owner and third parties required to complete the Work in a timely manner and in accordance with Contract Time.

1.03 SCHEDULE REQUIREMENTS.

- A. Unless Owner agrees in writing otherwise, progress schedule shall be on Microsoft Project, most current version of Sure Track, or equivalent software acceptable to Owner, as Owner may specify, which Contractor shall prepare and supply to Owner, with all datapoint entries completed for start dates, necessary work activities, durations (not longer than 21 calendar days), and logic ties.
- B. Contractor shall develop a network plan and schedule for the Project demonstrating complete fulfillment of all Contract requirements, shall keep the network plans up to date in accordance with the requirements of this Section 01 3200, and shall utilize the Critical Path Method (**CPM**) in planning, coordinating, performing and reporting the work under this contract, including all activities of Subcontractors, equipment vendors, and suppliers, and in assisting Owner in monitoring the progress of the Work.
- C. CPM network is a graphic depiction of the Contractor's construction plan, showing the sequential steps needed to reach completion of the Work within the prescribed Contract Time. It shall depict events and tasks as activities, and their interrelationships, and shall recognize the progress that must be made on one activity before subsequent activities can begin. These activities shall be logically represented in a CPM network showing their interrelationships in a chronological fashion. As each activity has a time allocation, the completed network shall show the critical path of activities that must be completed on time if the entire Project is not to be delayed. It shall also be possible to identify the earliest and latest start and finish times for each activity if the overall Project is not to be delayed. Therefore, the CPM network shall be comprehensive and shall include all interdependencies and interactions required to perform the Work of the Project.
- D. Contractor's Baseline Schedule and progress schedules shall be in the form of a CPM (arrow) diagram and bar chart (Gaant). Contractor shall provide Owner with native format electronic schedules and hard copies of the Baseline Schedule, schedule updates, and lookahead schedules. All electronic and hard copies of the schedule that Contractor provides to Owner shall indicate the critical path of the Work (in red) and shall show a logical progression of the Work through **Substantial and Final** completion within Contract Time.
- E. Unless Owner agrees in writing otherwise, progress schedules shall also show early and late start and finish dates and total available float (float to the successor activity's late start date) for each activity.
- F. Owner has no obligation to accept an early completion schedule.

1.04 MONTHLY UPDATES

- A. Contractor's progress schedule shall be updated monthly to reflect actual progress. The schedule shall be subject to Owner's review and acceptance for use in monitoring Contractor's Work and evaluating Applications for Payment.
- B. Contractor shall supply Owner with an electronic copy of the updated progress schedule with each payment application. Contractor shall provide Owner with two-week lookahead schedules weekly, showing in detail and activities and resources scheduled for the immediate two week period.

1.05 RECOVERY SCHEDULE

- A. Owner may request a recovery schedule should Contractor fall 21 or more Days behind any schedule Milestone, which schedule shall show Contractor's plan and resources committed to retain Contract completion dates.
- B. The recovery schedule shall show the intended critical path. If Owner requests, Contractor shall also:
 - 1. Secure and demonstrate appropriate Subcontractor and supplier consent to the recovery schedule.
 - 2. Submit a written plan and narrative explaining on trade flow and construction flow changes and man-hour loading assumptions for major Work activities and/or Subcontractors.

1.06 TIME IMPACT EVALUATION (TIE) FOR CHANGE ORDERS, TIME EXTENSIONS AND DELAYS

- A. When Contractor requests a time extension for any reason, Contractor shall submit a TIE, in accordance with Article 11 of Document 00 7200 and Section 01 2600, Article 1.02.C that provides information justifying the request and stating the extent of the adjustment requested for each specific change or alleged delay. Each TIE shall be in a form and content that is acceptable to Owner and that includes both a written narrative and a schedule diagram depicting how the changed Work or other impact affects other schedule activities. The schedule diagram shall show how Contractor proposes to incorporate the changed Work or other impact in the schedule and how it impacts the current Schedule update critical path or otherwise. Contractor is also responsible for establishing time extensions based on the TIE's impact on the critical path. The diagram shall be tied to the main sequence of scheduled activities to enable Owner to evaluate the impact of changed Work to the scheduled critical path.
- B. Contractor is responsible for all costs associated with preparing TIE's, and the process of incorporating TIE's into the current schedule update. Contractor shall provide Owner with four copies of each TIE.

END OF SECTION

DIVISION 1 GENERAL REQUIREMENTS

SECTION 01 3300

SUBMITTALS

PART 1 – GENERAL

1.01 SUMMARY

- A. Section includes description of requirements and procedures for submittals.

1.02 SCHEDULE OF SUBMITTALS

- A. Contractor shall prepare for Owner's review and acceptance prior to commencement of work on the Site, for purposes of contract administration, a schedule of submittals (also referred to as a submittal register) required to complete the Work, prepared by Contractor and accepted by Owner for contract administration. Schedule of submittals shall include, for each submittal: the specification or drawing reference requiring the submittal, if applicable; the material, item, or process for which the submittal is required; the submittal number and identifying title of the submittal; the Contractor's anticipated submission date and the approval need date.
- B. Contractor shall update monthly the schedule of submittals to reflect actual submission and acceptance dates for submittals. Review by Owner of schedule of submittals does not excuse Contractor of obligation to supply, schedule and coordinate all submittals required by the Contract Documents.

1.03 CONTRACTOR TO SUBMIT SHOP DRAWINGS, PRODUCT DATA AND SUBMITTALS.

- A. Contractor shall review for compliance with Contract Documents, approve and submit to Owner Shop Drawings, Product Data, Samples and similar submittals required by Contract Documents.
- B. Contractor shall schedule and submit concurrently submittals covering component items forming a system or items that are interrelated. Contractor shall include certifications to be submitted with the pertinent drawings at the same time.
- C. Contractor shall coordinate scheduling, sequencing, preparing and processing of all submittals with performance of work so that work will not be delayed by submittal processing.
- D. Submittals shall specifically identify any Work depicted that does not conform to the Contract Documents.

1.04 OWNER REVIEW OF SHOP DRAWINGS, PRODUCT DATA AND SUBMITTALS.

- A. After review by Owner of each Submittal, material will be returned to Contractor with actions defined as follows:
 - 1. NO EXCEPTIONS TAKEN - Accepted subject to its compatibility with general design concept of the Work, future Submittals and additional partial Submittals for any portions of the Work not covered in this Submittal. Does not constitute acceptance or deletion of specified or required items not shown on the Submittal.
 - 2. MAKE CORRECTIONS NOTED (NO RESUBMISSIONS REQUIRED) - Same as item 1 above, except that minor corrections as noted shall be made by Contractor.
 - 3. REVISE AS NOTED AND RESUBMIT - Rejected because of major inconsistencies or errors that shall be resolved or corrected by Contractor prior to subsequent review by Owner.
 - 4. REJECTED - RESUBMIT - Submitted material does not conform to Drawings and/or

Specifications in major respect, i.e.: wrong size, model, capacity, or material.

- B. Owner's review will not constitute acceptance by Owner of any responsibility for the accuracy, coordination, or completeness of the Submittals. Accuracy, coordination, and completeness of Submittals shall be Contractor's sole and exclusive responsibility including responsibility to back-check comments, corrections, and modifications from Owner's review before fabrication. Contractor, Subcontractors, or suppliers may prepare Submittals. Contractor submission of any Submittal is a representation that Contractor has confirmed that the Submittal meets requirements of Contract Documents including, without limitation, conforming to structural space and access conditions at point of installation. Owner's review will be only to assess if the items covered by the Submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as indicated by the Contract Documents. Owner's review of Submittal, method of Work, or information regarding materials and equipment Contractor proposes to furnish shall not relieve Contractor of responsibility for errors therein and shall not be regarded as assumption of risks or liability by Owner, or any officer or employee thereof. Contractor shall have no claim under Contract Documents on account of failure or partial failure or inefficiency or insufficiency of any plan or method of Work or material and equipment so accepted. Owner's review shall be considered to mean merely that Owner has no objection to Contractor using, upon Contractor's own full responsibility, plan or method of Work proposed, or furnishing materials and equipment proposed.
- C. Unless otherwise specified, Owner's review will not extend to the means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
- D. Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the Owner has reviewed respective Submittal and the Work described in the Submittal is authorized to proceed in accordance with paragraphs 1.04.A.1 or 2, above. Otherwise, any such Work is at Contractor's sole risk for removal and replacement, at Owner's sole discretion, and at Contractor's sole expense.

END OF SECTION

DIVISION 1 GENERAL REQUIREMENTS

SECTION 01 4100

REGULATORY REQUIREMENTS

PART 1 – GENERAL

1.01 SUMMARY

A. Section includes:

1. Regulatory requirements applicable to Contract Documents
2. Required provisions under Local Agency Disputes Act
3. Required references under federal law

1.02 GENERAL

A. Compliance with Laws

1. Conform to all applicable codes, laws, ordinances, rules and regulations, which shall have full force and effect as though printed in full in these Specifications. Codes, laws, ordinances, rules, regulations and ordinances (**Regulatory Requirements**) are not furnished to Contractor, because Contractor is assumed to be familiar with these requirements.
2. Any listing of Regulatory Requirements for hazardous waste abatement Work in the Contract Documents is supplied to Contractor as a courtesy and shall not limit Contractor's responsibility for complying with all applicable Regulatory Requirements having application to the Work. Where conflict among the Regulatory Requirements or with these Specifications occurs, the most stringent requirements shall be used.
3. Specific reference in the Specifications to codes and regulations or requirements of regulatory agencies shall mean the latest printed edition of each adopted by the regulatory agency in effect at the time of the Cost Proposal, except as may be otherwise specifically stated in the Contract Documents.

B. Precedence

1. Where specified requirements differ from Regulatory Requirements, the more stringent requirements shall take precedence. Where Drawings or Specifications require or describe products or execution of better quality, higher standard or greater size than required by Regulatory Requirements, then Drawings and Specifications shall take precedence so long as such increase is legal. Where no requirements are identified on Drawings or in Specifications, comply with all Regulatory Requirements of governing authorities having jurisdiction.
2. Should any conditions develop not covered by the Contract Documents wherein the finished Work will not comply with current codes, a Change Order detailing and specifying the required Work shall be submitted to and approved by Owner before proceeding with the Work.

1.03 REGULATORY REQUIREMENTS

A. Applicable Codes

1. Codes that apply to Contract Documents include all Codes applicable to construction, including, **WITHOUT LIMITATION**, the following:
 - a. California Building Code (2013 Edition or latest applicable code) as amended by applicable local ordinances for all construction work.

- b. California Electrical Code (2013 Edition or latest applicable code) as amended by applicable local ordinances for all construction work.
- c. California Plumbing Code (2013 Edition or latest applicable code) as amended by applicable local ordinances for plumbing, sewage disposal and health requirements.
- d. California Mechanical Code (2013 Edition or latest applicable code) as amended by applicable local ordinances for all construction work.
- e. California Fire Code (2013 Edition or latest applicable code) as amended by applicable local ordinances for all construction work.
- f. California Administrative Code Titles 15, 19 and 24 (with California amendments), and Americans with Disabilities Act (ADA) accessibility guidelines, whichever is more stringent.
- g. All State laws and City and County Ordinances, rules of the State or City or County Health Departments, rules of the National Board of Fire Underwriters and National Fire Protection Associations, and local power company regulations for mechanical and electrical work.

B. Applicable Laws, Statutes, Ordinances, Rules, And Regulations

- 1. During prosecution of Work to be done under Contract Documents, Contractor shall comply with applicable laws, ordinances, rules and regulations including, without limitation, the following:
 - a. Federal:
 - 1) Americans With Disabilities Act of 1990
 - 2) 29 CFR, Section 1910.1001, Asbestos
 - 3) 40 CFR, Subpart M, National Emission Standards for Asbestos
 - 4) Executive Order 11246
 - 5) Federal Endangered Species Act
 - 6) Clean Water Act
 - b. State of California:
 - 1) Code of Regulations, Titles 5, 8, 17, 19, 21, 22, 24 and 25
 - 2) Public Contract Code
 - 3) Health and Safety Code
 - 4) Government Code
 - 5) Labor Code
 - 6) Civil Code
 - 7) Code of Civil Procedure
 - 8) CPUC General Order 95, Rules for Overhead Electric Line Construction
 - 9) CPUC General Order 128, Rules for Construction of Underground Electric Supply and Communications Systems
 - 10) Cal/OSHA
 - 11) OSHA: Hazard Communications Standards
 - 12) California Endangered Species Act
 - 13) Water Code
 - 14) Fish and Game Code
 - c. State of California Agencies:
 - 1) State and Consumer Services Agency
 - 2) Office of the State Fire Marshall
 - 3) Office of Statewide Health Planning and Development (if applicable)
 - 4) Department of Fish and Game
 - 5) All Air Quality Management Districts with jurisdiction
 - 6) All Regional Water Quality Control Boards with jurisdiction
 - 7) Division of the State Architect (if applicable)
 - d. All Local Agencies with jurisdiction (cities, counties, fire departments)

C. Change Orders and Claims:

1. The Public Contract Code including, without limitation, Section 7105(d)(2), and the California Government Code Section 930.2, et seq., apply to all contract procedures for changes, time extensions, change orders (time or compensation) and claims. Federal law (*U.S. v. Holpuch* 326 U.S. 234) shall supplement California law on the enforceability of these requirements.
2. Any change, waiver, or omission to implement contract change order and claim procedures shall have no legal effect unless expressly permitted in a fully executed change order approved by Contractor and Owner and approved as to form by their respective legal counsel.

D. Required Provisions On Contract Claim Resolution

Any claim arising under this contract which the Contractor wishes to assert against the Authority shall be governed by California Public Contract Code Section 9204. Claims which do not exceed three hundred seventy-five thousand dollars (**\$375,000**) are also subject to the provisions of Article 1.5 of the California Public Contract Code (commencing with Section 20104). Pursuant to California Public Contracts Code Section 9204, claims shall be resolved as follows:

1. (a) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

(b) The claimant shall furnish reasonable documentation to support the claim, pursuant to Document 00 7200 (General Conditions), Article 12.

(c) If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

(d) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.
2. (a) If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(b) Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator

within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

(c) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(d) Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

(e) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

3. Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.
4. Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.
5. If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

E. Compliance With Americans With Disabilities Act

1. Contractor acknowledges that, pursuant to the Americans with Disabilities Act (**ADA**), programs, services and other activities provided by a public entity to the public, whether directly or through a Contractor, must be accessible to the disabled public. Contractor shall provide the services specified in the Contract Documents in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under the Contract Documents and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns shall constitute a material breach of the Contract Documents.

F. Compliance With IRCA

1. Contractor acknowledges that Contractor, and all subcontractors hired by Contractor to perform services under this Agreement, are aware of and understand the Immigration Reform and Control Act (**IRCA**). Contractor is and shall remain in compliance with the IRCA and shall ensure that any subcontractors hired by Contractor to perform services under this Agreement are in compliance with the IRCA. In addition, Contractor agrees to indemnify, defend and hold harmless Owner, its agents, officers and employees, from any liability, damages or causes of action arising out of or relating to any claims that Contractor's employees, or employees of any subcontractor hired by Contractor, are not authorized to work in the United States for Contractor or its subcontractor and/or any other claims based upon alleged IRCA violations committed by Contractor or Contractor's subcontractors.

END OF SECTION

DIVISION 1 GENERAL REQUIREMENTS

SECTION 01 4200

REFERENCES AND DEFINITIONS

PART 1 - GENERAL

1.01 SUMMARY

A. Section Includes:

1. Reference standards, abbreviations, symbols, and definitions used in Contract Documents.
2. Full titles are given in this Section for standards cited in other Sections of Specifications.

1.02 REFERENCE TO STANDARDS AND SPECIFICATIONS OF TECHNICAL SOCIETIES; REPORTING AND RESOLVING DISCREPANCIES

A. References

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard, specification, manual, code, or laws or regulations in effect at the time of Cost Proposal, except as may be otherwise specifically stated in the Contract Documents.
2. If during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any such law or regulation applicable to the performance of the Work or of any such standard, specification, manual, or code or of any instruction of any supplier, Contractor shall report it in writing at once to Owner's Representative and Architect/Engineer, and Contractor shall not proceed with the Work affected thereby until consent to do so is given by Owner.

B. Precedence

1. Except as otherwise specifically stated in the Contract Documents or as may be provided by Change Order, CCD, or Supplemental Instruction, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - a. The provisions of any such standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or
 - b. The provisions of any such laws or regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such law or regulation).
2. No provision of any such standard, specification, manual, code, or instruction shall be effective to change the duties and responsibilities of Owner, Owner's Representative, Architect/Engineer or Contractor, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents, nor shall it be effective to assign to Owner, Architect/Engineer, or any of their consultants, agents, representatives or employees any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

C. Referenced Grades, Classes, and Types:

1. Where an alternative or optional grade, class, or type of product or execution is included in a reference but is not identified in Drawings or in Specifications, provide the highest, best, and greatest of the alternatives or options for the intended use and prevailing conditions.

D. Edition Date of References:

1. When an edition or effective date of a reference is not given, it shall be understood to be the current edition or latest revision published as of the date of Contractor proposal
2. All amendments, changes, errata and supplements as of the effective date shall be included.

- E. ASTM and ANSI References:** Specifications and Standards of the American Society for Testing and Materials (ASTM) and the American National Standards Institute (ANSI) are identified in the Drawings and Specifications by abbreviation and number only and may not be further identified by title, date, revision, or amendment. It is presumed that Contractor is familiar with and has access to these nationally- and industry-recognized specifications and standards.

1.03 DEFINITIONS

A. Meaning of Words and Phrases

Wherever any of the words or phrases defined below, or a pronoun used in place thereof, is used in any part of the Contract Documents, it shall have the meaning here set forth. Where abbreviations and symbols are used, such abbreviations and symbols shall be given their common meaning in the construction industry. In the Contract Documents, the neuter gender includes the feminine and masculine, and the singular number includes the plural.

While Owner has made an effort to identify all defined terms with initial caps, the following definitions shall apply regardless of case unless the context otherwise requires:

1. Agreement (Document 00 5200): Agreement is the basic Contract Document that binds the parties to construction Work. Agreement defines relationships and obligations between Owner and Contractor and by reference incorporates Conditions of Contract, Drawings, and Specifications and contains Addenda and all Modifications subsequent to execution of Contract Documents.
2. Alternate: Work added to or deducted from the base Cost Proposal, if accepted by Owner.
3. Application for Payment: Written application for monthly or periodic progress or final payment made by Contractor complying with the Contract Documents.
4. Approved Equal: Approved in writing by Owner as being of equivalent quality, utility and appearance.
5. Architect/Engineer: If used elsewhere in the Contract Documents, "Architect/Engineer" shall mean a person (or that person's firm) holding a valid California State Architect's or Engineer's license representing the Owner in the administration of the Contract Documents. Architect/Engineer may be an employee of or an independent consultant to Owner. When Architect/Engineer is referred to within the Contract Documents and not an employee of Owner, Architect/Engineer shall be construed to include employees of Architect/Engineer and/or employees that Architect/Engineer supervises. When the designated Architect/Engineer is an employee of Owner, his or her authorized representatives on the Project will be included under the term Architect/Engineer. If Architect/Engineer is an employee of Owner, Architect/Engineer is the beneficiary of all Contractor obligations to Owner, including without limitation, all releases and indemnities. Architect/Engineer may also be referred to as Architect or Engineer.
6. Asbestos: Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by OSHA or Cal/OSHA.
7. Cost Proposal: The offer or proposal of the Contractor submitted on the prescribed form(s) setting forth the prices for the Work to be performed.

8. Contractor: One who submits a Cost Proposal.
9. Cost Proposal Documents: All documents comprising the Project Manual (including all documents and Specification Sections listed in Document 00 0110 [Table of Contents]), including documents supplied for Cost Proposal purposes only and Contract Documents.
10. Board: The governing body of the Owner.
11. Business Day: Any Day other than Saturday, Sunday, and the following days that have been designated as holidays by Owner. If a holiday falls on a Saturday, the preceding Friday will be the holiday. If a holiday falls on a Sunday, the following Monday will be the holiday.
 - a. New Year's Day, January 1;
 - b. Martin Luther King Jr.'s Birthday, third Monday in January;
 - c. Presidents' Day, third Monday in February;
 - d. Memorial Day, last Monday in May;
 - e. Independence Day, July 4;
 - f. Labor Day, first Monday in September;
 - g. Veterans' Day, November 11;
 - h. Thanksgiving Day, as designated by the President;
 - i. The Day following Thanksgiving Day;
 - j. Christmas Eve Day, December 24;

 - k. Christmas Day, December 25; and
 - l. New Year's Eve Day, December 31.
12. By Owner: Work that will be performed by Owner or its agents at the Owner's expense.
13. By Others: Work that is outside scope of Work to be performed by Contractor under this Contract, which will be performed by Owner, other contractors, or other means.
14. Change Order: A written instrument prepared by Owner and signed by Owner and Contractor, stating their agreement upon all of the following:
 - a. a change in the Work;
 - b. the amount of the adjustment in the Contract Sum, if any; and
 - c. the amount of the adjustment in the Contract Time, if any.
15. Code Inspector: A local or state agency responsible for the enforcement of applicable codes and regulations.
16. Concealed: Work not exposed to view in the finished Work, including within or behind various construction elements.
17. Construction Change Directive (CCD): A written order prepared and signed by Owner, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both.
18. Contract Amount: a change order price, line item price, Contract Sum, or other price assigned to a scope of work.
19. Contract Conditions or Conditions of the Contract: Consists of two parts: General Conditions and Supplementary Conditions.
 - a. General Conditions are general clauses that are common to the Owner Contracts, including Document 00 7200 (General Conditions).
 - b. Supplementary Conditions modify or supplement General Conditions to meet specific requirements for Contract Documents, including Documents 00 7300, *et seq.* (Supplementary Conditions).
20. Contract Documents and Contract: Contract Documents and Contract shall consist of the documents identified as the Contract Documents in Document 00 5200 (Agreement), plus all changes, Addenda, and modifications thereto.

21. Contract Modification: Either:
 - a. a written amendment to Contract signed by Contractor and Owner; or
 - b. a Change Order; or
 - c. a Construction Change Directive; or
 - d. a written directive for a minor change in the Work issued by Owner.
22. Contract Sum: The sum stated in the Agreement and, including authorized adjustments, the total amount payable by Owner to Contractor for performance of the Work and the Contract Documents. The Contract Sum is also sometimes referred to as the Contract Price or the Contract Amount.
23. Contract Time: The number or numbers of Days or the dates stated in the Agreement to achieve Substantial Completion of the Work or designated Milestones; and/or to achieve Final Completion of the Work so that it is ready for final payment and is accepted.
24. Contractor: The person or entity identified as such in the Agreement and referred to throughout the Contract Documents as if singular in number and neutral in gender. The term "Contractor" means the Contractor or its authorized representative.
25. Contractor's Employees: Persons engaged in execution of Work under Contract as direct employees of Contractor, as Subcontractors, or as employees of Subcontractors.
26. County: The County in which Owner is located.
27. Day: One calendar day of 24 hours measured from midnight to the next midnight, unless the word "day" is specifically modified to the contrary.
28. Defective: An adjective which, when modifying the word "Work," refers to Work that is unsatisfactory or unsuited for the use intended, faulty, or deficient, that does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents (including, without limitation, approval of Samples and "or equal" items), or has been damaged prior to final payment (unless responsibility for the protection thereof has been assumed by Owner). Unapproved substitutions for major items as included within the Order Confirmation form are Defective. Owner and Contractor shall come to agreement as to whether Work is Defective.
29. Drawings: The graphic and pictorial portions of Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.
30. Equal: Equal in opinion of Owner. Burden of proof of equality is responsibility of Contractor.
31. Final Acceptance or Final Completion: Owner's acceptance of the Work upon issuance of Notice of Completion as satisfactorily completed in accordance with Contract Documents. Requirements for Final Acceptance/Final Completion include, but are not limited to:
 - a. All systems having been tested and passed Acceptance Test as per Contract Documents.
 - b. All required instructions and training sessions having been given by Contractor.
 - c. All Project Record Documents having been submitted by Contractor, reviewed by Owner, and accepted by Owner.
 - d. All punch list Work, as agreed upon by Owner and Contractor, having been completed by Contractor.
 - e. Generally all Work, except Contractor maintenance after Final Completion, having been completed per the Contract.
32. Force Account: Work directed to be performed without prior agreement as to lump sum or unit price cost thereof, and which is to be billed at cost for labor, materials, equipment, taxes, and other costs, plus a specified percentage for overhead and profit.
33. Exposed: Work exposed to view in the finished Work, including behind louvers, grilles, registers and various other construction elements.
34. Furnish: Supply only, do not install.
35. Indicated: Shown or noted on the Drawings.

36. Install: Install or apply only, do not furnish.
37. Latent: Not apparent by reasonable inspection including, without limitation, the inspections and research required as a condition to quoting under Document 00 7200 (General Conditions).
38. Law: Unless otherwise limited, all applicable laws including without limitation all federal, state, and local laws, statutes, standards, rules, regulations, ordinances, and judicial and administrative decisions.
39. Material: This word shall be construed to embrace machinery, manufactured articles, materials of construction (fabricated or otherwise), and any other classes of material to be furnished in connection with Contract, except where a more limited meaning is indicated by context.
40. Milestone: A principal event specified in Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all Work.
41. Modification: Same as Contract Modification.
42. Not in Contract or "NIC": Work that is outside the scope of Work to be performed by Contractor under Contract Documents.
43. Notice of Completion: Shall have the meaning provided in California Civil Code Section 9202, and any successor statute.
44. Off Site: Outside geographical location of the Project.
45. Owner: Owner is defined in Document 00 5200 (Agreement).
46. Owner-Furnished, Contractor Installed: Items furnished by Owner at its cost for installation by Contractor at its cost under Contract Documents.
47. Owner's Representative(s): See Document 00 5200 (Agreement).
48. Partial Utilization: Use by Owner of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all of the Work.
49. PCBs: Polychlorinated biphenyls.
50. Phase: A specified portion of the Work (if any) specifically identified as a Phase in Document 00 5200 (Agreement) or Section 01 1100 (Summary).
51. Product Data: That information (brochures, catalog sheets, manufacturer's cut sheets, etc.) supplied by vendors having technical and commercial characteristics of the supplied equipment or materials and accompanying commercial terms such as warranties, instructions, and manuals.
52. Progress Report: A periodic report submitted by Contractor to Owner with progress payment invoices accompanying progress schedule. See Document 00 7200 (General Conditions).
53. Project: Total construction of which Work performed under Contract Documents may be whole or part.
54. Project Manual: Project Manual consists of quoting Requirements, Agreement, Bonds, Certificates, Contract Conditions, Drawings, and Specifications.
55. Project Record Documents: All Project deliverables required under the Contract Documents, including without limitation, as built drawings; Installation, Operation, and Maintenance Manuals; and Machine Inventory Sheets.
56. Proposal: A Cost Proposal.
57. Provide: Furnish and install.
58. Request for Information (RFI): A document prepared by Contractor requesting information regarding the Project or Contract Documents. The RFI system is also a means for Owner to submit Contract Document clarifications or supplements to Contractor.
59. Request for Proposals (RFP): A document issued by Owner to Contractor whereby Owner may initiate changes in the Work or Contract Time as provided in Contract Documents.

60. Request for Substitution (RFS): A document prepared by Contractor requesting substitution of materials as permitted and to the extent permitted in Contract Documents.
61. RFI-Reply: A document consisting of supplementary details, instructions, or information issued by Owner that clarifies or supplements Contract Documents, and with which Contractor shall comply. RFI-Replies do not constitute changes in Contract Sum or Contract Time except as otherwise agreed in writing by Owner. RFI-Replies will be issued through the RFI administrative system.
62. Samples: Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
63. Shop Drawings: All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
64. Shown: As indicated on Drawings.
65. Site: The particular geographical location of Work performed pursuant to the Contract Documents.
66. Specifications: The written portion of the Contract Documents consisting of requirements for materials, equipment, construction systems, standards, and workmanship for the Work; performance of related services.
67. Specified: As written in Specifications.
68. Subcontractor: A person or entity that has a direct contract with Contractor to perform a portion of the Work at the Site. The term Subcontractor is referred to throughout the Contract Documents as if singular in number and neutral in gender and means a Subcontractor or an authorized representative of the Subcontractor. The term Subcontractor does not include a separate contractor or subcontractors of a separate contractor.
69. Substantial Completion: The Work (or a specified part thereof) has progressed to the point where, in the opinion of Owner as evidenced by a notice or certificate of Substantial Completion, the Work is sufficiently complete, in accordance with Contract Documents, so that the Work (or specified part) is verified to allow the system to functionally operate, and unperformed or incomplete work elements are minor in nature; or if no such certificate is issued, when the Work (or specified part) is complete and. The terms “**Substantially Complete**” and “**Substantially Completed**” as applied to all or part of the Work refer to Substantial Completion thereof.
70. Supplemental Instruction: A written directive from Owner to Contractor ordering alterations or Modifications that do not result in change in Contract Sum or Contract Time, and do not substantially change Drawings or Specifications.
71. Technical Specifications: Specification Sections included within Division 02 and above.
72. Testing and Special Inspection Agency: An independent entity engaged to inspect and/or test the workmanship, materials, or manner of construction of buildings or portions of buildings, to determine if such construction complies with the Contract Documents and applicable codes.
73. TIE: Time Impact Evaluation; see Section 01 2600 (Modification Procedures). May also be referred to as Time Impact Analysis (**TIA**).
74. Underground Facilities: All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities that have been installed underground to furnish any of the following services or materials: electricity, gases, chemicals, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems, or water.
75. Unit Price Work: Shall be the portions of the Work for which a unit price is provided in Document 00 5200 (Agreement) or Section 01 1100 (Summary).

76. Work: The entire completed construction, or the various separately identifiable parts thereof, required to be furnished under the Contract Documents within the Contract Time. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials and equipment into the construction, and performing or furnishing services and furnishing documents, all as required by the Contract Documents including everything shown in the Drawings and set forth in the Specifications. Wherever the word "work" is used, rather than the word "Work," it shall be understood to have its ordinary and customary meaning.

B. Other Defined Terms

The following terms are not necessarily identified with initial caps; however they shall have the meaning set forth below:

1. Wherever words "as directed," "as required," "as permitted," or words of like effect are used, it shall be understood that direction, requirements, or permission of Owner is intended. Words "sufficient," "necessary," "proper," and the like shall mean sufficient, necessary, or proper in judgment of Owner. Words "approved," "acceptable," "satisfactory," "favorably reviewed," or words of like import, shall mean approved by, or acceptable to, or satisfactory to, or favorably reviewed by Owner.
2. Wherever the word "may" or "ought" is used, the action to which it refers is discretionary. Wherever the word "shall" or "will" is used, the action to which it refers is mandatory.

END OF SECTION

DIVISION 1 GENERAL REQUIREMENTS

SECTION 01 7700

CONTRACT CLOSEOUT

PART 1 GENERAL

1.01 Summary.

A. Section describes requirements and procedures for:

1. Project cleaning
2. Testing of equipment and systems
3. Substantial Completion
4. Final Completion
5. Close Out
6. Warranties

1.02 Substantial Completion.

A. Removal of Temporary Construction Facilities and Project Cleaning.

1. Prior to Substantial Completion inspection: remove temporary materials, equipment, services, and construction; clean all areas affected by the Work; clean and repair damage caused by installation or use of temporary facilities; restore permanent facilities used during construction to specified condition.

B. Equipment and Systems.

1. Prior to Substantial Completion, Contractor shall start up, run for periods prescribed by Owner, operate, adjust and balance all manufactured equipment and Project systems including, without limitation, mechanical, electrical, safety, fire, and controls.
2. Demonstrate that such equipment and systems conform to contract standards and manufacturer's guarantees. Where applicable, use testing protocols specified, and if the contract is silent, then consistent with manufacturer's recommendations and industry standards.

C. Procedure for Substantial Completion.

1. When Contractor considers Work or designated portion of the Work as Substantially Complete, submit written notice to Owner, with list of items remaining to be completed or corrected and explanation of why such items do not prevent Owner's beneficial use and occupancy of the Work for its intended purposes. Within reasonable time, Owner will inspect to determine status of completion.
2. Should Owner determine that Work is not Substantially Complete, Owner will promptly notify Contractor in writing, listing all defects and omissions. Contractor shall remedy deficiencies and send a second written notice of Substantial Completion. Owner will reinspect the Work. If deficiencies previously noted are not corrected on reinspection, then pay the cost of the reinspection.
3. When Owner concurs that Work is Substantially Complete, Owner will issue a written notice or certificate of Substantial Completion, accompanied by Contractor's list of items to be completed or corrected as verified by Owner.
4. Manufactured units, equipment and systems that require startup must have been started up and before a notice or certificate of Substantial Completion will be issued.
5. A punch list examination will be performed upon Substantial Completion. One follow-up review of punch list items for each discipline will be provided. If further Site visits are required to review punch list items due to incompleteness of the Work by Contractor, Contractor will reimburse Owner for costs associated with these visits.

1.03 Final Completion.

A. Requirements.

1. Final Completion occurs when Work meets requirements for Owner's Final Acceptance.

B. Procedure.

1. When Contractor considers Work is Finally Complete, submit written certification that:
 - (a) Contractor has inspected Work for compliance with Contract Documents, and all requirements for Final Acceptance have been met.
 - (b) Except for Contractor maintenance after Final Acceptance, Work has been completed in accordance with Contract Documents and deficiencies listed with Certificate of Substantial Completion have been corrected. Equipment and systems have been tested in the presence of Owner, and are operative.
 - (c) Project Record Documents are completed and turned over to Owner, and Work is complete and ready for final inspection.
2. In addition to submittals required by Contract Documents, provide submittals required by governing authorities and submit final statement of accounting giving total adjusted Contract Sum, previous payments, and sum remaining due.
3. Should Owner determine that Work is incomplete or Defective, Owner promptly will so notify Contractor, in writing, listing the incomplete or Defective items. Contractor shall promptly remedy the deficiencies and notify the Owner when it is ready for reinspection.

C. Final Adjustments of Accounts.

1. Submit a final statement of accounting to Owner, showing all adjustments to the Contract Sum and complete and execute Document 00 6530 (Agreement and Release of Claims).
2. If so required, Owner shall prepare a final Change Order for submittal to Contractor, showing adjustments to the Contract Sum that were not previously made into a Contract Modification.

D. Warranties.

1. Execute Contractor's Submittals and assemble warranty documents, and Installation, Operation, and Maintenance Manuals, executed or supplied by Subcontractors, suppliers, and manufacturers. Provide table of contents and assemble in 8½ inches by 11 inches three-ring binder with durable plastic cover, appropriately separated and organized. Assemble in Specification Section order.
2. For equipment put into use with Owner's permission during construction, submit warranty materials within 14 Days after first operation. For items of Work delayed materially beyond Date of Substantial Completion, provide updated Submittal within 14 Days after first operation, listing date of Notice of Completion as start of warranty period.
3. Warranty Forms: Submit drafts to Owner for approval prior to execution. Forms shall not detract from or confuse requirements or interpretations of Contract Documents. Warranty shall be countersigned by manufacturers. Where specified, warranty shall be countersigned by Subcontractors and installers.
4. Rejection of Warranties: Owner reserves right to reject unsolicited and coincidental product warranties that detract from or confuse requirements or interpretations of Contract Documents.
5. Term of Warranties: For materials, equipment, systems, and workmanship, warranty period shall be one year minimum from date of issuance of Notice of Completion of entire Work except where:
 - (a) Detailed Specifications for certain materials, equipment or systems require longer warranty periods.
 - (b) Materials, equipment or systems are put into beneficial use of Owner prior to Final Completion as agreed to in writing by Owner.

E. Warranty of Title.

No material, supplies, or equipment for Work under Contract shall be purchased subject to any chattel mortgage, security agreement, or under a conditional sale or other agreement by which an interest therein or any part thereof is retained by seller or supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in Work and agrees upon completion of all Work to deliver premises, together with improvements and appurtenances constructed or placed thereon by Contractor, to Owner free from any claim, liens, security interest, or charges, and further agrees that neither Contractor nor any person, firm, or corporation furnishing any materials or labor for any Work covered by Contract shall have right to lien upon premises or improvement or appurtenances thereon. Nothing contained in this paragraph, however, shall defeat or impair right of persons furnishing materials or labor under bond given by Contractor for their protection or any rights under law permitting persons to look to funds due Contractor in hands of Owner.

F. Turn-In. Contract Documents will not be closed out and final payment will not be made until all keys issued to Contractor during prosecution of Works, pursuant to Contract Documents, are turned in to Owner.

G. Release of Claims. Contract Documents will not be closed out and final payment will not be due or made until Document 00 6530 (Agreement and Release of Claims) is completed and executed by Contractor and Owner.

H. Fire Inspection Coordination. Coordinate fire inspection and secure sufficient notice to Owner to permit convenient scheduling (if applicable).

I. Building Inspection Coordination. Coordinate with Owner a final inspection for the purpose of obtaining an occupancy certificate (if applicable).

END OF SECTION

DOCUMENT 00 4330

SUBCONTRACTORS LIST

The Subcontractors List must include the names of all subcontractors for those subcontractors who will perform any portion of Work, including labor, rendering of service, or specially fabricating and installing a portion of the Work or improvement according to detailed drawings contained in the plans and specifications, in excess of one half of one percent (0.5%) of the total contract amount.

Name of Subcontractor and Location of Place of Business	Description of Work	Subcontractor's DIR License No.	DIR Registration Number*	% of Total
Titus MRF Services 11080 Rose Avenue Fontana, CA 92337	Mechanical & Electrical Installation	CSLB: 872945	1000060249	

(attach additional sheets if necessary)

* Pursuant to Division 2, Part 7, Chapter 1 (commencing with section 1720) of the California Labor Code.

Questionnaire

Failure to complete the questionnaire or inclusion of any false statement(s) shall be ground for immediate disqualification.

CONTACT INFORMATION

Company Name: **Titus MRF Services** _____
 Owner of Company: **Michael C Centers** _____
 Contact Person: **Mike Centers** _____
 Address: **11080 Rose Avenue, Fontana, CA 92337** _____
 Phone: **909-357-3156** _____ Fax: **909-357-3166** _____

EXPERIENCE OF DESIGNATED SUBCONTRACTOR

The nature of this Project requires prior similar experience for each of the Designated Subcontractor(s) performing the Work. Summarize similar project experience below and provide the detailed project information requested:

Designated Subcontractor (1). List three (3) projects of similar size and scope to the Work of the Contract, completed in the past two (2) years, and indicate who were the superintendent, project manager and scheduler. NOTE: this listing will be used to assess compliance with the stated minimum qualifications in Paragraph 1.01.

Project Name	Construction Cost (\$)	Year Completed	Name of Project Superintendent	Name of Project Manager	Name of Project Scheduler
Greenwaste optical sorter install	\$1,700,000	2019	Arturo Pacheco	Dean Locke	Miguel Moreno

Pier 96 optical sort install	\$1,500,000	2019	Arturo Pacheco	Mike Centers	Miguel Moreno

Key Personnel.

List Key Personnel that will be assigned to the Work of the current Project and their experience/training with the projects listed above:

Project Manager: **Mike Centers**

Project Superintendent: **Arturo Pacheco**

Project Scheduler: **Miguel Moreno**

Recent Projects.

Provide information about three (3) of its most currently completed projects. Names and references must be current and verifiable. This listing will be used to assess compliance with the stated minimum qualifications in Paragraph 1.01. If a separate sheet is used, it must contain all of the following information:

1. Project Name: **Greenwaste optical sorter install**

Location: **San Jose, CA**

Owner: **Greenwaste**

Owner Contact (name and phone): **Ricky Lopez 408-504-6494**

Architect/Engineer: **Matt Edwards**

Architect/Engineer Contact (name and phone number): **Matt Edwards 541-760-4562**

Const. Mgr. or Project Mgr. (name and phone number): **Dean Locke 541-972-9013**

Description of Project, Scope of Work Performed: **Install 6 NRT Near-Infrared optical sorters without downtime that would have forced customer to divert material**

Total Construction Cost: **\$1,700,000**

Total Change Order Amount: **\$94,000**

Did Change Orders exceed 10% of original contract sum? **No** If yes, please explain on separate sheet.

Original Scheduled Date of Completion: December 2018
Time Extensions Granted (number of Days): 90 Days assuming no installation downtime
Actual Date of Completion: March 30, 2019
Number of Stop Notices filed by Subcontractors or Suppliers: None

2. Project Name: Pier 96 Recology optical sort installation
Location: San Francisco, CA
Owner: Recology
Owner Contact (name and phone): Maurice Quillen 415-740-6451
Architect/Engineer: Gil
Architect/Engineer Contact (name and phone number): _____
Const. Mgr. Or Project Mgr. (name and phone number): _____
Description of Project, Scope of Work Performed: Install 3 fiber optical sorters without shutting down customer where they would have to divert material
Total Construction Cost: \$1,500,000
Total Change Order Amount: \$95,000
Did Change Orders exceed 10% of original contract sum? No If yes, please explain on separate sheet.

Original Scheduled Date of Completion: December 2018
Time Extensions Granted (number of Days): None
Actual Date of Completion: December 20, 2018
Number of Stop Notices filed by Subcontractors or Suppliers: None

3. Project Name: Polk County Installation-3 Material Stream MRF
Location: Fosston, MN
Owner: Polk County Solid Waste Management
Owner Contact (name and phone): Jon Steiner 218-289-2384
Architect/Engineer: Marlon P Machowick
Architect/Engineer Contact (name and phone number): Marlon P Machowick 701-893-2314
Const. Mgr. Or Project Mgr. (name and phone number): Rick Centers 248-866-1061
Description of Project, Scope of Work Performed: Install a plant to sort MSW Single Stream and commercial recovering valuable recyclables

Total Construction Cost: \$9,000,000

Total Change Order Amount: \$175,000

Did Change Orders exceed 10% of original contract sum? No If yes, please explain on separate sheet.

Original Scheduled Date of Completion: October 2018

Time Extensions Granted (number of Days): 45 days

Actual Date of Completion: December 2018

Number of Stop Notices filed by Subcontractors or Suppliers: NONE

FINANCIAL INFORMATION

- 1. Has Contractor ever reorganized under the protection of bankruptcy laws? Yes _____ No X If yes, please state when _____
- 2. If Contractor has had their general liability carrier for less than 5 years, please provide additional information below for balance of the last 5 years:

Agency Name: _____

Contact Name: _____

Phone Number: _____

Carrier: _____ A.M. Best Rating: _____

Carrier: _____ A.M. Best Rating: _____

Carrier: _____ A.M. Best Rating: _____

- 3. Has Contractor ever had insurance terminated by a carrier? Yes _____ No X If yes, explain on a separate signed sheet marked with correlating cross-reference to this paragraph of the questionnaire.

Contractor hereby declares under penalty of perjury that all the information provided in this questionnaire is true and correct.

Michael C. Grah
SIGNATURE

President
TITLE

DOCUMENT 00 6113.13

CONSTRUCTION PERFORMANCE BOND

THIS CONSTRUCTION PERFORMANCE BOND (Bond) is dated September 19, 2019 is in the amount of Five Million Twenty One Thousand Five Hundred Seventeen and 00/100 Dollars (\$5,021,517.00) (Penal Sum), which is 100% of the Contract Sum and is entered into by and between the parties listed below to ensure the faithful performance of the Contract identified below. This Bond consists of this page and the Bond Terms and Conditions, Paragraphs 1 through 14 attached to this page. Any singular reference to Emerging Acquisitions, LLC dba Bulk Handling Systems (Contractor), Atlantic Specialty Insurance Company (Surety), South Bayside Waste Management Authority (Owner), or other party shall be considered plural where applicable.

CONTRACTOR:

SURETY:

Emerging Acquisitions, LLC dba Bulk Handling Systems

Atlantic Specialty Insurance Company

3592 West 5th St
Address

605 Highway 169 North, Suite 800
Principal Place of Business

Eugene, OR 97402
City/State/Zip

Plymouth, MN 55441
City/State/Zip

CONSTRUCTION CONTRACT:

Agreement for the MRF Phase 1 Improvements Project, located at 225 Shoreway Rd, San Carlos, CA 94070, dated _____, 2019, in the amount of \$5,021,517.00

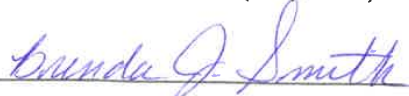
CONTRACTOR AS PRINCIPAL

SURETY

Emerging Acquisitions, LLC dba (Corp. Seal)
Bulk Handling Systems

Atlantic Specialty Insurance Company
(Corp. Seal)

Signature: _____

Signature: 

Name: _____

Name: Brenda J. Smith

Title: _____

Title: Attorney-in-Fact

BOND TERMS AND CONDITIONS

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to Owner and the State of California for the complete and proper performance of the Construction Contract, which is incorporated herein by reference.
2. If Contractor completely and properly performs all of its obligations under the Construction Contract, Surety and Contractor shall have no obligation under this Bond.
3. If there is no Owner Default, Surety's obligation under this Bond shall arise after:
 - 3.1 Owner provides Surety with written notice that Owner has declared a Contractor Default under the Construction Contract pursuant to the terms of the Construction Contract; and
 - 3.2 Owner has agreed to pay the Balance of the Contract Sum:
 - 3.2.1 To Surety in accordance with the terms of this Bond and the Construction Contract;
or
 - 3.2.2 To a Contractor selected to perform the Construction Contract in accordance with the terms of this Bond and the Construction Contract.
4. When Owner has satisfied the conditions of Paragraph 3 above, Surety shall promptly (within 40 Days) and at Surety's expense elect to take one of the following actions:
 - 4.1 Arrange for Contractor, with consent of Owner, to perform and complete the Construction Contract (but Owner may withhold consent, in which case the Surety must elect an option described in Paragraphs 4.2, 4.3 or 4.4 below); or
 - 4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors or Construction entities; provided, that Surety may not select Contractor as its agent or independent contractor or Contractor without Owner's consent; or
 - 4.3 Undertake to perform and complete the Construction Contract by obtaining bids from qualified contractors or Construction entities acceptable to Owner for a contract for performance and completion of the Construction Contract and, upon determination by Owner of the lowest responsive and responsible Contractor, arrange for a contract to be prepared for execution by Owner and the contractor or Contractor selected with Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract; and, if Surety's obligations defined in Paragraph 6 below, exceed the Balance of the Contract Sum, then Surety shall pay to Owner the amount of such excess; or
 - 4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor or Contractor, and with reasonable promptness under the circumstances and, after investigation and consultation with Owner, determine in good faith its monetary obligation to Owner under Paragraph 6 below, for the performance and completion of the Construction Contract and, as soon as practicable after the amount is determined, tender payment therefor to Owner with full explanation of the payment's calculation. If Owner accepts Surety's tender under this Paragraph 4.4, Owner may still hold Surety liable for future damages then unknown or unliquidated resulting from the Contractor Default, as agreed by Owner and Surety at the time of tender. If Owner disputes the amount of Surety's tender

under this Paragraph 4.4, Owner may exercise all remedies available to it at law to enforce Surety's liability under Paragraphs 6 and 7 below.

5. At all times Owner shall be entitled to enforce any remedy available to Owner at law or under the Construction Contract including, without limitation, and by way of example only, rights to perform work, protect Work, mitigate damages, advance critical Work to mitigate schedule delay, and coordinate Work with other consultants or contractors.
6. If Surety elects to act under Paragraphs 4.1, 4.2 or 4.3 above, within the time period provided in Paragraph 4, above, and complies with its obligations under this Bond, Surety's obligations under this Bond are commensurate with Contractor's Construction Contract obligations. Surety's obligations include, but are not limited to:
 - 6.1 Contractor's obligations to complete the Construction Contract and correct Defective Work;
 - 6.2 Contractor's obligations to pay liquidated damages; and
 - 6.3 To the extent otherwise required of Contractor under the Construction Contract, Contractor's obligations to pay additional legal, design professional, and other costs not included within liquidated damages resulting from Contractor Default (but excluding attorney's fees incurred to enforce this Bond).
7. If Surety does not elect to act under Paragraphs 4.1, 4.2, 4.3, or 4.4, above, within the time period provided in Paragraph 4, above, or comply with its obligations under this Bond, then Surety shall be deemed to be in default on this Bond ten Days after receipt of an additional written notice from Owner to Surety demanding that Surety perform its obligations under this Bond. Such Surety default shall be independent of the Contractor Default. To the extent Surety's independent default causes Owner to suffer damages including, but not limited to, delay damages, which are different from, or in addition to (but not duplicative of) damages which Owner is entitled to receive under the Construction Contract, Surety shall also be liable for such damages. In the event any Surety obligation following its independent default is inconsistent or conflicts with California Civil Code Section 2809, or any other law which either prohibits, restricts, limits or modifies in any way any obligation of a surety which is larger in amount or in any other respect more burdensome than that of the principal, Surety hereby waives the provisions of such laws to that extent.
8. If Surety elects to act under Paragraphs 4.1, 4.3 or 4.4 above, within the time period provided in Paragraph 4, above, and complies with all obligations under this Bond, Surety's monetary obligation under this Bond is limited to the Penal Sum.
9. No right of action shall accrue on this Bond to any person or entity other than Owner or its successors or assigns.
10. Surety hereby waives notice of any change, alteration or addition to the Construction Contract or to related subcontracts, design agreements, purchase orders and other obligations, including changes of time, and of any Owner action in accordance with Paragraph 5 above. Surety consents to all terms of the Construction Contract, including provisions on changes to the Contract. No extension of time, change, alteration, Modification, deletion, or addition to the Contract Documents, or of the Work (including services) required thereunder, or any Owner action in accordance with Paragraph 5 above shall release or exonerate Surety on this Bond or in any way affect the obligations of Surety on this Bond, unless such action is an Owner Default.
11. Any proceeding, legal or equitable, under this Bond shall be instituted in any court of competent jurisdiction where a proceeding is pending between Owner and Contractor regarding the Construction Contract, or in the courts of the County of San Mateo, or in a court of competent jurisdiction in the location in which the Work is located. Communications from Owner to Surety

under Paragraph 3.1 above shall be deemed to include the necessary agreements under Paragraph 3.2 above unless expressly stated otherwise.

12. All notices to Surety or Contractor shall be mailed or delivered (at the address set forth on the signature page of this Bond), and all notices to Owner shall be mailed or delivered as provided in Document 00 5200 (Agreement). Actual receipt of notice by Surety, Owner or Contractor, however accomplished, shall be sufficient compliance as of the date received at the foregoing addresses.
13. Any provision in this Bond conflicting with any statutory or regulatory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein.
14. **Definitions**
 - 14.1 **Balance of the Contract Sum:** The total amount payable by Owner to Contractor pursuant to the terms of the Construction Contract after all proper adjustments have been made under the Construction Contract, for example, deductions for progress payments made, and increases/decreases for approved Modifications to the Construction Contract.
 - 14.2 **Construction Contract:** The agreement between Owner and Contractor identified on the signature page of this Bond, including all Contract Documents and changes thereto.
 - 14.3 **Contractor Default:** Material failure of Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract, limited to "default" or any other condition allowing a termination for cause as provided in Document 00 7200 (General Conditions).
 - 14.4 **Owner Default:** Material failure of Owner, which has neither been remedied nor waived, to pay Contractor progress payments due under the Construction Contract or to perform other material terms of the Construction Contract, if such failure is the cause of the asserted Contractor Default and is sufficient to justify Contractor termination of the Construction Contract.

END OF DOCUMENT

DOCUMENT 00 6113.16

CONSTRUCTION LABOR AND MATERIAL PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS:

1.01 THAT WHEREAS, **SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY (Owner)** has awarded to **Emerging Acquisitions, LLC dba Bulk Handling Systems**, as Principal, Project Number **CIP.600100-17** dated the _____ day of _____, 2019, (the **Contract**), titled **THE MRF PHASE 1 IMPROVEMENTS PROJECT** in the amount of Five Million Twenty One Thousand Five Hundred Seventeen and 00/100 Dollars (\$5,021,517.00), which Contract is by this reference made a part hereof, for the work of the following Contract:

BHS to install/improve Glass Clean-Up System, Bypass and Residue Reroute Systems, and In-Feed Metering Bin.

- 1.02 AND WHEREAS, Principal is required to furnish a bond in connection with the Contract to secure the payment of claims of laborers, mechanics, material suppliers, and other persons as provided by law;
- 1.03 NOW, THEREFORE, we, the undersigned Principal and **Atlantic Specialty Insurance Company**, as Surety, are held and firmly bound unto Owner in the sum of 100% OF THE CONTRACT PRICE **Five Million Twenty One Thousand Five Hundred Seventeen and 00/100 Dollars (\$5,021,517.00)** for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.
- 1.04 THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, or its executors, administrators, successors, or assigns approved by Owner, or its subcontractors shall fail to pay any of the persons named in California Civil Code Section 9100, or amounts due under the State of California Unemployment Insurance Code with respect to work or labor performed under the Contract, or for any amounts required to be deducted, withheld, and paid over to the State of California Employment Development Department from the wages of employees of Principal and subcontractors pursuant to Section 13020 of the State of California Unemployment Insurance Code with respect to such work and labor, that Surety will pay for the same in an amount not exceeding the sum specified in this bond, plus reasonable attorneys' fees, otherwise the above obligation shall become and be null and void.
- 1.05 This bond shall inure to the benefit of any of the persons named in California Civil Code Section 9100, as to give a right of action to such persons or their assigns in any suit brought upon this bond. The intent of this bond is to comply with the California Mechanic's Lien Law.
- 1.06 Surety, for value received, hereby expressly agrees that no extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Contract, or to the work to be performed thereunder, shall in any way affect the obligation of this bond; and it does hereby waive notice of any such extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Contract, or to the work to be performed thereunder.
- 1.07 Surety's obligations hereunder are independent of the obligations of any other surety for the payment of claims of laborers, mechanics, material suppliers, and other persons in connection with Contract; and suit may be brought against Surety and such other sureties, jointly and severally, or

against any one or more of them, or against less than all of them without impairing Owner's rights against the other.

1.08 Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

IN WITNESS WHEREOF, we have hereunto set our hands this 19th day of September, 2019.

CONTRACTOR AS PRINCIPAL

Emerging Acquisitions, LLC dba (Corp. Seal)
Bulk Handling Systems

Signature

Name


Title

3592 West 5th Avenue
Street Address

Eugene, OR 97402
City, State, Zip Code

SURETY

Atlantic Specialty Insurance Company
(Corp. Seal)



Signature

Brenda J. Smith
Name

Attorney-in-Fact
Title

605 Highway 169 North, Suite 800
Street Address

Plymouth, MN 55441
City, State, Zip Code

END OF DOCUMENT



Power of Attorney

KNOW ALL MEN BY THESE PRESENTS, that ATLANTIC SPECIALTY INSURANCE COMPANY, a New York corporation with its principal office in Plymouth, Minnesota, does hereby constitute and appoint: **Ed Heine, Tyler McIntyre, George Seaton, Michael Button, Pamela R Urlacher, Cheryl Moore, Brenda J Smith, Amy Farris, Cynthia L Heiney, Thomas Davis, Melissa Wolf, Pamela A. Nelson**, each individually if there be more than one named, its true and lawful Attorney-in-Fact, to make, execute, seal and deliver, for and on its behalf as surety, any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof; provided that no bond or undertaking executed under this authority shall exceed in amount the sum of: **sixty million dollars (\$60,000,000)** and the execution of such bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof in pursuance of these presents, shall be as binding upon said Company as if they had been fully signed by an authorized officer of the Company and sealed with the Company seal. This Power of Attorney is made and executed by authority of the following resolutions adopted by the Board of Directors of ATLANTIC SPECIALTY INSURANCE COMPANY on the twenty-fifth day of September, 2012:

Resolved: That the President, any Senior Vice President or Vice-President (each an "Authorized Officer") may execute for and in behalf of the Company any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof, and affix the seal of the Company thereto; and that the Authorized Officer may appoint and authorize an Attorney-in-Fact to execute on behalf of the Company any and all such instruments and to affix the Company seal thereto; and that the Authorized Officer may at any time remove any such Attorney-in-Fact and revoke all power and authority given to any such Attorney-in-Fact.

Resolved: That the Attorney-in-Fact may be given full power and authority to execute for and in the name and on behalf of the Company any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof, and any such instrument executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed and sealed by an Authorized Officer and, further, the Attorney-in-Fact is hereby authorized to verify any affidavit required to be attached to bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof.

This power of attorney is signed and sealed by facsimile under the authority of the following Resolution adopted by the Board of Directors of ATLANTIC SPECIALTY INSURANCE COMPANY on the twenty-fifth day of September, 2012:

Resolved: That the signature of an Authorized Officer, the signature of the Secretary or the Assistant Secretary, and the Company seal may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing an Attorney-in-Fact for purposes only of executing and sealing any bond, undertaking, recognizance or other written obligation in the nature thereof, and any such signature and seal where so used, being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed.

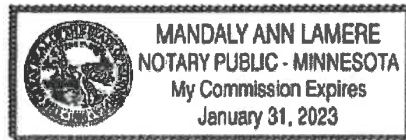
IN WITNESS WHEREOF, ATLANTIC SPECIALTY INSURANCE COMPANY has caused these presents to be signed by an Authorized Officer and the seal of the Company to be affixed this twenty-ninth day of April, 2019.

STATE OF MINNESOTA
HENNEPIN COUNTY



By 
Paul J. Brehm, Senior Vice President

On this twenty-ninth day of April, 2019, before me personally came Paul J. Brehm, Senior Vice President of ATLANTIC SPECIALTY INSURANCE COMPANY, to me personally known to be the individual and officer described in and who executed the preceding instrument, and he acknowledged the execution of the same, and being by me duly sworn, that he is the said officer of the Company aforesaid, and that the seal affixed to the preceding instrument is the seal of said Company and that the said seal and the signature as such officer was duly affixed and subscribed to the said instrument by the authority and at the direction of the Company.





Notary Public

I, the undersigned, Secretary of ATLANTIC SPECIALTY INSURANCE COMPANY, a New York Corporation, do hereby certify that the foregoing power of attorney is in full force and has not been revoked, and the resolutions set forth above are now in force.

Signed and sealed. Dated 19th day of September 2019

This Power of Attorney expires
January 31, 2023




Christopher V. Jerry, Secretary



**SBWMA
San Carlos, CA
RSS Retrofit**

Confidential Order Confirmation # 18-0334-DV2
September 17, 2019





Glass Clean-Up System Equipment Detail

September 17, 2019

Item #	Model #	Description	Width	Length	HP	Quantity	Price
Equipment							
R100	CR-IC-60	Existing Equip#056 Residential Glass Collection Conveyor - Modify Support Bents Skirt Walls Conveyor Chute Large	60"	28'		1	\$23,464
R102	CR-IC-30	Existing Equip#058 Glass Transfer Conveyor 1 - Modify Conveyor Chute Small	30"	110'		1	\$3,176
R103	CR-IC-30	Existing Equip#062 Glass Transfer Conveyor 2 - Modify Conveyor Type: IC-30 Conveyor Length Addition Support Bents Conveyor Chute Small	30"	53'		11	\$24,123
R104	CR-LPS-30	Existing Equip#164 GCUS Combi Separator Unders Conveyor - Modify Conveyor Type: LPS-30 Conveyor Length Addition Conveyor Chute Small	30"	32'		1 23	\$19,275
E100	MAG-42	Magnet - Glass Type of Magnet: Electro Magnet Belt Orientation: Cross Belt Belt Type: Rubber Extension Required: Not Included Magnet Vendor Model Number: SE-7422-SC2-24EXT			3	1	\$62,886
E102	ECSNES100-5005	Eddy Current Separator - Glass	40"		3,5.4	1	\$98,425
	CHUTE	ECS Spreader Chute				1	
	CHUTE	ECS Ejection Chute				1	
	CHUTE	ECS Splitter Chute				1	
R101	WS-S1400	Existing GCUS Windshifter Combi Separator: CS 4500 x 5500 Rotary Valve: RV 900 x1400 Recirculation Fan: RFI 70				1	\$37,782
	Ducting	Pneumatic System Ductwork Pipe Selection: 210 Feet -Pneumatic Pipe - 16" dia. Elbow Selection: 9 -Pneumatic 90 degree Elbows & Transitions-16" dia.				1	
Equipment Total							\$269,131

Item #	Model #	Description	Width	Length	HP	Quantity	Price
Structure							
R105	STRET	Existing Equip#356 Post Sort Platform				1	\$20,369
S100	ST-MAG-SS	Magnet Structure - Glass				1	\$51,047
S101	PLAT-EQUIP	ECS Platform - Glass Platform Square Footage Standard Landing Stairs				1 156	\$40,861
Structure Total							\$112,277

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Bypass System Equipment Detail

September 17, 2019

Item #	Model #	Description	Width	Length	HP	Quantity	Price
Equipment							
C200	LPS-72	4in Bypass Unders Collection Conveyor Conveyor Type: Sliderbed Support Bents Skirt Walls Conveyor Hopper	72"	14'	3	1	\$49,164
C201	LPS-60	Bypass Optical Infeed Conveyor Conveyor Type: Sliderbed Support Bents Skirt Walls Conveyor Bend Conveyor Hopper	60"	79'	8	1	\$87,633
C202	ACL-120	Bypass Optical Accl Conveyor - Ejects OCC Conveyor Type: Acceleration Support Bents Skirt Walls	120"	22'	10	1	\$70,163
C203	ACL-108	Bypass Optical Accl Conveyor - Ejects Containers Conveyor Type: Acceleration Support Bents Skirt Walls	108"	18'	10	1	\$61,075
C204	LPS-30	Bypass Optical Default Collection Conveyor Conveyor Type: Sliderbed Support Bents Skirt Walls Conveyor Bend	30"	32'	3	1	\$41,735
C205	HDPC-54	Container Line Presort Infeed Conveyor Conveyor Type: Sliderbed Support Bents Skirt Walls Conveyor Chute Large Conveyor Hopper	54"	49'	3	1	\$99,209
C206	LPS-48	Optical Ejects 3d Separating Conveyor Conveyor Type: Sliderbed Support Bents Skirt Walls Conveyor Chute Large Conveyor Hopper Reversing Conveyor	48"	24'	3	1	\$68,569
C207	LDP-48	OCC Post Sort Transfer Conveyor Conveyor Type: Sliderbed Support Bents Skirt Walls Conveyor Chute Large Conveyor Hopper Reversing Conveyor	48"	9'	3	1	\$34,445
E200	DRS84-15-850	BHS Debris Roll Screen® - 4 Inch Model #: DRS84-15-850 Description: BHS Fiber Pure™ Screen A1-850-RF Type: Fiber Pure Screen Width Metric Width Length			5	1	\$153,412
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Bypass System Equipment Detail

September 17, 2019

Item #	Model #	Description	Width	Length	HP	Quantity	Price
		Length Metric				4	
		Weight (Approximate)				11800	
		Configuration/IFO: Variable width: 3.25", 4.25", 5.25", 6.25", 7.25" Length=5"					
		Nominal Cut Size: Variable in fixed increments					
		Maximum Cut Size: Variable in fixed increments					
		Shaft Type: Round					
		Shaft Center: 10"					
		Disc Model: A1-850-RF					
		Number of Discs per Shaft				1513119	
		Disc Material: Rubber					
		HP				5	
		# of Motors				1	
	DRSOC	DRS Overs Chute				1	
	DRSUC	DRS Unders Chute				1	
R200	CR-LPS-60	Existing Equip#086 Commercial OCC Unders Conveyor - Modify Retro Work Shorten Support Bents Skirt Walls	60"	32'		1	\$17,025
R203	CR-LPS-48	Existing Equip#068 4 Inch Minus Collection Conveyor - Modify Conveyor Type: LPS-48 Conveyor Length Addition Support Bents Skirt Walls	48"	33'		1	\$30,139
R204	CR-HDS-36	Existing Equip#080 Container Line Bypass Transfer Conveyor 2 Support Bents	36"	71'		1	\$19,479
R205	CR-LPS-36	Equip#078 Container Line Bypass Transfer Conveyor 1 Support Bents Skirt Walls	36"	35'		1	\$17,466
R206	CR-LPS-36	Existing Equip#182 Fiber Return Conveyor - Modify	36"	19'		1	\$0
R207	CR-LPS-36	Existing Equip#242 Container Line Bypass Transfer Conveyor 3 - Modify Support Bents Skirt Walls Conveyor Bend	36"	35'		1	\$23,202
R208	CR-LPS-48	Existing Equip#152 Commercial Mixed Fiber Sort Conveyor Conveyor Chute Large	48"	42'		1	\$13,355
R209	CR-MDP-36	Existing Equip#154 Post Sort Trash Collection Conveyor 4 - Modify Skirt Walls	36"	14'		1	\$7,057
R210	CR-LPS-48	Existing Equip#071 4in Minus Transfer Conveyor 2 - Modify Conveyor Type: LPS-48 Conveyor Length Addition Support Bents New Belt Skirt Walls	48"	50'		1	\$55,673
R222	CB48-9	Equip#074 Container Transfer Conveyor 2 - Remove		61'		1	\$0
R223	DRS60 11/9	Equip#076 BHS Debris Roll Screen Glass Breaker DRS60 11-9 - Remove				1	\$0
R224		Existing Equip#330 - Remove				1	\$0
R225	CR-IC-48	Equip#064 Glass Breaker Unders Conveyor - Remove	48"	15'		1	\$137,313
E201	VIS-120	Bypass Optical Vis - Ejects OCC				1	\$160,731
E202	SpydIR-120R	Bypass Optical - Ejects OCC	120"		0.5	1	\$379,847
	CHUTE	Optical Chute				1	
E203	SpydIR-108R	Bypass Optical - Ejects Containers	108"		0.5	1	\$353,018
	CHUTE	Optical Chute				1	





Bypass System Equipment Detail

September 17, 2019

Item #	Model #	Description	Width	Length	HP	Quantity	Price
	FEA2700	Aspirator Hood					\$31,384
E204	MDA-108ef	Bypass Optical MetalDirector™ - Ejects Containers	96"			1	\$75,838
E205	AIR-500	Air Compressor				1	\$140,773
		Air Compressors PKG Model No: AIR-500					
		AC PKG Description: Air Compressor System 500CFM					
		AC Pkg Tank Size: Dry Tank 2000 Gallon					
		Air Piping: Included					
		Air Compressor Qty Base Package				1	
		Ingersoll Rand Air Compressor Base Package Total HP				100	
R214	PTS-16-15HP	Existing Eq 1825-528-3-7-pt (rev-01)_csl 6-25-10 - Modify	16"			1	\$37,340
	Ducting	Pneumatic System Ductwork				1	
		Pipe Selection: 45 Feet -Pneumatic Pipe - 16" dia.					
		Elbow Selection: 1 -Pneumatic 90 degree Elbows & Transitions-16" dia.					
R220	WindShifter	Equip#512 Bypass Windshifter 1 - Remove				1	\$0
R221	WindShifter	Equip#512 Bypass Windshifter 2 - Remove				1	\$0
						Equipment Total	\$2,165,045

Item #	Model #	Description	Width	Length	HP	Quantity	Price
Structure							
R201	PLAT-EQUIP	Existing Equip#308 Commercial OCC Struc				1	\$41,396
		Platform Square Footage				0	
R202	ST-OCC	Existing Equip#308 Residential and Comme				1	\$23,186
R212	STRET	Existing Equip#356 Post Sort Platform				1	\$21,564
R213	STRET	Existing Equip #332 Container Line Walkway				1	\$89,970
R215	STRET	Existing Equip #316 Access Walkway - Modify				1	\$22,972
S201	PLAT-EQUIP	Bypass Optical Platform - Ejects OCC				1	\$92,517
		Platform Square Footage				449	
S202	PLAT-EQUIP	Bypass Optical Platform - Ejects Containers				1	\$77,021
		Platform Square Footage				350	
		Switchback Stairs					
						Structure Total	\$368,626

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What's next.

Residue Reroute Equipment Detail

Sep

Item #	Model #	Description	Width	Length	HP	Quantity
Equipment						
C401	LPS-48	CSS PS Overs Residue Transfer Conveyor Conveyor Type: Sliderbed Support Bents Skirt Walls Conveyor Chute Large	48"	21'	3	1
C402	LPS-48	Residue Transfer Conveyor #1 Conveyor Type: Sliderbed Support Bents Skirt Walls Conveyor Hopper	48"	32'	3	1
C403	LPS-48	Residue Transfer Conveyor #2 Conveyor Type: Sliderbed Support Bents Skirt Walls Conveyor Chute Large Conveyor Bend Conveyor Hopper	48"	60'	5	1
R401	CR-LPS-48	Existing Equip#148 Commercial PS Overs Conveyor Retro Work Shorten Support Bents Conveyor Chute Large	48"	26'		1
R402	RAS-48x72-7.5HP-	Existing Equip#516 Fiber Recovery Rotary Air Separator - Modify				1
R404	CR-LPS-48	Existing Equip#092 Trash Transfer Conveyor 4 Retro Work Shorten Support Bents Skirt Walls	48"	85'		1
912	Ducting	Ducting Pipe Selection: 55 Feet -Pneumatic Pipe - 20" dia. Elbow Selection: 1 -Pneumatic 90 degree Elbows & Transitions-20" dia.				1
						Equipment Total

Item #	Model #	Description	Width	Length	HP	Quantity
Structure						
R403	ST-RAS	Existing Equip#329 RAS Structure - Modify				1
R405	STRET	Existing Equip#356 Post Sort Platform				1
S402	PLAT-SORT	Residue Recovery Platform Platform Square Footage				1 49
						Structure Total

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September 17, 2019

Price
\$56,478

\$39,426

\$113,078

\$29,747

\$10,000
\$20,023

\$12,489

\$281,241

Price
\$22,604
\$26,208
\$36,882
\$85,694

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CSS Metering Bin Equipment Detail

Sep

Item #	Model #	Description	Width	Length	HP	Quantity
Equipment						
E031	MB-60	BHS Metering Bin Capacity: 60 cu. yds. (46 cu. m) Metering Bin Head Chute			25,2	1
R031	CBH-72	Equip#012 Commercial Infeed Belt - Remove	72"	41'		1
						Equipment Total

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September 17, 2019

Price
\$272,854
\$0
\$272,854

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System Integration

September 17, 2019

System Integration

Controls Package	Included
The following components will be supplied for the new equipment listed within this proposal:	
<ul style="list-style-type: none"> ▪ Hoffman NEMA 12 rated enclosure for new/added hardware ▪ Allen Bradley components mounted on removable back panel ▪ Lockable, fused disconnect for 460/3/60 service ▪ Power distribution block ▪ Control power transformer, 460VAC-240 -120VAC ▪ Indicating fuse holders for 120VAC control power circuits ▪ Fuses with indicating statuses for all ACVF drives and motor starters ▪ (Input) line reactors for each ACVF drive ▪ ABB drive for variable speed control required motors ▪ Output contractors for emergency stop isolation for each of the ACVF drives ▪ Master control relay for isolation of control power for emergency stop conditions, Category 1 circuit ▪ Allen Bradley Compact Logix PLC ▪ Wire duct for running control and power wire inside enclosure ▪ Numbered terminal strips for all connecting field wiring including motor leads ▪ Hardwired, lighted, emergency stop button on front of enclosure ▪ Existing HMI will be utilized for operator interface ▪ Pricing assumes that original controls program language is available and accessible ▪ Existing controls will be modified. If upgrades in hardware or software are determined to be required this work will be billed as a change order. 	
Total Intelligence Platform-T.I.P.	Not Included
Project Management, Field Services, Start-up Assistance, and Training	Included
BHS Project Manager will manage our scope of the project. All services listed below will be performed by professional BHS employees.	
Pre-Installation Services:	
<ul style="list-style-type: none"> ▪ Project Kick-Off Meeting ▪ Engineering measure-up of existing building and equipment ▪ General Arrangement Review ▪ Pre-Installation Visit from Project Manager 	
Installation Services:	
<ul style="list-style-type: none"> ▪ Contracting and Management of Electrical and Mechanical Installation Contractors ▪ On-Site Start-up and Commissioning Supervision 	
Training Services:	
<ul style="list-style-type: none"> ▪ On-Site Maintenance and Operations Training for new equipment 	
System Engineering and Consultation	Included
Detailed field measurements will be taken by BHS Engineering during General Arrangement phase. If actual site conditions differ from information shown on sales drawing, a change order may be necessary to accommodate additional costs.	
Certified Professional Engineering (Stamped and Certified Documents)	Not Included
Mechanical Installation - Prevailing Wages to include after hours and weekend work	Included
BHS will provide mechanical installation of the equipment that is included in our scope of supply. This includes assembly and erection of the equipment. Owner to supply any necessary civil contracting (concrete, building erection and/or modification, truck scales, general lighting, HVAC, plumbing, etc.) and any required mechanical or civil permits.	
Supply of all lubricants as required for equipment Commissioning. This applies only to equipment included within BHS scope of supply.	Included
Electrical Installation - Prevailing Wages to include after hours and weekend work	Included
BHS will provide electrical installation of the equipment package. This includes the electrical permit and all wiring from the MCC to each piece of equipment. Main power supply to MCC cabinet(s) to be provided by owner.	
Demolition and/or Retrofit Work (Excludes removal of existing equipment from site)	Included

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System Integration

September 17, 2019

System Integration

Retrofit Services:

Included

- Modifications to existing conveyors and structures are limited to the scope specifically listed herein
- Conveyors being lengthened will include new sections of belting to be spliced into the existing belt
- All existing structure, equipment and components are assumed to be suitable for purpose and in full working order. If it is determined that items need to be modified or replaced, that work will be billed as a Change Order
- Any items being demolished/removed will be done assuming material will be scrapped
- Should it be deemed that existing conduit or other utilities need to be removed in order for the mechanical installation crew to install/modify structures and/or equipment, that work will be billed as a Change Order.

- Existing Conduit within BHS scope of equipment will be moved as part of project, other conduit utilities that have been installed by others will be customers responsibility

Performance Test

Not Included

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Pricing & Terms

September 17, 2019

Package #1 - Glass Clean-Up System*

Table with 3 columns: Item, Unit, Price. Includes Equipment, Structure, Controls, Project Management and Start-Up, Mechanical/Electrical Installation and Demo/Retrofit Work, and Estimated Shipping and Handling.

Package #2 - Bypass System & Residue Reroute*

Table with 3 columns: Item, Unit, Price. Includes Equipment, Structure, Controls, Project Management and Start-Up, Mechanical/Electrical Installation and Demo/Retrofit Work, and Estimated Shipping and Handling.

Package #3 - CSS Metering Bin Package*

Table with 3 columns: Item, Unit, Price. Includes Equipment, Controls, Project Management and Start-Up, Mechanical/Electrical Installation, and Estimated Shipping and Handling.

Totals Scope Pricing

Summary table for Totals Scope Pricing with 3 columns: Item, Unit, Price.

Summary table for Strategic Partner Incentive and Total Contract Value with 3 columns: Item, Unit, Price.

Note: Pricing is based on everything being ordered at the same time and installation being completed in an order to be determined between BHS and SBWMA.

- Validity: This quote is valid for 30 days
Shipping Terms: Estimated freight costs have been provided for budgeting purposes.
Delivery: As per Contract
Payment Terms for System: As per Contract
Buyer's Responsibility: Storage and security of equipment upon arrival to site, Any and all applicable taxes, etc.

Please confirm order by signing and emailing to sales@bhsquip.com or faxing all pages to 541.485.6341 to begin processing.

Agreed to and accepted by:

Hilary Gans
SBWMA

Richard Sweet
Bulk Handling Systems

Date:

Date: September 17, 2019





Conditions of Sale & Warranty

1. PRICES

A. TAXES. Unless otherwise indicated no Sales, Use, Retailers, Occupation, Service Occupation, Service Use, Value Added, Goods and Services or other similar taxes are included in the purchase price. The amount of any such taxes which are paid or payable, or assessed, in connection with any order, and which are not specifically stated as being included in the purchase price, shall be paid by AUTHORITY to BHS or, if authorized by law, by AUTHORITY directly to the taxing authority.

B. PAYMENT. Invoices are due upon presentation and will be submitted in accordance with the payment schedule as outlined in the proposal. All sums due under this contract shall bear a finance charge of one and one-half (1½%) per month, or the highest lawful rate, whichever is more, if not paid within thirty (30) days of when due. Due date is deemed to be the date of the invoice. Upon AUTHORITY'S breach of this agreement, BHS may accelerate notice, require a letter of credit or make shipment under reservation.

2. SHIPMENT/COMPLETION

A. FORCE MAJEURE. BHS' best efforts will be made to meet promised shipping/completion dates. However, BHS will not be liable for delays in delivery or completion caused by any reason beyond our control, including but not limited to, acts of God, casualty, civil disturbances, labor disputes, transportation or supply difficulties, any interruption of our facilities, or act of any governmental authority, and the time for delivery specified herein shall be extended during the continuance of such conditions and for a reasonable time thereafter.

B. Removed - in main contract

3. Removed - in main contract

4. Removed - in main contract

5. CONFLICT IN TERMS. in the event that the terms of this Order Confirmation Conditions of Sale & Warranty conflict with those in the Contract, the terms of the Contract shall prevail.

6. WARRANTY. For a period of 12 months or 2,000 hours, whichever occurs first, following "Functional Operation" of BHS manufactured equipment, BHS warrants that its products will reasonably conform to the description contained in this agreement and they have been prepared, manufactured or produced in a good workmanlike manner, are free of defects of workmanship or materials, are of a standard quality or better as is common in the industry. This warranty is for parts only. At its option and expense, BHS will promptly repair or replace the products and/or component parts sold under this agreement, which do not conform to this warranty.

NRT optical sorter warranty will be provided for a period of 3 years. This warranty covers any defects in material or workmanship of all optic sensor related components inside the detector box including, but not limited to, the lenses, boards, and photo diodes. This warranty does not cover wear items to include, but not limited to, bulbs and glass shields. This warranty does not cover components affected or damaged by external sources including, but not limited to, any damages caused by non-NRT employees, the entry of external liquids and/or other materials into the detector box, and misuse.

As to equipment and/or component parts manufactured by third parties, BHS will pass through any third party warranty to the greatest extent allowed by the warranty and by law.

"Functional Operation" is defined as the date upon which the work is sufficiently complete such that our equipment is capable of operating for its intended purpose.

This warranty shall not apply to WEAR PARTS, or any product that has been subjected to misuse, misapplication, neglect (including but not limited to improper maintenance and storage), accident, improper installation, modification (including but not limited to use of unauthorized parts or attachments) that has not been authorized in writing and unauthorized adjustment or repair.

It is expressly agreed and understood that BHS'S SOLE LIABILITY UNDER THIS WARRANTY, WHETHER IN CONTRACT, TORT OR OTHERWISE, AND AUTHORITY'S SOLE REMEDY IS LIMITED TO THE REPAIR OR REPLACEMENT OF THE PRODUCTS, OR THE PARTS THEREOF. The parties agree that BHS WILL NOT BE LIABLE FOR any other injury, loss damage or expense, whether direct, incidental or consequential, including but not limited to loss of use, income, profit or production, in connection with the sale, installation, use of, inability to use, or the repair or replacement of BHS's products. THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED.





Conditions of Sale & Warranty

AUTHORITY shall notify BHS immediately of discovery of any defects, problems, malfunctioning or difficulties or indications thereof, and within ten (10) days of discovery, shall follow up with written notification. Any failure to immediately report, to give written notification, and to RETURN THE DEFECTIVE PARTS to BHS, shall subject AUTHORITY to responsibility for any expense or damage that probably could have been prevented, and at the option of BHS may void this warranty. Wear parts are not included in warranty.

7. CONFIDENTIALITY. Unless otherwise agreed in writing as part of this order confirmation, AUTHORITY is not acquiring any right, title or interest in any of BHS's intellectual property or trade secrets by way of this contract, including without limitation those used in the design, assembly, composition, or functionality of the system or any equipment supplied by BHS. AUTHORITY shall not disclose any proprietary information or trade secrets relating to the system or any equipment supplied by BHS to any third party, and shall not decompile or reverse engineer the system, any equipment or any parts therein, nor allow any third party to do so. AUTHORITY agrees to keep confidential and shall not disclose to any third party information regarding the technology supplied by BHS under this agreement or any information from BHS that is marked "confidential". Specifically, without limitation, AUTHORITY shall not display, demonstrate or allow the inspection of the system or any equipment supplied by BHS to any equipment manufacturer or competitor of BHS, without the express written consent of BHS, which consent may be withheld in BHS's sole discretion. Notwithstanding the arbitration provision above, upon any breach of this section by AUTHORITY, BHS shall be entitled to obtain injunctive relief in a court of competent jurisdiction, in addition to obtaining any other remedies available at law or in equity. Notwithstanding what is written here, the AUTHORITY is a public agency so it shall follow all state, federal and other applicable information request and related laws and codes. Therefore, if such public information requests are lodged, the AUTHORITY shall be beholden to such legal process(es).

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What's next.

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BHS EUROPE | Amsterdam, The Netherlands | +31 (0) 20 58 220 30 | info@bhsequip.eu | bulkhandlingsystems.com



SBWMA – San Carlos, CA
 BHS Proposal #18-0334
 August 1, 2019 (revised 9/4/19)

PERFORMANCE AND ACCEPTANCE GUARANTEE

RSS & CSS Small Fraction Sorting System Guarantee

This section defines the performance levels of new equipment installed into the Existing System at the Shoreway Facility and testing protocols per category agreed to by BHS and BUYER for the 18-0334 project “Small Fraction Sorting System” (SFSS)”.

System Throughput

The addition of the SFSS to the Existing System as proposed will increase the throughput capability of the Existing System from the original design capacity of 25 tph on RSS and 15 tph on CSS, to an average rate of **30 tons per hour** for the Residential Single Stream (RSS) Line and **20 tons per hour** for the Commercial Single Stream (CSS) Line, for a combined hourly production rate of 50 tons per hour.

Recovery Rates

Recovery Rates are based on the installation of the new SFSS installed into the Existing System. Testing of the recovery rates will be performed to ensure that recovery rates meet or exceed the recovery rates as in the table below.

Acceptance Test and Performance Test will be based on a maximum infeed to the NRT SpydIR with Max-AI VIS in the SFSS System at 8tph.

Commodity	Recovery Rate
OCC	85%
Box Board	80%
Containers	95%

Purity Rates

Purity Rates are based on the installation of the new SFSS installed into the Existing System. Acceptance Test and Performance Testing of the Purity Rates will be performed to ensure that Purity Rates meet or exceed the Purity Rates as in the table below and ends up on the OCC/Box Board QC Sort Belt.

OCC/Box Board:	Prohibitive 3%*	Out Throw 5%*
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* Prohibitives and Out Throws as defined in the ISRI Paperstock Standard

System Availability

System Availability, which is the functional operation of the system excluding breaks and scheduled maintenance and cleaning, will be a minimum of **95%**. (Ex: System Availability will be based on 2 shift's: 8 hour shift time x 95% run time = 7.6 hours)

The system availability guarantee excludes lost time caused as a result of neglect, poor maintenance, and foreign objects damaging the system equipment.

Throughput Rate Test

To establish the guaranteed throughput capacity rates for each process system, the following formula shall be used:

Bulk density will be determined by taking 300 cubic yards of residential and 300 cubic yards of commercial.

Bulk density will be used based on the Metering Bin Feedrate of the material into the RSS and CSS infeeds to determine average run rate per line, and cumulative system run rate.

Product Recovery Sampling Process

The following test procedure shall be used for the Recovery Rate measurement.

OCC & Box Board

- Random Samples will be taken every hour from the OCC/Box Board belt for determining recovery rates. No less than 1 sample every 2 hours. Each sample will consist of 1 to 2 cubic yards.
- (Total Recoverd material) divided by (Total Recovered Material + Default Material) equals (Total material).

Containers

- Random Samples will be taken every hour from the Bypass Optical Ejected belt and Optical Default Belt for determining recovery rates. No less than 1 sample every 2 hours. Each sample will consist of 1 to 2 cubic yards.
- (Total Ejected material) divided by (Total Ejected Material + Default Material) equals (Total material).

Product Purity Sampling Process

The following test procedure shall be used for the Purity Rate measurement.

OCC, Box Board

- Random Samples will be taken every hour from the OCC/Box Board belt for determining recovery rates. No less than 1 sample every 2 hours. Each sample will consist of 1 to 2 cubic yards.
- OCC/Box Board Prohibitive and Out Throws
 - $(\text{Total Non-OCC/Box Board in OCC/Box Board}) \div (\text{Total OCC/Box Board} + \text{Total Non-OCC/Box Board in OCC/Box Board}) = \text{Total Prohibitive Rate}$.
 - $(\text{Total Non-OCC/Box Board in OCC/Box Board}) \div (\text{Total OCC/Box Board} + \text{Total Non-OCC/Box Board in OCC/Box Board}) = \text{Out Throw Rate}$.



CSS Metering Bin Performance Guarantee

Acceptance Test and Performance Test Guarantee. This section defines the performance levels agreed to by BHS and BUYER for the 18-0334 project for the “CSS Metering Bin” upgrade.

The CSS Metering Bin Upgrade as proposed is shall process the material stream at an average rate of **20 tons per hour** for the Commercial Single Stream Line.

System availability, which is the functional operation of the system excluding breaks and scheduled maintenance and cleaning, will be a minimum of **95%**. The system availability excludes lost time caused as a result of neglect, poor maintenance, and foreign objects damaging the system equipment.

(Ex: System Availability will be based on 2 shift's: 8 hour shift time x 95% run time = 7.6 hours)

Glass Processing Performance Statement

This section defines the performance levels agreed to by BHS and BUYER for the 18-0334 project for the “Glass Processing” upgrade.

The Glass Processing upgrade as proposed is capable of processing up to 9 tons per hour, providing additional cleaning opportunity for the existing glass processing line.

The upgrade includes an overband magnet, eddy current and repurposed Windshifter to improve glass quality and remove potential problematic material.

The magnet shall remove ferrous material only; Items made of mixed materials, or that do not contain enough ferrous material may not be removed.

The Eddy Current shall remove non-ferrous material only; Items made of mixed materials, or that do not contain enough non-ferrous material may not be removed.

The Windshifter shall remove sufficient amounts of light fiber so that the existing Vibratory Screen and Aspirator function without clogging. As a part of the installation BHS will balance the system to maximize light fiber removal and maintain glass content.

Performance Testing Protocol

This section defines the testing protocol for all performance guarantees associated with project 18-0334.

Normal Operating Conditions

Normal Operating Conditions is defined as how SBR currently operates the facility, to document the *Normal Operating Conditions* of the facility the following plan will be executed between SBR and BHS. The follow will be used to define Normal Operating Conditions during Performance Testing.

- (2) Separate dates will be set up to evaluate operations and record plant settings.
- Dates will be set for October 2019 and November 2019 time frame, to be scheduled with a 2 week advance notice to each party. (To be scheduled to avoid excess moisture contamination from weather)
- SBWMA, SBR and BHS will have representative parties available for the dates set.
- Information recorded will consist of the following items;
 - Material bulk density of RSS and CSS
 - Infeed settings (per controls)
 - Screen speeds and angles
 - Conveyor belt speeds (per controls)
 - Estimated disc wear on each screen
 - BHS/SBR PM plan report can be used if within 30 days of test
 - Most recent PM Report on facility

It is understood by all parties that there may be a +/- 5% variation in recorded information that can be applied to "Normal Operations" for the testing protocol.

Operational Conditions

BHS guarantees that the system as proposed will achieve the performance levels defined herein so long as the following operational conditions are met by BUYER:

- SBWMA and BHS will evaluate material to determine if material for testing is as noted during "Normal Operations". If material as evaluated is not within "Normal Operations" test may be postponed.
- The input material is dry, not unduly compacted, and not frozen.
- System is fully staffed by trained personnel at the total staffing level indicated on the provided staffing chart hear within.
- 95% of all of the incoming bags containing material are pulled at the pre-sort and routed to the Bag Breaker to be opened.
- 95% of all bulky items and any items that may wrap or in other ways interfere with the operation of the BHS equipment (i.e. large film plastic, ropes, chains, fabrics and textiles) are removed by the sorters at the pre-sort stations.
- BHS and SBWMA agree that SBR's current system operations are "Normal Operating Conditions".
- BHS will evaluate system prior to Performance Test if maintenance is required to bring facility within operational conditions based on "Normal Operating Conditions".

Product Definitions And Qualifications

Recoverable commodities for the purposes of this guarantee are to be captured by the SFSS Optical System defined as follows:

1. **OCC** – Described as flattened old corrugated containers consisting of kraft linerboard with corrugated fillings.
 - a. Recovery rate applies OCC larger than 8 square inches with at least one outside dimension being 4” or larger. Material cannot be larger than 10” x 10” in size. Wet, crumpled, and/or contaminated materials will be excluded from the residue audit for purposes of calculating recovery rate. Material that is white or light colored on one side will be excluded from the residue audit for purposes of calculating recovery rate.
2. **Box Board** – Described as multi ply paperboard which are combined together during manufacturing to produce grades such as Box Board, Grey Board, Chipboard, Duplex Board, Bending Chip, and Carrier Board.
 - a. Recovery Rate applies Box Board larger than 8 square inches with at least one outside dimension being 4” or larger. Material cannot be larger than 12” x 12” in size. Wet, crumpled, and/or contaminated materials will be excluded from the residue audit for purposes of calculating recovery rate. Material that is white or light colored on one side will be excluded from the residue audit for purposes of calculating recovery rate.
3. **Plastic Bottles and Containers** – Clean beverage and food containers comprised of standard recyclable polymer types (marked any of #1 through #7).
 - a. Recovery rate apply only to clean, whole plastic bottles that contain less than 2 ounces liquid or other contaminates. The residue audit for purposes of calculating recovery rates will exclude clumped or interlocked containers, shredded or torn containers, black or dark colored containers, containers that are muddy, dirty, or obscured more than 70% by a label or other item, containers smaller than 2” in more than one dimension, and indeterminate polymer types (not marked with a recycling symbol #1-#7). An allowance shall be made for thin or lightweight objects with unpredictable aerodynamics that may be detected and fired upon, but may not be recovered.
4. **Ferrous Cans** – Steel food and beverage cans
 - a. Recovery rate applies only to empty steel food and beverage, and empty aerosol cans having at least 2 dimensions larger than 2”. Clumped, interlocked, shredded or torn, contaminated and multi-material objects or items that are not steel food or beverage cans will be excluded from the residue audit for purposes of calculating recovery rate.
5. **Aluminum Cans** – Used aluminum beverage cans (UBC)
 - a. Recovery rate applies only to empty aluminum (AL) beverage cans having at least 2 dimensions larger than 2”. Clumped, interlocked, shredded or torn, contaminated and multi-material objects and items that are not used aluminum beverage cans will be excluded from the residue audit for purposes of calculating recovery rate.



Staffing Chart

Following is an outline of the current sorter staffing by position for the plant, total of 30 sorters. For purposes of performance testing, the total number of sorters listed under New Staffing will be required. Each sorter will be required to perform a minimum of 30 accurate picks per minute during the test period. Sorters may be deployed to different positions as deemed necessary by BHS during the testing so long as the total number of sorters remains the same and throughput, quality and capture are not affected.

Staffing Location	Current Staffing
RSS Pre-Sort	4
CSS Pre-Sort	4
OCC Post Sort	2
ONP Post Sort #1	5
ONP Post Sort #2	5
Mixed Paper Post Sort	3
Container Line Pre-Sort	2
HDPE Post Sort	1
PET/Alum Post Sort	1
Mixed Plastic Post Sort	1
Container Residue Container Post Sort	1
Container Residue Fiber Post Sort	1
Total Sorters	30

Performance and Acceptance Test Protocol

Starting Criteria	At any time within first 60 days after commissioning of the plant.
Duration	Two regular 8 hour shift's
Success Criteria	BHS shall demonstrate under "Normal Operating Conditions" that the processing system will meet all of the the Performance and Acceptance Criteria stated herein
Result of Success	BUYER issues Acceptance of Performance Results and submits payment to Manufacturer within 5 days of completion of test
Re-testing	Should the Performance or Acceptance Criteria fail to be met a corrective action plan will be put in place. BUYER may choose to issue Acceptance of Performance Results following execution of the corrective action without a re-test. If a re-test is requested, the failed element(s) of the Acceptance Criteria will be re-tested as soon as practical, but in no case more than 6 months following the completion of the first Acceptance Test. Understanding that time is of the utmost importance.

Responsibilities

- **Buyer/Buyers Designated Contractor**
 - Buyer will provide all necessary staffing for full operation and supervision of the plant during the test period
 - Trained sorters
 - Supervisors
 - Plant operators
 - Maintenance and Cleaning
 - Rolling equipment operators
 - Any additional staff required to sort and audit materials for purposes of testing
 - Buyer will provide all necessary supplementary tools and equipment that may be required to operate the plant
 - Forklifts, Loaders, Trucks, etc.
 - Bins, trash cans, other mobile storage
 - Buyer will provide all necessary input material as defined in the "Normal Operations" herein and be responsible for disposal of same
- **BHS**
 - BHS will provide supervision and oversight during the testing period.
 - Project Manager will coordinate overall testing activities
 - Controls Technician will be available in the control room to answer operator questions and to make suggestions as necessary
 - Technical Support will monitor and audit sorter efficiency
 - Technical Support will supervise material sampling and validate recorded results
 - Field Service Technician will be available to provide guidance to BUYER'S maintenance staff

Performance and Acceptance Test Operating Plan

To establish a clear and accurate inventory of the amount of Acceptance test material on the tip floor area prior to the Acceptance test date.

This Acceptance test shall simulate normal operating conditions. The process systems shall be sufficiently staffed – as per manufacturer stated staffing levels and properly maintained, as required under normal operating conditions.

The Acceptance test for the processing system shall commence on a date mutually agreed to. Operator and the manufacturer's personnel shall be on-site to verify and validate the testing in accordance with this protocol. The Acceptance test duration shall be for a period of two (2), eight (8) hour shift's which includes two (2) 15-minute breaks and (1) 30 minute lunch break.

Acceptance Test Completion Documentation

The successful completion of the Acceptance Test will result in BUYER signing an Acceptance Document and signifying that the plant has passed the test and is accepted in full.

BHS Phase 1 MRF Improvements: Manufacture & Installation Contract Schedule of Payments

Element Amount	Retention	Performance	Payment #	Payment Amount	Description of Terms
\$ 1,000	\$ 50	\$ 50	1	\$ 900	Equipment down payment. Due with signed order to beginning of manufacturing.
\$ 615,277	\$ 30,764	\$ 30,764	2	\$ 704,395	Construction bond (\$150,646) and equipment progress payment due 2 weeks from signed order. Owner will inspect per below.
\$ 616,277	\$ 30,814	\$ 30,814	3	\$ 554,649	Equipment progress payment due 6 weeks from signed order. Owner will inspect manufacture of equipment to verify progress prior to payment
\$ 616,277	\$ 30,814	\$ 30,814	4	\$ 554,649	Equipment progress payment due 12 weeks from signed order. Owner will inspect manufacture of equipment to verify progress prior to payment.
\$ 414,088	\$ 20,704	\$ 20,704	5	\$ 372,679	Installation Contractor deposit due 12 weeks from signing order. Owner will inspect manufacture of equipment to verify progress prior to payment.
\$ 616,277	\$ 30,814	\$ 30,814	6	\$ 554,649	Equipment progress payment due upon receiving of first shipment of equipment. Owner will inspect manufacture of equipment to verify progress prior to payment.
\$ 616,277	\$ 30,814	\$ 30,814	7	\$ 554,649	Equipment progress payment due upon receiving of 10th shipment of equipment. Owner will inspect manufacture of equipment to verify progress prior to payment.
\$ 98,100	\$ 4,905	\$ 4,905	8	\$ 88,290	Shipping payment. Payable after 9th truck load of equipment has been received.
\$ 414,088	\$ 20,704	\$ 20,704	9	\$ 372,679	Installation progress payment due upon start of installation. Owner will inspect manufacture of equipment to verify progress prior to payment.
\$ 414,088	\$ 20,704	\$ 20,704	10	\$ 372,679	Installation progress payment due 50 calendar days after start of installation. Owner will inspect installation progress to verify progress prior to payment.
\$ 414,088	\$ 20,704	\$ 20,704	11	\$ 372,679	Installation progress payment due 75 calendar days after start of installation. Owner will inspect installation progress to verify progress prior to payment.
\$ 185,682	\$ 9,284	\$ 9,284	12	\$ 167,114	Project management, training and startup. Payable upon completion of startup and training and delivery of operating and safety manuals.
\$ 5,021,517	\$ 251,076	\$ 251,076	13	\$ 251,076	Performance Payment. Payable at successful completion of the Equipment Acceptance Test
			14	\$ 251,076	Payment of Retentions. Payable at completion of project and punch list
				\$ 5,172,163	Sub Total (includes Construction Bond)

Schedule of Submittals			
Number	Item	Date Due	Description
1	Equipment Delivery Schedule	one month prior to delivery commencement	limited laydown area necessitates JIT deliveries
2	CAD Designs for full Phase I project	Upon signing of Manufacture contract	GA drawings
3	CAD As-Builts for full Phase I project	Upon completion of install and prior to final payment	GA drawings updated with as-built changes
4	Manuals & Warranties	Upon completion of install and prior to final payment	Binder of all BHS & Third-party manuals and warranties
5	System Operations Training Documentation	Upon completion of training and startup	Binder and electronic version of BHS operations manuals
6	Shoreway Onsite Safety Documentation and Contractor Compliance Acknowledgement	prior to contactor's or subcontractor's employees work onsite	see forms provided by SBWMA

Attachment B.

Attachment B: CIP Projects and Sources of Funds

BOD			
Action	Project	Agency Cost	Payback (w/ interest)
2019	MRF Sort System (Phase I)	\$7.3M	7.6 years
2020	MRF Sort System (Phase II)	\$8M	5.0 years
2021	O2E Full-Scale Project*	<u>\$10M</u>	Cost Neutral
	Capital Projects Estimated Cost	\$25.3M	

Agency Sources of Funds	Amount	Status
Capital Reserve	\$5.5M	Mid-Year 18/19 Budget projected balance
Bond Refunding Savings	\$10M	Pending refunding process completion in 2019
Bond Refunding (New Money)	<u>\$10M</u>	Additional funds from extending Bond term
Total of Estimated Funds	\$25.5M	

- *November 2018 Board Approved O2E Full-Scale Project (based on successful completion of the Pilot Project and validation of the proforma and technical goals)*