































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

**SBWMA:**

**DATED:** \_\_\_\_\_, 2020

**BY:** \_\_\_\_\_  
**Joe La Mariana,**  
**SBWMA EXECUTIVE DIRECTOR**

**DATED:** \_\_\_\_\_, 2020

**BY:** \_\_\_\_\_  
**Jess E. (Jay) Benton**  
**SBWMA BOARD PRESIDENT**

**ATTEST:**

**DATED** \_\_\_\_\_, 2020

\_\_\_\_\_  
**Cyndi Urman,**  
**SBWMA BOARD SECRETARY**

**APPROVED AS TO FORM:**

**DATED** \_\_\_\_\_, 2020

\_\_\_\_\_  
**Jean Savaree,**  
**SBWMA LEGAL COUNSEL**

**CONTRACTOR:**

**DATED:** \_\_\_\_\_, 2020

**BY:** \_\_\_\_\_  
**Legal Representative,**  
**(Contractor name)**  
**TITLE**

## **EXHIBIT A**

### **DEFINITIONS**

**Actions** means all actions including claims, demands, causes of action, suits, mediation, arbitration, hearings, investigations, inquiries and proceedings, whether legal, judicial, quasi-judicial, governmental or administrative in nature and whether threatened, brought, instituted or settled.

**Affiliate** means all businesses (including corporations, limited and general partnerships, and sole proprietorships) which are directly or indirectly related to Contractor by virtue of direct or indirect Ownership interests or common management shall be deemed to be "**Affiliated with**" Contractor and included within the term "**Affiliates**" as used herein. An Affiliate shall include a business in which Contractor Owns a direct or indirect Ownership interest, a business which has a direct or indirect Ownership interest in Contractor and/or a business which is also Owned, controlled, or managed by any business or individual which has a direct or indirect Ownership interest in Contractor. For purposes of determining whether an indirect ownership interest exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue code of 1986, as in effect on the date of this Agreement, shall apply; provided, however, that (i) "ten percent (10%)" shall be substituted for "fifty percent (50%)" in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (ii) Section 318(a)(5)(C) shall be disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than ten percent (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.

**Agency/Agencies** means any one of the public entities which are signatories to the Joint Exercise of Powers Agreement of the South Bayside Waste Management Authority (SBWMA).

**Agreement** means this Agreement between the SBWMA and Contractor, including all exhibits, schedules and attachments (which are hereby incorporated in this Agreement by this reference), as this Agreement may be amended and supplemented.

**Applicable Law** means all law, statutes, rules, regulations, guidelines, Permits, actions, determinations, orders, approvals or requirements of the United States, State, regional or local government authorities, agencies, boards, commissions, courts or other bodies having applicable jurisdiction, that from time to time apply to or govern Services or the performance of the Parties' respective obligations under this Agreement.

**Assign** means:

- (i) selling, exchanging or otherwise transferring effective control of management of the Contractor (through sale, exchange or other transfer of outstanding stock or otherwise);
- (ii) issuing new stock or selling, exchanging or otherwise transferring 20% or more of the then outstanding common stock of the Contractor;
- (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction which results in a change of Ownership or control of Contractor;
- (iv) any assignment by operation of law, including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment of an execution, being levied against Contractor, appointment of a receiver taking possession of any of Contractor's tangible or intangible property;
- (v) any combination of the forgoing (whether or not in related or contemporaneous transactions) which has the effect of any that transfer or change of Ownership or control of Contractor.

**Calendar Year** means a successive period of 12 months commencing on January 1 and ending on December 31.



**Commencement Date** means the later date of execution by the SBWMA or Contractor on the execution page of this Agreement.

**Composting Facility** means the facility that will process, compost, and market the Plant and Organic Materials from Shoreway Environmental Center.

**Compost or Compost Products** means the resultant product of the Compost Process (composting, curing and screening process conducted by the Composting Facility). The Compost shall be dark in texture, have an earthy aroma, be neutral pH, and have the chemical profile of sufficient quality to participate in the U.S. Composting Council's Seal of Testing Assurance program.

**Compost Process** means the compost process operated as described in the facility's Report of Compost Site Information that is submitted to CalRecycle and/or the LEA. The process shall be managed to provide aeration, moisture and sufficient time and temperature so to produce Compost Product.

**Contamination or Contaminant** means any man-made non-organic fraction that is delivered to the composting facility with Organic Materials and must be removed to make the product acceptable to the market.

**Contractor** means a corporation organized and operating under the laws of the State of California.

**Contractor Default** has the meaning provided in Article VIII.

**Direct Cost** means Contractor's reasonable costs incurred for materials testing, sorting, or cleaning. Direct Cost of labor and equipment use does not include profit, overhead or administrative expense.

**Diversion (Divert)** means to divert from Disposal or use anywhere at or on a landfill through source reduction, reuse, recycling, composting.

**Food Scraps** means a subset of Organic Materials, as defined by state law, which at the execution of this Agreement includes: (i) all kitchen and table food waste, and all animal, vegetable, fruit, grain, dairy or fish waste that attends or results from the storage, preparation, cooking or handling of foodstuffs, with the exception of animal excrement, (ii) paper waste contaminated with putrescible material, and (iii) biodegradable plastic food service ware.

**Goods or Services** means all goods or services used in providing Services, including labor, leases, subleases, equipment, supplies and capital related to furnishing Services; insurance, bonds or other credit support if the insurer is an Affiliate or a captive of Contractor or any Affiliate; and legal, risk management, general and administrative services.

**Governmental Fees** are fees or taxes imposed upon Composting Facility by any governmental body or Regulatory Agency, other than those imposed upon the Composting Facility in connection with the repair, remediation, improvement, addition, or expansion of the Composting Facility.

**Holidays** are defined as New Year's Day, Labor Day, 4<sup>th</sup> of July, Thanksgiving Day, and Christmas Day.

**Hazardous Substance** means any of the following: (a) any substances defined, regulated or listed (directly or by reference) as "hazardous substances", "hazardous materials", "hazardous wastes", "toxic waste", "pollutant" or "toxic substances" or similarly identified as hazardous to human health or the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq.(CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC §7901 et seq.; and (vii) California Water Code §13050; (b) any amendments, rules or regulations promulgated there under to such enumerated statutes or acts currently existing or hereafter enacted; and (c) any other hazardous or toxic substance, material,

chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable federal, state or local environmental laws currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's ("PCBs"), petroleum, natural gas and synthetic fuel products, and by-products.

**Household Hazardous Waste** means any Hazardous Substance generated incidental to owning or maintaining a place of residence, excluding any Hazardous Substance generated in the course of operation of a business concern at a residence, in accordance with Section 25218.1 of the California Health and Safety Code.

**Liabilities** means all liabilities, including:

- (i) Actions;
- (ii) Awards, judgments and damages, both: (a) actual damages, whether special and consequential, in contract or in tort, such as natural resource damages, damage for injury to or death of any Person; and damage to property; and (b) punitive damages;
- (iii) Contribution or indemnity claimed by Persons other than the Parties;
- (iv) Injuries, losses, debts, liens, liabilities,
- (v) Costs, such as response remediation and removal costs,
- (vi) Interest,
- (vii) Fines, charges, penalties, forfeitures, and
- (viii) Expenses such as attorney's and expert witness fees, expenditures for investigation and remediation, and costs incurred in connection with defending against any of the foregoing or in enforcing Indemnities.

**Material Type** means segregated Plant Materials, segregated Wood Waste, segregated Food Scraps or Organic Materials (Commingled Plant Materials & Food Scraps).

**Maximum Vehicle Turnaround Time** means a monthly average of 30 minutes, measured from the time a vehicle enters either the Composting Facility property and until it exits the Composting Facility property, including but not limited to gross and net weights, tipping and transportation throughout the facility.

**Member (Member Agency)** means any one of the public entities of the Joint Exercise of Powers Agreement South Bayside Waste Management Authority.

**Rate** means the amount established under Article V, Contractor Compensation and Exhibit C, Plant and Organic Materials Rates, of this Agreement to be charged to the SBWMA by Contractor for Processing of Plant and Organic Materials.

**Monthly Report** is described in Article IV, Section 10 and Exhibit D, Monthly Reporting.

**Organic Materials** means those materials that will decompose and/or putrefy, as defined by state law, which at the execution of this Agreement includes Plant Materials, Food Scraps, and Wood Waste.

**Ownership** has the meaning provided under the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986 *except* that (1) 10 percent is substituted for 50 percent in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; (2) Section 318(a)(5)(C) is disregarded; (3) ownership interest of less than 10 percent is disregarded; and (4) percentage interests is determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.

**Party or Parties** refers to the SBWMA and Contractor, individually or together.

**Permits** means all federal, State, SBWMA, other local and any other governmental unit permits, orders, licenses, approvals, authorizations, consents and entitlements that are required under Applicable Law to be obtained or maintained by any Person with respect to Services, as renewed or amended from time to time.

**Person(s)** includes an individual, firm, association, organization, partnership, corporation, trust, joint venture, the United States, the State, local governments and municipalities and special purpose districts and other entities.

**Plant Materials** means a subset of Organic Materials, as defined by state law, which at the execution of this Agreement includes grass cuttings, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees (not more than six (6) inches in diameter and five (5) feet in length), and similar materials generated at Premises, separated from Solid Waste and other Organic Materials. Plant Materials does not include materials not normally produced from gardens or landscape areas, such as brick, rock, gravel, large quantities of dirt, concrete, sod, non-organic wastes, oil, and painted or treated wood products.

**Regulatory Agency** means any federal, State or local governmental agency, including California Department of Transportation, California Department of Motor Vehicles, EDD, U.S. Immigration and Naturalization Services, California Air Resources Board, state or regional water or air quality control boards or districts, California Department of Toxic Substances, California Department of Resources, Recycling, and Recovery (CalRecycle), the Local Enforcement Agency, federal and State Environmental Protection Agencies and other federal or State health and safety departments, applicable to Services.

**Records** means all ledgers, book of account, invoices, vouchers, canceled checks, logs, correspondence and other records or documents of Contractor evidencing or relating to Rates, tonnage of Plant and Organic Materials, satisfaction of Contractor's obligations under this Agreement and performance of the terms of this Agreement, damages payable under this Agreement and Contractor Defaults.

**Solid Waste** means and includes all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, rubbish, ashes, industrial wastes, demolition and construction wastes, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes, as defined in California Public Resources Code §40191 as that section may be amended from time to time. For the purposes of this Agreement, "Solid Waste" does not include Hazardous Substances, low-level radioactive waste, medical waste, or Organic Materials.

**South Bayside Waste Management Authority (SBWMA)** means the joint powers authority created under Government Code Section 6500 et seq. by an agreement dated October 13, 1999 among the Town of Atherton, the cities of Belmont, Burlingame, East Palo Alto, Foster City, Hillsborough, Menlo Park, Redwood City, San Carlos, San Mateo, the County of San Mateo and the West Bay Sanitary District.

**SEC** means the Shoreway Environmental Center (SEC) located at 225 Shoreway Road and 333 Shoreway Road and any other building and improvement located at these addresses in San Carlos, California (including the administration and vehicle repair and maintenance building) as its Facilities to be utilized under this Agreement.

**Subcontractor** means any Person to which Contractor subcontracts any portion of the Services, whether pursuant to formal, written agreement or otherwise.

**Term** is defined in Article III, Section 1.

**Ton (or Tonnage)** means a short ton of 2,000 standard pounds where each pound contains 16 ounces.

**Transfer (or Transferring** or other variations thereof) means transferring of Plant and Organic Materials at the SEC, if any, from residential collection vehicles, commercial collection vehicles and self-haulers into Transport vehicles.

**Transfer Company** means the Person that SBWMA directs pursuant to the Operating Agreement to Transport Plant and Organic Materials from the SEC to the Composting Facility.

**Transfer Vehicle** means a tractor and trailer designed to haul Plant and Organic Materials from SEC to the Composting Facility.

**Transport (or Transportation)** means the transportation of Plant and Organic Materials from SEC to the Composting Facility.

**Violation** means any notice, assessment or determination of non-compliance with Applicable law from any Regulatory Agency to Contractor, whether or not a fine or penalty is included, assess, levied or attached.

**Wood Waste** means a subset of Organic Materials consisting of pieces of unpainted and untreated dimensional lumber, and any other wood pieces or particles generated from the manufacturing or production of wood products, harvesting, processing or storage of raw wood materials, or construction and demolition activities.

## **EXHIBIT B** **CONTRACTOR SERVICES**

The services to be performed by Contractor under this Agreement shall be to accept, process, and market Plant and Organic Materials generated from the SBWMA's Member Agencies and the Shoreway Environmental Center (SEC) as described herein. This request for services does NOT include the transportation of materials from the Shoreway Environmental Center by the composter. Materials will be delivered to the composter's location in walking-floor trailers by the Shoreway Facility Operations Contractor. Contractor will accept, process, and market a mix of residential curbside and commercial green waste and food waste.

1. On a daily basis, the SBWMA shall deliver and the Contractor shall receive a minimum average of 100 tons per day up to a maximum average of 300 tons per day (based on a 30 day rolling average) to the Compost Facility. In aggregate, the SBWMA shall deliver a minimum of 30,000 tons per year. The Contractor and the SBWMA are only obligated to receive and deliver materials on days that the Compost Facility is operating (as described in Section 5, Days and Hours of Operations). Contractor will have the ability to manage deliveries in amounts of up to 200 percent of the average daily tonnage.
2. All accepted Plant and Organic Materials will be weighed-in using certified scales located at the Composting Facility and tracked by Material Type accepted (with amounts to be reported monthly).
3. Composting Facility will be operated such that SBWMA delivery trucks will be able to access the facility and exit at the Composting Facility within 30 minutes of arrival.
4. All Plant and Organic Materials accepted by Contractor shall be diverted and processed as provided in Article IV, Section 1 of this Agreement. Material shall be diverted in a manner that guarantees diversion credit under the requirements of AB 939, and compliance with SB 1383 for organics management purposes. Under no circumstances shall any material (other than approved residual) be considered "disposal" under state regulatory definitions.
5. 100% of the Plant and Organic Materials Processed by Contractor at the Composting Facility shall be diverted from use anywhere at a landfill and shall not be used as Alternative Daily Cover ("**ADC**") or for other uses at a landfill. "**Processed**" means subjected to a process to transform Plant and Organic Materials into a Compost Product, a mulch product for land application (other than at a landfill), or for use as biofuel, anaerobic digestion, or other allowable conversion technologies (in accordance with CalRecycle regulations so that such materials are considered diverted and recycled), and includes removal of all (other than trace amounts) Solid Waste and other materials that are not Plant or Organic Materials (collectively, "**Residue**"). Residue may be landfilled.
6. Contractor shall market finished Compost and other products manufactured from Plant and Organic Materials and shall be entitled to retain all proceeds thereof.
7. Composter will participate in the U.S. Composting Council's Seal of Testing Assurance program for any compost and/or mulch that is produced under this agreement.
8. At SBWMA's request, Contractor will provide finished Compost free of charge to Member Agencies of bulk Compost (tons) up to a maximum of 35% for every ton of material delivered. Contractor will not be responsible for the costs of delivery of finished product to the Shoreway. Compost quality will meet the U.S. Compost Council Seal of Testing Assurance.

9. Receive organic materials delivered by the Shoreway Operator (SBR) between 3:00 a.m. to 5:00 p.m. Monday - Friday, and from 3:00 a.m. to 4:00 p.m. on Saturday upon special request.
10. Provide the SBWMA a detailed monthly reporting on SBWMA materials inbound/outbound, materials mass-balance, and material market outlets. These reports shall include adequate detail and information for the SBWMA and its Member Agencies to complete necessary reports and should include products made, volume and disposition of "overs", volume and disposition of residuals, and any other information as required by the SBWMA.
11. Invoice the SBWMA on or before the 15<sup>th</sup> of each month showing by date, time, and vehicle identification number the tonnage received each day and the rate charged for each ton of organic material received.
12. Accept payment within thirty (30) days for any undisputed amounts invoiced.

## EXHIBIT C RATES

**a) Rates**

Contractor will be compensated per ton for Plant and Organic Materials delivered to the Compost Facility based on the Material Type in **Table 1**.

**b) Annual Rate Adjustments**

The Rates outlined in **Table 1** are for the period January 1, 2021 through the end of the term of the Agreement. Such rates will be adjusted annually as shown below, effective January 1 of each year of the term, including extensions. Commencing January 1, 2021 and thereafter on each January 1, this Agreement is in effect, including any extension years, the rates stated above shall be increased by the change in the value of the All Urban Consumers Index (CPI-U), All Items, for the San Francisco-Oakland-San Jose, CA, Base Period 1982 – 1984 = 100, not seasonally adjusted, compiled and published by the U. S. Department of Labor, Bureau of Labor Statistics (or its successor) for the previous October and its value twelve months before.

<b>Table 1 PROCESSING RATES</b>				
<b>Material Type</b>	<b>Rates per Annual Tonnage Bracket</b>			
<b><u>Contract Tonnage</u></b>	<b>≤30,000</b>	<b><u>30,001-50,000</u></b>	<b>50,001-70,000</b>	<b><u>≥70,000</u></b>
Residential Green Waste				
<b><u>Contract Tonnage</u></b>	<b>≤10,000</b>	<b><u>10,001-20,000</u></b>	<b>20,001-30,000</b>	<b><u>≥30,000</u></b>
Commercial Source-Separated Organics				
<b><u>Contract Tonnage</u></b>	<b>≤40,000</b>	<b><u>40,001-70,000</u></b>	<b>70,001-100,000</b>	<b><u>≥100,000</u></b>
Mixed Organics				

**c) Contamination Level.** Contractor will have the right to refuse contaminated loads based on a standard as specified in their Proposal. Should a load be deemed contaminated, the contractor will document the contamination, and make a claim to SBWMA. At SBWMA's discretion, the SBWMA can choose to have the Contractor sort contamination from the load so that it meets an acceptable level of acceptance. If contaminants are sorted from the load, they will be weighed and documented. Or the SBWMA may chose to have the load disposed of at the nearest fully permitted disposal facility at the Agency's expense.

**EXHIBIT D**  
**MONTHLY REPORTING**

Contractor will provide the SBWMA a monthly report that summarizes monthly the inbound/outbound materials, a materials mass-balance by supplier, and material market outlets as well as the detail scale reports and other documentation that supports the data in the summary report. The Contractor shall provide, and the SBWMA shall approve, the report structure.