



Request for Proposals For Organics Processing Services



Issued: February 28, 2020

Submission Deadline: March 25, 2020, 4:00 PM

South Bayside Waste Management Authority (SBWMA)

Attention: Grant Ligon,
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610 Elm Street, Suite 202
San Carlos, CA 94070
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Section 1

General Information

1.1 Introduction

This Request for Proposals ("RFP") is being issued by the South Bayside Waste Management Authority ("SBWMA"). The SBWMA is soliciting Proposals from entities ("Proposer(s)") with demonstrated experience and qualifications in providing Organics Processing Services as set forth in this RFP.

Proposals are due and must be delivered in a sealed envelope to **Mr. Grant Ligon**, Senior Management Analyst for the SBWMA, no later than **4:00 p.m. PDT on March 25, 2020** for the provision of Organics Processing Services.

Proposers should be aware that the SBWMA's intent is for Organics Processing Services to begin on or before January 1, 2021. Proposers are cautioned to carefully review the Rate Proposal Form Instructions in Section 5 of this RFP document before completing the Rate Proposal Forms. The SBWMA will consider alternative proposals for new technology to process Organic materials or for the development of a new facility per the requirements of Section 4.5 of this RFP.

1.2 Background

The SBWMA is seeking proposals from qualified firms to provide composting services for the management of plant and organic materials. The Processing Agreement(s) ("Agreement") will be between the SBWMA and the selected Proposer(s) for a five (5) year period. The term of the new Agreement(s) will commence on January 1, 2021, or sooner if an alternative start date is negotiated, and will end December 31, 2025. The SBWMA may extend the Term of this Agreement(s) for one (1) or more periods of two (2) years, on the same terms and conditions.

1.3 The South Bayside Waste Management Authority

Formed in 1982, the SBWMA is a joint powers authority of twelve member agencies in San Mateo County (the cities of Atherton, Belmont, Burlingame, East Palo Alto, Foster City, Hillsborough, Menlo Park, Redwood City, San Carlos and San Mateo along with the County of San Mateo and the West Bay Sanitary District) and is a leader in innovative waste reduction and recycling programs. The mission of the SBWMA is to serve as solid waste industry leaders in public health, safety and environmental stewardship by providing our ratepayers with innovative cost-effective zero waste programs and local climate action plan alignment through education, community engagement, infrastructure and policy development. Currently, Recology of San Mateo County (Recology) provides collection services for the ~100,000 residences and nearly 10,000 businesses in the SBWMA service area under individual franchise agreements with each Member Agency. South Bay Recycling (SBR) provides transfer and transportation of collected materials under an Operations Agreement with the SBWMA at the Shoreway Environmental Center located in San Carlos.

1.4 SBWMA's Goals and Objectives

The SBWMA is seeking to secure the best compost processing and marketing services for the most competitive price. The SBWMA's goals and objectives are as follows:

- Reduce the volume of waste being disposed through increased recycling and reuse activities at the Shoreway Environmental Center.
- Provide professional and timely service to all SBWMA Member Agencies including their franchised hauler(s), businesses and residents.
- Implement the most innovative and sustainable organic materials recycling, handling, and processing system.

The SBWMA's jurisdictions need to comply with requirements of various state goals, policies, and regulations, which currently set a municipal diversion requirement of 50 percent but will become more stringent upon finalization of State Senate Bill 1383 (Lara, Chapter 395, Statutes of 2016) which has targets for 50% and 75% diversion of organics (based on 2014 levels) by 2022 and 2025, respectively. SBR provides key materials handling services to the SBWMA and will be the main point of contact for transferring and transporting of organic materials (green waste and food waste) delivered to the Shoreway Environment Center by residential collection, commercial collection and self-haul customers.

1.5 General Scope of Requested Services

The SBWMA is requesting proposals from qualified firms for composting services as more fully described in the draft Agreement for Services, Exhibit B.

1.6 Rates

The compensation to the Composter by the SBWMA shall be adjusted annually, effective January 1 of each year of the term, including extensions. The proposed rate per ton shall be adjusted by the annual percentage change, from November 1 of the previous year to October 31 of the following year, in the Consumer Price Index for the San Francisco-Oakland-San Jose Metropolitan Area (All Urban Consumers).

1.7 Proposal Considerations

1.7.1 SBWMA's Rights

In issuing this RFP the SBWMA retains, but is not limited, to the following rights:

- Issuing addenda to the RFP, including extending or otherwise revising the timeline for submittals.
- Withdrawing, reissuing, or modifying the RFP.
- Requesting clarification and/or additional information from the Proposer(s) at any point in the procurement process.

- Executing an agreement with a Proposer based on the original proposals and/or any other information submitted by the Proposers during the procurement process.
- Rejecting any or all proposals, waiving irregularities in any proposals, accepting or rejecting all or any part of any proposals, or waiving any requirements of the RFP, as may be deemed to be in the best interest of the SBWMA.
- Accepting and negotiating with a Proposer any combination of services.
- Negotiating with one or more Proposer(s).
- Accepting a proposal that does not offer the lowest cost but offers the best overall value, which the SBWMA determines is in the best interest of the Member Agencies' of the SBWMA, based on the Proposer's qualifications, technical proposal, financial strength, willingness to accept contractual terms, as well as its cost proposal.
- Discontinuing its negotiations after commencing negotiations with a selected Proposer, if progress is unsatisfactory in the judgment of the SBWMA.
- Commencing discussions with another qualified Proposer.

1.7.2 Obligations of Proposal Submission

The submission of a proposal shall not be deemed an agreement between the Proposer and SBWMA. Specifically, the following provisions apply:

- SBWMA shall not be obligated to respond to any proposal submitted nor be bound in any manner by the submission of a proposal;
- Acceptance of a proposal by the SBWMA obligates the Proposer to enter into good faith Agreement negotiations based on the proposal submitted; and
- The cost of investigating, preparing and submitting a proposal is the sole responsibility of the Proposer and shall not be chargeable in any manner to the SBWMA. The SBWMA will not reimburse any Proposer for any costs associated with the preparation and submission of proposals or expenses incurred in making an oral presentation, participating in an interview, or negotiating an Agreement with the SBWMA.

1.8 Organization of the RFP

General information regarding the RFP purpose, process, and schedule are provided in the following sections:

- Section 2 contains background information that will assist Proposers in understanding the current and proposed operations including information about SBWMA Member Agencies, a facility description, waste types, and waste quantities.
- Section 3 details the General Instructions for this RFP.
- Section 4 discusses the Proposal Preparation Instructions.
- Section 5 contains the Proposal Forms to be submitted.

1.9 Pre-Proposal Conference

A pre-proposal conference may be held, if requested in advance by proposers, at the Shoreway Environmental Center, 225 Shoreway Road, San Carlos, California.

All persons attending the pre-proposal conference will be asked to identify themselves and the prospective Proposer they represent and to sign an attendance form, giving their name, address, telephone number, and e-mail address, and providing a business card with the same or more information.

The SBWMA plans to adhere to the following process schedule (Table 1-1) to the extent possible. Changes to the process schedule shall be at the sole option of the SBWMA.

Table 1-1 Process Schedule	
Activity	Date
SBWMA releases RFP online	February 28, 2020
Deadline to submit written questions and comments by 3:00 pm PDT	March 10, 2020
Pre-proposal meeting at 11:00 a.m.	March 11, 2020
SBWMA will issue response to written questions and RFP addendum (if necessary)	March 18, 2020
Proposals Due by 4:00 pm PDT	March 25, 2020
SBWMA requests clarification of proposals	March 31, 2020
Interviews with and Committee review of short-listed Proposers	April - June, 2020
SBWMA Board discussion on next steps	June 25, 2020
Composter(s) commences providing services	January 1, 2021*
<i>* Compost services may be initiated earlier if an alternative start date is agreed upon.</i>	

Section 2

Background Information

2.1 Introduction

The purpose of this section of the RFP document is to familiarize prospective Proposers with the SBWMA and its current and proposed recycling and solid waste services, and to provide information not included in other sections of this document.

2.2 SBWMA Member Agencies

The SBWMA includes twelve Member Agencies (as noted in Section 1.3). Under the framework of the Joint Powers Agreement, each Member Agency contracts for collection of residential and commercial waste and recycling. The Member Agencies are obligated, under the JPA agreement, to deliver materials to the Shoreway Environmental Center.

Member Agency	Residents
Atherton	7,148
Belmont	27,594
Burlingame	30,148
East Palo Alto	30,340
Foster City	33,225
Hillsborough	10,900
Menlo Park	35,670
Redwood City	86,685
San Carlos	29,311
San Mateo	103,959
West Bay	N.A.
Unincorporated San Mateo Co.	100,000
Total	494,980

2.3 Transportation and Current Contracts for Off-Site Processing

Transportation of organic materials to off-site composters is done in walking-floor trailer by South Bay Recycling (SBR) and is a component of the Shoreway Operations Agreement. Currently the approximately 120,000 tons per year of organic materials are sent to two composting facilities:

- a) 70,000 tons per year to Recology's Blossom Valley Organics North (BVON) in Vernalis, and
- b) 50,000 tons per year to Republic Services' Newby Island Compost Facility in San Jose.

The Composting Services Agreement between the SBWMA and Recology-BVON expires on December 31, 2020 and the Agency is soliciting proposals from composters interested in providing composting services up to 70,000 tons per year.

Current Processing Agreements			
Service	Facility	Annual Tons (2019)	Expiration
Composting	Recology – Blossom Valley Organics North	43,257 organics 28,862 food waste 72,119 total	December 31, 2020
Composting	Republic – Newby Island	50,369 organics	December 31, 2022

The SBWMA's organic materials are a combination of residential green waste & food waste collected in a cart-based system, commercial green waste and food waste, and self-haul green waste delivered to the transfer station.

2.4 Current Service Rates

The current organic materials processing arrangement with Recology-BVON expires on December 31, 2020. The 2020 rates charged by Recology-BVON for composting services listed by material type and tons per year (tpy) thresholds are shown in the below table. The cost of transportation is paid to SBR by the SBWMA and is separate from the tip fee rate.

Rate by Material Type and Annual Tonnage Level			
Material Type	≤60,000 tpy	60,001 – 80,000 tpy	80,001 – 100,000 tpy
Segregated Plant Materials	\$34.67	\$32.94	\$29.32
Segregated Wood, Brush, Logs & Branches	\$32.19	\$25.12	\$21.35
Segregated Food Scraps	\$56.56	\$56.56	\$56.56
Organics Materials	\$39.03	\$39.03	\$38.83

2.5 Summary of Intent

The SBWMA's intent and the requirements of this RFP document are to continue to provide the Member Agencies with the appropriate level of service at the best price and with the highest quality of service. The specifications contained within this RFP are designed to establish an

effective, efficient, uniform, and safe system of composting organic materials that provides for the following intended purposes:

- Establishment and maintenance of a continuous and uniform level of composting services to ensure flow of materials through the Transfer Station.
- Maximize quality of compost product to ensure that the composters can sell product that is desirable by the market and thereby ensure stable market outlets.
- Composting facilities that have demonstrated proficiency in operating a compost facility, marketing product, and maintaining compliance with regulations.
- Composting facilities that effectively divert the maximum amount of materials from landfill.

To this end, the SBWMA has tried to provide as much information as possible to all prospective Proposers to allow them to properly prepare their responses and compute fair and reasonable compensation and rate quotes. However, it is the sole responsibility of the Proposer to calculate and be responsible for the rates quoted in the applicable set of Rate Proposal Forms provided in Section 5 of this RFP document.

Section 3

General Instructions

3.1 RFP Document

This RFP document constitutes the complete set of proposal specifications and forms. All forms and applicable documents must be executed and submitted in sealed envelopes, as described in Section 4 of this RFP. Proposals not submitted on the prescribed proposal forms shall be deemed not responsive. By submitting a proposal, the Proposer agrees to be subject to all terms and conditions specified herein. Except as otherwise set forth in this RFP no exception to the terms and conditions shall be allowed. Submittal of a response to this RFP constitutes a binding offer by the Proposer which shall be open for a period of no less than one hundred eighty (180) calendar days from the date of submittal.

3.2 Mistakes

Proposers are expected to examine the RFP documents, proposal forms, and all other instructions provided herein. FAILURE TO DO SO WILL BE AT THE PROPOSER'S RISK. In the event of extension error(s), the unit price will prevail and the Proposers total offer will be corrected accordingly. In the event of addition error(s), the unit price will prevail and the Proposers total offer will be corrected accordingly.

3.3 Additional Terms and Conditions

Except as is set forth in Section 4.5 of this RFP, no additional terms and conditions included with the RFP shall be evaluated or considered. Any and all such additional terms and conditions shall have no force and effect and are inapplicable to this RFP.

3.4 Interpretations and Inquires

Questions concerning the intent, meaning, and interpretation of the RFP document shall be submitted in writing and received via email, no later than 3:00 p.m. PDT on Wednesday, March 10, 2020. Written inquiries shall be addressed to the SBWMA Representative:

Grant Ligon
Senior Management Analyst
South Bay Waste Management Authority
610 Elm Street, Suite 202
San Carlos, CA 94070
Phone: (650) 610-1621
Fax: (650) 802-3501
gligon@rethinkwaste.org

All Proposers shall carefully examine the RFP document. **Any ambiguities or inconsistencies shall be brought to the attention of the SBWMA in writing as soon as possible, but in no event later than 3:00 p.m. PDT on March 10, 2020.**

No person is authorized to give oral interpretations of, or make oral changes to, the RFP document. Therefore, oral statements will not be binding and should not be relied upon. Any interpretation of, or changes to, the RFP document will be made in the form of a written addendum to the RFP document and will be furnished by the SBWMA to all Proposers who attend the pre-proposal conference and submit a properly completed Process Integrity Rules Form. Only those interpretations of, or changes to, the RFP document that are made in writing and furnished to the Proposers by the SBWMA may be relied upon.

3.5 Verbal Agreements

No verbal agreement or conversation with any officer, agent, or employee of the SBWMA, either before or after execution of the Agreement, shall affect or modify any of the terms or obligations contained in the Agreement. Any such verbal agreement or conversation shall be considered as unofficial information and in no way binding upon the SBWMA or the Proposer.

3.6 Qualification of Proposer

The Proposer must be qualified by experience, adequate financing, staffing and equipment to do the work called for in the RFP.

3.7 Conflict of Interest

All Proposers must disclose, with their proposal, the name of any officer, director, agent, or any relative of an officer, director, or agent who is an employee, elected official or appointed official of the SBWMA or its Member Agencies. Furthermore, all Proposers must disclose, to the best of their knowledge, the name of any SBWMA employee, elected official or appointed official who has any direct or indirect economic interest in the Proposers' firm or any of its branches or subsidiaries. "Economic interest" shall have the same meaning as that term is defined in Title 2, California Code of Regulations Sections 18703 – 18703.5.

3.8 Proposers Non-Collusion Certification

Any Proposer submitting a proposal to this RFP must complete and execute the Non-Collusion form included in Section 5 of the RFP document.

3.9 Legal Requirements

Proposers are required to comply with all provisions of federal, state, county, and local laws, ordinances, rules and regulations that are applicable to the services being offered in this RFP. Lack of knowledge by the Proposer shall in no way be a cause for relief from responsibility or constitute a cognizable defense against the legal effects thereof.

3.10 Familiarity with Laws and Ordinances

The submission of a proposal for the services requested herein shall be considered as a representation that the Proposer is familiar with all federal, state, and local laws, ordinances, rules, and regulations which affect those engaged or employed in the provision of such services, or equipment used in the provision of such services, or which in any way affects the conduct of the provision of such services; and no plea of misunderstanding will be considered because of ignorance thereof. The Proposer's attention is directed to such relevant ordinances and resolutions of the SBWMA, as may be amended from time to time, under which the Collection Service programs are to be operated. If the Proposer discovers any provisions in the RFP

document that are contrary to or inconsistent with any law, ordinance, or regulation, the Proposer shall report it as is set forth in Section 3.4 above without delay.

3.11 Agreements

The SBWMA shall not be obligated to any Proposer to enter into a Processing Service Agreement. No action will lie against the SBWMA to compel the SBWMA to execute any such Agreement(s), or to recover from the SBWMA any damages, costs, lost profits, expenses, etc., that any Proposer may incur if the SBWMA chooses not to approve an Agreement after considering proposals received in response to the RFP. By submitting a proposal for the services, all Proposers acknowledge and agree that no enforceable contractual relationship arises until the SBWMA Board approves and directs execution of the appropriate Agreement, that no action shall require the SBWMA to execute an Agreement at any time, and that each Proposer waives all claims to damages, lost profits, costs, expenses, etc., as a result of the SBWMA not fully executing an Agreement.

3.12 Facilities

The SBWMA reserves the right to inspect each Proposer's facilities at any reasonable time, during normal working hours, with prior notice to determine that the Proposer has a bona fide place of business, and working, permitted compost facility.

3.13 Insurance

The SBWMA has set forth the insurance requirements contained in Section 1.5 of this RFP. Proposers are strongly encouraged to review and obtain an understanding of these requirements before submitting a proposal.

3.14 Agreement Modifications

The SBWMA reserves the right to make modifications to the Agreements to more fully effectuate the intent of this RFP and the Organics Processing Service programs.

3.15 Withdrawal or Revision of Proposal Prior to Opening

At any time prior to the closing time for receiving proposals, a Proposer may, without prejudice, withdraw, modify, or correct a proposal after it has been deposited with the SBWMA Representative provided a request is made in writing to the SBWMA Representative, whose name, address, and contact information is provided herein. Modification or corrections of proposals may be made by means of facsimile or other written communications, provided the SBWMA Representative receives such modifications or corrections prior to the closing time set for receiving proposals.

Proposals which are not submitted on the forms furnished by the SBWMA and are not in conformity with the provisions of Section 4 of this RFP document may be deemed non-responsive. No corrections in proposals will be acceptable unless each correction is signed or initialed by the Proposer. If initialed, the SBWMA may require the Proposer to identify any corrections so initialed. A proposal in which omissions occur or which has been conditioned by the Proposer in a manner that is unacceptable to the SBWMA may be rejected. Omissions and corrections may be made until the closing time set for receiving proposals.

3.16 Acceptance or Rejection of Proposals

The SBWMA reserves the following rights and options:

- To deem non-responsive all proposals that fail to meet the literal and exact requirements of the specifications provided in this RFP document;
- To accept the proposal that is, in the judgment of the SBWMA Board, in the best interest of the SBWMA and its residents;
- To reject all non-responsive proposals;
- To waive irregularities in any proposal as the SBWMA Board may elect to waive; and
- To reject all proposals and to issue subsequent requests for new proposals.

Any or all proposals will be rejected if there is reason to believe that collusion existed among the Proposers. Proposals received from participants in such collusion will not be considered for the same work when and if re-advertised.

3.17 Award of Agreement(s) by SBWMA Board

The award of Agreement(s), if made, will be the Agreement(s) which best fulfills the requirements and provides the best value to the SBWMA. No award will be made until all necessary investigations have been made to determine the responsiveness and responsibility of the Proposer under consideration. After opening the proposals, the SBWMA may require the selected Proposer(s) to submit a verified statement disclosing all ownership interests, whether direct, indirect, or beneficial, and including intermediate and ultimate ownership interests where several levels of ownership exist, disclosing any single source in excess of thirty percent (30%) of outstanding debt, and disclosing any person or entity that has guaranteed in excess of thirty percent (30%) of the Proposer(s) outstanding debt furthermore, such disclosure shall contain any information of or relating to any and all common ownership, control, management, or common pecuniary benefit said proposing entity, its owners, management, or representatives possess or retain in any other entity now participating, or proposing to participate, in the Collection Service Agreement and/or the Facility Operations Agreement with the SBWMA. The SBWMA Board shall be the sole judge as to the responsiveness and the suitability of the Proposer(s) to satisfactorily perform the work specified within the Agreement(s).

As soon as practicable after opening the proposals, the Proposer(s) recommended for award of the Agreement(s) will be submitted to the SBWMA Board for approval.

In the event the SBWMA Board approval is not received within **one hundred and eighty (180) calendar days** after opening of the proposals, the Proposer may request that it be released from the Agreement obligation.

The foregoing action by the SBWMA or the Proposer shall in no way provide any cause whatsoever for claim against the SBWMA by the Proposer.

3.18 Addendum

The Proposer shall sign each Addendum issued and attach it to the proposal in order to have the proposal considered.

3.19 Examination of the Site of the Work

By the submission of a proposal to do the work, the Proposer certifies that a careful examination of all RFP documents has taken place, and that the Proposer is fully informed concerning the requirements of the RFP document, the physical conditions to be encountered in the work, the quality and quantity of service to be performed, and of the materials and equipment to be furnished. The Proposer will not be entitled to additional compensation upon subsequently finding that conditions require methods or equipment other than that anticipated in making the proposal. Negligence or inattention of the Proposer in determining conditions of the Agreement(s) prior to submitting the proposal, or in any phase of the performance of the work, shall be grounds for refusal by the SBWMA to agree to proposed additional compensation for additional work caused by such negligence or inattention by the Proposer.

3.20 Performance Bond

A performance bond in a form acceptable to the SBWMA is required from the successful Processing Service Proposer within thirty (30) calendar days from the date the SBWMA Board approves the Composting Service Agreement in an amount equal to Two-hundred and Fifty Thousand Dollars (\$250,000). The performance bond shall be executed by a surety company licensed to do business in the State of California and acceptable to the SBWMA having an "A-" or better rating by A. M. Best or Standard and Poor's, and included on the list of surety companies approved by the Treasurer of the United States. Failure to provide this performance bond within the timeframe called for by this section shall constitute a default and grounds for immediate termination of an Agreement.

3.21 Proprietary Information

Under the California Public Records Act, most SBWMA records are made public. Trade Secrets and certain financial information, which are not public, are exceptions to this general rule. Proposers must clearly identify as "Confidential" or as a "Trade Secret" any information in their proposals that they believe shall be exempt from disclosure under the Public Records Act. If a Proposer marks any information in their proposal as "Confidential" or "Trade Secret," the SBWMA agrees to maintain the confidentiality of such information and data to the extent permitted by law. SBWMA agrees to notify Proposer of any request from any third party to review and/or inspect information and data. In the event a third-party files legal action against the SBWMA seeking release of such records and data, SBWMA shall tender the defense of such action to Proposer and Proposer shall defend, indemnify and hold the SBWMA harmless from any and all expenses associated with the defense of such action, including, without limitation, the SBWMA's attorney's fees and costs and any attorney's fees awards or other awards or judgments against the SBWMA. If Proposer fails to follow these requirements in any way, SBWMA may release the requested information or data at its sole discretion.

To the extent permitted by applicable law, all pricing data will remain confidential until after an initial evaluation of the proposals is made.

3.22 Subcontractors/Operators

Proposers intending to enter into contracts with subcontractors/operators in order to provide the services requested in this RFP must include in their proposal responses a list of those potential subcontractor/operators for approval by the SBWMA.

Section 4

Proposal Preparation Instructions

4.1 Receipt and Opening of Proposals

The SBWMA will receive written and sealed proposals to furnish all labor, equipment, materials, tools, insurance, supervision, and all other items incidental thereto, and to perform all work necessary, specified, and relating to in the prescribed manner and time to provide Composting Services. **Sealed proposals will be received no later than 4:00 p.m. PDT, Wednesday March 25, 2020, at the office listed below.**

Each proposal and supporting documentation must be submitted in a sealed envelope or container plainly labeled in the lower-left corner: "Proposal for ORGANICS PROCESSING SERVICES" along with the Proposal opening date and time. Proposers must also include their company name and address on the outside of the envelope or container. Proposals must be delivered to the SBWMA Representative:

**South Bayside Waste Management Authority
Attention: Grant Ligon
Senior Management Analyst
610 Elm Street, Suite #202
San Carlos, CA 94070**

Proposers are responsible for making certain that proposals are delivered to the SBWMA Representative. Mailing of a proposal or receipts of postal or other delivery agents does not ensure that the proposal will be delivered on time or delivered at all.

Proposals will be accepted in person, by United States Mail, or by private courier service. No proposals will be accepted by oral communication, telephone, electronic mail, telegraphic transmission, or facsimile transmission. Proposals may be withdrawn prior to the above scheduled time set for opening of proposals. No Proposer may withdraw a proposal after the above scheduled time for opening the proposals. Any proposal received after the date and hour specified will be rejected and returned unopened to the Proposer.

The SBWMA reserves the right to postpone the date and time for opening proposals through an addendum to this RFP.

4.2 Pre-Proposal Conference

A PRE-PROPOSAL CONFERENCE may be held on Wednesday, March 11th, 2020, beginning at 11:00 a.m. PDT, at the Shoreway Environmental Center, 225 Shoreway Road, San Carlos, CA 94070. At the pre-proposal conference, representatives of the SBWMA will be available to answer questions and explain the intent of this RFP. Questions about, or requested modifications to, the RFP document which have been submitted in writing and received as set forth in Section 3.4 of this RFP will be addressed. To the extent possible, the SBWMA will also consider other questions or concerns that may be raised at that time. After the pre-proposal conference, the SBWMA will prepare written documentation to answer questions which were addressed at the pre-proposal conference which relate to the interpretation of, or changes to, the RFP document which the SBWMA deems appropriate for clarification. Proposers are again cautioned that only

interpretations of, or changes to, the RFP document received from the SBWMA in writing may be relied upon.

4.3 Preparation of Proposals

Four (4) sets of the RFP responses must be submitted along with an electronic copy on a flash drive or similar device (in Word and Excel format). The four sets shall consist of one original proposal and three copies, all placed in three ring binders with a cover indicating the company name and proposal title. The cover of the original proposal shall be clearly marked "Original Proposal" and the covers of the proposal copies shall be clearly marked "Proposal Copies". Additional copies may be requested by the SBWMA at its discretion. All blank spaces must be filled in and noted, in ink or typed, with amounts extended and totaled as appropriate. All required original signatures must be manual and all corrections made by the Proposer to any part of the RFP document must be signed or initialed.

Proposals must be executed by an individual with the authority to bind the Proposer to the terms and conditions of the RFP.

4.4 Proposal Content

All proposals must include the following sections, in the following order:

Cover Letter

The cover letter should not exceed the equivalent of four (4) single sided pages and should provide:

- 1) Name, address, telephone number, email address, and fax number of Proposer's key contact person
- 2) Description of the type of organization (e.g., corporation, partnership, joint venture teams and subcontractor/operators) submitting proposals.
- 3) Name of the entity that will sign the Processing Service Agreement in the event one is awarded.
- 4) A written statement warranting that the requirements of the Processing Service Agreement as described in this RFP document, its enclosures, and all addenda, by listing all addenda and dates received, have been thoroughly reviewed and the Proposer has conducted all due diligence necessary to confirm material facts upon which the proposal is based.
- 5) A written statement acknowledging the validity of the proposal contents including proposed rates, and pricing for a period of one hundred eighty (180) days.

Table of Contents

Executive Summary

The executive summary should not exceed the equivalent of three (3) double-sided pages and should highlight the major elements of the Proposer's qualifications and proposal, including a brief description of the Proposer's initial transition plan and schedule. All information should be provided in a concise manner.

Forms

The proposal must contain Forms A - H of Section 5 of the RFP, in the order they are provided in Section 5.

Proposers should note that they are required to include a copy of the completed Form A, "Process Integrity Rules" that was submitted earlier and complete all Forms (A-H) provided in Section 5 of this RFP document.

Proposers shall use only the forms and format provided. Any deviation from those provided may be grounds for rejection of the entire proposal.

Signed Addenda

Qualifications

- 1) **Key Staff** - Proposer must identify and provide resumes for key staff proposed for the service identified herein.
- 2) **Staff Responsibilities** - Proposers must provide names and resumes of principal officers, partners, or other officials or managers who will be performing substantive responsibilities required under the Processing Service Agreement. The resume should describe the relevant technical experience of key personnel.
- 3) **References** - Proposers must provide a minimum of three (3) local governmental clients that the SBWMA may contact to conduct a reference check. The Proposer must be providing or have provided similar services as requested herein to a local governmental entity within the last three (3) years. In the event a Proposer has not provided similar services to at least four (4) local governmental clients in the last three (3) years, they must provide the requested information for all local governmental clients for whom they have provided similar services in the last seven (7) years.
- 4) **Conflict of Interest Statement** - Proposers must warrant that no gratuities have been or will be offered or given by Proposer, or any agent or representative of the Proposer, to any officer, employee of the SBWMA or any participant in the selection of a Proposer to furnish the services described herein to secure a favorable treatment regarding the evaluation, grading, and Agreement award process.
- 5) **Statement of Financial Qualifications** - Proposers shall provide copies of audited financial statements for the entity that is proposed to execute the Processing Service Agreement for the most recent three (3) fiscal years. If the entity that will execute the Agreement does not have three (3) years of audited financial statements, the Proposer must provide sufficient financial data to substantiate, to the satisfaction of the SBWMA, the Proposer's financial capability and the viability of the entity to provide the services requested. If necessary, this matter will be discussed further at the pre-proposal meeting.
- 6) **Financial Rights** - The SBWMA reserves the right to require submission by the Proposer, at no cost to the SBWMA, of an opinion by a Certified Public Accountant regarding the financial status of such Proposer, including ownership of, or interest in, equipment and facilities prior to award of a Collection Service Agreement.

Technical Proposals

Proposers are required to provide a description of the way the requested service is to be provided. At a minimum, this should include the following components:

- 1) **Processing Operating Plan** - Proposers seeking to provide Processing Services should provide the following information:
 - a. Documentation that the facility design and operations comply with all applicable federal, state, and local regulations;
 - b. A list of all operating permits associated with site operations (i.e., Conditional Use Permit, CEQA documentation, State Solid Waste Facility Permit, Regional Water Quality Board permit or approval, any relevant Regional Air Quality Management District or Air Pollution Control Authority approvals, etc.);
 - c. The permitted capacity of the site and the available capacity that is not contractually committed, with an estimate of existing contractually committed capacity.
 - d. A written commitment guaranteeing capacity (daily and annual basis) for the material accepted under the terms of the Processing Service Agreement;
 - e. Documentation of any expansion plans, including additional capacity to be constructed, schedule for expansion, and permitting status of the expansion plan needed to ensure the guaranteed capacity;
 - f. Any import restrictions, taxes, or fees that will be applicable to the receipt of the SBWMA's material stream;
 - g. Any applicable import restrictions on accepting material from outside of the local jurisdiction, and the process to have the import restriction waived;
 - h. A written commitment to indemnify the SBWMA against all events in connection with or related to the Operator's provision of Processing Services;
 - i. A description of the way material will be received, stored and processed, including the ability to receive and process material (prior to composting) separately from other material; and
 - j. A description and samples of the reporting programs and sample reports that will be used to track the material received, processed, tested, and shipped to end-use markets.
- 2) **Violations History** - The Proposer must provide a history for the last five (5) years of all claims, settlements, arbitrations, litigation proceedings, and civil actions involving Ten Thousand Dollars (\$10,000.00) or more, and all criminal legal actions in which the company, its parent company, subsidiaries, all partners, or principals were involved. For each case, the Proposer must provide the following:
 - a. The name of the claim, arbitration, litigation or action;
 - b. The amount at issue or the criminal charges alleged; and
 - c. The resolution of the case.
 - d. The Proposer must also provide details of any current or threatened legal actions in California against the Proposer or its parent company, subsidiaries, all partners, principals, or joint venture company(ies) by a governmental entity contracting with the

Proposer or its parent company for services relating to solid waste management, or against such a government entity by the Proposer or its parent company or joint venture company(ies). For each action, the Proposer must provide the following:

- The name of the action;
 - The court in which the action is pending;
 - The action number; and
 - The amount at issue.
- e. The Proposer shall provide a list of all enforcement actions taken against it during the last five (5) years by any regulatory agency such as, but not limited to, the United States Environmental Protection Agency or a Local Enforcement Agency under the California Integrated Waste Management Act. The list shall include the name of the regulatory agency and the date of the enforcement action.
- f. The Proposer shall inform the SBWMA if it has had a permit, franchise, license, entitlement or business license that has been revoked or suspended in the last five (5) years.
- g. The Proposer must list any claims against a Bid or Performance Bond and the results and failure to receive a Bid or Performance Bond, or any contractual defaults or termination in the last fifteen (15) years.
- h. The Proposer shall submit copies of all notices of violations, corrective action notices, enforcement actions or orders, warning notices, or other forms of permit violation/non-compliance documentation that they have received in the past five (5) years from public agencies for equipment, maintenance, processing equipment, chip and grind, and composting facilities in California, which are owned or operated by the Proposer, its parent company and/or subsidiaries.

3) Proposal Alternatives and Exceptions - Proposers should include information related to proposal exceptions and alternatives.

4) Additional Information - Proposers may provide any additional information that they believe to be applicable to this proposal in this section of the Appendix.

4.5 Proposal Exceptions and Alternatives

Proposer shall discuss any exceptions or requested changes that Proposer has to the City's RFP conditions, requirements, or sample contract, attached to the RFP as Appendix A. If there are no exceptions noted, it is assumed the Proposer will accept all conditions and requirements identified in the RFP. Items not excepted will not be open to later negotiation.

In the event the Proposer takes exception to the RFP specifications or wishes to propose an alternative technology, to propose the development of a new facility, or to propose the expansion of processing capacity at an existing operation, they may set forth those exceptions and/or alternatives in the following manner:

- The exception and alternative is to be presented on a paper whose pages are titled, "**Form G - RFP Exceptions and Alternatives**".

- Each exception or alternative must be presented separately by stating the specific exception or alternative, the suggested changes to the program related to the exception or alternative, the suggested changes related to the exception or alternative, the manner in which the proposed change would benefit the SBWMA and the specific dollar change in each of the various service rates, as proposed by the Proposer in this RFP, that would take place if the exception or alternative was accepted by the SBWMA.
- The exceptions and alternatives attachment must include the following language without exception.

“Except as set forth above, Proposer is in complete agreement with the proposed terms, conditions and business arrangements described in the RFP. The Proposer assumes the risk of all conditions foreseen or unforeseen and agrees to provide the services set forth in the RFP under whatever circumstances may develop other than as herein provided.”
- The form must be signed by an individual authorized to commit the Proposer’s firm to a contract with SBWMA.

Proposers should note that if exceptions and/or alternatives are presented, all required information as set forth above must be submitted. Exceptions and/or alternatives provided, without the required information will not be considered. Proposers should also note that the submittal of an exception and/or alternative does not obligate the SBWMA to accept and incorporate the exceptions and/or alternative.

Proposers are *strongly cautioned* that all exceptions or alternatives related to the services set forth in this RFP must be raised as part to the respondent’s proposal and in the manner set forth above. Exceptions and/or alternatives of any type, regardless of how small or incidental, that are not raised in the proposal and which do not include the required rate information and substitute language will not be considered for discussion after the proposals are received.

4.6 Evaluation of Proposals

A panel of SBWMA staff, consultants, and such other parties as the SBWMA deems necessary (the Evaluation Team), will review all proposals submitted and recommend the proposal that they believe best meets SBWMA’s requirements as specified in the RFP. The SBWMA may request, at its sole option, presentations or interviews from selected Proposers.

The proposals will be evaluated based on the following criteria:

1. Overall responsiveness to the RFP and submittal criteria
2. Proposer’s experience and qualifications
 - Overall experience
 - References
 - Financial stability
3. Adequacy and completeness of the technical proposal
4. Processing Services
 - Marketing Plan
 - Processing Plans
 - Operations Plan

- Violation History
- Capacity Guarantee
- Facility Location (For the purposes of the RFP, the starting mileage distance is the Shoreway Environmental Center located at 333 Shoreway Road, San Carlos)
- Exceptions and Alternatives

5. Proposed rates

The SBWMA, at its sole option, will select the proposal which best fulfills the requirements and provides the best value to the SBWMA and its residents.

Proposers should note that the SBWMA may modify the evaluation criteria and the evaluation process at its discretion until the proposals have been received.

Section 5

Proposal Forms

5.1 Proposal Forms

The SBWMA will receive proposals to provide the services as required in the Processing Services Agreement. Forms A - H must be completed as part of the Proposal. The forms are designed to allow Proposers to input their information directly into Forms A – H. Questions that are not applicable should be included and marked “Not Applicable.” The purpose of the forms contained herein is not intended in any way to limit the type, quality or quantity of data and information supplied by the Proposer. Required Forms not completed in full may result in disqualification.

Form A
PROCESS INTEGRITY RULES

The South Bayside Waste Management Authority's pledge is for the procurement process for Organics Processing Services to be open, objective, carefully monitored, and understandable to all. The following rules will be adhered to and enforced.

UNTIL THE SBWMA BOARD EXECUTES THE PROCESSING SERVICE AGREEMENT(S), ALL CONTACT BETWEEN PROPOSERS AND THE SBWMA RELATED TO THE RFP SHALL BE THROUGH GRANT LIGON OR JOE LA MARIANA. ALL INTERACTION SHALL BE IN WRITING, EITHER BY MAIL OR BY E-MAIL. THE ADDRESS AND FAX NUMBER ARE:

Mr. Grant Ligon, Sr. Management Analyst
Joe La Mariana, Executive Director
South Bayside Waste Management Authority
610 Elm Suite #202
San Carlos, CA 94070
Phone: (650) 802-3500
Fax: (650) 802-3501
gligon@rethinkwaste.org
jlamariana@rethinkwaste.org

Any attempt to contact or interact with any Board Member of the SBWMA for the purpose of influencing the selection process will be grounds for disqualification from the selection process.

All communications between the SBWMA and a participant, along with the related responses, will be transmitted simultaneously to all participants.

Any participant who fails to recognize or utilize this process of communication will be notified of its violation and may be subject to disqualification from the selection process at the sole discretion of the SBWMA.

All participants must acknowledge and sign this statement as part of the RFP process. All participants must provide a signed **ORIGINAL** of this statement by the close of the pre-proposal meeting and a **COPY** of this statement submitted with your proposal. Participants that do not provide this signed statement will be disqualified from this procurement process.

On behalf of my company, I understand and accept the rules established in this statement

Company Name:

(Print or Type)

Representative:

Title:

(Print or Type)

Signature: _____

Date:

(Sign in Ink)

Form B
PROPOSER'S STATEMENT OF ORGANIZATION

1. Full Name of Business Concern (Proposer):

Principal Business Address:

2. Principal Contact Person(s):

Name:

Phone Number:

3. Form of Business Concern:

Corporation Partnership Joint Venture Other:

4. Provide names of partners or offices as appropriate and indicate if the individual has the authority to sign in name of Proposer. Provide proof of the ability of the individuals so named to legally bind the Proposer.

<u>Name</u>	<u>Address</u>	<u>Title</u>
-------------	----------------	--------------

5. If a corporation, in what state incorporated:

Date Incorporated:

Month

Day

Year

6. If a Joint Venture or Partnership, date of Agreement:

Form B
PROPOSER'S STATEMENT OF ORGANIZATION (Cont.)

7. List all subcontractors/operators participating in this Agreement:

<u>Name</u>	<u>Address</u>
a)	
b)	
c)	
d)	

8. Outline specific areas of responsibility for each firm listed in Question 7.

a)

b)

c)

d)

Identify the provisions of any agreement between parties which assigns legal or financial liabilities or responsibilities:

If responding firm(s) are a partially or fully-owned subsidiary of another firm, or share common ownership with another firm, please identify the firms and relationships.

**Form C
PROCESSING RATES**

Material Type	Rates per Annual Tonnage Bracket			
Contract Tonnage	≤30,000	30,001-50,000	50,001-70,000	≥70,000
Residential Green Waste				
Contract Tonnage	≤10,000	10,001-20,000	20,001-30,000	≥30,000
Commercial Source-Separated Organics				
Contract Tonnage	≤40,000	40,001-70,000	70,001-100,000	≥100,000
Mixed Organics				

Form D
COMPOSTING FACILITY - EXISTING

(Provide One Form Per Facility Site)

1. Name of Composting Facility:
2. Location of Composting Facility:
3. Proposer's role in the Composting Facility:
4. Other contracting parties:
5. Name, telephone number and address of Composting Facility owner:

6. CalRecycle Permit Type and Number:
7. Please attach a list of all relevant permits and approvals:

<u>Types of materials accepted</u>	<u>Quantity of materials permitted by material type (tpd)</u>
------------------------------------	---

8. Mixed Green & Food Waste
9. Segregated Plant Waste
10. Segregated Wood Waste
11. Other
12. Total Facility Daily Permitted Capacity

<u>End Use Markets</u>	<u>Percent of Finished Product</u>
------------------------	------------------------------------

- | | |
|---|---|
| 13. Bulk/Bagged Compost | % |
| 14. Mulch/Land Application (non-landfill) | % |
| 15. Biomass /Co-generation fuel | % |
| 16. Landfill Application (ADC or erosion control) | % |
| 17. Other (please describe) | % |

Form E
ALTERNATIVE FACILITY – PROPOSED
 (Provide One Form Per Facility Site)

1. Name of Facility:
2. Type of Facility:
3. Location of Facility:
4. Proposer's role in the Facility:
5. Other contracting parties:
6. Name, telephone and address of Facility owner:

7. Operational Status (Planning, Permitting, etc.):
8. Operational Date (estimated):
9. Permits Required (include status):
10. Total Facility Daily Design Capacity:

<u>Material Accepted</u>	<u>Daily Capacity (tpd)</u>
11. Mixed Green & Food Waste	
12. Segregated Plant Waste	
13. Segregated Wood Waste	
14. Other (Please describe):	

<u>End Use Markets</u>	<u>Percent of Finished Product</u>
15.	%
16.	%
17.	%

Please describe the future benefits of the proposed facility or new technology:

Form F

ANTI-COLLUSION AFFIDAVIT

The following affidavit is submitted by Proposer as a part of this proposal:

The undersigned deponent, of lawful age, being duly sworn, upon his oath deposes and says that he has lawful authority to execute the within and foregoing proposal; that he has executed the same by subscribing his name hereto under oath for and on behalf of said Proposer; that Proposer has not directly or indirectly entered into any agreement, express or implied, with any Proposer or Proposers, having for its object the controlling of the price or amount of such proposal or proposals, the limiting of the proposals or Proposers, the parceling or farming out to any Proposer or Proposers or other persons of any part of the agreement or any part of the subject matter of the proposal or proposals or of the profits thereof, and that he has not and will not divulge the sealed proposal to any person whomsoever, except those having a partnership or other financial interest with him in said proposal or proposals, until after the said sealed proposal or proposals are opened.

Deponent further states that the Proposer has not been a party to any collusion among Proposers in restraint of freedom of competition; by agreement to make a proposal at a fixed price or to refrain from submitting a proposal; or with any state official or employee as to quantity, quality, or price in the prospective agreement; or in any discussions between Proposers and any South Bayside Waste Management Authority or Member Agency official concerning exchange of money or other things of value for special consideration in the letting of an agreement; that the Proposer/Company has not paid, given or donated or agreed to pay, give or donate to any official, officer or employee of the South Bayside Waste Management Authority or Member Agencies directly or indirectly, in the procuring of the award of agreement pursuant to this proposal.

Executed under penalty of perjury on this _____ day of _____, 2020 at _____.

SIGNED BY: _____

TITLE: _____

Subscribed and sworn to before me this _____ day of _____, 2020 at _____.

Notary Public

My Commission expires:

Form G
RFP EXCEPTIONS

Proposers are to prepare the Rate Proposal Forms based on the program specifications set forth in the RFP documents without considering any exceptions that may be set forth on this form. In the event the Proposer takes exception to the RFP specifications they may set forth those exceptions in the following manner.

- The exceptions are to be presented on a separate paper titled, "Form G - Exceptions to Proposal Specifications".
- Each exception must be presented separately by stating: the specific exception, the page and line numbers of the exception, the suggested changes to the program related to the exception, the suggested changes related to the exception, the way the proposed change would benefit the SBWMA, the customers or both, and the specific dollar change in each of the various service rates, as proposed by the Proposer in this RFP, that would take place if the exception was accepted by the SBWMA.
- The exceptions must be followed with the following language without exception.

"Except as set forth above, Proposer is in complete agreement with the proposed terms, conditions and business arrangements described in the RFP. The Proposer assumes the risk of all conditions foreseen or unforeseen and agrees to provide the services set forth in the RFP under whatever circumstances may develop other than as herein provided."

- The form must be signed by an individual authorized to commit the Proposer's firm to a contract with SBWMA in the manner set forth below.

Signature _____ Name (typed):

Title _____ Date:

Please note that if exceptions are taken, all required information as set forth above must be submitted. Exceptions taken without providing the required information will not be considered.



Appendix A

AGREEMENT FOR ORGANICS PROCESSING SERVICES

between

**South Bayside Waste Management
Authority**

&

____ Successful Proposer ____

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Exhibits

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AGREEMENT FOR ORGANICS PROCESSING SERVICES

This Agreement is made and entered into as of the 1st day of January, 2021 by and between the **South Bayside Waste Management Authority** a California Joint Powers Authority hereinafter “**SBWMA**”, and **Successful Proposer**, a [REDACTED] corporation, hereinafter “**Contractor**”. Contractor and SBWMA are hereinafter referred to jointly as the Parties.

I. RECITALS

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

1. That SBWMA desires to engage Contractor to render processing services for Plant and Organic Materials generated from the SBWMA Member Agencies;
2. That Contractor is qualified to provide such services to the SBWMA; and
3. That SBWMA has elected to engage the services of Contractor upon the terms and conditions as hereinafter set forth.

II. DEFINITIONS

In this Agreement, capitalized words have the meanings defined in **Exhibit A**.

III. TERMS AND CONDITIONS OF AGREEMENT

1. Term of Agreement

This Agreement shall commence on the 1st day of January, 2021 and shall continue for a period of five (5) years, terminating on December 31, 2025. The Agreement may be extended for two (2) years at SBWMA’s sole discretion, by SBWMA giving written notice of intent to extend to **Successful Proposer** no later than December 31, 2024.

2. Authorization and Termination

This Agreement becomes effective when endorsed by both Parties.

IV. SCOPE OF SERVICES

1. Scope of Processing Services

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

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

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

2. Permits and Compliance

Contractor will comply with all Permits, including any mitigation measures related to the operation and maintenance of their Compost Facility. Contractor is solely responsible for paying any fines or penalties imposed for noncompliance with or violation of Permits or failure to obtain Permits.

Under no circumstances shall any provision of this Agreement obligate Contractor to violate any of its Permits.

Contractor shall have a permitted Composting Facility that is permitted as a composting facility with the Department of Resources, Recycling, and Recovery (CalRecycle) and maintain this designation throughout the term of the contract. The Composting Facility Permit must include the ability to accept the types of compostable materials generated by the SBWMA. Contractor must notify SBWMA before accepting any shipments if there are any change in such status.

Contractor shall maintain all required permits from the applicable agencies to operate a composting facility. Permits shall include but not be limited to CalRecycle/LEA, Regional Water Quality Control Board, Air Quality Management District, and others as appropriate.

3. Compliance with all Applicable Laws and Regulations

Contractor shall comply with all Federal, State, and/or local regulations in the performance of this Agreement.

4. Notification of Violations.

Contractor shall provide copies of any notices of violation that it receives (or that any Subcontractor receives and that are provided to Contractor) from any Regulatory Agency during the term of this Agreement related to the operation of the Composting Facility or the performance of the Services. Contractor shall provide to the SBWMA copies within three (3) business days of receiving them.

5. Days and Hours of Operation

Contractor will operate the Composting Facility for the receipt of SBWMA's Plant and Organic Materials between the hours of 3:00 a.m. to 5:00 p.m., Monday through Friday, and on Saturday by prior appointment made the preceding Wednesday or before (but not more than one Saturday per month). Composting Facility will be closed on Sundays and Holidays. Contractor may not reduce the hours or total number of hours for acceptance of SBWMA's Plant and Organic Materials without the concurrence of the SBWMA except for reductions required by a change in a Permit subsequent to the Commencement Date.

6. Traffic Control and Direction

Contractor will direct on-site traffic to appropriate unloading areas and provide a safe working environment. Contractor will provide necessary signs and personnel to assist drivers to proper unloading areas. Contractor will operate the Compost Facility so that the conditions of the Maximum Vehicle Turnaround are met and the SBWMA's Transfer Company vehicles are processed, unloaded and exit without delay from the facility no longer than 30 minutes from arrival at the Contractor's scales. Contractor will not exceed this time more than 5 times per month. For each load exceeding the 30 minutes from arrival at the scale to exiting the scale over the five grace loads, the Contractor may be assessed liquidated damages equal to \$2.00 per minute for each minute of delay. The calculation of the times will be based on time stamp tickets at the scale house.

7. Scale Operation

a. Maintenance and Operation

Contractor will maintain State-certified scales that link to a centralized computer recording and billing system and that account for tracking of the origin, destination and tonnage of all incoming and outgoing loads. Contractor will operate scales during Compost Facility receiving hours established in Section 5. Contractor will provide the SBWMA with access to weighing report promptly upon SBWMA's request.

b. Vehicle Tare Weights

When Transfer Company place new vehicles into service, Contractor will promptly weigh the new vehicle and determine its unloaded ("tare") weight(s). Contractor will record tare weight, hauler

name, and vehicle identification number. Within 10 Working Days of weighing, Contractor will provide the SBWMA and Transfer Company with a report listing vehicle tare weight information. Contractor will have the right to request re-determination of tare weights of vehicles twice each Calendar Year. If there is reasonable suspicion or evidence that tare weights are not accurate, Transfer Company may request re-determination of tare weights, in which case Contractor will promptly re-determine tare weights for requested vehicles up to 4 times per Calendar Year. Contractor may update tare weights (at its own initiative) more frequently.

8. Testing

Contractor will test and calibrate all scales in accordance with Applicable Law, but at least every 12 months. Upon SBWMA request, Contractor will promptly provide the SBWMA with copies of test results. Contractor will further test and calibrate any or all scales within 3 Working Days of SBWMA direction. If test results indicate that the scale or scales complied with Applicable Law, the SBWMA will reimburse Contractor the Direct Costs of the tests. If the test results indicate that the scale or scales did not comply with Applicable Law, Contractor will bear the costs thereof and Contractor will at its own cost adjust and correct, consistent with the results of that test, all weight measurements recorded and Plant and Organic Materials Rates calculated, charged and paid, as the case may be, from the date of SBWMA's direction.

9. Weighing Standards and Procedures

Contractor will use the Composting Facility entry scale house(s) to weigh vehicles and charge Plant and Organic Materials Rates. Contractor will charge Transfer Company the Plant and Organic Materials Rates based on the Tonnage of SBWMA's Transfer Company deliveries to the Composting Facility. Contractor will weigh and record inbound weights of all Transfer Company's vehicles when the vehicles arrive at the Compost Facility and weigh and record outbound weights of vehicles for which Contractor does not maintain tare weight information. Contractor will provide each driver a receipt showing the date, time, and quantity of SBWMA's Plant and Organic Materials that the vehicle delivered to the Compost Facility.

10. Records and Reporting

Contractor will maintain scale records and reports that provide information including date of receipt; inbound time; origin, destination and weight of inbound and outbound loads; inbound and outbound weights of vehicles; and vehicle identification number. Contractor shall keep and maintain accurate records of products delivered or of all time expended in performing services and costs and expenses incurred relating thereto. Said records shall be available to the SBWMA for review and copying during regular business hours at Contractor's place of business or as otherwise agreed upon by the parties.

Contractor will provide the SBWMA a detailed monthly report as described and exemplified in **Exhibit D**, Monthly Reporting to the SBWMA.

11. Safety

The Contractor will conduct operations of Compost Facility in a safe manner, in accordance with Applicable Law and insurance requirements provided in Article VI, Indemnity and Insurance.

12. Invoicing

On or before the 15th of each month, Contractor will invoice the SBWMA in amounts equal to the applicable Plant and Organic Materials Rates listed in **Exhibit C**. for the prior month's Plant and Organic Materials delivered to the Composting Facility. Invoices will be in a form satisfactory to SBWMA. All undisputed amounts shall be payable by SBWMA within 30 days of receipt of the invoice. For example, for processing provided in July, Contractor will invoice SBWMA on or before August 15 and payment will be due and payable by SBWMA on or before September 15. SBWMA shall, within five days of receipt of invoice, identify any disputed charges and communicate these to Contractor. Contractor may deliver to SBWMA a notice of late payment for a given monthly invoice thirty-five calendar days after the date of generation of the invoice. Contractor's invoices shall be deemed delinquent if not paid within five (5) calendar days of the

date of the notice of late payment. Thereafter, the delinquent invoice shall bear interest on the unpaid balance at a rate not to exceed one and one-third percent (1 1/3%) per month.

13. Right to Enter Facility and Observe Operations

The SBWMA and its designated representative(s) may enter, observe and inspect the Composting Facility at any time during operations, conduct studies or surveys of the Compost Facility, and meet with the manager(s) or his or her representatives at any time, provided that the SBWMA and its representatives comply with Contractor's reasonable safety and security rules and will not interfere with the work of the Contractor or its subcontractors. However, if the Compost Facility manager or other management personnel are not present at the Compost Facility when the SBWMA or its designated representative(s) visit without prior announcement, Contractor may limit the visit of the SBWMA or its designated representative to the public areas of the facility. In that event, Contractor will arrange for SBWMA or its designated representative(s) to return for a visit of the complete Compost Facility within 24 hours of the SBWMA's visit. Upon SBWMA direction, Contractor will make personnel available to accompany SBWMA employees on inspections. Contractor will ensure that its employees cooperate with the SBWMA and respond to the SBWMA's reasonable inquiries.

V. CONTRACTOR COMPENSATION

1. General

The Contractor will perform all of its obligations, responsibilities and duties under this Agreement, including paying costs associated with obtaining and complying with all Permits, and operating the Compost Facility in full compliance with Applicable Laws.

2. Processing Rate; Annual Rate Adjustments

The Contractor will be compensated on a per ton basis for Materials delivered by the Transfer Company and accepted by Contractor for Processing. Exhibit C (Rates) provides the initial Rates by Material Type. The Contractor shall be entitled to an annual rate adjustment as shown in Exhibit C. Such rates shall be increased annually as set forth in Exhibit C.

3. Special Rate Review and Adjustments

- a. Contractor may request a special review and adjustment of Rates, over and above the annual CPI-based adjustment set forth in Exhibit C, in the event that there is a change in Applicable Law.
- b. Contractor's request for a special review and adjustment of Rates shall specify the event or circumstance giving rise to the request, Contractor's reasonable additional costs arising from or related to such event or circumstance, and the change in the Rates that Contractor proposes to cover such additional costs.
- c. Contractor must submit its request for a special review and adjustment of Rates in a form and manner specified by SBWMA, together with required cost and operational data.
- d. In a special review under this Section, Contractor shall bear the burden of justifying to the SBWMA by substantial evidence the change in Applicable Law. If the SBWMA determines that the Contractor has not met its burden, it shall notify Contractor that it is prepared to deny Contractor's request for an increase in Rates. Within ten (10) days after such notice, Contractor may request a hearing before the SBWMA Board to produce additional evidence.
- e. Based on evidence presented to it, including, that submitted by Contractor, the SBWMA Board may grant some, all, or none of the requested increase.

- f. Contractor shall bear all reasonable costs incurred by SBWMA (including assistance provided to it by SBWMA) of a special review which it has requested. Costs of a review requested by Contractor may not be included in Contractor's Rates.

VI. INDEMNITY AND INSURANCE

1. Agreement Indemnification

a) Indemnification of the SBWMA

To the fullest extent allowed by law, Contractor hereby agrees to defend, indemnify, and save harmless the SBWMA, its boards, officers, employees and agents, from and against any and all claims, suits, actions, liability, loss, damage, expense, cost (including, without limitation, costs and fees of litigation) of every nature, kind or description, which may be brought against, or suffered or sustained by, the SBWMA, its boards, officers, employees, and agents caused by, or alleged to have been caused by, the negligence, intentional tortuous act or omission, or willful misconduct of the Contractor, its officers, employees, subcontractors or agents in the performance of any services or work pursuant to this Agreement.

b) Indemnification of Contractor

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

Contractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law.

The defense and indemnification obligations of this agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained within this Agreement.

2. Contractor Compliance

Contractor will comply with all requirements of Contractor's insurers and the insurance policies required under Article VI, Section 3 below. Carrying insurance will not relieve Contractor from any obligations under this Agreement. Nothing in this Agreement may be construed as limiting in any way the extent to which the Contractor may be held responsible for payments of damages to Persons or property resulting from Contractor's or any Subcontractors' performance of Services.

3. Insurance

Contractor shall not commence work under this Agreement until all insurance required under this Paragraph has been obtained. Contractor shall furnish SBWMA with certificates of insurance evidencing the required coverage. The SBWMA and its employees, directors, officers, agents, and member entities will be named as additional insured in the policy. These certificates shall specify or be endorsed to provide that thirty (30) days notice must be given, in writing, to the SBWMA office of any pending change in the limits of liability or of any cancellation or modification of the policy. The minimum amounts of coverage shall be as follows:

<u>Insurance Category</u>	<u>Minimum Limits</u>
Workers' Compensation	As Required by the Labor Codes of the State of California

Employer's Liability	\$1,000,000 per accident per accident, bodily injury, or disease
Commercial General Liability	\$2,000,000 per occurrence and \$5,000,000 aggregate for bodily injury, personal injury and property damage
Automobile Liability	\$2,000,000 per accident for bodily injury and property damage (coverage required to the extent applicable to Contractor's vehicle usage in performing services hereunder)
Environmental Impairment/ Pollution Liability	\$5,000,000 per claim and aggregate

It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to SBWMA as an Additional Insured. Furthermore, the requirements for coverage and limits shall be the greater of either (1) the minimum coverage and limits specified in this Agreement or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named Insured.

Contractor agrees to include with all subcontractors in their subcontracts the same requirements and provisions of this agreement including the indemnity and insurance requirements to the extent they apply to the scope of the subcontractor's work. Subcontractors hired by Contractor shall agree to be bound to Contractor and SBWMA in the same manner and to the same extent as Contractor is bound to SBWMA under this Agreement and its accompanying documents. Subcontractors shall further agree to include these same provisions with any sub-subcontractors. A copy of the indemnity and insurance provisions of this Agreement will be furnished to the Subcontractor upon request. Contractor shall require all subcontractors to provide a valid certificate of insurance and the required endorsements included in the subcontract agreement and will provide proof of compliance to SBWMA prior to commencement of any work by the subcontractor.

Concurrently with the execution of this Agreement, Contractor shall furnish SBWMA with certificates and copies of information or declaration pages of the insurance required hereunder and, with respect to evidence of commercial general liability and automobile liability insurance coverage, original endorsements:

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

The limits of insurance required in this agreement 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 benefit of SBWMA, to the extent required by this Agreement, before the

SBWMA's insurance or self-insurance may be called upon to protect SBWMA as a named Insured.

All self-insured retentions (SIR) must be disclosed to SBWMA for approval and shall not reduce the limits of liability coverage. 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 SBWMA.

SBWMA reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

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, the SBWMA at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

4. Workers' Compensation

Contractor certifies that he is aware of the provisions of the Labor Code of the State of California which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor certifies that he will comply with such provisions before commencing the performance of the work of this agreement.

VII. FAITHFUL PERFORMANCE BOND

1. Faithful Performance Bond

Contractor shall file with SBWMA a bond securing its faithful performance of its obligations under this Agreement within thirty (30) days of the date this Agreement is executed. The bond shall be in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) in a form acceptable to the SBWMA. The term of the bond shall be for five (5) years. It is the intention of this section that there be in full force and effect at all times a bond securing the Contractor's faithful performance of the Agreement, throughout its Term. The performance bond shall be executed by a surety company licensed to do business in the State of California and acceptable to the SBWMA having an "A-" or better rating by A. M. Best or Standard and Poor's, and included on the list of surety companies approved by the Treasurer of the United States. Failure to provide this bond within the timeframe called for by this section shall constitute a default and grounds for immediate termination of this Agreement.

VIII. DEFAULT AND TERMINATION

1. Default and Remedies

Each of the following shall constitute a default under this Agreement (a "Default"):

- A. Fraud or deceit.
- B. Failure to maintain insurance coverage described herein.
- C. Contractor violation of orders or filings of a regulatory body having a material impact on Contractor's ability to perform its obligations as required by this Agreement.
- D. Loss of any required operating "composting facility" permit (air, water, waste, etc.)
- E. Failure to perform Services as required by this Agreement for two (2) consecutive days or more or for any seven (7) days in a period of 30 days.
- F. Failure to divert and Process Plant and Organic Materials as provided in Article IV, Section 1 of this Agreement.
- G. Failure of Contractor to provide reports and/or records as provided for in this Agreement.
- H. Any act or omission by Contractor which violates the terms of this Agreement.
- I. Any false or misleading representation of Contractor.

- J. Filing of a voluntary petition for debt relief.
- K. Bankruptcy of Contractor.
- L. Contractor's failure to provide a performance bond within thirty (30) days of execution of this Agreement.

Upon any Contractor default, SBWMA may terminate or suspend this Agreement, in whole or in part. Such termination or suspension shall be effective thirty (30) days after SBWMA gives notice as provided in Section X, General Provisions, (3) Notice Procedures, except that the Agreement may be terminated or suspended in a shorter time period or immediately if the Contractor's default endangers the health, welfare and safety of the public. If Contractor fails to cure the Default within the timeframe shown in the Notice to terminate or suspend, the SBWMA may, at its option, terminate this Agreement.

2. Specific Performance

By virtue of the nature of this Agreement, the urgency of timely, continuous and high-quality service, the lead time required to effect alternative service, and the rights granted by SBWMA to Contractor, the remedy of damages for a breach hereof by Contractor is inadequate and SBWMA shall be entitled to injunctive relief.

3. Damages

Contractor shall be liable to SBWMA for all direct, indirect, special and consequential damages arising out of Contractor's default. This Section is intended to be declarative of existing California law.

4. SBWMA's Remedies Cumulative

SBWMA's rights to suspend or terminate the Agreement and to obtain specific performance are not exclusive, and SBWMA's exercise of one such right shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies that SBWMA may have, including a legal action for damages or imposition of liquidated damages.

5. Liquidated Damages

The Parties acknowledge that performance by Contractor is of utmost importance and SBWMA has considered and relied on Contractor's representations as to its quality of service commitment in entering into this Agreement. The Parties further recognize that quantified standards of performance are necessary and appropriate to ensure consistent and reliable service. The Parties further recognize that if Contractor fails to perform, SBWMA and its residents will suffer damages and that it is and will be impracticable and extremely difficult to ascertain and determine the exact amount of damages that SBWMA will suffer. Therefore, the Parties agree that liquidated damages in the amount of \$5,000 per day represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to SBWMA that reasonably could be anticipated and recognition that proof of actual damages would be costly or inconvenient. By initialing the places provided, each Party specifically confirms the accuracy of the statements made above and the fact that each Party had ample opportunity to consult with legal counsel and obtain an explanation of this liquidated damage provision at the time that this Agreement was made.

Contractor Initial Here: _____ Agency Initial Here: _____

Contractor agrees to pay (as liquidated damages and not as a penalty) the amount set forth.

SBWMA's right to recover liquidated damages for Contractor's failure to meet the service performance standards shall not preclude Agency from obtaining equitable relief for persistent failures to meet such standards nor from terminating the Agreement for such persistent failures.

6. Segregated Commercial Food Scraps Termination

The SBWMA reserves the right to terminate processing services of segregated Commercial Food Scraps only with written notice to the Contractor of not less than ninety (90) days.

IX. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

1. Legal Status

Contractor is a corporation or LLC organized and operating under the laws of the State of California.

2. Authorization

Contractor represents and warrants that it has the authority to enter into and perform its obligations under this Agreement. The Contractor has taken all actions required by law to authorize the execution of this Agreement. The person signing this Agreement on behalf of Contractor has authority to do so.

3. Agreement Will Not Cause Breach

To the best of Contractor's and SBWMA's knowledge, after reasonable investigation, neither the execution or delivery of this Agreement, nor the performance of this Agreement: (i) conflicts with, violates, or results in a breach of any applicable law; or (ii) conflicts with, violates, or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency, or other governmental authority, or any agreement or instrument to which Contractor or SBWMA is a party or by which Contractor or SBWMA or any of its properties or assets are bound, or constitutes a default thereunder.

5. No Litigation

To the best of Contractor's knowledge, after reasonable investigation, there is no action, suit, proceeding, or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency, or instrumentality decided, pending, or threatened against Contractor wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by Contractor of its obligations hereunder or which, in any way, would adversely affect the validity or enforceability of this Agreement or which would have a material adverse effect on the financial condition of Contractor or any surety guaranteeing Contractor's performance under this Agreement, which has not been waived by the SBWMA in writing.

6. Ability to Perform

Contractor possesses the business, professional and technical expertise to manage, handle, treat, store, process, and recycle Plant and Organic Materials, and possesses the equipment, plant, and employee resources required to perform this Agreement.

X. GENERAL PROVISIONS

1. Entire Agreement

This Agreement represents the full and entire Agreement between the SBWMA and Contractor with respect to the matters covered herein.

2. Force Majeure

Contractor shall not be in default under this Agreement in the event, and for so long as, it is impossible or extremely impracticable for it to perform its obligations due to any of the following reasons: riots, wars, sabotage, civil disturbances, insurrection, explosion, natural disasters such as floods, earthquakes, landslides, fires, and volcanic eruptions, strikes, lockouts and other labor disturbances or other catastrophic events which are beyond the reasonable control of Contractor.

the following: employment, advancement, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor shall at all times be in compliance with the requirements of the Federal Americans With Disabilities Act (Public Law 101-336) which prohibits discrimination on the basis of disability by public entities. Contractor agrees to post in conspicuous places available to employees and applicants for employment any notices provided by SBWMA setting forth the provisions of this non-discrimination clause.

6. Severability

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Agreement or any part thereof is, for any reason, held to be illegal, such decision shall not affect the validity of the remaining portions of this Agreement or any part thereof.

7. Waiver or Modification

No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of both parties to this Agreement.

8. Governing Law

This Agreement shall be governed by the laws of the State of California and any suit or action initiated by either party shall be brought in the County of San Mateo, California. In the event of litigation between the parties hereto to enforce any provision of the Agreement, the unsuccessful party will pay the reasonable attorney's fees and expenses of litigation of the successful party.

9. Mediation

Should any dispute arise out of this Agreement, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. Neither party shall be permitted to file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution. The costs of the mediator, if any, shall be paid equally by the parties. If a mediated settlement is reached neither party shall be deemed the prevailing party for purposes of the settlement and each party shall bear its own legal costs.

10. Court Costs and Attorney Fees

In the event legal action is instituted by either party to enforce this Agreement, the prevailing party shall be entitled to reasonable attorney fees and actual costs in connection with such action.

11. Counterparts and Facsimile Signatures

This Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall be deemed a single document. For purposes of this Agreement, each of the signatories hereto agrees that a facsimile copy of the signature page of the person executing this Agreement shall be effective as an original signature and legally binding and effective as an execution counterpart thereof.

12. Non-Assignment

This Agreement is not assignable either in whole or in part.

13. Conflict of Interest

Contractor may serve other clients, but none that would place Contractor in a "conflict of interest" as that term is defined in State law.

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 foregoing (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, 4th 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 15th 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.

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