



**AGREEMENT FOR
ORGANICS
PROCESSING SERVICES**

between

**South Bayside Waste Management
Authority**

&

Successful Proposer

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AGREEMENT FOR ORGANICS PROCESSING SERVICES

This Agreement is made and entered into as of the 1st day of January, 2025 by and between the **South Bayside Waste Management Authority** a California Joint Powers Authority hereinafter "**SBWMA**", and **Successful Proposer, Inc.**, a 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, 2025 and shall continue for a period of five (5) years, terminating on December 31, 2029. The Agreement may be extended for up to two years upon written amendment to this Agreement executed by the Parties no later than July 31, 2031.

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:

Insurance Category

Minimum Limits

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 forgoing (whether or not in related or contemporaneous transactions) which has the effect of any that transfer or change of Ownership or control of Contractor.

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

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

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

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

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

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

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

Contractor Default has the meaning provided in Article VIII.

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

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

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

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

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

Holidays are defined as New Year's Day, Labor Day, 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.

b) Annual Rate Adjustments

Rates will be adjusted annually as shown below, effective January 1 of each year of the term, including extensions. Commencing January 1, 2025 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.

Form C				
COMPOST PURCHASE PRICE				
Finished Compost Purchase Price (FOB Compost Facility)	Up to 1,000 tons/yr	1,001-5,000 tons/yr	Over 5,000 tons/yr	
Price Quote	_____per ton	_____per ton	_____per ton	

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.

d) Additional Compost Procurement Pricing

The SBWMA will be aiding the Member Agencies of the SBWMA to comply with SB1383 and the procurement of compost to meet SB1383 requirements. While the quantities of needed compost are not yet known, the SBWMA is requesting pricing for compost product that can be back-hauled by SBI to the Member Agencies. Towards this end, proposers are requested to provide pricing based on a percentage of wholesale on compost product in the event that additional compost quantities (over the 2,000 tons/year of free compost already included in the contract) needs to be procured throughout the contract term. Contractor will not be responsible for the costs of delivery of finished product to either the Shoreway Environmental Center or the a location designated directly by a Member Agency of the South Bayside Waste Management Authority. Compost quality will meet the U.S. Compost Council Seal of Testing Assurance

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.