Rethink waste
South Bayside Waste Management Authority
A Public Agency

SHOREWAY OPERATIONS AND CONTRACT MANAGEMENT

Agenda Item 7

7A

STAFF REPORT

To:	SBWMA Board of Directors
From:	Joe La Mariana, Executive Director Hilary Gans, Principal Engineer, Sr. Operations Manager Cyndi Urman, Senior Management Analyst
Date:	June 27, 2024 Board of Directors Meeting
Subject:	Resolution Authorizing the Executive Director to Execute an Organics Processing Agreement with Browning-Ferris Industries of California, Newby Island 2025-2029

Recommendation

It is recommended that the SBWMA Board of Directors approve Resolution No. 2024-21 authorizing the Executive Director to execute an Agreement for Organic Materials Processing Services with Browning-Ferris Industries of California, Inc. Newby Island Facility beginning January 1, 2025 through December 31, 2029.

Summary

The Agreement for Organic Materials Processing Services with Browning-Ferris Industries (BFI) of California, Inc. (acquired by Republic Services but remains branded as "BFI") at the Newby Island Facility (Newby Island) expired on December 31, 2022. Two, one-year options have been exercised under the current contract and the final expiration is December 31, 2024. An RFP process was conducted in March and April 2024 that resulted in two qualified companies proposing composting services for the SBWMA with Browning-Ferris of California, Inc (Newby Island, or Newby)" being low-bidder. Due to Newby's lower cost, closer distance, and demonstrated historical performance; staff recommends that the agency continue composting services with Newby and that the Board approve a new 5-year Agreement (plus 2-one-year optional extensions).

Background

The SBWMA currently generates approximately 110,000 tons per year of source-separated compostable (green cart) materials from residential, multi-family, and commercial collection programs, which represents about 25% of the total volume of materials that flows through the Shoreway Facility.

- Prior to 2008, Allied Waste was responsible for providing organic materials transportation and organics processing services at Newby Island.
- On April 22, 2010, the Board approved four-year agreements with Newby Island and Recology-Grover for Organic Materials Processing Services that expired on December 31, 2014. Both composting services agreements were renewed in 2014: one with Newby through 2017 and one with Recology through 2020.
- On September 28, 2017, the Board approved a new 5-year Agreement (plus 2-one-year optional extensions) with BFI Newby Island.
- On June 25, 2020, the Board approved a five-year agreement with Recology Blossom Valley Organics-North (BVON) (formerly known as "Grover") through December 31, 2025.
- On June 23, 2022, the Board approved executing the 2-one-year optional extensions with BFI Newby Island which expire on December 31, 2024.

Analysis

Currently organic materials are collected in the SBWMA Member Agency's service areas by Recology and delivered to the Shoreway Facility where they are loaded onto transfer trailers and transported by SBI to two compost facilities BFI's Newby Island composting facility (Newby) in San Jose and the Recology BVON compost facility in Vernalis. The contract for composting services at Newby will expire on December 31, 2024. In March and April, Staff conducted an RFP for Composting Services and distributed an RFP to the four qualified regional commercial organics processing facilities within trucking distance of the Shoreway Facility. Proposals were received from two Composting companies – BFI's Newby and Recology's-BVON..

As presented to the Board in the past, the lack of compost facilities and the difficulty of permitting new facilities has led to an extreme shortage of industrial-scale compost processing with available permitted capacity in the greater bay area/NorCal region. Increased capacity is necessary to process and manage the large amount of organic materials generated and diverted by Bay Area cities. The industry expects this gap in compost processing capacity to increase even further as organic materials collection volumes are being mandated to increase through compliance with California's Senate Bill (SB) 1383's implementation.

Given the increasing market ant supply of organics collection materials and the lack of new regional compost facility development the fact that the Agency received only two proposals was predictable.

In the cost evaluation analysis below, the Newby proposal is the lowest qualified bid. Additionally, Newby can process up to 60,000 tons of organic material for processing, the full amount requested in the RFP. The BVON proposal included pricing for an additional 154 tons per day (up to 40,000 tons per year) of residential organics material only in addition to the material that facility processes now as part of the agreement that expires at the end of 2025.

Cost Evaluation

While the two proposals' costs per ton are remarkably close when current transportation rates are factored in ($131.02/134.62 for Newby and $133.65/$183.40 for BVON), there are additional relevant cost factors to consider that provide important clarity for determining the staff recommendation. (Table 1) shows the current rates, the proposed rates and the transportation costs based on the 2024 actual cost. The total annual cost for Newby with the proposed 2025 rates (based on 2024 actual tons and transportation costs) is $7,268,775.73 versus $8,266,598.99 for BVON – a net difference of $997,823.26 per year.

Table 1.

Processing Facility	Tip Fee	Transportation Cost per ton (2024)	Total Cost Per Ton	Tons based on 2023 Actuals)	Total Annual Cost
Newby 2024 Rate	$ 102.28	$ 23.02	$ 125.30	$ 55,000.00	$ 6,891,500.00
Newby 2025 Proposed Rate (Residential Green Waste)	$ 108.00	$ 23.02	$ 131.02	$ 36,483.20	$ 4,780,028.86
Newby 2025 Proposed Rate (Commercial Organics)	$ 108.00	$ 26.62	$ 134.62	$ 18,487.20	$ 2,488,746.86
Total Proposed 2025 Costs (Estimated)					$ 7,268,775.73
Newby is 25.3 Miles from Shoreway					
BVON 2024 Residential Green Waste	$ 78.04	$ 55.61	$ 133.65	$ 36,483.70	$ 4,876,046.51
BVON 2025 Proposed Rate Residential Green Waste	$ 78.04	$ 55.61	$ 133.65	$ 36,483.70	$ 4,876,046.51
Residential Green Waste for loads over 5% contamination	$ 127.79	$ 55.61	$ 183.40	$ 18,487.20	$ 3,390,552.48
Additional Per Load Charge for Contaminated Loads					$ 621.98
Total Proposed 2025 Costs (Estimated)					$ 8,266,598.99
BVON did not propose an additional Commercial Organics Capacity BVON is 72.5 Miles from Shoreway					

Other significant cost factors to consider include the substantial increase in cost per ton and the per load charge if a contaminated load is delivered BVON. Furthermore, SBI would need to purchase additional trucks to ship the additional tons to BVON due to the long distance and these costs will also be incurred by our ratepayers.

Purchase of finished compost evaluation

The current BVON agreement and the proposed Newby agreement include a total of 2,000 tons each of finished compost to be delivered back to the Member Agencies each year. Based on San Mateo County Sustainability Staff's calculations, it is estimated that to meet the SB 1383 requirements (assuming no legislative changes) Member Agencies would collectively need to procure 21,857 tons of finished compost each year. Even though the BVON price of $9 per ton of finished compost is significantly cheaper than the Newby price of $20 to $24 per ton, the SBWMA would have to purchase more than 90,000 tons per year to make up the transportation cost differential (Table 2).

Table 2

FINISHED COMPOST PURCHASE PRICE COMPARISON			
	Purchased Tons	Price per Ton	Total Price per Ton (Purchase + Trans)
Newby	Up to 999	$24.00	$27.26
	1000 to 4,999	$22.00	$25.26
	5000 tons or more	$20.00	$23.26
BVON	1000 Tons or less		
	1001 to 5000 Tons		
	5000 tons or more	$9.00	$12.45
Notes:			
Compost backhaul from:	Newby is $78.25/load		
	BVON is $82.85/load	To equal the $997,823.26 processing cost difference, the required tons needed to be purchased is 92,320 tons	
Assumes each backhaul load is 24 tons			

Quality of Service Evaluation

For the past 14 years and during the term of the current composting agreement, Newby has provided reliable composting services to the SBWMA. The Shoreway facility operator has been able to transport organics to this facility without problem and has not had problems turning trucks around quickly.

Permits: Newby has permits in good standing with the regulatory agencies and the facility is permitted to compost the material types and tons proposed in the Agreement.

Product Markets: Newby operates a large composting facility with well-established markets for compost product and has not had problems marketing finished compost product.

Diversion: Newby has a landfill that can accept compost overs/residual if the biomass markets are unable to take this material for use as fuel.

Evaluation of Other Factors

Given the SBWMA's large volume of organic materials staff feels that it is important to maintain a diversity of outlets for organic materials processing. Should one processing facility experience a shutdown, there is an option to transport material to the second. Therefore, Staff is recommending execution of a new contract and continue services with Newby. The goal will continue to be to split the composting processing services between two processors - both receiving roughly half of the total organic material tonnage approximately 110,000 tons per year currently and expected to increase with further as compliance with SB 1383 increases.

The Ad-Hoc Review committee of TAC Members Jack Johnson (San Mateo), Sergio Ramirez (West Bay Sanitary District), and Gordon Tong(County of San Mateo) along with Board Members at the March 2024 retreat and historically at additional meetings have expressed concerns about the amount of plastic contamination in the organics (and Recycling) being collected by Recology in the commercial stream. The issue of contamination has become salient in the RFP for new composting services because there are higher tip fees proposed for contaminated organics and because plastic contamination persisting through the compost process taints the finished compost product. Both problems are a serious concern and seem to only be getting worse as the increase in organic material collected attributed to (SB) 1383 compliance is food waste (commercial organics). Residential organics have low levels of contamination by comparison.

The SBWMA is committed to protecting the compost markets and working to keep plastic contamination out of loads being sent to our compost service providers and has a staff position focused on 1383 compliance and

maximizing the quantity and purity of the food waste collected from commercial generators in the services area. Areas that the SBWMA can act to reduce contamination include:

1) Work with Recology to educate commercial generators about contamination in the organics carts;
2) Monitor and enforce the 10% contamination limits established within the Franchise Agreement;
3) Reactivate the Organics to Energy processing equipment that is designed to remove plastics and other contamination and direct the slurry to waste water treatment facilities rather than composting.

Contract Language

The Ad-Hoc Review committee directed staff to approach Newby about three potential contract points.

1) Finished Compost purchase price - Due to the large discrepancy in finished compost price between the two proposers, the committee asked staff to discuss the potential for reduction in the proposed finished compost price. As a result of that the recommended contract with BFI Newby includes reduced finished compost purchase pricing as follows:

Cost Per Ton of Finished Compost			
Newby Finished Compost to come back to the SBWMA Member Agencies	Purchased Tons	Final Price per Ton	Original Price in RFP Response
	Up to 999	$24.00	$30.00
	1000 to 4,999	$22.00	$24.00
	5000 tons or more	$20.00	$20.00

2) Contamination – The committee asked staff if it was possible to put language in the agreement regarding cleaning up the material to remove contamination. Legal Counsel advised that this point was not in the original RFP language, and would result in the need for additional cost proposal from only one bidder making it unfair to the other bidder. Counsel advised against negotiating for this language being added to the contract.
3) Direct Service Provider Language – Some California cities have Direct Service Provider Agreements as part of their organics processing agreements. These service provider agreements allow those cities to get 1383 procurement credit for any compost that the facility sells to the agricultural community. The committee directed staff to see if it was possible to add direct service provider language to the agreement, and if not possible to add this language to the 2025 RFP for organics processing services. As a result, of the discussion BFI Newby Island has agreed to add language to the contract such that of the 2,000 total tons of finished compost allocated to SBWMA per each year of the agreement term, up to 500 of these tons may be given away to 3rd party recipients by way of a direct service provider agreement. Such direct service provider agreement shall be made available to SBWMA in lieu of the physical delivery of finished compost material to SBWMA and its Member Agencies as previously described in the contract. The remaining balance of the 2,000 annual tons of finished compost material shall be physically received by SBWMA. The change in contract language can be found in the attached Exhibit A - Proposed Organics Processing Agreement between the SBWMA and Browning Ferries Inc Newby Island Facility in Exhibit B section 8, and Exhibit C.

A final proposed contract with all contract changes is included as Exhibit A to this staff report.

Fiscal Impact

The total tip fee and transportation cost for the approximately 55,000 tons of organic material that will be processed at the Newby facility will be approximately $7,268,559.91. This is a 5.47% increase over current rates. An evaluation of the impact this change will have on the overall budget will be discussed during the mid-year budget review (agenda item 5B) at the June 25, Board of Directors meeting where staff will provide the Board recommendations for setting Shoreway gate fees in 2025.

Attachments:

Resolution 2024-21

Exhibit A – Proposed Organics Processing Agreement between the SBWMA and Browning Ferries Inc Newby Island Facility

RESOLUTION NO. 2024-21

RESOLUTION OF THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY BOARD OF DIRECTORS AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE AN ORGANICS PROCESSING AGREEMENT WITH BROWNING-FERRIS INDUSTRIES OF CALIFORNIA INC. NEWBY ISLAND FACILITY

WHEREAS, the South Bayside Waste Management Authority's (SBWMA) contract with Browning-Ferris Industries of California Inc.(BFI) Newby Island Facility expires on December 31, 2024; and

WHEREAS, the SBWMA issued an RFP for these services on March 11, 2024 resulting in two qualified proposals; and

WHEREAS, Browning-Ferris Industries of California Inc.(BFI) Newby Island Facility is the low bidder, and

WHEREAS, the SBWMA has negotiated an Organics Processing Agreement with Browning-Ferris Industries of California Inc.(BFI) Newby Island Facility. attached hereto as Exhibit A, which will provide the highest quality Services for the SBWMA and its Member Agencies.

NOW, THEREFORE BE IT RESOLVED that the SBWMA Board of Directors hereby authorize that the Agreement with Browning-Ferris Industries of California Inc.(BFI) Newby Island Facility attached hereto as Exhibit A is approved and the Executive Director is authorized to execute the Agreement.

PASSED AND ADOPTED by the Board of Directors of the South Bayside Waste Management Authority, County of San Mateo, State of California on the 27th day of June, 2024, by the following vote:

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

I HEREBY CERTIFY that the foregoing Resolution No. 2024-21 was duly and regularly adopted at a regular meeting of the South Bayside Waste Management Authority on June 27, 2024.

ATTEST:
SBWMA

Adam Rak, SBWMA Board Chairperson

Cyndi Urman, Board Secretary

AGREEMENT FOR ORGANICS PROCESSING SERVICES

between

South Bayside Waste Management Authority

&

Browning-Ferris Industries of California, Inc.

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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 Browning-Ferris Industries of California, Inc., 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.

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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 herein has been obtained. Contractor shall furnish SBWMA with ACORD 25 certificate(s) of insurance evidencing the required coverage as stated herein. The SBWMA and its employees, directors, officers, agents, and member entities will be named as additional insured in the policy(ies), except Workers Compensation/Employer's Liability, via blanket-form endorsement, These certificate(s) shall be supplemented with a blanket-form notice of cancellation endorsement to provide that thirty (30) days notice must be given, in writing, to the SBWMA office of any cancellation, non-renwal or material modification of the policy(ies) except Woker's Compensation/Employer's Liability. 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 aggregate	$2,000,000 per occurrence and $5,000,000 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)
Contractor's Pollution Liability aggregate	$5,000,000 per contamination incident and

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 if applicable. 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 time fame 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.

Before assessing Liquidated Damages, the Authority shall give Contractor notice of its intention
to do so. The notice will include a brief description of the incident(s) and non-performance. The
Authority may review (and make copies at its own expense) all information in the possession of

Contractor relating to incident(s) and/or non-performance. Contractor may, within ten (10) Business Days after receipt of notice, request a meeting with the Authority. The Authority may present evidence of non-performance in writing and through testimony of its employees and others relevant to the incident(s) and non-performance. The Authority will provide Contractor with a written explanation of its determination on each incident(s) and non-performance prior to authorizing the assessment of Liquidated Damages under this Section 11.07. Should such notice of the Authority intention to assess Liquidated Damages exceed thirty thousand dollars ($30,000) in total, Contractor may within ten (10) Business Days of receipt of such notice request the opportunity to meet with the Authority's Executive Director and Facility Manager to respond to the intended assessment. If Contractor has made such request within the required timeframe, the intended assessment of Liquidated Damages will not be imposed on Contractor until Contractor has been afforded the opportunity to respond to the intended assessment. In such case, the decision of Authority's Executive Director and Facility Manager shall be final, Contractor shall not be subject to, or required to exhaust, any further administrative remedies, and Contractor shall have the right the present it's claim in a court of competent jurisdiction.

Contractor Initial Here: ___ Agency Initial Here: ____

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

6. 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. 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. Labor unrest, including but not limited to strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by Contractor's employees or directed at Contractor is not an excuse from performance, provided, however, that labor unrest or job action directed at a third party over whom Contractor has no control, shall excuse performance.

Contractor must (i) have taken reasonable precautions to avoid being affected by the cause, and
(ii) notify the other party in writing within 5 days after the occurrence of the event specifying the nature of the event, the expected length of time that the party expects to be prevented from performing, and the steps which the party intends to take to restore its ability to perform.

3. Notice Procedures

All notices, demands, requests, proposals, approvals, consents, and other communications which this Agreement requires, authorizes, or contemplates shall be in writing and shall either be personally delivered to a representative of the Parties at the address below, e-mailed to the e- mail address below, or faxed to the fax number below, or sent via certified mail or Federal Express, or deposited in the United States mail, first class postage prepaid, addressed as follows:

SBWMA: **South Bayside Waste Management Authority**
Joe La Mariana, Executive
Director 610 Elm Street, Suite
202
San Carlos, CA 94070
Phone: (650) 802-3500
Fax: (650) 802-3501

Contractor: Browning Ferris Industries of Califorma
1601 Dixon Landing Road
Milpitas, CA 95035

Attention: Enrique Perez, General Manager

The address to which communications may be delivered may be changed from time to time by a notice given in accordance with this Section.

Notice shall be deemed given on the day it is personally delivered, e-mailed, or faxed, or, if mailed, three calendar days from the date it is deposited in the mail.

4. Independent Contractor

Contractor is an independent contractor and not an officer, agent, servant or employee of the SBWMA. Contractor is solely responsible for the acts and omissions of its officers, agents, employees and subcontractors, if any. Nothing in this Agreement shall be construed as creating a partnership or joint venture between the SBWMA and Contractor. Neither Contractor nor its officers, employees, agents or subcontractors shall obtain any rights to retirement or other benefits which accrue to SBWMA employees.

5. Non-Discrimination

Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Contractor will take affirmative action to insure that applicants are employed and the employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, advancement, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. 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:_____, 2024 **BY:_____**
Joe La Mariana,
SBWMA EXECUTIVE DIRECTOR

DATED:_____, 2024 **BY:_____**
SBWMA BOARD CHAIR

ATTEST:

DATED_____, 2024 **_____**
Cyndi Urman,
SBWMA BOARD SECRETARY

APPROVED AS TO FORM:

DATED_____, 2024 **_____**
Jean Savaree,
SBWMA LEGAL COUNSEL

CONTRACTOR:

DATED: June 20th **, 2024** **BY:** Paul Enrique Perez
Enrique Perez, General Manager Browning Ferris Industries of California

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) o f 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 defiend 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 up to 2,000 tons of finished Compost free of charge to Member Agencies of bulk Compost (tons). Contractor will not be responsible for the transportation of, nor the costs of delivery, of finished product to any location including the Shoreway Environmental Center. Of the 2,000 total tons of finished compost allocated to SBWMA per each year of the agreement term, up to 500 of these tons may be given away to 3rd party recipients by way of a direct service provider agreement. Such direct service provider agreement shall be made available to SBWMA in lieu of the physical delivery of finished compost material to SBWMA and its Member Agencies as described **Exhibit C** The remaining balance of the 2,000 annual tons of finished compost material shall be physically received by SBWMA Any finished compost material requested by SBWMA above the 2,000 tons per contract year, shall be made available to SBWMA and its Member Agencies by either the same physical delivery procedures outlined in this Exhibit and Exhibit C or by way of a direct service provider agreement Compost quality will meet the U.S. Compost Council Seal of Testing Assurance .
9. Receive organic materials delivered by the Shoreway Operator (SBI) 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 outlined in the table below.

Material Type	Tip Fee (2025)
Residential Green Waste	$ 108.00
Commercial Organics	$ 108.00

b) Annual Rate Adjustments

Rates will be adjusted annually, 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. Annual increases will be no less than 3.2% annually.

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 and Policy

1) **Purpose**. Contractor shall assist SBWMA with the procurement of finished compost and documentation of a written credit to be provided to SBWMA for the use, or giveaway, of finished compost by Contractor. This procurement assistance shall be for the benefit of (1) the City of Belmont, (2) the City of Burlingame, (3) the City of East Palo Alto, (4) Foster City, (5) The City of Hillsborough, (6), The City of Menlo Park, (7) Redwood City, (8) The City of San Carlos, (9) The City of San Mateo, (10) The West Bay Sanitary District, (11) Unincorporated San Mateo Co., California ("the SBWMA Member Agencies") in order to allow SBWMA to assist its Member Agencies with meeting their organic materials respective procurement targets for compliance with Senate Bill 1383 and its implementing regulations ("SB 1383"). For purposes of allocating credits for compost used and/or given away, SBWMA shall provide written direction to Contractor regarding the specific SBWMA Member Agencies or Cities that will be provided credits for purchased compost that is used or given away.

2) **Procedures and Conditions**. Contractor shall provide SBWMA with the written credit for the procured compost for the benefit of the SBWMA Member Agency(ies) designated by SBWMA. The annual compost procurement services shall be subject to the following

conditions:

- Up to 2,000 total tons of finished compost shall be allocated to SBWMA per each year of the agreement term.
- Any finished compost material requested by the SBWMA from 1 to 2,000 tons per contract year shall be allocated at no additional charge to the SBWMA or its Member Agencies.
- Contractor will not be responsible for the transportation of, nor the costs of delivery, of finished product to either the Shoreway Environmental Center or to a location designated directly by a Member Agency of the SBWMA.
- Any finished compost material requested by SBWMA above the 2,000 tons per contract year shall be in accordance with the per ton rates outlined further in this Exhibit.
- Of the 2,000 total tons of finished compost allocated to SBWMA per each year of the agreement term, up to 500 of these tons may be given away to 3rd party recipients by way of a direct service provider agreement. Such direct service provider agreement shall be made available to SBWMA in lieu of the physical delivery of finished compost material to SBWMA and its Member Agencies as previously described in this Exhibit. The remaining balance of the 2,000 annual tons of finished compost material shall be physically received by SBWMA.
- Any finished compost material requested by SBWMA above the 2,000 tons per contract year, shall be made available to SBWMA and its Member Agencies by either the same physical delivery procedures outlined in this Exhibit or by way of a direct service provider agreement.
- Compost quality will meet the U.S. Compost Council Seal of Testing.

3) **Disposition and Reporting Documentation**. For all finished compost SBWMA purchases, Contractor shall provide SBWMA with the credit identified on section 1, a written record of the transportation and disposition of the compost material for the benefit of the designated SBWMA Member Agency(ies) to facilitate SBWMA's documentation to be provided to SBWMA Member Agency(ies) for SB 1383 recovered organic waste product procurement compliance in accordance with the SB 1383 Regulations at 14 CCR Division 7, Chapter 12, Article 12 – Procurement of Recovered Organic Waste Products (14 CCR 18993.1 et seq.). Contractor shall maintain and provide to SBWMA quarterly and annual written reports, including weight tickets, conversion ratios and methods, bills of lading and/or shipping manifests sufficient to demonstrate the amount of compost generated and that the compost generated was used or given away solely for the benefit of the SBWMA Member Agency(ies), as directed by SBWMA from time to time in writing. Contractor shall provide such records on a quarterly basis by the 15th of the month following the end of a quarter, and the final quarterly report and an annual summary record by January 15 of each year following the reporting year.

4) **Pricing for additional compost** is listed in the table below:

COMPOST PURCHASE PRICE (by ton)				
Finished Compost Purchase Price (FOB Compost Facility)	**Up to 999 tons/yr**	**1,000-4,999 tons/yr**	**Over 5,000 tons/yr**	
Price Quote	**$24.00 per ton***	**$22.00 per ton***	**$20.00 per ton***	

*Compost purchase prices (by ton) are subject to the annual rate adjustment procedures included in Exhibit C. Section b) Annual rate Adjustments.

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.

7B

STAFF REPORT

To:	SBWMA Board Members
From:	Hilary Gans, Principal Operations & Engineering Manager Joanne Nghiem, Associate Engineer
Date:	June 27, 2024 Board of Directors Meeting
Subject:	Resolution Approving a Contract with Tanner Pacific for Construction Management Services for the Underground Storage Tank Project for a Not to Exceed Amount of $206,683

Recommendation

Staff recommends that the Board of Directors approve Resolution No. 2024-22 for a contract in an amount not to exceed $206,683-with Tanner Pacific for construction management services for the Underground Storage Tank Project.

Summary

On June 22, 2023, the Board awarded a contract with CONSTRUCTION CORP (CIC) for a NTE amount of $2,423,964 for the Underground Fuel Storage Tank (UST) Removal and Replacement project. The project is estimated to be completed in February 2025. To assist Staff in managing the technically detailed construction and closeout of the UST project, Staff is recommending the approval of a contract in the amount of $206,683 with Tanner Pacific to provide construction management services through project completion.

Background and Analysis

Senate Bill (SB) 445 requires that all single wall USTs like the ones at the Shoreway Environmental Center (SEC) must be removed and replaced with new double-wall tanks on or before December 31, 2025. On April 27, 2023, an RFP for the Underground Fuel Storage Tank Removal and Replacement Project was issued. Staff held the mandatory pre-bid conference on May 10, 2023, that seven companies attended, including CIC. One bid was received on June 5, 2023, from CIC for a total bid amount of $2,423,964. Staff, with technical support from Tanner Pacific, reviewed the submitted bid documents against the Contract Documents, including performing a reference check. This process found CIC (an affiliate of TecAccutite, a company that has a long history provide tank compliance monitoring of the SEC system) to be fully satisfactory. On June 22, 2023, the Board approved a contract with CIC to complete the work on the UST Removal And Replacement project.

Tanner Pacific was hired for pre-construction management services to provide Staff with technical expertise in the preparation of contact documents and to advise on the bidding, selection, and award process. Tanner Pacific has relevant project management expertise with UST removal at Silicon Valley Clean Water's Redwood Shores facility. Tanner Pacific has been a valuable resource to Staff in managing construction schedules, change orders and permitting requirements.

Fiscal Impact

The construction management services in the amount of $206,683 with Tanner Pacific to provide construction management services will be added to the capital cost of the project. The cost of the UST project are being drawn from the underground storage tank replacement reserve which was created from legacy ground water clean up

project funded by BFI ($1,233,640) and the agency's capital reserves. These funds have been designated/protected for the past 14 years in anticipation of this work.

Attachments:

Resolution 2024-22

Exhibit A – Contract Agreement with Tanner Pacific for Construction Management Services related to the Underground Fuel Storage Tank Removal and Replacement Project

RESOLUTION NO. 2024-22

RESOLUTION OF THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY BOARD OF DIRECTORS APPROVING RESOLUTION APPROVING A CONTRACT WITH TANNER PACIFIC FOR CONSTRUCTION MANAGEMENT SERVICES FOR THE UNDERGROUND STORAGE TANK PROJECT FOR A NOT TO EXCEED AMOUNT OF $206,683

WHEREAS, Senate Bill (SB) 445 requires that all single wall USTs like the ones at the Shoreway Environmental Center (SEC) must be removed and replaced with new double-wall tanks on or before December 31, 2025; and

WHEREAS, the SBWMA Board approved a contract with CIC for the Underground Fuel Storage Tank Removal and Replacement Project on June 22, 2023 for a NTE amount of $2,423,964; and

WHEREAS, the SBWMA Staff is seeking construction management services from Tanner Pacific, a qualified consultant engineering firm; and

WHEREAS, Tanner Pacific has provided a cost proposal of $206,683 for construction management services through project completion; and

NOW, THEREFORE, BE IT RESOLVED that the South Bayside Waste Management Authority approve a contract with Tanner Pacific to provide construction management services for the Underground Fuel Storage Tank Removal and Replacement Project with a NTE Amount of $206,683.

PASSED AND ADOPTED by the Board of Directors of the South Bayside Waste Management Authority, County of San Mateo, State of California on the 27th day of June, 2024, by the following vote:

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

I HEREBY CERTIFY that the foregoing Resolution No. 2024-22 was duly and regularly adopted at a regular meeting of the South Bayside Waste Management Authority on June 27, 2024.

ATTEST:

Adam Rak, Chairperson of SBWMA

Cyndi Urman, Clerk of the Board

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PROFESSIONAL SERVICES AGREEMENT
FOR
CONSTRUCTION MANAGEMENT SERVICES
UNDERGROUND STORAGE TANKS REMOVAL PROJECT

This Agreement is made and entered into as of the 28th of June, 2024 by and between the SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY hereinafter called "AUTHORITY" and Tanner Pacific, Inc. hereinafter called "CONSULTANT".

RECITALS

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

A. That AUTHORITY desires to engage CONSULTANT to provide professional services;

B. That CONSULTANT is qualified to provide such services to the AUTHORITY and;

C. That the AUTHORITY has elected to engage the services of CONSULTANT upon the terms and conditions as hereinafter set forth.

1. Services. The services to be performed by CONSULTANT under this Agreement shall include those services set forth in Exhibit A, attached hereto and, by this reference, made a part hereof ("Services").

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

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

2. Term. The term of this Agreement shall commence upon the date hereinabove written through November 1, 2025, unless terminated earlier pursuant to Section 10 of this Agreement.

3. Schedule. Time is of the essence in the performance of Services under this Agreement. CONSULTANT shall complete the Services within the term of this Agreement and in accordance with the schedule set forth in Exhibit A. Any Services for which times for performance are not specified in this Agreement shall be commenced and completed by CONSULTANT in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the CONSULTANT. AUTHORITY'S agreement to extend the term or the schedule for performance shall not preclude

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recovery of damages for delay if the extension is required due to the fault of CONSULTANT.

4. Compensation; Expenses; Payment. AUTHORITY shall compensate CONSULTANT for all Services performed by CONSULTANT hereunder in an amount based upon CONSULTANT's hourly rates during the time of the performance of the Services. A copy of CONSULTANT's hourly rates for which Services hereunder shall be performed are set forth in CONSULTANT's fee schedule included in Exhibit A, attached hereto and by this reference incorporated herein.

   Notwithstanding the foregoing, the combined total of compensation and reimbursement of costs payable hereunder shall not exceed the sum Two hundred six thousand, six hundred and eighty two dollars and fifty cents ($206,682.50) unless the performance of Services and/or reimbursement of costs and expenses in excess of said amounts have been approved in advance of performing such Services or incurring such costs and expenses by AUTHORITY's Executive Director (for contracts less than $60,000) or AUTHORITY Board (for contracts $60,000 or more) evidenced by motion duly made and carried.

   Compensation and reimbursement of costs and expenses hereunder shall be payable upon monthly billing therefor by CONSULTANT to AUTHORITY, which billing shall include an itemized statement, briefly describing by task and labor category or cost/expense items billed as, as more particularly described in Exhibit B, attached hereto and by this reference made a part hereof.

5. Additional Services. In the event AUTHORITY desires the performance of additional services not otherwise included within the Services described in Exhibit A, such services shall be authorized in advance of the performance thereof by AUTHORITY's Executive Director (for contracts less than $60,000) or AUTHORITY Board (for contracts $60,000 or more) by motion duly made and carried. Such amendment to this Agreement shall include a description of the services to be performed thereunder, the maximum compensation and reimbursement of costs and expenses payable therefor, the time of performance thereof, and such other matters as the parties deem appropriate for the accomplishment of such services. Except to the extent modified by written amendment, all other terms and conditions of this Agreement shall be deemed incorporated in each such amendment.

6. Records. CONSULTANT shall keep and maintain accurate records of all time expended and costs and expenses incurred relating to Services to be performed by CONSULTANT hereunder. Said records shall be available to AUTHORITY for review and copying during regular business hours at CONSULTANT's place of business or as otherwise agreed upon by the parties.

7. Reliance on Professional Skill of CONSULTANT. CONSULTANT represents that it has the necessary professional skills to perform the

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Services required and the AUTHORITY shall rely on such skills of the CONSULTANT to do and perform the work. In performing Services hereunder CONSULTANT shall adhere to the standards generally prevailing for the performance of expert consulting services similar to those to be performed by CONSULTANT hereunder.

8. Documents. All documents, plans, drawings, renderings, and other papers, or copies thereof, as finally rendered, prepared by CONSULTANT pursuant to the terms of this Agreement, shall, upon preparation and delivery to AUTHORITY, become the property of AUTHORITY.

9. Relationship of Parties. It is understood that the relationship of CONSULTANT to the AUTHORITY is that of an independent contractor and all persons working for or under the direction of CONSULTANT are its agents or employees and not agents or employees of the AUTHORITY.

10. Termination or Suspension of Agreement or Services.

(a) The AUTHORITY may suspend the performance of the Services, in whole or in part, or terminate this Agreement, with or without cause, by giving ten (10) days prior written notice thereof to CONSULTANT. Upon receipt of such notice, CONSULTANT will immediately discontinue its performance of the Services.

(b) CONSULTANT may terminate this Agreement or suspend its performance of the Services by giving thirty (30) days prior written notice thereof to AUTHORITY, but only in the event of a substantial failure of performance by AUTHORITY.

(c) Upon such suspension or termination, CONSULTANT shall deliver to the AUTHORITY immediately any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by CONSULTANT or its contractors, if any, or given to CONSULTANT or its contractors, if any, in connection with this Agreement. Such materials will become the property of AUTHORITY.

(d) Upon such suspension or termination by AUTHORITY, CONSULTANT will be paid for the Services rendered or materials delivered to AUTHORITY in accordance with the scope of services on or before the effective date (i.e., 10 days after giving notice) of suspension or termination; provided, however, if this Agreement is suspended or terminated on account of a default by CONSULTANT, AUTHORITY will be obligated to compensate CONSULTANT only for that portion of CONSULTANT's services which are of direct and immediate benefit to AUTHORITY as such determination may be made by the Executive Director acting in the reasonable exercise of his/her discretion. The following Sections will survive any expiration or termination of this Agreement: 11, 12, 13, 10(d), and 15.

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(e) No payment, partial payment, acceptance, or partial acceptance by AUTHORITY will operate as a waiver on the part of AUTHORITY of any of its rights under this Agreement.

11. Indemnity. To the fullest extent allowed by law, CONSULTANT hereby agrees to defend, indemnify, and save harmless AUTHORITY, 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, AUTHORITY, 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 CONSULTANT, its officers, employees, subcontractors or agents in the performance of any services or work pursuant to this Agreement.

The duty of CONSULTANT 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.

CONSULTANT'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.

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

Insurance Category	Minimum Limits
Workers' Compensation	statutory minimum
Employer's Liability	$1,000,000 per accident for bodily injury or disease
Commercial General Liability	$1,000,000 per occurrence and $2,000,000 aggregate for bodily injury, personal injury and property damage
Automobile Liability	$1,000,000 per accident for bodily injury and property damage (coverage required

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	to the extent applicable to CONSULTANT's vehicle usage in performing services hereunder)
[1]Professional Liability	$1,000,000 per claim and aggregate
Cyber Liability	$1,000,000 per claim and annual aggregate with a carrier with an A.M. Best rating of A VI (also titled Network Security/Cyber/Privacy liability)

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.

CONSULTANT 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 CONSULTANT shall agree to be bound to CONSULTANT and AUTHORITY in the same manner and to the same extent as CONSULTANT is bound to AUTHORITY 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. CONSULTANT 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 the AUTHORITY prior to commencement of any work by the subcontractor.

Applicable to Workers Compensation, Employers Liability, Commercial General Liability, and Automobile Liability policies, concurrently with the execution of this Agreement, CONSULTANT shall, on the Insurance Coverage form provided in Exhibit C, or equivalent, furnish AUTHORITY 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

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

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AUTHORITY shall have received written notification of cancellation in coverage or reduction in per occurrence limits by first class mail;

(b) Naming the South Bayside Waste Management Authority, its officers, boards, employees, and agents, as additional insureds; and

(c) Providing that CONSULTANT's insurance coverage shall be primary insurance with respect to South Bayside Waste Management Authority, its officers, boards, employees, and agents, and any insurance or self-insurance maintained by AUTHORITY for itself, its officers, boards, employees, and agents shall be in excess of CONSULTANT's insurance and not contributory with it. CONSULTANT and its insurer may not seek contribution from AUTHORITY'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 AUTHORITY, to the extent required by this Agreement, before the AUTHORITY's insurance or self-insurance may be called upon to protect AUTHORITY as a named Insured.

All self-insured retentions (SIR) must be disclosed to AUTHORITY for approval and shall not reduce the limits of liability coverage. Policies containing and SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named CONSULTANT/Named Insured or AUTHORITY.

AUTHORITY 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.

Any and all Subcontractors shall agree to be bound to CONSULTANT and AUTHORITY in the same manner and to the same extent as CONSULTANT is bound to AUTHORITY under this Agreement. Subcontractors shall further agree to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, in any agreement with sub-subcontractors to the extent that they apply to the scope of the sub-subcontractor's work. A copy of the indemnity and insurance provisions of this Agreement shall be furnished to any subcontractor upon request.

CONSULTANT 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 Services. In the event CONSULTANT fails to obtain or maintain completed operations coverage as required by this Agreement, the AUTHORITY at its sole discretion may purchase the coverage required and the cost will be paid by CONSULTANT.

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13. WORKERS' COMPENSATION. CONSULTANT 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 CONSULTANT certifies that he will comply with such provisions before commencing the performance of the work of this agreement.

14. NON-DISCRIMINATION. The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The CONSULTANT will take affirmative action to ensure that applicants are employed and the employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, advancement, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The CONSULTANT shall at all times be in compliance with the requirements of the Federal Americans With Disabilities Act (Public Law 101-336) which prohibits discrimination on the basis of disability by public entities. The CONSULTANT agrees to post in conspicuous places available to employees and applicants for employment any notices provided by the AUTHORITY setting forth the provisions of this non-discrimination clause.

15. Notice. All notices required by this Agreement shall be given to the AUTHORITY and CONSULTANT in writing, by first class mail, postage prepaid, addressed as follows:

AUTHORITY: Rethink Waste
610 Elm Street, Suite 202
San Carlos, CA 94070
Attention: Hilary Gans, Sr. Operations and Engineering Manager
Joe La Mariana, Executive Director
Cyndi Urman, Clerk of the Board/Mgmt. Analyst

CONSULTANT: Tanner Pacific
Bill Tanner, President
John Mahoney, PE
274 Redwood Shores Parkway
Suite 607
Redwood City, CA 94065
650-585-4484

16. Non-Assignment. This Agreement is not assignable either in whole or in part.

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17. Amendments. This Agreement may be amended or modified only by written agreement signed by both parties.

18. Validity. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

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

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

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

22. Entire Agreement. This Agreement, including Exhibits A, B, and C, comprises the entire Agreement.

23. Authorization. This Agreement becomes effective when endorsed by both parties in the space provided below. The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

24. Counterparts. This Agreement may be signed in multiple counterparts, which shall, when executed by all the parties, constitute a single binding agreement.

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

Rethink waste
A Public Agency

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SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY

Dated: _____

_____
Adam Rak, Board President

ATTEST:

Dated: _____

_____
Cyndi Urman, Board Secretary

APPROVED AS TO FORM

Dated: _____

_____
Jean Savaree, Legal Counsel

CONSULTANT

Dated: 6/20/2024

DocuSigned by:
Bill Tanner
CBAFBB2E272E404...
Bill Tanner, Principal

Dated: 6/20/2024

DocuSigned by:
John Mahoney
FC419EFD6CBC4C9...
John Mahoney, PE

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EXHIBIT A

SCOPE OF WORK, WORK SCHEDULE, AND FEE SCHEDULE
FOR
CONSTRUCTION MANAGEMENT SERVICES
UNDERGROUND STORAGE TANKS REMOVAL PROJECT

EXHIBIT A DETAILED ON NEXT PAGE

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TANNER PACIFIC

751 Laurel Street, Suite 609
San Carlos, CA 94070

June 11, 2024

Joanne Nghiem, PE
Associate Engineer
South Bayside Waste Management Authority
610 Elm Street, Suite 202
San Carlos, CA 94070

Subject: Construction Management and Inspection for the South Bayside Waste Management Authority

Project: Underground Fuel Storage Tank Replacement

Dear Ms. Nghiem:

Tanner Pacific Inc. (TPI) is pleased to submit the following proposal to provide Construction Management and Inspection services for the Underground Fuel Storage Tank Replacement. Our proposed Construction Management budget is attached. Below is the proposal summary.

Underground Fuel Storage Tank Replacement	$206,682.50

Please contact me at 619-414-6397 or at yelkassis@tannerpacific.com with any questions regarding this proposal.

We appreciate this opportunity to provide continued services to the South Bayside Waste Management Authority.

Sincerely,
Tanner Pacific, Inc.

Youseff Elkassis

Youseff Elkassis, PMP,
Construction Management

Attachment 1: Proposed Scope of Work
Attachment 2: Proposed Budget

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TANNER PACIFIC
751 Laurel Street, Suite 609
San Carlos, CA 94070

ATTACHMENT 1

South Bayside Waste Management Authority
Underground Fuel Storage Tank Replacement
Tanner Pacific, Inc.
Proposed Scope of Services Construction Management &Inspection

I. Underground Fuel Storage Tank Replacement ("Project")

A. Responsibilities

1. Construction Administration

a. Provide administrative services on a part-time basis to manage all documentation and communications throughout the Project duration.

2. Meetings

a. Prepare agendas, facilitate and provide record of discussions for all Project related meetings including the pre-construction meeting.

3. Submittals

a. Receive all submittals, manage routing through an online system and coordinate all comments to and from the Authority.

4. Requests for Information (RFI)

a. Receive all requests for information (RFIs) from Contractor and determine if the request is a valid RFI; if not, Tanner Pacific will return the RFI to the Contractor.

b. Route all other RFIs to the Authority.

c. Review the response, verify acceptability of response and transmit the RFI response to the Contractor.

5. Change Order Preparation, Negotiation & Processing

a. Assist the Authority in preparing any change requests by the Authority. Work with all parties to negotiate an equitable resolution.

b. Prepare all documentation to adjust the original construction contract for any and all time and cost impacts.

6. Field Orders (FO) and Field Directives (FD)

a. In the event that the Contractor encounters a time sensitive problem, Tanner Pacific will issue a FO subject to Authority approval in writing.

(650) 585-4484 phone
www.tannerpacific.com

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San Carlos, CA 94070

7. Progress Payments
    a. Assist the C Authority with review and processing of the monthly progress payments.
8. Scheduling
    a. Review the Contractor's initial baseline schedule and the weekly 3-week look ahead schedule.
    b. In conjunction with the Authority, provide written comments to the Contractor on the project schedule.

II. Field Inspection

A. Responsibilities

1. Field Observation (when required to be in the field)
    a. Provide field observation services to monitor compliance with contract documents.
    b. Prepare a daily observation report documenting all observed field activities, field crews, contractor equipment, and field problems. Information in the report will only reflect observations for the time the inspector was on site.
    c. Maintain the database, implemented by Tanner Pacific, for daily observation reports and photographs.
    d. Provide photographic documentation of the Project prior to construction and maintain photographs of observed field activities for status monitoring of the project.
    e. Tanner Pacific will not be responsible for information, photos or other actions that take place when Tanner Pacific's inspector is not required to be on site.

III. Special Inspections

A. If needed, schedule and coordinate special inspections, materials testing with Authority's third party contractor or vendor.

IV. Project Closeout

A. Tanner Pacific will review Contractor furnished record drawings for accuracy and completeness. Tanner Pacific will provide Record Drawings to the Authority for preparation of as-built plans.

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San Carlos, CA 94070

B. Final Inspection and Punch List.

1. The Authority, along with TPI, will participate and provide input on final inspection.
2. Tanner Pacific will compile and issue the punch list with input from the Authority.
3. Tanner Pacific to provide the Authority with notification when all punch list items are complete, so Authority may formally accept the project.

C. Tanner Pacific shall provide the Authority with all project documentation electronically.

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ATTACHMENT 2

South Bayside Waste Management Authority
Underground Fuel Storage Tank Replacement
Proposed Work Hours and Budget
Tanner Pacific, Inc.

Personnel / Service		Units		Rate	Amount	Preconstruction	Construction						Closeout
		Hours	Months			Jul-24	Aug-24	Sep-24	Oct-24	Nov-24	Dec-24	Jan-25	Feb-25
Tanner Pacific Labor													
	Principal/President	32		$ 285.00	$ 9,120.00	4	4	4	4	4	4	4	4
	Construction Manager	264		$ 235.00	$ 62,040.00	81	44	42	24	19	15	20	19
	Project Engineer	391.5		$ 195.00	$ 76,342.50	111.5	44	42	48	38	30	40	38
	Inspector	269		$ 220.00	$ 59,180.00	0	66	63	48	38	15	20	19
	Labor Subtotal	956.5			**$ 206,682.50**	197	158	151	124	99	64	84	80
Optional Labor													
	Inspector	0		$ -	$ -	0	0	0	0	0	0	0	0
	Labor Subtotal	0			**$ -**								

Notes and Assumptions:

Start of Services 1-Jun-24

1. Budget is based on FY 24-25 Fee Schedule that will remain constant for full period of Contract

2. TPI rates include normal operating and home office expenses such as telephone, computers, in-house reproduction. The budget does not include any expenses for a field trailer.

3. Budget is based on a **9 month** construction duration. Time extensions may require an additional service request.

4. Services are provided on an hourly basis. Tanner Pacific, Inc. has no obligation to provide services above the budget without a fee adjustment.

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EXHIBIT B

SAMPLE INVOICE

INVOICE

Your Company Name
Address
City State Zip
Phone Number

Date:
Project Number:
Invoice Number:

RethinkWaste
Attn: Project Manager
610 Elm Street, Suite 202
San Carlos, CA 94070

SBWMA Project: Project Title
Invoice for Professional Services from 1/1/21 to 1/31/21

TASK 1 TITLE/Description

Professional Personnel:	Hours:	Rate:	Amount:
John Doe	1.5	$200.00	$300.00
Jane Smith	1.0	$100.00	$100.00
TOTALS:	2.0		$400.00

TOTAL THIS TASK: $400

TASK 2 TITLE/Description

Professional Personnel:	Hours:	Rate:	Amount:
John Doe	3.0	$200.00	$600.00
TOTALS:	3.0		$600.00

TOTAL THIS TASK: $600.00

TOTAL THIS INVOICE $1,000.00

BILLING LIMITS:

Total Contract Amount		$10,000.00
Prior Invoices	0%	$0.00
Current Contract Balance	100%	$10,000.00
This Invoice	**10%**	**$1,000.00**
Contract Balance	90%	$9,000.00

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EXHIBIT C

INSURANCE FORMS

CONSULTANT shall provide, in addition to the Certificates of Insurance, original Endorsement affecting the coverages specified in Section 12 - INSURANCE of the Agreement on the attached form. No substitute form will be accepted.

ATTACHED

1. Insurance Coverage Form

DocuSign Envelope ID: 621ED55A-DA16-4E8F-8436-919C711A9F87

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 3/8/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER PCF Insurance Services of the West LLC 21300 Victory Blvd. Suite 700 Woodland Hills CA 91367 License#: 0L78680	CONTACT NAME: Candace Valentino PHONE (A/C, No, Ext): 747-234-3179 FAX (A/C, No): 818-703-0935 E-MAIL ADDRESS: cvalentino@pcfoy.com
INSURED Tanner Pacific, Inc. 274 Redwood Shores Parkway Suite 607 Redwood City CA 94065 TANNPAC-01	INSURER(S) AFFORDING COVERAGE / NAIC # INSURER A : Travelers Indemnity Company 25658 INSURER B : Travelers Casualty & Surety Company of America 31194 INSURER C : Travelers Property Casualty Company of America 25674 INSURER D : Employers Preferred Insurance Company 10346 INSURER E : Underwriters at Lloyd's London (Illinois) 15792 INSURER F :

COVERAGES **CERTIFICATE NUMBER:** 1667250673 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY [ ] CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [X] PRO-JECT [ ] LOC [ ] OTHER:	Y	Y	680 7P141386 24 47	3/11/2024	3/11/2025	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG $	$ 2,000,000 $ 1,000,000 $ 5,000 $ 2,000,000 $ 4,000,000 $ 4,000,000 $
B	AUTOMOBILE LIABILITY X ANY AUTO [ ] ALL OWNED AUTOS [ ] SCHEDULED AUTOS X HIRED AUTOS [X] NON-OWNED AUTOS	Y	Y	BA-4R641948-24-47-G	3/11/2024	3/11/2025	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) $	$ 1,000,000 $ $ $ $
C	X UMBRELLA LIAB [X] OCCUR [ ] EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [X] RETENTION $ 50,000			CUP-7P141313-24-47	3/11/2024	3/11/2025	EACH OCCURRENCE AGGREGATE $	$ 4,000,000 $ 4,000,000 $
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N [ ] (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	Y	EIG2791637-05	3/11/2024	3/11/2025	X PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 1,000,000 $ 1,000,000 $ 1,000,000
E	Professional Liability			AE243446	3/11/2024	3/11/2025	Each Claim Aggregate E&O Retention	2,000,000 2,000,000 50,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

* 30 Days notice of cancellation / 10 days notice for non-payment of premium applies*

South Bayside Waste Management Authority "SBWMA," its employees, officers and member entities are named as Additional Insured with respect to General Liability & Commercial Auto as their interests may appear subject to the conditions, limitations and exclusions of the policy forms. Waiver of Subrogation applies.

CERTIFICATE HOLDER

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

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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7C

STAFF REPORT

To:	SBWMA Board Members
From:	Joe LaMariana, Executive Director
	Hilary Gans, Senior Operations and Engineering Manger
Date:	June 27, 2024 Board of Directors Meeting
Subject:	Resolution Approving Emergency Expenditures Related to MRF Baler Cylinder Replacement

Recommendation

It is recommended that the SBWMA Board of Directors approve Resolution No 2024-23 attached hereto authorizing the following action: Resolution Approving Emergency Expenditures Related to MRF Baler Cylinder Replacement.

Summary

The MRF has two balers that are essential components of the MRF sort system. SBI identified a failure in the main baler's cylinder and alerted the SBWMA staff of the critical need to replace the cylinder before a complete failure occurred. If this equipment fails, the MRF is effectively shutdown until a replacement unit can be sourced and installed (estimated at up to 16 weeks).The $97,462 replacement was authorized by the Executive Director under hiz Emergency Expenditure provision aqs defined by the Agency's Public Procurement policy. The SBWMA Executive Committee was briefed of this emergency decision and supportive rationale on May 22, 2024.

Analysis

After identifying the worsening condition of the IPS baler hydraulic cylinder, SBI located a replacement at Olympic Baler & Wire company. Since the baler cylinder is essential to the MRF operations and finding another replacement option could cause the baler to be down for 4 months, the Executive Director authorized to proceed with the purchase/installation of a replacement hydraulic cylinder and for the replacement work to be completed by SBI using the standard work order process.

The SBI maintenance team is to be commended for identifying this compromised equipment during their recent equipment evaluation activities. Ideally, this issue would've been identified in time for Board consideration / approval at the April 25th meeting but the timing of this discovery did not allow for this option. Therefore, emergency approval authority was exercised by the Executive Director authorizing the purchase amount that exceeding the spending level of $60k (this decision was made only after extensive discussion with Hilary, SBI, and our legal team regarding the severity of the negative safety and operational consequences that could occur should this equipment fail before the June Board meeting). Per our procurement policy requirements, this approval is now being reported to the Board at the June meeting.

Key factors that contributing to the decision to invoke emergency spending authority:

1) Worker safety: This cylinder has been temporarily repaired and is cleared for operation. This part does, however, function under extended hydraulic pressure on a daily basis so it's a sensible best practice to replace it immediately to avoid a failure which could potentially cause bodily harm.

2) Facility impact: Should this temporarily repaired part fail, we will have no primary means to bale paper, plastic and metals. We do have a secondary unit but it is simply not scaled for high levels of extended production. This means our MRF operations will be functionally shut down for 16 weeks until a replacement part is installed on the main unit.

3) Ratepayer impacts: Should our MRF be shutdown because of this potential situation, SBI's CBA workforce is still required to paid out (full wages and benefits) while the SBWMA incurs significant extra charges during the additional transportation of this material to other regional facilities and paying their (higher) per ton processing fees.

Fiscal Impact

The baler cylinder replacement project of $97,462 will be capitalized. These funds will be drawn from capital reserve's equipment replacement fund.

Attachments:
Resolution 2024-23

RESOLUTION NO. 2024-23

RESOLUTION OF THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY BOARD OF DIRECTORS RESOLUTION APPROVING EMERGENCY EXPENDITURES RELATED TO MRF BALER CYLINDER REPLACEMENT

WHEREAS, the parts for the MRF baler repair needed to be acquired immediately to avoid the potential shutdown of the MRF sort system.

WHEREAS, the parts were available but needed to be secured before the next board meeting,

WHEREAS, the parts cost of $97,462 is above the ExecutiveDirector's spending limit but can be approved via emergency authorization,

WHEREAS, the agency policy requires the Board to be notified and approve any use of the emergency authorization,

NOW, THEREFORE BE IT RESOLVED that the South Bayside Waste Management Authority hereby approves Resolution Approving Emergency Expenditures Related to MRF Baler Cylinder Replacement

PASSED AND ADOPTED by the Board of Directors of the South Bayside Waste Management Authority, County of San Mateo, State of California on the 27th day of June, 2024 by the following vote:

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

I HEREBY CERTIFY that the foregoing Resolution No. 2024-23 was duly and regularly adopted at a regular meeting of the South Bayside Waste Management Authority on June 27, 2024

ATTEST:

Adam Rak, Chairperson of SBWMA

Cyndi Urman, Clerk of the Board