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Enactment Date	2-10-16



**OAKLAND UNIFIED  
SCHOOL DISTRICT**  
*Community Schools. Thriving Students*

Date: February 10, 2016

To: Board of Education

From: Antwan Wilson, Superintendent and Secretary, Board of Education

By: Vernon Hal, Senior Business Officer

Lance Jackson, Interim Deputy Chief, Facilities Planning and  
Management

Subject: **First Amendment to Memorandum of Agreement with Alameda County Waste  
Management Authority.**

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#### **ACTION REQUESTED**

Approval by the Board of Education of First Amendment to Memorandum of Agreement with Alameda County Waste Management Authority.

#### **BACKGROUND**

The Oakland Unified School District ("District") and Alameda County Waste Management Authority ("Authority") entered into a Memorandum of Agreement ("Agreement") on February 10, 2014, regarding the responsibilities for the Sequoia Elementary School's Sausal Corner Bay-Friendly Schoolyard Project ("Project").

The Project is funded by the California Urban Greening Grant Program to build "Sausal Corner," a multi-purpose oasis devoted to building ecological and emotional connections with the Sausal Creek that runs north of the school campus. The Project was to be installed by the District through a combination of Buildings & Ground staff and parent volunteer support, including the Friends of Sequoia School ("FOSS"). Sausal Corner is to be maintained at the school site for a minimum of ten years.

The District and Authority intend to amend the Agreement to provide that:

- The District will enter into a contract with Cagwin & Doward for the performance of the work of the Project for which the Authority will provide the District grants funds, pursuant to a separate agreement, in the amount of \$76,655 to pay the contract price; and
- The Authority will provide an additional Bay Friendly Landscaping non-profit grant to FOSS in the amount of \$8,000 to cover any unforeseen final costs of the Project requested by the District, which shall be pursuant to a separate agreement between the Authority and FOSS.

#### **FISCAL IMPACT**

None.

**RECOMMENDATION**

Approval by the Board of Education of First Amendment to Memorandum of Agreement with Alameda County Waste Management Authority.

**ATTACHMENTS**

First Amendment to Memorandum of Agreement with Alameda County Waste Management Authority.

**FIRST AMENDMENT TO MEMORANDUM OF AGREEMENT BETWEEN ALAMEDA COUNTY WASTE  
MANAGEMENT AUTHORITY AND OAKLAND UNIFIED SCHOOL DISTRICT**

**THIS FIRST AMENDMENT** is made this 10<sup>th</sup> day of February, 2016, by and between the Oakland Unified School District, a California public school district located in the County of Alameda, California, ("District") and the Alameda County Waste Management Authority ("Authority"). District and Authority may be individually referred to herein as "Party" or collectively referred to herein as "Parties."

**RECITALS**

1. District and Authority entered into a Memorandum of Agreement ("Agreement") dated as of February 10, 2014, for the Sequoia Elementary Sausal Corner Bay-Friendly Schoolyard Project ("Project") funded by the "California Urban Greening Grant Program."
2. District and Authority now intend to amend the Agreement to provide that the District shall enter into an agreement with Cagwin & Dorward ("Contractor") for performance of the work of the Project subject to the terms and conditions set forth herein.
3. District and Authority further intend to amend the Agreement to provide that the Authority shall provide grant funds necessary to pay the Contractor's contract price of Seventy Six Thousand Six Hundred Fifty Five Dollars (\$76,655) ("Project Grant Funds") for performance of the work of the Project. The Project Grant Funds shall be provided to the District pursuant to an agreement by and between the Authority and the District. The Authority shall be responsible for any delinquent or failure of payment to the District. The Authority acknowledges and understands that pursuant to the agreement with the District, payment is due within thirty (30) days of the Effective Date of this First Amendment. A true and correct copy of the Landscape Commercial Construction Contract is attached hereto as Exhibit "A" and made a part hereof by this reference.
4. District and Authority further intend to amend the Agreement to provide that the Authority shall provide an additional Bay Friendly Landscaping non-profit grant in the Amount of Eight Thousand Dollars (\$8,000) an amount necessary to cover the ten percent (10%) contingency funds relating to any unforeseen final Project Costs ("Bay Friendly Grant Funds") to the California Council of Dads Club Sequoia Elementary dba Friends of Sequoia School ("FOSS"). The Bay Friendly Grant Funds shall be provided to FOSS pursuant to an agreement by and between the Authority and FOSS. The Bay Friendly Grant Funds will remain in the possession of FOSS until the District requests partial or total use of the Bay Friendly Grant Funds specifically for the Sausal Creek Nature Area Project. Accordingly, FOSS will pay the Bay Friendly Grant Funds, to the District should they be needed within ten (10) business days of receipt of a request for funds from the District. FOSS shall be responsible for any delinquent or failure of payments to the District which are to be paid from the Contingency Grant Funds. Any Bay Friendly Grant Funds not expended for the Project will reside or be returned to FOSS within thirty (30) days of completion of the Project. A true and correct copy of the Bay Friendly Landscaping Grant is attached hereto as Exhibit "B" and made a part hereof by this reference.

NOW THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, District and Authority agree as follows:



## AMENDMENT

1. Landscape Contract. The following is added to the section entitled "Oakland Unified School District stipulates and/or agrees to the following":

**"F. Cagwin & Dorward Landscape Contract.** District will enter into an agreement with Cagwin & Dorward ("Contractor") for performance of the work of the Project subject to the terms and conditions set forth therein. A true and correct copy of the agreement with Cagwin & Dorward is attached to the Agreement as Exhibit "A."

2. Grant Funding. The following is added to the section entitled "Alameda County Waste Management Authority agrees to the following":

**"D. Grant Funding.** Within 10 days of the date this agreement is approved by the District, Authority shall provide District grant funds necessary to pay the Contractor's contract price of Seventy Six Thousand Six Hundred Fifty Five Dollars (\$76,655) ("Project Grant Funds") for performance of the work of the Project subject to the following conditions: (1) District shall provide Authority with evidence of each payment made to Contractor together with a copy of Contractor's billings related to the payment and (2) within sixty (60) days following completion of the Project or termination of Contractor's contract District will return any unused Project Grant Funds to Authority.

Authority shall provide an additional Bay Friendly Landscaping grant in an amount necessary to cover the ten percent (10%) or \$8,000 in contingency funds relating to any unforeseen final Project Costs ("Bay Friendly Grant Funds"). The Bay Friendly Grant Funds shall be provided to FOSS for payment to the District pursuant to an agreement by and between the Authority and FOSS. The Agreement between the Authority and FOSS shall require that the Bay Friendly Grant Funds be payable to the District within ten (10) business days of the District's request to FOSS. The Bay Friendly Grant Funds may be used in part or in total for the Sausal Creek Nature Area Project. Any Bay Friendly Grant Funds not used for the Project shall be returned to FOSS within thirty (30) days of completion of the Project. The Authority and FOSS shall be responsible for any delinquent or failure of payment to Contractor which are to be paid from the Bay Friendly Grant Funds if FOSS has not timely made payment to the District as provided above. A true and correct copy of the Bay Friendly Landscaping Grant is attached hereto as Exhibit "B" and made a part hereof by this reference.

3. Miscellaneous. This First Amendment may be executed in any number of counterparts all of which when taken together shall constitute one and the same document. Except as expressly modified by this First Amendment, all other terms and provisions of the Agreement are in full force and effect. This First Amendment shall be governed and construed in accordance with the laws of the State of California.

*[Signatures on Following Page]*

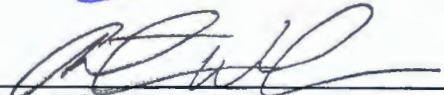
The parties hereto have executed this First Amendment as of the date set forth above.

**ACCEPTED AND AGREED** on the date indicated below:

**OAKLAND UNIFIED SCHOOL DISTRICT**

  
James Harris, President, Board of Education

2/10/16  
Date

  
Antwan Wilson, Superintendent

2/10/16  
Date

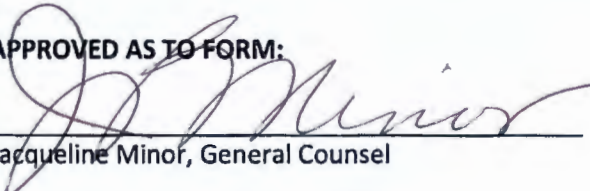
**ALAMEDA COUNTY WASTE MANAGEMENT AUTHORITY, A Joint Powers Authority**

By: \_\_\_\_\_

\_\_\_\_\_  
Date

Its: \_\_\_\_\_

**APPROVED AS TO FORM:**

  
Jacqueline Minor, General Counsel

2/1/16  
Date

First Amendment to Memorandum of Agreement with Alameda County Waste Management Authority

Grant Agreement for \_\_\_\_\_

Dated: 2/10/16, 2016

Oakland Unified School District

By: 

Print Name: TADASHI NAKAGAWA

Print Title: DIRECTOR FACILITIES

Dated: 1/28/16, 2016

Alameda County Waste Management Authority, A  
Joint Powers Authority

By: 

Print Name: Pat Cabrera

Print Title: Adm Svcs. Director

**EXHIBIT "A"**  
**LANDSCAPE COMMERCIAL CONSTRUCTION CONTRACT**



**EXHIBIT "B"**  
**BAY FRIENDLY LANDSCAPING GRANT AGREEMENT**  
**ALAMEDA COUNTY SOURCE REDUCTION & RECYCLING BOARD**  
**GRANT FUNDING AGREEMENT**

THIS AGREEMENT is made in Oakland, California by and between the Alameda County Source Reduction & Recycling Board ("Grantor"), and California Council of Dads Club Sequoia Elementary dba Friends of Sequoia School \_\_\_\_\_ ("Grantee"), who agree that:

1. **Purpose of Grant.** This is a grant for supporting the construction and maintenance of the Sequoia Elementary Sausal Corner Bay-Friendly Schoolyard Project ("Project") . The grant funding first prioritizes project costs that require contingency funding related to any unforeseen final project construction costs. Any remaining grant funding not required for contingency costs, can be used for other related Bay-Friendly Schoolyard Landscaping activities specifically described in Exhibit A of this agreement ("Grant Project Description"). All work funded by this agreement shall be completed in accordance with the Grant Project Description.
2. **Term.** The term of this agreement commences on (check one): ☒ the date last signed below.
3. **Payment.** The total grant funding provided pursuant to this agreement shall not exceed the total sum of **eight thousand dollars \$8,000** for work in connection with the Grant Project Description. The initial invoice may be submitted only after (1) this contract is fully executed, (2) insurance certificates and endorsements required by this agreement have been submitted, (3) signed Federal Taxpayer ID Number Form (substitute IRS Form W-9) has been submitted, and (4) any other pre-invoice requirements specified in the Grant Project Description have been completed.
4. **Grant Administration.** The primary representatives of Grantor and Grantee for grant administration are listed below.

	<b>Grantor</b> StopWaste	<b>Grantee</b> California Council of Dads Club Sequoia Elementary dba Friends of Sequoia School
Primary Representative:	Cassie Bartholomew Program Manager	Stacie Chun FOSS Co-Treasurer
Address:	1537 Webster Street Oakland, CA 94612	3730 Lincoln Avenue Oakland CA 94602
Telephone:	510-891-6516	
Fax:	510-893-2308	510-306-2693
Cell Phone:		
E-mail:	cbartholomew@stopwaste.org	fosstreasurer@yahoo.com



5. **Insurance.** Grantee and all contractors providing services to Grantee in connection with the Grant Project Description shall procure and maintain insurance as required by the provisions set forth in Exhibit B.
6. **Use of Grant Funds.** In accepting grant funds, Grantee agrees that it shall use or expend grant funds, or any portion thereof, only as provided for in this agreement and, without limiting the generality of the foregoing, agrees to purchase materials, equipment or other property specified in Exhibit A only for use in connection with the grant project authorized by this Agreement except as may be otherwise provided herein.
7. **General Provisions.** Grantor and Grantee agree to and shall abide by the general provisions set forth in Exhibit C. Grantee's failure to comply with the terms of Exhibits B and C is a material breach of this Agreement and may result in withholding of grant funds pending cure of the breach (if cure is permitted by the Grantor or otherwise allowed under this Agreement), whole or partial suspension or termination of this Agreement, recovery of funds paid to Grantee under this Agreement, withholding of future grant awards or other legal or equitable remedies provided by law.
8. **Supplemental Requirements.** This agreement includes supplemental requirements described in connection with each box checked below:
  - ☐ If this box is checked this agreement is funded in whole or in part by an entity other than Grantor. Grantee shall comply with all rules and regulations required by such funding entity. Applicable funding entity requirements are set forth in Exhibit D. Nothing in this paragraph or in the funding entity requirements shall be construed to relieve Grantee of its duty to ensure that it is in compliance with all applicable laws and regulations.
  - ☐ If this box is checked Exhibit E sets forth requirements regarding \_\_\_\_\_.
9. **Exhibits.** All exhibits referred to in this agreement are attached hereto and are by this reference incorporated herein and made a part of this agreement.
10. **Power to Execute Agreement.** Each individual executing this agreement, on behalf of one of the parties, represents that he or she is duly authorized to sign and deliver the agreement on behalf of such party and that this agreement is binding on such party in accordance with its terms. This agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

Grant Agreement for Sequoia Elementary Sausal Corner Bay-Friendly Schoolyard Project

IN WITNESS WHEREOF, the parties hereto have executed this agreement.

Grantee	Grantor
<hr/> April Schlenk, Co-Chair  Date: <hr/>	<hr/> Wendy Sommer, Executive Director  Date: <hr/>
	APPROVED AS TO FORM: <hr/> Audrey Beaman, County Counsel  Date: <hr/>

Attachments

Exhibit A – Grant Project Description

Exhibit B – Insurance Requirements

Exhibit C – General Requirements

## **Exhibit A**

### **Project Description, Scope of Work & Payment/Reporting Schedule**

#### **Bay-Friendly Landscaping Grant for Sequoia Elementary Sausal Corner Bay Friendly Schoolyard Project**

##### **Project Description**

This is a grant for supporting the construction and maintenance of the Sequoia Elementary Sausal Corner Bay-Friendly Schoolyard Project ("Project"). The Bay-Friendly Landscaping grant funding prioritizes first, project costs in an amount necessary to cover up to ten percent (10%) or \$8,000 in contingency funding related to any unforeseen final project construction costs. The Bay-Friendly grant funds shall be provided to FOSS for payment to Oakland Unified School District pursuant to this funding agreement between the Authority and FOSS. The Bay Friendly Grant Funds are payable to the District within ten (10) business days of the District's request to FOSS. Any Bay-Friendly grant funds not used for the Project by the District shall be returned to FOSS within thirty (30) days of completion of the Project. The Authority and FOSS are responsible for any delinquent or failure of payment by District to Contractor which is to be paid from the Bay Friendly Grant Funds. If FOSS has not timely made payment to the District once the Authority has paid an approved invoice from FOSS, FOSS will be solely responsible for any late charges from Oakland Unified School District.

Any remaining grant funding not required for contingency costs can be used for other related Bay-Friendly Schoolyard Landscaping activities that are pre-approved by StopWaste prior to funds being spent. A sample list of Bay-Friendly Schoolyard activities are described below:

##### **Sample Bay Friendly Grant Project Activities:**

- Sheet-mulch (compost and mulch) lawn, bare soil and/or enhance existing planting beds and garden areas
- Purchase, install or maintain drought tolerant or edible non-invasive plants
- Purchase, install or maintain reclaimed or FOSC certified lumber for built projects
- Purchase, install or maintain drip irrigation, smart meter/controllers or other tools to reduce water usage of irrigated areas and measure water usage
- Purchase recycled mulch, Bay-Friendly plants and compost/planting mix for planted areas
- Include Bay-Friendly interpretive signage, other educational tools and resources to teach about Bay-Friendly garden practices (StopWaste can provide template)
- Support short term maintenance costs

##### **Scope of Work/Payment and Reporting Schedule**

<b>Grantee Contact:</b>	Stacie Chun, FOSS
<b>Agency Contact:</b>	Cassie Bartholomew, Program Manager
<b>Contract Amount:</b>	\$8,000.00
<b>Length of Contract:</b>	January 1, 2016 to December 28, 2017



Grant Agreement for Sequoia Elementary Sausal Corner Bay-Friendly Schoolyard Project

<i>Task</i>	<i>Grantee</i>	<i>StopWaste staff</i>
Prior to initial invoice/payment	<ul style="list-style-type: none"> <li>• Submittal of W-9 form, including Federal Tax ID number.</li> <li>• Submittal of Certificates of insurance meeting the requirements of Section 9 of this agreement.</li> <li>• This funding agreement has been fully executed.</li> <li>• Submittal of a signed invoice on Grantee letterhead for payment.</li> </ul>	Approve proposed services and pay associated invoices for approved services
	<ul style="list-style-type: none"> <li>• Make payment to District for Project costs.</li> <li>• Any funds remaining after District notifies FOSS and Authority that the Project is complete shall be used for other related Bay-Friendly Schoolyard Landscaping activities that are pre-approved by StopWaste prior to funds being spent.</li> </ul>	Provide technical assistance as appropriate
Final report and final payment	<ul style="list-style-type: none"> <li>• Submittal of brief final report to include plant/material list, receipts for materials purchased, documentation of maintenance practices and copies of any promotional materials or media articles, and a listing of budget expenditures for the project. Upon request, a sample final report will be provided StopWaste staff.</li> <li>• Brief summary regarding implementation and coordination.</li> <li>• Submittal of final invoice on Grantee letterhead for remaining \$ amount prior to contract expiration of December 28, 2017.</li> </ul>	Review final report. Upon approval of report and invoice, Authority will pay invoice for remaining funds

-End of Exhibit A-

## Exhibit B

### Insurance

1. During the life of this agreement, Grantee and all Grantee contractors funded by the grant shall maintain the following minimum insurance:
  - A. Comprehensive general liability insurance, including personal injury liability, blanket contractual liability, and broad-form property damage liability coverage. The combined single limit for bodily injury and property damage shall be at least \$1,000,000.
  - B. Automobile bodily injury and property damage liability insurance covering owned, non-owned, rented, and hired cars. The combined single limit for bodily injury and property damage shall be at least \$1,000,000.
  - C. Statutory workers' compensation and employer's liability insurance as required by state law with a limit of at least \$1,000,000 per accident for bodily injury or disease. Neither Grantee nor its carrier shall be entitled to recover any costs, settlements, or expenses of workers' compensation claims arising out of this agreement. The Employer's Liability policy shall be endorsed to waive any right of subrogation against the Grantor, its employees or agents.
  - ☐ If this box is checked, Professional Errors and Omissions Liability Insurance. The limit of liability shall be at least \$1,000,000. If the policy is written on a "claims made" basis, Contractor must maintain required coverage for a period of three years after the expiration of this agreement. Contractor may satisfy this requirement by renewal of existing coverage or purchase of either prior acts or tail coverage applicable to said three-year period.

Grantee shall submit to Grantor certificates of insurance and endorsements for the policies listed above. All endorsements shall be signed by a person authorized by that insurer to bind coverage on its behalf. Grantor has the right to require Grantee's insurer to provide complete, certified copies of all required insurance policies. Grantee shall not cancel, assign, or change any policy of insurance required by this agreement or engage in any act or omission that will cause its insurer to cancel any insurance policy required by this agreement except after providing 30 days prior written notice to Grantor. If an insurance policy required by this agreement is unilaterally cancelled or changed by the insurer, the Grantee shall immediately provide written notice to the Grantor and obtain substitute insurance meeting the requirements of this agreement. Nothing in this subsection relieves Grantee of its obligation to maintain all insurance required by this Contract at all times during the term of the agreement.

2. As to all of the policies of insurance listed above, the following shall apply:
  - A. *Deductibles and Self Insured Retentions.* Any deductibles or self insured retentions must be declared to and approved by the Grantor. At the option of the Grantor, either (1) the insurer shall reduce or eliminate such deductibles or self insured retentions as respects the Grantor, its officers, officials and employees; or (2) the Grantee shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
  - B. *Grantor as Additional Insured.* The Grantor, its officers, officials, employees, agents and volunteers are to be covered as insureds with the same coverage and limits available to the named insured regarding: liability arising out of activities performed by or on behalf of the Grantee; any products and completed operations of the Grantee, premises owned, occupied or used by the Grantee, or automobiles owned, leased, hired or borrowed by the Grantee. The coverage shall contain no special limitations on the scope of the protection afforded to the Grantor, its officers, officials, employees, agents or volunteers. Any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the Additional Insured. Any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the Additional Insured; the additional insured coverage and limits shall be (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; whichever is greater. For



Grant Agreement for Sequoia Elementary Sausal Corner Bay-Friendly Schoolyard Project

any claims related to this project, Grantee's insurance coverage shall be primary insurance as respects Grantor, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by Grantor, its officers, officials, employees, or volunteers shall be excess of Grantee's insurance and shall not contribute with it. Coverage can be provided in the form of an endorsement to Grantor's insurance (at least as broad as ISO Form CG 20 38 04), or as a separate owner's policy, or on Grantor's own form. Additional insured coverage does not apply to errors and omissions insurance.

- C. *Other Insurance Provisions.* The policies are to contain, or be endorsed to contain, the following provisions:
- Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Grantor, its officers, officials, employees or volunteers.
  - The Grantee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- D. *Insurer Rating.* Insurance is to be placed with insurers with a Bests' rating of no less than A:VII.
- E. *Umbrella/Excess 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 Grantor (if agreed to in a written contract or agreement) before the Grantor's own Insurance or self insurance shall be called upon to protect it as a named insured.
- F. *Subcontractors.* Grantee agrees to include in all contracts for work funded by this agreement the same requirements and provisions of this agreement including the indemnity and insurance requirements to the extent they apply to the scope of the contractor's work. Contractors hired by Grantee shall agree to be bound to Grantee and Grantor in the same manner and to the same extent as Grantee is bound to Grantor under this agreement and Grantee shall furnish a copy of this agreement's insurance and indemnity provisions to all subcontractors. All contractors shall provide Grantee with valid certificates of insurance and the required endorsements included in the agreement prior to commencement of any work and Grantee will provide proof of compliance to Grantor.

3. Grantee hereby grants to Grantor a waiver of any right to subrogation which any insurer of Grantee may acquire against Grantor by virtue of the payment of any loss under such insurance. Grantee agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether Grantor has received a waiver of subrogation endorsement from the insurer.

4. If a death, serious personal injury or substantial property damage occurs in connection with the performance of this agreement, Grantee shall immediately notify Grantor by telephone. Grantee shall promptly submit to Grantor a written report, in such form as may be required by Grantor of all accidents which occur in connection with this agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) names and address of Grantee's contractor, if any; (3) name and address of Grantee's liability insurance carrier; and (4) a detailed description of accident and whether any of Grantor's equipment, tools, materials or staff were involved. Failure to comply with this section shall constitute a material breach of this agreement.

***All Insurance modifications must be approved by the Grantor's Contract Administrator***

***\*This Section is for use by Contract Administrative Services Only\****

***Insurance Modification Approved*** (Yes)\_\_\_ (No) \_\_\_ Date Approved \_\_\_\_\_ (CAS Initials) \_\_\_

***Type of Insurance Waived or Reduced:***

Automotive Liability (Auto) \_\_\_\_\_, Worker's Comp (W/C)\_\_\_\_\_ Professional Liability (P/L)\_\_\_\_\_

-End of Exhibit B-



## Exhibit C

### General Provisions

#### 1. Grantee Obligations.

- 1.1 Grantee shall carry out the Grant Project Description to the best of Grantee's ability and in accordance with the generally accepted professional and ethical standards of Grantee's profession and community and currently approved methods and practices in Grantee's field and in accordance with the standards required by the Grant Project Description.
- 1.2 Grantee shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including without limitation all provisions of the Occupational Safety and Health Act of 1979, Title VII of the Civil Rights Act of 1964, the Immigration Reform and Control Act of 1986 and all other applicable federal, state, and local laws. Grantee represents and warrants to Grantor that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Grantee to complete the Grant Project Description.
- 1.3 No relationship of employer and employee is created by this agreement, it being understood that Grantee shall act hereunder as an independent contractor performing the work set forth in Exhibit A for its own and the general public benefit, not on behalf of Grantor and that the sole interest of Grantor is to ensure that grant funds are used in accordance with their intended purpose in accordance with the standards set forth in this agreement.
- 1.4 Grantee shall not have any claim under this agreement or otherwise against Grantor for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance, medical care, hospital care, insurance benefits, social security, disability, unemployment, workers compensation or employee benefits of any kind. Grantee shall be solely liable for and obligated to pay directly all applicable taxes, including, but not limited to, federal and state income taxes, and in connection therewith Grantee shall indemnify and hold Grantor harmless from any and all liability that Grantor may incur because of Grantee's failure to pay such taxes.

#### 2. Grant Disbursement.

- 2.1 Grantee shall submit all invoices for grant disbursement to Grantor and Grantor shall pay such invoices in the manner specified in this paragraph. Payment shall be made payable to Grantee and delivered to the address specified in section 4 on page 1 of this agreement. The payments specified in this paragraph shall be the only payments to be made to Grantee in connection with Grantee's

completion of the Grant Project Description pursuant to this agreement. Grantee shall not be allowed or paid travel expenses except to the extent authorized in Exhibit A. The making of any payment by Grantor, or the receipt thereof by the Grantee, shall in no way lessen the liability of the Grantee to correct or revise work that is not authorized by this agreement, even though the unsatisfactory character of such work may not have been apparent or detected at the time such payment was made. Grantor may withhold payment to Grantee in any instance in which the Grantee has failed or refused to satisfy any material obligation provided for in this agreement.

2.2 Grantee shall submit invoices, not more often than once a month during the term of this agreement for disbursements in accordance with the Grant Project Description. Invoices shall contain the following information:

- (a) Serial identifications of invoices, i.e., Invoice No. 1;
- (b) The beginning and ending dates of the invoice period;
- (c) A summary containing the total grant amount, the amount of prior invoices, the total invoiced this period, percentage of grant project completed, the remaining balance available for all remaining invoice periods, and a brief description of work completed during the invoice period.

2.3 Within 30 days of receiving an invoice Grantor shall make payment for satisfactory progress in completion of the Grant Project Description.

3. Grantor Obligations.

Grantor shall make grant disbursements as described above and shall provide, at its expense, such services of its officers and employees and such use of its premises, facilities, supplies and equipment as the Grantor in its sole discretion determines is necessary in connection with the administration or monitoring of this agreement. Grantee shall not use any such Grantor services, premises, facilities, supplies or equipment for any purpose other than in the performance of Grantee's obligations under this agreement.

4. Grantor Representative.

The Grantor's Primary Representative designated in section 4 on page 1 of this agreement is authorized to transmit instructions, receive information, and interpret and define Grantor's policies consistent with this agreement. Grantee shall be entitled to rely on representations made by Grantor's representative(s) unless otherwise directed in writing by Grantor. All correspondence and other communications shall be directed to or through the Administrator or the Administrator's designee.

4.1 In General. All notices or communication concerning a party's compliance with the terms of this agreement shall be in writing and may be given either



personally, by certified mail, return receipt requested, or by overnight express carrier. The notice shall be deemed to have been given and received on the date delivered in person or the date upon which the postal authority or overnight express carrier indicates that the mailing was delivered to the address of the receiving party. The parties shall make good faith efforts to provide advance courtesy notice of any notices or communications hereunder via e-mail. However, under no circumstances shall such courtesy notice satisfy the notice requirements set forth above; nor shall lack of such courtesy notice affect the validity of service pursuant to the notice requirement set forth above.

- 4.2 Addresses for Notice. Notices or communications shall be given to the parties at the addresses set forth in section 4 ("Contract Administration") unless otherwise designated in a written notice to the other party. In addition, notices to Grantor shall be copied to:

Pat Cabrera Administrative Services Director 1537 Webster Ave. Oakland, CA 94612
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This copy shall not constitute notice.

- 4.3 Change of Address. Any party hereto, by giving ten (10) days written notice to the other, may designate any other address as substitution of the address to which the notice or communication shall be given.

5. Grantee Not an Agent.

Except as Grantor may specify in writing, Grantee shall have no authority, express or implied, to act on behalf of Grantor in any capacity whatsoever as an agent. Grantee shall have no authority, express or implied, pursuant to this agreement to bind Grantor to any obligation whatsoever.

6. Assignment and Subcontracts.

This grant award is personal in character and Grantee may not assign any right or obligation under this agreement. Any attempted or purported assignment of any right or obligation under this agreement shall be void and of no effect. However, with the consent of the Grantor given in writing, Grantee is entitled to contract portions of the Grant Project Description and all contractors of Grantee shall be subject to all the provisions of this agreement.

7. Retention of Records.

Until the expiration of five years after the final grant disbursement pursuant to this agreement, Grantee shall make available to the Grantor or any party designated by the Grantor, upon written request by Grantor, this agreement, and such books, documents and records of Grantee (and any books, documents, and records of any Grantee contractor(s)) that are necessary (i) to certify that Grantee is or was qualified to receive grant funds under this agreement for the entire time that Grantee made use of such funds or



property acquired with such funds, (ii) to determine the reasonable cost of work or other activities carried out by Grantee or its contractors with grant funds under this agreement, (iii) to evaluate whether or not Grantee is performing or has performed as required under this agreement, and (iv) to evaluate the Grantee's business or other activities to confirm Grantee's ability to perform as required under this Agreement.

8. Conflict of Interest.

- 8.1 Grantee warrants that, to the best of the Grantee's knowledge and belief, there are no relevant facts or circumstances which could give rise to a conflict of interest, or that the Grantee has already disclosed all such relevant information. Grantee shall not employ or contract with a person having such an interest in the performance of this agreement.
- 8.2 Grantee agrees that if an actual or potential conflict of interest is discovered after award, the Grantee will make a full disclosure in writing to the Grantor. This disclosure shall include a description of actions which the Grantee has taken or proposes to take, after consultation with the Grantor to avoid, mitigate, or neutralize the actual or potential conflict. Within 45 days, the Grantee shall have taken all necessary steps to avoid, mitigate, or neutralize the conflict of interest to the satisfaction of the Grantor.
- 8.3 No officer, member or employee of Grantor and no member of the Grantor governing body shall have any pecuniary interest, direct or indirect, in this agreement or the proceeds thereof. Neither Grantee nor any member of any Grantee's family shall serve on any Grantor board or committee or hold any such position which either by rule, practice or action nominates, recommends, or supervises Grantee's operations or authorizes funding to Grantee.

9. Rights to Material Produced.

- 9.1 Grantor shall have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, use, and to authorize others to do so, all original writings, sound recordings, pictorial reproductions, drawings, computer programs, and other works of similar nature produced in the course of or under this agreement. Grantee agrees to deliver a reproducible copy of such documents and materials to the Recycling Board on completion of the Grant Project Description.
- 9.2 Grantor may, in its sole discretion, require Grantee to identify or credit Grantor as the funding agency or source for all materials or products generated or produced by Grantee as part of this project. This identification or credit may take the form of a logo or other representative mark of Grantor or representative wording (e.g. "funded in whole or in part by the Alameda County Source Reduction and Waste Management Authority") which is printed or applied directly on or to those materials or products. Grantee shall not use

Grantor materials including logos, flyers, etc without written permission from Grantor.

- 9.3 Except as otherwise provided in this agreement, Grantee shall have and retain title to all real or personal property purchased or funded with grant funds; provided, however, that Grantor may require, as an additional condition of eligibility for grant funds and in advance of approval of this agreement, that the Grantee provide security to the Recycling Board in order to ensure the performance of Grantee's obligations under this Agreement and that those obligations are performed consistent with the terms and conditions of this Agreement.

10. Intellectual Property.

Grantee represents and warrants that it has the legal right to utilize all intellectual property it will utilize in carrying out the Grant Project Description. Grantee shall indemnify and hold Grantor harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by Grantor, or any of its officers or agents, of articles or work to be carried out in the performance of this agreement.

11. Indemnification.

To the fullest extent permitted by law, Grantee shall indemnify, defend, and hold harmless Grantor, its employees, agents and officials, from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs (including, without limitation, costs and fees of litigation) of any kind whatsoever without restriction or limitation, incurred in relation to, as a consequence of or arising out of or in any way attributable actually, allegedly or impliedly, in whole or in part, to the performance of this agreement. All obligations under this provision are to be paid by Grantee as they are incurred by the Grantor.

12. Drug-Free Workplace.

Grantee shall maintain a drug-free workplace. Neither Grantee nor Grantee's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code Section 812, including marijuana, heroin, cocaine, and amphetamines, at any facility, premises or work-site used in any manner in connection with implementing the Grant Project Description pursuant to this agreement. If Grantee or any employee of Grantee is convicted or pleads nolo contendere to a criminal drug statute violation occurring at such a facility, premises, or work-site, the Grantee, within five days thereafter, shall notify the Grantor.

13. Environmentally Preferable Purchasing.

Grantee shall comply with the Grantor's Environmentally Preferable Purchasing Policy of instituting practices that reduce waste and purchasing products that include recycled content, are durable and long-lasting, conserve energy and water, and otherwise minimize environmental impacts, toxics, pollution and



hazards to worker and community safety to the greatest extent practicable. At a minimum, this shall include all of the following for services and products purchased and used on behalf of the Grantor:

- a. All products for which the U.S. Environmental Protection Grantor (EPA) has established minimum recycled content standard guidelines (such as paper and non-paper office products) shall contain the highest postconsumer content practicable, but no less than the minimum recycled content standards established by the U.S. EPA Guidelines.
- b. Paper products that are unbleached or that are processed without chlorine or chlorine derivatives, shall be purchased whenever possible. To the greatest extent practicable, recycled content shall be included in products that also meet this specification.
- c. All photocopying and printing shall be double-sided.
- d. All pre-printed recycled content materials intended for distribution that are purchased or produced shall include a statement that the material is recycled content.
- e. Elimination of packaging or use of the minimum amount necessary for product protection is requested, to the greatest extent practicable. Packaging that is reusable, recyclable or compostable is preferred, when suitable uses and programs exist. Take back and reuse of packaging materials by the Grantee is encouraged.

Upon request, Grantee shall submit to the Grantor written certification documenting that the requirements above have been satisfied. A copy of the Grantor's Environmentally Preferable Purchasing Policy may be obtained from the Grantor representative.

#### 14. Termination.

Either party may terminate this agreement with or without cause by providing 30 days' notice in writing to the other party. The Grantor may terminate this agreement at any time without prior notice in the event that Grantee commits a material breach of the terms of this agreement. Upon termination, this agreement shall become of no further force or effect whatsoever and each of the parties hereto shall be relieved and discharged herefrom, subject to payment for acceptable grant implementation work carried out prior to the expiration of the notice of termination and delivery to Grantor of any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this agreement, and any completed or partially completed work which, if this agreement had been completed, would have been required to be furnished to Grantor. Notwithstanding the foregoing and section 2 on page 1, this section and the provisions of this agreement concerning insurance (Exhibit B), Funding Agency Requirements (as set forth in Exhibit D if applicable), Grantee Obligations, Retention of Records, Rights to Material Produced, Intellectual Property, Confidential Information, Indemnification, Default and Remedies, and Jurisdiction and Severability shall survive termination of this agreement.

#### 15. Default and Remedies.

15.1 Each of the following shall constitute an event of default hereunder:

- (a) Failure to perform any obligation under this agreement and failure to cure such breach immediately upon receiving notice of such breach, if the breach is such that the Grantor determines the health, welfare, or safety of the public is immediately endangered; or



- (b) Failure to perform any obligation under this agreement and failure to cure such breach within fifteen (15) days of receiving notice of such breach, if the breach is such that the Grantor determines that the health, welfare, or safety of the public is not immediately endangered, provided that if the nature of the breach is such that the party claiming breach determines it will reasonably require more than fifteen (15) days to cure, breaching party shall not be in default if it promptly commences the cure and diligently proceeds to completion of the cure.

15.2 Upon any default, the non-defaulting party shall have the right to immediately suspend or terminate the agreement, seek specific performance, and/or seek damages including incidental, consequential and/or special damages to the full extent allowed by law.

15.3 The parties shall make a good faith effort to settle any dispute or claim arising under this agreement. If the parties fail to resolve such disputes or claims, they shall submit them to non-binding mediation in California at shared expense of the parties for at least 8 hours of mediation. If mediation does not arrive at a satisfactory result, arbitration, if agreed to by all parties, or litigation may be pursued. In the event any of these dispute resolution processes are involved, each party shall bear its own costs and attorneys' fees.

15.4 If any litigation is commenced between parties to this agreement concerning any alleged default or any provision hereof or the rights and duties of any person in relation thereto, each party shall bear its own attorneys' fees and costs.

16. Jurisdiction and Severability.

This agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this agreement shall be in that state and venue shall be in Alameda County, California. If any part of this agreement is found to conflict with applicable laws, such part shall be inoperative, null and void insofar as it conflicts with said laws, but the remainder of this agreement shall be in full force and effect.

17. Waiver.

Neither the acknowledgement of work or disbursement of grant funds pursuant to this agreement shall constitute a waiver of any rights or obligations arising under this agreement. The failure by the Grantor to enforce any of Grantee's obligations or to exercise Grantor's rights shall in no event be deemed a waiver of the right to do so thereafter.

18. Notice of Nonrenewal.

Grantee understands and agrees that there is no representation, implication, or understanding that Grantee may be entitled to grant funds in the future or that the

work or other activity funded by Grantor pursuant to this agreement will be funded by the Grantor under a new agreement following expiration or termination of this agreement. Grantee waives all rights or claims to notice or hearing respecting any failure by Grantor to continue to fund all or any such activities by Grantee following the expiration or termination of this agreement.

19. Parties in Interest.

This agreement is entered only for the benefit of the parties executing this agreement and not for the benefit of any other individual, entity or person.

20. Entire Agreement.

This agreement supersedes any and all agreements, either oral or written, between the parties hereto with respect to the grant funding described herein and contains all of the covenants and agreements between the parties with respect to the grant project described herein in any manner whatsoever. Each party to this agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party which are not embodied herein, and that no other agreement, statement or promise not contained in this agreement shall be valid or binding. No alteration or variation of the terms of this agreement shall be valid unless made in writing and signed by the parties hereto.

**-End of Exhibit C-**

751914.1





## MEMORANDUM OF UNDERSTANDING 2015-2016 ROUTING FORM

Project Information			
Project Name	Alameda County Waste Management Authority	Site	
Basic Directions			
Services cannot be provided until the contract is fully approved and a Purchase Order has been issued.			
Attachment Checklist	<input type="checkbox"/> Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000 <input type="checkbox"/> Workers compensation insurance certification, unless vendor is a sole provider		

Contractor Information							
Contractor Name	Alameda County Waste Management	Agency's Contact	Cassie Bartholomew				
OUSD Vendor ID #		Title	Program Manager				
Street Address	1537 Webster Street	City	Oakland	State	CA	Zip	94612
Telephone	510-891-6516	Policy Expires					
Contractor History	Previously been an OUSD contractor? X Yes <input type="checkbox"/> No		Worked as an OUSD employee? <input type="checkbox"/> Yes X No				
OUSD Project #							

Term			
Date Work Will Begin	2-10-2016	Date Work Will End By (not more than 5 years from start date)	2-10-2017

Compensation			
Total Contract Amount	\$	Total Contract Not To Exceed	\$76,655
Pay Rate Per Hour (If Hourly)	\$	If Amendment, Changed Amount	\$
Other Expenses		Requisition Number	

Budget Information				
<i>If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition.</i>				
Resource #	Funding Source	Org Key	Object Code	Amount
	MOU			\$76,655

Approval and Routing (in order of approval steps)				
Services cannot be provided before the contract is fully approved and a Purchase Order is issued. Signing this document affirms that to your knowledge services were not provided before a PO was issued.				
1.	Division Head	Phone	510-535-7038	Fax
	Director, Facilities			510-535-7082
	Signature	Date Approved		
2.	General Counsel, Department of Facilities Planning and Management			
	Signature	Date Approved		
3.	Interim Deputy Chief, Facilities Planning and Management			
	Signature	Date Approved		
4.	Senior Business Officer			
	Signature	Date Approved		
5.	President, Board of Education			
	Signature	Date Approved		