

BURBANK SANITARY DISTRICT

**REGULAR MEETING AGENDA FOR
July 20, 2021 at 7:00 PM**

In accordance with Executive Order N-33-20, meeting to be held at 7:00 p.m. via teleconferencing [call (866) 899-4679 Conference ID: 785-518-013] and anyone interested may also call in. The District Office at 20863 Stevens Creek Boulevard, Suite 100, Cupertino, California is closed.

1. CALL TO ORDER

2. ROLL CALL

3. APPROVAL OF AGENDA

4. PUBLIC COMMENTARY – This area is reserved for items **not** listed on the agenda. The Brown Act does not allow discussion of or action on items not on the agenda. The Board may briefly respond to comments or questions from members of the public, provide a reference to staff or other resources for factual information, or direct staff to place the issue on a future agenda. There is a three (3) minute limit for individual speakers.

- 4.A. Visitor Commentary
- 4.B. Agency Representatives
- 4.C. Board Commentary

5. CLOSED SESSION

5.A. CONFERENCE WITH LEGAL COUNSEL –EXISTING LITIGATION

Government Code Section 54956.9(d)(1) Name of Case: County Sanitation District 2-3, West Valley Sanitation District, Cupertino Sanitary District, Burbank Sanitary District and the City of Milpitas v. The City of San Jose, The City of Santa Clara, and Does 1 through 50 inclusive.

6. CONSENT CALENDAR

- 6.A. Approval of Minutes. Board action required: Approve Meeting Minutes from 6/15/2021

7. WARRANTS

- 7.A. Approval of Warrants. Board action required: Approve seven (7) warrants.
 - 1. Mark Thomas & Company, Inc. (District Management Services and BSD CIPs)
 - 2. First Tech Federal Credit Union (Board of Directors' Payroll)
 - 3. Armento and Hynes, LLP (District Legal Services)
 - 4. Alliant Insurance Services, Inc. (Insurance Premium July 2021 – July 2022)
 - 5. City of San Jose (TP O&M & Capital Billing Q1 2021-2022)
 - 6. Local Agency Formation Commission (LAFCO cost sharing FY2021-22)
 - 7. County Roads & Airports (Encroachment Permit – 1975 Scott St)

8. NEW BUSINESS

- 8.A. FY2020-21 Year End Financial Review. Board action required: None.

9. OLD BUSINESS

- 9.A. Status of SRF Loan and Design Update. Board action required: Review and approve DBE/Davis Bacon Contract.
- 9.B. Long Range Financial Planning. Board action required: None.
- 9.C. GreenWaste Recovery, Inc. Board action required: None.
- 9.D. District Website Update. Board action required: None.
- 9.E. COVID-19 Update. Board action required: None.

10. HOUSEKEEPING ITEMS

- 10.A. Updates on Housekeeping Items. Board action required: None.
- 10.B. Agenda Items for Next Upcoming Meeting. Board action required: None.

11. ADJOURNMENT: NEXT REGULAR MEETING – Tuesday, August 3, 2021

In compliance with the Americans with Disabilities Act of 1990, if you need special assistance to participate in a District meeting, or you need a copy of the agenda, or the agenda packet, in an appropriate alternative format, please contact the District Administrator's office at (408) 255-2137. Notification of at least 48 hours prior to the meeting or time when services are needed will assist the District staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting or service. In accordance with California Government Code Section 54957.5, any writing or document that is a public record, relates to an open session agenda item, and is distributed less than 72 hours prior to a regular meeting will be made available for public inspection at the District Office. If, however, the document or writing is not distributed until the regular meeting to which it relates, then the document or writing will be made available to the public at the location of the meeting, as listed on this agenda.

* Pursuant to Government Code 54954 subsection b, subsection 4, this facility constitutes the closest meeting facility for the Burbank Sanitary District, since the District has no other meeting facility within the boundaries of the territory, over which the Burbank Sanitary District exercises jurisdiction.

BURBANK SANITARY DISTRICT

6. CONSENT CALENDAR

6.A. APPROVAL OF MINUTES

Approve Minutes from Regular Meeting of
June 15, 2021

1. CALL TO ORDER

The Board of the Burbank Sanitary District convened this date at 7:00 p.m. via teleconferencing in accordance with Executive Order N-33-20. President Sclafani called the meeting to order at 7:00 p.m.

2. ROLL CALL

Directors Present: Ken Colson (left meeting after Item 9.B), Rene Prupes, Procopio Sclafani, Michelle Kaelker-Boor (left meeting after moved Item 10.D), Rebecca Yoder
Directors Absent: None
Counsel Present: None
Staff: Benjamin Porter (District Manager), Robert Woodhouse (Deputy District Manager), Vani Kathula.
Advisor: None
Visitors: None

3. APPROVAL OF AGENDA

Motion: To approve the agenda with moving Item 10.D – District Website Update after the Public Hearing and canceling the Closed Session.

Move: Kaelker-Boor

Second: Yoder

Board vote:

Ayes: Colson, Prupes, Sclafani, Yoder, Kaelker-Boor

Noes: None

Absent: None

4. PUBLIC COMMENTARY

4.A. Visitor Commentary – None.

4.B. Agency Representatives – None.

4.C. Board Commentary – Director Kaelker-Boor proposed to add the following items to the public outreach.

- Status of the SRF Loan and CIP Project
- Status of Litigation
- Status of the New Website
- Strategic Plan
- How the drought affects the Sewer District

5. PUBLIC HEARING

5.A. Public Hearing on Taxroll Collection for FY2021-2022

1. Staff Presentation
2. Open Public Hearing and Receive Testimony
3. Close Public Hearing
4. Board Discussion
5. Board Action – Adopt Resolution No. 286

President Sclafani opened the Public Hearing at 7:12 p.m. and it was closed at 7:13 p.m.; no members of the public attended the Public Hearing.

Motion: To adopt Resolution No. 286 – Approving Sewer Service Charges Report and Collection on the Taxroll for FY2021-2022.

Move: Yoder

Second: Colson

Board vote:

Ayes: Prupes, Sclafani, Kaelker-Boor, Colson, Yoder

Noes: None

Absent: None

10.D. District Website Update. (Moved Item)

Vani Kathula joined the meeting to discuss the website. She presented the draft website and talked about the features and functionality of the site. President Sclafani suggested the Board members provide feedback via a google document to be circulated. Consider a feature for communication to customers.

6. CLOSED SESSION

6.A. CONFERENCE WITH LEGAL COUNSEL –EXISTING LITIGATION

Government Code Section 54956.9(d)(1) Name of Case: County Sanitation District 2-3, West Valley Sanitation District, Cupertino Sanitary District, Burbank Sanitary District and the City of Milpitas v. The City of San Jose, The City of Santa Clara, and Does 1 through 50 inclusive.

Item was cancelled.

7. CONSENT CALENDAR

7.A. Approval of Minutes from the Regular Meetings of May 18, 2021.

Motion: To approve Meeting Minutes from the Regular Meetings of May 18, 2021.

Move: Prupes

Second: Yoder

Board vote:

Ayes: Prupes, Sclafani, Colson, Yoder

Noes: None

Absent: Kaelker-Boor

8. WARRANTS

8.A. Approval of Warrants.

1. Mark Thomas & Company, Inc. (District Management Services and BSD CIP)
2. First Tech Federal Credit Union (Board of Directors' Payroll)
3. Armento and Hynes, LLP (District Legal Services)
4. Richard Tanaka (District Advisor Services)
5. Cupertino Sanitary District (Common Interest Agreement – Milpitas Portion of Invoices 4/1/19 thru 12/31/20)

Motion: To approve five (5) warrants as listed.

Move: Yoder **Second:** Prupes

Board vote: **Ayes:** Prupes, Sclafani, Colson, Yoder
Noes: None
Absent: Kaelker-Boor

9. NEW BUSINESS

9.A. District Budget FY2021-2022.

Manager Porter presented the draft budget for the next fiscal year 2021-2022.

Motion: To approve the District FY2021-2022 Budget.

Move: Yoder **Second:** Prupes

Board vote: **Ayes:** Prupes, Sclafani, Colson, Yoder
Noes: None
Absent: Kaelker-Boor

9.B. District Insurance.

Motion: To approve District Insurance renewal proposal for the next fiscal year 2021-2022.

Move: Yoder **Second:** Prupes

Board vote: **Ayes:** Prupes, Sclafani, Colson, Yoder
Noes: None
Absent: Kaelker-Boor

10. OLD BUSINESS

10.A. Status of SRF Loan and Design Update.

Manager Porter provided an update for the SRF loan and design package. Deputy Manager Woodhouse provided a summary of the proposed schedule for bidding the project and the process for getting the project budget approved by the State.

10.B. Long-Range Financial Planning.

The Board and staff discussed the Long-Range Financial Planning effort and next steps.

10.C. GreenWaste Recovery, Inc Update.

Board reviewed and noted the Spring Clean-Up report from GreenWaste.

10.E. Form 470 Update.

Manager Porter advised that not all Board members had filed their Form 470. Board members are to file their Form 470 by July 31.

10.F. COVID-19 Update.

Manager Porter provided an update on the upcoming meeting of Cal/OSHA to conform their guidelines with the State, County, and CDC.

11. HOUSEKEEPING ITEMS

11.A. Updates on Housekeeping Items.

Board can continue to have meetings remotely.

11.B. Agenda Items for Next Upcoming Meeting.

Provide Public Outreach to include:

- Status of the SRF loan and the CIP project
- Status of litigation
- Status of the new website
- Strategic Plan
- How the drought effects the sewer District
- NextDoor account for the District

12. ADJOURNMENT – NEXT REGULAR MEETING – Tuesday, July 6, 2021

Motion: To adjourn meeting at 8:24 pm.

Move: Yoder **Second:** Prupes

Board vote: **Ayes:** Prupes, Sclafani, Yoder
Noes: None
Absent: Kaelker-Boor, Colson

Approved: July 20, 2021

Respectfully Submitted,

Mark Thomas & Company, Inc.

Procopio Sclafani, President

District Manager
Benjamin T. Porter, PE

BURBANK SANITARY DISTRICT

7. WARRANTS

7.A. APPROVAL OF WARRANTS

1. Mark Thomas & Company, Inc.
2. First Tech Federal Credit Union
3. Armento and Hynes, LLP
4. Alliant Insurance Services, Inc.
5. City of San Jose
6. Local Agency Formation Commission
7. County Roads & Airports

Warrant List for 07/20/21

#	Payee	Invoice Date	Invoice No.	Invoice Amount	Description	Warrant No.
1	Mark Thomas & Company, Inc.	7/14/2021	40798	\$15,224.56	CU-20103 BSD District Management Services	
		7/14/2021	40799	\$21,125.58	CU-16117 BSD District Wide CIP Project	
		7/14/2021	40800	\$597.24	CU-20106 BSD 1975 Scott St., Mainline Extension	
		7/14/2021	40798-R	\$760.89	Reimbursables - Website Development & Monthly Hosting Fee; Printing & Publications for Tax Roll Collection	
			MTCO Subtotal	\$37,708.27		3935
2	Burbank Sanitary District / First Tech Fed Credit Union		N/A	\$750.00	Board Payroll, Processing Fees/Taxes (Amount Deposited)	3936
				\$115.50	6/15/2021	
				\$115.50	6/15/2021	
				\$115.50	6/15/2021	
				\$115.50	6/15/2021	
				\$115.50	6/15/2021	
				Subtotal actual amt	\$577.50	
3	Armento and Hynes, LLP	6/30/2021	2021-6	\$114.00	District Counsel - June 2021	3937
4	Alliant Insurance Services, Inc.	7/1/2021	1686538	\$10,198.00	Insurance Premium 07/01/2021 - 07/01/2022	3938
5	City of San Jose	7/1/2021	1199545	\$70,982.00	Operations & Maintenance Billing for Q1 FY2021-2022	
		7/1/2021	1199546	\$54,395.00	Capital Billing for Q1 FY2021-2022	
			CSJ Subtotal	\$125,377.00		3939
6	Local Agency Formation Commission	6/11/2021	N/A	\$460.68	LAFCO Cost Sharing for FY2021-2022	3940
7	County Roads & Airports	6/23/2021	N/A	\$939.96	Encroachment Permit - 1975 Scott Street	3941
	TOTAL WARRANT AMOUNT			\$175,547.91		
TOTAL YEAR-TO-DATE WARRANT AMOUNT FY2020-21				\$982,249.34		
TOTAL YEAR-TO-DATE WARRANT AMOUNT FY2021-22				\$136,035.68		

\$39,512.23	Total June expenses reflected in June FY20-21 Financials
\$136,035.68	Total FY21-22 expenses to be reflected in July FY21-22 Financials (San Jose, LAFCO, Insurance)
\$175,547.91	Total Warrants to be paid this month

BURBANK SANITARY DISTRICT

8. NEW BUSINESS

8.A. FY2020-21 Year End Financial

BURBANK SANITARY DISTRICT
4th Quarter Financial (April 1, 2021 through June 30, 2021)
FISCAL YEAR: July 1, 2020 to June 30, 2021
BUDGET REPORT - EXPENSES

Account Name	Amount budgeted	Prior Expenses July - May	Amount Payable	Total Expenses To Date	Unencumbered Balance	% Expended To Date	Comments
JUNE							
Debt Related Expenses							
Revenue Bonds 2009 Series A - Term Ends 2020	\$15,900.00	\$15,860.19	\$0.00	\$15,860.19	\$39.81	99.75%	None this month
State Revolving Fund	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	None this fiscal year
Special District Fixed Asset Acquisition							
Treatment Plant Capital Improvement Fund	\$331,000.00	\$142,322.00	\$0.00	\$142,322.00	\$188,678.00	43.00%	100% paid this Fiscal Year (dewatering delayed)
Sewer System CIP Projects	\$450,000.00	\$169,170.86	\$21,125.58	\$190,296.44	\$259,703.56	42.29%	District Wide CIP project
Service and Supplies							
Wastewater Treatment Plant O&M	\$366,000.00	\$267,084.00	\$0.00	\$267,084.00	\$98,916.00	72.97%	100% paid this Fiscal Year (Legacy Lagoons deferred)
Wastewater Treatment Plant Equipment	\$1,000.00	\$0.00	\$0.00	\$0.00	\$1,000.00	0.00%	No costs incurred to date
San Jose Joint Use O&M	\$10,000.00	\$0.00	\$0.00	\$0.00	\$10,000.00	0.00%	No costs incurred to date
San Jose Joint Use CIP	\$10,000.00	\$0.00	\$0.00	\$0.00	\$10,000.00	0.00%	No costs incurred to date
Annual Neighborhood Clean Up Day	\$2,000.00	\$1,588.00	\$0.00	\$1,588.00	\$412.00	79.40%	None this month
Preventive Maintenance & Video Inspection	\$40,000.00	\$28,417.80	\$0.00	\$28,417.80	\$11,582.20	71.04%	None this month
Emergency Repairs and Stoppages	\$15,000.00	\$0.00	\$0.00	\$0.00	\$15,000.00	0.00%	No costs incurred to date
Repairs and Replacement (mains/laterals)	\$30,000.00	\$0.00	\$0.00	\$0.00	\$30,000.00	0.00%	No costs incurred to date
Permits (encroachment)	\$15,000.00	\$1,154.91	\$939.96	\$2,094.87	\$12,905.13	13.97%	Encroachment Permit for 1975 Scott Street
Office Expenses/Publications	\$2,500.00	\$1,448.07	\$760.89	\$2,208.96	\$291.04	88.36%	Website Development & Monthly Hosting Fee; Printing & Publications
Engineering/Maintenance Management	\$229,900.00	\$220,675.30	\$15,821.80	\$236,497.10	(\$6,597.10)	102.87%	On Target; slightly over budget due to SSMP Update and Recertification
Legal - District Counsel	\$35,000.00	\$16,492.00	\$114.00	\$16,606.00	\$18,394.00	47.45%	District Counsel - June Services
Legal - Outside Services	\$17,000.00	\$30,404.14	\$0.00	\$30,404.14	(\$13,404.14)	178.85%	None this month; greater than expected costs for Fiscal Year
Legal - District Advisor	\$8,000.00	\$3,700.00	\$0.00	\$3,700.00	\$4,300.00	46.25%	None this month
Audit and Accounting Services	\$12,000.00	\$11,200.00	\$0.00	\$11,200.00	\$800.00	93.33%	Paid auditors in full
Taxroll Preparation	\$500.00	\$0.00	\$0.00	\$0.00	\$500.00	0.00%	No costs incurred to date
Annual Memberships (CASA, SWRCB, Website)	\$5,000.00	\$5,059.34	\$0.00	\$5,059.34	(\$59.34)	101.19%	None this month
Insurance Renewal (Alliant)	\$10,000.00	\$9,728.00	\$0.00	\$9,728.00	\$272.00	97.28%	Paid for this Fiscal Year
Board Election Expenses	\$3,000.00	\$4,105.00	\$0.00	\$4,105.00	(\$1,105.00)	136.83%	None this month; election costs greater than expected
	\$1,612,800.00	\$928,409.61	\$38,762.23	\$967,171.84	\$645,628.16	59.97%	
Salary and Benefit Special Districts							
Per Diem - Five Board Members x 24 meetings	\$17,100.00	\$13,750.00	\$750.00	\$14,500.00	\$2,600.00	84.80%	BOD Meeting dates - 6/15/21
Per Diem - District Clerk x 24 meetings	\$3,420.00	\$577.50	\$0.00	\$577.50	\$2,842.50	16.89%	None this month
	\$20,520.00	\$14,327.50	\$750.00	\$15,077.50	\$5,442.50		
TOTAL EXPENSES	\$1,633,320.00	\$942,737.11	\$39,512.23	\$982,249.34	\$651,070.66	60.14%	

BURBANK SANITARY DISTRICT
4th Quarter Financial (April 1, 2021 through June 30, 2021)
 FISCAL YEAR: July 1, 2020 to June 30, 2021
BUDGET REPORT - REVENUE

Account Name	Account Number	Amount budgeted	Prior Expenses July - May	Current Month Receipts	Total Receipts To Date	Balance of Budget	% Earned To Date	Comments
JUNE								
OPERATING								
Direct Assessments	4980350	\$1,328,000.00	\$771,816.61	\$556,395.59	\$1,328,212.20	(\$212.20)	100.02%	Tax Roll 2nd Payment for FY2020-2021
Permits and Connections	4980010	\$10,000.00	\$16,020.00	\$1,180.00	\$17,200.00	(\$7,200.00)	172.00%	Two payments received this month; Seventeen payments received to date
Interest Allocation	4301100	\$15,000.00	\$18,180.12	\$0.00	\$18,180.12	(\$3,180.12)	121.20%	None this month; Interest received through Q3 FY2020-2021
Credit for Treatment Plant CIP		\$75,000.00	\$139,983.45	\$0.00	\$139,983.45	(\$64,983.45)	186.64%	None this month
TOTAL OPERATING REVENUE		\$1,428,000.00	\$946,000.18	\$557,575.59	\$1,503,575.77	(\$75,575.77)	105.29%	
TOTAL REVENUE		\$1,428,000.00	\$946,000.18	\$557,575.59	\$1,503,575.77	(\$75,575.77)	105.29%	

CASH ACCOUNT SUMMARY

Date	Description	Balance
July 31, 2020	Ending balance	\$1,535,578.14
August 31, 2020	Ending balance	\$1,514,603.53
September 30, 2020	Ending balance	\$1,485,069.97
October 31, 2020	Ending balance	\$1,308,457.09
November 30, 2020	Ending balance	\$1,420,819.31
December 31, 2020	Ending balance	\$1,381,740.70
January 31, 2021	Ending balance	\$1,863,802.67
February 28, 2021	Ending balance	\$1,940,776.00
March 31, 2021	Ending balance	\$1,898,156.15
April 30, 2021	Ending balance	\$1,743,719.33

BURBANK SANITARY DISTRICT

9. OLD BUSINESS

- 9.A Status of SRF Loan and Design Update
- 9.B. Long Range Financial Planning
- 9.C. GreenWaste Recovery, Inc.
- 9.D. District Website Update
- 9.E. COVID-19 Update



Burbank Sanitary District

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Cupertino, CA 95014

Phone (408) 255-2137 Fax (408) 253-5173

www.burbanksanitary.org

"Serving the Burbank Community since 1940"

Item 9A

July 20, 2021

TO: BURBANK BOARD OF DIRECTORS

FROM: BENJAMIN T. PORTER, District Manager-Engineer

SUBJECT: **BSD District Wide Capital Improvement
Labor Compliance Consultant Agreement**

BACKGROUND:

The Burbank Sanitary District was recently awarded a loan by the California State Water Resources Control Board to rehabilitate the sewer system it operates. The Board obtained the loan from California's Clean Water State Revolving Fund, which is capitalized through a variety of funding sources like grants from The United States Environmental Protection Agency. Because the loan is federally funded, the loan agreement requires the Burbank Sanitary District to monitor the Federal Davis-Bacon Requirements, which include prevailing wage requirements, wage determinations, Davis- Bacon provisions, and compliance monitoring. It is also stated in the loan agreement that the BSD must also report the utilization of Disadvantage Business Enterprise (DBE).

PROPOSAL:

The Burbank Sanitary District and Mark Thomas engineering staff acknowledges that the Federal labor compliance monitoring requirements are beyond their scope of expertise and knowledge, and has unanimously decided to contract a private consulting firm to monitor the labor compliance requirements. They reached out to three consulting companies and received two proposals. The engineers held a meeting in which they reviewed and discussed the candidates' qualifications and proposals and decided that Imperium First Consulting was the preferred candidate.

The engineering staff discussed their decision to proceed with Imperium First Consulting and discussed compensation and other contingencies. The resultant agreement was agreed upon as an hourly rate contract, with a not to exceed amount of \$23,000.

The Burbank Sanitary District and Mark Thomas engineering staff understands the benefit of having a professional with more than 20 years of specialized work experience monitoring the Federal labor compliance requirements for the BSD District Wide Capital Improvement Project, and highly encourages the Burbank Sanitary District Board of Directors' support and approval.

AGREEMENT FOR CONSULTING SERVICES

THIS AGREEMENT, dated 7/20/2021____, by and between BURBANK SANITARY DISTRICT ("District"), and IMPERIUM FIRST CONSULTING, a California corporation ("Consultant"), is made with reference to the following facts:

NOW, THEREFORE, it is agreed as follows:

1. **Scope of Services.** Subject to the approval of District, Consultant shall oversee State and Federal Funding compliance, which includes DBE and Davis Bacon monitoring for the Burbank Sanitary District Wide Capital Improvement Project. All consulting services shall be performed to comply with the State and Federal requirements outlined in the Bid Documents for Burbank Sanitary District CIP Specification 06182021.

2. **Principal-In-Charge.** Consultant shall designate a person in charge, who shall act on behalf of Consultant and be primarily responsible for supervising performance of Consultant's services hereunder (the "Principal-In-Charge"). The person designated as Principal-In-Charge shall be subject to approval of the District. At any time, Consultant may change the person designated as Principal-In-Charge and the District may request Consultant to replace the person currently serving as the Principal-In-Charge.

3. **Compensation and Expenses.** As compensation for all services to be performed by Consultant under this Agreement, Consultant shall be paid the amounts set forth in Exhibit "B" attached hereto and incorporated herein by reference. In addition to such compensation, Consultant shall be entitled to charge District for expenses as described in Exhibit "B", provided such expenses are included as part of the District's annual budget, or are otherwise approved by the District Board, and are billed to District at Consultant's cost.

4. **Method of Payment.** Consultant shall submit billings to District describing in detail the work performed for which payment is requested, the date the services were performed, the number of hours spent and by whom, and a description of any expenditures charged to District during the period covered by the statement. Billings shall be submitted monthly, or at such other time as agreed upon between District and Consultant. District shall pay Consultant no later than 30 days after approval of the invoice by the District Board. If the District Board objects to all or any portion of the billing, the District shall notify Consultant of the nature of such objection and the amount in dispute. District shall pay when due the portion of the billing, if any, that is not in dispute. The parties will make every effort to settle the disputed billing through good faith negotiations and mediation.

5. **Maintenance and Inspection of Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, time cards, purchase orders, and other records or documents relating to charges for services or expenditures charged to District, for a minimum of three (3) years from the date of final payment to Consultant under this Agreement and shall make the same available to District or its authorized representatives for inspection and audit, at any time during regular business hours, upon written request by District. The right of inspection shall include the right to make extracts and copies.

6. **Assignment and Subcontracts.** Consultant acknowledges that Consultant's special skill and expertise is a material consideration for District entering into this Agreement. Consultant shall not assign, subcontract or delegate to any other party the performance of any services to be rendered by Consultant under this Agreement without prior approval of the District Board. If the District Board consents to any subcontracting of work, Consultant shall be responsible to District for all acts or omissions of the subcontractor.

7. **Correction of Work.** Consultant shall promptly correct any defective, inaccurate or incomplete tasks, deliverables, goods, services, or other work, without additional cost to District. The performance or acceptance of services furnished by Consultant shall not relieve Consultant from the obligation to correct subsequently discovered defective, inaccurate, or incomplete performance of Consultant's services hereunder.

8. **Ownership of Documents.** All plans, drawings, specifications, reports, documents and other writings prepared by and for Consultant in the course of performing its services under this Agreement, including all such materials delivered to Consultant by any other parties, except Consultant's working notes and internal documents, shall become the property of District upon payment to Consultant for such work, and District shall have the sole right to use such materials in its discretion without further compensation to Consultant or to any other party. Consultant shall, at Consultant's cost, provide such plans, drawings, specifications, reports, documents and other writings to District upon written request.

9. **Independent Contractor.** Except as otherwise expressly provided in this Agreement, Consultant is, and at all times shall remain, an independent contractor, and not an agent, officer or employee of District.

10. **Licenses.** Consultant represents and warrants to District that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature that are legally required of Consultant to practice its profession. Consultant shall, at its sole cost and expense, keep and maintain such licenses, permits, qualifications, insurance and approvals in full force and effect at all times during the term of this Agreement.

11. **Compliance with Standards of Care and Laws.** Consultant shall adhere to the standard of care in its profession and shall exercise due professional care to comply with all applicable federal, state and local laws, codes, ordinances and regulations in connection with the performance of its services under this Agreement.

12. **Mutual Indemnity.**

(a) Consultant shall indemnify, defend, and hold harmless the District and its officers, directors, and officials, from and against any and all claims, demands, causes of action, losses, damages, injuries, expenses and liabilities, direct or indirect, including reasonable attorney's fees, to the extent arising out of the negligent performance by Consultant of its services under this Agreement or its failure to comply with any of its obligations contained in this Agreement, and District shall not be liable for any negligent acts or omissions or willful misconduct of Consultant.

(b) To the extent permitted by law, District shall indemnify, defend, and hold harmless Consultant and its officers, directors, shareholders, and employees, from and against any and all claims, demands, causes of action, losses, damages, injuries, expenses and liabilities, direct or indirect, including reasonable attorney's fees, arising from Consultant being designated and acting as District's manager, engineer, and District Clerk, and not resulting from any negligent act or omission or willful misconduct committed by Consultant, Consultant's Responsible Principal, or any of Consultant's other principals, officers, directors, employees or agents.

13. **Insurance.** Consultant, at its own expense, shall procure and maintain, for the duration of this Agreement, insurance policies which satisfy the following requirements:

- (a) Type of policies and coverage:
 - (1) General Liability Coverage. Consultant shall maintain commercial general liability insurance in an amount not less than \$1,000,000 per claim for bodily injury, personal injury and property damage. If the form of insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit.
 - (2) Automobile Liability Coverage. Consultant shall maintain automobile liability insurance in an amount not less than \$1,000,000 combined single limit for each occurrence, for bodily injury and property damage, providing coverage at least as broad as Insurance Services Office form CA 0001 (Ed. 12/90) Code 1 (any auto).
 - (3) Workers' Compensation and Employer's Liability Coverage. Consultant shall maintain workers' compensation insurance as required by the State of California and employer's liability insurance in an amount not less than \$1,000,000 per occurrence, for any and all persons employed by Consultant in connection with the performance of services under this Agreement. In the alternative, Consultant may rely on a self-insurance program to provide this coverage so long as the program of self-insurance complies fully with the provisions of the California Labor Code. The insurer, if insurance is provided, or Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against District for loss arising from work performed by Consultant for District.
 - (4) Professional Liability Coverage. Consultant shall maintain professional errors and omissions liability insurance in an amount not less than \$1,000,000 per claim, covering negligent acts, errors or omissions which may be committed by Consultant in the performance of its services under this Agreement.
- (b) Endorsements: Each general liability and automobile liability insurance policy shall contain, or be endorsed to contain, the following provisions:
 - (1) The District, its directors, officers, officials, employees, agents and volunteers in their official capacities as representatives of the District, are to be covered as insureds as respects: liability arising out of activities performed by or on

behalf of Consultant; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or vehicles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to District, its directors, officers, officials, employees, agents or volunteers.

- (2) For any claims related to the services performed by Consultant hereunder, Consultant's insurance coverage shall be primary insurance as respects the District, its directors, officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by District, its directors, officers, officials, employees, agents or volunteers shall be excess of Consultant's insurance and shall not contribute with it.
 - (3) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to District, its directors, officers, officials, employees, agents or volunteers.
 - (4) Consultant'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.
 - (5) Consultant's insurance coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to District.
- (c) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the District Board.
- (d) Acceptability of Insurers. Insurance is to be placed with insurers having a current A.M. Best rating of no less than A:VII, unless otherwise approved by the District Board.
- (e) Verification and continuation of coverage. Consultant shall provide certificates of insurance with original endorsements to District as evidence of the insurance coverage required by this Agreement. At the request of District, Consultant shall provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by this Agreement. In the event of any reduction, suspension or cancellation of any insurance coverage required to be provided by Consultant hereunder, Consultant shall furnish replacement insurance in accordance with the requirements of this Section prior to the effective date of such reduction, suspension or cancellation so as to avoid any lapse in coverage.

14. **Notices.** Any notices required or permitted to be given under this Agreement shall be in writing and shall be either personally delivered or sent by certified mail, return receipt requested, addressed to the other party as follows:

To District: Burbank Sanitary District
20863 Stevens Creek Blvd.
Suite 100
Cupertino, CA 95014
Attn: Benjamin Porter
District Manager-Engineer

To Consultant: Imperium First Consulting
P.O Box 1710
Carlsbad, CA 92018
Attn: Christine Willson
CEO/ President
Principal-In Charge

15. **Litigation Expenses and Attorneys' Fees.** To the extent permitted by law, if either party to this Agreement commences any legal action against the other party to enforce or interpret this Agreement, the prevailing party shall be entitled to recover all costs and expenses that may be incurred in connection therewith, including court costs, expert witness fees, discovery expenses, and attorneys' fees. Prior to the commencement of any litigation, the parties shall make a good faith effort to resolve the dispute through mediation.

16. **Termination of Agreement.** This Agreement may be terminated by either party, effective upon written notice, should the other party commit any material default in the performance of its obligations hereunder. This Agreement may also be terminated by either party, for any reason, upon ninety (90) day's prior written notice to the other party. In the event this Agreement is terminated by District through no fault of Consultant, Consultant shall be compensated for all services performed to the effective date of termination.

17. **Miscellaneous Provisions.**

(a) Severability. Should any portion of this Agreement be declared void or unenforceable in a final decision by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement can be reasonably interpreted to implement the intention of the parties.

(b) Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes and cancels all prior agreements or understandings, whether written or verbal.

(c) Amendments. This Agreement may be modified or amended only by a written document duly executed by both District and Consultant.

(d) Waiver. The waiver of any breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same provision or any other provision of this Agreement.

(e) Execution. Each party warrants that the individuals signing this Agreement on its behalf have the legal power and authority to do so and to bind the party to this Agreement.

(f) Successors and Assigns. Subject to the restriction against assignment and subcontracting, this Agreement shall be inured to the benefit of and shall be binding upon the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

BURBANK SANITARY DISTRICT
OF SANTA CLARA COUNTY

By: _____
Procopio Sclafani, President

Attest: _____
Rene Prupes, Secretary

APPROVED AS TO FORM:

Valerie Armento, District Counsel

PRINCIPAL-IN-CHARGE:
Imperium First Consulting

By: _____
Christine Willson, CEO

EXHIBIT A

Description of Services

- 1 Project Preparation and Accounting: Imperium First Consulting will gather, and review documents and information provided by BSD including project schedules and Loan Agreement Specifications where the State and Federal requirements are outlined.
- 2 Oversight and Monitoring of Federal and State Requirements: IFC will review regularly and recommend actions when needed to ensure the DBE goal is met or exceeded. IFC is aware of the provisions of Section 1773 of the California Labor Code, which requires the payment of prevailing wage on public projects, and will ensure the Federal requirements are met.
- 3 Imperium First Consulting will attend pre-construction conference or meeting and provide contractors with a check list of all prevailing wage and DBE requirements. The check list will be reviewed and signed by authorized personnel for each contracting company. IFC will be available after pre-construction conference/meeting for all questions contractors may have regarding their obligation to fulfil prevailing wage and Davis Bacon Requirements.
- 4 IFC and its staff will review weekly certified payrolls submitted via secure email, or FedEx/UPS. Certified payrolls and supporting documentation are reviewed and logged after all compliances are met. All labor hours are tracked and apprentice ratios are also tracked to comply with labor code 1777.5 where the ratio is five hours of journeyman work to one hour of apprenticeship. Apprentice certifications will be verified through Department of Industrial Relations (DIR) and Department of Labor (DOL).
 - All DBE contractors' payments will be tracked to ensure DBE participation goal is met. In order to achieve this, IFC proposes LCP Tracker Software or similar is utilized to capture weekly and monthly reporting.
 - Monthly reporting will be sent to the Mark Thomas staff contracting for the Burbank Sanitary District. This reporting will state whether progress payments or contractor retention must be withheld due to non-compliance.
 - During certified payroll reviews, all journeyman and apprentice hours are logged on an excel report to track apprentice requirements. Supporting documentation such as fringe benefit payments to third parties are requested periodically to cross check for compliance. Contractor will be notified of all delinquencies. In the event where delinquencies are not

rectified after notifying contractors, or/and apprentice ratios continue to fall below the minimum ratio, Mark Thomas staff contracting for the Burbank Sanitary District will be notified.

- Employee interviews will be performed periodically according to 29 CFR 5.6, to cross check employee prevailing wage rates with certified payrolls received. Depending on project site location, IFC will rely on Inspectors on site to fill out interview questionnaires and email copies to IFC. Originals will be picked up when IFC's representative performs CUCP reviews. IFC will rely on Mark Thomas' inspectors or project managers to inform us of the weekly work schedule of contractors particularly DBE Contractors work schedule, so that we can schedule our CUCP interview/interviews accordingly.
- California Unified Certification Program (CUCP) reviews will be done on site to ensure contractors are performing the scope of work per agreement with Mark Thomas and Burbank Sanitary District. All contractors DBE Certification will be verified through the CUCP website. The objectives of this compliance review are to:
 - Determine whether the contractor is honoring the Unified Certification Program agreement submitted to Mark Thomas for Burbank Sanitary District
 - Examine the required tools utilized on site, and scope of work performed to ensure they meet procedures and standards of the CUCP against the Disadvantaged Business Enterprise program compliance standards set forth in the regulations and to document the compliance status of each component.
 - Gather information and data regarding the operation of the DBE Contractor interviews and certification file review.

Scope of Work Assumptions

Imperium assumes that Burbank Sanitary District will obtain the recommended LCP Tracker Software to monitor the weekly and monthly reporting.

EXHIBIT B
Compensation

1. Imperium First Consulting will complete this work on an hourly basis, using the hourly rate schedule table shown below.
2. IFC will charge for 2 round trip flights from Ontario, CA to San Jose, CA to conduct CUCP Reviews. Dates to be determined according to contractor schedule.
3. Imperium First Consulting will complete the scope of work and travel for a not to exceed amount of \$21,000.
4. If the scope of work for the project increases as a result of project delays, additional travel, or other scope changes then the not to exceed fee limit will be increased.

The table below outlines Imperium First Consulting’s hourly rates.

Staff Name	Function	Rate hourly 2021
Christine Willson	Labor Compliance Manager	89.00

However, to get a better estimate, the Burbank Sanitary District and IFC have discussed compensation assumptions, as well as created a description of the tasks to be performed per IFC’s proposal, which are outlined below.

Tasks

1. Project Preparation and Accounting
2. Oversight and Monitoring of Federal and State Requirements
3. Imperium First Consulting Pre-Construction Conference
4. IFC Weekly Certified Payrolls Review

Total not to exceed amount \$21,000

Compensation Assumptions:

1. Imperium First consulting rates are hourly, however, to determine an estimated hours per week, we have based the hours of five contractors
2. Each contractor having a total of up to seven employees on their certified payroll each week requiring 10 hours of review weekly, to include supporting documentation review, and calculation of apprentice hours.
3. Ten hours is minimum review total for this project.
4. IFC will conduct two CUCP reviews to capture all DBE contractors on site During the week of CUCP reviews, IFC will add 5 hours of work time to commute to the job site and interview DBE Contractors.
5. It is assumed that the project duration will be 110 working days.



GREEN UPDATES



GREENWASTE RECOVERY'S QUARTERLY NEWSLETTER FOR JURISDICTION

NEWS AND FEATURES

- 1 Message from CEO: SB 1383 Reporting
- 2 Reducing Organic Waste, Tip # 2
- 2 Requesting Extra Services & Holiday Collection



Meeting SB 1383 Reporting Requirements

by Tracy Adams, Co-CEO

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Reduce Organic Waste, Tip #2

by Emma Rasmussen, Sustainability and Communications Analyst

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How to Request Extra Services

by Ereida Atayde, Office Manager

Extra services are available to residents of JURISDICTION. Some of these services are included (like On-Call Clean Ups), and some come with an extra charge (like Backyard Service).

Please contact Customer Service at least 48 hours in advance of requested service so that the proper work orders can be placed, and so that our team can explain any specific parameters. You can contact Customer Service through the following means:

- Email: customerservice@greenwaste.com
- Online form: greenwaste.com > Support > Service Request
- Live Chat: greenwaste.com > jurisdiction search function
- Phone: (650) 798-5999



Holiday Collection Information

by Kevin Martinez, Community Relations Coordinator

Christmas Day and New Year's Day fall on Saturdays this season, so collection schedules will remain uninterrupted!

TREES:

On service day, place unornamented trees (cut to no longer than five foot lengths) Curbside, next to your service carts for Yard Trimmings collection. Trees are collected for no additional charge between December 26 and January 25 of each year.

