



**A Public Agency**

CONSENT CALENDAR



**DRAFT MINUTES**

SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY  
MEETING OF THE BOARD OF DIRECTORS  
March 27, 2014 – 1:30 p.m.  
RethinkWaste Board Room at the Shoreway Environmental Center

**Call To Order: 1:30 PM**

**1. Roll Call**

Agency	Present	Absent	Agency	Present	Absent
Atherton	X		Menlo Park	X	
Belmont	X		Redwood City	X	
Burlingame	X		San Carlos	X	
East Palo Alto	X		San Mateo	X	
Foster City	X		County of San Mateo		X
Hillsborough	X		West Bay Sanitary District	X	

2. **Adjourn to Closed Session** –Conference with Legal Counsel – Existing litigation per government code section 54956.9(a) Zanker Road Resource Management, LTD versus South Bayside Waste Management Authority Santa Clara Superior Court Case No. 1-13-CV-248796

Regular Session CTO: 2:00 PM

**3. Report from Closed Session**

Nothing to report

**4. Roll Call**

Agency	Present	Absent	Agency	Present	Absent
Atherton	X		Menlo Park	X	
Belmont	X		Redwood City	X	
Burlingame	X		San Carlos	X	
East Palo Alto	X		San Mateo	X	
Foster City	X		County of San Mateo		X
Hillsborough	X		West Bay Sanitary District	X	

**5. Public Comment**

Persons wishing to address the Board on matters NOT on the posted agenda may do so.

Each speaker is limited to two minutes. If there are more than five individuals wishing to speak during public comment, the Chairman will draw five speaker cards from those submitted to speak during this time. The balance of the Public Comment speakers will be called upon at the end of the Board Meeting.

If the item you are speaking on is not listed on the agenda, please be advised that the Board may briefly respond to statements made or questions posed as allowed under The Brown Act (Government Code Section 54954.2). The Board's general policy is to refer items to staff for attention, or have a matter placed on a future Board agenda for a more comprehensive action or report and formal public discussion and input at that time.

Dwight Herring of SBR spoke about the proposed California budget elimination of curbside supplemental fees that are paid to the Member Agencies, and administrative fees that are paid to certified recycling centers. He noted that the proposed plan suggests certified recycling centers and processors should continue to provide the critical recycling services without any compensation. He added that administrative fees, or reimbursements, are used to defray the cost of managing the CRV recordkeeping and reporting requirements. Administrative fees also cover the cost of capital expended by recycling centers that typically wait 30 days or more to be reimbursed by the state for payments made to the public. In 2013, the Administration Fees that were billed to CalRecycle and paid to the SBWMA amounted to over \$24,000. He concluded by asking Board members to contact their State Assembly members asking them to leave the administrative fees alone.

Chair Widmer asked Dwight Herring to send a form letter to all of the Member Agencies that could be used to contact Assembly Members regarding the issue.

Michael Brownrigg commented that he was expecting a bigger number than \$24,000 and would like to understand the bottom line scale better.

Chair Widmer suggested this item be referred to the TAC for further understanding.

**6. Approval of Consent Calendar:**

Consent Calendar item(s) are considered to be routine and will be enacted by one motion. There will be no separate discussion on these items unless members of the Board, staff or public request specific items be removed for separate action. *Items removed from the Consent Calendar will be moved to the end of the agenda for separate discussion.*

- A. Adopt the February 27, 2014 BOD Meeting Minutes
- B. Resolution Approving Calendar Year 2013 Financial Statements
- C. Resolution Approving Agreement to Conduct a Financial Systems Audit of the Collection Services and Facility Operations Contractors

Motion/Second: Gauthier/Aguirre  
 Voice Vote: All in favor

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

Chair Widmer noted that Item 8 Old Business would be taken before Item 7.

8. **Old Business:**

A. Resolution Clarifying Interest Calculations for Rate Revenue Surplus/Shortfall Calculated as part of Annual Contractor Compensation Adjustment Process

Staff Feldman noted that this was a follow up item from the January 2014 Board Meeting, and that staff was asking for approval of the Memorandum of Understanding (MOU) attached to the staff report, which establishes expectations regarding future interest calculations on surplus revenue accrued by Recology. He noted that the MOU would be between the SBWMA and Recology because the SBWMA staff is charged with the review of the compensation application calculations that show the surplus or shortfall for each agency each year.

Member Bronitsky noted that last time he asked if it was all or nothing, and clarified that with this approval it will be all.

Counsel Lanzone answered yes, per the contract this Board approves the revenue reconciliation, and sets the compensation for the next year, as part of that the MOU says that if an Agency has a surplus they can apply by the end of July each year to have the surplus amount returned.

Executive Director McCarthy clarified that this Board doesn't set each individual Agency's rates; it approves the revenue requirement that needs to be generated through the rates.

Staff Feldman added that section 10 of the contract allows Agencies to provide an "other fee" with their garbage rates, if an "other fee" is part of your rates Recology will remit that money throughout the year, and avoid accruing any surplus.

Vice Chair Dehn asked for clarification on the time in between when an Agency is notified of a surplus and the July deadline to ask for the money back.

Staff Feldman answered that the revenue reconciliation report is due March 31<sup>st</sup> each year, so it's between April and July that an Agency would need to ask for the surplus funds.

Chair Widmer recalled that at the last meeting the time line was 30 days for a payment to be made.

Staff Feldman clarified that Agencies have 60 days to make the request, and it will be paid within 30 days.

Member Olbert made a motion to approve Resolution 2014-06.

Member Bronitsky seconded the motion

Member Brownrigg noted that he would be voting in favor of the resolution, adding that the City of Burlingame does maintain a significant surplus and they would be asking for it back.

Roll Call Vote: 11-0-0-1

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

B. Discussion on Cost Allocation Methodology in Member Agency Franchise Agreements with Recology San Mateo County (Discussion only)

Executive Director McCarthy noted that this was a follow up item and the last time this was discussed Recology was going to come back to the Board with additional data points to see if more data would change allocations, and also come back with information on what it would cost to automate their systems.

Mario Puccinelli explained the data that was provided in the staff report. He noted that they used their route hours operating statistics in June, September and December and then annualized them to emulate the process used in the compensation application. He concluded there were slight fluctuations in the allocations but nothing alarming, and that they believe no matter what methodology is used, there will still be variances. He also noted the Recology has yet to receive a quote on the cost of automating their systems.

Member Olbert wondered if it was possible to put the information gathered into dollar terms.

Mario Puccinelli answered that without doing the full blown rate application Recology would be making some large assumptions to do that.

Chair Widmer commented that he would still like to see all the data for the whole year, and that he thought that information was vital to making a final decision on fixing allocation. He added that increased data would give the Board good information from a benchmarking standpoint as well. He concluded that he supports the Executive Director's request to continue to press forward, and requested that the item be brought back next month to put pressure on the non-responsive vendor.

Mario Puccinelli agreed that Recology would press their vendor for a quicker response.

Member Brownrigg stated that there are two different elements involved. One is what data is collected, and second is how often it is collected. He noted that Burlingame would support a process that changed rates less than annually, but that he didn't support fixing allocation forever.

Chair Widmer commented that he is in favor of less variability.

Member Olbert commented that he is less concerned about year over year variability, because each agency can manage that to whatever level they wish themselves, and noted that there is inherent variability that is outside of this Board's control.

Vice Chair Dehn asked for clarification on whether this data is already collected, or if the Board was requesting another type of audit or methodology.. She commented that she did not support additional audits.

Mario Puccinelli explained that Recology looked at data from a different time and compared it to the four week period.

Member Brownrigg clarified that he was commenting on the term in the staff report – “arduous process”. He added that if it is an arduous process it is an expensive process and therefore he didn’t think it should be done annually.

Executive Director McCarthy added that he thought the take away from the last meeting was to try and get a different data set to see if it led to different results. He added that there isn’t enough information at this time to change what is being done now, and the proposal from RouteWare could be a game changer. He acknowledged that this year’s annual route assessment is coming up, and requested that there be an acknowledgement that Recology keep using the process prescribed in the contract, since there is no alternative to change to at this time. He noted that this would be a fundamental change to the compensation methodology that is in the Franchise Agreements to the JPA can’t make this change, each agency would have to vote on it.

## **7. New Business:**

- A. Consideration of Introduction of Ordinance Implementing a Recycling Reporting System for Commercial Recycling Haulers

Staff Feldman noted that this item has been before the Board in May and October of 2013, and in February of 2014, and that a lot of progress had been made at the TAC meetings in the last 2 months. He commented that changes in the last two months are: it is no longer a permit system it’s a registration system, enforcement would be in the way of administrative fines, and a detailed implementation schedule and a protocol manual will be set up. He added that one of the protocols is to have stakeholders meetings this fall to let them know they need to register by January 1, 2015, and the first quarter of 2015 would be the first reporting period.

Executive Director McCarthy added that there would be fees charged, and the intent would be to set fees get full cost recovery, he noted that there isn’t a firm number on how many haulers there are, which is why the registration fee hasn’t been determined yet.

Member Olbert was uncomfortable with the line in the staff report explaining why this would be a JPA ordinance, that stated some agencies may chose not to adopt the ordinance, noting that it felt like this Board would be stepping on Member Agencies prerogative to make sure they do the right thing.

Executive Director McCarthy commented that it’s possible if a model ordinance template is used then all the Member Agencies might not pass it, and then we would have an incomplete picture of diversion across the service area. He referred to the example of the model C&D ordinance that was passed by this agency that was felt to be a high priority to get additional diversion, noting that it took 2 years to get 8 or 9 agencies to pass a C&D ordinance.

Member Olbert followed up by clarifying that this ordinance would be enforced by SBWMA, and if it was new to the JPA.

Counsel Lanzone answered that it would be enforced by the SBWMA, and that the SBWMA has done one other ordinance, the cost accounting ordinance.

Member Bronitsky asked why it was important to collect the information.

Executive Director McCarthy answered that as stated in the staff report, this JPA plans solid waste and recycling programs for the 12 agencies in the JPA, and as far as doing our program planning the commercial recycling diversion rates are a big area of concern. All of our member agencies are doing great on the residential side, some as high as 80% diversion, but looking at the commercial side which is just what Recology collects the number is more like 30%, so that looks like a big opportunity for diversion. He noted that the truth may lie somewhere in between, but we don't know until we can get some information and reporting on what other recyclers are doing in the service area.

Member Bronitsky commented that he read the staff report as saying it's not for compliance with AB939, and if not for compliance with the law, that he didn't understand the necessity for an ordinance to collect data. He wondered why data couldn't be collected without an ordinance. He also commented that he had issues with passing authority to this board. He suggested starting with a letter from each municipality to all of their businesses to ask how they deal with their recycling to see if data would be given, and to ensure all of the commercial haulers were known. He commented that a business is more likely to know their City, than a letter that says RethinkWaste.

Executive Director McCarthy answered that part of what this JPA does is to look out over the horizon so that staff can advise on solid waste and recycling needs. He added that as part of that there is a 75% diversion state wide goal, and the only way to reach that 75% goal is through increased commercial recycling. He noted that it isn't a local mandate yet, so that is not the goal, but the goal behind getting the data is to be in a better position to answer the question as to whether or not there should be additional commercial recycling efforts throughout the service area. He also noted that in his opinion it would be hard to get the data voluntarily, there is a long history in the state of California of people trying to get the data voluntarily, but it got very expensive and the process was stopped.

Member Bronitsky wanted to know what the burden on the business community would be to provide this data and what the cost of enforcement would be.

Executive Director McCarthy stated that it is not the intent to chase businesses down; the intent is to get the data.

Member Olbert commented that if you start getting some of the larger haulers, they will know who the competition is.

Executive Director McCarthy added that Recology knows who the haulers are and that he thought it was a small universe and not too many companies would be missed.

Member Brownrigg suggested bringing on the consultant to shape the data inquiry before the ordinance, so that more definite parameters could be defined which could help make this board more comfortable passing an ordinance.

Staff Feldman noted that it is prescribed in the ordinance as far as who the applicants are, the definitions of a commercial hauler, and the material information collected. He added that it is not the intent to make it arduous on the businesses.

Member Bronitsky asked about a company like Safeway that puts the empty boxes back in the truck and if that was dealt with in the ordinance.

Staff Feldman answered that it is in the ordinance, and explained the term back haul.

Executive Director McCarthy added that these large businesses that are back hauling may be the largest source of diversion, but we don't know without getting the data.

Member Bronitsky noted that he would like more information from Cascadia, and that the ordinance was still a problem for him. He would like to use the next nine months to see if information can be gathered voluntarily.

Staff Feldman responded that it was staff's perspective that in order to spend the money prudently it needed to be more than voluntary.

Chair Widmer reiterated that Member Bronitsky didn't suggested large sums of money be spent in developing the software before a decision is made on the ordinance. The idea is to better define what is wanted and see if the information could be gathered voluntarily and be readily available before a data base is built.

Executive Director McCarthy noted that staff has surveyed agencies across the state that are dealing with the same issue and they've either put exclusive non franchises in place, which staff thinks is excessive, or they've done these types of ordinances, because they've found it difficult to get the data voluntarily.

Vice Chair Dehn asked if staff has reached out to haulers to see if they could provide information easily in a way that would be of value.

Staff Feldman answered that they provide this information to other agencies like the SBWMA that have ordinances in place, so they can also provide the information to our agency, but staff hasn't reached out to those business yet, it is part of the stakeholder engagement plan.

Member Ross wondered if any of the other agencies that have enacted an ordinance have run into any litigation with regards to the information being requested.

Counsel Lanzone answered that that he hadn't heard of any nor was there any mentioned in the consultant's report.

Chair Widmer asked for Executive Director McCarthy's thoughts on moving forward with the motion.

Executive Director McCarthy thought that a vote should be taken, and that this was the simplest way to go about getting the data. He noted that budget conversation would begin next month, including a long range plan and that this information would be needed as part of the long range plan and that he thought this was the cheapest way to go about getting the data. He noted that if the Board doesn't want an ordinance the backup plan would be to pursue voluntary data, but that it was important to get this information because without it there is an incomplete picture of our diversion.

Member Carlton suggested just going to what is thought to be the top 20% of generators that we know are providing this information to other jurisdictions to see if they would provide without an ordinance.

Executive Director McCarthy answered that would be the backup plan.

Counsel Lanzone suggested that an alternative would be to table the matter and bring back more information to the board.

Member Bronitsky made a motion that we table the decision until more information and informal outreach to some of the haulers can be done.

Member Gauthier seconded the motion

Discussion:

Member Olbert suggested taking this back to individual councils to see if their Agencies would be in favor of this.

Member Brownrigg noted that he would find it very difficult to adopt an ordinance in which the fee is not clear.

Chair Widmer suggested the chair or the vice chair of the TAC comment on their thoughts as a public comment.

TAC Vice Chair Afshin Oskoui noted that there has been a lot of healthy discussion on this topic for about a year and half at the TAC, and that Executive Director McCarthy has a legitimate concern over the big hole in the data, and how to capture that. He thought this was a means to get these companies to come to the table. He noted that information especially from the smaller haulers would be challenging without the ordinance but seeing if information could be given from the larger haulers over the next two to three months might not be a bad idea. He added that it might put staff in an awkward position in terms of planning purposes if the information can't be gathered voluntarily.

Member Ross added that when asking for the information voluntarily, that the message be that the Board is considering an ordinance but would like to take the least intrusive means to collect the data, noting that the delivery message would be important.

Member Bronitsky noted that he had no issue with collecting the data, so put the money in the budget to collect the data and then see if we can get it voluntarily or not.

Voice Vote: All in Favor.

B. Review of Cash Reserve Policy (Discussion only)

Staff Moran gave an overview of the staff report noting that the cash reserve policy was last reviewed in May by the previous board and the current policy was adopted at that time.

Executive Director McCarthy added that different from many cities, the JPA doesn't have high fixed costs, there is a small staff, and 1/3 of the total costs are staff costs, so there isn't as much risk exposure on a percentage basis. He noted that the policy is in line with what other JPAs are doing with the exception of the rate stabilization fund. Noting that reserving money for a rate stabilization fund is unique to this JPA, so it's not something individual member Agencies need to do. He also added that the only thing that can affect our revenue swing is commodity revenue which can go up and down, so he reiterated that the risk exposure is much smaller when compared to other municipalities.

Member Olbert questioned why operating expenses are tied to reserve policies and not revenue, since operating expenses are what is variable.

Executive Director McCarthy answered that the formula could be changed, but 10% of the operating cost gives a \$3M reserve which is in line with largest impact this agency has experienced, so we get there, and the rate stabilization fund is there to mitigate any sudden shocks that would make the tipping fees go way up or down.

Chair Widmer commented that some of the Member Agencies are setting up funds to deal with rate increases, and he suggested a supplemental rate stabilization fund to soften the blow when the additional labor costs come to the Agencies. He noted that the contracts are back end loaded with increases so - those costs are going up, and when those costs can get passed on to the Member Agencies they will, and he thought a supplemental fund would help the agencies.

Member Olbert commented that he was opposed to setting aside those types of funds at the JPA level because it could create a reverse incentive at negotiation time.

Executive Director McCarthy added that there is cost containment now, as increases are tied to indices, noting that under the old contract there was no cost containment. He added that it will be in 2017 and 2018 when these points will come up because if the contract is renewed they will want to have those costs covered, but right now there is a mechanism in place to protect the Member Agencies.

Member Brownrigg commented that he was comfortable with the reserve policy the way that it is, but asked if the Executive Director had visibility into the contracts that were recently renegotiated, because he would like to see some analysis of the cost curves that have been built in and some sense of what the delta might be.

Executive Director McCarthy that staff could do that both contractors have provided table on their rates, but the benefit side would have to be forecasted.

Member Ross is now absent.

D. Staff Overview of Contractor Annual Reports

Staff Feldman and Staff Gans gave overviews of Recology and SBR's annual reports.

Executive Director McCarthy gave a Snapshot Report on Recycling, Organics and Solid Waste for 2013 service area wide.

Member Brownrigg questioned why multi-family developments (MFD) and commercial were lumped together.

Executive Director McCarthy answered that there is separated information through Recology, but the two are serviced similarly which is why they are reported together.

Staff Feldman added that MFD diversion is very low.

Vice Chair Dehn asked why the HHW numbers were down in 2012.

Executive Director McCarthy answered that there was no significant outreach for HHW programs in 2012, in 2013 outreach was done, money was spent, and the numbers went up.

Chair Widmer wondered if 3<sup>rd</sup> party tons from outside the facility were included in the diversion analysis.

Executive Director McCarthy answered that they are included in overall facility numbers but not included if talking about self-haul.

E. Contractor Presentations on 2013 Annual Reports (Presentation only)

Mario Puccinelli gave a presentation on Recology's 2013 annual report and introduced his management team who each gave a presentation on each of their departments.

Tim Hester Assistant General Manager gave a presentation on Recology operations.

Dennis Franco Maintenance Manager gave a presentation on Recology maintenance.

Jeannette Haskell Customer Service Manager gave a presentation on Recology customer service.

Chair Widmer asked if the average time to resolve issues is going down.

Jeannette Haskell answered that all calls are resolved within 24 hours and that the time is going down.

Tammy DelBene Waste Zero manager gave a presentation on the Waste Zero specialists.

Gino Gasparini Public Affairs Manager gave a presentation on Recology's community involvement and volunteer programs.

Member Stone now absent.

Dwight Herring General Manager of SBR gave a presentation on SBR's annual report.

Member Aguirre now absent.

**9. Staff Updates**

- a) Update on Labor Issues
- b) Potential Future Board Agenda Items
- c) Check Register for February 2014
- d) Technical Consulting Contracts – 1<sup>st</sup> Quarter 2014

Executive Director McCarthy noted that this staff update was included at the request of the Board and would be provided quarterly.

- e) Update on 2014/15 Franchise Rate Setting Process
- f) Recycling and Outreach Programs Update

Staff Mututa announced the Trash to Art Contest judging and asked the Board members to vote places 1<sup>st</sup> through 4<sup>th</sup> for their favorites.

- g) Shoreway Facility Operations and Maintenance Update
- h) Receipt of Recology and SBR Monthly Reports

**10. Board Member Comments**

**11. Adjourn 4:39 PM**





## STAFF REPORT

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**To:** SBWMA Board Members  
**From:** Robert J. Lanzone, General Counsel  
**Date:** April 24, 2014 Board of Directors Meeting  
**Subject:** Agreement with Zanker Road Resource Management, Ltd.

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### Recommendation

It is recommended that the SBWMA Board of Directors approve Resolution No. 2014-07 attached hereto authorizing the following action:

Approve an amendment to the SBWMA agreement with Zanker Road Resource Management, Ltd., dated July 1, 2012 as shown in **Exhibit A** to the Resolution 2014-07.

### Analysis

Beginning in March 2004, the SBWMA began delivering all its loads of construction and demolition debris (C&D) from its San Carlos Transfer Station to a facility in San Jose, California owned and operated by Zanker Road Resource Management, Ltd., (Zanker). SBWMA and Zanker have continued to do the same business under subsequent agreements dated in 2006, 2010 and 2012. The 2012 agreement became the subject of a disagreement between the parties in 2013 as there was a dispute over certain terms and conditions. The dispute wound up in a lawsuit which, through mediation, was settled on March 6, 2014 subject to SBWMA Board approval, which was obtained March 27, 2014 (**Exhibit B Settlement Agreement**).

The Settlement Agreement calls for an amendment to the Agreement of July 1, 2012 between the parties. The changes amending the Agreement are in a redline copy of the Agreement attached to the Resolution as **Exhibit A** hereto. The major changes are:

1. The per ton rate for C&D is increased from approximately \$46.00 per ton of C&D to \$49.00 per ton.
2. Any restrictions on the amount of C&D that SBWMA can deliver to Zanker have been amended to Staff's satisfaction by 1) allowing delivery of up to 3,000 tons of C&D per month, 2) increasing the allowable tonnage per day of up to 140 tons, and 3) providing an exception of up to 160 tons of C&D per day for any five-days in a calendar month. There are increased rates of \$62.90 for tons in excess of the stated amounts, but given our past history of C&D tonnage staff does not anticipate exceeding the new delivery caps that are being put in place.
3. The Settlement eliminates all other claims, and calls for each party to pay its own fees and costs.

The changes to the Agreement are shown in **Exhibit A** redline in the Agreement attached to the Resolution, and we recommend the Board adopt the Resolution and formally approve the amendments to the Agreement.

### Fiscal Impact

There should be no impact to the SBWMA and its Member Agencies as all of the C&D tonnage is handled through fees charged to third parties (self-haul) customers at the Transfer Station.

### Attachments:

Resolution 2014-07

*Exhibit A* – Zanker Redline Contract Amendment  
*Exhibit B* – Zanker Settlement Agreement



## RESOLUTION NO. 2014-07

### RESOLUTION OF THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY BOARD OF DIRECTORS APPROVING FIRST AMENDMENT OF THE JULY 1, 2012 AGREEMENT WITH ZANKER ROAD RESOURCES MANAGEMENT, LTD.

**WHEREAS**, the South Bayside Waste Management Authority (SBWMA) contracted with Zanker Road Resources Management, LTD., (Zanker) to process construction and demolition debris (C&D) on July 1, 2012; and

**WHEREAS**, a dispute and lawsuit between Zanker and the SBWMA over certain terms and conditions of the Agreement was resolved pursuant to the terms of a settlement reached in mediation on March 6, 2014, and approved by the SBWMA Board on March 27, 2014 (the Settlement) subject to the SBWMA Board approving amendments to the Agreement (see **Exhibit A**); and

**WHEREAS**, the Agreement reflects in redline (see **Exhibit A**), the changes and amendments to the Agreement, and the said changes and amendments are found to be in the best interest of the SBWMA.

**NOW, THEREFORE, BE IT RESOLVED** that the South Bayside Waste Management Authority hereby approves the Agreement with amendments as shown in **Exhibit A** hereto.

**PASSED AND ADOPTED** by the Board of Directors of the South Bayside Waste Management Authority, County of San Mateo, State of California on the 24<sup>th</sup> day of April, 2014, by the following vote:

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

I HEREBY CERTIFY that the foregoing Resolution No. 2014 -07 was duly and regularly adopted at a regular meeting of the South Bayside Waste Management Authority on April 24, 2014.

ATTEST:

\_\_\_\_\_  
Bill Widmer, Chairperson of SBWMA

\_\_\_\_\_  
Cyndi Urman, Board Secretary

1       **AGREEMENT FOR CONSTRUCTION AND DEMOLITION DEBRIS PROCESSING**  
2                               **FOR RECYCLING AND BENEFICIAL USE**  
3       **BETWEEN THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY**  
4                               **AND ZANKER ROAD RESOURCE MANAGEMENT, LTD.**  
5

6       This Agreement is entered into by and between the South Bayside Waste  
7       Management Authority (SBWMA), a California joint powers authority, and Zanker  
8       Road Resource Management, Ltd. (Contractor) a California limited partnership,  
9       on February 1, 2010 and sets forth the terms and conditions under which  
10       Contractor will accept and process for recycling and beneficial use mixed  
11       construction and demolition debris from the Shoreway Environmental Center  
12       owned by the South Bayside Waste Management Authority (SBWMA) and  
13       located at 225 Shoreway Road, San Carlos, California 94070.  
14

15   **1. Definitions**  
16

17   **A. Construction and Demolition Debris (C&D)**

18   “Construction and Demolition Debris (C&D)” means a mixture of all non-  
19   hazardous waste material resulting from construction, remodeling, repair, or  
20   demolition activities. Construction and Demolition Debris includes, but is not  
21   limited to: soil, brush, logs, concrete, asphalt, brick, ceramics, stucco, plaster,  
22   wood, drywall, metals, wall coverings, roofing materials, wires and conduit,  
23   carpet, carpet pad, ceiling tiles, windows, doors, fixtures, insulation, fencing,  
24   cardboard, and plastic. Individual pieces of Construction and Demolition Debris  
25   delivered to Contractor shall not exceed 150 pounds or 8 feet in any two  
26   directions. There is no minimum size restriction for individual pieces of  
27   Construction and Demolition Debris; however materials cannot be ground or  
28   shredded prior to arriving at Contractor’s processing facility.  
29

30   **B. Non-Construction and Demolition Debris**

31   “Non-Construction and Demolition Debris” means putrescible waste, food waste,  
32   grass clippings, leaves, residential or commercial waste collected in compacting  
33   vehicles, waste enclosed in plastic bags, furniture, mattresses, tires, appliances,  
34   and individual pieces of Construction and Demolition Debris exceeding 150  
35   pounds or 8 feet in any two directions.  
36

37   **C. Recyclable Construction and Demolition Debris**

38   “Recyclable Construction and Demolition Debris” means 1) wood such as  
39   dimensional lumber, pallets, shake shingles, particle board, plywood, Oriented  
40   Strand Board, Medium Density Fiberboard and other manufactured wood  
41   products, that are free of lead paint, stain, melamine coating, creosote, arsenic or  
42   other chemical treatments; 2) brush and logs; 3) concrete, asphalt, brick, rock,  
43   ceramics; 4) soil; 5) metal; 6) drywall; and, 7) cardboard.  
44

45   **D. Recycled**

46   “Recycled” means those materials, which would otherwise be Disposed, that  
47   have been processed, separated, treated, and/or reconstituted and returned to  
48   the economy in the form of raw materials for new, reused, or reconstituted  
49   products. For purposes of this Agreement, “Recycled” shall also mean that the

50 material is not reported to the California Integrated Waste Management Board as  
51 being either "Disposed" or utilized as "Alternative Daily Cover (ADC.)" Materials  
52 Recycled under this Agreement shall not be reported as disposed or ADC at the  
53 Contractor's facility or at any other solid waste facility to which the contractor  
54 delivers the material after processing. Acceptable end-uses for Recycled  
55 materials include, but are not limited to: biomass fuel, manufactured wood  
56 products, mulch, compost, engineered soil, agricultural gypsum, gravel, road  
57 base, and Beneficial Use at a Landfill.

58  
59 **E. Beneficial Use at a Landfill:**

60 "Beneficial Use at a Landfill" means use at a solid waste landfill of materials  
61 recovered from Construction and Demolition Debris for: final cover foundation  
62 layer, liner operations layer, leachate and landfill gas collection system  
63 construction fill, road base, wet weather operations pads and access roads, soil  
64 amendments for erosion control and landscaping, or any other legitimate use that  
65 is not reported to the California Integrated Waste Management Board as either  
66 Alternative Daily Cover (ADC) or Disposal.

67  
68 **F. Alternative Daily Cover (ADC)**

69 "Alternative Daily Cover" means cover material other than soils/earthen materials  
70 that are placed on the surface of the active face of a solid waste landfill at the  
71 end of each operating day to control vectors, fires, odors blowing litter, and  
72 scavenging. For purposes of this Agreement, materials recovered from  
73 Construction and Demolition Debris shall be considered ADC if their use meets  
74 this definition and/or if they are reported to the California Integrated Waste  
75 Management Board as ADC, either at the Contractor's facility or at any other  
76 solid waste facility to which the Contractor delivers the materials after processing.

77  
78 **G. Disposed (Disposal)**

79 "Disposal" means the ultimate disposition of Construction and Demolition Debris  
80 at a landfill. Disposal does not include the use of Construction and Demolition  
81 Debris as Alternative Daily Cover (ADC) or Beneficial Use at a Landfill, so long  
82 as State regulations consider such uses to be diversion for purposes of  
83 complying with State diversion requirements. For purposes of this Agreement,  
84 C&D shall be considered Disposed if it is reported to the California Integrated  
85 Waste Management Board as Disposed, either at the Contractor's facility or at  
86 any other solid waste facility to which the Contractor delivers the materials.

87  
88 **H. Shoreway Environmental Center Operator**

89 "Shoreway Environmental Center Operator" means the private entity employed  
90 by the SBWMA to operate the Shoreway Environmental Center and deliver  
91 Construction and Demolition Materials to Contractor. The current Shoreway  
92 Environmental Center Operator is South Bay Recycling.

93  
94 **I. Hazardous Waste**

95 "Hazardous Waste" means all substances defined as Hazardous Waste, acutely  
96 Hazardous Waste, or extremely Hazardous Waste by the State of California in  
97 Health and Safety Code §25110.02, §25115, and §25117 or in the future  
98 amendments to or recodifications of such statutes or identified and listed as

99 Hazardous Waste by the U.S. Environmental Protection Agency (EPA), pursuant  
100 to the Federal Resource Conservation and Recovery Act (42 USC §6901 et  
101 seq.), all future amendments thereto, and all rules and regulations promulgated  
102 thereunder.  
103

104 **J. Universal Waste**

105 “Universal Waste” means all wastes as regulated and defined by Title 22 Article 1  
106 Subsections 66273.1 through 66273.9 of the California Code of Regulations.  
107 These include, but are not limited to, batteries, fluorescent light bulbs, mercury  
108 switches, creosote treated lumber, and E-Waste.  
109

110 **K. Accepted Load**

111 “Accepted Load” means a load of SBWMA Construction and demolition debris  
112 delivered to Contractor’s facility, which meets the requirements of Section 5 and  
113 will be processed by Contractor.  
114

115 **L. Held Load**

116 “Held Load” means a load of SBWMA Construction and Demolition Debris  
117 delivered to Contractor’s facility, which Contractor believes does not conform to  
118 the requirements of Section 5 of this Agreement, and is being kept separate and  
119 undisturbed so that it can be inspected by an authorized representative of the  
120 SBWMA. Contractor must provide the SBWMA until 5:00 p.m. the day following  
121 notification to inspect a Held Load.  
122

123 **M. Rejected Load**

124 “Rejected Load” means a Held Load that the SBWMA has either a) inspected in  
125 person or by utilizing photographs provided by Contractor, and agreed that it  
126 does not meet the requirements of Section 5 of this Agreement; or b) waived its  
127 right to inspect by not performing such an inspection by 5:00 p.m. of the day  
128 following notification that the load is being Held.  
129

130 **2. Contractor’s Representations and Warranties**  
131

132 **A. Legal Status**

133 Contractor represents and warrants that it is a limited partnership duly organized,  
134 validly existing, and in good standing under the laws of the State of California  
135 and authorized to do business in the State of California. It has the power to own  
136 its properties and to carry on its business as now owned and operated and as  
137 required by this Agreement.  
138

139 **B. Limited Partnership Authorization**

140 Contractor represents and warrants that it has the authority to enter into and  
141 perform its obligations under this Agreement. The General Partner of Contractor  
142 (or the shareholders, if necessary) have taken all actions required by law, its  
143 partnership agreement, or otherwise, to authorize the execution of this  
144 Agreement. The person signing this Agreement on behalf of Contractor has  
145 authority to do so.  
146

147 **C. Agreement Will Not Cause Breach**

148 To the best of Contractor's and SBWMA's knowledge, after reasonable  
149 investigation, neither the execution or delivery of this Agreement, nor the  
150 performance of this Agreement: (i) conflicts with, violates, or results in a breach  
151 of any applicable law; or (ii) conflicts with, violates, or results in a breach of any  
152 term or condition of any judgment, order or decree of any court, administrative  
153 agency, or other governmental authority, or any agreement or instrument to  
154 which Contractor or SBWMA is a party or by which Contractor or SBWMA or any  
155 of its properties or assets are bound, or constitutes a default thereunder.  
156

157 **D. No Litigation**

158 To the best of Contractor's knowledge, after reasonable investigation, there is no  
159 action, suit, proceeding, or investigation, at law or in equity, before or by any  
160 court or governmental authority, commission, board, agency, or instrumentality  
161 decided, pending, or threatened against Contractor wherein an unfavorable  
162 decision, ruling or finding, in any single case or in the aggregate, would materially  
163 adversely affect the performance by Contractor of its obligations hereunder or  
164 which, in any way, would adversely affect the validity or enforceability of this  
165 Agreement or which would have a material adverse effect on the financial  
166 condition of Contractor or any surety guaranteeing Contractor's performance  
167 under this Agreement, which has not been waived by the SBWMA in writing.  
168

169 **E. Ability to Perform**

170 Contractor possesses the business, professional and technical expertise to  
171 manage, handle, treat, store, process, and recycle Construction and Demolition  
172 Debris, and possesses the equipment, plant, and employee resources required  
173 to perform this Agreement.  
174

175 **3. Term**

176  
177 The term of this Agreement shall be for the period commencing February 1, 2010  
178 to January 31, 2017. The parties, if they mutually agree in writing, may extend  
179 the tem of this agreement on an annual basis for up to three annual extensions.  
180

181 **4. Exclusive Services**

182  
183 A. Except as provided below, during the term of this Agreement, the SBWMA  
184 shall direct the Shoreway Environmental Center Operator to transport all  
185 loads of Construction and Demolition Debris generated from the Shoreway  
186 Environmental Center to be hauled exclusively, up to 3,000 tons per  
187 month, to Contractor's facilities at 675 and 705 Los Esteros Road in San  
188 Jose, California, for processing, recycling, finished product marketing, and  
189 disposal of residuals. Contractor shall accept up to 140 tons on any  
190 individual day, except for five (5) days per month, selected at SBWMA's  
191 discretion, when SBWMA may deliver up to 160 tons on a single day.  
192 ~~Contractor shall make available to the SBWMA at least 70 tons per day of~~  
193 ~~Construction and Demolition Debris processing capacity.~~ The SBWMA shall  
194 guarantee delivery of at least 35 tons per day (as calculated on a 30 day

195  
196  
197  
198

average) to the Contractor's processing facility, on the terms and conditions specified in this Agreement.

199 **5. Scope of Construction and Demolition Processing Services**  
200

201 Contractor agrees to accept, process for recycling, and dispose of residual  
202 amounts, all Construction and Demolition Debris received from the SBWMA.  
203 Contractor shall process, recycle, market finished products, and dispose of  
204 residuals. Contractor shall ensure that, at a minimum, Recyclable Construction  
205 and Demolition Debris from the SBWMA are Recycled. Contractor shall ensure  
206 that at least 75% by weight of the Construction and Demolition Debris accepted  
207 from the SBWMA is Recycled. Contractor shall ensure that at least 50% by  
208 weight of the Construction and Demolition Debris accepted from the SBWMA is  
209 Recycled to uses other than Beneficial Use at a Landfill. Contractor may dispose  
210 of or utilize as ADC any residuals from the SBWMA Construction and Demolition  
211 Debris that cannot be Recycled. Such residuals shall not exceed 25% of the  
212 inbound weight of accepted SBWMA Construction and Demolition Debris.  
213 Contractor may reject SBWMA loads containing more than 5% by weight of Non-  
214 Construction and Demolition Debris as defined in this Agreement. Contractor  
215 may also reject SBWMA loads containing less than 75% by weight of Recyclable  
216 Construction and Demolition Debris as defined in this Agreement. In order to  
217 reject an SBWMA load, Contractor must follow the procedures for rejection of  
218 loads set forth in Section 7.  
219

220 **6. Hours of Operation**  
221

222 Contractor's facility shall be open to accept Construction and Demolition Debris  
223 from 6:00 a.m. to 5:45 p.m., Monday through Friday, and from 8:00 a.m. to 3:45  
224 p.m., Saturday and Sunday. Said facility will be closed Thanksgiving Day,  
225 Christmas Day, New Year's Day, and Easter Sunday. In the event the  
226 Contractor applies to its regulating agencies for, and is granted, additional  
227 permitted receiving hours, Contractor shall make those additional hours available  
228 to the SBWMA for delivery of Construction and Demolition Debris.  
229

230 **7. Rejection of Loads**  
231

232 An SBWMA Construction and Demolition Debris load may be held by Contractor  
233 if Contractor believes that it does not conform to the guidelines set forth in  
234 Section 5. Contractor may not declare a load to be held until that load has been  
235 unloaded from the transfer vehicle so that the entire load may be viewed. If  
236 Contractor declares a load to be held, Contractor shall photograph the Held  
237 Load, and shall keep the entire Held Load separate from other materials, and  
238 undisturbed, until it can be visually inspected by an authorized representative of  
239 the SBWMA. Contractor shall inform the SBWMA of the Held Load via e-mail  
240 ([cdloadproblem@rethinkwaste.org](mailto:cdloadproblem@rethinkwaste.org)) and telephone (number to be designated by  
241 the SBWMA.) The e-mail shall include digital photos of the Held Load. The  
242 load's arrival time and date and truck number shall be included in these  
243 communications. If the SBWMA does not inspect the load at Contractor's site by  
244 5:00 p.m. of the day following notification, Contractor may move the load or  
245 combine it with other materials.  
246

247 By 5:00 p.m. of the day following notification, the SBWMA will inform Contractor  
248 as to whether or not it is in agreement that the Held Load should be Rejected. If  
249 the SBWMA finds that the Held Load does conform to the requirements of  
250 Section 5, Contractor shall accept the load at the rate for Accepted Loads set  
251 forth in Section 10A. If the SBWMA agrees that the load does not conform to the  
252 requirements of Section 5, the SBWMA will either 1) authorize Contractor to  
253 dispose of the load, and direct the Shoreway Environmental ~~Center~~  
254 ~~Operator~~Center Operator to pay Contractor the rate for disposing of Rejected  
255 Loads as specified in Section 10B or 2) direct the Shoreway Environmental  
256 Center Operator to remove the Rejected Load from Contractor's facility.  
257 Contractor will load the Rejected Load into the Shoreway Environmental ~~Center~~  
258 ~~Operator's~~Center Operator's vehicle and weigh that vehicle as it leaves  
259 Contractor's facility. In the event of a dispute as to whether or not a Held Load  
260 should be Rejected, Contractor may be required to remove and separately weigh  
261 materials from the Held Load to demonstrate that it does not conform to the  
262 requirements of Section 5. In addition to the other costs provided for herein, if  
263 the load is deemed rejected, the SBWMA shall pay for all costs associated with  
264 the sorting and re-weighing of the Rejected Load.

265  
266 It is the intent of both the SBWMA and Contractor to have no Held Loads or  
267 Rejected Loads. Should Held Loads exceed two in a six month period, the  
268 SBWMA and Contractor will meet and confer to resolve the issue.  
269

## 270 8. Hazardous or Universal Waste Materials

271  
272 In the event any SBWMA Construction and Demolition Debris contains any  
273 Universal Waste or Hazardous Waste, the SBWMA shall direct Shoreway  
274 Environmental Center ~~Operator~~ to pay to Contractor any actual, reasonable, and  
275 necessary costs incurred by Contractor in handling and disposing of said  
276 materials. In disposing of said Hazardous and/or Universal Waste materials, the  
277 SBWMA shall be designated as the owner or generator of said Hazardous Waste  
278 or Universal Waste. In the event that Shoreway Environmental ~~Center~~  
279 ~~Operator~~Center Operator does not pay said costs to Contractor within thirty (30)  
280 days, the SBWMA shall pay the undisputed portion of said costs directly to  
281 Contractor.  
282

## 283 9. Reporting

284  
285 Contractor shall report monthly the amount of SBWMA Construction and  
286 Demolition Debris accepted, Recycled, used as ADC, and Disposed. Contractor  
287 shall report monthly the end-uses (e.g. biomass fuel, road base, Beneficial Use  
288 at a Landfill, etc.) for each material type Recycled from SBWMA Construction  
289 and Demolition Debris at Contractor's facility. For reporting purposes, inbound  
290 weights from SBWMA loads may be applied to overall diversion and end-use  
291 percentages for mixed Construction and Demolition Debris processing operations  
292 at the Contractor's facility. However, if the overall diversion and end-use  
293 percentages do not demonstrate compliance with the processing services listed  
294 in Section 5, Contractor shall be required to demonstrate compliance in regards

295 to the SBWMA materials by processing the SBWMA's Construction and  
296 Demolition Debris separately.

297  
298 **10. Rates**

299  
300 A. For the period February 1, 2010 through ~~February 28~~January 31, 2014,  
301 the SBWMA shall ~~pay or~~ direct ~~the~~ Shoreway Recycling and Disposal  
302 Center Operator to pay to Contractor the sum of \$45.00 per ton for all  
303 SBWMA Construction and Demolition Debris accepted by Contractor for  
304 processing.

305  
306 ~~A.C.~~ ~~The sum of \$45.00 per ton for all SBWMA Construction and Demolition~~  
307 ~~Debris accepted by Contractor for processing.~~

308  
309 D. For the period of March 1, 2014 to January 31, 2017, the SBWMA shall  
310 pay or direct the Shoreway Recycling and Disposal Center Operator to  
311 pay Contractor the sum of \$49.00 per ton for all Construction and  
312 Demolition Debris delivered up to 3,000 tons per month and \$62.90 per  
313 ton for tonnage above 3,000 tons in a given month. Contractor shall  
314 accept up to 140 tons on any individual day, except for five (5) days per  
315 month, selected at SBWMA's discretion, when SBWMA may deliver up to  
316 160 tons on a single day.

317  
318 ~~B.E.~~ The SBWMA shall pay or direct the Shoreway Recycling and Disposal  
319 Center Operator to pay Contractor ~~the~~ the sum of \$57.50 per ton for any  
320 rejected SBWMA loads that the SBWMA authorizes Contractor to dispose  
321 of.

322  
323 Commencing February 1, 201~~5~~4 and thereafter on each February 1<sup>st</sup>, this  
324 Agreement is in effect, including any extension years, both rates stated above  
325 shall be increased by 90% of the change in the value of the All Urban Consumers  
326 Index (CPI-U), All Items, for the San Francisco-Oakland-San Jose, CA, Base  
327 Period 1982 – 1984 = 100, not seasonally adjusted, compiled and published by  
328 the U. S. Department of Labor, Bureau of Labor Statistics (or its successor) for  
329 the previous December and its value twelve months before.

330  
331 In the event that any government agency imposes upon Contractor any  
332 additional regulations or fees which result in additional expenses, charges, fees,  
333 or taxes to Contractor and which relate specifically to the construction and  
334 demolition services provided hereunder, either 1) such expenses, charges, fees  
335 or taxes shall be added to the prices on a pro-rata basis, based upon the  
336 percentage that the total tonnage of construction and demolition waste being  
337 delivered to Contractor pursuant to this Agreement bear to the total tonnage of  
338 construction and demolition waste delivered to Contractor's facility from all  
339 sources; or, 2) the SBWMA may terminate this Agreement.

340  
341 **11. Payment**

343 On or before the 10<sup>th</sup> of each month, Contractor shall send an invoice (showing  
344 by date, time, and vehicle identification number the tonnage received and the  
345 rate charged) to Shoreway Environmental ~~Center Operator~~Center Operator for  
346 the preceding month. Shoreway Environmental Center Operator shall reconcile  
347 such invoice to its daily records and pay the undisputed portion of said invoice  
348 within thirty (30) days of receipt. Within fifteen (15) days of receipt, Shoreway  
349 Environmental ~~Center Operator~~Center Operator shall inform Contractor and the  
350 SBWMA of any disputed amounts and Shoreway Environmental ~~Center~~  
351 ~~Operator~~Center Operator and Contractor shall act promptly to resolve such  
352 disputes. Payment shall be made only by cashier's check, certified check, or by  
353 Shoreway Environmental Center Operator or SBWMA check. In the event that  
354 Shoreway Environmental Center -Operator does not pay any undisputed invoice  
355 within thirty (30) days, the SBWMA shall pay the amounts it reasonably  
356 determines are due Contractor directly to Contractor. The above payment  
357 provisions will be modified effective January 1, 2011 such that the Contractor  
358 shall bill the SBWMA.  
359

## 360 **12. Default and Remedies**

361 All provisions of this Agreement to be performed by Contractor are considered  
362 material. Each of the following shall constitute an event of default.

- 364 A. Fraud or deceit.
- 365 B. Failure to maintain insurance coverage described herein.
- 366 C. Contractor violation of orders or filings of a regulatory body having a  
367 material impact on Contractor's ability to perform its obligations as  
368 required by this Agreement.
- 369 D. Failure to perform services as required by this Agreement for two (2)  
370 consecutive days or more or for any seven (7) days in a period of 30 days.
- 371 E. Failure of Contractor to provide reports and/or records as provided for in  
372 this Agreement.
- 373 F. Any act or omission by Contractor which violates the terms of this  
374 Agreement.
- 375 G. Any false or misleading representation of Contractor.
- 376 H. Filing of a voluntary petition for debt relief.
- 377 I. Bankruptcy of Contractor.
- 378 J. Contractor's failure to provide assurance of performance.

379 Contractor shall be given 30 days from notification by the SBWMA to cure any  
380 default arising under this Agreement.  
381

382 In the event of Contractor's failure to cure said default, the SBWMA may, at its  
383 option, terminate this Agreement. This right of termination is in addition to any  
384 other rights of the SBWMA and the SBWMA's termination of this Agreement shall  
385 not constitute an election of remedies. Instead, it shall be in addition to any and  
386 all other legal and equitable rights and remedies the SBWMA may have.  
387  
388

## 389 **13. Termination for Cause**

390

391 The SBWMA selected Contractor based on its high landfill diversion levels.  
392 These factors are essential to the services the SBWMA shall obtain from  
393 Contractor. Therefore, notwithstanding the terms and conditions of Section 12, in  
394 any month, should the Recycled fraction of accepted Construction and  
395 Demolition Debris fall below 75% or should the fraction of these accepted  
396 Construction and Demolition Debris Recycled to end-uses other than Beneficial  
397 Use at a Landfill fall below 50%, then Contractor will be found in breach of this  
398 Agreement and the SBWMA may terminate the Agreement for cause. In such  
399 case, the SBWMA shall notify Contractor in writing of its intent to do so sixty (60)  
400 days prior to the intended date of termination. Contractor shall be given thirty  
401 (30) days to correct the breach and, if it does, then the termination shall be  
402 suspended. A second breach within a twelve-month period may reactivate the  
403 termination of the Agreement and such termination shall occur within sixty (60)  
404 days of the second breach, without any right by Contractor to correct the breach.  
405

406 The SBWMA shall meet and confer with Contractor if Contractor is unable to  
407 meet the diversion requirements set forth in Section 5, due to changes in markets  
408 for Recycled materials.  
409

#### 410 **14. Insurance**

411 Insurance policies are to be obtained by Contractor and remain in full force and  
412 effect at all times to provide protection against liability for damages which may be  
413 imposed for the negligence of Contractor or its employees, agents, or  
414 subcontractors including, but not limited to, general liability and automobile  
415 liability insurance. Contractor shall also provide liability coverage under  
416 California Workers' Compensation laws. The amounts of insurance required are  
417 to be established herein. Said amounts shall not be construed to limit  
418 Contractor's liability.  
419

420  
421 The insurance requirements provided herein may be reduced or waived in writing  
422 by the SBWMA Board of Directors, provided the Board of Directors determines  
423 that such waiver or reduction does not unreasonably increase the risk of  
424 exposure to the SBWMA.  
425

426 **A. Workers' Compensation Insurance.** Contractor shall obtain and maintain in  
427 full force and effect throughout the entire term of this Agreement full Workers'  
428 Compensation Insurance in accord with the provisions and requirements of the  
429 Labor Code of the State of California. Endorsements that implement the required  
430 coverage shall be filed and maintained with the SBWMA throughout the term of  
431 this Agreement.  
432

433 **B. Comprehensive General Liability.** Contractor shall obtain and maintain  
434 in full force and effect throughout the entire term of this Agreement a Broad Form  
435 Comprehensive General Liability (occurrence) policy with a minimum limit of  
436 TWO MILLION DOLLARS (\$2,000,000.00) aggregate and ONE MILLION  
437 DOLLARS (\$1,000,000.00) per occurrence for bodily injury and property  
438 damage, with any self-insured retention not exceeding TWO HUNDRED  
439 THOUSAND (\$200,000.00) per occurrence. Said insurance shall protect

440 Contractor and the SBWMA from any claim for damages for bodily injury,  
441 including accidental death, as well as from any claim for property damage which  
442 may arise from operations performed pursuant to this Agreement, whether such  
443 operations are by Contractor itself, or by its agents, employees and/or sub-  
444 contractors. Copies of the policies or endorsements evidencing the above-  
445 required insurance coverage shall be filed with the SBWMA. Endorsements are  
446 required to be made a part of all of the following insurance policies required by  
447 this Section:  
448

- 449 (1) "The SBWMA, its employees, agents, and officers, are hereby  
450 added as insured as respects liability arising out of activities  
451 performed by or on behalf of Contractor."  
452
- 453 (2) "This policy shall be considered primary insurance as respects  
454 any other valid collectible insurance the SBWMA may possess  
455 including any self-insured retention the SBWMA may have,  
456 and any other insurance the SBWMA does possess shall be  
457 considered excess insurance and shall not contribute with it."  
458
- 459 (3) "This policy shall act for each insured, as though a separate  
460 policy had been written for each. This, however, will not act to  
461 increase the limit of liability of the insuring company."  
462
- 463 (4) "Thirty (30) days prior written notice by certified mail, return  
464 receipt requested, shall be given to the SBWMA in the event  
465 of suspension, cancellation, reduction in coverage or in limits  
466 or non-renewal of this policy for whatever reason. Such notice  
467 shall be sent to the SBWMA."  
468

469 **C. Vehicle Liability.** Contractor shall obtain and maintain in full force and  
470 effect throughout the entire term of this Agreement a vehicle liability policy with a  
471 minimum limit of TWO MILLION DOLLARS (\$2, 000,000.00) per occurrence for  
472 bodily injury and ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) per  
473 occurrence for property damage. Said insurance shall protect Contractor and the  
474 SBWMA from any claim for damages for bodily injury, including accidental death,  
475 as well as from any claim for property damage which may arise from operation of  
476 owned and non-owned vehicles. Copies of the policies or endorsements  
477 evidencing the above-required insurance coverage shall be filed with the  
478 SBWMA.  
479

480 The limits of such insurance coverage, and companies, shall be subject to review  
481 and approval by the SBWMA every year and may be increased, subject to  
482 Contractor's consent, at that time and match the coverage provided by the  
483 SBWMA's own liability insurance policy. The SBWMA shall be included as a  
484 named insured on each of the policies, or policy endorsements.  
485

## 486 15. Indemnification

487 **A. Indemnification of the SBWMA.** Contractor shall defend the SBWMA  
488 with counsel reasonably acceptable to the SBWMA and indemnify the SBWMA  
489

490 from and against any and all liabilities, costs, claims, and damages which are  
491 caused by Contractor's negligence, intentional wrongful acts, or failure to comply  
492 with applicable laws and regulations, including but not limited to, liabilities, costs,  
493 claims, and damages.

494  
495 **B. Indemnification of Contractor.** The SBWMA shall defend Contractor  
496 with counsel reasonably acceptable to Contractor and indemnify Contractor from  
497 and against any and all liabilities, costs, claims and damages which are caused  
498 by the SBWMA's negligence, intentional wrongful acts, or failure to comply with  
499 applicable laws and regulations, including but not limited to, liabilities, costs,  
500 claims, and damages. The SBWMA shall not offer such indemnification to  
501 Contractor for Shoreway Environmental ~~Center Operator's~~Center Operator's  
502 negligence or failure to comply with applicable laws and regulations.

503  
504  
505 **16. General Provisions**

506  
507 **A. Entire Agreement.** This Agreement represents the full and entire  
508 Agreement between the SBWMA and Contractor with respect to the matters  
509 covered herein.

510  
511 **B. Force Majeure.** Neither party shall be in default under this Agreement in  
512 the event, and for so long as, it is impossible or extremely impracticable for it to  
513 perform its obligations due to any of the following reasons: riots, wars, sabotage,  
514 civil disturbances, insurrection, explosion, natural disasters such as floods,  
515 earthquakes, landslides, fires, and volcanic eruptions, strikes, lockouts and other  
516 labor disturbances or other catastrophic events which are beyond the reasonable  
517 control of Contractor. Labor unrest, including but not limited to strike, work  
518 stoppage or slowdown, sick-out, picketing, or other concerted job action  
519 conducted by Contractor's employees or directed at Contractor is not an excuse  
520 from performance; provided, however, that labor unrest or job action directed at a  
521 third party over whom Contractor has no control, shall excuse performance.

522  
523 A party claiming excuse under this Section must (i) have taken reasonable  
524 precautions to avoid being affected by the cause, and (ii) notify the other party in  
525 writing within 5 days after the occurrence of the event specifying the nature of the  
526 event, the expected length of time that the party expects to be prevented from  
527 performing, and the steps which the party intends to take to restore its ability to  
528 perform.

529  
530 **C. Notice Procedures.** All notices, demands, requests, proposals,  
531 approvals, consents, and other communications which this Agreement requires,  
532 authorizes, or contemplates shall be in writing and shall either be personally  
533 delivered to a representative of the Parties at the address below, e-mailed to the  
534 e-mail address below, or faxed to the fax number below, or sent via certified mail  
535 or Federal Express, or deposited in the United States mail, first class postage  
536 prepaid, addressed as follows:

537  
538 1.) If to the SBWMA:  
539

540 Kevin McCarthy  
541 Executive Director  
542 South Bayside Waste Management Authority  
543 610 Elm Street, Suite 202  
544 San Carlos, California 94070  
545 E-Mail: KMcCarthy@ReThinkWaste.org  
546 Fax: 650-802-3501  
547

548 2.) If to Contractor:  
549

550 Richard Cristina  
551 President  
552 Zanker Road Resource Management, Ltd.  
553 675 Los Esteros Road  
554 San Jose, CA 95134  
555 E-Mail: Michael@zankerrecycling.com  
556 Fax: (408) 263-2393  
557

558 The address to which communications may be delivered may be changed  
559 from time to time by a notice given in accordance with this Section.  
560

561 Notice shall be deemed given on the day it is personally delivered, e-mailed,  
562 or faxed, or, if mailed, three calendar days from the date it is deposited in the  
563 mail.  
564

565 **D. Independent Contractor.** Contractor is an independent contractor and  
566 not an officer, agent, servant or employee of the SBWMA. Contractor is solely  
567 responsible for the acts and omissions of its officers, agents, employees,  
568 Contractor's and sub-contractor, if any. Nothing in this Agreement shall be  
569 construed as creating a partnership or joint venture between the SBWMA and  
570 Contractor. Neither Contractor nor its officers, employees, agents or  
571 subcontractor shall obtain any rights to retirement or other benefits which accrue  
572 to SBWMA employees.  
573

574 **E. Severability.** If any section, subsection, subdivision, paragraph,  
575 sentence, clause, or phrase of this Agreement or any part thereof is, for any  
576 reason, held to be illegal, such decision shall not affect the validity of the  
577 remaining portions of this Agreement or any part thereof.  
578

579 **F. Waiver or Modification.** No waiver, alteration, or modification of any of  
580 the provisions of this Agreement shall be binding unless in writing and signed by  
581 a duly authorized representative of both parties to this Agreement.  
582

583 **G. Forum Selection.** Contractor and the SBWMA stipulate and agree that  
584 any litigation relating to the enforcement or interpretation of this Agreement,  
585 arising out of Contractor's performance, or relating in any way to the work, shall  
586 be brought in California State Courts in San Mateo County.  
587

588 **H. Court Costs and Attorney Fees.** In the event legal action is instituted by  
589 either party to enforce this Agreement, the prevailing party shall be entitled to  
590 reasonable attorney fees and actual costs in connection with such action.

591  
592 **I. Counterparts and Facsimile Signatures.** This Agreement may be  
593 executed in counterparts, each of which shall constitute an original and all of  
594 which together shall be deemed a single document. For purposes of this  
595 Agreement, each of the signatories hereto agrees that a facsimile copy of the  
596 signature page of the person executing this Agreement shall be effective as an  
597 original signature and legally binding and effective as an execution counterpart  
598 thereof.

599

600 IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives,  
601 have affixed their hands on the day and year this Agreement first above written.

602

603 **South Bayside Waste Management Authority**

604

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

606

607

608 Name: \_\_\_\_\_  
609 Kevin McCarthy

610 Title: Executive Director

611

612

613 Date: \_\_\_\_\_

614

615

616 **Contractor**

617 Zanker Road Resource Management, LTD, a California limited partnership

618

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

620

621

622 Name: \_\_\_\_\_  
623 Richard Cristina

624 Title: Zanker Road Resource Recovery, Inc. General Partner

625

626

627 Date: \_\_\_\_\_

628

629

630

631 **Approved as to form:**

632

633

634 BY: \_\_\_\_\_  
635 Robert Lanzone

636 Legal Counsel of the Board of Directors

637

638

639 Date: \_\_\_\_\_

640

641

642

643 BY: \_\_\_\_\_  
644 Cyndi Urman

645 Secretary of the Board of Directors

646

647

648 Date: \_\_\_\_\_

## SETTLEMENT AGREEMENT AND GENERAL RELEASE

### RECITALS

**Whereas**, Zanker Road Resource Management, Ltd. (“Zanker”) and the South Bayside Waste Management Authority (“SBWMA”) (collectively “the Parties”) entered into an agreement titled AGREEMENT FOR CONSTRUCTION AND DEMOLITION DEBRIS PROCESSING FOR RECYCLING AND BENEFICIAL USE BETWEEN THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY AND ZANKER ROAD RESOURCE MANAGEMENT, LTD. (Agreement), which was most recently amended and executed July 1, 2012; and

**Whereas**, Zanker filed a civil complaint in the Santa Clara County Superior Court, Case Number 113 CV 248796, for breach of contract and declaratory relief based on a dispute between the Parties regarding the duties and obligations under the Agreement; and

**Whereas**, the dispute between the Parties dealt primarily with the amount of Construction and Demolition Debris (C&D) that SBWMA was allowed to deliver to Zanker on a daily basis and the proper processing rate for any C&D over 70 tons delivered to Zanker on a given day; and

**Whereas**, the Parties attended mediation with retired Judge Ronald Sabraw on March 6, 2014 and reached terms that will provide for a mutually beneficial resolution of the disputes; and

**Whereas**, the Parties desire to resolve the Lawsuit and any claims that were or could have been brought by Zanker without the costs, uncertainties, and expenses attending litigation by way of this Settlement Agreement and General Release (Settlement);

**Now Therefore**, the Parties agree as follows:

### TERMS OF AGREEMENT

1. All claims for past due payment or payment adjustments are hereby waived. Zanker and SBWMA agree that there is no outstanding debt to either of the Parties as of the date of this Settlement;
2. The Agreement shall be amended to provide for the following:
  - a. SBWMA may deliver up to 3,000 tons of C&D per month to Zanker for processing at the rate of \$49.00 per ton.
  - b. Any amount of C&D in excess of 3,000 tons delivered within one calendar month will be processed by Zanker at a rate of \$62.90 per ton.
  - c. SBWMA has the right to deliver up to 140 tons of C&D per day but Zanker is not obligated to accept more than 140 tons of C&D on any particular day, except on five (5) days for each calendar month, selected as needed by SBWMA, when SBWMA has the right to deliver up to 160 tons and Zanker is obligated to accept up to 160 tons.
  - d. The first 3,000 tons of C&D generated by SBWMA per month must be exclusively delivered to Zanker; SBWMA is not obligated to deliver any tonnage generated by SBWMA in excess of the 3,000 tons monthly cap.

- e. The language enacting the above amendments to the Agreement, specifically amendments to Sections 4 and 10 of the Agreement, is attached hereto as **Exhibit A**.
- 3. The Parties shall bear their own costs, attorney's fees, and other fees associated with this case and mediation. In the event of any future dispute arising from or concerning the terms and conditions of the Agreement, the prevailing party in that dispute shall be entitled to an award of reasonable attorney's fees and costs. This Settlement shall be construed as mutually drafted by the Parties.
- 4. The Parties understand and acknowledge that this Settlement constitutes a compromise and settlement of disputed claims. No action taken by the Parties hereto, or either of them, either previously or in connection with this Settlement shall be deemed or construed to be (a) an admission of the truth or falsity of any claims made or (b) an acknowledgment or admission by either party of any fault or liability whatsoever to the other party or to any third party.
- 5. This Settlement shall be governed by the laws of the State of California.
- 6. This Settlement may be signed in counterparts and taken together as a whole. A copy shall be deemed an original.
- 7. This Settlement represents the sole, complete, and final understanding between the Parties and supersedes all other representations, understandings and agreements. This Settlement's terms may not be altered except by written agreement signed by the Parties.

Kevin McCarthy, SBWMA Executive Director	Date
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Robert J. Lanzone, Attorney for SBWMA	Date
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Zanker Road Resource Management, Ltd.	Date
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Counsel for Zanker Road Resource Management, Ltd.	Date
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