

Attachment 10
Processing Agreement with
Zanker Road Resource Recovery

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 Management
7 Authority (SBWMA), a California joint powers authority, and Zanker Road Resource
8 Management, Ltd. (Contractor) a California limited partnership, on December 8, 2006
9 and sets forth the terms and conditions under which Contractor will accept and process
10 for recycling and beneficial use mixed construction and demolition debris from the
11 Shoreway Recycling and Disposal Center owned by the South Bayside Waste
12 Management Authority (SBWMA) and located at 225 Shoreway Road, San Carlos,
13 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 Recycling and Disposal Center Operator**

89 "Shoreway Recycling and Disposal Center Operator" means the private entity
90 employed by the SBWMA to operate the Shoreway Recycling and Disposal
91 Center and deliver Construction and Demolition Materials to Contractor. The
92 current Shoreway Recycling and Disposal Center Operator is Allied Waste
93 Systems of San Mateo.

94
95 **I. Hazardous Waste**

96 "Hazardous Waste" means all substances defined as Hazardous Waste, acutely
97 Hazardous Waste, or extremely Hazardous Waste by the State of California in
98 Health and Safety Code §25110.02, §25115, and §25117 or in the future

99 amendments to or recodifications of such statutes or identified and listed as
100 Hazardous Waste by the U.S. Environmental Protection Agency (EPA), pursuant
101 to the Federal Resource Conservation and Recovery Act (42 USC §6901 et
102 seq.), all future amendments thereto, and all rules and regulations promulgated
103 thereunder.
104

105 **J. Universal Waste**

106 "Universal Waste" means all wastes as regulated and defined by Title 22 Article 1
107 Subsections 66273.1 through 66273.9 of the California Code of Regulations.
108 These include, but are not limited to, batteries, fluorescent light bulbs, mercury
109 switches, creosote treated lumber, and E-Waste.
110

111 **K. Accepted Load**

112 "Accepted Load" means a load of SBWMA Construction and demolition debris
113 delivered to Contractor's facility, which meets the requirements of Section 5 and
114 will be processed by Contractor.
115

116 **L. Held Load**

117 "Held Load" means a load of SBWMA Construction and Demolition Debris
118 delivered to Contractor's facility, which Contractor believes does not conform to
119 the requirements of Section 5 of this Agreement, and is being kept separate and
120 undisturbed so that it can be inspected by an authorized representative of the
121 SBWMA. Contractor must provide the SBWMA until 5:00 p.m. the day following
122 notification to inspect a Held Load.
123

124 **M. Rejected Load**

125 "Rejected Load" means a Held Load that the SBWMA has either a) inspected in
126 person or by utilizing photographs provided by Contractor, and agreed that it
127 does not meet the requirements of Section 5 of this Agreement; or b) waived its
128 right to inspect by not performing such an inspection by 5:00 p.m. of the day
129 following notification that the load is being Held.
130

131 **2. Contractor's Representations and Warranties**
132

133 **A. Legal Status**

134 Contractor represents and warrants that it is a limited partnership duly organized,
135 validly existing, and in good standing under the laws of the State of California
136 and authorized to do business in the State of California. It has the power to own
137 its properties and to carry on its business as now owned and operated and as
138 required by this Agreement.
139

140 **B. Limited Partnership Authorization**

141 Contractor represents and warrants that it has the authority to enter into and
142 perform its obligations under this Agreement. The General Partner of Contractor
143 (or the shareholders, if necessary) have taken all actions required by law, its
144 partnership agreement, or otherwise, to authorize the execution of this
145 Agreement. The person signing this Agreement on behalf of Contractor has
146 authority to do so.
147

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

149 To the best of Contractor's and SBWMA's knowledge, after reasonable
150 investigation, neither the execution or delivery of this Agreement, nor the
151 performance of this Agreement: (i) conflicts with, violates, or results in a breach
152 of any applicable law; or (ii) conflicts with, violates, or results in a breach of any
153 term or condition of any judgment, order or decree of any court, administrative
154 agency, or other governmental authority, or any agreement or instrument to
155 which Contractor or SBWMA is a party or by which Contractor or SBWMA or any
156 of its properties or assets are bound, or constitutes a default thereunder.
157

158 **D. No Litigation**

159 To the best of Contractor's knowledge, after reasonable investigation, there is no
160 action, suit, proceeding, or investigation, at law or in equity, before or by any
161 court or governmental authority, commission, board, agency, or instrumentality
162 decided, pending, or threatened against Contractor wherein an unfavorable
163 decision, ruling or finding, in any single case or in the aggregate, would materially
164 adversely affect the performance by Contractor of its obligations hereunder or
165 which, in any way, would adversely affect the validity or enforceability of this
166 Agreement or which would have a material adverse effect on the financial
167 condition of Contractor or any surety guaranteeing Contractor's performance
168 under this Agreement, which has not been waived by the SBWMA in writing.
169

170 **E. Ability to Perform**

171 Contractor possesses the business, professional and technical expertise to
172 manage, handle, treat, store, process, and recycle Construction and Demolition
173 Debris, and possesses the equipment, plant, and employee resources required
174 to perform this Agreement.
175

176 **3. Term**

177
178 The term of this Agreement shall be for the period commencing January 1, 2007 to
179 December 31, 2010. The parties, if they mutually agree in writing, may extend the term
180 of this agreement on an annual basis.
181

182 **4. Exclusive Services**

183
184 Except as provided below, during the term of this Agreement, the SBWMA shall direct
185 the Shoreway Recycling and Disposal Center Operator to transport all loads of
186 Construction and Demolition Debris generated from the Shoreway Recycling and
187 Disposal Center to be hauled exclusively to Contractor's facilities at 675 and 705 Los
188 Esteros Road in San Jose, California, for processing, recycling, finished product
189 marketing, and disposal of residuals. Contractor shall make available to the SBWMA at
190 least 70 tons per day of Construction and Demolition Debris processing capacity. The
191 SBWMA shall guarantee delivery of at least 35 tons per day (as calculated on a 30 day
192 average) to the Contractor's processing facility, on the terms and conditions specified in
193 this Agreement.
194

195 **5. Scope of Construction and Demolition Processing Services**
196

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

215 **6. Hours of Operation**
216

217 Contractor's facility shall be open to accept Construction and Demolition Debris from
218 6:00 a.m. to 5:45 p.m., Monday through Friday, and from 8:00 a.m. to 3:45 p.m.,
219 Saturday and Sunday. Said facility will be closed Thanksgiving Day, Christmas Day,
220 New Year's Day, and Easter Sunday. In the event the Contractor applies to its
221 regulating agencies for, and is granted, additional permitted receiving hours, Contractor
222 shall make those additional hours available to the SBWMA for delivery of Construction
223 and Demolition Debris.
224

225 **7. Rejection of Loads**
226

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

241 By 5:00 p.m. of the day following notification, the SBWMA will inform Contractor as to
242 whether or not it is in agreement that the Held Load should be Rejected. If the SBWMA
243 finds that the Held Load does conform to the requirements of Section 5, Contractor shall

244 accept the load at the rate for Accepted Loads set forth in Section 10A. If the SBWMA
245 agrees that the load does not conform to the requirements of Section 5, the SBWMA will
246 either 1) authorize Contractor to dispose of the load, and direct the Shoreway Recycling
247 and Disposal Center Operator to pay Contractor the rate for disposing of Rejected
248 Loads as specified in Section 10B or 2) direct the Shoreway Recycling and Disposal
249 Center Operator to remove the Rejected Load from Contractor's facility. Contractor will
250 load the Rejected Load into the Shoreway Recycling and Disposal Center Operator's
251 vehicle and weigh that vehicle as it leaves Contractor's facility. In the event of a dispute
252 as to whether or not a Held Load should be Rejected, Contractor may be required to
253 remove and separately weigh materials from the Held Load to demonstrate that it does
254 not conform to the requirements of Section 5. In addition to the other costs provided for
255 herein, if the load is deemed rejected, the SBWMA shall pay for all costs associated
256 with the sorting and re-weighing of the Rejected Load.
257

258 It is the intent of both the SBWMA and Contractor to have no Held Loads or Rejected
259 Loads. Should Held Loads exceed two in a six month period, the SBWMA and
260 Contractor will meet and confer to resolve the issue.
261

262 **8. Hazardous or Universal Waste Materials**

263

264 In the event any SBWMA Construction and Demolition Debris contains any Universal
265 Waste or Hazardous Waste, the SBWMA shall direct Shoreway Recycling and Disposal
266 Center Operator to pay to Contractor any actual, reasonable, and necessary costs
267 incurred by Contractor in handling and disposing of said materials. In disposing of said
268 Hazardous and/or Universal Waste materials, the SBWMA shall be designated as the
269 owner or generator of said Hazardous Waste or Universal Waste. In the event that
270 Shoreway Recycling and Disposal Center Operator does not pay said costs to
271 Contractor within thirty (30) days, the SBWMA shall pay the undisputed portion of said
272 costs directly to Contractor.
273

274 **9. Reporting**

275

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

288 **10. Rates**

289

290 For the period January 1, 2007 through December 31, 2007, the SBWMA shall direct
291 Shoreway Recycling and Disposal Center Operator to pay to Contractor
292

293 A. The sum of \$47.50 per ton for all SBWMA Construction and Demolition Debris
294 accepted by Contractor for processing.

295
296 B. The sum of \$57.50 per ton for any rejected SBWMA loads that the SBWMA
297 authorizes Contractor to dispose of.

298
299 Commencing January 1, 2008 and thereafter on each January 1, this Agreement is in
300 effect, including any extension years, both rates stated above shall be increased by
301 90% of the change in the value of the All Urban Consumers Index (CPI-U), All Items, for
302 the San Francisco-Oakland-San Jose, CA, Base Period 1982 – 1984 = 100, not
303 seasonally adjusted, compiled and published by the U. S. Department of Labor, Bureau
304 of Labor Statistics (or its successor) for the previous December and its value twelve
305 months before.

306
307 In the event that any government agency imposes upon Contractor any additional
308 regulations or fees which result in additional expenses, charges, fees, or taxes to
309 Contractor and which relate specifically to the construction and demolition services
310 provided hereunder, either 1) such expenses, charges, fees or taxes shall be added to
311 the prices on a pro-rata basis, based upon the percentage that the total tonnage of
312 construction and demolition waste being delivered to Contractor pursuant to this
313 Agreement bear to the total tonnage of construction and demolition waste delivered to
314 Contractor's facility from all sources; or, 2) the SBWMA may terminate this Agreement.

315 316 **11. Payment**

317
318 On or before the 10th of each month, Contractor shall send an invoice (showing by date,
319 time, and vehicle identification number the tonnage received and the rate charged) to
320 Shoreway Recycling and Disposal Center Operator for the preceding month. Shoreway
321 Recycling and Disposal Center Operator shall reconcile such invoice to its daily records
322 and pay the undisputed portion of said invoice within thirty (30) days of receipt. Within
323 fifteen (15) days of receipt, Shoreway Recycling and Disposal Center Operator shall
324 inform Contractor and the SBWMA of any disputed amounts and Shoreway Recycling
325 and Disposal Center Operator and Contractor shall act promptly to resolve such
326 disputes. Payment shall be made only by cashier's check, certified check, or by
327 Shoreway Recycling and Disposal Center Operator or SBWMA check. In the event that
328 Shoreway Recycling and Disposal Center Operator does not pay any undisputed
329 invoice within thirty (30) days, the SBWMA shall pay the amounts it reasonably
330 determines are due Contractor directly to Contractor.

331 332 **12. Default and Remedies**

333
334 All provisions of this Agreement to be performed by Contractor are considered material.
335 Each of the following shall constitute an event of default.

- 336 A. Fraud or deceit.
- 337 B. Failure to maintain insurance coverage described herein.
- 338 C. Contractor violation of orders or filings of a regulatory body having a
339 material impact on Contractor's ability to perform its obligations as
340 required by this Agreement.

- 341 D. Failure to perform services as required by this Agreement for two (2)
- 342 consecutive days or more or for any seven (7) days in a period of 30 days.
- 343 E. Failure of Contractor to provide reports and/or records as provided for in
- 344 this Agreement.
- 345 F. Any act or omission by Contractor which violates the terms of this
- 346 Agreement.
- 347 G. Any false or misleading representation of Contractor.
- 348 H. Filing of a voluntary petition for debt relief.
- 349 I. Bankruptcy of Contractor.
- 350 J. Contractor's failure to provide assurance of performance.
- 351

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

354
355 In the event of Contractor's failure to cure said default, the SBWMA may, at its option,
356 terminate this Agreement. This right of termination is in addition to any other rights of
357 the SBWMA and the SBWMA's termination of this Agreement shall not constitute an
358 election of remedies. Instead, it shall be in addition to any and all other legal and
359 equitable rights and remedies the SBWMA may have.

361 **13. Termination for Cause**

362
363 The SBWMA selected Contractor based on its high landfill diversion levels. These
364 factors are essential to the services the SBWMA shall obtain from Contractor.
365 Therefore, notwithstanding the terms and conditions of Section 12, in any month, should
366 the Recycled fraction of accepted Construction and Demolition Debris fall below 75% or
367 should the fraction of these accepted Construction and Demolition Debris Recycled to
368 end-uses other than Beneficial Use at a Landfill fall below 50%, then Contractor will be
369 found in breach of this Agreement and the SBWMA may terminate the Agreement for
370 cause. In such case, the SBWMA shall notify Contractor in writing of its intent to do so
371 sixty (60) days prior to the intended date of termination. Contractor shall be given thirty
372 (30) days to correct the breach and, if it does, then the termination shall be suspended.
373 A second breach within a twelve-month period may reactivate the termination of the
374 Agreement and such termination shall occur within sixty (60) days of the second breach,
375 without any right by Contractor to correct the breach.

376
377 The SBWMA shall meet and confer with Contractor if Contractor is unable to meet the
378 diversion requirements set forth in Section 5, due to changes in markets for Recycled
379 materials.

381 **14. Insurance**

382
383 Insurance policies are to be obtained by Contractor and remain in full force and effect at
384 all times to provide protection against liability for damages which may be imposed for
385 the negligence of Contractor or its employees, agents, or subcontractors including, but
386 not limited to, general liability and automobile liability insurance. Contractor shall also
387 provide liability coverage under California Workers' Compensation laws. The amounts
388 of insurance required are to be established herein. Said amounts shall not be
389 construed to limit Contractor's liability.

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

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

- B. Comprehensive General Liability.** Contractor shall obtain and maintain in full force and effect throughout the entire term of this Agreement a Broad Form Comprehensive General Liability (occurrence) policy with a minimum limit of TWO MILLION DOLLARS (\$2,000,000.00) aggregate and ONE MILLION DOLLARS (\$1,000,000.00) per occurrence for bodily injury and property damage, with any self-insured retention not exceeding TWO HUNDRED THOUSAND (\$200,000.00) per occurrence. Said insurance shall protect Contractor and the SBWMA from any claim for damages for bodily injury, including accidental death, as well as from any claim for property damage which may arise from operations performed pursuant to this Agreement, whether such operations are by Contractor itself, or by its agents, employees and/or sub-contractors. Copies of the policies or endorsements evidencing the above-required insurance coverage shall be filed with the SBWMA. Endorsements are required to be made a part of all of the following insurance policies required by this Section:
 - (1) "The SBWMA, its employees, agents, and officers, are hereby added as insured as respects liability arising out of activities performed by or on behalf of Contractor."
 - (2) "This policy shall be considered primary insurance as respects any other valid collectible insurance the SBWMA may possess including any self-insured retention the SBWMA may have, and any other insurance the SBWMA does possess shall be considered excess insurance and shall not contribute with it."
 - (3) "This policy shall act for each insured, as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."
 - (4) "Thirty (30) days prior written notice by certified mail, return receipt requested, shall be given to the SBWMA in the event of suspension, cancellation, reduction in coverage or in limits or non-renewal of this policy for whatever reason. Such notice shall be sent to the SBWMA."

440 **C. Vehicle Liability.** Contractor shall obtain and maintain in full force and
441 effect throughout the entire term of this Agreement a vehicle liability policy
442 with a minimum limit of TWO MILLION DOLLARS (\$2, 000,000.00) per
443 occurrence for bodily injury and ONE HUNDRED THOUSAND DOLLARS
444 (\$100,000.00) per occurrence for property damage. Said insurance shall
445 protect Contractor and the SBWMA from any claim for damages for bodily
446 injury, including accidental death, as well as from any claim for property
447 damage which may arise from operation of owned and non-owned
448 vehicles. Copies of the policies or endorsements evidencing the above-
449 required insurance coverage shall be filed with the SBWMA.
450

451 The limits of such insurance coverage, and companies, shall be subject to review and
452 approval by the SBWMA every year and may be increased, subject to Contractor's
453 consent, at that time and match the coverage provided by the SBWMA's own liability
454 insurance policy. The SBWMA shall be included as a named insured on each of the
455 policies, or policy endorsements.
456

457 **15. Indemnification**

458

459 **A. Indemnification of the SBWMA.** Contractor shall defend the SBWMA
460 with counsel reasonably acceptable to the SBWMA and indemnify the
461 SBWMA from and against any and all liabilities, costs, claims, and
462 damages which are caused by Contractor's negligence, intentional
463 wrongful acts, or failure to comply with applicable laws and regulations,
464 including but not limited to, liabilities, costs, claims, and damages.
465

466 **B. Indemnification of Contractor.** The SBWMA shall defend Contractor
467 with counsel reasonably acceptable to Contractor and indemnify
468 Contractor from and against any and all liabilities, costs, claims and
469 damages which are caused by the SBWMA's negligence, intentional
470 wrongful acts, or failure to comply with applicable laws and regulations,
471 including but not limited to, liabilities, costs, claims, and damages. The
472 SBWMA shall not offer such indemnification to Contractor for Shoreway
473 Recycling and Disposal Center Operator's negligence or failure to comply
474 with applicable laws and regulations.
475

476 **16. General Provisions**

477

478 **A. Entire Agreement.** This Agreement represents the full and entire
479 Agreement between the SBWMA and Contractor with respect to the matters
480 covered herein.
481

482 **B. Force Majeure.** Neither party shall be in default under this Agreement in the
483 event, and for so long as, it is impossible or extremely impracticable for it to
484 perform its obligations due to any of the following reasons: riots, wars,
485 sabotage, civil disturbances, insurrection, explosion, natural disasters such as
486 floods, earthquakes, landslides, fires, and volcanic eruptions, strikes, lockouts
487 and other labor disturbances or other catastrophic events which are beyond
488 the reasonable control of Contractor. Labor unrest, including but not limited

489 to strike, work stoppage or slowdown, sick-out, picketing, or other concerted
490 job action conducted by Contractor's employees or directed at Contractor is
491 not an excuse from performance; provided, however, that labor unrest or job
492 action directed at a third party over whom Contractor has no control, shall
493 excuse performance.
494

495 A party claiming excuse under this Section must (i) have taken reasonable
496 precautions to avoid being affected by the cause, and (ii) notify the other party
497 in writing within 5 days after the occurrence of the event specifying the nature
498 of the event, the expected length of time that the party expects to be
499 prevented from performing, and the steps which the party intends to take to
500 restore its ability to perform.
501

502 **C. Notice Procedures.** All notices, demands, requests, proposals, approvals,
503 consents, and other communications which this Agreement requires,
504 authorizes, or contemplates shall be in writing and shall either be personally
505 delivered to a representative of the Parties at the address below, e-mailed to
506 the e-mail address below, or faxed to the fax number below, or sent via
507 certified mail or Federal Express, or deposited in the United States mail, first
508 class postage prepaid, addressed as follows:
509

510 1.) If to the SBWMA:

511
512 Kevin McCarthy
513 Executive Director
514 South Bayside Waste Management Authority
515 610 Elm Street, Suite 202
516 San Carlos, California 94070
517 E-Mail: KMcCarthy@ReThinkWaste.org
518 Fax: 650-802-3501
519

520 2.) If to Contractor:

521
522 Richard Cristina
523 President
524 Zanker Road Resource Management, Ltd.
525 675 Los Esteros Road
526 San Jose, CA 95134
527 E-Mail: Michael@z-best.com
528 Fax: (408) 263-2393
529

530 The address to which communications may be delivered may be changed
531 from time to time by a notice given in accordance with this Section.
532

533 Notice shall be deemed given on the day it is personally delivered, e-mailed,
534 or faxed, or, if mailed, three calendar days from the date it is deposited in the
535 mail.
536

537 **D. Independent Contractor.** Contractor is an independent contractor and not
538 an officer, agent, servant or employee of the SBWMA. Contractor is solely

539 responsible for the acts and omissions of its officers, agents, employees,
540 Contractor's and sub-contractor, if any. Nothing in this Agreement shall be
541 construed as creating a partnership or joint venture between the SBWMA and
542 Contractor. Neither Contractor nor its officers, employees, agents or
543 subcontractor shall obtain any rights to retirement or other benefits which
544 accrue to SBWMA employees.
545

546 **E. Severability.** If any section, subsection, subdivision, paragraph, sentence,
547 clause, or phrase of this Agreement or any part thereof is, for any reason,
548 held to be illegal, such decision shall not affect the validity of the remaining
549 portions of this Agreement or any part thereof.
550

551 **F. Waiver or Modification.** No waiver, alteration, or modification of any of the
552 provisions of this Agreement shall be binding unless in writing and signed by
553 a duly authorized representative of both parties to this Agreement.
554

555 **G. Forum Selection.** Contractor and the SBWMA stipulate and agree that any
556 litigation relating to the enforcement or interpretation of this Agreement,
557 arising out of Contractor's performance, or relating in any way to the work,
558 shall be brought in California State Courts in San Mateo County.
559

560 **H. Court Costs and Attorney Fees.** In the event legal action is instituted by
561 either party to enforce this Agreement, the prevailing party shall be entitled to
562 reasonable attorney fees and actual costs in connection with such action.
563

564 **I. Counterparts and Facsimile Signatures.** This Agreement may be executed
565 in counterparts, each of which shall constitute an original and all of which
566 together shall be deemed a single document. For purposes of this
567 Agreement, each of the signatories hereto agrees that a facsimile copy of the
568 signature page of the person executing this Agreement shall be effective as
569 an original signature and legally binding and effective as an execution
570 counterpart thereof.

571 IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives,
572 have affixed their hands on the day and year this Agreement first above written.
573

574 **South Bayside Waste Management Authority**

575

576 By:

577

578

579 Name: _____

580 Kevin McCarthy

581

582

583 Title: Executive Director

584

585

586 Date: _____

587

588

589 **Contractor**

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

591

592 By:

593

594

595 Name: _____

596 Richard Cristina

597

598

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

600

601

602 Date: _____