



SHOREWAY OPERATIONS AND CONTRACT MANAGEMENT

STAFF REPORT

To: SBWMA Board Members
From: Hilary Gans, Operations Contracts Manager
Date: January 26, 2017 Board of Directors Meeting
Subject: Resolution Approving Shoreway Environmental Center Site Restoration Services' Contracts Let Under Purchasing Policy & Update on MRF Fire Restoration and Facility Reopening Schedule

Recommendation

SBWMA Staff recommend approval of resolution No. 2017-07 approving Shoreway Environmental Center site restoration services' contracts let under purchasing policy.

Summary

This report provides a description of the MRF fire restoration efforts, contracts let, and status of claims with Hanover Insurance. The Shoreway MRF restoration efforts are currently under budget and ahead of schedule. On January 5th the MRF resumed full operations and discontinued shipping recyclable materials to offsite facilities for processing. Repairs to the MRF building and some minor equipment replacements are the only items that remain to be completed in the fire restoration efforts. The SBWMA has been reimbursed by Insurance for all major repairs and is now processing the SBWMA's business interruption claims.

Analysis

Status of Facility Restoration Efforts

SBWMA staff has lead the fast-tracked and highly-coordinated efforts of contractors, consultants and SBR to restore the MRF to normal operations. After final equipment testing and calibration performed by BHS in December, the MRF workers returned to their positions and on January 5th, the MRF restarted full operations. Shipment of recyclable materials to offsite MRFs for processing was halted and all recyclables are being processed by SBR at the Shoreway MRF since its re-start on January 5th.

Below is a list of the restoration projects that have been completed since the September 7th fire. At the writing of this staff report, only the last time, Building Repairs remain to be completed from the following task list:

- ✓ Making arrangements for off-site processing of recyclable materials
- ✓ MRF and transfer station cleaning
- ✓ Assessment of building damage
- ✓ Assessment of equipment damage
- ✓ Removal of materials and equipment from MRF
- ✓ Complete smoke and fire related cleaning
- ✓ Order parts and complete equipment electrical and mechanical repairs
- ✓ Testing and calibration of MRF equipment
- ✓ Securing all final equipment and fire inspection approvals
- ✓ Develop specifications and bid package for building repairs
- **Bid award and complete MRF Building Repairs**

A low bid award in the amount of \$170,302.84 was awarded to South West Construction on January 10, 2016 for repairs to the MRF building that were the result of the fire. The building repair work has been sequenced so that it will not interfere with the MRF operations (work will largely by performed in off-hours). The MRF building repairs consist primarily of metal

panel replacement for the roofing and side panels and is expected to be completed in March. Additionally, there is a large conveyor in the transfer station that was damaged by the second fire that occurred on September 11th, and will need to be replaced. Staff is developing bid specifications now with the goal of having this item replaced by March. Staff has worked closely with TannerPacific, the construction management company, track the MRF restoration project schedule (see Exhibit A).

Insurance Claims Processing

The Fire Project Tracking table below shows the status of restoration funds received by Hannover and paid out to restoration vendors. At the end of December, the SBWMA has received a total of \$6,340,385 in claims payments from Hanover Insurance to cover expenses incurred in performing fire restoration work and the SBWMA has paid a total of \$6,197,830, resulting in a positive cash balance of \$142,555. SBWMA has accumulated over a million dollars in lost revenues as a result of being *out of service* for the past four months. Business Interruption claims for September – November are being processed by Hanover currently.

Table 1. Fire Project Tracking		9/7/2016
Insurance Payments Received		
	Date	Amount
Payment #1	9/14/2016 \$	300,000
Payment #2	9/28/2016 \$	700,000
Payment #3	10/13/2016 \$	500,000
Payment #4	10/24/2016 \$	1,000,000
Payment #5	11/15/2016 \$	1,806,136
Payment #6	12/5/2016 \$	1,055,632
Payment #7	12/5/2016 \$	728,617
Payment #8	11/23/2016 \$	250,000
Total \$		6,340,385
Fire Expenses Paid		
	Week Ending	Amount
Invoice # 1	9/30/2016 \$	760,241
Invoice # 2	10/7/2016 \$	164,925
Invoice # 3	10/14/2016 \$	516,608
Invoice # 4	10/21/2016 \$	379,583
Invoice # 5	10/28/2016 \$	392,085
Invoice # 6	11/4/2016 \$	524,153
Invoice # 7	11/11/2016 \$	477,222
Invoice # 8	11/23/2016 \$	452,963
Invoice # 9	12/2/2016 \$	718,097
Invoice # 10	12/9/2016 \$	558,567
Invoice # 11	12/16/2016 \$	1,188,548
	Reconciled amount \$	51,424
	Pending \$	13,413
Total \$		6,197,830
Balance - Over/(Shortfall)	\$	142,555
Note Business Interruption Claims are not included.		

Contracts Let

Table 2 below lists contracts that have been let by the SBWMA for fire restoration and repair. The most recent contract was to South West Construction for MRF building repair in the amount of \$170,302.84.

Table 2. Contract and Purchase Orders for Fire Related Work at the SEC				
PO Number	Date Issued	Amount	Company	Description
629	9/16/2016	\$50,000.00	Signal Restoration	Initial PO for Clean Up Work*
630	9/30/2016	\$50,000.00	BHS	Initial PO for Inspection and Repair of BHS Equipment*
760	9/30/2016	\$17,200.00	JR Miller	Design of Roof Repairs*
761	9/30/2016	\$344,324.54	BHS	Inspection of BHS Equipment Damage*
	10/6/2016	\$4,750,000.00	Signal Restoration	Signal Contract for Restoration*
808	10/10/2016	\$23,649.79	LiveWire	Replacement of Camera System
809	10/10/2016	\$157,134.61	BHS	Parts List Two for BHS - Short- Lead
810	10/10/2016	\$374,992.57	BHS	Parts List One for BHS - Long - Lead*
811	10/10/2016	\$82,180.00	Tanner Pacific	Full Contract for Construction Management Services
2968	10/10/2016	\$16,080.00	Tanner Pacific	On Call Construction Management Services - Let prior to fire
1028	10/27/2016	\$83,988.77	BHS	Duct Work
1031	10/27/2016	\$871,585.00	BHS	Mechanical Work
1032	10/27/2016	\$479,520.56	BHS	Electrical Work
810-01	10/27/2016	\$87,405.30	BHS	Change Order #1 to Parts List Number 1 - Long - Lead
810-02	11/21/2016	\$73.68	BHS	Change Order #2 to Parts List Number 1 - Long - Lead
809-01	11/29/2016	\$15,862.07	BHS	Change Order #1 to Parts List Two-Short Lead
761-02	12/21/2016	\$29,766.32	BHS	Change order number 1 to BHS Inspection
809-02	12/21/2016	\$29,934.07	BHS	Change order #2 to parts list 2 - short lead
TBD	1/10/2017	\$170,302.84	South West Const	MRF Building fire damage repair

Background

Insurer Coverage and Response

The SBWMA has maintained a fire damage insurance policy with Hanover Insurance in the coverage amounts listed in **Table 2**. Hanover's loss adjusters responded promptly after being notified of the fire, and soon thereafter, Hanover conducted an investigation as to the cause of the fire (which proved inconclusive) and cleanup and restoration work was initiated. Hanover has been cooperative and expeditious in their response and in setting up claims for fire restoration expense processing. Hanover has indicated that they will reimburse the SBWMA for all expenses related to: 1) restoration of the building and equipment to proper function (Personal Property Coverage), and 2) SBWMA's loss of business revenues (Business Income Coverage) during the restoration process.

Table 2.

Hanover Insurance coverage:

- \$37 Million Buildings
- \$20 Million Personal Property
- \$4.5 Million Business Income
- The deductible each of our two fire claims is \$5,000

Fiscal Impact

The SBWMA maintains fire insurance coverage with Hanover and has a \$5,000 deductible. Based on conversations with SBWMA legal counsel relating to the Agency's coverage and claims Hanover should reimburse the SBWMA for all expenses related to: 1) restoration of the building and equipment to proper function (Personal Property Coverage), and 2) SBWMA's loss of business revenues (Business Income Coverage) during the restoration process.

Attachments:

Resolution 2017-07

Exhibit A - [Contract with South West Construction for MRF Building Repair \(available online only at www.rethinkwaste.org\)](http://www.rethinkwaste.org)

Attachment A – MRF Restoration Project Detail Schedule



RESOLUTION NO. 2017-07

**RESOLUTION OF THE SBWMA BOARD OF DIRECTORS
ACCEPTING AND APPROVING EXECUTIVE DIRECTOR'S
REPORT PURSUANT TO SBWMA PURCHASING POLICIES
SECTION 3.12.180, EMERGENCY AUTHORITY OF EXECUTIVE DIRECTOR**

WHEREAS, pursuant to South Bayside Waste Management Authority Purchasing Policies Section 3.12.180, Emergency Authority of Executive Director, an emergency requiring the Executive Director to purchase supplies and services exists by virtue of a fire at the Shoreway Environmental Center on September 8th; and

WHEREAS, the Board of Directors was advised at its meeting of September 22nd, 2016, that the Executive Director intended to authorize emergency contracts for supplies and services in order to address damage caused by the above-referenced fire; and

WHEREAS, Purchasing Policies Section 3.12.180 requires that the Executive Director report at the next succeeding Board meeting on the supplies and services purchased, and prices thereof; and

WHEREAS, the Executive Director has executed the following emergency contracts:

- o **South West Construction on 1/10/17 for \$170,302.84.**

NOW, THEREFORE BE IT RESOLVED that the South Bayside Waste Management Authority hereby approves the Executive Director's report made pursuant to Purchasing Policies Section 3.12.180.

PASSED AND ADOPTED by the Board of Directors of the South Bayside Waste Management Authority, County of San Mateo, State of California on the January 26, 2017, 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 Sanitary Dist				

I HEREBY CERTIFY that the foregoing Resolution No. 2017-07 was duly and regularly adopted at a regular meeting of the South Bayside Waste Management Authority on January 26, 2017.

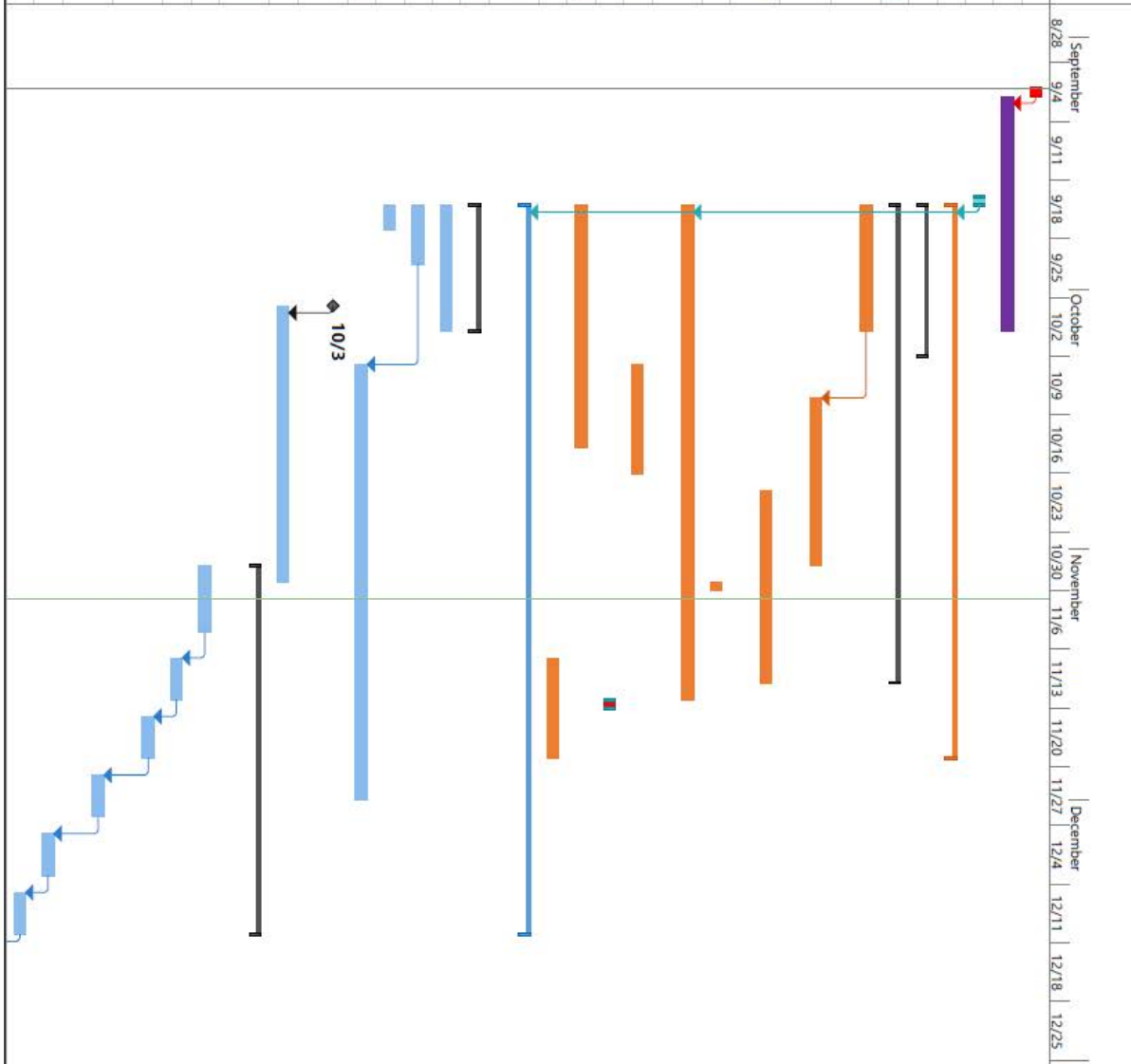
ATTEST:

Bob Grassilli, Chairperson of SBWMA

Cyndi Urman, Board Secretary

Attachment A –MRF Restoration Project Detail Schedule

ID	Task Name	Duration	Start	Finish
1	Fire Event	1 day	Wed 9/7/16	Wed 9/7/16
2	SBR Fire Maintenance Contractor Kickoff	21 days	Thu 9/8/16	Wed 10/5/16
3	Facility Restoration	1 day	Tue 9/20/16	Tue 9/20/16
4	ERS	52 days	Wed 9/21/16	Fri 11/25/16
5	Ice Blasting	15 days	Wed 9/21/16	Sat 10/8/16
8	Ice Blasting Bays 1-4	45 days	Wed 9/21/16	Wed 11/16/16
9	Ice Blasting Bays 8-9	12 days	Wed 9/21/16	Wed 10/5/16
10	Ice Blasting Fire Areas (Bays 5-7)	14 days	Fri 10/14/16	Wed 11/2/16
11	Ice Blasting Bays 8-9	19 days	Tue 10/25/16	Wed 11/16/16
12	Exterior Cleaning	1 day	Sat 11/5/16	Sat 11/5/16
13	V Force Labor	47 days	Wed 9/21/16	Fri 11/18/16
14	Duct Cleaning	10 days	Mon 10/10/16	Sat 10/22/16
15	Transfer Station Scaffolding	1 day	Sat 11/19/16	Sat 11/19/16
16	Remove Scaffolding	23 days	Wed 9/21/16	Wed 10/19/16
17	Equipment	10 days	Mon 11/14/16	Fri 11/25/16
18	Equipment	67 days	Wed 9/21/16	Fri 12/16/16
19	Assessment/Demo	12 days	Wed 9/21/16	Wed 10/5/16
20	Mechanical	12 days	Wed 9/21/16	Wed 10/5/16
21	Electrical	6 days	Wed 9/21/16	Tue 9/27/16
22	Control	3 days	Wed 9/21/16	Fri 9/23/16
23	ESC Electrical Install	40 days	Mon 10/10/16	Wed 11/30/16
24	Parts List	0 days	Mon 10/3/16	Mon 10/3/16
25	Equipment Delivery	26 days	Mon 10/3/16	Fri 11/4/16
26	Mechanical Installation	34 days	Thu 11/3/16	Fri 12/16/16
27	Screen 96	7 days	Thu 11/3/16	Thu 11/10/16
28	Screen 126	5 days	Mon 11/14/16	Fri 11/18/16
29	OCC Under Conveyor	5 days	Mon 11/21/16	Fri 11/25/16
30	OCC Overs Conveyor	5 days	Mon 11/28/16	Fri 12/2/16
31	NRT Unit	5 days	Mon 12/5/16	Fri 12/9/16
32	Start-Up	5 days	Mon 12/12/16	Fri 12/16/16



ID	Task Name	Duration	Start	Finish
33	SBR Plant Start Up	0 days	Fri 12/16/16	Fri 12/16/16
34	Building Restoration	89 days	Mon 10/10/16	Tue 2/7/17
35	JRMA Drawings	16 days	Mon 10/10/16	Mon 10/31/16
36	Camera Repairs	3 days	Tue 10/18/16	Thu 10/20/16
37	Lighting Assessment/Repair	9 days	Tue 10/25/16	Fri 11/4/16
38	Cosco Fire Repairs	3 days	Wed 11/2/16	Fri 11/4/16
39	Bid Doc Prep	20 days	Tue 10/18/16	Fri 11/11/16
40	Bid Doc Legal Review	5 days	Mon 11/14/16	Fri 11/18/16
41	Publish Bid	0 days	Fri 11/18/16	Fri 11/18/16
42	Pre-Bid Conference	1 day	Tue 11/29/16	Tue 11/29/16
43	Bid Opening	0 days	Wed 12/7/16	Wed 12/7/16
44	San Carlos Permit	3 days	Thu 12/8/16	Mon 12/12/16
45	Insurance	15 days	Thu 12/8/16	Wed 12/28/16
46	NTP	0 days	Tue 1/3/17	Tue 1/3/17
47	Construction	26 days	Tue 1/3/17	Tue 2/7/17
48	Replace Doors	1 day	Tue 1/3/17	Tue 1/3/17
49	Building Material Procurement	16 days	Tue 1/3/17	Tue 1/24/17
50	Remove Roof Solar	5 days	Wed 1/18/17	Tue 1/24/17
51	Panel & Hatch Replacement	5 days	Wed 1/25/17	Tue 1/31/17
52	Reinstall Solar	5 days	Wed 2/1/17	Tue 2/7/17

Project: SBWMA Bid Schedule
Date: Mon 11/7/16

Task Legend:

- Project Summary
- Inactive Task
- Manual Task
- Start-only
- External Milestone
- Deadline
- Milestone Summary
- Inactive Milestone
- Manual Summary Relup
- External Tasks
- Progress
- Manual Progress



STAFF REPORT

To: SBWMA Board Members
From: Hilary Gans, Facility Operations Contracts Manager
Date: January 26, 2017 Board of Directors Meeting
Subject: Resolution Authorizing the Executive Director to Enter into a Contract with Zanker Road Resource Recovery for Construction and Demolition Materials Processing Services

Recommendation

It is recommended that the SBWMA Board of Directors approve Resolution No. 2017-08 authorizing the Executive Director to enter into a contract with Zanker Road Resource Recovery for Construction and Demolition Materials Processing Services.

Background

The Self Haul materials delivered to the Shoreway transfer station are primarily composed of construction and demolition material (C&D). The SBWMA has held a contract with Zanker Road Resource Management (Zanker) in San Jose for the processing and recycling of C&D material since 2004 (the agreement was revised in 2006, 2010, 2012 and amended in 2014). The expiration date of the current agreement was January 31, 2017, but was extended through an MOU to February 28, 2017.

Analysis

The new agreement for C&D materials processing services (**Exhibit A**) differs from the expiring agreement with Zanker in two substantive elements: Term and Rates. In the new contract with Zanker:

1. The Term of the agreement is for a total of 5-years (the SBWMA can exercise an option to exit the agreement after the first two-years by providing Zanker written notice six-months prior to the contract anniversary date).
2. The Rate for C&D processing services will increase from the current rate of \$51.61 per ton as shown in the Table 1 below.

Year	Term	Rates
	Current 2016-17	\$51.61
Year 1	2017-18	\$60.00
Year 2	2018-19	\$65.00
<i>Year 3</i>	<i>2019-20</i>	<i>\$70.00</i>
<i>Year 4</i>	<i>2020-21</i>	<i>\$73.00</i>
<i>Year 5</i>	<i>2020-22</i>	<i>\$74.00</i>
<i>Note: the SBWMA may exit the Agreement in Years 3-5:</i>		

Staff has explored the possibility of taking C&D materials to other processors and found that there are very few facilities in the Bay Areas for C&D materials processing. In addition to having few processing options, other options are not economical due to: 1) the distance that the materials would need to be hauled to get to other facilities, 2) the tip fees at other facilities are comparable, 3) the fact that many other C&D facilities are under-capitalized and recover far less material than Zanker's facility. To mitigate costs, SBWMA staff and SBR are

evaluating ways to process C&D materials at the Shoreway transfer station, however, lack of floor-space is limiting on-site material sorting opportunities.

Fiscal Impact

C&D materials are brought to the Shoreway transfer station exclusively by self-haul customs and therefore, there will be no impact to the Member Agencies rates from the Zanker C&D rate change. The cost increase for C&D processing by Zanker will only impact self-haul customers

The SBWMA FY16/17 Budget anticipated an increase in C&D processing rates after the expiration of the current Zanker agreement and the Shoreway Tip Fees for self-haul customers have been increased sufficiently (\$5 in July and \$5 January) to cover the Zanker cost increase. Hence, there will be no adverse impact to the FY16/17 Budget.

Attachments:

Resolution 2017-08

Exhibit

Exhibit A – Zanker Contract



RESOLUTION NO. 2017-08

RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO A NEW CONTRACT WITH ZANKER ROAD RESOURCE RECOVERY FOR CONSTRUCTION AND DEMOLITION MATERIALS PROCESSING SERVICES.

WHEREAS, the South Bayside Waste Management Authority (SBWMA) has construction and demolition (C&D) materials that it would like have Zanker Road Resources Management, LTD., (Zanker) process for recovery.

WHEREAS, the SBWMA Board has reviewed the contract with Zanker Road Resource Recovery for Construction and Demolition Materials Processing Services (**Exhibit A**).

NOW, THEREFORE, BE IT RESOLVED that the South Bayside Waste Management Authority hereby authorizes the Executive Director to enter into a new contract with Zanker Road Resource Recovery for Construction and Demolition Materials Processing Services.

PASSED AND ADOPTED by the Board of Directors of the South Bayside Waste Management Authority, County of San Mateo, State of California on January 26, 2017 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. 2017-08 was duly and regularly adopted at a regular meeting of the South Bayside Waste Management Authority on January 26, 2017.

ATTEST:

Bob Grassilli, Chairperson of SBWMA

Cyndi Urman, Board Secretary

EXHIBIT A

**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.**

This Agreement is entered into by and between the South Bayside Waste Management Authority (SBWMA), a California joint powers authority, and Zanker Road Resource Management, Ltd. (Contractor) a California limited partnership, on February 1, 2017, and sets forth the terms and conditions under which Contractor will accept and process for recycling and beneficial use mixed construction and demolition debris from the Shoreway Environmental Center owned by the SBWMA and located at 225 Shoreway Road, San Carlos, California 94070. The SBWMA and Contractor shall be referred to hereinafter as the Parties.

1. Definitions

A. Construction and Demolition Debris (C&D)

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

B. Non-Construction and Demolition Debris

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

C. Recyclable Construction and Demolition Debris

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

D. Recycled

“Recycled” means those materials, which would otherwise be Disposed, that have been processed, separated, treated, and/or reconstituted and returned to the economy in the form of raw materials for new, reused, or reconstituted 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. After notification, Contractor must provide the SBWMA up to 8
121 Working Hours to inspect the 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 within 8 Working Hours.
128

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

131 **A. Legal Status**

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

138 **B. Limited Partnership Authorization**

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

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

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

156 **D. No Litigation**

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

168 **E. Ability to Perform**

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

174 **3. Term**

175
176 The term of this Agreement shall be for the period February 1, 2017 to January 31,
177 2019. Thereafter, the Agreement shall automatically be extended for three (3)
178 additional one (1) year terms (i.e., February 1, 2019-January 31, 2020; February 1,
179 2020-January 31, 2021; and February 1, 2021-January 31, 2022) unless terminated by
180 the SBWMA giving written notice of termination no later than July 1, 2019, thereby
181 terminating the Agreement on January 31, 2020, or July 1, 2020, thereby terminating
182 the Agreement on January 31, 2021.
183

184 **4. Exclusive Services**

185
186 **Except as provided below, during the term of this Agreement, the SBWMA shall**
187 **direct the Shoreway Environmental Center Operator to transport all loads of**
188 **Construction and Demolition Debris generated from the Shoreway Environmental**
189 **Center exclusively to Contractor's facilities at 675 and 705 Los Esteros Road in**
190 **San Jose, California, for processing, recycling, finished product marketing, and**
191 **disposal of residuals.**

192 **5. Scope of Construction and Demolition Processing Services**
193

194 Contractor agrees to accept, process for recycling, and dispose of residual amounts, all
195 Construction and Demolition Debris received from the SBWMA at the rates provided in
196 Paragraph 10, Rates. Contractor shall process, recycle, market finished products, and
197 dispose of residuals. Contractor shall ensure that, at a minimum, Recyclable
198 Construction and Demolition Debris from the SBWMA are Recycled. Contractor shall
199 ensure that at least 75% by weight of the Construction and Demolition Debris accepted
200 from the SBWMA is Recycled. Contractor shall ensure that at least 50% by weight of
201 the Construction and Demolition Debris accepted from the SBWMA is Recycled to uses
202 other than Beneficial Use at a Landfill. Contractor may dispose of or utilize as ADC any
203 residuals from the SBWMA Construction and Demolition Debris that cannot be
204 Recycled. Such residuals shall not exceed 25% of the inbound weight of accepted
205 SBWMA Construction and Demolition Debris. Contractor may reject SBWMA loads
206 containing more than 5% by weight of Non-Construction and Demolition Debris as
207 defined in this Agreement. Contractor may also reject SBWMA loads containing less
208 than 75% by weight of Recyclable Construction and Demolition Debris as defined in this
209 Agreement. In order to reject an SBWMA load, Contractor must follow the procedures
210 for rejection of loads set forth in Section 7. Diversion rates for all materials must be
211 maintained using Recycling Certification Institute website site.
212

213 The SBWMA shall meet and confer with Contractor if Contractor is unable to meet the
214 diversion requirements set forth in Section 5, due to changes in markets for Recycled
215 materials.
216

217 **6. Hours of Operation**
218

219 Contractor's facility shall be open to accept Construction and Demolition Debris from
220 6:00 a.m. to 5:45 p.m., Monday through Friday, and from 8:00 a.m. to 3:45 p.m.,
221 Saturday and Sunday. Said facility will be closed Thanksgiving Day, Christmas Day,
222 New Year's Day, and Easter Sunday. In the event the Contractor applies to its
223 regulating agencies for, and is granted, additional permitted receiving hours, Contractor
224 shall make those additional hours available to the SBWMA for delivery of Construction
225 and Demolition Debris.
226

227 **7. Rejection of Loads**
228

229 An SBWMA Construction and Demolition Debris load may be held by Contractor if
230 Contractor believes that it does not conform to the guidelines set forth in Section 5.
231 Contractor may not declare a load to be held until that load has been unloaded from the
232 transfer vehicle so that the entire load may be viewed. If Contractor declares a load to
233 be held, Contractor shall photograph the Held Load, and shall keep the entire Held Load
234 separate from other materials, and undisturbed, until it can be visually inspected by an
235 authorized representative of the SBWMA. Contractor shall inform the SBWMA of the
236 Held Load via e-mail (cdloadproblem@rethinkwaste.org) and telephone (number to be
237 designated by the SBWMA.) The e-mail shall include digital photos of the Held Load.
238 The load's arrival time and date and truck number shall be included in these
239 communications. If the SBWMA does not inspect the load at Contractor's site within 8
240 Working Hours, Contractor may move the load or combine it with other materials.

241
242 Within 8 Working Hours of the notification, the SBWMA will inform Contractor as to
243 whether or not it is in agreement that the Held Load should be Rejected. If the SBWMA
244 finds that the Held Load does conform to the requirements of Section 5, Contractor shall
245 accept the load at the rate for Accepted Loads set forth in Section 10A. If the SBWMA
246 agrees that the load does not conform to the requirements of Section 5, the SBWMA will
247 either 1) authorize Contractor to dispose of the load, and direct the Shoreway
248 Environmental Center Operator to pay Contractor the rate for disposing of Rejected
249 Loads as specified in Section 10B or 2) direct the Shoreway Environmental Center
250 Operator to remove the Rejected Load from Contractor's facility. Contractor will load
251 the Rejected Load into the Shoreway Environmental Center Operator's vehicle and
252 weigh that vehicle as it leaves Contractor's facility. In the event of a dispute as to
253 whether or not a Held Load should be Rejected, Contractor may be required to remove
254 and separately weigh materials from the Held Load to demonstrate that it does not
255 conform to the requirements of Section 5. In addition to the other costs provided for
256 herein, if the load is deemed rejected, the SBWMA shall pay for all costs associated
257 with the sorting and re-weighing of the Rejected Load.
258

259 It is the intent of both the SBWMA and Contractor to have no Held Loads or Rejected
260 Loads. Should Held Loads exceed two in a six-month period, the SBWMA and
261 Contractor will meet and confer to resolve the issue.
262

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

264

265 In the event any SBWMA Construction and Demolition Debris contains any Universal
266 Waste or Hazardous Waste, the SBWMA shall direct Shoreway Environmental Center
267 Operator to pay to Contractor any actual, reasonable, and necessary costs incurred by
268 Contractor in handling and disposing of said materials. In disposing of said Hazardous
269 and/or Universal Waste materials, the SBWMA shall be designated as the owner or
270 generator of said Hazardous Waste or Universal Waste. In the event that Shoreway
271 Environmental Center Operator does not pay said costs to Contractor within thirty (30)
272 days, the SBWMA shall pay the undisputed portion of said 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. Diversion rates for all of Contractor's
287 sorting operations must be maintained on the Recycling Certification Institute website.
288

289 **10. Rates**

290
291 For the period February 1, 2017 through January 31, 2022, the SBWMA shall direct
292 Shoreway Environmental Center Operator to pay to Contractor
293

- 294 A. The sum of \$60.00 per ton for all SBWMA Construction and Demolition Debris
295 accepted by Contractor for processing for the period of February 1, 2017 to
296 January 31, 2018.
- 297 B. The sum of \$65.00 per ton for all SBWMA Construction and Demolition Debris
298 accepted by Contractor for processing for the period of February 1, 2018 to
299 January 31, 2019.
- 300 C. The sum of \$70.00 per ton for all SBWMA Construction and Demolition Debris
301 accepted by Contractor for processing for the period of February 1, 2019 to
302 January 31, 2020.
- 303 D. The sum of \$73.00 per ton for all SBWMA Construction and Demolition Debris
304 accepted by Contractor for processing for the period of February 1, 2020 to
305 January 31, 2021.
- 306 E. The sum of \$74.00 per ton for all SBWMA Construction and Demolition Debris
307 accepted by Contractor for processing for the period of February 1, 2021 to
308 January 31, 2022.
- 309
- 310 F. The sum of \$70.00 per ton for any rejected SBWMA loads that the SBWMA
311 authorizes Contractor to dispose of during the term of this Agreement.
312

313 In the event that any government agency imposes upon Contractor any additional
314 regulations or fees which result in additional expenses, charges, fees, or taxes to
315 Contractor and which relate specifically to the construction and demolition services
316 provided hereunder, either 1) such expenses, charges, fees or taxes shall be added to
317 the prices on a pro-rata basis, based upon the percentage that the total tonnage of
318 construction and demolition waste being delivered to Contractor pursuant to this
319 Agreement bear to the total tonnage of construction and demolition waste delivered to
320 Contractor's facility from all sources; or, 2) the SBWMA may terminate this Agreement
321 by giving thirty (30) days' written notice of termination.
322

323 **11. Payment**

324

325 On or before the 10th of each month, Contractor shall send an invoice (showing by date,
326 time, and vehicle identification number the tonnage received and the rate charged) to
327 Shoreway Environmental Center Operator for the preceding month. Shoreway
328 Environmental Center Operator shall reconcile such invoice to its daily records and pay
329 the undisputed portion of said invoice within thirty (30) days of receipt. Within fifteen
330 (15) days of receipt, Shoreway Environmental Center Operator shall inform Contractor
331 and the SBWMA of any disputed amounts and Shoreway Environmental Center
332 Operator and Contractor shall act promptly to resolve such disputes. Payment shall be
333 made only by cashier's check, certified check, or by Shoreway Environmental Center
334 Operator or SBWMA check. In the event that Shoreway Environmental Center Operator
335 does not pay any undisputed invoice within thirty (30) days, the SBWMA shall pay the
336 amounts it reasonably determines are due Contractor directly to Contractor.
337

338 **12. Default and Remedies**

339

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

- 342 A. Fraud or deceit.
- 343 B. Failure to maintain insurance coverage described herein.
- 344 C. Contractor violation of orders or filings of a regulatory body having a
345 material impact on Contractor's ability to perform its obligations as
346 required by this Agreement.
- 347 D. Failure to perform services as required by this Agreement for two (2)
348 consecutive days or more or for any seven (7) days in a period of 30 days.
- 349 E. Failure of Contractor to provide reports and/or records as provided for in
350 this Agreement.
- 351 F. Any act or omission by Contractor which violates the terms of this
352 Agreement.
- 353 G. Any false or misleading representation of Contractor.
- 354 H. Filing of a voluntary petition for debt relief.
- 355 I. Bankruptcy of Contractor.
- 356 J. Contractor's failure to provide assurance of performance.

357
358 Contractor shall be given thirty (30) days from written notification by the SBWMA to cure
359 any default arising under this Agreement.

360
361 In the event of Contractor's failure to cure said default, the SBWMA may, at its option,
362 terminate this Agreement by giving thirty (30) days written notice of termination. This
363 right of termination is in addition to any other rights of the SBWMA and the SBWMA's
364 termination of this Agreement shall not constitute an election of remedies. Instead, it
365 shall be in addition to any and all other legal and equitable rights and remedies the
366 SBWMA may have.

367
368
369 **13. Termination for Cause**

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

385
386 **14. Insurance**
387

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

395
396 The insurance requirements provided herein may be reduced or waived in writing by the
397 SBWMA Board of Directors, provided the Board of Directors determines that such
398 waiver or reduction does not unreasonably increase the risk of exposure to the
399 SBWMA.

400
401 **A. Workers' Compensation Insurance.** Contractor shall obtain and
402 maintain in full force and effect throughout the entire term of this
403 Agreement full Workers' Compensation Insurance in accord with the
404 provisions and requirements of the Labor Code of the State of California.
405 Endorsements that implement the required coverage shall be filed and
406 maintained with the SBWMA throughout the term of this Agreement.

407
408 **B. Comprehensive General Liability.** Contractor shall obtain and maintain
409 in full force and effect throughout the entire term of this Agreement a
410 Broad Form Comprehensive General Liability (occurrence) policy with a
411 minimum limit of TWO MILLION DOLLARS (\$2,000,000.00) aggregate
412 and ONE MILLION DOLLARS (\$1,000,000.00) per occurrence for bodily
413 injury and property damage, with any self-insured retention not exceeding
414 TWO HUNDRED THOUSAND (\$200,000.00) per occurrence. Said
415 insurance shall protect Contractor and the SBWMA from any claim for
416 damages for bodily injury, including accidental death, as well as from any
417 claim for property damage which may arise from operations performed
418 pursuant to this Agreement, whether such operations are by Contractor
419 itself, or by its agents, employees and/or sub-contractors. Copies of the
420 policies or endorsements evidencing the above-required insurance
421 coverage shall be filed with the SBWMA. Endorsements are required to
422 be made a part of all of the following insurance policies required by this
423 Section:

424
425 (1) "The SBWMA, its employees, agents, and officers, are hereby
426 added as insured as respects liability arising out of activities
427 performed by or on behalf of Contractor."

428
429 (2) "This policy shall be considered primary insurance as respects
430 any other valid collectible insurance the SBWMA may possess
431 including any self-insured retention the SBWMA may have,
432 and any other insurance the SBWMA does possess shall be
433 considered excess insurance and shall not contribute with it."

434

- 435 (3) "This policy shall act for each insured, as though a separate
436 policy had been written for each. This, however, will not act to
437 increase the limit of liability of the insuring company."
438
439 (4) "Thirty (30) days prior written notice by certified mail, return
440 receipt requested, shall be given to the SBWMA in the event
441 of suspension, cancellation, reduction in coverage or in limits
442 or non-renewal of this policy for whatever reason. Such notice
443 shall be sent to the SBWMA."
444

445 **C. Vehicle Liability.** Contractor shall obtain and maintain in full force and
446 effect throughout the entire term of this Agreement a vehicle liability policy
447 with a minimum limit of TWO MILLION DOLLARS (\$2, 000,000.00) per
448 occurrence for bodily injury and ONE HUNDRED THOUSAND DOLLARS
449 (\$100,000.00) per occurrence for property damage. Said insurance shall
450 protect Contractor and the SBWMA from any claim for damages for bodily
451 injury, including accidental death, as well as from any claim for property
452 damage which may arise from operation of owned and non-owned
453 vehicles. Copies of the policies or endorsements evidencing the above-
454 required insurance coverage shall be filed with the SBWMA.
455

456 The limits of such insurance coverage, and companies, shall be subject to review and
457 approval by the SBWMA every year and may be increased, subject to Contractor's
458 consent, at that time and match the coverage provided by the SBWMA's own liability
459 insurance policy. The SBWMA shall be included as a named insured on each of the
460 policies, or policy endorsements.
461

462 15. Indemnification

463
464 **A. Indemnification of the SBWMA.** Contractor shall defend the SBWMA
465 with counsel reasonably acceptable to the SBWMA and indemnify the
466 SBWMA from and against any and all liabilities, costs, claims, and
467 damages which are caused by Contractor's negligence, intentional
468 wrongful acts, or failure to comply with applicable laws and regulations,
469 including but not limited to, liabilities, costs, claims, and damages.
470

471 **B. Indemnification of Contractor.** The SBWMA shall defend Contractor
472 with counsel reasonably acceptable to Contractor and indemnify
473 Contractor from and against any and all liabilities, costs, claims and
474 damages which are caused by the SBWMA's negligence, intentional
475 wrongful acts, or failure to comply with applicable laws and regulations,
476 including but not limited to, liabilities, costs, claims, and damages. The
477 SBWMA shall not be obligated to indemnify Contractor for Shoreway
478 Environmental Center Operator's negligence, intentional wrongful acts or
479 failure to comply with applicable laws and regulations, including but not
480 limited to, liabilities, costs, claims and damages.
481

482 16. General Provisions

483

484 **A. Entire Agreement.** This Agreement represents the full and entire
485 Agreement between the SBWMA and Contractor with respect to the matters
486 covered herein.
487

488 **B. Force Majeure.** Neither party shall be in default under this Agreement in the
489 event, and for so long as, it is impossible or extremely impracticable for it to
490 perform its obligations due to any of the following reasons: riots, wars,
491 sabotage, civil disturbances, insurrection, explosion, natural disasters such as
492 floods, earthquakes, landslides, fires, and volcanic eruptions, strikes, lockouts
493 and other labor disturbances or other catastrophic events which are beyond
494 the reasonable control of Contractor. Labor unrest, including but not limited
495 to strike, work stoppage or slowdown, sick-out, picketing, or other concerted
496 job action conducted by Contractor's employees or directed at Contractor is
497 not an excuse from performance; provided, however, that labor unrest or job
498 action directed at a third party over whom Contractor has no control, shall
499 excuse performance.
500

501 A party claiming excuse under this Section must (i) have taken reasonable
502 precautions to avoid being affected by the cause, and (ii) notify the other party
503 in writing within 5 days after the occurrence of the event specifying the nature
504 of the event, the expected length of time that the party expects to be
505 prevented from performing, and the steps which the party intends to take to
506 restore its ability to perform.
507

508 **C. Notice Procedures.** All notices, demands, requests, proposals, approvals,
509 consents, and other communications which this Agreement requires,
510 authorizes, or contemplates shall be in writing and shall either be personally
511 delivered to a representative of the Parties at the address below, e-mailed to
512 the e-mail address below, or faxed to the fax number below, or sent via
513 certified mail or Federal Express, or deposited in the United States mail, first
514 class postage prepaid, addressed as follows:
515

516 1.) If to the SBWMA:

517
518 Joe La Mariana
519 Executive Director
520 South Bayside Waste Management Authority
521 610 Elm Street, Suite 202
522 San Carlos, California 94070
523 E-Mail: KMcCarthy@ReThinkWaste.org
524 Fax: 650-802-3501
525

526 2.) If to Contractor:

527
528 Greg Ryan
529 President
530 Zanker Road Resource Management, Ltd.
531 675 Los Esteros Road
532 San Jose, CA 95134
533 E-Mail: Michael@zankerrecycling.com

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

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

- D. Independent Contractor.** Contractor is an independent contractor and not an officer, agent, servant or employee of the SBWMA. Contractor is solely responsible for the acts and omissions of its officers, agents, employees, Contractor's and sub-contractor, if any. Nothing in this Agreement shall be construed as creating a partnership or joint venture between the SBWMA and Contractor. Neither Contractor nor its officers, employees, agents or subcontractor shall obtain any rights to retirement or other benefits which accrue to SBWMA employees.
- E. Severability.** If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Agreement or any part thereof is, for any reason, held to be illegal, such decision shall not affect the validity of the remaining portions of this Agreement or any part thereof.
- F. Waiver or Modification.** No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of both parties to this Agreement.
- G. Forum Selection.** Contractor and the SBWMA stipulate and agree that any litigation relating to the enforcement or interpretation of this Agreement, arising out of Contractor's performance, or relating in any way to the work, shall be brought in California State Courts in San Mateo County.
- H. Dispute Resolution.** Any and all disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to mediation before a mediator agreed to by the Parties. The mediation process shall be concluded within thirty (30) days and the costs of the mediator, if any, shall be paid equally by the parties. In the event a dispute is not resolved by mediation, either Party shall have the right to pursue any available legal or equitable remedy, including damages, injunctions and restraining orders. All remedies shall be cumulative and the pursuit of any available remedy shall not constitute a waiver or election of remedies with respect to all other available remedies.
- I. Counterparts and Facsimile Signatures.** This Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall be deemed a single document. For purposes of this Agreement, each of the signatories hereto agrees that a facsimile copy of the signature page of the person executing this Agreement shall be effective as an original signature and legally binding and effective as an execution counterpart thereof.

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

585

586 **South Bayside Waste Management Authority**

587 By:

588

589

590 Name: _____

591 Joe La Mariana
592 Title: Executive Director

593

594 Date: _____

595

596

597 **Contractor**

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

599 By:

600

601

602 Name: _____

603 Greg Ryan

604 Title: Zanker Road Resource Recovery, Inc. President

605

606 Date: _____



STAFF REPORT

To: SBWMA Board Members
From: Hilary Gans, Operations Contracts Manager
Date: January 26, 2017 Board of Directors Meeting
Subject: Update on Recology’s Termination of 3rd Party Tons Supply Agreement with SBR.

Recommendation

This staff report is an informational update and no Board action is required.

Background

Recology and SBR entered into Supply Agreement in 2013 for the processing of recyclable materials collected by other Recology companies servicing cities outside of the SBWMA franchise area at the Shoreway MRF. These “third-party” tons have been sorted by SBR at the Shoreway MRF for the past four years and under an agreement approved by the Board, SBR pays the SBWMA a “host fee” in exchange for the using the Shoreway MRF to process these third-party recyclables. In November a memo was sent to Board members by legal counsel advising of the potential that Recology could terminate the Supply Agreement with SBR and that the associated host fee payments might be discontinued. Staff was recently advised that Recology has, in fact, exercised its contractual right to opt-out of this agreement, thereby eliminating these non-franchised recycling tons at our MRF.

Analysis

Recology Termination of the Third-party Tons Agreement

Recology collects recyclable material from cities outside of the SBWMA franchise service area and, until recently, has brought this “third-party” material to Shoreway for processing. The processing arrangements for the third-party tonnage is covered by a Supply Agreement between Recology and SBR that was signed in 2013. Since the start of the Supply Agreement, Recology has delivered to the Shoreway MRF for processing a total of 89,920 tons (approximately 22,480 tons per year). (see Table 1)

Year	Third-Party		Total Host Fee	
	Tons	Host Fee Rate	Payments	
2013	\$ 10.00	5,661	\$	56,610
2014	\$ 10.15	20,092	\$	203,934
2015	\$ 13.20	34,544	\$	455,981
2016	\$ 13.54	29,623	\$	401,095
TOTAL		\$ 89,920	\$	1,117,620

On December 7, 2016 Staff received a notice from Recology of their intention to terminate the Master Supply Agreement with SBR. The termination was based on a “Force Majeure Events” contract term that provides

Recology the right to terminate should SBR not be able to process material for a period of more than 90 days (the MRF fire occurred on September 7th, 2016 and the MRF resumed operations on January 5th 2017). Recology confirmed their termination of the Supply Agreement with SBWMA staff in December and has not delivered third-party material to the MRF since the facility's reopening in January. Recology has made it clear their decision to end the Supply Agreement was based on logistical and cost advantages to use another MRF in the south bay and not due to any dissatisfaction with service provided by SBR.

Host Fee Payments

While the Supply Agreement governed the arrangements between Recology and SBR, the SBWMA and SBR have a separate agreement which governs SBR's use of the Shoreway MRF for processing third-party tonnage. Included in this agreement is the payment of host fees by SBR to the SBWMA for each third-party ton processed at the Shoreway MRF. The fee amount (established at \$10.00 in 2013 has adjusted up to \$13.54 in 2016) is intended to cover the cost of 1) the increased wear on the MRF equipment and 2) the construction of the MRF canopy project. The MRF canopy project was built in 2015 out of the need to add covered tip floor area to accommodate additional third-party volume. Over the past four years the total host fee revenues from Recology's third-party materials has exceeded one million dollars – more than covering the increased equipment wear and the \$400K cost of the MRF canopy.

The loss of the Recology third-party tons will have a fiscal impact on the FY16/17 Budget. The budgeted Host Fee revenues for FY16/17 are \$403,070 and approximately \$200,000 in host fee payments were received in the first six months of the fiscal year.

Additional Recology Materials

Staff has had several meetings with Recology regarding the termination of the Supply Agreement and the fiscal impact to the SBWMA from the loss third-party tons. In an effort to mitigate the lost host fee revenues, Recology has offered to bring other non-franchise materials to the Shoreway facility. Starting in December, with staff's approval, Recology began delivering other MSW, Organic and C&D materials collected from cities outside of the SBWMA service area to the Shoreway transfer station. These third-party tons were delivered to the transfer station and have paid the SBWMA's "Gate Rate" for these materials.

The supplemental materials are being offered by Recology to explicitly help offset the budget gap created through the loss of "host fee" revenues. The net financial benefit to the SBWMA for the additional Recology will depend on 1) the total tons of materials, 2) the mix of materials, 3) the margin between the tip fee charged at the scales and the handling costs paid by the SBWMA. Due to the fact that these tons have just started to come into the Shoreway facility, it is not yet possible to forecast the total net financial contribution of these additional tons. Staff will continue work with Recology to support the delivery of additional non-franchise tons to Shoreway and will report back to the Board in March with an analysis and forecast of the financial impacts to the Agency.

Fiscal Impact

The loss of the Recology third-party tons will have a fiscal impact on the FY16/17 Budget. The budgeted Host Fee revenues for FY16/17 are \$403, 070 and approximately \$200,000 in host fee payments were received in the first six-months of the fiscal year. The Mid-year budget has been updated to include this anticipated loss of revenue for the balance of FY16/17.