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

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

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

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

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

I. **Hazardous Waste**
"Hazardous Waste" means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State of California in Health and Safety Code §25110.02, §25115, and §25117 or in the future amendments to or recodifications of such statutes or identified and listed as
Hazardous Waste by the U.S. Environmental Protection Agency (EPA), pursuant to the Federal Resource Conservation and Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder.

J. Universal Waste

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

K. Accepted Load

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

L. Held Load

"Held Load" means a load of SBWMA Construction and Demolition Debris delivered to Contractor's facility, which Contractor believes does not conform to the requirements of Section 5 of this Agreement, and is being kept separate and undisturbed so that it can be inspected by an authorized representative of the SBWMA. After notification, Contractor must provide the SBWMA up to 8 Working Hours to inspect the Held Load.

M. Rejected Load

"Rejected Load" means a Held Load that the SBWMA has either a) inspected in person or by utilizing photographs provided by Contractor, and agreed that it does not meet the requirements of Section 5 of this Agreement; or b) waived its right to inspect by not performing such an inspection within 8 Working Hours.

N. Working Hours

"Working Hours" means hours that the Contractor's facility is accepting materials as described in Section 6 "Hours of Operation".

2. Contractor's Representations and Warranties

A. Legal Status

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

B. Limited Partnership Authorization

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

C. Agreement Will Not Cause Breach
To the best of Contractor's and SBWMA's knowledge, after reasonable investigation, neither the execution or delivery of this Agreement, nor the performance of this Agreement: (i) conflicts with, violates, or results in a breach of any applicable law; or (ii) conflicts with, violates, or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency, or other governmental authority, or any agreement or instrument to which Contractor or SBWMA is a party or by which Contractor or SBWMA or any of its properties or assets are bound, or constitutes a default thereunder.

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

E. Ability to Perform
Contractor possesses the business, professional and technical expertise to manage, handle, treat, store, process, and recycle Construction and Demolition Debris, and possesses the equipment, plant, and employee resources required to perform this Agreement.

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

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

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

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

6. **Hours of Operation**

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

7. **Rejection of Loads**

An SBWMA Construction and Demolition Debris load may be held by Contractor if Contractor believes that it does not conform to the guidelines set forth in Section 5. Contractor may not declare a load to be held until that load has been unloaded from the transfer vehicle so that the entire load may be viewed. If Contractor declares a load to be held, Contractor shall photograph the Held Load, and shall keep the entire Held Load separate from other materials, and undisturbed, until it can be visually inspected by an authorized representative of the SBWMA. Contractor shall inform the SBWMA of the Held Load via e-mail (cdloadproblem@rethinkwaste.org) and telephone (number to be designated by the SBWMA.) The e-mail shall include digital photos of the Held Load. The load’s arrival time and date and truck number shall be included in these communications. If the SBWMA does not inspect the load at Contractor’s site within 8 Working Hours, Contractor may move the load or combine it with other materials.
Within 8 Working Hours of the notification, the SBWMA will inform Contractor as to whether or not it is in agreement that the Held Load should be Rejected. If the SBWMA finds that the Held Load does conform to the requirements of Section 5, Contractor shall accept the load at the rate for Accepted Loads set forth in Section 10A. If the SBWMA agrees that the load does not conform to the requirements of Section 5, the SBWMA will either 1) authorize Contractor to dispose of the load, and direct the Shoreway Environmental Center Operator to pay Contractor the rate for disposing of Rejected Loads as specified in Section 10B or 2) direct the Shoreway Environmental Center Operator to remove the Rejected Load from Contractor’s facility. Contractor will load the Rejected Load into the Shoreway Environmental Center Operator’s vehicle and weigh that vehicle as it leaves Contractor’s facility. In the event of a dispute as to whether or not a Held Load should be Rejected, Contractor may be required to remove and separately weigh materials from the Held Load to demonstrate that it does not conform to the requirements of Section 5. In addition to the other costs provided for herein, if the load is deemed rejected, the SBWMA shall pay for all costs associated with the sorting and re-weighing of the Rejected Load.

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

8. Hazardous or Universal Waste Materials

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

9. Reporting

Contractor shall report monthly the amount of SBWMA Construction and Demolition Debris accepted, Recycled, used as ADC, and Disposed. Contractor shall report monthly the end-uses (e.g., biomass fuel, road base, Beneficial Use at a Landfill, etc.) for each material type Recycled from SBWMA Construction and Demolition Debris at Contractor’s facility. For reporting purposes, inbound weights from SBWMA loads may be applied to overall diversion and end-use percentages for mixed Construction and Demolition Debris processing operations at the Contractor’s facility. However, if the overall diversion and end-use percentages do not demonstrate compliance with the processing services listed in Section 5, Contractor shall be required to demonstrate compliance in regards to the SBWMA materials by processing the SBWMA’s Construction and Demolition Debris separately. Diversion rates for all of Contractor’s sorting operations must be maintained on the Recycling Certification Institute website.
10. Rates

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

A. The sum of $60.00 per ton for all SBWMA Construction and Demolition Debris accepted by Contractor for processing for the period of February 1, 2017 to January 31, 2018.

B. The sum of $65.00 per ton for all SBWMA Construction and Demolition Debris accepted by Contractor for processing for the period of February 1, 2018 to January 31, 2019.

C. The sum of $70.00 per ton for all SBWMA Construction and Demolition Debris accepted by Contractor for processing for the period of February 1, 2019 to January 31, 2020.

D. The sum of $73.00 per ton for all SBWMA Construction and Demolition Debris accepted by Contractor for processing for the period of February 1, 2020 to January 31, 2021.

E. The sum of $74.00 per ton for all SBWMA Construction and Demolition Debris accepted by Contractor for processing for the period of February 1, 2021 to January 31, 2022.

F. The sum of $70.00 per ton for any rejected SBWMA loads that the SBWMA authorizes Contractor to dispose of during the term of this Agreement.

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

11. Payment

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

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

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

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

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

13. Termination for Cause

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

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

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."

C. Vehicle Liability. Contractor shall obtain and maintain in full force and effect throughout the entire term of this Agreement a vehicle liability policy with a minimum limit of TWO MILLION DOLLARS ($2,000,000.00) per occurrence for bodily injury and ONE HUNDRED THOUSAND DOLLARS ($100,000.00) per occurrence for property damage. 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 operation of owned and non-owned vehicles. Copies of the policies or endorsements evidencing the above-required insurance coverage shall be filed with the SBWMA.

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

15. Indemnification

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

B. Indemnification of Contractor. The SBWMA shall defend Contractor with counsel reasonably acceptable to Contractor and indemnify Contractor from and against any and all liabilities, costs, claims and damages which are caused by the SBWMA’s negligence, intentional wrongful acts, or failure to comply with applicable laws and regulations, including but not limited to, liabilities, costs, claims, and damages. The SBWMA shall not be obligated to indemnify Contractor for Shoreway Environmental Center Operator’s negligence, intentional wrongful acts or failure to comply with applicable laws and regulations, including but not limited to, liabilities, costs, claims and damages.


Agreement for Construction and Demolition Debris Processing
A. **Entire Agreement.** This Agreement represents the full and entire Agreement between the SBWMA and Contractor with respect to the matters covered herein.

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

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

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

1.) If to the SBWMA:

Joe La Mariana  
Executive Director  
South Bayside Waste Management Authority  
610 Elm Street, Suite 202  
San Carlos, California 94070  
E-Mail: KMcCarthy@ReThinkWaste.org  
Fax: 650-802-3501

2.) If to Contractor:

Greg Ryan  
President  
Zanker Road Resource Management, Ltd.  
675 Los Esteros Road  
San Jose, CA 95134  
E-Mail: Michael@zankerrecycling.com
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.
IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands on the day and year this Agreement first above written.

South Bayside Waste Management Authority

By: 

Name: Joe La Mariana
Title: Executive Director
Date: 1/31/2017

Contractor

Zanker Road Resource Management, LTD, a California limited partnership

By: 

Name: Greg Ryan
Title: Zanker Road Resource Recovery, Inc. President
Date: 1-30-17