

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND REPUBLIC  
SERVICES OF SAN MATEO COUNTY**

This Agreement is entered into this 18th day of August 2018, by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called "County," and BFI Waste Systems of North America, LLC, dba Republic Service of San Mateo County, hereinafter called "Contractor."

\* \* \*

Whereas, pursuant to Section 31000 of the California Government Code, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof; and

Whereas, it is necessary and desirable that Contractor be retained for the purpose of operating the Pescadero Transfer Station.

**Now, therefore, it is agreed by the parties to this Agreement as follows:**

**1. Exhibits and Attachments**

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

Exhibit A—Services, and Terms  
Exhibit B—Operating Rates  
Exhibit C—Processing and Transfer Rates  
Exhibit D—Sample Calculation for Rate Increases  
Attachment I—§ 504 Compliance

**2. Services to be performed by Contractor**

In consideration of the payments set forth in this Agreement and in Exhibit A, B and C, Contractor shall perform services for County in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibit A.

**3. Payments**

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, County shall make payment to Contractor based on the rates and in the manner specified in Exhibit B and C. County reserves the right to withhold payment if County determines that the quantity or quality of the work performed is unacceptable. In no event shall County's total fiscal obligation under this Agreement exceed Three Hundred Thousand Dollars (\$300,000) a Fiscal Year. In the event that the County makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by the County at the time of contract termination or expiration. Contractor is not entitled to payment for work not performed as required by this agreement.

**4. Term**

Subject to compliance with all terms and conditions, the term of this Agreement shall be from August 18th, 2018, through August 1, 2023.

**5. Termination**

County may terminate this Agreement or a portion of the services referenced in the Exhibit A. Section JJ. Duration of Contract and Terms. The County may also terminate based upon the unavailability of Federal, State, or County funds by providing written notice to Contractor as soon as is reasonably possible after County learns of said unavailability of outside funding.

**6. Contract Materials**

At the end of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as "contract materials") prepared by Contractor under this Agreement shall become the property of County and shall be promptly delivered to County. Upon termination, Contractor may make and retain a copy of such contract materials if permitted by law.

**7. Relationship of Parties**

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of County and that neither Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of County employees.

**8. Hold Harmless**

**a. General Hold Harmless**

Contractor shall indemnify and save harmless County and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of Contractor under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following:

- i. injuries to or death of any person, including Contractor or its employees/officers/agents;
- ii. damage to any property of any kind whatsoever and to whomsoever belonging;
- iii. any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or
- iv. any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County and/or its officers, agents, employees, or servants. However, Contractor's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

Contractor warrants that the services it provides under this Agreement do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. Contractor shall defend, indemnify, and hold harmless County from and against all liabilities, costs, damages, losses, and

expenses (including reasonable attorney fees) arising out of or related to any claim by a third party that the services provided under this Agreement infringe or violate any third-party's IP Rights provided any such right is enforceable in the United States. Contractor's duty to defend, indemnify, and hold harmless under this Section applies only provided that: (a) County notifies Contractor promptly in writing of any notice of any such third-party claim; (b) County cooperates with Contractor, at Contractor's expense, in all reasonable respects in connection with the investigation and defense of any such third-party claim; (c) Contractor retains sole control of the defense of any action on any such claim and all negotiations for its settlement or compromise (provided Contractor shall not have the right to settle any criminal action, suit, or proceeding without County's prior written consent, not to be unreasonably withheld, and provided further that any settlement permitted under this Section shall not impose any financial or other obligation on County, impair any right of County, or contain any stipulation, admission, or acknowledgement of wrongdoing on the part of County without County's prior written consent, not to be unreasonably withheld); and (d) should services under this Agreement become, or in Contractor's opinion be likely to become, the subject of such a claim, or in the event such a third party claim or threatened claim causes County's reasonable use of the services under this Agreement to be seriously endangered or disrupted, Contractor shall, at Contractor's option and expense, either: (i) procure for County the right to continue using the services without infringement or (ii) replace or modify the services so that they become non-infringing but remain functionally equivalent.

Notwithstanding anything in this Section to the contrary, Contractor will have no obligation or liability to County under this Section to the extent any otherwise covered claim is based upon: (a) any aspects of the services under this Agreement which have been modified by or for County (other than modification performed by, or at the direction of, Contractor) in such a way as to cause the alleged infringement at issue; and/or (b) any aspects of the services under this Agreement which have been used by County in a manner prohibited by this Agreement.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

## **9. Assignability and Subcontracting**

Contractor shall not assign this Agreement or any portion of it to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without County's prior written consent shall give County the right to automatically and immediately terminate this Agreement without penalty or advance notice.

## **10. Insurance**

### **a. General Requirements**

Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by County's Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. Contractor shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to County of any pending change in the limits of liability or of any cancellation or modification of the policy.

### **b. Workers' Compensation and Employer's Liability Insurance**

Contractor shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, Contractor

certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

**c. Liability Insurance**

Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them.

Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

<b>General Liability</b> (Including operations, products and completed operations, as applicable)	<b>\$1,000,000</b> – per occurrence for bodily injury, personal injury and property damage. If Commercial General insurance or other form with a generate aggregate limit is used, the general aggregate limit either mist apply separately to this project or must be twice the required occurrence limit.
<b>Automobile Liability</b>	<b>\$1,000,000</b> – per accident for bodily injury and property damage.
<b>Workers Compensation</b>	<b>As required by the state of California</b>
<b>Employee's Liability</b>	<b>\$1,000,000</b> – each accident, \$1,000,000 policy limit bodily injury by disease, \$1,000,000 each employee bodily injury by disease.
<b>Pollution Liability</b>	<b>\$1,000,000</b> – Per Occurrence, can be included in your automobile liability policy.
<b>Performance Bond</b>	<b>\$300,000</b> – Per occurrence.

If the vendor collects and transmits data by accepting credit or debit cards for payments at the Pescadero Transfer Station, the County will not be responsible for a breach of said data. The vendor will indemnify and hold harmless the County from claims, lawsuits or other legal action stemming from any release of information.

County and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the County or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, County, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

#### **11. Compliance with Laws**

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in

accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

## **12. Non-Discrimination and Other Requirements**

### **a. General Non-discrimination**

No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

### **b. Equal Employment Opportunity**

Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County upon request.

### **c. Section 504 of the Rehabilitation Act of 1973**

Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any services this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.

### **d. Compliance with County's Equal Benefits Ordinance**

Contractor shall comply with all laws relating to the provision of benefits to its employees and their spouses or domestic partners, including, but not limited to, such laws prohibiting discrimination in the provision of such benefits on the basis that the spouse or domestic partner of the Contractor's employee is of the same or opposite sex as the employee.

### **e. Discrimination Against Individuals with Disabilities**

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and Contractor and any subcontractor shall abide by the requirements of 41 C.F.R. 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

**f. History of Discrimination**

Contractor certifies that no finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination prior to execution of this Agreement. Failure to comply with this Section shall constitute a material breach of this Agreement and subjects the Agreement to immediate termination at the sole option of the County.

**g. Reporting; Violation of Non-discrimination Provisions**

Contractor shall report to the County Manager the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this Section of the Agreement or the Section titled "Compliance with Laws". Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other entity charged with the investigation or adjudication of allegations covered by this subsection within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination).

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to the following:

- i. termination of this Agreement;
- ii. disqualification of the Contractor from being considered for or being awarded a County contract for a period of up to 3 years;
- iii. liquidated damages of \$2,500 per violation; and/or
- iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this Section, the County Manager shall have the authority to offset all or any portion of the amount described in this Section against amounts due to Contractor under this Agreement or any other agreement between Contractor and County.

**h. Compliance with Living Wage Ordinance**

As required by Chapter 2.88 of the San Mateo County Ordinance Code, Contractor certifies all contractor(s) and subcontractor(s) obligated under this contract shall fully comply with the provisions of the County of San Mateo Living Wage Ordinance, including, but not limited to, paying all Covered Employees the current Living Wage and providing notice to all Covered Employees and Subcontractors as required under the Ordinance.

**13. Compliance with County Employee Jury Service Ordinance**

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that Contractor shall have and adhere to a written policy providing that its employees, to the extent they are full-time employees and live in San Mateo County, shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such

jury service with Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Contractor has no employees in San Mateo County, it is sufficient for Contractor to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, Contractor certifies that it has no full-time employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, Contractor shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code." The requirements of Chapter 2.85 do not apply if this Agreement's total value listed in the Section titled "Payments", is less than one-hundred thousand dollars (\$100,000), but Contractor acknowledges that Chapter 2.85's requirements will apply if this Agreement is amended such that its total value meets or exceeds that threshold amount.

**14. Retention of Records; Right to Monitor and Audit**

- 15.** Contractor shall maintain all required records relating to services per Attachment A, Section V. Retention of Records, Right to Monitor and Audit provided under this Agreement. **Merger Clause; Amendments**

This Agreement, including the Exhibits attached to this Agreement and incorporated by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

**16. Controlling Law; Venue**

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

**17. Notices**

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of County, to:

Name/Title:	Jim Eggemeyer, Director, Office of Sustainability
Address:	455 County Center, 4 <sup>th</sup> Floor, Redwood City, CA 94063
Telephone:	(650) 363-4189
Email:	jeggemeyer@smcgov.org

In the case of Contractor, to:



Name/Title: Michael Caprio, Area President  
Address: 1680 Edgeworth Avenue, Daly City, CA 94015  
Telephone: (650) 756-1130  
Email: [mcaprio@republicservices.com](mailto:mcaprio@republicservices.com)

**18. Electronic Signature**

Both County and Contractor wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo. Any party to this Agreement may revoke such agreement to permit electronic signatures at any time in relation to all future documents by providing notice pursuant to this Agreement.


**19. Payment of Permits/Licenses**

Contractor bears responsibility to obtain any license, permit, or approval required from any agency for work/services to be performed under this Agreement at Contractor's own expense prior to commencement of said work/services. Failure to do so will result in forfeit of any right to compensation under this Agreement.

\* \* \*

In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

For Contractor: Republic Services of San Mateo County

  
Contractor Signature

10/22/18  
Date

MICHAEL J. MAHONEY  
Contractor Name (please print)

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COUNTY OF SAN MATEO

By:

President, Board of Supervisors, San Mateo County

Date:

ATTEST:

By:

Clerk of Said Board

# **Exhibit A**

In consideration of the payments set forth in Exhibit B and C, Contractor shall provide the following services:

## **Services To Be Performed By Contractor**

Contractor will provide a list to the County of all the operating permits that are required for this facility within 30 days of the execution on this Agreement. Contractor will obtain and maintain all such permits throughout the term of this Agreement, which are required for the Contractor to operate the TS/MRF. Ongoing reporting requirements to the permitting agencies will be the responsibility of the Contractor.

The Contractor will participate in meetings with permitting agencies upon request of the County. The Contractor will assist in reviewing all phases of construction of the TS/MRF to assure that the best available construction materials and practices are being used, in accordance with all County specifications and governmental requirements.

The County will be responsible for preparing and submitting all environmental documentation and permit applications required to renovate the facility. In its capacity as owner of the site, the County of San Mateo will be designated on all site improvement applications and related permits as the "responsible agency."

### **A. Scope of Contract**

1. The Contractor agrees to manage and efficiently operate the TS/MRF and to process and transfer all non-hazardous solid waste delivered to the TS/MRF to Ox Mountain Sanitary Landfill, located east of Half Moon Bay off Route 92 in San Mateo County in accordance with the provisions of this contract. The Contractor also agrees to process and transfer all recyclable materials to a County approved recycler. Recyclables and yard waste will be transferred at Ox Mountain to Newby Island Materials Recovery Park in San Jose for processing. The Contractor agrees to make reasonable attempts to recover and/or recycle as much of the materials that are delivered to the facility on an annual basis.
2. Subject to the possibility of a reduction to 1 days per week as set forth in section II.A.3, the Contractor shall staff the premises with personnel three (3) days a week unless the County determines a reduction in service is necessary.
3. The Contractor's personnel will accept the receipt of solid waste, collect all fees for disposal, manage the reuse and recyclables area. Waste and segregated materials brought to the site will be visually inspected to determine load composition, to identify any hazardous wastes, and to assess what payment should be made to the gate attendant. The Contractor's employee at the gate will direct all vehicles to facilitate traffic flow at the site.
4. Should the County establish a small scale in-vessel or aerobic digester at this site to process organic materials, the Contractor will ensure that onsite personnel will have the necessary experience, training and background to oversee its operation.
5. The Contractor's personnel will follow operational procedures that prevent any undue off-site impacts of odor, noise, vectors, litter, and surface or groundwater quality. The Contractor's on-site attendant will be responsible for litter abatement and removing any illegally dumped material on or adjacent to the site. The Contractor will also sponsor an annual creek cleanup of the

Pescadero Creek near the facility. The Contractor will also mow any vegetation onsite to maintain a safe and clean facility.

6. The Contractor has agreed to provide and maintain an administrative office for the Contractor's staff with space for record keeping, computing, collection and secure storage of fees, and monitoring of equipment and all other site activities. Contractor will submit all reports electronically to the County, as required under the Agreement. It is the Contractor's responsibility to provide reasonable oversight and audits of all fees collected at the gate. All users of the facility are required to pay the County adopted gate fee rates in advance, or set up an account with the Contractor and keep the account payments current, and the account in good standing with the Contractor.
7. All gate fees will be recorded electronically and submitted to the County on a monthly basis. The gate attendant is not allowed to reduce the gate fee rates without prior County approval. The Contractor will provide monthly reports in a form specified by the County. The Contractor will pay all costs for these operations (including maintenance). Each of the Contractor's employees who work at the facility will be bonded to protect against fraud, waste, or mismanagement. The Contractor shall provide and maintain in good working order, a cash register or electronic device capable of issuing receipts to customers and of recording on paper tape the following information for each transaction:
  - a. Date of transaction
  - b. Origin of Waste.
  - c. Cash sale, ticket redemption, or charge account.
  - d. Fee for cubic yards and for special handling to the appropriate dumping locations.
    - i. The Contractor agrees to provide a series of different size and style of containers. The containers for the customer will be ADA accessible. These will include: roll-off boxes dedicated for large items, including furniture, appliances, yard waste and construction and demolition (C&D) debris.
    - ii. A cart and/or container area for smaller items, including batteries, used motor oil and motor filters, compact fluorescent lightbulbs (CFL's).
  - e. A front-load bin and or compactor area for segregated recyclable materials and garbage.
  - f. All electrical waste and U-waste collection bins shall be covered.
  - g. All putrescible waste bins shall be covered.
8. All equipment shall be uniform and maintained by Contractor to the satisfaction of the County. Contractor will remove and dispose of the existing solid waste compactor and damaged roll-off bins. These items must be inventoried by the County Surplus Property officer before removal. Contractor may install a compactor and/or baler for recycled materials to maximize the efficiency of hauling such materials to markets.
9. The Contractor will provide an area for users to unload separated recyclable materials; e-waste; and designated household hazardous wastes such as latex paints, oil, batteries, and fluorescent tubes, into bins that are accessible pursuant to the Americans with Disabilities Act. The designated bins for such materials will have signs provided above each of them clearly delineating to the satisfaction of the County what materials are to be deposited. If Contractor wishes to charge by weight for any materials, or buyback materials from the public, a certified

portable scale may be included for the weighing of recycled materials. The household hazardous waste (HHW removed by facility employee(s) from arriving waste loads under the load-checking program must be stored safely in the approved storage bins. The Contractor will make arrangements with the County HHW program and all involved regulatory agencies to comply with all appropriate HHW regulations and to coordinate with the County HHW program for pick-up services. The contractor will also establish a permanent mattress drop-off program on-site at the Pescadero TS/MRF.

10. The Contractor will be responsible for acquiring all needed stationary equipment and rolling stock and bins to accomplish the tasks stated in this agreement. The Contractor will also be responsible for all maintenance of the building(s) and equipment, as well as insurance, self-insurance, or a combination thereof in amounts set forth by the County Risk Manager Contractor shall provide any other amenities or necessities necessary to the operation of the facility. The Contractor will also be responsible for providing and paying for all inspection fees and permits (with the exception of the Air District permit fees which will continue to be paid by the County), stationary and mobile equipment and vehicles associated with operations. As there are no sanitary sewage treatment capacities on-site, Contractor will provide a portable toilet that is accessible to both the public and to staff on site. Storage of bins, rolling stock, and equipment will not be permitted outside of the TS/MRF gates. Contractor must include sufficient storage capacity for up to 3 days of incoming wastes and recyclables (including compostables) to be stored on-site. This site will also be a possible location for transferring disaster debris, upon request of the County.
11. The Contractor shall submit to the County, for prior approval, manufacturer performance specifications and exterior dimensions of all vehicles, which the Contractor proposes to use in the performance of the contract work.
12. With the sole exception of rolling stock, the County will obtain clear ownership and title to site improvements, the facility and equipment upon termination of the Agreement, and contractor agrees to execute all necessary documents to effect the transfer. The disposal charges paid over the life of the contract will cover all the capital, financing and operating costs for the facility not covered by the County's site improvements budget. In the event of an early termination of this Agreement, the County will negotiate a reasonable buy-out provision for the remaining useful life of the facility and equipment.
13. The County may adopt reasonable rules and regulations with reference to the day-to-day operation of the transfer station after consultation with Contractor.
14. For fire protection services, Contractor shall provide two fire extinguishers on site: one back pump filled with water for trash fires and one non-toxic dry chemical type with an Underwriters Laboratory rating of 10 BC or better for electrical fires. The Contractor shall also provide the necessary equipment to handle any liquid spills.
15. Contractor shall arrange for and pay the expense of directional and informational signs at the transfer station, telephone service, electricity, and potable water. The County shall provide an identification sign at entrance to the site.
16. The Contractor shall maintain the TS/MRF in good working condition, including, but not limited to the structural parts of the transfer station, the electrical system, and the drainage system. Contractor shall at its expense, immediately retain properly skilled people to repair the

equipment or premises improvements if they are damaged by any cause including Contractor's operations, except Acts of God. The County will be responsible for maintaining the pavement, general repainting of gate house, and major damage not caused by Contractor's negligence or deliberate actions. Major damage does not include broken windows, damaged screens or guard rails. In the event of damage, which Contractor considers to be the responsibility of County, Contractor shall notify County of said damage no later than one working day after discovery. Any dispute as to what constitutes major damage or County responsibility shall be resolved as set forth in this agreement.

17. The County may require changes in existing services or schedule and Contractor shall comply. If such changes result in increased costs or decreased revenues to Contractor, Contractor shall have the right to apply for a special fee adjustment pursuant to Exhibit A, Section U of this Agreement. If changes in existing services or New Services required by the County result in decreased costs or increased revenues to Contractor, the County shall reduce Contractor's payments accordingly.
18. At the County's request, and subject to the following, Contractor shall provide any other exclusive or non-exclusive services (New Service) not covered by this agreement upon receiving a written request from the County and subject to establishment of an appropriate fee for such New Service. Contractor may also submit unsolicited written proposals to the County for any other exclusive or non-exclusive services not included in this agreement. Authorization to provide such services shall be contingent upon County approval, and subject to establishment of an appropriate fee for such New Service. If a mutually acceptable fee for such New Service cannot be negotiated between the County and Contractor within a reasonable timeframe, the County shall maintain the right to solicit other bids for such New Service.

**B. Compliance with laws; Payment of Permits/Licenses**

1. All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws including, but not limited to: Health Insurance Portability and Accountability Act of 1996 (HIPAA) as amended and all Federal regulations promulgated there under, the Americans with Disabilities Act of 1990 as amended, and Section 504 of the Rehabilitation Act of 1973 as amended, which prohibits discrimination on the basis of handicap in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to, appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations.
2. In the event of a conflict between the terms of this agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement.
3. The Contractor shall abide by the terms of the Solid Waste Facilities Permit as originally issued or thereafter modified by the Local Enforcement Agency or other responsible agency; and shall bear the cost of any fines and/or re-inspections levied for any violations by the Contractor of any of the terms of the permit. Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance with the Permit and the laws, regulations.

**C. Notice to Proceed/ Commencement of Work**

Contractor shall neither commence operations work nor allow its employees or anyone to commence operations work at the transfer station site until a final contract has been issued which prescribes the starting date of the contract. The Notice to Proceed may be issued to Contractor following its submittal of the necessary bonds, insurance certificates, and permits, County approval of said documents, and Contractor having made available equipment necessary to operate the transfer station and haul solid waste and recyclable materials.

**D. Site Controls**

Contractor shall be responsible for opening and closing the site in accordance with Exhibit A, Section M of this Agreement. Contractor shall keep gates locked during the times when the transfer station is not open. Contractor shall supply both the Director and the Local Enforcement Agency (LEA) with a gate key to allow access on days when the transfer station is not open to the public. Contractor need not supply County with a key to the administration room except at the expiration or termination of the contract.

**E. Acceptance of Premises**

The taking of possession of the transfer station by Contractor shall constitute acknowledgement that the premises are in good condition. Taking possession shall occur when Contractor opens the gate to the public to operate the transfer station.

**F. Use of Premises/Monitoring**

1. Contractor shall use the transfer station only for the receipt, transfer and shipment of non-hazardous solid waste, recyclables (including compostables) and reusable items that are brought to the facility. Contractor may store a roll-off vehicle and permit employee parking on site only in locations which do not impede public ingress and egress.
2. Contractor shall take steps necessary to allow two vehicles to back up simultaneously and to direct traffic for expeditious ingress and egress. The Contractor may not use the site for storage of additional debris boxes and recycling containers not included in the Agreement without prior County approval. The Contractor will submit to the LEA, on a quarterly basis a report giving the total tonnage of all Solid Waste handled per month at the transfer station along with the number of operating days for that month.
3. The Contractor will allow the County and the LEA to inspect any phase of the operation during normal working hours. Records shall be kept and made available to the LEA upon request.
4. Monitoring Program:
  - a. It is the Contractor's responsibility to provide reasonable oversight and audits of all fees collected at the gate. The operator of this facility or its agent shall monitor the following items and all records shall be kept and made available to the County:
  - b. Dates of transactions:
    - i. Origin of Wastes.
    - ii. Cash sales, ticket redemptions, or charge accounts.
    - ii. Fees collected for cubic yards and for special handling to the appropriate dumping locations.

**G. Specific Agreement to Receive Wastes**

1. It will be the responsibility of the Contractor to identify markets for materials and the most cost-effective system of sorting those materials from the waste stream. Contractor may direct or remove materials (e.g., mattresses and furniture) from the solid waste stream to improve the efficiency of loading of roll-offs, to facilitate reuse and recovery, or both.
2. The Contractor may dump some “clean” loads in a designated area or container that the site staff may sort through (on-site or off-site) to divert as many materials as possible, subject to the LEA approval.
3. The Contractor shall cooperate with County in developing workable procedures in the event special circumstances arise which in County's judgment, require exceptions to normal operating rules. The Contractor shall be responsible for deploying contingency measures at the Pescadero TS/MRF should a situation arise. Should there be an issue with personnel, equipment or other similar item, the Contractor will provide replacement personnel and equipment in an extremely timely manner. The Contractor may use backup staffing trained on the operations of the Pescadero TS/MRF and additional containers stored at Ox Mountain.
4. Contractor may charge discounted rates for certain recyclable materials that do not generate sufficient revenues upon sale to pay for the costs of processing and shipping of these materials. Such discounted rates must be at least 25% less than corresponding waste disposal rate, as the rate structure must encourage reuse, recycling and composting. The County must approve all gate fees charged to the public. If any source-separated materials can be recovered for a lower cost than transport to landfill, Contractor shall reuse or recycle them. The County may periodically hold special events at the site to capture additional recyclable materials. Organics collected at the TS/MRF should not be used as alternative daily cover for a landfill.

**H. Acceptable Materials**

All yard waste, bottles, cans, papers, plastic agricultural tubing, appliances, bedsprings, mattresses, textiles, scrap metals, tires, demolition materials (including dirt, rocks and broken concrete not over nine inches in diameter, boards and timbers not over eight feet in length and small tree stumps) and other bulky items may be deposited into designated open containers upon payment of appropriate gate fees established by this agreement. Putrescible waste may not be dumped into open containers except in emergencies.

The Contractor will accept the following items for recycling and disposal at the Pescadero TS/MRF:

**Solid Waste**

**Single-Stream Recycling**

Glass bottles/jars  
Aluminum cans/ foil  
Cardboard  
Mixed paper  
Aseptic Containers  
Film plastic

**Construction and Demolition**

Inerts  
Wood Waste

**Other**

AC units  
Appliances  
Food waste and Food Scraps  
Latex paint cans  
Mattresses/box springs  
Refrigerators  
Scrap metal  
Sofa/upholstered furniture  
Tires  
Universal waste



E-Waste & Fluorescent tubes  
Used motor oil/filters  
Yard waste

For details regarding the items listed, please refer to *Exhibit B*.

**I. Excluded and Responsibility**

1. The Contractor agrees to receive all inert wastes, solid waste, recyclables (including compostables), subject to volume and size limitations set forth by the County, from residents and businesses delivered to the transfer station. Contractor shall not accept delivery at the transfer station of any loads aggregating over five (5) cubic yards. Loads will not be accepted if they contain hazardous waste as defined by state laws and regulations, or hot ashes, septic tank pumpings, sludge, dead animals, engine blocks, large items such as car bodies, large rocks or concrete, tree limbs over 9" in diameter, or any other wastes County specifies to Contractor. This restriction on hazardous waste does not apply to designated household hazardous wastes being recycled as stated in Section A.7.
2. Contractor shall exercise reasonable care in viewing each vehicle entering the transfer station and tipping area. Reasonable care consists of looking in the vehicle and at its contents, walking around the vehicle when necessary, but does not include either climbing onto the vehicle for the purpose of viewing waste or touching waste material. Contractor may require a person who succeeds in dumping a prohibited item, to retrieve and remove from the premises said item, and shall have a rake available for such purpose.

**J. Frequency of Removal of Wastes**

Contractor shall be responsible for removing containers when they are full or nearly so. In arranging for hauls to Ox Mountain Sanitary Landfill, or County approved recyclers, Contractor shall be cognizant of the hours of operation of said facilities and allow sufficient time for transfer vehicles to reach said facilities before closing time. For logistical reasons Contractor may switch filled and empty containers at the transfer station site without hauling the filled containers away, provided the filled containers do not remain on site more than 48 hours or such other period as the LEA may direct. The Contractor will utilize additional compactors for garbage and yard waste to reduce the number of hauling trips to Ox Mountain as an operational efficiency improvement and cost-savings measure. Any open container containing flammable material remaining at the site at closing time shall be completely covered with metal sheets or placed into the appropriate Hazardous Waste container on site, for protection against fire.

**K. Resource Recovery**

1. Contractor shall make estimates of the volume of each material recycled weekly and shall provide County with copies of said estimates and receipts from sale of recycled materials when submitting invoices for monthly payments.
2. The County reserves the right to terminate Contractor resource recovery operations if, after a reasonable period, resource recovery is determined to be impractical or economically infeasible. County termination of resource recovery operations shall not provide Contractor cause either to terminate all or any other portions of this contract or to request amendments to other portions of this contract.

**L. Title to Waste**

Except for those wastes placed in recycling containers, all rights, legal title and interest in and to all solid waste shall remain with County until said solid waste is accepted for disposal at Ox Mountain Sanitary Landfill.

**M. Hours of Operation**

The transfer station shall be open three days a week on Fridays from 10:00 a.m.- 5:30 p.m. and from 9:00am-4:30pm on Saturdays and Sundays, except for the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day, unless otherwise determined by the County. During the Holiday weeks the Contractor will notify customers three weeks before the scheduled closure by posting a notice at the site and adjusting the schedule listed above to accommodate for providing three days of service per week period. As an example, if Christmas falls on a Friday the Contractor will adjust the three day a week schedule and be open on Saturday, Sunday and Monday. Contractor shall be responsible for unlocking and locking the gate to the site at the opening and closing times. If an emergency occurs at the site which requires the Contractor to close the site, a sign shall be posted in a visible location to notify customers, and the County shall be notified by phone prior to closing. If the County has not been notified, the Contractor is subject to a reduction in the monthly operating cost fees for the time period in which the TF/MRF has been closed.

**N. Haul Route**

Because of the width and alignment of Bean Hollow Road, all roll-off trucks, loaded or unloaded, shall enter and leave the transfer station site by way of the southerly segment of Bean Hollow Road, unless otherwise agreed upon by the County.

**O. Miscellaneous Fees and Services**

1. The County will continue to pay the fees associated with the State Water Resource Board and the Bay Area Air Quality Management District permits; all other fees and permits for operation and transfer of waste materials, will be the responsibility of the Contractor.
2. Contractor shall be responsible for the cost of labor, benefits, taxes utility fees (telephone/ electricity) at the TF/MRF and any fines, late charges, or other costs resulting from Contractor's laxity or failure to abide by regulations or official notices.

**P. Alterations**

Contractor shall not alter the premises without the County's consent. Any alterations made shall remain on the premises and be surrendered to County on the expiration or termination of this contract.

**Q. Health and Safety**

1. Contractor shall operate the TS/MRF at all times in a manner that protects the health and safety of all persons employed and/or otherwise on the site, including the general public. Contractor shall require children and pets to remain in vehicles, and shall prohibit any member of the general public from entering a container, except if directed by Contractor to retrieve prohibited materials. Smoking shall be prohibited within 25 feet of any unloading area.

2. All flammable material shall be removed and dead vegetation cleared within the perimeter of the fence, unloading areas and any container. The grounds and roads immediately adjacent to the facility shall be checked once each operating day for litter and illegal dumping. Any litter discovered will be promptly removed and properly recycled or disposed of.

**R. Service Complaints**

Contractor shall maintain telephone service satisfactory to the County for receiving and answering complaints. Contractor shall record in a log, all complaints, including date, complainant name and address, nature and resolution of complaint. This log shall be available for inspection by County representatives during Contractor's regular office hours. Contractor shall present a copy of this log to the Director annually together with Contractor's fee adjustment statement. Complaints received by County shall be transmitted to Contractor if, in the judgment of the Director, they reflect upon the performance of Contractor.

**S. Notice of Corporate Officials /Merger Clause**

Contractor, if incorporated, shall furnish County at the beginning of the term of this Agreement the names and positions of the officers and directors of the corporation. It shall promptly notify the County in writing of any changes which occur in its officers or Board. Contractor shall furnish.

**T. Sole Agreement**

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement or specification set forth in this body of the agreement conflicts with or is inconsistent with any term, condition, provision, requirement or specification in any exhibit and/or attachment to this agreement, the provisions of this body of the agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties.

**U. Fee Adjustments**

If the Contractor can demonstrate to the satisfaction of County that significant and costly changes in Contractor's operation are required as the result of changes in State or Federal regulations, or requests from the County for changes in service, one or more fees in this contract may be amended with the mutual consent of both parties to reflect actual increased costs incurred by Contractor. In such an event County may require and Contractor shall provide at its expense, any financial records and/or analysis services which County deems necessary to substantiate and quantify Contractor's fee amendment request.

**V. Retention of Records, Right to Monitor and Audit**

1. Contractor shall maintain all required records for five (5) years after the County makes final payment and all other pending matters or audits are closed, and shall be subject to the examination and/or audit of the County, a Federal grantor agency, and the State of California.
2. Reporting and Record Keeping: Contractor shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the County.

3. Contractor agrees to provide the County, any Federal or State department having monitoring or review authority, County's authorized representatives, and/or their appropriate audit agencies, and upon reasonable notice, access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules and regulations, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.
4. Contractor shall audit gate fees and customer transactions to ensure gate fees collected are accurate.

**W. Performance Bond**

Upon award of the Agreement, a Performance Bond and Letter of Credit shall be obtained by the Contractor with the following components:

1. The amount of the TS/MRF performance bond is three hundred thousand dollars (\$300,000), plus the amount of capital and financing costs that the Contractor has agreed to finance for improvements to the TS/MRF.
2. The amount of the Letter of Credit will be equal to 45 days operating expenses, to be used by the County in the event of a Contractor default.

**X. Right to Require Performance**

The failure of County at any time to require performance by Contractor of any provision in this agreement, shall in no way waive the right of County hereinafter to enforce the same. Nor shall waiver by County of any breach of any previous provision be taken or held to be waiver of any succeeding breach of such provision or as a waiver of any provision itself.

**Y. Emergency Procedures**

In the event of a local emergency that has been declared in accordance with applicable laws and regulations, Contractor, upon the request of the Director, shall make solid waste transportation equipment available to the degree possible for emergency assistance. Contractor shall follow instruction of County in such circumstance. Emergency use of transportation equipment may include operating the TS/MRF during hours or on days not included in this contract. In such an event, Contractor shall be compensated on the basis of fair, equitable, and prompt reimbursement of Contractor's actual costs.

**Z. Destruction**

If, during the term the premises are totally or partially destroyed by Acts of God rendering the premises totally or partially inaccessible or unusable, County may, at its option, restore the transfer station to substantially the same condition as it was immediately before destruction. If the restoration can be made within 360 days, such destruction shall not terminate this contract. If restoration cannot be made within the stated period, this contract shall become null and void and Contractor shall have no further rights hereunder.

**AA. Temporary Closure of Transfer Station**

In the event of a temporary emergency at the transfer station involving Acts of God, human error or mechanical failure, Contractor shall make every reasonable effort to maintain close-to-normal operations. With approval of County, Contractor may limit loads or direct loads to Ox Mountain Sanitary Landfill.

**BB. Default**

1. The occurrence of any of the following shall constitute a default by Contractor.
  - a. Failure to staff the transfer station if such failure continues for one calendar day after notice has been given, except holidays recognized in this contract;
  - b. Failure to properly transfer all non-hazardous and inert solid waste and reusables and recyclables delivered to the TS/MRF.
2. Failure to perform any other provision of this agreement if the failure to perform is not cured within 15 calendar days after notice has been given to Contractor. If the default cannot reasonably be cured within 15 calendar days Contractor shall not be in default if Contractor commences to cure the default within 3 calendar days after notice has been given and diligently and in good faith, as determined by County, continues to cure the default.

**CC. Payment of County Costs**

For each month in which County or its agents has utilized Contractor's equipment and facilities to carry out any portion of the assigned work, County shall maintain an itemized accounting of all direct and indirect costs to County associated with the required work, and provide Contractor with said accounting. In the event that itemized expenses exceed payments due Contractor Contractor's performance bond or cash on deposit shall be liable for the remainder. Contractor expressly waives the right to assert that County's expenses were unnecessary or unreasonably incurred.

**DD. Acts of God**

1. Regardless of any other provision of this contract, Contractor shall not be in default of any provision hereof if its performance is prevented by an Act of God, which prevents or makes more difficult its performance.
2. Such events may include forest or range fires, road closures that render the transfer station inaccessible via County or State maintained highways, earthquakes, and floods. Should access to the facility be restricted due to a natural disaster or other reason, the Contractor would collaborate with the County on establishing an alternate temporary location to provide the needed services using equipment from its other locations. Ox Mountain would also serve as an alternate facility that customers could be redirected to.

**EE. Disputes/Controlling Law**

Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Office of Sustainability Director, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to Contractor. The decision of the Director shall be final and conclusive unless within ten (10) calendar days from the date of Contractor's receipt of such copy Contractor mails or otherwise

furnishes to County a written appeal. The decision of the County Manager for determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith; or not supported by evidence. In connection with any appeal proceeding under this clause, Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, Contractor shall proceed diligently with the performance of the contract and in accordance with the Director's decision. This clause does not preclude consideration of law questions in connection with decisions provided for in this clause, provided that nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law. The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California.

**FF. Taxes and Assessments**

Contractor shall pay all taxes, licenses, fees and other charges that are levied and assessed against the Contractor's personal property.

**GG. Entire Contract**

This contract constitutes the entire contract and understanding between the parties hereto.

**HH. Illegal Provisions**

If any provisions of this contract shall be declared illegal, void or unenforceable, the other provisions shall not be affected and shall remain in full force and effect.

**II. Incorporation in Contract**

All attached Exhibits ("A," "B," "C," and "D") are part of this contract and shall be considered incorporated into the contract.

**JJ. Duration of Contract/Terms**

In consideration of the services provided by Contractor described in Exhibit A through C and subject to the terms of the Agreement, County shall pay Contractor based on the following fee schedule and terms:

**1. Duration of Contract**

- a. The term of this agreement is for sixty (60) months beginning on August 18, 2018 and ending on August 30, 2023. At the expiration of the term, this agreement may be extended by the parties' execution of a written amendment, which extends the term on an annual basis for a period not to extend beyond 36 months.
- b. This Agreement may be terminated by Contractor, the County, or Office of Sustainability and/or his/her designee at any time without a requirement of good cause upon thirty (30) days written notice to the other party, or as stated in section Agreement, Section 5.Termination.
- c. In the event of termination, all finished or unfinished documents, data, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall

become the property of the County and shall be promptly delivered to the County. Upon termination, the Contractor may make and retain a copy of such materials. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that portion of the full payment, which is determined by comparing the work/services completed to the work/services required by the Agreement.

## **2. Termination for Cause**

County may terminate this Agreement for cause. In order to terminate for cause, County must first give Contractor notice of the alleged breach. Contractor shall have five business days after receipt of such notice to respond and a total of ten calendar days after receipt of such notice to cure the alleged breach. If Contractor fails to cure the breach within this period, County may immediately terminate this Agreement without further action. The option available in this paragraph is separate from the ability to terminate without cause with appropriate notice described above. In the event that County provides notice of an alleged breach pursuant to this section, County may, in extreme circumstances, immediately suspend performance of services and payment under this Agreement pending the resolution of the process described in this paragraph. County has sole discretion to determine what constitutes an extreme circumstance for purposes of this paragraph, and County shall use reasonable judgment in making that determination.

County shall notify Contractor in writing of the material breach, and Contractor shall reply and correct said breach within fifteen (15) calendar days. If said material breach is not corrected or if repeated breaches occur, County may terminate this contract with thirty (30) calendar days written notice.

This contract may be terminated at the option of County if Contractor becomes insolvent, is adjudged bankrupt, or makes an assignment for the benefit of creditors, or if Contractor materially or repeatedly breaches any term or condition of this contract. Such termination in the case of insolvency, bankruptcy, or assignment for the benefit of creditors, may be made by County by giving Contractor thirty (30) calendar days written notice of termination. In the case of a material or repeated breach,

## **3. Operation of Contractor's Facilities and Equipment in the Event of Termination**

If contract is terminated by County for any of the afore stated reasons, County or its agents may utilize all or any portion of Contractor's equipment and facilities as is necessary to carry out all or any portion of its assigned work. However, County or its agents may not utilize Contractor's equipment for more than one calendar year from the effective date of contract termination. During periods when County or its agents operates Contractor's equipment, Contractor shall have the option to either maintain said equipment under a maintenance schedule to be mutually agreed upon, or have County perform all maintenance.

## **4. Operation in Lieu of Termination**

In the event Contractor becomes insolvent, is adjudged bankrupt, or makes an assignment for the benefit of creditors, or if Contractor materially or repeatedly breaches any term or condition of this contract, County or its agents shall have the right after one (1) day written notice, to operate all or any portion of the equipment which Contractor had used in performance of this

contract and utilize Contractor's facilities as required to perform the work necessary to properly receive, handle, transport and dispose of solid waste, reusables and recyclables (including compostables), until such time the Contractor has demonstrated to the satisfaction of County it is again capable of performing the work required by this contract. At that time, County or its agents, shall return operation and use of Contractor's equipment and facilities to Contractor, who again will be required to perform the work required by this contract. If Contractor cannot resume performance, County may at any time elect to terminate this contract in accordance with Section A.

#### **5. Termination or Suspension for Permit Revocation**

In the event the California Integrated Waste Management Board or the Local Enforcement Agency suspends or revokes the Solid Waste Facility permit at this site, the County reserves the right to terminate the contract or temporarily suspend the performance under the contract at its option. In the event of said termination or suspension, Contractor shall be entitled to reasonable compensation for services rendered to the effective date of termination or suspension of the contract.

#### **KK. Revenues**

1. All revenues collected by Contractor from the users of the TS/MRF are the property of County. The Director reserves the right to annually increase all gate fees by up to the increase in the CPI, throughout the term of this agreement. The CPI is defined in section OO. Fee Modifications and Adjustments of this Exhibit. Revenues that Contractor receives from the sale of recyclable materials are the property of Contractor unless determined otherwise by the County.
2. Revenues that Contractor receives from the sale of recyclable materials are the property of Contractor unless determined otherwise by the County.
3. Gate Fees charged at the TS/MRF for waste and recyclables (including compostables) will count towards revenue to the County.

#### **LL. Load Recording Procedure**

Contractor shall provide consecutively numbered and dated load slips (segregated as to type of container and approved as to form by the County), signed by the operator and the driver, for each load taken from the site. On delivery of the load to disposal or recycling facilities, the roll-off vehicle and container shall be weighed and the driver shall obtain a receipt showing the net weight and the disposal fee incurred or revenue received.

#### **MM. Payment for Transfer Station Operation and Solid Waste Hauling/Availability of Funds**

1. In consideration of the services provided by Contractor in accordance with all terms, conditions and specifications set forth herein, County shall make payment to Contractor based on the fees and in the manner specified in Exhibits A, B, C. The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this Agreement exceed \$300,000 (Three Hundred Thousand Dollars) per year. In the event that Contractor estimates fees will exceed this amount, Contractor will contact County to meet and confer on whether to reduce services or to revise the budget for those services.



2. The disposal and recycling fees, which Contractor collects on behalf of County, shall be shown as a credit on Contractor's invoices. The County may terminate this Agreement or a portion of the services referenced in the Exhibits to this agreement, if Federal, State, or County funds are no longer available, by providing written notice to Contractor as soon as is reasonably possible after the County learns that these funds are no longer available.
3. All payments by County shall be made in arrears after the service has been provided. County shall make payment no more than thirty (30) days from County's receipt of the Contractor's invoice.

**NN. Payment Formula**

Contractor must submit monthly invoices in order to receive payments from the County. County will provide Contractor with an invoice form for the Contractor to request payment. Monthly payments will be composed of the sum of one-twelfth of the annual Fixed Operating Costs as identified in Exhibit A, plus the number of tons for each of the Variable Cost items times the rate for each item as listed in Exhibits B and C. The total gate fees collected during the month covered by the invoice, will be deducted from the above calculation to arrive at the amount due from the County to the Contractor.

**1. Contractor's Invoices**

Contractor's monthly invoices must be accompanied by the following:

- a. Daily record of fees collected on a form approved by County.
- b. Each load slip for the billing period.
- c. Each disposal receipt for the billing period.
- d. Each receipt for recyclables and reusables (including compostables) for the billing period.
- e. Total number of load trips for the billing period for each.
- f. Total number of tons for the billing period for each material.

**OO. Fee Modifications and Adjustments**

1. Adjustments. Starting on August 1, 2019, and on each September 1st thereafter during the term of this agreement, the Service Fees may be adjusted upward or downward depending on changes in the Consumer Price Index (CPI) and the Producer Price Index (PPI). Adjustments will only be considered if the Contractor is satisfying all of its performance obligations as detailed in this agreement.
2. Data Required. On or before August 1 of each year starting on August 1, 2019, the following information must be provided with the request in order to be considered by the County:
  - a. The proposed rate Exhibit B and C.
  - b. The Consumer Price Index (CPI) Unadjusted Percent Change from June to June for the twelve months preceding the year in which the Contractor's rate adjustment is being calculated.
  - c. The Producer Price Index (PPI) Unadjusted Percent Change from June to June for the twelve months preceding the year in which the Contractor's rate adjustment is being calculated.
  - d. The calculation of the adjustments to the Rate(s) that is based on the instructions detailed in 3. which follows and as shown in Exhibit D.

3. Calculation. The calculation of the Rate adjustments will be determined as follows:
- a. The **Fixed Operating Cost (Exhibit B)** represents the on-going costs to operate the TS/MRF. The Fixed Operating Cost Rate, as identified in Exhibit B to this agreement and as adjusted in subsequent years starting on September 1, 2019 and each September thereafter, will be multiplied by the Unadjusted Percent Change in the CPI for the period of February to February for the twelve months preceding the year in which the Contractor's rate adjustment is being calculated. This amount will be added to the Fixed Operating Cost Rate that was used for this calculation.
  - b. The **Variable Costs (Exhibit C)** represent the costs for transporting the solid waste and recyclables to other facilities. The Variable Cost Rates for Solid Waste and Recycling will be calculated in two steps:
    - i. The Variable Cost Rates for Solid Waste and Recycling, as identified in Exhibits C to this agreement and as adjusted in subsequent years starting on September 1, 2019 and each September 1 thereafter, will first be multiplied by 85%. That result will then be multiplied by the Unadjusted Percent Change in the CPI for the period of February to February for the twelve months preceding the year in which the Contractor's rate adjustment is being calculated.
    - ii. The Variable Cost Rates for Solid Waste and Recycling, as identified in Exhibits C to this agreement and as adjusted in subsequent years starting on September 1, 2019 and each September 1 thereafter, will first be multiplied by 15% and that result will then be multiplied by the Unadjusted Percent Change in the PPI for the period of February to February for the twelve months preceding the year in which the Contractor's rate adjustment is being calculated.
    - iii. The two calculations explained in the preceding i) and ii) will then be added to the Variable Cost Rate that was used for these calculations. The final number will be the new Variable Cost Rate.
    - iii. The calculations specified in the preceding Exhibit A, section OO. Fee Modifications and Adjustments, 1-3 will be repeated for each of the Variable Cost Rates listed in Exhibits C to this Agreement to arrive at the new rates. These adjusted rates will become effective the September 1st following the approval of the calculations by the County.
    - iv. For the purpose of these calculations, "CPI Index" means the Consumer Price Index for all Urban Consumers (San Francisco-Oakland Hayward CPI-U) compiled and published by the United States Department of Labor, Bureau of Labor Statistics, or any other measure hereafter employed by the Federal Bureau of Labor Statistics in lieu of the consumer price index that measures the cost of living in U.S. cities. "PPI Index" means Producer Price Index Series WPU057303 for #2 diesel fuel published by the Bureau of Labor Statistics (percent change from February to February annual average for the preceding year, if that index is no longer published, a substitute or replacement employed by the Federal Bureau of Labor Statistics in lieu thereof that measures the cost of diesel fuel in the United States.

## Exhibit B

Service	Unit	1 Day/Wk Operation (Sat) Rate to County (Per Unit Cost)	3 Day/Wk Operation Rate to County (Per Unit Cost)
<b>Fixed Operating Costs: (This includes: equipment (bins, forklifts or compactors, maintenance, operator, operator sorting, computers, phone, insurance, state fees, operating permits, licenses and bins).</b>	<b>Per Year</b>	\$156,018	\$156,018

## Exhibit C

Material	Unit	Rate to County (Per Unit Cost)
<b>MSW Delivered to Ox Mountain</b>	<b>Tons</b>	\$105.80
<b>MSW Delivered to Ox Mountain</b>	<b>Per Yard</b>	\$15.86
<b>Commingled Single Stream (Mixed paper, glass bottles, cans, aluminum foil, aseptic containers, #1 and #2 plastics)</b>	<b>Per Ton</b>	\$113.78
<b>Film Plastic (nonagricultural)</b>	<b>Per Ton</b>	\$113.78
<b>Plastics # 3-7</b>	<b>Per Ton</b>	\$113.78
<b>Metal</b>	<b>Per Ton</b>	\$82.29
<b>Appliances</b> (Washer, Dryers, Dishwasher, Stoves, Ovens, Microwave)	Each or Per Ton	\$82.29 Per Ton
<b>Water Heaters 30 gal or less</b>	Each or Per Ton	\$82.29 Per Ton
<b>Water Heaters 30 gal or larger</b>	Each or Per Ton	\$82.29 Per Ton
<b>Refrigerators with Freon Evacuated</b>	Each or Per Ton	\$82.29 Per Ton
<b>Refrigerators with Freon</b>	Each or Per Ton	\$82.29 Per Ton
<b>Heaters / AC Units Freon Evacuated</b>	Each or Per Ton	\$82.29 Per Ton
<b>Heaters / AC Units Freon</b>	Each or Per Ton	\$82.29 Per Ton
<b>Mattress / Box Springs</b>	Each or Per Ton	See Note below*
<b>Sofa / Upholstered Furniture</b>	Each or Per Ton	\$105.80 Per Ton
<b>Yard Waste</b>	Per Ton	\$131.06
<b>Wood Waste</b> (clean)	Per Ton	\$131.06
<b>Food Scraps</b> (residential and commercial)	Per Ton	\$131.06
<b>Food Waste</b> (Agricultural)	Per Ton	\$131.06
<b>Inerts</b> (Dirt, Concrete, Rock, Asphalt)	Per Ton	\$131.06
<b>Electronic Waste Below 21"</b>	Each	\$25.00
<b>Electronic Waste Above 21"</b>	Each	\$40.00
<b>Tires</b>	Each	\$8.35
<b>Universal Waste</b> (Fluorescent Tubes & Batteries)	Per Ton	\$105.79
<b>Waste Oil / Filters</b>	Each	\$0
<b>Latex Paint</b>	Lb./Each	N/A
<b>Agricultural Plastic Pipe and Tubing</b>	Per Ton	113.78 Per Ton
<b>Agricultural Plastics</b>	Per Yard/Ton	113.78 Per Ton

\*The Rate per Ton for Mattress/Box Springs shall be as stated: Allied Waste industries participates in the Mattress Recycling Council Collection Program (Program). During Allied Waste Industries' participation in the Program the public gate fees for Mattress/Box Springs must be waived as condition of the Program. Processing is paid by the program. Should Allied Waste Industries cease to participate in the Program during the term of the agreement, the Rate per each or ton will be determined on a per ton rate.

# Exhibit D

## Sample Calculations for Rate Increases

The Rate adjustments will be based upon two indices. The first is the Consumer Price Index for San Francisco Oakland Hayward(CPI-U) Feb.-Feb., and the second is the Producer Price Index(PPI) and percent change for commodity groupings and individual items, #2 diesel fuel.

### Fixed Fee Adjustments

Fixed Operating Costs rate adjustments will only be adjusted by the (CPI-U).

Using Exhibit A and Table 1 as an example:

(Rate to County for Operations) x (CPI-U) = New Rate

Example:

$\$156,018.00 + 3.6\% = \$161,634.65$

$\$161,634.65 =$  The New Operating Fee from September 1<sup>st</sup> - August 30<sup>th</sup>

### Variable Fee Adjustments

The Variable Fee Adjustments will apply to the Transfer and Processing of Solid Waste and Recyclables. These rates will use a combination formula. 85% of the increase will be based upon the CPI-U as shown in Table 1 and 15% of the rate increase will be based on the PPI #2 diesel fuel as shown in Table 2.

(Rate to County per Unit Cost for Transfer & Processing) x (85% x CPI-U) =CPI adjustment.

(Rate to County per Unit Cost for Transfer & Processing) x (15% x PPI) = PPI adjustment.

CPI rate adjustment + PPI rate adjustment = change

Rate to County per unit Cost for Transfer & Processing + change = New rates

Example:

MSW:  $\$105.80 \times 85\% = \$89.93 \rightarrow \$89.93 \times 3.6\% = \$3.24$

MSW:  $\$105.80 \times 15\% = \$15.87 \rightarrow \$15.87 \times (44.0\% \text{ or } 0.44) = \$6.98$

$\$3.24 + \$6.98 = \$10.22$

$\$105.80 + \$10.22 =$  New Rate for Transfer & Processing September 1<sup>st</sup> - August 30<sup>th</sup>.

# Exhibit D

## Table 1-CPI Example

Table 1. Consumer Price Index for All Urban Consumers (CPI-U): Indexes and percent changes for selected periods

San Francisco-Oakland-Hayward, CA (1982-84=100 unless otherwise noted)

Item and Group	Indexes			Percent change from-		
	Dec. 2017	Jan. 2018	Feb. 2018	Feb. 2017	Dec. 2017	Jan. 2018
Expenditure category						
All items	277.414	-	281.308	3.6	1.4	-
All items (1967=100)	852.847	-	864.818	-	-	-
Food and beverages	269.334	-	273.794	2.4	1.7	-
Food	268.585	-	273.196	2.2	1.7	-
Food at home	247.770	249.327	252.155	1.1	1.8	1.1
Cereals and bakery products	253.562	-	257.289	-	1.5	-
Meats, poultry, fish, and eggs	247.652	-	248.194	-	0.2	-
Dairy and related products	262.942	-	266.693	-	1.4	-
Fruits and vegetables	326.032	-	332.725	-	2.1	-
Nonalcoholic beverages and beverage materials <sup>(1)</sup>	192.294	-	206.068	-	7.2	-

[https://www.bls.gov/regions/west/news-release/2018/consumerpriceindex\\_sanfrancisco\\_20180313.htm#tableA](https://www.bls.gov/regions/west/news-release/2018/consumerpriceindex_sanfrancisco_20180313.htm#tableA)

## Table 2-PPI Example

Table 9. Producer price indexes and percent changes for commodity and service groupings and individual items, not seasonally adjusted — Continued  
[1982=100 unless otherwise indicated]

Commodity	Commodity code	Other index base	Index			Percent change to Feb. 2017 from:	
			Oct. 2016 <sup>1</sup>	Jan. 2017 <sup>1</sup>	Feb. 2017 <sup>1</sup>	Feb. 2016	Jan. 2017
Kerosene and jet fuels.....	0572		150.8	162.8	165.6	57.9	1.7
Kerosene.....	0572-02		170.8	172.6	171.6	56.9	-0.6
Kerosene.....	0572-0201		170.8	172.6	171.6	56.9	-0.6
Jet fuel.....	0572-03		150.3	162.8	165.8	58.1	1.8
Jet fuel.....	0572-0301		151.5	164.0	167.1	58.1	1.9
Light fuel oils.....	0573		153.4	157.4	159.5	48.1	1.3
Home heating oil and distillates.....	0573-02		138.7	156.3	156.7	72.4	0.3
Home heating oil and distillates.....	0573-0201		138.7	156.3	156.7	72.4	0.3
No. 2 diesel fuel.....	0573-03		159.7	160.7	163.3	44.0	1.6
No. 2 diesel fuel.....	0573-0302	06/85	199.9	201.2	204.4	44.0	1.6

February 2017 Source: <https://www.bls.gov/ppi/ppidr201702.pdf>

All PPI Reports: [https://www.bls.gov/ppi/ppi\\_dr.htm#2017](https://www.bls.gov/ppi/ppi_dr.htm#2017)

# ATTACHMENT I

## Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended

The undersigned (hereinafter called "Contractor(s)") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.

The Contractor(s) gives/give this assurance in consideration of for the purpose of obtaining contracts after the date of this assurance. The Contractor(s) recognizes/recognize and agrees/agree that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor(s), its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor(s).

The Contractor(s): (Check a or b)

☐ a. Employs fewer than 15 persons.

☒ b. Employs 15 or more persons and, pursuant to section 84.7 (a) of the regulation (45 C.F.R. 84.7 (a), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

Name of 504 Person: Christine Peterson

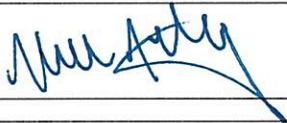
Name of Contractor(s): Republic Services of San Mateo County

Street Address or P.O. Box: 3260 Blume Drive

City, State, Zip Code: San Pablo, CA 94806

I certify that the above information is complete and correct to the best of my knowledge

Signature:



Title of Authorized Official: General Manager

Date: 10/22/18

\*Exception: DHHS regulations state that: "If a recipient with fewer than 15 employees finds that, after consultation with a disabled person seeking its services, there is no method of complying with (the facility accessibility regulations) other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible."