

FORM APPROVED COUNTY COUNSEL 7/13/16
 BY: GREGORY P. PRIAMOS DATE

Departmental Concurrence

**SUBMITTAL TO THE BOARD OF SUPERVISORS
 COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

349



FROM: Riverside County Department of Waste Resources

SUBMITTAL DATE:
 July 13, 2016

SUBJECT: Agreement for Mattress Recycling, All Districts, [Waste Resources Enterprise Funds, \$0], CEQA Exempt

RECOMMENDED MOTION: That the Board of Supervisors:

1. Find that the Project is exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines section 15061(b)(3) (General Rule for Exemption), and categorically exempt pursuant to section 15301 (Existing Facilities); and
2. Authorize the Chairman of the Board of Supervisors to execute the attached agreement with the Mattress Recycling Council; and
3. Authorize the General Manager-Chief Engineer to execute amendments and approve annual renewals of the agreement after the initial two-year term.

**BACKGROUND
 Summary**

(commences on page 2)

Hans Kernkamp
 General Manager – Chief Engineer

| FINANCIAL DATA | Current Fiscal Year: | Next Fiscal Year: | Total Cost: | Ongoing Cost: | POLICY/CONSENT (per Exec. Office) |
|------------------------|----------------------|-------------------|-------------|---------------|--|
| COST | \$ 0 | \$ 0 | \$ 0 | \$ 0 | Consent <input type="checkbox"/> Policy <input type="checkbox"/> |
| NET COUNTY COST | \$ 0 | \$ 0 | \$ 0 | \$ 0 | <input type="checkbox"/> |

SOURCE OF FUNDS: N/A
Budget Adjustment: No
For Fiscal Year: 2016/17

C.E.O. RECOMMENDATION: APPROVE
 BY:
 County Executive Office Signature Steven C. Horn

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Benoit, seconded by Supervisor Ashley and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Washington, Benoit and Ashley
 Nays: None
 Absent: None
 Date: August 23, 2016
 xc: Waste

Kecia Harper-Ihem
 Clerk of the Board
 By:
 Deputy

- A-30
- Positions Added
- 4/5 Vote
- Change Order

Prev. Agn. Ref.: | **District:** ALL | **Agenda Number:** | **COUNTY**

12-1

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

FORM 11: Agreement for Mattress Recycling, All Districts, [Waste Resources Enterprise Funds, \$0], CEQA

Exempt

DATE: July 13, 2016

PAGE: 2 of 2

BACKGROUND:

Summary

In 2013 Governor Jerry Brown signed Assembly Bill 254 creating the California Used Mattress Recovery and Recycling Act. The bill authorizes a qualified industry association to establish a mattress recycling organization. The bill also authorized the Department of Resources Recycling and Recovery to certify that a mattress recycling organization has been established.

The Mattress Recycling Council, Inc. (MRC) is certified by the State of California to plan and implement a mattress recycling program in California as set forth in California Public Resources Code §§ 42985 – 42994 (2014) (the "Act"), and is organized (among other things) to negotiate and execute agreements to collect and transport used mattresses for recycling.

MRC's primary goals are to: (1) increase the number of mattresses diverted from landfills, (2) reduce the number of illegally dumped mattresses, (3) increase the quantity of mattresses recovered and recycled for other uses, and (4) to establish and administer a funding plan in a manner that distributes costs uniformly over all mattresses sold in the state. By entering into an agreement with MRC the Department of Waste Resources (Department) can provide better collection opportunities to the public and businesses.

An agreement with MRC would allow the Department to:

- Collect mattresses at various Department operated landfills for recycling.
- Retain valuable landfill space currently lost to mattress disposal.
- Reduce damage to landfill equipment caused by mattress components (metal/springs).
- Receive payment to cover the cost of collecting and sorting mattresses for recycling.

California Environmental Quality Act (CEQA) Findings

The Project is exempt from CEQA pursuant to the State CEQA Guidelines section 15061(b)(3) (General Rule for Exemption), and categorically exempt from CEQA pursuant to section 15301 (Existing Facilities). The Project contemplated in this Form 11 involves executing an agreement with a certified mattress recycling organization to implement a mattress recycling program at existing solid waste facilities. The collection of mattresses for recycling would occur within permitted disturbance areas and involve no expansion of approved uses. This work would not have a direct, indirect, or cumulatively significant effect on the environment. A Notice of Exemption (NOE) to this effect will be filed by the Department with the County Clerk upon Project approval.

Impact on Residents and Businesses

The implementation of this agreement allows the Department to provide free collection of used mattresses to both citizens and businesses of the County.

Additional Fiscal Information

It is estimated this agreement would create additional expenditures for the Department and is anticipated to result in savings, when considering the landfill space saved.

Contract History and Price Reasonableness

The County's landfill system has accepted mattresses from the public and businesses since its inception. Past attempts to separate mattresses for recyclers proved to be too difficult due to recycling companies being very selective regarding which mattresses were worth recycling. The Mattress Recycling Act and subsequent regulations have created funding which makes the majority of mattresses acceptable for recycling.

California Used Mattress Recycling Program
Used Mattress Collection Services Agreement

Between

Mattress Recycling Council, Inc.

and

Riverside County Department of Waste Resources

AUG 23 2016 12-10

**California Used Mattress Recycling Program
Collection Facility and Used Mattress Management Services Agreement**

This Agreement is made on this 12 day of July, 2016 ("Agreement") by and between Riverside County Department of Waste Resources, herein called "COUNTY" located at 14310 Frederick Street, Moreno Valley, CA 92553 (the "COUNTY") and Mattress Recycling Council, a Delaware corporation having its offices at 501 Wythe Street, Alexandria, VA 22182 ("MRC").

RECITALS

Whereas, MRC is the "mattress recycling organization" certified by the State of California to plan and implement a mattress recycling program in California (the "Program"), as set forth in California Public Resources Code §§ 42985 – 42994 (2014) (the "Act"), and is organized (among other things) to negotiate and execute agreements to collect and transport used mattresses for recycling;

Whereas, California Public Resources Code § 42987.1(o) requires that MRC develop and submit to the state of California a recycling plan that (among other things) provides for MRC to pay an amount to a municipal or solid waste facility or operation that accepts used mattresses dropped off by California residents at no charge (a facility) that both MRC and the facility determine is reasonable for the facility to accept, store, and handle such mattresses;

Whereas, the COUNTY operates one or more such facility(ies) in California;

Whereas, MRC and the COUNTY, pursuant to § 42987.1(o), wish to enter into this Agreement, which describes the terms and conditions under which the COUNTY will provide the Services described herein to MRC;

Now, therefore, for and in consideration of the terms of this Agreement and the mutual promises and covenants contained herein, the parties hereto agree as follows:

ARTICLE 1 – DEFINITIONS

- 1.1 "Consolidate" means (as applicable) accepting, handling, storing, and packing only acceptable Program Products into Collection Containers provided by, or approved for use by, MRC or its subcontractors in a manner that is efficient, complies with the requirements of MRC or its subcontractors, and is conducive to safe and efficient transport.
- 1.2 "Collection Containers" are containers provided by, or approved for use by, MRC or its contractors to hold and transport Program Products.
- 1.3 "Collection Facility(ies)" means all permanent or temporary collection facilities that are owned, leased, subleased, or otherwise controlled by the COUNTY and

designated by the Program to collect Program Products, and as specifically identified in Attachment E ("Collection Facility Information").

- 1.4 "Effective Date" means the date that the parties' obligations begin under this Agreement. The Effective Date is the first date shown above.
- 1.5 "Force Majeure" is defined in 14.2.
- 1.6 "Guidelines" are listed in Attachment D, and give a more specific overview of how the Program is to be implemented. MRC reserves the right to update, change, modify, amend, add or remove terms, or otherwise alter these Guidelines at any time with or without prior notice.
- 1.7 "Including" (whether or not capitalized) means "including but not limited to."
- 1.8 "Initial Term" is defined in Article 2.1.
- 1.9 "Law" means all existing and future federal, state, and local statutes, laws, codes, ordinances, decrees, rules, regulations, requirements, and orders, of any governmental authority, entity, or agency whether federal, state, municipal, local, or other government body or subdivision, including those relating to unemployment compensation, worker's compensation, disability, taxes, worker and public health and safety, the environment, and the Program.
- 1.10 "Materials and Activities" mean materials, supplies, tools, vehicles, equipment, labor, water, light, power, facilities, construction of any nature, supervision, and all other services, acts, activities, resources, and goods, but not Collection Containers, necessary for or otherwise used by the COUNTY to Collect, Pack, and otherwise comply with and fully perform its obligations under the Agreement.
- 1.11 "Non-Conforming Units" are Program Products that individual residents drop off at no-cost for recycling that are later determined to be contaminated or too damaged to recycle, and they must be disposed of as solid waste. Non-Conforming Units do not include any Units delivered by any entity other than an individual resident (i.e., a business or other entity).
- 1.12 "Non-Program Products" mean products not covered by the Program that are collected and/or managed by the COUNTY. Non-Program Products include: sleeping bags, pillows, an unattached mattress pad or mattress topper (even items with resilient filling intended to be used with or on top of a mattress), a car bed, crib or bassinet mattress, juvenile products or the pads used for such juvenile products, waterbeds, air mattresses that contain no upholstery material (such as a camping mattress), sofa beds and futons.
- 1.13 "Program Products" include "mattresses" (which are defined as a resilient material or combination of materials that is enclosed by a ticking [the outermost layer of fabric or related material of a mattress] and is intended or promoted for sleeping upon), "foundations" (for example, a box spring, which is used to support a mattress and may include constructed wood or other frames, steel springs, or other materials used alone or in combination), and a renovated mattress or renovated foundation.

- 1.14 "Program" means the California Used Mattress Recycling Program created by MRC.
- 1.15 "Services" means all services for which COUNTY is responsible, as described in this Agreement and in the Attachments hereto, including any and all Materials and Activities.
- 1.16 "State" means the State of California.
- 1.17 "Storage and Transportation Services Option" means the COUNTY's option to provide its own storage and transportation of Program Products from their collection location to an MRC-contracted recycler. If this option is selected on Attachment A, COUNTY will be bound to the terms in Attachment F "Storage and Transportation Services" for such Services.
- 1.18 "Temporary Collection Events" mean an event hosted by the COUNTY to Consolidate Program Products at locations within the State that are short in duration and not at permanent collection facilities.
- 1.19 "Transportation Providers" or "Transporter" means a contractor hired by MRC or COUNTY to transport Program Products from the Collection Facilities or Temporary Collection Events. This term will apply to the COUNTY if COUNTY selects the Storage and Transportation Option listed on Attachment A.
- 1.20 "Unit" means a single Program Product dropped off at a facility by a California resident at no charge. For example, an individual mattress and an individual box spring would each be a single Unit.

ARTICLE 2 – TERM OF AGREEMENT

- 2.1 This Agreement will commence upon the Effective Date and will remain in full force and effect for a period of two (2) years (the "Initial Term").
- 2.2 Immediately after expiration of the Initial Term, this Agreement will automatically renew for additional successive one (1) year terms unless either party notifies the other in writing at least sixty (60) days in advance of the renewal term commencement date that the Agreement will not be renewed. The consideration of each option year will be the same as the consideration during the previous contract period, unless otherwise agreed to in writing by MRC.
- 2.3 If either party provides notice that the Agreement will not be renewed, the COUNTY, before the end of the term of the Agreement or at another time agreed to in writing by the parties, will, at no additional cost to MRC (a) make all Collection Containers supplied by MRC or a subcontractor available for pick up by a Transportation Provider, (b) undertake the orderly cessation of the Services, and (c) cooperate fully at the direction of MRC in the orderly transition of the Services to its successor, if any.

ARTICLE 3 – GENERAL OBLIGATIONS OF THE COUNTY

- 3.1 In consideration of MRC's payments, if any, to the COUNTY for Services, and for activities undertaken at MRC's expense, the COUNTY will perform the Services provided for in Attachment A ("Scope of Work") in conformity with the Program and Guidelines, except to the extent the Program and/or Guidelines conflict with the terms of this Agreement or any applicable Law.
- 3.2 The COUNTY will manage all Program Products Collected at the Collection Facilities only in accordance with Attachment A ("Scope of Work"), and will not dispose of Program Products in any other method without the prior written approval of MRC.
- 3.3 The COUNTY will be responsible for:
 - a. making day-to-day and critical decisions regarding the Services, including the management and supervision of all activities comprising the Services;
 - b. complying with all applicable Law; and
 - c. securing and locking the Collection Facilities at all times when the facilities are closed or not attended.
- 3.4 The COUNTY may amend Attachment E ("Collection Facility Information") to add or delete sites, subject to MRC's prior written approval for each such addition/deletion.
- 3.5 The COUNTY is responsible for and will manage, at its sole expense, any and all Non-Program Products it collects at the Collection Facilities or places in Collection Containers. MRC accepts no responsibility for such Non-Program Products, and will not pay COUNTY any consideration in connection with such Non-Program Products.
- 3.6 The COUNTY will not charge a per-unit fee to California residents that drop off Program Products with the COUNTY. This section does not preclude the COUNTY from charging fees for curbside collection or services other than Program Product drop off. Nothing in this Agreement prohibits the COUNTY from charging fees to California residents, businesses, or other entities for dropping off Non-Program Products.
- 3.7 The County will inspect each Unit before placing it in a Collection Container to confirm whether it is a Program Product. County will separate and document Non-Conforming Units dropped off by individual residents, will dispose of such Units as solid waste, and then will invoice MRC for such Units at rates listed in Attachment B. Non-Conforming Units obtained from businesses or other entities receive no compensation from MRC.
- 3.8 The COUNTY will provide the Services at its own risk and take every precaution to protect all public and private property during the performance of the Services. If the COUNTY's personnel or equipment cause any damage to the property of MRC or its contractors, the COUNTY, at its sole expense, will promptly replace the damaged property or repair it to the condition existing before the damage.

- 3.9 The COUNTY will thoroughly familiarize itself with the nature and scope of the Services under this Agreement and with matters that may affect the Services, including the Law governing the Services, Guidelines, and this Agreement. Any failure by the COUNTY to thoroughly familiarize itself with such matters does not relieve the COUNTY of its obligations under this Agreement.
- 3.10 Work under this Agreement will be performed only by competent personnel under the indirect or direct management or supervision of the COUNTY.
- 3.11 The COUNTY will commit adequate resources to participate in the Program and meet its obligations under this Agreement, including providing, at its sole expense, any and all Materials and Activities.
- 3.12 The reporting and notification requirements identified in Attachment A ("Scope of Work") and elsewhere in this Agreement are an integral part of the Services. The COUNTY will comply with all reasonable requests from MRC for preparation, access, review, and/or adjustment of these deliverables throughout the term of this Agreement.
- 3.13 The COUNTY will inspect the Collection Containers upon arrival and determine whether they are in proper condition for use. MRC or its contractor is responsible for replacing any defective Collection Containers and repairing normal wear-and-tear to the Collection Containers. The COUNTY will immediately notify MRC if at any point during the term of the Agreement a Collection Container(s) is not in proper condition for use and will not use any such defective Collection Containers until they are repaired or replaced by MRC or its contractor. If a Collection Container is functional, but is delivered in a damaged condition, the COUNTY will notify MRC or its contractor in writing of the nature and location of such damage upon the arrival of the Collection Container.

ARTICLE 4 – COUNTY REPRESENTATIONS AND WARRANTIES

- 4.1 The COUNTY represents, covenants, and warrants that:
 - a. it is a political subdivision of the State of California in good standing and qualified to carry on business in California, and has all necessary approval, capacity, and authority to enter into this Agreement and fully perform its obligations under this Agreement;
 - b. this Agreement does not in any way conflict with any other agreements of the COUNTY;
 - c. it possesses the business, professional, and technical expertise, as well as training, Materials and Activities, facilities, and equipment necessary and required to perform the Services;
 - d. it will perform the Services in a diligent, safe, and workmanlike manner that conforms with generally accepted industry, professional, and best management practices, and with the care and skill ordinarily exercised, for such Services; and

- e. it and/or its facilities, equipment, employees, or agents, have been issued, as of the date of this Agreement and throughout the term of the Agreement, all permits, licenses, certificates, or approvals required by applicable statutes, ordinances, orders, rules, regulations, and regulatory or administrative bodies necessary to perform the Services.

ARTICLE 5 – MRC OBLIGATIONS

- 5.1 Upon receiving a request from the COUNTY, MRC will arrange for timely pick-up by a Transportation Provider of Program Products Consolidated by the COUNTY. MRC or an MRC contractor will, at its expense, arrange for the Transportation Provider to transport such Program Products after pick-up to intermediary locations, processors, or other final destinations that are part of the Program.
- 5.2 MRC will make available to the COUNTY consumer brochures and signage.
- 5.3 MRC's Transportation Provider will provide Collection Containers to the COUNTY, or approve use of the COUNTY's containers as Collection Containers, for each of the Collection Facilities. All Collection Containers supplied by MRC or a subcontractor will remain the property of the MRC or subcontractor (as applicable).
- 5.4 MRC has no authority to manage, direct, or supervise employees, representatives, or agents of the COUNTY, including how they perform the work and achieve compliance with applicable Law. MRC does not have responsibility for making day-to-day and critical decisions regarding the Services, including the management or supervision of any activities comprising the Services.
- 5.5 Nothing herein creates an exclusive arrangement between MRC and the COUNTY. The COUNTY may not restrict MRC from contracting with other entities under the Program.

ARTICLE 6 – COVENANTS OF MRC

- 6.1 MRC covenants, represents, and warrants that:
 - a. it is a non-profit corporation validly existing under the laws of Delaware;
 - b. it has the corporate power, capacity, and authority to enter into and complete this Agreement; and
 - c. the execution and delivery of this Agreement has been validly authorized by all necessary corporate actions by MRC.

ARTICLE 7 – AGREEMENT TERMINATION

- 7.1 The COUNTY acknowledges that, except for any payments for rendering Services as specifically provided for in Attachment A ("Scope of Work") of this Agreement at the Compensation Rates set in Attachment B, it will not receive any other monetary payments under this Agreement.

- 7.2 MRC or the COUNTY may terminate this Agreement at any time without cause upon sixty (60) days' written notice to the other party.
- 7.3 Either party may terminate this Agreement or any Services under this Agreement immediately, upon prior written notice if the other party:
- a) has breached any material provision of this Agreement, and has failed to cure such breach within thirty (30) days of receiving written notification of such breach; or
 - b) has violated applicable Law.
- 7.4 MRC may terminate this Agreement immediately:
- a) if COUNTY fails to maintain the insurance requirements described in this Agreement; or
 - b) upon a finding by MRC in its sole and reasonable opinion that COUNTY has acted fraudulently or dishonestly in providing Storage and Transportation Services (as applicable).
- 7.5 This Agreement is contingent upon MRC's ability to fund the Program through fees collected on Mattress sales in the State. MRC may terminate the Agreement upon thirty (30) days' written notice if such funding is reduced to such an extent that, in MRC's sole and reasonable opinion, it is unable to fulfill its duties under this Agreement.

ARTICLE 8 – TITLE AND RISK OF LOSS

- 8.1 The parties acknowledge that the Program Products are not household hazardous waste.
- 8.2 The COUNTY (and not MRC) has title to and risk of loss and liability for any and all Program Products, Non-Conforming Units and Non-Program Products that the COUNTY receives. Notwithstanding the foregoing, once a Transportation Provider accepts for transportation any Program Products Collected by the COUNTY under this Agreement and Consolidated on a Collection Container, title to and risk of loss as to those Program Products, will transfer to that Transportation Provider. MRC at no time takes title to or assumes liability for any Program Products, Non-Conforming Units or Non-Program Products. However, MRC will require in its contracts with its Transportation Providers that they accept title and risk of loss immediately upon accepting any Program Products for transportation from the COUNTY.
- 8.3 MRC is not responsible for any damage to persons or property resulting from the use, misuse, or failure of any equipment used by the COUNTY, or by any of its employees or contractors, including the Collection Containers, even if such equipment is furnished, rented, or loaned to the COUNTY by MRC.

ARTICLE 9 – CONSIDERATION AND PAYMENT

- 9.1 As consideration under this Agreement, MRC or its contractors will (i) provide the COUNTY with Collection Containers, consumer brochures, and signage; (ii) facilitate the transportation of Program Products by Transportation Providers as set forth in this Agreement; (iii) pay the COUNTY for Services rendered as set forth in this Agreement; and (iv) perform other services incidental to the management of the Program.
- 9.2 MRC's payment to COUNTY for Services Rendered in the manner set forth in Attachment B ("Compensation Rates") will be made in U.S. currency. Other than such payments, MRC will not provide the COUNTY with any monetary compensation or reimbursement for the COUNTY's Collection of Program Products, furnishing of the Materials and Activities, or its performance of the Services.
- 9.3 The COUNTY will invoice MRC on a monthly basis, either by hardcopy or electronically, as determined by MRC. Invoices furnished by the COUNTY under this Agreement must include the information included in Attachment C ("Model Invoice") and must state:
- a. the unique, identifying invoice number;
 - b. the specific work categories of Services provided for under the Agreement;
 - c. the specific number of Units consolidated;
 - d. copies of each Transportation Bill of Lading or equivalent shipping documentation that includes the information included in Attachment D's "Model Bill of Lading" validating the number of units consolidated; and
 - e. any additional information as agreed to in writing by the parties that is relevant to the Services being performed by the COUNTY.
- 9.4 Each invoice must include the signature of the COUNTY employee responsible for submitting the invoice and a certification that the invoice accurately reflects the Services performed.
- 9.5 MRC reserves the right to refuse payment of any invoice or portion thereof that is not received in an acceptable form.
- 9.6 All amounts invoiced by the COUNTY to MRC, or paid by MRC to the COUNTY, are subject to audit by MRC, as described below in ARTICLE 10 – AUDIT AND INSPECTION RIGHTS OF MRC.
- 9.7 The COUNTY will submit all invoices to MRC by the method directed by MRC and/or at the address specified below. MRC will send all payments due to the COUNTY to the address specified below.

To: Mattress Recycling Council Inc.
Attn: Accounts Payable
Fax: 703-683-4503
Phone: 1-855-229-1691
E-mail: clyons@sleepproducts.org
Address: 501 Wythe Street
Alexandria, VA 22314

To: Riverside County Department of Waste Resources
Attn: Accounts Receivable
Fax: (951) 486-3230
E-mail: WasteAccountsReceivable@rcwaste.org
cc: echau@rcwaste.org
Address: 14310 Frederick Street
Moreno Valley, CA 92553

- 9.8 Provided that the COUNTY has supplied the required information and otherwise performed its obligations under this Agreement, MRC will pay such invoice within forty-five (45) days of the date that MRC receives the invoice. In the event MRC has a good-faith objection to an invoice, MRC will pay the undisputed amount pursuant to the terms of this Agreement and notify in writing the COUNTY of said objections and describe in reasonable detail the basis for the objections. The Dispute Resolution provisions in ARTICLE 17 - DISPUTE RESOLUTION will be used to resolve such disputed portion of an invoice. During any such dispute, the COUNTY will continue with its responsibilities under this Agreement and will not stop providing the Services unless this Agreement is terminated pursuant to Article 7. MRC will make all payments due to the COUNTY over which there is no good-faith dispute.
- 9.9 MRC's payment of all or a part of an invoice neither relieves the COUNTY of any of its obligations under this Agreement nor constitutes a waiver of any claims by MRC.
- 9.10 The COUNTY warrants that, to the best of its knowledge, all documents, including invoices, billings, back-up information for invoices, and reports, submitted by the COUNTY to MRC to support amounts invoiced in connection with the Services truly reflect the facts about the activities and transactions to which they pertain. The COUNTY warrants that MRC, for whatever purpose, may rely upon all such documents and the data therein as being complete and accurate. The COUNTY will promptly notify MRC upon discovery of any instances where the COUNTY becomes aware of any discrepancies in relation to documents under this Article.

ARTICLE 10 – AUDIT AND INSPECTION RIGHTS OF MRC

- 10.1 MRC and its representatives may (a) monitor and verify that the COUNTY has complied with this Agreement, the applicable Law, and Guidelines; and (b)

consult with the COUNTY about such compliance; provided, however, that MRC will not, and affirmatively disclaims any ability to, control, supervise or manage (1) the employees of the COUNTY; (2) the activities undertaken by the COUNTY in the performance of this Agreement; and (3) the means by which the COUNTY meets all requirements, including applicable Law.

- 10.2 MRC may audit and inspect, with full access, the COUNTY's Collection Facilities during the Collection Facilities' hours of operation, as well as any other site at which the COUNTY performs the Services. MRC will provide the COUNTY with at least twenty-four (24) hours' notice before any such audit or inspection.
- 10.3 The COUNTY will maintain and make available to MRC, during regular business hours, accurate books and accounting records relating to its Services under this Agreement. The COUNTY will permit MRC to audit, examine, and make excerpts and transcripts, for any books or records, and to make audits of any invoices, materials, records, and other data related to all other matters covered by this Agreement, unless such documents are confidential in accordance with the California Public Records Act (Govt. Code § 6250 – 6276.48). The COUNTY will maintain such data and records in an accessible location and condition for a period of not less than three (3) years from the date produced under this Agreement or until after final audit has been resolved, whichever is later. The COUNTY will include this requirement in any subcontract for the performance of any of the Services under this Agreement.
- 10.4 In addition to those reports detailed in Attachment A ("Scope of Work"), the COUNTY will maintain the following records:
 - a. For each pick-up of Program Products by a Transportation Provider from a Collection Facility, a copy of the Bill of Lading or equivalent shipping documentation that includes the information included in Attachment D's "Model Bill of Lading", that will be provided by the Transporter;
 - b. Records confirming the number of Units the COUNTY received at each Collection Facility including:
 - i. The number transported to MRC-contracted recyclers,
 - ii. The number of Non-Conforming Units dropped off by individual residents that COUNTY disposes of as solid waste, and
 - iii. The number transported to other entities;
 - c. Records of any inspections required by Law; and
 - d. Records of compliance for any required state and local employee trainings.

ARTICLE 11 – INDEMNIFICATION

- 11.1 The COUNTY, and its successors and assigns (collectively, the "Indemnifying Party"), will, to the fullest extent allowed by law, indemnify, defend, and hold harmless MRC and its sole member (as identified under MRC's Certificate of Incorporation), and their member companies, officers, directors, stockholders, employees, successors, assigns, attorneys, agents, and invitees (collectively, the "Indemnified Parties") from and against any and all claims, demands, actions, losses, liabilities, damages, and all expenses and costs incidental thereto (collectively, "Claims"), including cost of defense, settlement, arbitration, and reasonable attorney's fees, resulting from injuries to or death of persons, including but not limited to employees of either party hereto, and damage to or destruction of property or loss of use thereof, including but not limited to the property of either party hereto, arising out of, pertaining to, or resulting from the acts or omissions of the Indemnifying Party, or the acts or omissions of anyone else directly or indirectly acting on behalf of the Indemnifying Party, its officers, agents, employees, or contractors, or for which the Indemnifying Party is legally liable under law regardless of whether caused in part by an Indemnified Party. The Indemnifying Party will not be liable for any Claims arising from the sole negligence or willful misconduct of an Indemnified Party where such indemnification would be invalid under Section 2782 of the Cal. Civil Code.
- 11.2 MRC, and its successors and assigns (collectively, the "MRC Indemnifying Party"), will, to the fullest extent allowed by law, indemnify, defend, and hold harmless the COUNTY and its officers, directors, stockholders, employees, successors, assigns, attorneys, agents, and invitees (collectively, the "MRC Indemnified Parties") from and against any and all claims, demands, actions, losses, liabilities, damages, and all expenses and costs incidental thereto (collectively, "Claims"), including cost of defense, settlement, arbitration, and reasonable attorney's fees, resulting from injuries to or death of persons, including but not limited to employees of either party hereto, and damage to or destruction of property or loss of use thereof, including but not limited to the property of either party hereto, arising out of, pertaining to, or resulting from the acts or omissions of the MRC Indemnifying Party, or the acts or omissions of anyone else directly or indirectly acting on behalf of the MRC Indemnifying Parties, or for which the MRC Indemnifying Party is legally liable under law excepting only such injury, death, or damage to the extent caused by the active negligence or willful misconduct of an MRC Indemnified Party.
- 11.3 The following provisions apply to Paragraphs 11.1 and 11.2 above:
- a. This indemnity will not be limited by the types and amounts of insurance or self-insurance maintained by the Indemnifying or Indemnified Parties or their contractors;
 - b. Nothing in this indemnity will be construed to create any duty to, any standard of care with reference to, or any liability or obligation, contractual or otherwise, to any third party; and

- c. The provisions of this indemnity will survive the expiration or termination of this Agreement.

11.4 MRC WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR INCIDENTAL DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF SUCH POTENTIAL DAMAGES. NOTHING IN THIS AGREEMENT CONSTITUTES A WAIVER OR LIMITATION OF ANY RIGHTS THAT MRC MAY HAVE UNDER THE APPLICABLE LAW.

ARTICLE 12 – INSURANCE

12.1 The COUNTY at its own expense shall carry and maintain on a continuous basis the following insurance coverage (collectively, the “Required Insurance”) during the term of this Agreement and thereafter as provided below:

- a. Commercial General Liability insurance written on an occurrence basis covering personal injury, property damage, and bodily injury and death with limits not less than \$1,000,000 each occurrence, and \$2,000,000 in the aggregate. The Commercial General Liability insurance carried pursuant to this Article 10.1(a) shall include: i) comprehensive form; ii) premises – operations, improvements, and equipment; iii) products/completed operations hazard; iv) contractual insurance; v) broad form property damage; vi) independent contractors; vii) personal injury; and viii) all liability assumed under and indemnities provided under this Agreement;
- b. Commercial Automobile Liability insurance (owned, non-owned or hired) written on an occurrence basis with limits not less than \$1,000,000 for each occurrence, and \$5,000,000 in the aggregate;
- c. Workers’ Compensation Insurance as required by the State or other applicable Law; and

12.2 The COUNTY may utilize self-insurance to satisfy all of the obligations in this Article related to the Required Insurance. To the extent that the COUNTY relies on its self-insurance to meet its obligations, the COUNTY warrants that it satisfies all of the requirements of this Article by virtue of its self-insurance. The intent of this paragraph is to impose on the COUNTY all of the same requirements and obligations that would have been imposed on one or more insurance carriers had the COUNTY procured the Required Insurance instead of relying on self-insurance.

12.3 The Required Insurance, except for worker’s compensation insurance, must contain or be endorsed to contain MRC, its officers, agents, and employees, as additional insureds and a waiver of subrogation in favor of MRC and its officers, agents, and employees. The COUNTY will obtain any endorsement that may be

necessary to affect the waiver of subrogation. The Required Insurance policies (except for worker's compensation) must contain (i) a written statement in the policies or in endorsements thereto that they are each primary insurance to any other insurance available to the COUNTY or to any additional insureds or additional named insureds, and (ii) a separation of insureds provision stating that the insurance applies separately to each insured against whom a claim is made or a suit is brought and that the actions or omissions of any insured that might give rise to application of an exclusion to coverage apply only to that insured actually committing the actions or omissions.

- 12.4 The COUNTY shall provide a certificate of insurance complying with this article within fifteen (15) days of execution of this Agreement or twenty-four (24) hours before Services under this Agreement commence, whichever date is earlier, demonstrating that the Required Insurance is in full force and effect and all premiums paid. The certificate of insurance must have no disclaimers of liability. All Required Insurance must be placed with insurers with rating comparable to A-, VIII, or higher, that are authorized to do business in the State, and that are satisfactory to MRC. Approval of the insurance by MRC will not relieve or decrease the liability of the COUNTY hereunder.
- 12.5 For all Required Insurance policies, the COUNTY shall provide thirty (30) days' advance written notice to MRC of any reduction or nonrenewal of coverage or cancellation of coverage for any reason.
- 12.6 Should any of the Required Insurance be provided under a claims-made form, the COUNTY, at its sole expense, shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three (3) years beyond the expiration or termination of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration or termination of the Agreement, such claims will be covered by such claims-made policies.
- 12.7 Should any of the Required Insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit must be at least double the each-occurrence or each-claim limits specified above.
- 12.8 Should any of the Required Insurance lapse during the term of this Agreement or during the three-year period set forth in Article 12.6 above, requests for payments originating after such lapse shall not be processed until MRC receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, MRC may, at its sole discretion, terminate this Agreement effective on the date of such lapse of insurance.
- 12.9 All deductibles, self-insured retentions or similar amounts are the sole responsibility of the COUNTY and will not be paid by or payable by MRC.

- 12.10 If the COUNTY will use a subcontractor to complete any portion of this Agreement or to provide any Services, the COUNTY shall ensure that the subcontractor provides insurance coverage as set forth herein and meeting all of the above requirements for the Required Insurance, including (i) naming MRC, its officers, agents, and employees and the COUNTY as additional insureds or additional named insured in conformity with the above provisions and (ii) providing a waiver of subrogation.
- 12.11 Within thirty (30) days after the Effective Date and at least once annually thereafter, COUNTY shall provide MRC with a letter of self-insurance, verifying that COUNTY's insurance complies with the requirements of this Agreement.
- 12.12 MRC at its own expense shall carry and maintain on a continuous basis the following insurance coverage during the term of this Agreement (collectively, "MRC Required Insurance"):
- a. Commercial General Liability insurance written on an occurrence basis covering personal injury, property damage, and bodily injury and death with limits not less than \$1,000,000 each occurrence, and \$2,000,000 in the aggregate.
- 12.13 Upon receiving a written request from the COUNTY, MRC shall provide a certificate of insurance evidencing insurance demonstrating that the MRC Required Insurance is in full force and effect and all premiums paid. All MRC Required Insurance is subject to reasonable audit and review by the COUNTY or its designees at any time. MRC promptly shall cooperate with all reasonable requests made in connection with such audit or review. Within seven (7) days of any written request from the COUNTY, MRC shall provide the COUNTY with certified copies of all binders of insurance, policies of insurance, and all endorsements thereto. If any deficiencies are found during such audit or review related to any of the Required Insurance, MRC will correct the deficiencies at its sole expense as soon as reasonably possible and, in any event, within fourteen (14) days of being provided with notice thereof.
- 12.14 The MRC Required Insurance must be placed with insurers that are authorized to do business in the State, and that are satisfactory to the COUNTY. Approval of the insurance by the COUNTY will not relieve or decrease the liability of MRC hereunder.
- 12.15 For all Required Insurance policies, MRC shall provide seven (7) days' advance written notice to the COUNTY of any reduction or nonrenewal of coverage or cancellation of coverage for any reason.
- 12.16 MRC shall require that its Transportation Providers carry appropriate insurance, including the following (collectively, the "Transportation Provider Insurance"):
- a. Commercial General Liability insurance written on an occurrence basis covering personal injury, property damage, and bodily injury and death with limits not less than \$1,000,000 each occurrence, and \$2,000,000 in the aggregate;

- b. Commercial Automobile Liability insurance (owned, non-owned or hired) with a Combined Single Limit of \$1,000,000; and
- c. Workers' Compensation Insurance as required by the State or other applicable Law.

ARTICLE 13 – ASSIGNMENT AND SUBCONTRACTING

- 13.1 The COUNTY may not assign, novate, or otherwise transfer (including transfer by operation of law) this Agreement or the obligations and rights hereunder without the express written consent of MRC, which consent will not be unreasonably withheld. Any change of control by the COUNTY constitutes an assignment that requires prior written consent. A “change of control” includes, among other items, any merger, consolidation, sale of all or substantially all of the assets, or sale of a substantial block of stock of the COUNTY. Any attempted assignment, novation, or other transfer made in violation of this Article is void and has no effect.
- 13.2 MRC may not assign, novate, or otherwise transfer (including transfer by operation of law) this Agreement or the obligations and rights hereunder without the express written consent of the COUNTY, which consent will not be unreasonably withheld. Any change of control by MRC constitutes an assignment that requires prior written consent. A “change of control” includes, among other items, any merger, consolidation, sale of all or substantially all of the assets, or sale of a substantial block of stock of MRC. Any attempted assignment, novation, or other transfer made in violation of this Article is void and has no effect.
- 13.3 The COUNTY may subcontract any part of the Services with MRC’s prior written permission, such permission not to be unreasonably withheld. As part of any subcontract relating to this Agreement, the COUNTY must include the following Articles and Attachments to the extent applicable for the Services being provided by the Subcontractor: ARTICLE 8 – TITLE AND RISK OF LOSS, ARTICLE 10 – AUDIT AND INSPECTION RIGHTS OF MRC, ARTICLE 12 - INSURANCE, ARTICLE 18 – COMPLIANCE WITH LAW, ARTICLE 19 – CONFIDENTIALITY/PUBLICITY, Attachment A (“Scope of Work”), and Attachment D (“Guidelines”). Nothing contained in this Agreement or otherwise creates any contractual relationship between MRC and any subcontractor of the COUNTY. A subcontract does not relieve the COUNTY of its responsibilities and obligations hereunder. The COUNTY is as fully responsible to MRC for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the COUNTY.
- 13.4 The COUNTY’s obligation to pay its subcontractors is an obligation independent from MRC’s obligation to make payments to the COUNTY. As a result, MRC has no obligation to pay or to enforce the payment of any moneys to any subcontractor of the COUNTY.

ARTICLE 14 – FORCE MAJEURE

- 14.1 Any delay or failure of either party to perform its obligations hereunder will be suspended if, and to the extent, it is caused by the occurrence of a Force Majeure. In the event that either party intends to rely upon the occurrence of a Force Majeure to suspend or to terminate its obligations, such party will notify the other party in writing, in accordance with the requirements of Article 15, within 2 business days after becoming aware of the Force Majeure, or as soon as reasonably possible, setting forth the particulars of the circumstances. Written notices will likewise be given after the effect of such occurrence has ceased.
- 14.2 An occurrence of a “Force Majeure” means riots, wars, civil disturbances, insurrections, labor strikes of MRC, COUNTY, contractors or subcontractors, acts of terrorism, epidemics, acts of nature (or any threat of such occurrences) whose effects prevent safe passage of vehicles upon state or federal highways for a continuing period of not less than fourteen (14) days and federal or state government orders, any of which is beyond the reasonable anticipation or control of the applicable party and which prevents performance of this Agreement, but only to the extent that due diligence is being exerted by the applicable party to resume performance at the earliest possible time.

ARTICLE 15 – NOTICES

- 15.1 Except where otherwise expressly authorized, notice will be by, facsimile, first class certified or registered mail, or by commercial delivery service issuing a receipt for delivery. Notices will be addressed as set forth below. Either party may change the address information below by providing written notice to the other party. Notice is effective upon delivery, or if delivery is refused, when delivery is attempted.

To: Mattress Recycling Council, Inc.
Attn: Mike O'Donnell
Email: mikeo@mattressrecyclingcouncil.org
Address: 501 Wythe Street Alexandria, VA 22314

To: Riverside County Department of Waste Resources
Attn: Hans Kernkamp
Fax: (951) 486-3205
Email: HKERNKAM@rcwaste.org
Address: 14310 Frederick Street
Moreno Valley, CA 92553

ARTICLE 16 – INDEPENDENT CONTRACTOR STATUS

- 16.1 The parties intend that the COUNTY, in performing the Services specified herein, is acting as an independent contractor and that the COUNTY will control the work and the manner in which it is performed. This Agreement is not intended and

may not be construed to create the relationship between the parties of agent, servant, employee, partnership, joint venture, or association.

- 16.2 Each party, or its subcontractors, as appropriate, is solely liable and responsible for providing all compensation and benefits due to, or on behalf of, all persons performing work on its behalf in connection with this Agreement. Neither party has any liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of the other party.
- 16.3 Each party understands and agrees that all persons performing work pursuant to this Agreement are, for purposes of Workers' Compensation liability, solely employees of that party and not employees of the other party. Each party is solely liable and responsible for furnishing any and all Workers' Compensation benefits to its employees as a result of any injuries arising from or connected with any work performed by or on behalf of that party pursuant to this Agreement.
- 16.4 Third-party Transportation Providers are independent contractors and are not employees, partners, or agents of either party. Neither party is liable for the acts or omissions of third-party Transportation Providers under this Agreement. However, if COUNTY exercises the Storage and Transportation Services Option, COUNTY will be liable for any acts or omissions in providing such services.

ARTICLE 17 - DISPUTE RESOLUTION

- 17.1 Subject to the conditions and limitations of this Article, any controversy or claim arising out of or relating to this Agreement will be exclusively settled by arbitration under the laws of the State of California, in accordance with the rules of the American Arbitration Association.
- 17.2 The parties agree to consolidation of any arbitration between them with any other arbitration involving, arising from, or relating to this Agreement.
- 17.3 Each party hereto accepts the jurisdiction of the courts of the State of California for the purposes of commencing, conducting, and enforcing an arbitration proceeding pursuant to this Article. Each party will accept service of notice of the other party's intent to proceed with arbitration, and of any other step in connection therewith or enforcement thereof, if such notice is in writing and sent by certified letter addressed to said party according to Article 15.1, and such notice will have the same effect as if the party had been personally served within the State of California.
- 17.4 Any decision of an arbitrator engaged under this Article is final, binding, and enforceable upon both parties.
- 17.5 The COUNTY will continue with its responsibilities under this Agreement during any dispute.

- 17.6 The parties will continue to work during the dispute resolution process in a diligent and timely manner in accordance with all applicable provisions of this Agreement.
- 17.7 Each party hereto will bear the costs and expenses incurred by it in connection with such arbitration processes. The cost of any independent decision maker will be shared equally between the parties.

ARTICLE 18 – COMPLIANCE WITH LAW

- 18.1 Each party will comply with all Law applicable to this Agreement.
- 18.2 The COUNTY will promptly notify MRC in writing upon discovery of any failure, or any allegation of any failure, of the COUNTY or other persons or entities to comply with any applicable Law relevant to the performance of Services or any requirement of this Agreement.
- 18.3 Duties and obligations imposed by this Agreement, and rights and remedies available thereunder, are in addition to (and not a limitation of) duties, obligations, rights, and remedies otherwise imposed or afforded by applicable Law.
- 18.4 MRC will comply with all certification and disclosure requirements prescribed by Section 319, Public Law 101-121 (31 U.S.C. § 1352) and any implemented regulations.
- 18.5 If services under this Agreement are funded with state funds granted to COUNTY, MRC will not utilize any such funds to assist, promote or deter union organization by employees performing work under this Agreement and will comply with the provisions of Government Code Sections 16645 through 16649.
- 18.6 The COUNTY will provide MRC with sixty (60) days' prior written notice before entering into negotiations or engaging in any direct or indirect lobbying activities with any government authority or agency to develop any variance or revision to Cal. Public Resources Code §§ 42985 – 42994.

ARTICLE 19 – CONFIDENTIALITY/PUBLICITY

- 19.1 The COUNTY will not disclose any details in connection with this Agreement to any person or entity without MRC's prior written authorization, except as may be otherwise provided hereunder or required by law. However, in recognizing the COUNTY's need to identify its services and related clients to sustain it, MRC will not inhibit the COUNTY from publishing its role in the Program within the following conditions:
 - a. The COUNTY may utilize and develop publicity material regarding the MRC Program only upon the prior written consent of MRC, which consent will not be unreasonably withheld; and
 - b. During the term of the Agreement, the COUNTY will not, and will not authorize another to, publish or disseminate any commercial

advertisements, press releases, feature articles, or other materials using the name of MRC without the prior written consent of MRC, which consent will not be unreasonably withheld.

- 19.2 The Collection Facilities may be listed, referenced, or advertised as collection sites by MRC for the Program during the term of this Agreement.
- 19.3 To the extent that the COUNTY is subject to disclosure requirements under the California Public Records Act (Govt. Code § 6250 – 6276.48) and other applicable federal, state, and local public record laws (collectively, "the Disclosure Laws"), the following additional terms apply:
- a. The COUNTY acknowledges that MRC claims that the pricing information in this Agreement constitutes proprietary information; and
 - b. In the event the COUNTY receives a request for disclosure of such information or disclosure under the Disclosure Laws, the COUNTY will provide MRC with reasonable prior notice, and in no case less than ten (10) days' notice, of the request prior to disclosing the information or documentation. If MRC claims the information or documentation is exempt from disclosure under the Disclosure Laws, it must obtain a protective order, injunctive order, or other appropriate remedy from a California court of law before the COUNTY's deadline for responding to the request. If MRC fails to obtain such judicial relief within that time, the COUNTY may disclose the requested information without any penalty or liability to MRC.

ARTICLE 20 – MISCELLANEOUS PROVISIONS

- 20.1 **No Waiver.** The failure at any time to enforce any provision of this Agreement or failure to exercise any right herein granted does not constitute a waiver of such provision or of such right thereafter to enforce any or all of the provisions of this Agreement.
- 20.2 **Selective Waiver.** Either party may waive any default by the other party under this Agreement by an instrument in writing to that effect and no such waiver will extend to any subsequent or other default by the other party. No failure or delay on the part of either party to exercise any right hereunder operates as a waiver thereof. Either party may elect to selectively and successively enforce its rights hereunder, such rights being cumulative and not alternative.
- 20.3 **Entire Contract/Order of Precedence.** This Agreement and all Attachments and exhibits hereto, and all referenced documents, including the Guidelines, constitute the entire agreement between the parties with respect to the matters herein, and integrates, merges, and supersedes all prior negotiations, representations, or agreements relating thereto, whether written or oral, except to the extent they are expressly incorporated herein. The provisions of this Agreement and the accompanying document are to be construed and interpreted as consistent whenever possible. Any conflicts in this Agreement and the

accompanying documents will be resolved in accordance with the following descending order of precedence:

- a. Attachment A ("Scope of Work");
- b. Attachment B ("Compensation Rates");
- c. Attachment F ("Storage and Transportation Services"), if applicable;
- d. The terms of this Agreement;
- e. Attachment D Guidelines;
- f. Attachment E ("Collection Facility Information"); and
- g. Attachment C ("Model Invoice").

- 20.4 **Amendment or Modification.** Unless otherwise provided herein, no amendments, changes, alterations, variations, or modifications to this Agreement will be effective unless in writing and signed by the respective duly authorized officers of the parties hereto.
- 20.5 **Additional Sites.** COUNTY, either currently or in the future, may have additional sites, solid waste facilities, collection facilities or subsidiaries ("Additional Sites") that it wishes to add to this Agreement. Additional Sites may become a COUNTY under this Agreement by executing its own Compensation Rate form in Attachment B. The Additional Sites will then be governed by the terms of this Agreement and the Attachments hereto (including its personalized Compensation Rate form in Attachment B). Any changes or modifications made by an Additional Site to Attachment B will not affect other COUNTIES that exist under this Agreement, nor will it change or modify any of the other COUNTIES' terms, conditions, responsibilities and/or liabilities under this Agreement.
- 20.6 **Governing Law/Venue.** This Agreement is executed and intended to be performed in the State of California, and the laws of that State will govern its interpretation and effect. Any legal proceedings relating to this Agreement will initially be brought before a court of jurisdiction prescribed by law in the State of California.
- 20.7 **Severability.** If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof will remain in full force and effect and will in no way be affected, impaired, or invalidated thereby.
- 20.8 **Calendar Days.** Any reference to the word "day" or "days" herein will mean calendar day or calendars days, respectively, including weekends and Federal Holidays, unless otherwise expressly provided. If a deadline falls on a weekend or Federal Holiday, the next business day will be the applicable deadline.
- 20.9 **No Third-Party Beneficiary.** This Agreement is intended solely for the benefit of the parties hereto, and no third party has any right or interest in any provision of this Agreement or as a result of any action or inaction by any party in connection therewith.

- 20.10 **Authorization.** Each party represents and warrants that it has full power and authority to enter into this Agreement and to perform its obligations set forth herein. The representative(s) signing this Agreement on behalf of each party represents that he/she has the authority to execute this Agreement on behalf of the applicable party and to bind it to its contractual obligations hereunder.
- 20.11 **Survival of Terms.** All services performed and deliverables provided pursuant to this Agreement are subject to all of the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Agreement or any extension thereof. Further, the terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Agreement will so survive, including but not limited to: ARTICLE 4 – COUNTY REPRESENTATIONS AND WARRANTIES; ARTICLE 8 – TITLE AND RISK OF LOSS; ARTICLE 10 – AUDIT AND INSPECTION RIGHTS OF MRC; ARTICLE 11 – INDEMNIFICATION; ARTICLE 12 – INSURANCE; ARTICLE 16 – INDEPENDENT CONTRACTOR STATUS; ARTICLE 17 – DISPUTE RESOLUTION; ARTICLE 18 – COMPLIANCE WITH LAW; ARTICLE 19 – CONFIDENTIALITY/PUBLICITY; and ARTICLE 20 – MISCELLANEOUS.

IN WITNESS WHEREOF, the parties have each caused this Agreement to be executed by its duly authorized representative on the day and year set forth above.

RIVERSIDE COUNTY
DEPARTMENT OF WASTE RESOURCES
14310 Frederick Street
Moreno Valley, CA 92553

Mattress Recycling Council, Inc.
501 Wythe Street
Alexandria, VA 22182

Date: AUG 23 2016

Date July 12, 2016

By: 

Name: Ryan Trainer

Title: President

RECOMMENDED FOR APPROVAL

By: 

Name: Hans Kernkamp

Title: General Manager-Chief Engineer

RIVERSIDE COUNTY

By: 

Chairman, Board of Supervisors

JOHN J. BENOIT

ATTEST:

By: 

Clerk of the Board

KECIA HARPER-IHEM

FOR APPROVED COUNTY COUNSEL

BY: 

DATE

ATTACHMENT A: SCOPE OF WORK

As part of the Services under this Agreement, the COUNTY will do the following:


- 1) Provide the Services necessary to consolidate acceptable Program Products dropped off by individual California residents free of charge into Collection Containers for pick up by Transportation Providers.
- 2) Include no Non-Program Products, no Non-Conforming Units and no Units that are unsuitable for recycling in the Collection Containers provided by MRC or its subcontractors.
- 3) If exercising the Storage and Transportation Services Option, COUNTY will provide the services described in Attachment F.
 Please mark here if COUNTY elects to exercise this option.
- 4) If not exercising the Storage and Transportation Services Option for some or all of the Scope of Work, notify Transporter *before* collection containers are full to allow adequate time for Transporter to schedule pick-up services.
- 5) Provide to MRC a minimum of ninety (90) days' advance notice of any Temporary Collection Events conducted by the COUNTY that include the Collection of Program Products dropped off by individual California residents free of charge to be picked up by Transportation Providers at the Temporary Collection Event.
- 6) Provide reports to MRC on a monthly basis, within thirty (30) days after the end of each month, containing the date and location of any such Temporary Collection Events held by or on behalf of the COUNTY.


ATTACHMENT B: COMPENSATION RATES

County/Service Provider: Riverside County Department of Waste Resources

| Service | Description | Unit Price |
|--|--|---|
| <u>Program Product Consolidation</u> | MRC will compensate the COUNTY for all Units of Program Products dropped off by California residents free of charge that COUNTY Consolidates in a Collection Container picked up by a Transportation Provider. The COUNTY will not place either Non-Program Products, Non-Conforming Units or Units that are unsuitable for recycling in such Collection Containers. | \$2.38 per Unit |
| <u>Solid Waste Disposal of Non-Conforming Units</u> | MRC will compensate COUNTY for disposal of Non-Conforming Units dropped off by individual California residents free of charge. Excludes Units dropped off by businesses or other entities. | \$0.88 per Unit |
| <u>Storage and Transportation Services Option</u> | COUNTY may provide its own storage container and Transportation Services to transport above Units to an MRC-contracted recycler. Such Services will be governed by Attachment F ("Storage and Transportation Services") | Storage Container: \$0 per Month per Storage Container Transport: \$0 per Trip Not Applicable |

By initialing this form, the parties agree to the Compensation Rates above:

MRC initials: 

Service Provider initials: 

Additional Sites: Pursuant to Section 20.5 of the agreement entitled "California Used Mattress Recycling Program Collection Facility and Used Mattress Management Services Agreement" entered into between the Mattress Recycling Council, Inc. and _____, executed on _____, 201__ (the "Agreement"), this Attachment B form may be used to add Additional Sites to the Agreement. By signing below, the Additional Site hereby agrees that the Agreement's terms will govern its relationship with MRC, and it accepts all the same terms, conditions, responsibilities and liabilities attributed to a Service Provider as set forth in the Agreement.

IN WITNESS WHEREOF, the parties have each caused this Agreement to be executed by its duly authorized representative on the day and year set forth above.

By:

Authorized Signatory
Mattress Recycling Council, Inc.

Authorized Signatory

[Name of Additional Site/Service Provider]

Print Name

Print Name

Print Title

Print Title

Date: _____

Date: _____

Notices and Payments for Service Provider should be sent to:

Attn: _____

Address: _____

Phone: _____

Fax: _____

Email: _____

ATTACHMENT C: MODEL INVOICE

COUNTY: _____

Collection Facility Location: _____

Unique Identifying Invoice Number: _____

| Service (refer to Attachment B of Agreement for definitions of below Service terms) | Quantity of Units | Unit Price | Invoiced Amount |
|--|--------------------------|----------------------------------|----------------------------|
| Program Product Consolidation | | \$__ per Unit | |
| Solid Waste Disposal of Non-Conforming Units | | \$__ per Unit | |
| Storage and Transportation Services Option Storage Container Fee | | \$__ per Month Not Applicable | |
| Storage and Transportation Services Option Transport Services | | \$__ per Trip Not Applicable | |
| TOTAL | | | |

The above invoice represents, to the best of my knowledge, complete and accurate information regarding the Services rendered and for which the COUNTY seeks payment through the Program. I hereby certify on behalf of the COUNTY that the attached back-up documentation is accurate.

Name:

Company Title:

Date:

ATTACHMENT D: GUIDELINES



**Mattress
Recycling
Council**

**California Mattress Recycling Program
COLLECTION GUIDELINES**

October 2015

CONTACTS

MRC Program Coordinators

Mark Patti
Southern California Coordinator
661-302-8888
mpatti@mattressrecyclingcouncil.org

Rodney Clara
Northern California Coordinator
415-509-8453
rclara@mattressrecyclingcouncil.org

Mattress Recycling Council Inc.
501 Wythe Street
Alexandria, VA 22314
www.mattressrecyclingcouncil.org

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About the Mattress Recycling Council

In 2013, California enacted Senate Bill 254, later amended by Senate Bill 1274, which requires mattress manufacturers to create a recycling program for mattresses discarded in the state. The Mattress Recycling Council (MRC) is the non-profit organization established by the mattress industry to develop and operate the California mattress recycling program. The Program will start on December 30, 2015.

MRC has contracted with service providers to transport and recycle mattresses and box-springs from collection sites throughout the state. For simplicity, we will refer to both mattresses and box-springs as just mattresses. These Guidelines describe the Program and what your facility needs to do to participate. MRC reserves the right to update, change, modify, amend, add or remove terms, or otherwise alter these Guidelines at any time with or without prior notice.

What MRC Provides

Staff at all participating collection sites must be knowledgeable regarding these Guidelines before accepting mattresses.

MRC provides the following to participating solid waste facilities:

- A collection container to store mattresses that is appropriate for the number of mattresses that the collection site expects to generate and the site's available space
- Transportation from the solid waste facility to a contracted recycler
- No-cost mattress recycling services

PROGRAM MATERIALS

ACCEPTABLE

Only mattresses used and discarded in California can be accepted by the Program. The pictures below exemplify mattresses that are acceptable by the program.



A participating collection site may not charge for mattresses that are dropped off by individuals at its site and recycled through the Program.

UNACCEPTABLE

- Out-of-state mattresses
- Severely damaged, twisted, wet, frozen or soiled mattresses
- Mattresses infested with bed bugs or other living organisms
- Sleeping bags
- Pillows and cushions
- Loose bedding, blankets or sheets
- Car beds
- Juvenile products, i.e., a carriage, basket, dressing table, stroller, playpen, infant carrier, lounge pad, or crib bumper
- Water beds
- Camping air mattresses
- Fold-out sofa beds
- Futons and furniture
- Loose mattress pads and toppers



Mattress Inspection and Examination

Facility staff should screen incoming mattresses to determine whether they are suitable for recycling and should remove mattresses that are:

- Excessively wet or frozen
- Severely twisted, punctured or crushed
- Infested with bed bugs or other living organisms
- Exceptionally soiled or moldy

Mattresses not suitable for recycling should be disposed of through your existing solid waste stream.

Bed Bug Identification

Mattresses and box springs infested with bed bugs are unacceptable for recycling and should be disposed of through your existing solid waste stream. Staff at collection sites should evaluate program materials for evidence of bed bug infestation.



Bed bugs are tan to brown in color, but may appear redder if they have fed.

Adult Bed Bugs are dorsally flat insects, broadly oval, and the size of an apple or melon seed (1/4").

Nymphs look like adults in shape but are smaller.

Eggs are white and barrel shaped.



Signs of bed bug activity may be more obvious than the insects themselves. Look for clusters of dark spots or smudges on mattresses (fecal spots), especially along seams. Eggs, shed skins, and all life stages of bed bugs may also be present in these 'soiled' areas.



For more information on bed bugs, please refer to the resources made possible by the Connecticut Coalition Against Bed Bugs at www.ct.gov/caes/CCABB

MATERIALS COLLECTION & HANDLING

Each collection site will have unique operational considerations. Participating facilities must make their own decisions about how to best manage their operations in the safest manner possible in accordance with applicable laws. At a minimum, each participating site must meet these requirements:

| | MINIMUM PROGRAM REQUIREMENTS |
|---|---|
| SITE | Each collection site must be secure with adequate space and staffing to handle and store acceptable mattresses. |
| PERMITS | Each collection site must have knowledge of, and comply with all applicable federal, state and local laws. These may include, but are not limited to, zoning requirements, state permit requirements, and OSHA or other workplace requirements. Please contact your Local Enforcement Agency (LEA) to confirm whether your site is in compliance with all applicable notifications or requirements for accepting mattresses for recycling at your site. In many cases, this will be your County or local Public Health Department. |
| INSURANCE | Each collection site must maintain general liability insurance of at least \$1,000,000 per occurrence. |
| TRAINING | Staff at each collection site must be trained and knowledgeable regarding these Guidelines before accepting mattresses for recycling. |
| STORING & LOADING MATTRESSES <i>See page 6 for photos and guidelines</i> | <p>Collection sites must keep mattress dry by storing in weather proof containers, or under cover, to maximize their recyclability. In addition, all collection sites must:</p> <ul style="list-style-type: none"> • Make every effort to place mattresses in MRC-designated storage containers immediately upon acceptance • Keep mattresses intact and not intentionally crush or puncture them • Efficiently stack mattresses to maximize the number of units loaded in each storage container • Provide oversight to keep unacceptable items out of MRC-designated storage containers • Remove any non-program materials from MRC-designated storage containers before transport to MRC recyclers • Practice good housekeeping standards, and keep storage containers and program materials in a neat and orderly condition |
| SITE ACCESS | Collection sites must allow MRC access to confirm compliance with these Guidelines. |

Loading Mattresses in Storage Containers

| Container Type | Number of Mattresses |
|----------------------------|----------------------|
| 20-foot sea container | 25-40 |
| 30-yard roll-off container | 25-35 |
| 40-yard roll-off container | 25-40 |
| 48-foot trailer | 110-180 |
| 53-foot trailer | 125-190 |

Expected number of mattresses that should fit in various container sizes



Mattresses and box springs must be packed as efficiently as possible to maximize the number of units in each container.

TRANSPORTATION AND RECYCLING

Transporters

MRC will assign each collection site a transporter to provide a storage container and transport services.

- MRC contracted transporters will provide participating locations with evidence of automobile insurance coverage of at least \$1,000,000 per occurrence
- Each collection site must notify transporter at least 2 business days before a storage container is full of mattresses
- The assigned transporter will pick up full containers and drop off an empty container at the same time
- On the scheduled pick up day, the collection site must make the collection container readily accessible to the transporter
- At the time of pick-up, collection site staff must be present to sign a three-part Bill of Lading (BOL) supplied by the transporter that details the quantity of mattresses in the container, and must provide appropriate copies of the BOL to the transporter

A collection site may choose to provide its own storage containers and transportation at its own cost. These locations must contact the recycler directly to arrange for a convenient drop-off time.

Recyclers

Recyclers under contract with MRC will meet established recycling standards and accurately account for all mattresses it receives, the mattress components it recycles (e.g., foam, steel, wood, fiber, etc.), and any residual disposal. Solid waste facilities will be assigned a recycler by MRC to best service your facility.

PROGRAM WITHDRAWAL & TERMINATION

A collection site's participation in the California mattress recycling program is voluntary. Either party may withdraw from participation with 30 days' notice to the other party. MRC reserves the right to remove any collection site not in compliance with these Guidelines from further participation in the Program.

RECORDKEEPING

Bill of Lading:

A Bill of Lading (BOL) will be provided by the transporter. Before a full container leaves the site, the BOL must be completed and signed by facility staff. Following is a sample BOL and required information:

BILL OF LADING

Date:

Unique BOL #: pre-printed #

Collection Site/ Generator

Facility Name and Operator:

Address:

Type of Collection Site: solid waste facility mattress retailer other _____

Collection Container Type: 20 ft. sea container 30 yd. roll-off 40 yd. roll-off

53 ft. trailer 48 ft. trailer other: _____

Collection Site Count: Mattress and Box Spring Units: _____

Collection Site Certified Net Weight (if available): _____ lbs.

I hereby certify that to the best of my knowledge, the above information is accurate, and all of the products described in this document were used and discarded in California.

Name (print), Title

Signature

Date

Transporter

Company Name:

Address:

Truck #:

Name (print), Title

Signature

Date

Mattress Recycler

Date:

Company Name:

Address:

Recycler Count: Mattress Units: _____ Box Spring Units: _____

Net Weight of all Mattress and Box Spring Units: _____ lbs.

Comments/Count Discrepancies:

I hereby certify that to the best of my knowledge, the above information is accurate, and all of the products described in this document were used and discarded in California.

Name (print), Title

Signature

Date

ATTACHMENT E: COLLECTION FACILITIES / EVENTS

Provide all applicable information.

| | | |
|--------|---|--|
| Site 1 | 1. Type: (fixed or temporary event) | Fixed |
| | 2. Name of site/event | Badlands Sanitary Landfill |
| | 3. Street address for site or event | 31125 Ironwood Avenue |
| | 4. City, State, Zip Code for site or event | Moreno Valley, CA 92555 |
| | 5. Permit holder | Riverside County Department of Waste Resources |
| | 6. Phone # for general public | (951) 486-3200 |
| | 7. Days/hours | Monday through Saturday 6:00 am to 4:30 pm, Closed during major holidays and Sundays |
| | 8. Drop off limits (self-imposed) | |
| | 9. Service area (cities/towns) | Riverside County |
| | 10. Special site/event notes | |
| | 11. Contact person's name and title | Emily Chau, Program Coordinator |
| | 12. Contact person's agency/company | Riverside County Department of Waste Resources |
| | 13. Contact person's phone | (951) 486-3277 |
| | 14. Contact person's email | echau@co.riverside.ca.us |
| | 15. Promote site/event on MRC site locator? (yes/no) | Yes |
| | 16. Advertise site in MRC ads? (yes/no) | Yes |
| | 17. Best newspapers and radio stations for promoting this site/event? | Press Enterprise |

Site 2

- 18. Additional information
- 1. Type: (fixed or temporary event)
- 2. Name of site/event
- 3. Street address for site or event
- 4. City, State, Zip Code for site or event
- 5. Permit holder
- 6. Phone # for general public
- 7. Days/hours
- 8. Drop off limits (self-imposed)
- 9. Service area (cities/towns)
- 10. Special site/event notes
- 11. Contact person's name and title
- 12. Contact person's agency/company
- 13. Contact person's phone
- 14. Contact person's email
- 15. Promote site/event on MRC site locator? (yes/no)
- 16. Advertise site in MRC ads? (yes/no)
- 17. Best newspapers and radio stations for promoting this site/event?
- 18. Additional information

| |
|--|
| |
| Fixed |
| Lamb Canyon Sanitary Landfill |
| 16411 Lamb Canyon Road |
| Beaumont, CA 92223 |
| Riverside County Department of Waste Resources |
| (951) 486-3200 |
| Monday through Saturday 6:00 am to 4:30 pm, Closed during major holidays and Sundays |
| |
| Riverside County |
| |
| Emily Chau, Program Coordinator |
| Riverside County Department of Waste Resources |
| (951) 486-3277 |
| echau@co.riverside.ca.us |
| Yes |
| Yes |
| Press Enterprise |
| |

ATTACHMENT F: STORAGE AND TRANSPORTATION SERVICES

1. COMPENSATION

1.1. Rates.

1.1.1. The Rates for Storage and Transportation Services are set forth in Attachment B "Compensation" of this Agreement, and are incorporated by reference herein.

1.2. Payments to the COUNTY.

1.2.1. In order to receive payment from MRC for Storage and Transportation Services, the COUNTY, at its own expense, must provide MRC with a properly completed Bill of Lading as shown in Attachment D's Guidelines, and an invoice as shown in Attachment C properly accounting for the Storage Containers and the Transportation Services.

2. SCOPE OF STORAGE AND TRANSPORTATION SERVICES

COUNTY's responsibilities for providing Storage and Transportation Services are as follows:

2.1. General Requirements.

2.1.1. All Program Products placed in Collection Containers will become the responsibility of the COUNTY until they are delivered to an MRC-contracted recycler, at which point responsibility and property will transfer to the recycler. At no time, however, will the COUNTY own such Program Products.

2.1.2. The COUNTY will provide, at its expense, a Bill of Lading to the recycler in a format that conforms to the Model Bill of Lading included in the Guidelines in this Agreement, Attachment D.

2.1.3. The COUNTY will take every precaution to protect all public and private property during the performance of its responsibilities under this Agreement.

2.1.4. Any damage to property caused by the COUNTY's personnel or equipment (including that of its subcontractors) will be promptly repaired to the condition existing before the damage or be replaced. All costs for such repairs or replacements will be solely the responsibility of the COUNTY.

2.1.5. To the extent possible, the COUNTY, in carrying out its work, must employ such methods or means that will not interrupt or interfere with the recycler's work.

2.2. Providing Storage Containers.

2.2.1. The COUNTY will have thirty (30) days from the date of this contract to provide storage container(s) to its designated collection location(s).

2.2.2. The COUNTY will be responsible for keeping all Storage Containers and other equipment that the COUNTY or its subcontractors provide in the performance of this Agreement in good working order and in a clean, sanitary and attractive condition, and as free from offensive odors as possible. Equipment is subject to periodic inspection by MRC.

2.2.3. All Storage Containers and other equipment provided by the COUNTY or its subcontractors will be marked and properly identified in a method mutually acceptable to MRC and the COUNTY.

2.2.4. The COUNTY will post appropriate notices on Storage Containers provided by the COUNTY or its subcontractors stating that such containers are only for temporary storage of mattresses and/or Program Products dropped off free of charge by California consumers, and that Program Products obtained from other entities, Non-Program Products and Units that are not suitable for recycling may not be placed in such Storage Containers.

2.3. Transportation of Program Products.

2.3.1. The COUNTY will pick-up and transport collected Program Products from its solid waste facility(ies) to recycler's premises.

2.3.2. The COUNTY is responsible for scheduling deliveries with the recycler. MRC will not be liable for any fees related to unscheduled, late or canceled deliveries made to the recycler.