

**2016 Amendment of Agreement between Regional Disposal Company
and Pend Oreille County, Washington
Regarding Transfer Station Operations and
Solid Waste Transportation and Disposal Services**

THIS 2016 AMENDMENT OF AGREEMENT BETWEEN REGIONAL DISPOSAL COMPANY AND PEND OREILLE COUNTY, WASHINGTON REGARDING TRANSFER STATION OPERATIONS AND SOLID WASTE TRANSPORTATION AND DISPOSAL SERVICES (this "Amendment") is made as of the 29th day of February, 2016, by and between Regional Disposal Company ("Contractor"), a Washington general partnership, and Pend Oreille County (the "County"), a political subdivision of the State of Washington;

RECITALS

A. The County and Contractor are parties to that certain Agreement between Regional Disposal Company and Pend Oreille County, Washington Regarding Transfer Station Operations and Solid Waste Transportation and Disposal Services dated as of December 5, 1994, as previously amended by (1) an Amendment to Agreement between Regional Disposal Company and Pend Oreille County, Washington Regarding Transfer Station Operations and Solid Waste Transportation and Disposal Services executed by Regional Disposal Company on February 10, 2008 and by the County on February 25, 2008, and (2) an Amendment to Agreement between Regional Disposal Company and Pend Oreille County, Washington Regarding Transfer Station Operations and Solid Waste Transportation and Disposal Services executed by Regional Disposal Company on November 18, 2011 and by the County on November 28, 2011 (collectively the "Contract").

B. Subject to the terms and conditions of this Amendment, the County and Contractor wish to further amend in certain respects the Contract.

AGREEMENT

For good and valuable consideration, including the respective agreements of the parties set forth in this Amendment, the County and Regional Disposal Company agree as follows:

1. Amended And Restated Agreement. Effective for all periods from and after February 29, 2016 (the "Amendment Date"), the Contract is amended so as to conform with the attached Terms and Conditions of Amended and Restated Agreement between Regional Disposal Company and Pend Oreille County, Washington (the "Amended and Restated Terms and Conditions"). The Amended and Restated Terms and Conditions express the entire agreement of the County and Contractor with respect to the services to be provided by the Contractor from and after the Amendment Date. From and after the Amendment Date, the title of the Contract is amended be:

*Amended and Restated Agreement
Between Regional Disposal Company and Pend Oreille County, Washington
Regarding Solid Waste Transportation and Disposal Services*

2. Acknowledgments. The County and Contractor acknowledge that the County has exercised its option to internalize operation of the Transfer Facilities, and as a result one of the purposes of this Amendment and of the Amended and Restated Terms and Conditions is to eliminate any obligation of Contractor on or after the Amendment Date with respect to the operation of the Transfer Facilities, and to eliminate any obligation of Contractor on or after April 1, 2016 for transport of waste or Containers between or among Transfer Facilities, while retaining the obligation of Contractor to accept Acceptable Waste by the County pre-loaded into Containers at the South Transfer Facility, to Transport such containerized Acceptable Waste to the Disposal Site, and to dispose of such Acceptable Waste at the Disposal Site. In addition, the County and Regional Disposal Company by this Amendment and the Amended and Restated Terms and Conditions are further extending the Term of the Contract to midnight on December 15, 2020 with a further five-year term extensions as provided in Article 20 of this Contract, and are establishing a new Service Fee to be paid by the County to Contractor covering both Transportation from the South Transfer Facility and Disposal, and are providing for future adjustments to such Service Fee based on a different consumer price index than the one specified in the current Contract.

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WHEREFORE, the parties are executing this 2016 Amendment Of Agreement Between Regional Disposal Company And Pend Oreille County, Washington Regarding Transfer Station Operations And Solid Waste Transportation And Disposal Services as of the date stated in the introductory paragraph on the first page.

COUNTY:

Pend Oreille County,
a political subdivision of the State of
Washington
By the Pend Oreille Board of County
Commissioners

CONTRACTOR:

Regional Disposal Company,
a Washington general partnership
By Rabanco, Ltd., Managing Partner

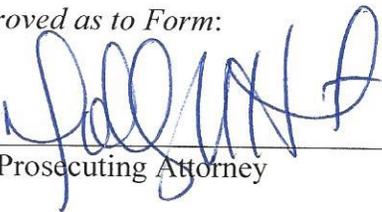
By: 
Mike Manus, Commissioner and
Commission Chair

By: _____
Name: _____
Title: _____

By: 
Karen Skoog, Commissioner and
Commission Vice-Chair

By: 
Stephen Kiss, Commissioner

Approved as to Form:

By: 
Prosecuting Attorney

**TERMS AND CONDITIONS OF
AMENDED AND RESTATED AGREEMENT
BETWEEN REGIONAL DISPOSAL COMPANY AND PEND OREILLE COUNTY,
WASHINGTON**

(Effective For Periods From And After The Amendment Date)

ARTICLE 1

Definitions

For the purposes of this Contract and the Contract Documents, the following terms shall have the following meanings:

1.1 Acceptable Waste means all putrescible and nonputrescible waste including but not limited to garbage, rubbish, refuse, paper and cardboard; plant and grass clippings and leaves; commercial, industrial, demolition and construction wastes; wood waste; discarded or abandoned vehicles or parts thereof; septage screenings; discarded home and industrial appliances; manure, vegetable or animal solids and semisolid wastes and dead animals; and Household Hazardous Waste. Acceptable Waste does not include source separated recyclable or compostable materials intended for collection as part of a franchised collection contract, and does not include Unacceptable Waste.

1.2 Amendment Date means February 29, 2016.

1.3 Change in Law means:

(a) any of the following that occurs after the date of this Contract:

(i) The enactment, adoption, promulgation, modification, repeal or change in interpretation of any federal, state, city, county or other local law, ordinance, code, rule, requirement, regulation or similar legislation;

(ii) The issuance of an order, decree or judgment of any federal, state or local court, administrative agency or governmental office or body, to the extent that order, decree or judgment is not also the result of negligence or willful action or failure to act of the party relying thereon, provided that contesting in good faith any order, decree or judgment shall not constitute or be construed as a willful or negligent action of that party; or

(iii) The imposition of any material conditions on the renewal of any official permit, license or approval which establishes requirements making the operation of the Disposal Site or Vehicles financially more burdensome than the most stringent requirements in effect on the Amendment Date.

(b) Notwithstanding the foregoing, the following shall not constitute a Change of Law for purposes of this Contract:

(i) the adoption of, or change, amendment or modification to, any federal, state, local or any other law which imposes or increases a tax, fee or charge upon business activities generally, or certain classes of business activities generally, and which is not specifically directed at solid waste disposal and/or solid waste transportation business activities to the exclusion of other business activities not directly related to solid waste; or

(ii) the adoption of or change, amendment or modification to any law, ordinance, code, rule, regulation or similar requirement by a local governmental body with jurisdiction over the Disposal Site, if such action is taken at the instance or request of Contractor.

1.4 Consumer Price Index or CPI means the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average – Water and Sewer and Trash Collection expenditure category (1982-84 = 100), as published by the U.S. Department of Labor, Bureau of Labor Statistics.

1.5 Container means a receptacle for transporting Acceptable Wastes. The term includes, but is not limited to, intermodal shipping containers.

1.6 Contract means this *Amended And Restated Agreement Between Regional Disposal Company And Pend Oreille County, Washington Regarding Solid Waste Transportation And Disposal Services*.

1.7 Contract Documents means the combination of all of the following:

- (a) this Contract;
- (b) the performance bonds, letters of credit or other financial guarantees required under Section 6.4; and
- (c) any and all appendices, attachments, amendments, change orders, or modifications of the foregoing documents agreed to by the parties in the manner prescribed by the Contract unless otherwise designated for informational or proposal evaluation purposes only.

1.8 Contractor means Regional Disposal Company, a Washington general partnership selected by the County to provide Transportation and Solid Waste Disposal services in accordance with this Contract, its successors or assigns and, as applicable, the Contractor's officers, employees and agents.

1.9 Dispose or Disposal means all work, services or operations performed by the Contractor pursuant to this Contract on or after the time that Acceptable Waste enters the boundaries of the Disposal Site pursuant to this Contract.

1.10 Disposal Site means: (a) the Roosevelt Regional Landfill in Klickitat County, Washington; or (b) any other landfill or disposal site used by the Contractor for the final treatment, utilization, processing, or deposition of any Acceptable Waste received under this Contract which (i) meets the requirements of 40 CFR Part 258; and (ii) is approved in advance by the County, which approval may not be unreasonably withheld.

1.11 Hazardous Waste means (a) all waste defined or characterized as hazardous waste by the federal Solid Waste Disposal Act (42 U.S.C. 3251 *et seq.*), as amended, including the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901, *et seq.*, and all future amendments thereto, or regulations promulgated thereunder, and (b) all waste defined or characterized as dangerous or extremely hazardous in the Washington State Hazardous Waste Management Act, and all future amendments thereto or regulations promulgated thereunder, provided that the term Hazardous Waste:

(i) is intended to mean and include those substances which are not normally expected to be disposed of by generally accepted sanitary landfill methods;

(ii) includes radioactive wastes; and

(iii) shall be construed to have the broader, more encompassing definition where there exists a conflict in the definitions employed by two or more governmental agencies having concurrent or overlapping jurisdiction over Hazardous Waste.

1.12 Load or Loaded means the process by which and status of a Container after Waste is discharged into that Container at a Transfer Facility.

1.13 Person or Persons means, without limitation, any individual, firm, corporation, association, partnership, consortium, joint venture, entity, government agency, or unit of local government.

1.14 Project means any and all items that the Contract requires to be done, kept, performed and furnished by the Contractor and by the County, respectively, for the Transportation and Disposal of Waste.

1.15 RCW means the Revised Code of Washington.

1.16 Representative means, depending upon the context, the authorized representative of the County or the Contractor designated in accordance with Article 5.

1.17 Service Area means all areas within Pend Oreille County.

1.18 Service Fee means the per-ton fee paid by the County to the Contractor for services as defined in this Contract as set forth in Article 8.

1.19 Solid Waste Reduction Program means any program that reduces the amount of Waste that would otherwise be disposed of in a landfill, including without limitation recycling, composting, salvaging and waste-to-energy projects.

1.20 Solid Waste Stream means Waste generated in the Service Area.

1.21 Special Waste means asbestos containing waste or problem waste as defined in 173-304-100 (61) WAC.

1.22 State/Local Solid Waste Handling Fee means a governmentally-imposed fee, tax, surcharge, or similar charge on solid waste handling services, including but not limited to Transportation and Disposal services; the term does not include federally-imposed fees, taxes, surcharges, or other charges levied equally on solid waste handling in all states.

1.23 Surety means the Person approved by the County to provide a cash bond, performance bond, or other financial guarantee required under Section 6.4 guaranteeing or providing the funds to guarantee, performance of the Contractor's obligations under this Contract; the surety must be licensed to conduct business in the state of Washington and be included on the current list of Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies, as published in Circular 570, as amended, by the Audit Staff Bureau of Accounts, United States Treasury Department.

1.24 Term or Term of Contract means the term of this Contract determined in accordance with Article 20, and any extensions thereof agreed to in writing by the County and Contractor.

1.25 Tractor means a vehicle used to move Containers.

1.26 Transfer Facility means any County transfer station. As of the Amendment Date, the Transfer Facilities consist of: a South Transfer Station located about three miles southwest of Newport on Deer Valley Road, a Central Transfer Station located about one mile south of Usk at 661 Jared Road, and a North Transfer Station located about two miles east of Ione at 1712 Sullivan Lake Road.

1.27 Transfer Trailer means a Tractor-drawn trailer or intermodal shipping Container on a chassis.

1.28 Transport or Transportation means the Contractor's acceptance from the County of Containers containing Acceptable Waste at the South Transfer Facility and the Transportation of such Containers from the South Transfer Facility to the Disposal Site by Regional Disposal Company.

1.29 Unacceptable Waste means:

(a) Waste that may not be disposed at the Disposal Site under federal, state or local law, regulation, rule, code, permit or permit condition;

- (b) Hazardous Waste; or
- (c) any other Waste expressly excluded from Acceptable Waste.

1.30 Uncontrollable Circumstances means any act or event that has had or may reasonably be expected to have a material adverse effect on the rights or obligations of a party to this Contract, or a material adverse effect on the County's operation, ownership or possession of the Transfer Facilities, or the operation, ownership or possession of Containers, Vehicles or Disposal Site, if that act or event is beyond the reasonable control of the party relying thereon as justification for not performing an obligation or complying with any condition under this Contract. Those acts or events shall include, but are not limited to, the following:

(a) an act of God (except normal weather conditions for the geographic area affected), hurricanes, tornadoes, epidemic, landslide, lightning, earthquake, volcano eruption, nuclear radiation, fire or explosion, flood or similar occurrence, an act of public enemy, war, blockade, insurrection, riot, general arrest, or restraining of government and people, civil disturbance or similar occurrence, that directly affects the County's use or operation of the Transfer Facility, or the Contractor's use or operation of Containers, Transfer Trailers, Vehicles or the Disposal Site;

(b) the failure of any appropriate federal, state or local agency or public or private utility having operational jurisdiction over, or responsibility to serve any of the Transfer Facility, Containers, Vehicles or Disposal Site to provide, maintain and assure the maintenance of any necessary utility which failure is not caused by the failure to pay for those utilities or by the failure to comply with applicable law of the party asserting such circumstance as an Uncontrollable Circumstance;

(c) any strike or labor dispute; or

(d) a Change in Law (except that a Change in Law imposed by the County may not be asserted as an Uncontrollable Circumstance by the County).

1.31 U.S.C. means the United States Code.

1.32 Vehicle means a Tractor, Container, Transfer Trailer, railroad rolling stock or other piece of equipment used in the Transportation of Waste.

1.33 WAC means the Washington Administrative Code.

1.34 Waste means any Acceptable Waste that is received at any of the Transfer Facilities.

ARTICLE 2

General Provisions

2.1 Governing Law. This Contract is made in and shall be construed under the laws of the State of Washington.

2.2 Complete Agreement. This Contract constitutes the entire and complete agreement and final expression of the parties with respect to the subject matter it contains.

2.3 Complementary Contract Documents. The Contract Documents are complementary and shall be interpreted so that what is required by one shall be as binding as if required by all. The Contractor immediately shall bring to the County's attention, for decision and mutual revision, any observed conflicts between or duplications of any Contract provisions or any material omission from the Contract. The Contractor shall obtain written instructions from the County's Representative before proceeding with services affected by omissions or discrepancies in the Contract Documents.

2.4 Severability. If any Contract provision is held void, invalid, or unenforceable under any applicable law, the remaining provisions of the Contract shall remain in effect and bind the parties; however, the parties shall negotiate in good faith to amend the Contract to effectuate the intent of any void, invalid, or unenforceable provision, if permissible under applicable law.

2.5 Time of the Essence; No Waiver. Time is of the essence of this Contract. The County's or Contractor's failure to object to a breach of any Contract provision is not and shall not be construed as a waiver of that provision. The payment or acceptance of compensation subsequent to any breach is not and shall not be deemed an acceptance of that breach. Any waiver must be in writing and signed by the party against whom the waiver is asserted; otherwise, the waiver shall not be effective.

2.6 Construction of Terms. Unless otherwise specified in the Contract, words describing material or work that have a well-known technical or trade meaning shall be construed in accordance with the well-known meaning generally recognized by solid waste professionals, engineers and trades.

2.7 Access. The County shall have the right of reasonable access to inspect any or all of the Contractor's and any subcontractors' operations, Containers, Vehicles, Disposal Site, or records related to this Contract, if and to the extent reasonably necessary to verify the Contractor's compliance with the terms and conditions of this Agreement; however, that the County's access to records for such purpose shall be subject to the confidentiality provisions of Section 6.5, and the County shall not have any right to review individual personnel records (including but not necessarily limited to employment applications, employment records and I-9 forms) with respect to individuals except to the extent that Contractor otherwise is obligated by law to make such records available to the County.

2.8 No Third Party Beneficiaries. This Contract is not intended to create nor does it create any third party beneficiary or rights in any private Person. This Contract does create certain rights in the County with respect to the Contractor but those rights may be exercised only by and through the County.

2.9 Personal Liability. This Contract is not intended to create or result in any personal liability for any public official or County employee or agent, or for any of the directors, officers, employees, affiliates or agents of Contractor, nor shall the Contract be construed to create that liability.

2.10 Comprehensive Contract. All services that are necessary to complete and carry out the Project as described in the Contract Documents shall be considered part of the Project and the Contractor shall perform or provide for the services without extra compensation unless otherwise expressly stated in the Contract Documents.

2.11 Subsidiary Contracts. No contract between the Contractor and its subcontractors, officers, employees, or agents, including all contracts relating to the use, lease, operation, or ownership of Containers, Vehicles or the Disposal Site, shall prevent, expressly or in effect, the Contractor from performing its obligations under this Contract.

2.12 Notices. Any written notice under the Contract shall be deemed served when: (a) delivered in person to the Person to whom it was intended; (b) if sent by certified mail or other carrier, return receipt requested, to that Person at the Person's last known business address; or (c) if sent by facsimile (confirmed promptly by the means described in clause (a) or (b) of this paragraph). The date or time of service shall be three (3) business days after the date or time the relevant document was sent to or personally delivered at that address. The Contractor shall address all notices and correspondence for the County to the County's Representative. The County shall address all notices and correspondence for the Contractor to the Contractor's Representative.

2.13 Article, Section and Subsection References. Any Articles, Sections, or subsections mentioned in this Contract by number only, without reference to another document refer to those Articles, Sections, or subsections contained in this Contract.

2.14 Amendment or Waiver. Neither this Contract nor any provision hereof may be changed, modified, amended or waived except by written instrument signed by the parties.

2.15 Contract Execution. For purposes of this Contract, Contract execution shall be the first date upon which both parties have executed the Contract.

ARTICLE 3

Independent Contractor

3.1 Contractor as Independent Contractor. The County and Contractor each acknowledges that the services of Contractor provided by this Agreement are not services that the County has the capability of undertaking itself, and neither party considers Contractor to be the

“functional equivalent” of a County employee. The Contractor shall perform all work under this Contract as an independent contractor. The Contractor is not and shall not be considered an employee, agent, subagent, or servant of the County for this Contract or otherwise; the Contractor’s subcontractors, employees, or agents are not and shall not be considered employees, agents, subagents, or servants of the County for this Contract or otherwise. Nothing in this Contract shall be construed as creating a partnership or joint venture between the Contractor and the County or as giving the County a duty to supervise, direct or control the acts or omissions of any Person performing services or work under the Contract. Except for any records that Contractor is specifically required by this Agreement to generate and provide to the County, the parties acknowledge that all records generated by Contractor in the course of Contractor’s performance of its services are intended to be private records of the Contractor.

ARTICLE 4

Subcontractors

4.1 Suppliers and Subcontractors. The Contractor shall submit to the County the names and addresses of all proposed suppliers or subcontractors for Project items and/or services that will or reasonably should be expected in any twelve-month period to equal or exceed twenty-five percent (25%) of the Service Fees received by the Contractor under this Contract for the previous twelve months of operations. Contractor shall make this submission at least thirty (30) days prior to the effective date of any such subcontract. The County reserves the right to reject in writing within fifteen (15) days of such submission any such supplier or subcontractor. The County’s right to reject shall not be unreasonably exercised. The County hereby approves in advance, without requirement of any such submission, (1) Contractor’s use of BNSF Railway Company as a rail transportation subcontractor, (2) Contractor’s use of any person or entity authorized to operate as a common carrier in the state of Washington as a subcontractor for the services of Contractor described in clause (g) of Section 6.1, and (3) Contractor’s use of any entity controlled by, controlling or under common control with Contractor as a subcontractor.

ARTICLE 5

Contractor and County Representatives

5.1 Representatives. The Contractor and the County shall, respectively, designate and provide for the Term of this Contract a 24-hour emergency contact telephone number.

5.2 Contractor Representative. The Contractor’s Representative shall be the Contractor’s agent and shall represent the Contractor for all purposes of this Contract. All written or oral directions, instructions, or notices given by the County to that Representative and related to the subject matter of the Contract shall bind the Contractor as if delivered to the Contractor personally. The Contractor’s Representative shall be in charge of the Project at all times and shall have authority to act on behalf of the Contractor; the Contractor’s Representative’s statements, representations, actions and commitments shall fully bind the Contractor.

The Contractor's Representative is:

Don Tibbets, General Manager
2733 3rd Street South
Seattle, WA 98134

Phone: (206) 332-7740
Email: DTibbets@republicservices.com

5.3 County Representative. Unless otherwise provided, the County's Representative shall be the County's representative for all purposes of this Contract and that Representative's statements, representations, actions and commitments shall fully bind the County to the extent permitted by applicable law.

The County's Representative is:

Sam Castro, Public Works Director
PO Box 5065
625 West 4th Street
Newport, WA 99156

Phone: (509) 447-4513
Email: scastro@pendoreille.org

5.4 Change in Representative. The parties shall promptly notify each other in writing of any change in the Person designated as the Contractor's or the County's Representative.

ARTICLE 6

Contractor Responsibilities

6.1 General. The Contractor's responsibilities under this Contract include, but are not necessarily limited to:

(a) acceptance from the County of pre-loaded Containers of Acceptable Waste at the South Transfer Facility, the Transportation of such pre-loaded Containers to the Disposal Site, and the Disposal of such Acceptable Waste at the Disposal Site, all in compliance with the terms and conditions of this Contract;

(b) ownership, operation, and/or leasing of, and/or right to use for disposal purposes, the Disposal Site, and of all Containers and Vehicles and other equipment necessary to the performance of Contractor's obligations under this Contract;

(c) procurement and maintenance of performance bonds, letters of credit, or other financial guarantees in accordance with Section 6.4;

(d) compliance with all applicable laws in accordance with Section 6.5; obtaining any permit, license, certificate, or governmental approval required for the Project in accordance with Section 6.6; and the payment of all applicable taxes and fees in accordance with Section 6.7;

(e) procurement and maintenance of insurance in accordance with Article 12;

(f) maintenance of a closure and post-closure trust fund in accordance with Section 6.9; and

(g) until March 31, 2016, the short-haul transport of pre-loaded drop box Containers from the North Transfer Station and the Central Transfer Station to the South Transfer Station, the unloading (tipping) of such transported drop box Containers at the South Transfer Station, and the return of such empty drop box Containers to the North Transfer Station and Central Transfer Station.

All Containers and Transfer Trailers necessarily to the performance of the Contractor's services under this Contract shall be furnished by Contractor, and Contractor at all times shall keep the County adequately supplied with Containers and Transfer Trailers for such purposes. Title to all such Containers and Transfer Trailers supplied by Contractor for the County's use shall remain with Contractor.

6.2 No Operation of Transfer Facilities. The parties acknowledge that previous to the Amendment Date, the Contractor operated the Transfer Facilities as part of its services under this Contract. However, Contractor no longer has any obligations with respect to the operation of any of the Transfer Facilities; rather, the County is solely responsible for all such operations, and for any transportation of Acceptable Waste to the South Transfer Station from any of the other Transfer Facilities. Unless already removed, Contractor shall have a reasonable period of time following the Amendment Date to remove from the Transfer Facilities all equipment and fixtures belonging to Contractor used in their operation, with the exception of any equipment or fixtures that Contractor commits under any separate written agreement to make available to the County for its use in operating one or more of the Transfer Facilities. Contractor promptly shall repair any damage caused by any such removal by Contractor of its equipment and fixtures; but otherwise, the County accepts turnover by Contractor of all improvements at the Transfer Stations on the Amendment Date in their "as is, where is" condition, and without any warranty or representation with respect to their condition, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. Contractor at its own expense within a reasonable time following the Amendment Date may conduct an environmental assessment of any one or more of the Transfer Facilities.

6.3 Equipment; Replacement or Repair.

(a) Equipment; Assignment; Equipment Lease. The Contractor shall construct, own, lease, or otherwise provide, maintain, or operate in a quantity sufficient to perform the services under this Contract in a timely manner throughout the Term of the Contract, the following:

- (1) Vehicles;
- (2) Containers; and
- (3) the Disposal Site.

(b) Replacement or Repair. The Contractor at its sole expense shall keep in good working order and repair all equipment necessary to Contractor's timely performance of its services under this Contract.

6.4 Contract Start-Up and Performance Bonds. All bonds required herein shall be issued by surety companies duly authorized to do business in the State of Washington. For purposes of this Article, the word "bond" shall mean any bond, letter of credit or other financial guarantee referred to in this Article and provided to guarantee or provide the funds to guarantee the performance of the Contractor's obligations under this Contract.

(a) Performance Bond. Fourteen days prior to the date of commencement of services pursuant to Section 6.2 above, the Contractor shall provide a one-year contract performance bond ("Performance Bond"). The amount of the Performance Bond for the remainder of 2016 shall be \$455,648.79, and such amount shall be modified for each calendar year thereafter to an amount equal to 100% of the Service Fee paid during the prior year (such adjustments to be made by the end of January of each such subsequent calendar year, and in any event before the Performance Bond then in effect expires). The form of the Performance Bonds provided by Contractor after the Amendment Date shall substantially conform with the form of those provided prior to the Amendment Date.

6.5 Public Records Act and Confidential Business Records.

This Agreement and all public records associated with this Agreement shall be available from the County for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). If and to the extent that possession of public records then in the custody of the Contractor is needed for the County to respond to a request under the Act, as reasonably determined by the County, the Contractor agrees to make such records promptly available to the County. However, if the Contractor considers any record or any portion of any record requested by the County under this Agreement, whether in electronic or hard copy form, not to be a public record or to be a public record exempt from disclosure under law, the Contractor shall clearly identify the record or any specific information within a record that Contractor claims is either not a public record or is otherwise exempt from disclosure. If the County receives a request under the Act to inspect or copy the records or information so identified by the Contractor, and if the County believes that disclosure of any or all of such identified documents or information is required by the Act, the County shall give written notice to the Contractor (a) of the request and (b) of the date by which such records or information will be made available by the County to the requester (if the records or information is in the possession of the County) or must be made available by the Contractor to the requester (if the records or information is in the possession of the Contractor), unless by such date the Contractor initiates appropriate legal proceedings for an order, decree or judgment precluding or enjoining disclosure pursuant to RCW 42.56.540 or other

appropriate process. Any such date designated by the County in any such written notice to Contractor shall be one that is reasonable in light of the time necessary to prepare and file pleadings seeking such a court order, decree or judgment. If the Contractor fails to timely seek a court order to enjoin disclosure, the County will release the requested information on the date specified. If the Contractor timely seeks a court order, decree or judgment to preclude or enjoin disclosure, the County will not disclose the record or information in issue prior to a final determination with respect to the matter unless otherwise ordered by the court to do so, and the Contractor and the County shall abide the result in the case.

The Contractor may designate documents as confidential business records; documents reasonably designated as such shall remain the exclusive property of the Contractor. For purposes of this Section “confidential business records” means records (whether in hard copy or electronic form) containing any trade secrets, proprietary plans, financial data and Contractor personnel information, that Contractor makes available to the County for purposes of verifying Contractor’s compliance with this Contract. Except as required by law or as otherwise authorized by Contractor, the County shall not use the information contained in documents or knowingly permit any Person to examine documents designated as confidential business records unless that Person is an employee, consultant, attorney or other agent of the County examining those documents for purposes of this Contract, and such person has been informed of this restriction.

6.6 Permits, Licenses, etc.. The Contractor shall obtain, maintain and pay for, at Contractor’s sole expense, all permits, licenses and approvals required by law for its operations and activities under this Contract and shall provide copies to the County upon request. The Contractor shall be liable for all fines or civil penalties that may be imposed by any regulatory agency for Contractor-caused violations of permits, laws, or regulations; the County shall not be liable for and shall not reimburse Contractor for payment of those fines or civil penalties. The Contractor reserves the right to contest any fine in an administrative proceeding or in court prior to its payment.

6.7 Taxes and Fees. The Contractor shall be responsible and liable for payment of all federal, state and local taxes and fees, and surcharges of every form, that apply to any and all Persons, property, income, equipment, materials, supplies, structures, or activities that are involved in the performance of this Contract, including but not limited to, any income taxes, real property, excise, sales and use taxes, business and occupation taxes and fees that arise in connection with the Contract; however, the Contractor shall not be responsible or liable for payment of any tax or fee for which the County is ordinarily responsible without regard to the services provided by the Contractor under this Contract. The extent to which the Contractor is permitted to adjust the Service Fee(s) for cost increases in the rates of taxes, fees, or surcharges, if at all, is set forth in Articles 8 and 9.

6.8 Property. The Contractor has or will acquire sufficient property rights to the Disposal Site to satisfy its obligations herein. The Contractor agrees to promptly remove or have removed any liens or encumbrances that, because of any act or default of Contractor, its officers, employees, or agents, or of Contractor’s subcontractors or sub-subcontractors, or material suppliers, or equipment owners are filed against the Disposal Site. The Contractor reserves the right to contest liens prior to their payment.

6.9 Closure and Post-Closure Fund. The County shall have no responsibility for any closure or post-closure costs relating to the Disposal Site. The Contractor shall be responsible for assuring that any closure and post-closure trust fund obligations with respect to the Disposal Site now or hereafter required of it under any applicable federal, state, or local law or regulation are performed.

6.10 Records; Quarterly Report. Within fourteen (14) days of receiving notice of any complaint, appeal, or other judicial or administrative action filed against the Disposal Site, Contractor shall notify the County of the same; provided, however, that such notice is not required for actions in the nature of liens or other claims for payment.

The Contractor shall keep accurate records of all transactions connected with this Contract including, but not limited to, all correspondence and invoices, transaction or weight tickets, or receipts issued at the Transfer Facilities or the Disposal Site. The Contractor shall at all times maintain an accounting system that uses generally accepted accounting principles for all services rendered and materials supplied, including additional and deleted work, in connection with this Contract.

The Contractor shall provide to the County, by the forty-fifth (45th) day following the end of each calendar quarter, a report for the preceding quarter summarizing routine and extraordinary activities during the prior quarter and plans and schedules for future activities. The quarterly report shall include, but not be limited to:

- (a) the tonnage by type of waste accepted by the Contractor from the County at the South Transfer Station;
- (b) a summary of all extraordinary occurrences affecting the Contractor's performance, including but not limited to, occurrences Transfer Facilities or the Disposal Site;
- (c) documentation regarding Unacceptable Waste, if any, gathered, produced and/or retained as required in Article 10; and
- (d) a summary of any material changes in the condition of Disposal Site.

In addition to the quarterly report required under this Section 6.10, Contractor shall provide to the County within forty-five (45) days of the end of any year of operations under the Contract an annual report summarizing and consolidating the information contained in the quarterly reports provided for the preceding year.

6.11 Accidents; Complaints. As between the County and the Contractor, the Contractor shall be responsible for all injuries, accidents and other mishaps in the performance of its services that are not caused by the sole negligence or intentional misconduct of, or a breach of this Contract by, the County. The Contractor shall report any accidents resulting from the performance of this Contract to the County as soon as practicable by telephone, fax or email. For purposes of this Section, "accident" shall include the death of any person, any personal injury resulting in inpatient

hospitalization or out-patient treatment by a physician, or damage to any real or personal property exceeding \$1,000. The Contractor shall report, in writing, to the County, within seven (7) days of that accident, complete details of the accident, including witness statements.

The Contractor shall respond in a reasonable manner to complaints, charges and allegations related to Contractor's performance under the Contract within thirty (30) days of receipt of that complaint, charge, or allegation, including but not limited to, those complaints made or actions brought by citizens, citizen groups and public agencies.

6.12 Payment of Subcontractors and Agents. Unless a reasonable dispute exists concerning payment, the Contractor shall promptly pay all subcontractors, materialmen, suppliers, or laborers engaged for purposes of this Contract in accordance with the contract or agreement between that Person and the Contractor.

6.13 Nondiscrimination in Employment.

(a) The Contractor shall not discriminate against any employee or applicant for employment because of race, religion, creed, color, sex, marital status, national origin, age or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupational qualification. The Contractor shall take action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, color, sex, marital status, national origin, age or the presence of any sensory, mental, or physical handicap. This Section shall apply to, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The Contractor agrees to post, in conspicuous places, available to employees and other applicants for employment, notices setting forth the provisions of this nondiscrimination Section. The Contractor will, prior to commencement and during the term of this Contract, furnish the Director or his or her designee, upon request and on such forms as may be provided by the Director therefor, a report of the action taken by the Contractor in implementing the terms of this provision, and will permit access by the Director of his or her designee to the Contractor's records for the purpose of investigation to determine compliance with this provision, provided, however, that Contractor shall not be obligated to disclose to the Director any individual personnel records, including employment applications, employment records or I-9 forms, except to the extent that Contractor otherwise is obligated under applicable law to make such documents available to the County. The Contractor agrees to comply with the provisions of Title VI of the Civil Rights Act of 1964, and RCW 49.60, the state law against discrimination.

6.14 Compliance with Laws and Regulations. Contractor agrees that, in its performance of services under this Contract, Contractor will qualify under, and comply with, any and all federal, state and local laws and regulations now in force and which may hereafter during the term of this Contract, be enacted and become effective, which are applicable to Contractor, its employees, agents or subcontractors, if any, concerning the Transportation and Disposal of Waste delivered by the County to Contractor; provided, however, Contractor shall have the right to contest in good faith the application of such law or regulation to the Disposal Facility or any other services to be

supplied under this Contract and Contractor shall not be deemed in breach of this Contract during such good faith contest for failure to comply, except as provided in this Contract.

6.15 Scheduling; Management; Quality of Performance. The Contractor shall coordinate, schedule in an orderly manner and manage all work done by Contractor's officers, employees, subcontractors. The Contractors and subcontractors shall perform every act or service under this Contract in a skillful and competent manner in accordance with the standards of the solid waste transportation and disposal industries. The Contractor shall be responsible to the County for any errors, deficiencies, or failures to perform under this Contract, except to the extent caused by any errors, deficiencies, or failures to perform under this Contract on the part of the County. All workers and subcontractors shall be skilled in their trades. All operators shall be licensed or otherwise qualified as required by law. The Contractor shall, at all times, enforce strict discipline and good order among its employees and all subcontractors.

6.16 Representations and Warranties of the Contractor. The Contractor makes the following representations and warranties to and for the benefit of the County:

(a) The Contractor is duly organized and validly existing as a partnership in good standing under the laws of the State of Washington.

(b) The Contractor has full legal right, power and authority to execute and deliver, and perform its obligations under this Contract, and has duly authorized the execution and delivery of this Contract. This Contract has been duly executed and delivered by the Contractor and constitutes a legal, valid and binding obligation of the Contractor enforceable against the Contractor in accordance with its terms.

(c) Neither the execution or delivery by the Contractor of this Contract, the performance by the Contractor of its obligations hereunder, nor the fulfillment by the Contractor of the terms and conditions hereof: (i) conflicts with, violates or results in a breach of any applicable law; or (ii) conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or to the best of Contractor's knowledge, any agreement or instrument, to which the Contractor is a party or by which the Contractor or any of its properties or assets are bound, or constitutes a default thereunder.

(d) No approval, authorization, license, permit, order or consent of, or declaration, registration or filing with, any governmental or administrative authority, commission, board, agency or instrumentality is required for the valid execution and delivery of this Contract by the Contractor, except such as has been duly obtained or made or such as the Contractor has given the County adequate assurance, that it will be obtained or made before the commencement of services by the Contractor under this Contract.

(e) The Contractor holds, or is expressly licensed to use, all rights, licenses, and franchises necessary or appropriate to construct, operate and maintain the Disposal Site and Vehicles pursuant to and in accordance with the terms of the Contract.

6.17 Emergency Operations Plan. The Contractor will provide to the County no later than thirty (30) days following the Amendment Date a revision of the most recent comprehensive emergency operations plan submitted by Contractor to and approved by the County, addressing measures designed to mitigate and correct hazards that may arise due to accidents in connection with or disruption of the Transportation or Disposal of Waste under this Contract, including, but not limited to: damage to property, the interruption of traffic along Transportation routes, release of hazardous or dangerous materials and the release of any Unacceptable Waste. The emergency operations plan shall be updated and submitted for County approval on an annual basis.

ARTICLE 7

County's Responsibilities

7.1 General. The County's responsibilities under this Contract include, but are not necessarily limited to:

- (a) Operation of the Transfer Facilities;
- (b) Transportation of Acceptable Waste to the South Transfer Station from all other Transfer Facilities;
- (c) Loading of Acceptable Waste into Containers and Transfer Trailers supplied by Contractor, for delivery to Contractor at the South Transfer Station;
- (d) Delivery to Contractor at the South Transfer Station of pre-loaded Contractor-supplied Containers on Transfer Trailers, for Transportation and Disposal by Contractor; and
- (e) From and after March 31, 2016, all transport of drop boxes or other Containers between or among any of the Transfer Facilities.

7.2 Waste Flow; Flow Control. The County shall to the extent allowed by law, cause all Acceptable Waste originating in the County Service Area and not delivered by legal self-disposal or a Solid Waste Reduction Program, to be delivered to the Transfer Facility. The County has enacted and shall maintain and enforce appropriate laws and shall enter into all necessary contracts and agreements to carry out the requirements of this section.

7.3 Permits, Licenses etc. The County shall obtain, maintain and pay for, at County's sole expense, all permits, licenses and approvals required by law for the Transfer Facilities and their operation by the County. The County shall be liable for all fines or civil penalties that may be imposed by any regulatory agency for failure to obtain any permits, licenses or approvals for the Transfer Facilities.

7.4 Cooperation with Contractor. The County shall use its best efforts to cooperate with the Contractor and to respond to the Contractor's reasonable requests for information and assistance, consistent with the provisions of this Contract.

ARTICLE 8

Service Fees and Contractor Compensation

8.1 Base Service Fee. For the Contractor's performance of its obligations under this Contract it shall compensated with a Service Fee based on the provisions as set forth in this Article. From and after the Amendment Date and through December 31, 2016, Customer shall pay Regional Disposal Company for each containerized load of Acceptable Waste that the County delivers to Contractor a Service Fee at the rate of \$64.47 per ton. Containerized loads shall not exceed a net weight of 25 tons. The net weights of containerized loads of Acceptable Waste delivered by the County to the Contractor shall be determined by comparison of incoming and outgoing weights at the Disposal Site, using the scale(s) at the Disposal Site.

8.2 CPI Adjustment for Service Fee Components. The per ton Service Fee rate shall be adjusted annually on January 1st of each year, commencing January 1, 2017. Such annual escalations shall be computed as follows:

(a) The CPI for the September preceding the beginning of the calendar year will be compared with the CPI for September 2015, to calculate the fractional change in CPI over the period between those two dates. This fractional change will be multiplied by the initial Service Fee calculate the Contract Adjustment. These calculations are mathematically as follows:

Let N be the year for which the Service Fee adjustment are to be effective (beginning January 1 of such calendar year).

Let CPI(N-1) be the CPI for the most recent September prior to year N.

Let CPI(2015) be the CPI for September 2015.

Fractional CPI Change = $(\text{CPI (N-1)} - \text{CPI(2015)}) / \text{CPI(2015)}$

During year N:

The adjusted Service Fee rate = $(1 + \text{Fractional CPI Change}) \times \64.47 .

Notwithstanding the foregoing, the Service Fee rate for any year N shall be no less than the Service Fee rate in effect at the end of the year immediately prior to year N.

(b) In the event of a correction to a CPI, the adjusted Service Fee shall be recalculated using the corrected CPI; however, there will be no recalculation of the rate for corrections to CPI that occur after the month during which the uncorrected annual adjustment based upon CPI has been in effect.

(c) In the event that the standard reference base period of the CPI is changed, the annual adjustment shall reflect the new base period in the first calendar year the new base period is available.

8.3 Other Service Fee Increases.

(a) Acceptable Increases. The Contractor may, after obtaining the County's approval, which approval may not be unreasonably withheld, increase Service Fees by one hundred percent of the Contractor's reasonable actual increased costs of performing the Project due to the events described below:

(1) Uncontrollable Circumstances. The Service Fee rate shall be increased for Uncontrollable Circumstances only to the extent permitted under Article 9.

(2) Change in Laws. The Service Fee rate shall be increased to reflect the cost of Contractor's compliance with a Change in Law. Except as provided in subsection 8.3(a)(3), below, no increase is permitted to reflect the cost of Contractor's compliance with any change in county (except Pend Oreille County) law applicable only to the Contractor if such change in county law is made at the request or instance of the Contractor. Contractor requests for increases in the Service Fee rate due to a Change in Laws shall be submitted to the County at least ninety (90) days prior to the end of County's fiscal year.

(3) Change in Certain Taxes, Fees, or Surcharges. Subject to the limitations and conditions of Article 9, the Service Fee rate may be increased for the imposition of or increases in the rates of federal, state, county, or County taxes, fees (including State/Local Solid Waste Handling Fees) or surcharges applicable to all businesses or to Persons engaged in the solid waste management industry; however, the Service Fee rate may not be increased for the imposition of or increase in county (except Pend Oreille County) taxes, fees (including State/Local Solid Waste Handling Fees) or surcharges imposed by the county in which the Disposal Site is located if the increase is effected pursuant to a written agreement to which the Contractor is a party that provides for the specific increase.

(b) General Conditions and Limitations on Service Fee Increases. The Service Fee rate may be increased under Section 8.3(a) only for reasonable costs that are actually incurred, net of any available insurance proceeds. No Service Fee rate increase shall be allowed for any cost increases that are in any way attributable to the elimination, correction or repair of defective conditions, structures, operations, or activities caused by the Contractor or its subcontractors, employees, agents, or servants, or for which Contractor otherwise is responsible.

The Contractor must fully demonstrate and document the need for the requested Service Fee rate increase to the County's reasonable satisfaction as a condition precedent to the Contractor's right to any such increase under Section 8.3(a).

(c) Cancellation of Service Fee Increases. On the County's request, Contractor shall immediately provide the County with all documents, information, or other evidence in the

Contractor's possession or control that the County requests to determine whether there is a continuing need for a Service Fee rate increase. The County may at any time cancel any Service Fee rate increase made under this Article upon good cause. The Contractor shall reduce the Service Fee rate accordingly within thirty (30) days of the date the County notifies the Contractor of the County's determination that the need for the increase in such rate has expired or that the original increase were made in error. The Contractor shall at all times keep the County informed as to whether any increase remains necessary.

8.4 Subcontracted-For Transport of Drop Box Containers. In addition to the foregoing, the County shall pay to Contractor, in respect of the inter-Transfer Facility transport services provided by the Contractor under Section 6.1(g), the actual reasonable out-of-pocket expense incurred by Contractor to any arms'-length subcontractor engaged by Contractor to provide such services.

8.5 Billing to and Payment by County.

(a) The Contractor shall provide to the County, by the fifteenth day of each month, a billing statement in a format acceptable to the County and accompanied by supporting documentation as required by the County detailing the number of containers handled and the net weight of Acceptable Waste in each Container of Acceptable Waste accepted for Disposal by the Contractor in the preceding month, indicating the amount payable therefor by the County to Contractor.

(b) The County shall remit payment by the thirtieth day from its receipt of the Contractor's billing statement. If payment is not remitted by the County within such 30-day period, Contractor may charge interest on the arrearage thereafter and until the arrearage is paid at the rate of 1% per annum.

(c) All unresolved disputes concerning the calculation of or adjustment to payments based upon Service Fees or Service Fee components shall be resolved by arbitration in accordance with Article 16. However, the undisputed portion of the adjustment shall be made effective promptly; further adjustment shall be made effective upon the resolution of the dispute under Article 16. In addition to any portion of the disputed adjustment ultimately awarded, the arbitrator may also award to the Contractor or the County interest on the disputed amount from the date the Service Fee adjustment was effective. The interest rate shall be determined by the arbitrator.

ARTICLE 9

Allocation of Risk; Uncontrollable Circumstances

9.1 Contractor Reliance. The Contractor warrants that prior to entering this Contract, it has examined carefully and acquainted itself with:

(a) all Contract documents;

- (b) the Project;
- (d) all applicable federal, state and local laws, regulations, ordinances, codes and rules.

9.2 Uncontrollable Circumstances.

(a) Uncontrollable Circumstances Limited. The Contractor's obligations to provide Transportation and Disposal services are subject to Uncontrollable Circumstances that necessarily and unavoidably prevent performance of the Project.

(b) Notification. The party with knowledge of the occurrence of an Uncontrollable Circumstance shall notify the other of the event promptly, but in no case more than twenty-four (24) hours after the discovery of the event. Notice shall again be given when the effect of the occurrence of an Uncontrollable Circumstance has ceased.

(c) Alternative Service Arrangement. Notwithstanding the provisions of Section 9.2(a), in the event that Contractor fails or is unable to provide the services which it has agreed to perform under this Contract because of an Uncontrollable Circumstance, Contractor shall use its reasonable business efforts to make available to County feasible alternative arrangements for the delivery, handling, Transportation and Disposal of Waste, at the prevailing fees then in effect and generally applicable to waste delivered, handled, Transported to and/or Disposed at such alternative site or location, for the period during which such event continues. Failure of Contractor to secure alternative arrangements as provided in this Section shall not be deemed a breach of this Contract, provided that Contractor has exercised good faith efforts to make such alternative arrangements. County has the right to make such alternative arrangements independent of Contractor.

9.3 Insurable Uncontrollable Circumstances. If any of the Containers, the Transfer Trailers, the Vehicles or other equipment used by Contractor in the performance of its services under this Contract, or the Disposal Site, are damaged or destroyed due to explosion, floods, fire, or other events for which the Contractor is obligated to carry insurance, the Contractor shall act diligently to promptly collect and apply insurance proceeds to the correction or reconstruction thereof.

ARTICLE 10

Ownership; Inspection of Waste; Unacceptable Waste

10.1 Ownership. Subject to the limitations and conditions of this Article, title to Waste that is Loaded into a Container or Transfer Trailer shall pass to the Contractor upon the Contractor's acceptance of delivery of the Container or Transfer Trailer at the South Transfer Station.

10.2 Facility Inspection Program. The County shall establish and maintain a program of operating and monitoring procedures for the Facility to prevent the Loading of Unacceptable

Waste into the Containers or Transfer Trailers. Operating personnel at the Transfer Facilities shall be instructed and trained by the County to implement the program.

10.3 Waste Inspection at Transfer Facility; Handling of Suspected Unacceptable Waste. The Contractor may inspect the contents of all waste delivered or tendered for delivery to the Contractor under this Contract.

If the Contractor discovers Unacceptable Waste or waste that the Contractor suspects is Unacceptable Waste (hereinafter referred to as "Suspect Waste") in a containerized load delivered or tendered for delivery to Contractor, whether at the South Transfer Station or at the Disposal Site, the Contractor shall:

(a) give any notification required by law to appropriate agencies of the discovery, if necessary, as soon as is reasonable practicable;

(b) gather, preserve, maintain and make available to the County all evidence regarding the Suspect Waste, including without limitation, the origin of the vehicle containing the Suspect Waste, the time the Suspect Waste was delivered or tendered for delivery to Contractor at the South Transfer Station or delivered to the Disposal Site (as the case may be), any photographs of the Suspect Waste taken that might establish that the waste is Unacceptable Waste, samples of the waste that may demonstrate the origin of the Suspect Waste, laboratory results (if any), any statements or documentation provided by federal, state, or local authorities;

(c) test or arrange to have tested, at the Contractor's own expense, the Suspect Waste to ascertain whether that Waste is Unacceptable Waste, if Contractor reasonably determines that testing is necessary;

(d) permit the County to inspect that Suspect Waste within 72 hours of notice by the Contractor to the County of the existence of that Suspect Waste, test the Suspect Waste within a reasonable period of time and examine all other evidence gathered by the Contractor under Section 10.3(b), above, at any time after the discovery of that Suspect Waste; for purposes of any inspection conducted pursuant to this Section, the County shall have unrestricted access to the Disposal Site and /or any other site or facility at which the Suspect Waste is located; and

(e) dispose of the Suspect Waste in accordance with all legal requirements.

Title to and any liability for any Unacceptable Waste delivered by the County to Contractor in all instances shall remain with the County; and the County agrees to indemnify and hold harmless the Contractor from all costs, expenses, losses and liabilities incurred by the Contractor as a consequence of the County's inclusion of Unacceptable Waste in any containerized load delivered to Contractor under this Contract, including but not limited to expenses incurred by Contractor in testing, handling and disposing of any such Unacceptable Waste. The County reserves the right to seek reimbursement of any sums paid to Contractor under this Section 10.3 from the person from whom the County received the Unacceptable Waste in question.

10.4 Liability for Testing. Inspecting, Handling and/or Disposing of Unacceptable Waste. If, after inspecting and/or testing the Suspect Waste the Contractor discovers no Unacceptable Waste, the Contractor shall dispose of that Waste at no additional cost to the County.

ARTICLE 11

Indemnification

11.1 Indemnification of County. The Contractor shall at all times indemnify, hold harmless and defend the County, its elected officials, officers, employees, agents and representatives, from and against any and all losses, damages, costs, charges, expenses, judgments, liabilities (except those resulting from the County's negligence, intentional misconduct or breach of this Contract) and resulting attorney's fees (including those fees to establish the right to indemnification) (collectively, the "losses"), directly or indirectly resulting from, arising out of, or related to one or more claims described in this Section. The term, "claims," as used in this Article shall mean all claims, lawsuits, causes of action, demands, damages, penalties, charges, judgments, losses, liabilities of any character or kind, and other legal actions and proceedings of whatever nature asserted by any third Person against the County, including, but not limited to, claims, lawsuits, causes of action, and other legal actions and proceedings involving bodily or personal injury or death of any person or damage to any property (including, but not limited to persons employed by the County, the Contractor or any other person and all property owned or claimed by the County, the Contractor, any affiliate of the Contractor, or any other person), arising out of and related to:

(a) the Contractor's performance or nonperformance of any provision or requirement of this Contract, including, but not limited to, the Transportation and Disposal services performed by Contractor, its officers, employees, subcontractors, agents, or servants;

(b) any act or omission of Contractor, its officers, employees, subcontractors, agents, or servants at the South Transfer Station, the Disposal Site, or in proceeding to or from other locations including the Disposal Site from the South Transfer Station;

(c) the failure of Contractor, its officers, employees, subcontractors, agents, or servants to comply in any respect with the provisions and requirements of all applicable permits, licenses, laws, statutes, regulations, ordinances, codes, orders and all other legal requirements of federal, state, regional, county and local government authorities and agencies having jurisdiction over the relevant activities of the Contractor; or

(d) any release(s) or threatened release(s) of Waste, Unacceptable Waste, or any dangerous substance by any Person(s) at, onto, into, above, under, through, or from any of the Vehicles while in the possession of Contractor or at the Disposal Site, subject to the provisions of Section 10.3.

11.2 Comprehensive Indemnification. The obligations of the Contractor under this Article shall apply to all losses and /or claims related to the Project whether the losses and/or claims are or are not asserted in a judicial forum; however, the Contractor shall not be liable for

losses that arise from the negligence or intentional misconduct of or a breach of this Contract by the County, its agents, or employees to the degree those losses are caused by that negligence, intentional misconduct or breach of this Contract.

The County shall not be liable to the Contractor for, and the Contractor hereby releases the County from all liability for any injuries, damages, or destruction to all or a part of property owned or claimed by the Contractor that directly or indirectly results from, arises out of or relates to the Project, except to the extent that liability arises from the negligence or intentional misconduct of or breach of this Agreement by the County, its agents, or employees and, in that event, the County shall be liable (whether or not the matter is asserted in a judicial forum) only to the extent of that negligence, intentional misconduct or breach of this Agreement.

11.3 Notice to Contractor; Legal Defense. In the event an action is brought against the County for which indemnity may be sought against the Contractor, the County shall promptly notify the Contractor in writing. The Contractor shall have the right to assume and control the investigation and defense, including the employment of counsel and the payment of all expenses of claims against which it must provide indemnity under this Article. The Contractor shall notify the County within twenty-one (21) days of the notice of the action whether it will undertake the investigation and defense of the County; provided, however, on demand of the County, the Contractor shall at its own cost and expense, defend and provide qualified attorneys reasonably acceptable to the County under service contracts acceptable to the County to defend the County, its officers, employees, agents and servants against all claims for which the County has a right to be indemnified and held harmless under Sections 11.1 and 11.2.

The County, at its own discretion, may employ separate counsel and participate in the investigation and defense but the County shall pay the fees and expenses of that counsel unless the Contractor has agreed otherwise.

11.4 Beneficiaries of Indemnification Provisions. The foregoing indemnification and hold harmless provisions are for the sole and exclusive benefit and protection of the County, the Contractor, and any affiliates of the Contractor and their respective officers, officials, agents and employees, and are not intended, nor shall they be construed, to confer any rights on or liabilities to any person or persons other than the County and the Contractor and their respective officers, officials, agents and employees.

11.5 Royalties; License Fees; Patents. The Contractor shall pay all royalties and license fees, shall defend all suits or claims for patent infringements that may occur in the performance of this Contract and shall hold the County harmless from any loss on account thereof.

11.6 No Waiver. Except as otherwise expressly stated herein, the parties do not under this Article waive or surrender indemnity available under any federal, state, regional, or local law. This Article shall survive termination or expiration of the Contract.

ARTICLE 12

Insurance

12.1 General. The Contractor shall provide, maintain and pay for the insurance coverage designated in this Article from an insurance company or companies approved in the State of Washington at all times during the Term of the Contract.

12.2 Failure to Provide Insurance. The Contractor's failure to fully comply with any provision of this Article shall be considered a Class C Default of this Contract.

12.3 Insurance Coverage. Prior to initiation of the service under this Contract and throughout the Term of the Contract, the Contractor shall obtain and maintain the following insurance coverage which may be modified from time to time by mutual agreement between the County and Contractor:

(a) Worker's Compensation Insurance on a state approved policy form as required by law;

(b) Employer's Liability Insurance with a minimum limit of \$100,000 each accident;

(c) Comprehensive or Commercial General Liability insurance, including products/completed operations, blanket contractual and personal injury liability, with limits of \$1,000,000 each occurrence, combined bodily injury and property damage; \$2,000,000 aggregate;

(d) Comprehensive (Business) Automobile Liability Insurance covering all owned, non-owned and hired vehicles with limits of liability of \$1,000,000 each occurrence, combined bodily injury and property damage;

(e) Pollution Liability insurance for the Disposal Site covering bodily injury and property damage to third parties occurring because of sudden, accidental or gradual pollution and remediation from all operations contemplated in this Contract with limits of \$3,000,000 per occurrence; \$6,000,000 aggregate.

Contractor agrees to provide evidence of the insurance required herein, satisfactory to the County, consisting of: (a) Certificate(s) of Insurance evidencing all of the coverages required and (b) an additional insured endorsement to Contractor's general liability policy.

The County, its officials, employees and agents will be named as an additional insured with respect to claims arising out of the operations of the Contractor under the above liability insurance policies, as applicable. The Contractor agrees to require this same provision of all subcontractors, joint ventures or other parties engaged by or on behalf of Contractor in relation to this agreement. It is acknowledged by the parties of this agreement all insurance coverages required be provided by Contractor or any subcontractor, is intended to apply on a primary noncontributing basis in relation to any other insurance of self-insurance available to the County.

The County will be furnished annually with Certificates of Insurance (ACORD form), and all policies shall provide for thirty (30) days' advance written notice of cancellation. Contractor shall assure that this provision also applies to any subcontractors, joint ventures or any other party engaged by or on behalf of contractor in relation to this agreement.

ARTICLE 13

Coordination Meetings

13.1 Periodic Coordination Meetings and Reports. The County and the Contractor shall hold periodic coordination meetings in Pend Oreille County no less than annually to review the Project and to discuss operations, problems and /or complaints made by third parties. Either the County or the Contractor may organize, call and notify the other party of that meeting. If requested, either party shall submit a written report to the other party at least one week before any meeting regarding operations, problems, complaints, or any other matter arising under the Contract.

ARTICLE 14

Additional Work

14.1 Payment or Credit for Additional Services. All requests for payment for services or work under this Contract, in addition to the services or work described in the Contract Documents, shall be made only under the conditions and procedures of this Article. For purposes of this Article, the term, "additional work," means work that is in addition to the Project or other work required to be performed under the Contract Documents or any amendments thereof, but does not include any work required to comply with any changes in law, statute, rules, regulations, ordinances, permit(s), permit conditions, or regulatory provisions. Nothing in this Article is intended to negate or lessen any other precondition or procedure for payment or reimbursement provided in this Contract.

14.2 Additional Work. The County shall submit to the Contractor a written request to perform any work or services that exceed Contractor's obligations under this Contract. Within twenty-one (21) days of that request, Contractor will submit a proposal for the performance of such requested work that includes (a) the Contractor's costs for performing the additional work or services; (b) a schedule; (c) and the impact the performance of that additional work or services will have on the Contractor's performance under this Contract. The Contractor's proposal shall be based upon the least costly method for performing the additional work or services that complies with applicable law and industry standard.

If the County approves of the Contractor's written proposal, the County shall notify the Contractor in writing and order the Contractor to proceed.

ARTICLE 15

Defaults in Performance of the Contract

15.1 Contractor Default. There shall be four classes of defaults by the Contractor in its performance under this Contract:

(a) A Class A Default is the Contractor's failure to continue Transportation and Disposal service from the South Transfer Facility and with Vehicles and a Disposal Site properly permitted by law and in substantial and material compliance with the Contract Documents, throughout the Term of this Contract.

(b) A Class B Default includes, on the commencement of services under this Contract, the Contractor's:

(i) failure to substantially perform the basic services under this Contract on three or more occasions of three days' duration in any given year;

(ii) failure to perform the basic services required under this Contract and it appears to the County's Representative, in that Representative's reasonable judgment, that the Contractor has abandoned the Project; or

(iii) direct or indirect acquisition of direct or indirect control or beneficial majority ownership of the Contractor by a Person or related group of Persons who do not have such direct or indirect control or beneficial majority ownership as of the Amendment Date, unless the acquisition is either (1) by Republic Services, Inc., (2) by a Person or related group of Persons who control, are controlled by or are under common control with Republic Services, Inc., or (3) accomplished by the acquisition of stock or other securities on a public exchange.

(c) A Class C default includes the Contractor's:

(i) failure to procure and/or maintain a Contract performance bond and/or other financial guarantee under Section 6.4; or

(ii) failure to procure and maintain insurance under Article 12.

(d) A Class D default includes any other material failure by the Contractor to perform its obligations under this Contract.

15.2 Consequences of Contractor Defaults.

(a) Class A Default. In the event of a Class A default, the Contractor or Surety shall be permitted to remedy the default within ninety (90) days from notice by the County and shall pay to the County, from the date of that notice to the date the default is remedied, liquidated damages in the amount of \$1,000 per day. If the Class A default is not remedied within ninety (90) days of that notice, the County may, at its sole option:

(i) be released from its obligations under this Contract and use any other method or Person to dispose of Waste and may sue for actual damages;

(ii) seek judicial remedy of specific performance;

(iii) pursue any combination of the foregoing or any other remedy provided under this Contract; or

(iv) foreclose on the performance bond required by Section 6.4.

(b) Class B Default. In the event of a Class B default, the Contractor or Surety shall be permitted to remedy the default within ten (10) days from notice by the County and shall pay to the County, from the date of that notice to the date the default is remedied, liquidated damages in the amount of \$500 per day.

If the Class B default is not remedied within ten (10) days, the County may, at its sole option:

(i) be released from its obligations under this Contract and use any other method or Person to transport and/or dispose of Waste and may sue for damages;

(ii) seek judicial remedy of specific performance; or

(iii) pursue any combination of the foregoing or any other remedy provided under this Contract.

(c) Class C Default. In the event of a Class C default, the Contractor or the Surety shall be permitted to remedy the default within fifteen (15) days from notice by the County and from the date of that notice to the date the default is remedied shall pay to the County liquidated damages in the following amounts:

(i) failure to procure and/or maintain insurance of the types and in the amounts required by Article 12: a per-day fee equal to twice the annual cost of obtaining that insurance on the day of the default divided by 365 (i.e., twice the daily cost of the insurance); and

(ii) failure to procure and /or maintain the bond or other financial guarantee required in Section 6.4: \$500 per day.

If a Class C default is not remedied within fifteen (15) days, the County may, at its sole option, exercise any of the remedies set forth for remedy of a Class B default under this section.

(d) Class D Default. In the event of a Class D default, other than a delay of operations, the Contractor or the Surety shall be permitted to remedy the default within thirty (30) days from written notice by the County and, if the default is not remedied within that thirty days, shall thereafter pay to the County liquidated damages in the amount of \$500 per day until the date

the default is remedied, plus the County's actual damages. In the event of a delay of operations, the Contractor shall pay to the County \$1,000 for each day operations are delayed.

15.3 Default Procedure.

(a) Notice. To initiate default proceedings under this Article, the County's Representative shall give written notice to the Contractor's Representative and its Surety of the County's intention to declare the Contractor in default. Unless the Contractor promptly shows cause to the County's satisfaction why it should not be declared in default under the Contract, the County may declare the Contractor in default.

(b) Performance by Surety. If the County by reason of a default by Contractor orders the Contractor to discontinue further performance under the Contract and takes such further actions as may be required under the Performance Bond as a condition of the Surety's obligations to perform under the Contract, the Surety shall assume performance of the Contract. The Surety's assumption of performance under such circumstances shall commence as soon thereafter as reasonably possible, but in any event no later than seventy-two (72) hours after the Surety's obligation to assume such performance arises. The Contractor shall take such actions as may be required of Contractor under the Contractor's agreement with the Surety to enable the Surety to render performance under the Contract. The Surety's assumption of performance in accordance with this Section shall not relieve it of its obligations under the Contract and the Performance Bond. If the County requires performance to the Surety under this Section, the County may make payments to the Surety or its agent for all work performed under the Contract by the Surety subsequent to that transfer in an amount equal to the amount due the Contractor had it performed in the manner and to the extent of Surety's performance.

(c) Failure by the Surety; County Substitution. If the Surety fails to effectively and competently assume or continue performance within ten (10) days of the effective date of notice from the County, the County may exercise its rights to foreclose on the performance bond.

(d) General. Any amount due the Contractor under this Contract at the time of default shall be reduced by the damages suffered and expenses incurred by the County due to the default. If the County obtains substitute performance upon default at a cost less than then-current Service Fees, the County shall retain that difference.

A delay or interruption in the performance of all or any part of the Contract resulting from Uncontrollable Circumstances shall not be deemed a default under this Section.

The County shall not be bound to the Contract by any trustee or receiver appointed to take possession of any of the Vehicles, Disposal Site, or the Contractor's business.

15.4 County Default. For purposes of this Contract, a County event of default shall constitute the repeated or persistent failure of refusal by the County to fulfill any of its material obligations under this Contract (unless that failure or refusal results from an Uncontrollable Circumstance). To initiate default proceedings under this Article, the Contractor's Representative shall give the County written notice of that default specifying with particularity the event of default

that has occurred and specifying the Contractor's intention to declare the County in default. If within thirty days of notice by the Contractor, except as provided in subsection (d) below, the County has failed to cure the default or give Contractor reasonable assurances that the default or threatened default will be promptly cured, the Contractor shall have the right to any or all of the following remedies to the extent provided by law:

(a) Specific Performance. For each and every default, the Contractor shall be entitled to a judicial remedy of specific performance or mandamus requiring the County to specifically perform the County's responsibilities as provided in Article 7; it being agreed that in the case of a default by the County, Contractor's remedies at law will be inadequate.

(b) Injunctive Relief.

(i) For each and every default, the Contractor shall be entitled to the remedy of a permanent or temporary injunction, either in mandatory or prohibitory form, it being agreed that in the case of a default, the Contractor's remedy at law is inadequate.

(ii) If the governing body of the County places as an agenda item before its deliberative body, any proposed ordinance, rule or other regulation that threatens, on its effective date, to precipitate a default of the County's responsibilities under Article 7, the Contractor may seek an injunction from a court of competent jurisdiction enjoining the County's deliberative body from enacting that ordinance, rule or regulation, if Contractor can show that Contractor will be irreparably damaged as a result of the enactment of that proposed ordinance, rule or regulation.

(c) Damages. For each and every County default, the Contractor may charge the County the Contractor's actual reasonable damages incurred as a result of that default, but in no event greater than \$5,000 per day.

(d) Termination or Suspension of Contractor's Performance of the Contract. For any County default that within 120 days of the County's receipt of the notice required under this Section is not remedied and for which the County does not give the Contractor reasonable assurance that it will be remedied and which occurs on a chronic basis and is material to the County's operations under the Contract, Contractor shall be entitled to terminate the Contract.

15.5 No Waiver by County. Nothing in this Article, and no actions taken pursuant to this Article, shall constitute a waiver or surrender of any rights, remedies, claims, or causes of action the County may have against the Contractor or its Surety under any other provision of this Contract or any provision of law.

15.6 Termination of Contract. Subject to the provisions of Article 9, if an Uncontrollable Circumstance occurs and prevents the County or the Contractor from performing the Contract for a period in excess of ninety (90) days, then each of Contractor and County shall have the right, in its sole discretion, to terminate this Contract (except that the County may not exercise such right of termination on account of any increase in or imposition of a State/Local

Solid Waste Handling Fee enacted by the County or a change in County law that makes performance impossible).

ARTICLE 16

Arbitration, Judicial Venue and Governing Law

16.1 Arbitration. All unresolved disputes between the parties arising from this Contract, whether during or following the Term, shall be exclusively settled by arbitration under the laws of the State of Washington, in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“AAA Rules” for purposes of this Article). The decision of the arbitrator shall be final and binding on both parties and the Surety.

16.2 One Arbitrator. All arbitrated disputes shall be heard and decided by one arbitrator.

16.3 Limited Consolidation. There shall be no consolidation of any arbitration between the County and the Contractor with any other arbitration not involving, arising from, or relating to this Project.

16.4 Expedites Procedure. In the event that the County determines, in its sole opinion, that the public interest requires a speedy resolution of any arbitrable controversy or claim regardless of the amount, the County shall have the option of electing resolution of the controversy or claim by the Expedited Procedures of the AAA Rules (Rules 54 through 58).

16.5 Jurisdiction; Venue. Each party to the Contract and the Surety accept jurisdiction of the courts of the State of Washington for the purposes of commencing, conducting and enforcing arbitration proceedings and agree to accept written notice of the arbitration proceedings sent by certified letter addressed to the party of intention. The parties agree that proper venue for any judicial proceeding to enforce any decision or award made by an arbitrator under this Article shall be exclusively in Pend Oreille County, in the State of Washington.

16.6 Nonarbitrable Disputes. The parties agree that the proper venue for any judicial proceeding brought under this Contract or any subcontract made pursuant to this Contract that is not subject to resolution by arbitration under this Article shall be the Superior Court of the State of Washington, in Pend Oreille County.

16.7 Arbitrator’s Fees; Attorney’s Fees. The parties shall share the fees and charges of any arbitrator or of the AAA in any arbitration conducted under this Article. In the event suit or action or arbitration is instituted to enforce any right granted herein, if either party substantially prevails, it shall be awarded its attorney’s fees and costs, including but not limited to expert witness fees.

16.8 Standing. Only the County and the Contractor shall have standing to bring or become a party to arbitration claims or legal actions under this Contract.

ARTICLE 17

Successors; Assignment

17.1 Contractor Delegation. The County executes this Contract with the Contractor as a qualified party to accomplish the Project. The Contractor's delegation of any Contract duties shall be subject to Article 4 of this Contract. Any delegation of duties shall not relieve the Contractor or the Surety of any liability and/or obligation to perform.

17.2 Assignment. The Contractor shall not assign any rights or obligations under or arising from this Contract without the prior written consent of the County, which shall not be unreasonably withheld; provided, however, that nothing herein shall prevent the Contractor from admitting additional partners, prevent a partner from assigning a portion of its interest, or prevent the Contractor from assigning rights or obligations under or arising from this Contract to another Person so long as the Contractor or such other person remains or is controlled directly or indirectly, by Republic Services, Inc. or by a Person controlling, controlled by or under common control with Republic Services, Inc. Unless specifically approved in writing by the County, any assignment shall not relieve the assignor of any liability hereunder.

17.3 Binding Effect. This Contract shall be binding on any and all successors or assignees in accordance with this Article.

ARTICLE 18

Guarantees and Warranties

18.1 Guarantees and Warranties Required by Contract. The Contractor shall provide to the County any and all warranties and guarantees specifically or implicitly required by any of the Contract Documents.

18.2 Other Guarantees and Warranties. The Contractor shall provide warranties and guarantees not already specifically required by the Contract Documents that may be reasonably necessary by reason of any material change in circumstances to ensure the viability of the County's rights and remedies under this Contract.

18.3 Independent Guarantees and Warranties. The guarantees and warranties described in this Article shall not be construed to modify, limit, or lessen in any way, any rights or remedies that the County may otherwise have against the Contractor or the Surety.

ARTICLE 19

Dissolution of the County and Successor to the County

19.1 In the event that the County is dissolved or its solid waste functions and power relative to this Contract are taken from the County by legislative act, or by referendum of the people, or by agreement, all of the duties, rights and remedies of the County under the Contract,

including, but not limited to, any bonds executed for this Contract, shall remain in full force and effect and shall be transferred to either: (1) the successor to the County as specified by the legislative act or referendum by which the County is dissolved; or (2) if no successor to the County is specified by the relevant legislation or referendum, the State of Washington, which shall be deemed to be the successor to the County under this Contract.

ARTICLE 20

Term

20.1 The Term of this Contract began on its execution and shall end at midnight on December 15, 2020. The Term of this Contract automatically shall be extended for an additional five (5) years (i.e., until December 15, 2025), unless the County gives the Contractor written notice on or before March 15, 2020 of the County's election to terminate this Contract on December 15, 2020. If the Contract is extended to December 15, 2025, then the Term of this Contract automatically shall be further extended for an additional five (5) years (i.e., until December 15, 2030), unless the County gives the Contractor written notice on or before March 15, 2025 of the County's election to terminate this Contract on December 15, 2025. If the Contract is extended to December 15, 2030, then the Term of this Contract may be further extended on one or more occasions for additional periods of up to five (5) years minus one day in the aggregate (i.e., until a date not later than December 14, 2035) if (but only if) both parties agree in writing to such a further extension or extensions. Time is of the essence with respect to the giving of any written notice of termination by the County provided for by this paragraph.