

# CONTRACT APPROVAL FORM

(Contract Management Use only)

CONTRACT TRACKING NO.  
**CM2564-A1**

## CONTRACTOR INFORMATION

Name: Republic Services of Florida, Limited Partnership

Address: 7000 Imeson Road Jacksonville FL 32219  
City State Zip

Contractor's Administrator Name: Jason Graves Title: Municipal Services Manager

Tel#: (904) 999-3033 Fax: \_\_\_\_\_ Email: jgraves@republicservices.com

## CONTRACT INFORMATION

Contract Name: Service Agreement for Recyclable Materials Contract Value: Varies by product

Brief Description: Delivery of recyclable materials. Processing Fee \$90 per ton for glass, plastic, aluminum; \$15 Environmental Fee; 4.91% Fuel Fee

Contract Dates : From: 6/10/2018 to: 12/10/18 Status:  New  Renew  Amend#  WA/Task Order

How Procured:  Sole Source  Single Source  ITB  RFP  RFQ  Coop.  Other \_\_\_\_\_

### If Processing an Amendment:

Contract #: CM2564 Increase Amount of Existing Contract: None

New Contract Dates: 12/11/18 to 6/10/19 TOTAL OR AMENDMENT AMOUNT: N/A

### APPROVALS PURSUANT TO NASSAU COUNTY PURCHASING POLICY, SECTION 6

- |    |  |                         |   |
|----|--|-------------------------|---|
| 1. | <u>Rebecca Ry</u><br>Department Head Signature                   | <u>12/18/18</u><br>Date | <u>Solid Waste</u><br>Submitting Department   |
| 2. | <u>Jason Hains</u><br>Contract Management                        | <u>12/18/18</u><br>Date | <u>01357534-543003</u><br>Funding Source/Acct # <span style="float: right;"><u>ms 12/20/18</u></span> |
| 3. | <u>M. Mail</u><br>Office of Management & Budget                  | <u>12/21/18</u><br>Date |   |
| 4. | <u>[Signature]</u><br>County Attorney (approved as to form only) | <u>12/20/18</u><br>Date |   |

Comments: \_\_\_\_\_

### COUNTY MANAGER - FINAL SIGNATURE APPROVAL

[Signature] 12/20/18  
Michael Mullin Date

### RETURN ORIGINAL(S) TO CONTRACT MANAGEMENT FOR DISTRIBUTION AS FOLLOWS:

- Original: Clerk's Services; Contractor (original or certified copy)
- Copy: Department  
Office of Management & Budget  
Contract Management  
Clerk Finance

RCVD COUNTY MGR  
18 DEC '18 PM 3:47

## Grayson Hagins

Renewal Letter/Email

**From:** Collins, Donald <DCollins3@republicservices.com>  
**Sent:** Wednesday, December 05, 2018 4:53 PM  
**To:** Grayson Hagins  
**Cc:** Graves, Jason  
**Subject:** RE: Contract CM2564 Republic Services\*\*Extension\*\*  
**Attachments:** Nassau County Contract Renewal - Dec 2018.pdf

Good afternoon Grayson,

According to the language in the current agreement, we can mutually agree to renewal. (see below). This means the email that you sent, and my reply would be an acceptable record of our mutual agreement. Or, if you would like, I have attached a new agreement for your execution that begins Dec 10, 2018 and ends June 10, 2019. We are good with either approach.

4. Term. Unless sooner terminated pursuant to Section 7, this Agreement shall commence as of the start date indicated on the first page of this Agreement ("Effective Date") and shall remain in full force and effect for six (6) consecutive months following the Effective Date ("Initial Term"). Upon mutual agreement of Republic and Customer the Initial Term may be extended for one six (6) consecutive month term ("Renewal Term"). Upon expiration or termination of this Agreement, the obligations of Customer to deliver and of Republic to accept Recyclable Materials shall terminate; provided, however, that all other rights and obligations of the parties under this Agreement (including those with respect to payment and indemnification) shall survive such expiration or termination.

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**From:** Grayson Hagins [mailto:ghagins@nassaucountyfl.com]  
**Sent:** Tuesday, December 04, 2018 8:16 AM  
**To:** Collins, Donald  
**Cc:** Graves, Jason  
**Subject:** RE: Contract CM2564 Republic Services\*\*Extension\*\*

Note that (ghagins@nassaucountyfl.com) is an external email. Forward unfamiliar emails to infosec.phishing@republicservices.com

Doug,

Is it possible for you to draw up a new Service Agreement showing the extension for six (6) more months? If not I can create something. Figured it was maybe easier on your side to just change the end date and add a note that agreement was extended. Please let me know your thoughts.

**Grayson Hagins**  
Contract/Purchasing Manager  
Nassau County Board of County Commissioners  
96135 Nassau Place, Suite 6  
Yulee, FL 32097  
ghagins@nassaucountyfl.com  
(904) 530-6040

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**From:** Collins, Donald <DCollins3@republicservices.com>  
**Sent:** Monday, December 03, 2018 11:44 AM  
**To:** Grayson Hagins <ghagins@nassaucountyfl.com>  
**Cc:** Graves, Jason <JGraves@republicservices.com>  
**Subject:** RE: Contract CM2564 Republic Services\*\*Extension\*\*

Yes, we agree to the 6 month extension.

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**From:** Grayson Hagins [<mailto:ghagins@nassaucountyfl.com>]

**Sent:** Tuesday, November 27, 2018 8:44 AM

**To:** Collins, Donald

**Subject:** Contract CM2564 Republic Services\*\*Extension\*\*

Note that ([ghagins@nassaucountyfl.com](mailto:ghagins@nassaucountyfl.com)) is an external email. Forward unfamiliar emails to [infosec.phishing@republicservices.com](mailto:infosec.phishing@republicservices.com)

Good morning Donald,

We would like to extend this contract for the 6 month Renewal Term coming up on the expiration date on 12/10/18. Do you agree to the extension? If so, I will get an amendment drawn up. Thank you.

**Grayson Hagins**

Contract/Purchasing Manager

Nassau County Board of County Commissioners

96135 Nassau Place, Suite 6

Yulee, FL 32097

[ghagins@nassaucountyfl.com](mailto:ghagins@nassaucountyfl.com)

(904) 530-6040

Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, please do not send electronic mail to this entity. Instead, please contact this office by phone or in writing.

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# CONTRACT APPROVAL FORM

(Contract Management Use only)

**CONTRACT TRACKING NO.**

CM 2564

**CONTRACTOR INFORMATION**

Name: Republic Services of Florida, Limited Partnership

Address: 7000 Imeson Road Jacksonville FL 32219

City State Zip

Contractor's Administrator Name: Donald Collins Title: Municipal Services Manager

Tel#: 904-999-3033 Cell: \_\_\_\_\_ Email: Dcollins3@republicservices.com

Contract Name: Service Agreement for Recyclable Materials Contract Value: Varies by product

Brief Description: Delivery of recyclable materials. Processing Fee \$90 per ton for glass, plastic & aluminum; \$15 Environmental fee; 4.91% fuel fee.

Contract Dates : From: 6/10/2018 to: 12/10/2018 Status:  New  Renew  Amend#  WA/Task Order

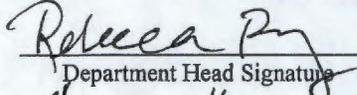
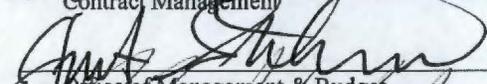
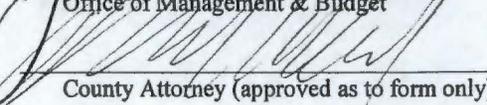
How Procured:  Sole Source  Single Source  ITB  RFP  RFQ  Coop.  Other

**If Processing an Amendment:**

Contract #: \_\_\_\_\_ Increase Amount of Existing Contract: \_\_\_\_\_

New Contract Dates: \_\_\_\_\_ to \_\_\_\_\_ TOTAL OR AMENDMENT AMOUNT: \_\_\_\_\_

**APPROVALS PURSUANT TO NASSAU COUNTY PURCHASING POLICY, SECTION 6**

- |    |   |                |                                   |
|----|---|----------------|-----------------------------------|
| 1. |  | <u>4/8/18</u>  | <u>Solid Waste</u>                |
|    | Department Head Signature   | Date           | Submitting Department             |
| 2. |  | <u>6/12/18</u> | <u>01357534-543003 MS 6/21/18</u> |
|    | Contract Management   | Date           | Funding Source/Acct #             |
| 3. |  | <u>6/21/18</u> |                                   |
|    | Office of Management & Budget   | Date           |                                   |
| 4. |  | <u>6/23/18</u> |                                   |
|    | County Attorney (approved as to form only)  | Date           |                                   |

Comments: \_\_\_\_\_

**COUNTY MANAGER – FINAL SIGNATURE APPROVAL**

 6-26-18

Shanea Jones Date

**RETURN ORIGINAL(S) TO CONTRACT MANAGEMENT FOR DISTRIBUTION AS FOLLOWS:**

- Original: Clerk's Services; Contractor (original or certified copy)
- Copy: Department  
Office of Management & Budget  
Contract Management  
Clerk Finance



We'll handle it from here."

**SERVICE AGREEMENT FOR RECYCLABLE MATERIALS**  
**Materials Recycling Facility**

ACCOUNT NUMBER \_\_\_\_\_  
 Company \_\_\_\_\_  
 E-MAIL Dcollins3@republicservices.com

Customer: Nassau County ("Customer")  
 Customer Address: 46026 Landfill Road, Callahan, FL 32011  
 Phone: 904-530-6702 Fax: 904-879-6323  
 County: Nassau State: FL Zip: 32011  
 e-Mail: bdiden@nassaucountyfl.com  
 Company: Republic Services of Florida, Limited Partnership a Republic Services company ("Republic")

Start Date: 6/10/2018  
 End Date: 12/10/2018

TYPE OF MATERIAL	PROCESSING FEE	REBATE
(x) Single Stream Glass, Plastic & Aluminum	\$90.00 Per Ton	\$0 Per Ton
(x) Clean Newspaper, Magazines & Office Paper	\$0 Per Ton	\$0 Per Ton
(x) Clean Baled Cardboard	\$0 Per Ton	\$0 Per Ton
( ) Aluminum Cans	\$0 Per Ton	\$0 Per Ton
( ) Baled Cardboard	\$0 Per Ton	\$0 Per Ton
( ) Other: _____	\$ Per Ton	\$ Per Ton
(x) Environmental Rec Fee \$15 per load	(x) Fuel Fee 4.91%	

DELIVER TO:

North FL Recycle Center – 7000 Imeson Rd., Jacksonville
Southland Recycle Center – 2127 Hubbard St., Jacksonville
Southland Recycle Center – 2127 Hubbard St., Jacksonville
N/A
N/A
N/A

Estimated Monthly Tonnage 6

The undersigned individual signing this Agreement on behalf of the Customer acknowledges that he or she has read and understands the terms and conditions of this Agreement and that he or she has the authority to sign this Agreement on behalf of Customer.

BY: \_\_\_\_\_ TITLE: \_\_\_\_\_  
 (AUTHORIZED SIGNATURE)  
 \_\_\_\_\_  
 CUSTOMER NAME (PLEASE PRINT) DATE OF AGREEMENT

BY: \_\_\_\_\_ TITLE: \_\_\_\_\_  
 (AUTHORIZED SIGNATURE)

COMMENTS

FOR OFFICE USE ONLY

Rate based on \_\_\_\_\_ lbs/yd.

ID. NUMBER	NATIONAL ACCOUNT NUMBER	CUSTOMER CATEL	CASH TOLERANCE	TVTFOE	CREDIT ANALYST
				Z C	
SITE NUMBER	REGULATORY/MSDF BELF	TERM	RENEW/DUE	C.P.L.	DPO/SEL. TUR/MI
				Z C	
TERRITORY	SALES REPRESENTATIVE	TAX CODE	TAX EXEMPTION NUMBER	TRANS CODE	SFBTPOIDPEF
RENEW.	MIG.	CREDIT APPROVAL	CREDIT LIMIT	CONTRACT APPROVAL	ENTERED BY
Z C	Z C				

**TERMS AND CONDITIONS**

1. **Delivery of Recyclable Materials.** Customer shall deliver all Recyclable Materials (as defined below and designated above) generated by customer or generated in the area served by Customer whether collected by Customer or Customer's subcontractor to the Materials Recycling Facility located at 7000 Imeson Road, Jacksonville, FL 32219 (the "MRF") or the Recycle Facility located at 2127 Hubbard St, Jacksonville, FL.

2. **Definitions.** "Recyclable Materials" means all of or any of the following if marked above: Clean OCC, Commercial OCC, Commercial Single Stream, Residential Single Stream, Residential Dual Stream and/or Other. "Clean OCC" means corrugated containers with a composition that contains 90% or greater of corrugated containers and no more than 10% Out-Throws or Prohibited Materials (as defined below). "Commercial OCC" means corrugated containers with a composition that contains between 70% and 90% corrugated containers and no more than 30% Out-Throws or Prohibited Materials. "Commercial Single Stream" means an inbound stream in which all paper fibers, plastics, metals, and other containers are mixed in a collection truck, instead of being sorted by the commercial location (business) into separate commodities. Commercial single stream originates exclusively from commercial business. "Out Throw" means all papers that are manufactured or treated in such a form that is unsuitable for use as the grade otherwise applicable to the Recyclable Materials. "Residential Single Stream" means an inbound stream in which all paper fibers, plastics, metals, and other containers are mixed in a collection truck, instead of being sorted by the resident into separate commodities. Residential single stream originates exclusively from households. "Residential Dual Stream" means an inbound stream in which all paper fibers are separate from all plastics, metals, and containers in a single collection vehicle. Residential single stream originates exclusively from households.

## TERMS AND CONDITIONS

### 3. Delivery Procedures; Operation of the MRF.

- (a) Acceptance of Recyclable Materials. Republic shall have the right in its sole discretion to reject delivery of any Recyclable Materials offered for acceptance by Customer at the MRF that do not meet the specifications under this Agreement or which is a Prohibited Material. To the extent any load of Recyclable Materials, or any type of Recyclable Material, is rejected by the recycling facility or not of the intended specifications, quality or grade, Republic shall notify Customer and Customer shall pay any damages, costs and penalties incurred by Republic with respect to such rejection or lesser specifications, quality or grade.
- (b) Operation of the MRF/Procedures. Customer's delivery of Recyclable Materials to the MRF, which shall occur only during the MRF's posted hours, shall be governed by the procedures applicable to customers utilizing the MRF as Republic may modify such procedures from time to time. Notwithstanding anything in this Agreement to the contrary, Republic shall have the right, in its sole discretion, to close the MRF, in whole or in part, either temporarily or permanently, at any time for any reason and the delivery of Recyclable Materials shall be suspended or adjusted accordingly. Upon any such permanent closure, Republic shall have the right to terminate this Agreement.
- (c) Customer's Compliance with Applicable Laws. Customer shall collect, transport and deliver Recyclable Materials to the MRF in compliance with all Applicable Laws and the procedures referenced in Section 3(b). "Applicable Laws" means all then applicable federal, state and local laws, regulations, ordinances, rules, permits, licenses, and governmental orders or directives applicable to the collection, transportation, use or reuse of the Recyclable Materials or the MRF.
- (d) Title to Recyclable Materials. Customer represents and warrants to Republic that either Customer or its customer shall hold clear title, free of all liens, claims and encumbrances, to the Recyclable Materials delivered by Customer to the MRF. Title to, and risk of loss and responsibility for, Recyclable Materials delivered to the MRF by Customer shall pass at the time such Recyclable Materials are removed from the delivery vehicle at the MRF. Title to Prohibited Material shall remain with Customer and shall never be deemed to pass to Republic.

4. Term. Unless sooner terminated pursuant to Section 7, this Agreement shall commence as of the start date indicated on the first page of this Agreement ("Effective Date") and shall remain in full force and effect for six (6) consecutive months following the Effective Date ("Initial Term"). Upon mutual agreement of Republic and Customer the Initial Term may be extended for one six (6) consecutive month term ("Renewal Term"). Upon expiration or termination of this Agreement, the obligations of Customer to deliver and of Republic to accept Recyclable Materials shall terminate; provided, however, that all other rights and obligations of the parties under this Agreement (including those with respect to payment and indemnification) shall survive such expiration or termination.

### 5. Recycling Fees.

- (a) Fees. The party designated on the first page of this Agreement shall receive the fee listed for the Recyclable Materials from the other party (the "Recycling Fee").
- (b) Payment; Deposit. Republic shall transmit an itemized invoice to Customer of all Recycling Fees and other charges under this Agreement on a periodic basis as set forth on the first page of this Agreement. All invoices shall be paid within sixty (60) days after receipt of invoice.
- (c) Fuel Fee. Fuel fee is variable and corporate adjusts the rate on the 15<sup>th</sup> of the month based on the On-Highway Diesel posted by the EIA.

### 6. Prohibited Material.

- (a) Delivery of Prohibited Material. Customer agrees that it shall not deliver any Prohibited Materials to the MRF. If Customer delivers Recyclable Materials that contains both Recyclable Materials and Prohibited Materials, the entire delivery shall constitute Prohibited Material if the Prohibited Material cannot be separated from the Recyclable Materials through the reasonable efforts of Republic, as Customer's agent to cause such separation, with the cost of such separation to be paid by Customer.
- (b) Weighing and Inspection of Waste by Republic. Republic shall weigh all waste at the MRF and the weight so determined shall be final and conclusive on both Customer and Republic. Republic shall have the

right, but not the obligation, to inspect any of Customer's trucks to determine whether the waste delivered is Recyclable Materials or Prohibited Materials. Customer acknowledges and agrees that any failure by Republic to perform any such inspection or to detect Prohibited Material despite such inspection shall in no way relieve Customer from its obligation to deliver only Recyclable Materials or from its other obligations under this Section 6.

(c) Rejection of Prohibited Material. If Customer delivers Prohibited Material to the MRF, Republic may, in its sole discretion: (i) reject such Prohibited Material at Customer's expense; or (ii) if Republic does not discover such Prohibited Material in time to reject and reload such Prohibited Material, after giving Customer telephonic notice thereof and a reasonable opportunity to dispose of such Prohibited Material, Republic may, as Customer's agent, dispose of such Prohibited Material at a location authorized to accept such Prohibited Material in accordance with all Applicable Laws and charge Customer all direct and indirect costs incurred due to handling, delivery and disposal of such Prohibited Material, unless Customer otherwise elects to arrange for disposal of the Prohibited Material. If Customer elects to dispose of such Prohibited Material, it shall do so within such time period as Republic reasonably deems necessary or appropriate in connection with the operation of the MRF, including the preservation of the health and safety of its employees. If after electing to do so Customer does not dispose of the Prohibited Material within such time period, Republic may dispose of such Prohibited Material as Customer's agent, without further notice to Customer, and Customer shall pay the direct and indirect costs set forth above. Notwithstanding the foregoing, no notice shall be required by Republic to Customer for Republic to dispose of Prohibited Material as Customer's agent in emergency situations where in Republic's reasonable judgment a delay in such disposal could constitute a hazard to the MRF or any person on, about or near the premises.

(d) Definition of Prohibited Material. For the purposes of this Agreement, "Prohibited Material" means: (i) any material that is not Recyclable Materials; (ii) any material that by reason of its composition, characteristics or quantity is defined as a "hazardous material," "hazardous waste," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "toxic substance," "toxic waste," "toxic pollutant," "contaminant," "pollutant," "infectious waste," "medical waste," "radioactive waste," or "sewage sludge" under any Applicable Law; (iii) any material that requires other than normal handling, storage, management, transfer or disposal; or (iv) any other material that may present a substantial endangerment to public health or safety, may cause applicable air quality or water effluent standards to be violated by the normal operation of the MRF, or because of its size, durability or composition cannot be delivered to the MRF or has a reasonable possibility of otherwise adversely affecting the operation of the MRF.

### 7. Default.

- (a) Events of Default. Each of the following shall be an event of default by Customer under this Agreement: (i) Customer fails to pay any amount due, if any, as and when the same becomes due under this Agreement; or (ii) Customer fails to perform any other term, covenant or agreement contained in this Agreement on its part to be performed and such failure continues for a period of thirty (30) days after written notice to Customer specifying the nature of such failure and requesting that it be remedied.
- (b) Remedies on Default. Whenever any event of default by Customer shall have occurred and be continuing, Republic shall have the following rights and remedies, which shall be in addition to any other remedies provided by Applicable Law or this Agreement: (i) upon the end of any applicable grace period in this Section 7, Republic shall have the option to immediately terminate this Agreement unless during such period Customer has taken remedial steps the effect of which would be to enable Customer to cure such event of default within an additional fifteen (15) day period following the expiration of such grace period; and (ii) if Customer is then in default, Republic shall have the option, without terminating this Agreement, to stop accepting Recyclable Materials delivered by Customer until such default is cured or this Agreement is terminated. If Republic stops accepting Recyclable Materials, Customer shall pay Republic a service interruption fee in an amount determined by Republic in its discretion up to the maximum amount allowed by Applicable Law.

8. Responsibility of Parties. Customer agrees to be responsible for costs or damages arising out of Customer's transportation to and delivery of any materials at, on or upon the MRF that is Excluded Waste or any other material not permitted for processing at the MRF, as well as any material breach of Customer's

obligations under this Agreement.

9. Insurance. During the term of this Agreement, Customer shall maintain the following insurance coverage's:

Workers' Compensation:

Coverage A	Statutory
Coverage B – Employer's Liability	\$1,000,000 each Bodily Injury by Accident \$1,000,000 policy limit Bodily Injury by Disease \$1,000,000 each occurrence Bodily Injury by Disease

Automobile Liability:

Bodily Injury/Property Damage Combined – Single Limit	\$1,000,000 Coverage applies to all owned, non-owned, hired and leased vehicles (including trailers) and must include MCS-90 endorsement for pollution liability coverage.
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Commercial General Liability:

Bodily Injury/Property Damage Combined – Single Limit	\$1,000,000 each occurrence \$3,000,000 general aggregate (including products/completed operations)
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Customer shall deliver the Certificates of Insurance evidencing the foregoing policies to Republic before Customer delivers any waste to the MRF pursuant to this Agreement. The Certificates and the insurance policies required by this Section 9 shall contain a provision that provides that the insurance coverage afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to Republic. The policies required by this Section 9 shall be primary and the insurance providers shall agree to waive their rights of subrogation against Republic. Notwithstanding anything contained herein, Customer does not waive any right to sovereign immunity, and the parties expressly agree that provisions of Fla. Stat. 768.28 apply to the County's obligations as set forth herein.

10. General.

(a) Force Majeure. Except for Customer's obligation to pay the Recycling Fee and all Tax/Host Fees/Charges, neither party hereto shall be liable for its failure to perform hereunder due to contingencies beyond a party's reasonable control, including, but not limited to, strikes, labor disputes, riots, terrorist acts, compliance with or changes in Applicable Law, fires, the loss, suspension, revocation or non-renewal of any permit, license or approval with respect to MRF and/or acts of God ("Force Majeure"). Any failure or delay in performance because of a Force Majeure event shall not constitute a breach of this Agreement, but shall entitle the affected party to be relieved of performance during the term of such event and for a reasonable time thereafter.

(b) Independent Contractor. Customer and Republic shall perform their obligations under this Agreement as independent contractors. Neither party nor any of its employees, agents or subcontractors shall be, purport to be, or be deemed, the agent of the other party.

(c) Assignment Binding Effect. Customer may not assign this Agreement without Republic's prior written consent, which Republic may grant or withhold in its sole discretion. Republic may assign this Agreement without the consent of Customer, and Customer acknowledges and agrees that any such assignment by Republic shall release Republic from any liability under this Agreement from and after the date

of the assignment. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assignees.

(d) Entire Agreement. This Agreement supersedes all prior agreements, written or oral, with respect to the subject matter of this Agreement. Only a written instrument signed by both parties hereto may modify this Agreement.

(e) Severability. If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions hereof shall continue in full force and effect without being impaired or invalidated in any way. The parties agree to replace any invalid or unenforceable provision with a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.

(f) Waiver. No delay or omission by a party in exercising any right under this Agreement shall operate as a waiver of that or any other right. A waiver or consent given by a party on any occasion is effective only in that instance and shall not be construed as a bar to or waiver of any right on any other occasion.

(g) Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the state in which the MRF is located, without giving effect to any choice or conflict of law provision or rule (whether of the state in which the MRF is located or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the state in which the MRF is located.

(h) Waiver of Jury Trial; Attorneys' Fees. By execution and delivery of this Agreement, each of the parties knowingly, voluntarily and irrevocably: (i) waives any right to trial by jury; and (ii) agrees that any dispute arising out of this Agreement shall be decided by court trial without a jury. If any legal action or any other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and other costs (including litigation related costs and expert witness fees) leading up to and incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

(i) Captions. The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained in this Agreement.

(j) Counterparts; Third Party Beneficiaries. This Agreement may be executed in two or more original, facsimile or pdf counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument. This Agreement is intended to be solely for the benefit of the parties hereto and their successors and permitted assignees and is not intended to and shall not confer any rights or benefits on any other third party not a signatory hereto, except as provided in Section 8 of, or expressly provided in, this Agreement.

The undersigned individual signing this Agreement on behalf of the Customer acknowledges that he or she has read and understands the terms and conditions of this Agreement and that he or she has the authority to sign the Agreement on behalf of Customer.

CUSTOMER SIGNATURE \_\_\_\_\_ DATE: \_\_\_\_\_