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MAUI COUNTY INTEGRATED WASTE CONVERSION AND ENERGY PROJECT
SERVICES AGREEMENT

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Director of Environmental Management (EDB-48)

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**MAUI COUNTY INTEGRATED WASTE CONVERSION AND ENERGY PROJECT
SERVICES AGREEMENT**

This Integrated Waste Conversion and Energy Project Services Agreement ("Agreement") is made and entered into this 8th day of January, 2014, ("Effective Date") by and between the County of Maui, a political subdivision of the State of Hawaii, whose address is 200 South High Street, Wailuku, Maui, Hawaii 96793, hereinafter referred to as the "County", and Maui Resource Recovery Facility, LLC, a Delaware limited liability company, whose address is 5780 Fleet Street, Suite 310, Carlsbad, California 90028, hereinafter referred to as "MRRF", both collectively referred to as the "Parties".

RECITALS

WHEREAS, the County owns and operates the Central Maui Landfill located at 1 Pulehu Road in Pu'unene, Maui, Hawaii, which includes a gas collection and control system ("GCCS") (collectively, "Landfill");

WHEREAS, landfill gas, consisting primarily of methane and carbon dioxide, is produced as a byproduct of the decomposition of refuse within the Landfill ("Landfill Gas"), and MRRF has sampled or otherwise become familiar with the Landfill Gas;

WHEREAS, the Landfill receives the following resources suitable for recovery of recycled materials and for conversion to energy, fuel, and/or other products: commercial and residential municipal solid waste ("MSW"), Green Waste; Sewage Sludge; and Fats, Oils, and Grease ("FOG"), all of which MRRF has sampled or otherwise become familiarized;

WHEREAS, on November 9, 2012, the County issued Request for Proposals No. 12-13/P32, Integrated Waste Conversion and Energy Project ("RFP");

WHEREAS, Anaergia Services LLC ("Anaergia"), responded to the County's RFP and the County selected Anaergia, which formed the MRRF to finance, plan, design, permit, construct, own, operate, and maintain an Integrated Waste Conversion and Energy Project ("MRRF's Facility" or "Facility"), intended to be located on privately owned real property in the vicinity of the Landfill;

WHEREAS, MRRF's Facility is intended to be a "Resource Recovery Facility," as defined in Section ("§") 340A-1, Hawaii Revised Statutes ("HRS").

WHEREAS, this Agreement is for performance of services as defined in HRS § 103D-104 such that MRRF's Facility will receive and convert Acceptable Waste and Landfill Gas into Fuel, as defined in HRS §196-2, or Renewable Energy, as defined in HRS §196-11, or other marketable commodities, thereby diverting a significant percentage of such waste from disposal in the Landfill;

WHEREAS, the County wishes to provide to MRRF, and MRRF wishes to accept from

the County, such or all of the Landfill Gas produced at the Landfill and Acceptable Waste received at the Landfill as further described in the Agreement ;

WHEREAS, pursuant to HRS §46-1.5(4) the County is authorized to enter into this Agreement; and

NOW, THEREFORE, in consideration of the mutual agreements contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the County and MRRF agree as follows:

Article I. Definitions

Unless otherwise required by the context in which any term appears: (a) capitalized terms used in this Agreement shall have the respective meanings set forth in this Article I; (b) the singular shall include the plural and vice versa; (c) the word "including" shall mean "including, without limitation", (d) references to "Sections" and "Exhibits" shall be to sections and exhibits hereof; (e) the words "herein," "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular section or subsection hereof; and (f) references to this Agreement shall include a reference to all exhibits hereto, as the same may be amended, modified, supplemented, or replaced from time to time.

"Acceptable Waste" means commercial and residential MSW, FOG, construction and demolition waste ("C&D"), agricultural plastic, Green Waste, tires, Source Separated Recyclables, Sewage Sludge, and residuals from water and wastewater treatment. Acceptable Waste does not include Unprocessibles.

"Acceptable Waste Delivery Point" shall mean the designated physical interconnection point at which the County delivers, or causes to be delivered, Acceptable Waste to MRRF, at which point ownership, possession, and control of the Acceptable Waste is transferred from the County to MRRF.

"Acceptable Waste Tipping Fee" means the amount paid by the County to MRRF for each ton of Acceptable Waste delivered to MRRF's Facility.

"Affiliate" means, when used with reference to a specified Party, any Party that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the specified Party. For this purpose, "control" means the direct or indirect ownership of ten percent (10%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

"Agreement" shall mean this Integrated Waste Conversion and Energy Project Services Agreement, including all exhibits and schedules hereto, as the same may be amended from time to time.

"Applicable Laws" shall mean any act, statute, law, regulation, permit, license, ordinance, rule, judgment, order, decree, directive, guideline, or policy (to the extent mandatory) or any similar form of decision or determination by, or any interpretation or

administration of, any of the foregoing by any governmental authority with jurisdiction over the County's Facilities, MRRF's Facility, the GCCS and Landfill, or the performance of the work hereunder and the transaction contemplated hereunder.

"BTU" shall mean British Thermal Unit.

"Business Day" shall mean any Day other than a Saturday, Sunday, or a legal holiday in the State of Hawaii.

"Bypassed Waste" means Acceptable Waste delivered to MRRF's Facility that is unable to be stored or processed at MRRF's Facility due to MRRF's Facility downtime and must be directed to the Landfill or another disposal facility.

"Change Order" means any approved request or written authorization that is agreed to by the Parties in writing that authorizes or requires additional or extra services or work or deletes or omits services or work. A Change Order may also modify a schedule of performance or otherwise alter the services or work to be performed.

"Commercial Operation Date" shall be the date upon which full commercial operation of MRRF's Facility's primary project components and processes, as identified in Section 3.01, commence.

"Condensate" shall mean any liquid(s) that condense or otherwise separate from the Landfill Gas or biogas during collection, transportation, or processing by the GCCS or MRRF's Facility.

"Contract Year" shall mean every twelve (12) month period which begins at 12:01 a.m. Hawaii Standard Time on the Commercial Operations Date and on every anniversary thereof during the Term.

"County's Facilities" shall mean the Landfill and GCCS together with all appurtenant facilities.

"Day" shall mean a calendar day.

"Delivery Commencement Date" shall mean the date on which the County commences delivery of Acceptable Waste and/or Landfill Gas, as applicable, to MRRF and MRRF accepts initial delivery of Acceptable Waste and/or Landfill Gas from the County, in accordance with the terms hereof.

"Effective Date" shall mean the date first set out above.

"Effluent" means wastewater generated by MRRF's Facility.

"Effluent Requirements" means any wastewater effluent limitations required by Applicable Law.

"Environmental Attributes" means any and all credits, benefits, emissions reductions, offsets and allowances, howsoever entitled, attributable to the generation from MRRF's Facility, and its displacement of conventional energy generation, including but not limited to Renewable Energy Certificates/Credits ("RECs"), (REC being defined as a tradable instrument representing the renewable attributes associated with the production of one (1) MWh of electricity by a certified renewable generator), Greenhouse Gas ("GHG")/Carbon Offsets/Credits (being defined as the offset, allowance, or credit associated with GHG reduction or GHG removal enhancement of one metric ton of CO₂e) as well as: (1) any avoided emissions of pollutants to the air, soil, or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and other GHGs that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the earth's climate by trapping heat in the atmosphere; and (3) the reporting rights to these avoided emissions, including the right of a party to report the ownership of accumulated offsets, green tags, GHG offsets, or REC reporting rights under any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program (which, as of the Effective Date include certificates issued by Green-e in accordance with the Green-e Renewable Electric Certification Program, National Standard Version 1.3 administered by the Center of Resource Solutions).

Environmental Attributes do not include (i) any energy, capacity, reliability, or other power attributes from MRRF's Facility, (ii) production tax credits associated with the construction or operation of MRRF's Facility, or any other associated contract or right, and other financial incentives in the form of credits, reductions, or allowances associated with MRRF's Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies, local subsidies, or tipping fees received by MRRF for the destruction of particular pre-existing pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by MRRF's Facility or the County for compliance with local, state, or federal operating and/or air quality permits.

"Excess Acceptable Waste" shall mean that quantity of the following individual sub-categories of Acceptable Waste in excess of 211,000 tons of MSW, or 35,000 tons of Green Waste, or 48,000 tons of C&D Waste, or 33,000 tons of Sewage Sludge, or 6,000 tons of FOG, as measured on an annual basis according to the Contract Year. Excess Acceptable Waste shall additionally mean quantities in excess of the daily maximum, measured in tons per Day ("TPD"), as follows: 700 TPD of MSW, 160 TPD of Commercial C&D, 25 TPD of Residential C&D, 150 TPD of Green Waste, 150 TPD of Sewage Sludge, and 50 TPD of FOG.

"Expansion Plant" shall mean any processing capacity added to MRRF's Facility to process Excess Acceptable Waste.

"Fats, Oils, and Grease" or "FOG" means any liquid, semi-liquid, or solid fat, oil, or grease of animal or vegetable origin that is removed from commercial food service establishments through the use of an interceptor or grease trap.

"Flare Turndown Landfill Gas" shall mean that volume of Landfill Gas that the County does not deliver to MRRF to meet the County's Flare Turndown Requirements.

"Flare Turndown Requirements" shall mean the minimum continuous volume and quality of Landfill Gas necessary to operate the County's flare(s) at the Landfill in compliance with manufacturer's specifications and Applicable Laws and Permits.

"Force Majeure" shall mean acts of God, strikes, lockouts or other industrial disturbances, epidemics, landslides, lightning, earthquakes, fires, storms, hurricanes, floods, high-water washouts, acts of the public enemy, wars, blockades, insurrections, riots, arrests and restraints by governments, civil disturbances, catastrophic events such as explosions, breakage, or accident to machinery or lines of pipe, freezing of or damage to wells or lines of pipe, and governmental actions such as the enactment of statutes, laws or regulations, acts of governmental bodies and any other cause or causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming Force Majeure and which, by the exercise of reasonable diligence, such party is unable to prevent or overcome. Force Majeure shall not include a Party's financial inability to perform any obligation under this Agreement.

"Landfill Gas Collection and Control System" or "GCCS" shall mean the GCCS as now constituted and as may be expanded or relocated from time to time within the Landfill during the term of this Agreement, comprised of Landfill Gas wells or trenches, lateral piping, blowers, and other equipment or facilities required for the extraction of Landfill Gas from the Landfill.

"Government Incentives" shall mean any monetary awards or other value provided by any governmental or other agency with respect to MRRF's receipt and utilization of Landfill Gas or Acceptable Waste or any activities of MRRF in connection with this Agreement or MRRF's Facility; provided such awards or other value shall exclude Environmental Attributes and Tax Credits.

"Green Waste" shall mean leaves, garden residues, shrubbery and tree trimmings, grass clippings, and similar material.

"Hawaii Administrative Rules" or "HAR" shall mean the Hawaii Administrative Rules, as amended.

"Hawaii Revised Statutes" or "HRS" shall mean the Hawaii Revised Statutes, as amended.

"Hazardous Waste" shall have the meaning set out in HRS §342J-2. Hazardous Waste does not include Household Hazardous Waste.

"Household Hazardous Waste" shall have the meaning set out in Section 342G-1, HRS.

"Interconnection Agreement" shall mean a written agreement between MRRF and the local electric utility specifying the business and technical arrangements pursuant to Rule 14H necessary to allow MRRF's Facility to operate in parallel with the utility's power system, and to allow MRRF's Facility to deliver electric energy to the utility's power system.

"kWh" shall mean kilowatt-hour.

"Landfill" shall mean the Central Maui Landfill located on Pulehu Road, Pu'unene.

"Landfill Gas" or "LFG" shall have the meaning set forth in the Recitals hereto.

"Landfill Gas Interconnection Point" shall mean the designated physical interconnection point at which the County delivers Landfill Gas to MRRF, at which point ownership, possession and control of the Landfill Gas is transferred from County to MRRF.

"Maui County Code" or "MCC" shall mean Maui County Code, as amended.

"MECO" shall mean the Maui Electric Company, Ltd.

"Month" shall mean one (1) full calendar month.

"MMBtu" shall mean 1,000,000 British Thermal Units of Energy.

"MRRF's Facility" or "Facility" shall mean MRRF's Facility and all appurtenant facilities and equipment necessary, including associated structures and interconnection equipment, installed at the Site and easements or leases to enable MRRF to accept delivery of Landfill Gas and Acceptable Waste. MRRF's Facility shall not include the GCCS.

"MWh" shall mean megawatt-hour.

"Municipal Solid Waste" or "MSW" shall have the same meaning as set forth in the definition of "solid waste or municipal solid waste" as set forth in HRS § 342G-1.

"Offtake Agreement" shall mean a written agreement pursuant to which MRRF has agreed to sell the commodities produced or refined by MRRF's Facility to a third party.

"Performance Guarantees" are identified in Article IX.

"Permits" shall mean all permits, authorizations, waivers, variances, licenses, approvals, consent decrees or agreements, or similar orders of or from any federal, state or local government authority, agency or any entity having jurisdiction over the matter in question.

"Power Sale Agreement" shall mean a written agreement pursuant to which MRRF has agreed to sell the output of MRRF's Facility to MECO, County, or to another third party.

"Procurement Officer" shall mean the director of the County of Maui Department of Finance.

"psia" shall mean pounds per square inch absolute.

"Renewable Compressed Natural Gas" or "RCNG" is a compressed natural gas created from Landfill Gas and/or the biogas created in MRRF's Facility.

"Renewable Liquefied Natural Gas" or "RLNG" is a liquefied natural gas created from Landfill Gas and/or the biogas created in MRRF's Facility.

"Residue" shall mean those substances or materials remaining after Acceptable Waste has been processed, refined, or otherwise handled by MRRF's Facility that are intended to be landfilled or otherwise disposed. Residue does not include Bypassed Waste, Unprocessibles, and bottom or fly ash.

"Rule 14H" shall mean the MECO's Public Utility Commission Tariff Rule No. 14, Section H entitled "Interconnection of Distributed Generating Facilities Operating in Parallel with the Company's Electric System".

"SCFM" shall mean "standard cubic feet per minute," the volumetric flow rate of Landfill Gas adjusted to standardized conditions of temperature (being 68° F) and pressure (being 14.73 psia).

"Sewage Sludge" shall have the same meaning as set forth in HRS §342G-1.

"Site" shall mean the real property upon which MRRF's Facility is located, along with all easements, licenses, or rights of entry benefiting such property.

"Solid Fuel" or "SF" is a solid fuel produced by processing Acceptable Waste.

"Source Separated Recyclables" means recyclable materials separated at the point of generation by the generator thereof from solid waste for the purposes of recycling.

"Standard Operating Procedures" or "SOP" shall mean a written document or instruction related to the steps and activities of a process or procedure related to the operation and maintenance of MRRF's Facility.

"Tax Credits" shall mean all or any of the credits against or with reference to any federal, state, or local taxes available to MRRF related to the Acceptable Waste and/or Landfill Gas delivered to MRRF at the Acceptable Waste Delivery Point and/or Landfill Gas Interconnection Point, and the operation and production of MRRF's Facility. For the avoidance of doubt, Tax Credits shall include cash payments in lieu of tax credits or depreciation.

"Term" shall have the meaning set forth in Article IV hereof.

"Title V permit" shall mean a permit issued pursuant to the federal Clean Air Act (CAA § 501-507; USC § 7661-7661f), as amended.

"Tons" or "tons" shall mean straight tons or 2,000 pounds of material regardless of moisture content.

"Unprocessibles" means material that cannot be processed at MRRF's Facility because of its size or its characteristics; e.g., oversized and/or bulky items (such as household appliances), Hazardous Waste, or Household Hazardous Waste. Unprocessibles are diverted by

MRRF from entering any of MRRF's Facility's processes and are not transformed by MRRF's Facility's processes.

Article II. Utility Interconnection and Offtake Infrastructure

Section 2.01 MRRF will be responsible for the costs of any required interconnection study and the cost, including design and permitting, to construct the utility or other third-party interconnection infrastructure related to offtake of any fuels or electricity produced by MRRF's Facility.

Article III. Construction, Installation, and Testing of MRRF's Facility

Section 3.01 MRRF Facility Description. MRRF's Facility will function to substantially divert from the Landfill all of the Landfill Gas generated by and Acceptable Waste received at the Landfill. MRRF's Facility will comprise the following primary project components and processes: materials recovery facility, anaerobic digester, and Solid Fuel facility. Landfill Gas will be used to generate fuel and/or electricity primarily to accommodate the power needs of MRRF's Facility. Acceptable Waste will be sorted within a materials recovery facility, which will separate and recover metals, plastics, glass, and/or other recyclables. Anaerobic digester(s) will be used to process the organic portion of the waste streams to produce biogas that will be used or marketed as fuel. The relevant remaining fraction of the incoming waste streams will be converted to Solid Fuel. As of the Effective Date, MRRF will not use the fuels produced in MRRF's Facility to produce electricity for sale to others, including the County; however, during the Term, MRRF may expand MRRF's Facility to include such capability through technology such as, but not limited to, gasification or internal combustion engines. The Facility will be designed to utilize or flare all of the Landfill Gas generated within the Landfill and to divert approximately eighty-five percent (85%) of the incoming Acceptable Waste streams (excluding C&D) and approximately sixty-five percent (65%) of the incoming C&D waste from disposal in the Landfill. Such target diversion rates are dependent upon the composition of the waste and do not include Unprocessibles.

Section 3.02 Progress Reports. MRRF shall report in writing to the County on at least a monthly basis from the Effective Date through the Commercial Operation Date on MRRF's progress toward completion of each Project Milestone, pursuant to Article IX.

Section 3.03 Plans and Specifications. MRRF shall prepare and submit for review to the County Department of Environmental Management ("DEM") detailed plans and specifications related to MRRF's Facility and the Landfill Gas Interconnection Point and the Acceptable Waste Delivery Point, including all structures, electrical systems, interfaces with the grid electricity supply, and any necessary Facility or utility infrastructure improvements. MRRF's Facility shall comply with all Applicable Laws, including the applicable Institute of Electrical and Electronic Engineers rules for interconnected distributed generation systems and shall be compliant with the applicable National Electrical Code and relevant state and local building codes. All equipment shall be labeled as required by the applicable National Electrical Code with special "High Voltage" warning labels where applicable.

Section 3.04 County's Plan Review. Within twenty (20) Days after MRRF's submission of

the plans and specifications to DEM, DEM shall inform MRRF in writing of any comments or objections to the plans and specifications. MRRF shall authorize reasonable changes thereto, provided that they do not materially alter the design, character, capacity, cost, and appearance of MRRF's Facility. The County's review of MRRF's plans and specifications shall not alter any obligations or responsibilities of MRRF hereunder, nor shall such review create any warranties as to the design, suitability, capability, or expected performance of MRRF's Facility or operations.

Section 3.05 Title V Permit. If necessary, MRRF shall apply for a Title V permit in connection with MRRF's Facility. If the Hawaii Department of Health advises MRRF that a separate Title V permit will not be allowed, and that the County's Landfill permit should be amended to include MRRF's Facility, MRRF shall so notify the County within thirty (30) Days of MRRF's receipt of such advice or notice from the Hawaii Department of Health. In such event, the Parties will cooperate to determine the best course of action or either Party may terminate this Agreement by notice to the other within sixty (60) Days after the County's receipt of MRRF's notice and, upon termination, neither Party shall have any further obligation to the other. If the County's Title V permit is amended to include MRRF's Facility, all costs associated with said modification shall be borne by MRRF. The Parties agree that a condition of this Agreement is that their respective activities and operations will be treated as independent sources or independent air emissions.

Section 3.06 Permits and Authorizations.

- (a) Prior to commencing construction, MRRF shall obtain, at MRRF's sole cost and expense, all necessary environmental assessments or impact studies, statements or reports, zoning and land use approvals, permits, licenses, and utilities for the installation, construction, and operation of MRRF's Facility, and shall comply with all applicable local, state, and federal laws and regulations. All applications, filings, or communications with third parties in connection with any of the foregoing shall be provided to the County for review.
- (b) At all times during the Term, MRRF shall, at its sole cost and expense, obtain and maintain in effect all permits, authorizations, easements, and rights of way required in connection with the installation, construction, expansion, modification, or addition to, or the operation, repair, or maintenance of MRRF's Facility, and MRRF shall comply with all conditions of any and all permits, licenses, and other governmental and regulatory approvals required for MRRF's use of MRRF's Facility.
- (c) At MRRF's request and expense, the County shall reasonably cooperate with MRRF in connection with any hearings, proceedings, or other procedures, and with the preparation of any environmental impact reports, assessments, statements, or studies required in connection with any permits, authorizations, or easements related to the installation, construction, or expansion of, modification or addition to, or the operation, repair, or maintenance of MRRF's Facility. Notwithstanding the foregoing, the County may elect to participate in any hearings, proceedings, or other procedures, and with the preparation of any

environmental impact reports, assessments, statements, or studies required in connection with any permits, authorizations or easements related to the installation, construction, or expansion of, modification or addition to, or operation, repair, or maintenance of MRRF's Facility.

Section 3.07 Conditions Precedent to Commencement of Construction and Installation of MRRF's Facility. Commencement by MRRF of construction and installation activities with respect to MRRF's Facility shall be subject to the satisfaction of the following conditions precedent:

- (a) MRRF shall have submitted detailed plans and specifications and its draft SOP (which shall include, as applicable, the categories identified in Section 3.08(c)) for the County's review pursuant to Section 3.04;
- (b) If required, MRRF shall have an Interconnection Agreement with the local electric utility as provided in Article II;
- (c) MRRF shall have obtained prior to such commencement the permits, licenses, and other approvals required by Applicable Law;
- (d) If the conditions set forth in this Article are not completed, waived, or extended by written agreement within thirty-six (36) months of the Effective Date and MRRF is not diligently pursuing such permits, licenses, and other approvals, the County shall have the option to terminate the Agreement without triggering the default provisions of this Agreement or incurring any liability under this Agreement.
- (e) At any time prior to commencement of construction, MRRF may terminate the Agreement without triggering default provisions if MRRF determines that reasonable financing of MRRF's Facility will not be achieved, financially viable Offtake Agreements can not be obtained, or a determination by MRRF that MRRF's Facility as contemplated will not be economically viable.

Section 3.08 Installation, Construction, and System Testing.

- (a) No later than the beginning of construction of MRRF's Facility, MRRF shall obtain and maintain, or cause to be obtained and maintained, all appropriate insurance coverages for intended construction.
- (b) Following construction start-up and through the Commercial Operation Date, a representative of MRRF and a representative of the County shall meet periodically at a place to be mutually agreed upon by the Parties ("Consultation Meetings"). The meetings shall take place no less often than once each calendar month. The purpose of these meetings is to discuss the construction of MRRF's Facility and to attempt to resolve any issues relating to such construction.
- (c) Prior to the Commercial Operation Date, MRRF shall provide MRRF's Facility's

SOP to the County, which shall include at a minimum:

- (i) General Site Description, including permits and regulatory compliance and access control;
 - (ii) Equipment and Personnel Requirements, including operating personnel, supervision, technical support, third-party assistance, training requirements, operating equipment, equipment inventory and usage, and maintenance procedures (including schedule of maintenance and procedure for emergency maintenance and shutdown);
 - (iii) Condensate management;
 - (iv) Landfill Gas and Acceptable Waste management including Excess Landfill Gas and Excess Acceptable Waste;
 - (v) Notification procedures;
 - (vi) Fire and safety procedures and controls;
 - (vii) Operational controls;
 - (viii) Environmental monitoring;
 - (ix) Record keeping;
 - (x) Reporting, including incident reports, non-compliance reports, annual operating report, and environmental monitoring reports; and such and further information as required by the County.
- (d) Start-up testing of equipment and systems will be completed to demonstrate that each is installed correctly, functions as intended, and meets the applicable conditions specified. Start-up testing will occur once the equipment or system has been installed and is mechanically and electrically complete. The County or its representatives shall have the right to observe any start-up testing. MRRF shall notify the County not less than ten (10) Days prior to the anticipated date(s) of all start-up testing.
- (e) Upon successful completion of the start-up testing, the Commissioning Test will occur. The purpose of the Commissioning Test (which may include a series of sub-tests, as shall be further refined by MRRF with review by the County) is to demonstrate that the Facility functions as intended and meets its permit limits, Applicable Laws, and MRRF's Facility's equipment design, manufacturer specifications, and other relevant factors. The Commissioning Test Plan is to include sequencing of operations, test methodologies, and scheduling of the testing to demonstrate each unit process in MRRF's Facility. A Draft

Commissioning Test Plan shall be submitted to the County a minimum of 30 Days prior to the start of the Commissioning Test. A Final Commissioning Test Plan shall be submitted to the County a minimum of 15 Days prior to the start of said test. As necessary, MRRF shall include regulatory agencies to witness and approve the Commissioning Test.

- (f) All documentation and test results shall be provided to the County for review after an evaluation at MRRF's expense by a third party engineering firm and determination that MRRF's Facility has passed "Commissioning". The County's review of MRRF's System Testing and Commissioning information and documentation shall not alter any obligations or responsibilities of MRRF hereunder, nor shall such review and approval create any warranties as to the design, suitability, capability, or expected performance of MRRF's Facility or operations.

Article IV. Term and Termination

Section 4.01 Term. Subject to the other provisions contained herein, the Term shall begin on the Effective Date and expire on the date ("the Expiration Date") that is twenty (20) years from the Commercial Operations Date (the period ending on the Expiration Date is the "Term"), unless terminated earlier as provided in this Agreement (the date of any such termination is the "Termination Date").

Section 4.02 Upon Expiration of Term or Early Termination of Agreement. Upon expiration of the Term or upon early termination in full or in part of the Agreement, MRRF shall provide services necessary for a transition of the services provided by MRRF under this Agreement to the County or its designee, for no more than six (6) months from the date of expiration of the Term or date of Termination.

Section 4.03 Multi-term Contract. Pursuant to state law, HRS §103D-315 and HAR §3-122-149, and unless otherwise provided for by law, this Agreement may be entered into for any period of time deemed to be in the best interests of the County, provided the term of the Agreement and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore. Further, when funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the Agreement shall be cancelled and MRRF shall be reimbursed for the actual, reasonable value of any non-recurring costs incurred but not amortized in the price of services delivered under this Agreement. The cost of cancellation may be paid from any appropriations available for such purposes.

Section 4.04 Termination for Convenience by the County.

- (a) The Procurement Officer may, when the interests of the County so require, terminate this Agreement in whole or in part, for the convenience of the County. The Procurement Officer shall give written notice of the termination to MRRF

specifying the part of the Agreement terminated and when such termination becomes effective.

(b) MRRF shall incur no further obligations in connection with the terminated performance, and on the date(s) set in the notice of termination MRRF shall stop performance to the extent specified. After receiving a Notice of Termination for Convenience or Notice of Partial Termination for Convenience, MRRF shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Section 4.04:

- (i) Terminate outstanding orders and subcontracts as they relate to the terminated performance;
- (ii) Settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance; and
- (iii) Complete the performance not terminated by the notice of termination and may incur obligations as are necessary to do so.

(c) Submission of Termination Claim.

- (i) MRRF shall submit a termination claim specifying the amounts due because of the termination for convenience, together with cost or pricing data to the extent required by subchapter 15, chapter 3-122 of the HAR, bearing on the claim. If MRRF fails to file a termination claim within one year from the effective date of termination, the Procurement Officer may pay the MRRF, if at all, an amount set in accordance with Subsection 4.04(d) based on the information available, and MRRF shall be bound by the Procurement Officer's determination.
- (ii) If a termination hereunder is partial, MRRF may file a proposal with the County for an equitable adjustment for the applicable price for the continued portion(s) of this Agreement. Any such proposal shall be submitted to the County within 90 Days of the Notice of Partial Termination. The amount of any such adjustment as may be agreed upon shall be set forth in an amendment to this Agreement.
- (iii) The Procurement Officer and MRRF may agree upon the whole or any part of the amounts to be paid to MRRF by reason of the total or partial termination for convenience pursuant to this Section 4.04, provided MRRF has filed a termination claim supported by cost or pricing data submitted to the extent required by subchapter 15, chapter 3-122 of the HAR, and further provided that such amount shall not exceed the reasonable value of any non-recurring costs incurred but not amortized in the price of services delivered under

this Agreement with respect to which a total or partial termination for convenience has occurred, plus settlement costs, reduced by payments previously made by the County.

- (iv) Nothing in Subsection 4.04(d) below prescribing the amount to be paid to MRRF in the event that MRRF and the County fail to agree upon the whole amount to be paid to MRRF by reason of the termination pursuant to this Subsection 4.04(c) shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts that may be agreed upon to be paid to MRRF pursuant to this Subsection 4.04(c). The County's execution and delivery of any settlement agreement under this Subsection 4.04(c) shall not affect any of its rights under the Agreement with respect to the portions of the Agreement that have been completed or relieve MRRF from its obligations with respect thereto.
- (d) No Agreement as to Amount of Termination Settlement. If MRRF and the County fail to agree upon the whole amount to be paid to MRRF by reason of the termination of the Agreement pursuant to this Section 4.04, the amount payable shall be determined by the County in accordance with the following, but without duplication of any items or of any amounts agreed upon in accordance with Subsection 4.04(c). The Procurement Officer shall pay the MRRF the following amounts:
 - (i) MRRF's actual, reasonable out-of-pocket costs incurred but not amortized in the price of providing the services delivered under this Agreement, without profit, in preparing to perform and performing the terminated portion of the Agreement.
 - (ii) A markup on the amount in Subsection 4.04(d)(i) above, determined by the County to be fair and reasonable, but in no event to exceed five percent (5%) of the amount determined under Subsection 4.04(d)(i); provided, however, the markup shall not include anticipatory profit or consequential damages, and further provided that if it appears that MRRF would have sustained a loss if the entire Agreement would have been completed, no markup shall be allowed or included and the amount of compensation under Section 4.04(d)(i) shall be reduced to reflect the anticipated rate of loss; and
 - (iii) Subject to the prior approval of the Procurement Officer, costs of settling and paying claims arising out of the termination of subcontracts pursuant to Subsection 4.04(b)(ii). Subcontractors shall be entitled to a markup of no more than ten (10) percent on direct costs incurred to the date of termination. These costs must not include costs paid in accordance with Section 4.04(c).
 - (iv) The total amount to be paid to MRRF, exclusive of costs described in

Subsection 4.04(b)(ii), shall not exceed the actual, reasonable value of any non-recurring costs incurred but not amortized in the price of services delivered under this Agreement with respect to which a total or partial termination for convenience has occurred, less the amount of payments otherwise made. Upon the Procurement Officer's determination of the amount of the termination payment, this Agreement shall be amended to reflect the agreed termination payment, MRRF shall be paid said amount, and the Agreement shall be amended to reflect the reduced scope of services.

Section 4.05 MRRF acknowledges and agrees that it shall not be entitled to any compensation in excess of the actual, reasonable value of any non-recurring costs incurred but not amortized in the price of services delivered under this Agreement, plus its settlement costs, and that items such as lost or anticipated profits, unabsorbed overhead, and opportunity costs shall not be recoverable by it upon termination of this Agreement pursuant to Article IV. For the purpose of determining the actual, reasonable value of any non-recurring costs incurred but not amortized in the price of services delivered under this Agreement under this Article IV, deductions will be made for the amounts paid by the County or to be paid for accepted services under the Agreement, depreciation or amortization related to MRRF's Facility or its fixed or mobile infrastructure or components, the cost of materials, supplies, hardware, software, machinery, and equipment to be retained by MRRF, amounts realized by the sale of such items, the cost of common items or infrastructure usable on MRRF's other work, and for other appropriate credits. Upon notice by the County of the intent to terminate this Agreement in whole or in part, MRRF shall use its best efforts to mitigate the effect of the full or partial termination of this Agreement.

Article V. Landfill Gas and Acceptable Waste

Section 5.01 Landfill Gas. The County does not warranty the quantity or quality of the Landfill Gas. MRRF assumes all risk and cost associated with testing, treatment, and use and/or destruction of the Landfill Gas upon delivery at the Landfill Gas Interconnection Point. In no event shall any Landfill Gas be returned to the County's flare or control absent the County's express election. All Landfill Gas delivered to MRRF at the Landfill Gas Interconnection Point shall be utilized by MRRF in MRRF's Facility, processed and sold as a marketable commodity, or destroyed by MRRF in its flare in accordance with Applicable Laws.

Section 5.02 Landfill Gas Quality. The County is not required to deliver and MRRF is not required to accept Landfill Gas having less than 40% methane and/or greater than 10% nitrogen and/or greater than 2.5% oxygen by volume.

Section 5.03 Unused Landfill Gas. The County shall not sell Landfill Gas to third parties and shall not use Landfill Gas to produce energy and/or fuel during the Term, provided that to the extent MRRF does not accept any Landfill Gas made available to MRRF at any time, the County may, at its option, sell, utilize, or flare any unused Landfill Gas in the manner it deems appropriate. To the extent reasonably possible, MRRF shall provide advance notice to the County of its intent not to utilize all or a portion of the Landfill Gas and the duration of

such event. If at any time after the Commercial Operations Date Landfill Gas is made available by the County to MRRF and MRRF does not accept such Landfill Gas for a continuous period 90 Days, it shall be assumed that such event constitutes notice to the County of MRRF's intent to discontinue acceptance of Landfill Gas.

Section 5.04 Delivery and Use of Landfill Gas.

- (a) On or prior to the Commercial Operation Date, the County agrees to deliver to MRRF, and MRRF agrees to accept Landfill Gas extracted from the Landfill each day during the Term, with the exception allowed in Section 5.02; provided that MRRF shall be entitled to shut down MRRF's Facility for maintenance purposes, during which days MRRF shall have no obligation to receive Landfill Gas. MRRF agrees to give the County sufficient notice of any planned shutdown of MRRF's Facility that would affect acceptance of Landfill Gas, pursuant to the provisions of MRRF's SOP.
- (b) MRRF's compensation to the County for Landfill Gas is reflected in the tip fees set in Section 6.02, which contemplates full implementation of MRRF's Facility's primary processes outlined in Section 3.01. If practicable and at MRRF's option, the Landfill Gas processing/conversion component of MRRF's Facility may be developed and implemented prior to the full implementation of MRRF's Facility's processes and/or prior to the Commercial Operations Date. In such event, payment from MRRF to the County for use of the Landfill Gas shall be mutually agreed by the Parties in writing.
- (c) MRRF shall design and construct (including the cost of permitting), at its sole expense, piping and related equipment and infrastructure (collectively, "infrastructure") required to transfer Landfill Gas from the current location of the County's Flare to the Landfill Gas Interconnection Point. Said infrastructure shall include the controls, monitors, and/or equipment necessary to comply with Applicable Laws, the County's permits, and the operation of the GCCS and County's flare. The infrastructure shall be designed and constructed by MRRF. The County shall approve all plans prior to commencement of construction, and modification to said plans shall be made to accommodate the County's permit requirements and the operation of the GCCS. MRRF shall deliver to the County a bill of sale for the infrastructure and other documentation reasonably required by the County, transferring title to the County for consideration of one dollar (\$1), free and clear of all liens and encumbrances, on or before the Delivery Commencement Date. The County shall operate and maintain this infrastructure until the end of the Term. The Parties will execute a Right of Entry relating to the construction of the infrastructure. Any costs associated with booster pumps or other equipment necessary to bring the Landfill Gas from the location of the County's flare at the Effective Date to the Landfill Gas Interconnection Point shall be borne by MRRF.

Section 5.05 Delivery of Acceptable Waste. Commencing on the Commercial Operations Date, the County agrees to provide or cause to be provided to MRRF, and MRRF agrees to

accept and process all of the Acceptable Waste received by the County at the Central Maui Landfill. As of the Effective Date, the County's Source Separated Recyclables programs on Maui include the County Residential Recycling Centers (community residential recycling dropboxes) and the County curbside recycling collection program. The County will cause such County-owned Source Separated Recyclables received by these programs after the Commercial Operations Date to be delivered to MRRF, provided that the County may increase, decrease, or cease such programs at its sole discretion.

Section 5.06 Excess Acceptable Waste. MRRF shall not be obligated to receive Excess Waste, but has the right of first refusal to such Excess Acceptable Waste and shall be obligated to exercise a good faith effort to accept such Excess Acceptable Waste to the extent practicable up to the capacity of MRRF's Facility. The per-ton tip fee for Excess Acceptable Waste shall be the same as for Acceptable Waste.

Section 5.07 Unprocessibles and Bypassed Waste. Unprocessibles and Bypassed Waste transported to but not unloaded and accepted by MRRF at the Acceptable Waste Delivery Point may be redirected by MRRF to return to the Landfill scale house for re-weighing and delivery to the Landfill. The County will be credited for any associated tip fee. Unprocessibles and Bypassed Waste unloaded at the Acceptable Waste Delivery Point shall become the property of MRRF. Such Unprocessibles and Bypassed Waste shall be transported at MRRF's expense to the County scale house for weighing and on to such site within the Landfill as designated by the County. Unprocessibles and Bypassed Waste that enter any of MRRF's Facility's processes shall be deemed Acceptable Waste.

Section 5.08 Residue. MRRF shall test Residue in accordance with Applicable Laws prior to transport and disposal at the Landfill to ensure that such Residue is not Hazardous Material, according to the parameters set out in the SOP and Applicable Laws. MRRF shall be responsible for all costs associated with transportation and disposal of Residue to such site within the Landfill as identified by the County.

Section 5.09 Title/Risk of Loss. Title to and control and possession of all materials, including Landfill Gas, shall pass to and be absolutely vested in MRRF upon delivery at the Acceptable Waste Delivery Point or the Landfill Gas Interconnection Point, as applicable. Title to Residue, Bypassed Waste, and Unprocessibles shall pass to the County upon acceptance of such materials to the Landfill at such delivery point designated by the County. Liability for and the risk of loss shall follow title.

Article VI. Compensation and Revenue/Benefits Sharing

Section 6.01 MRRF Compensation. MRRF shall be paid monthly an Acceptable Waste Tipping Fee that shall be the sum of the amounts calculated by multiplying the quantity of each waste type by the appropriate per-ton cost, as measured at the County scale house, as set forth in this Article, plus any payments or adjustments that might be due MRRF as a result of the Annual Settlement Process provided in this Article. Unless specifically allowed for in this Agreement, no other source of payment or cost recovery from the County shall be allowed MRRF. MRRF shall not enter into any agreements with any party for acceptance of Acceptable Waste absent the express written agreement of the County.

Section 6.02 Acceptable Waste Tipping Fee. The following per ton tipping fees shall be effective on the Delivery Commencement Date and shall be paid by the County to MRRF. The per ton tipping fees shall increase by two percent (2%) annually, effective on the first day of the month following the first annual anniversary of the Commercial Operations Date.

<u>Acceptable Waste Type</u>	<u>Tipping Fee (per ton)</u>
Municipal Solid Waste (residential and commercial)	\$68
Source Separated Recyclables (County dropbox or curbside pickup)	\$100 for the first 2,250 tons per Contract Year; \$68 thereafter
Green Waste (commercial and residential self-haul)	\$29
Sewage Sludge	\$76
Construction & Demolition Waste (residential and commercial)	\$68
Fats, Oils, and Grease	\$100

Section 6.03 Guaranteed Annual Minimum Tonnage of Acceptable Waste. Beginning on the Commercial Operations Date, the County will deliver or cause to be delivered a minimum of 125,000 tons of Acceptable Waste per Contract Year to MRRF, provided that the County does not control and can not guaranty the quality or composition of said Acceptable Waste or its suitability for any purpose. The Guaranteed Annual Minimum Tonnage of Acceptable Waste shall be measured as the average of the preceding three Contract Years. For example, the Guaranteed Annual Minimum Tonnage for Contract Years 1, 2, and 3 shall be the average of those Contract Years. Thereafter, the Guaranteed Annual Minimum Tonnage for Contract Year 4 shall be the average of Contract Years 2, 3, and 4, and the Guaranteed Annual Minimum Tonnage for Contract Year 5 shall be the average of Contract Years 3, 4, and 5, and so on. If the Guaranteed Annual Minimum Tonnage is not delivered, the County shall compensate MRRF by paying the then-applicable per-ton price for MSW for the tonnage of deficiency as part of the Annual Settlement Process in Section 6.10. If MRRF does not accept up to the per ton limits set out in the definition of Excess Acceptable Waste, as measured on a Contract Year basis, fails to meet any of the Performance Guarantees applicable to the current Contract Year as set out in Article IX, or accepts Acceptable Waste from others pursuant to Section 6.01, this Section 6.03 shall not apply.

Section 6.04 Fuel Sale. In the event the County becomes able to utilize fuels produced by MRRF's Facility, under a separate fuel sales agreement, MRRF and the County may exercise the option to sell these commodities to the County, at a fixed price that results in net cost savings to the County as compared to other sources of transportation or power generation

fuel, including fossil fuel. The escalation factor applied to such a fuel sales agreement pricing shall be 2% annually.

Section 6.05 Electricity Sale by MRRF to the County. Under a separate fixed-price Power Purchase Agreement, and using fuels produced at MRRF's Facility, MRRF and the County may exercise the option to sell electricity behind the meter to County sites such as wastewater treatment plants, water pumping facilities, and other County facilities, at a price that results in net cost savings to the County as compared to the then-cost of electricity purchased by the County from MECO, less demand charges of \$.30 per kWh, escalating at 2% annually. MRRF will bear the sole costs for installation of the required equipment and infrastructure necessary for such electricity usage at County sites.

Section 6.06 Electricity Wheeling by MRRF to County Sites. If wheeling of electricity becomes possible in the State of Hawaii, under separate Power Purchase Agreements, and using fuels produced at MRRF's Facility, MRRF and the County may exercise the option to wheel and sell electricity at a fixed price to County sites such as wastewater treatment plants, water pumping facilities, and other County facilities at a price that results in net cost savings to the County as compared to the then-cost of electricity purchased by the County from MECO. The escalation factor applied to such a Power Purchase Agreement shall be fixed at 2% annually.

Section 6.07 Prompt Payment. Pursuant to HAR §3-125-23, any money, other than retainage, paid to MRRF shall be dispersed to subcontractors within thirty (30) Days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and, upon final payment to MRRF, full payment to the subcontractor, including retainage, shall be made within forty-five (45) Days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.

Section 6.08 County Compensation.

- (a) MRRF's Tipping Fees. The following shall be effective on the Delivery Commencement Date and shall be paid by MRRF to the County. The per ton tipping fees shall increase by two percent (2%) annually, effective on the first day of the month following the annual anniversary of the Commercial Operations Date.

	<u>Tipping Fee (per ton)</u>
Residue	\$71
Bypassed Waste (by type):	
MSW	\$68
Green Waste	\$29
Sewage Sludge	\$76
C&D Waste	\$68
FOG	\$100
Unprocessibles	\$68

Total MRRF tipping fees shall be the sum of the amounts calculated by multiplying the quantity of each waste type (i.e., Residue, Bypassed Waste, Unprocessibles) by the appropriate per-ton cost. MRRF is responsible for the physical transportation of and/or the costs associated with transporting the Residue, Bypassed Waste, Unprocessibles, or other products and materials from MRRF's Facility to the County's scale house and on to a specified disposal site within the Landfill, or another disposal site, at the County's instruction.

- (b) MRRF's payment for its tipping fees plus any payments or adjustments that might be due the County as a result of the annual settlement process provided in this Article shall be paid to the County monthly by the twentieth day of each month following the month in which such costs are incurred, or they may be withheld from MRRF's Compensation at the County's discretion.

Section 6.09 Revenue/Benefit Sharing. During the Term, MRRF shall share revenues/benefits with the County, as follows and in the manner described under "Annual Settlement Process," below. "Sharing" reflects monetary compensation for value and does not reflect co-application or co-ownership of the same. Costs to vest Environmental Attributes and Government Incentives, or similar benefits shall be reimbursed to the vesting party at cost, with no markup, prior to the equal sharing of the balance.

- (a) Tax Credits shall be retained by MRRF.
- (b) Government Incentives shall be shared equally by MRRF and the County, with the exception of grants or incentives related to increasing recycling activities, equipment, or programs received by MRRF for the benefit of the County, which shall be retained by MRRF.
- (c) Environmental Attributes shall be shared equally between MRRF and the County, with the exception of RECs that can not be unbundled.
- (d) Notwithstanding the foregoing, neither Party shall claim credits or certificates under this Section 6.09 if obtaining such credits would require the other Party to lose or reduce any of the credits or certificates currently being received or claimed by that Party or require the Party not receiving such credits or certificates to purchase, trade, or otherwise acquire credits or certificates related to the operation of the Landfill or MRRF's Facility to comply with any mandatory scheme or system under which such credits or certificates could be obtained.
- (e) MRRF shall make all necessary applications and take all additional steps necessary in connection with Environmental Attributes and Government Incentives, or similar benefits that are or become available during the Term of this Agreement and that the Parties receive the full value of the foregoing and of all such benefits and incentives. In no event shall failure of MRRF to apply for such applications be considered a breach of this Agreement. If MRRF fails to obtain the value of any Environmental Attributes, Government Incentives, or

similar benefits that are or become available during the Term of this Agreement, then the County shall have the right to apply for any such benefits or incentives and retain the full value thereof. Notwithstanding the foregoing, MRRF and/or the County shall in no event be obligated to apply for or obtain any new Environmental Attributes, Government Incentives, and Tax Credits ("new" meaning such benefits arising or being enacted or otherwise occurring after the Effective Date) if doing so would impair, reduce, or eliminate any Party's ability to continue to obtain the benefit of existing Environmental Attributes, Government Incentives, and/or Tax Credits.

- (f) Recyclables. MRRF's Facility is intended to extract and generate marketable Recyclable Material, as listed below. MRRF shall share with the County fifty percent (50%) of gross revenues net of transportation cost and brokerage commission (such commission up to a maximum of five percent (5%)) from the sale of any of the following materials recovered by MRRF's Facility in any Contract Year in which the baseline commodity price such material exceeds two hundred percent (200%) effective in the first Contract Year following Commercial Operations Date. The baseline per-ton commodity pricing shall increase by two percent (2%) on the annual anniversary of Commercial Operations Date. Should additional recyclable materials be identified, the Parties shall mutually agree on a baseline commodity price relevant to the Contract Year the recyclable is marketed. "HI-5" refers to the Hawaii Deposit Beverage Container Program.

<u>Recyclable Material</u>	<u>Baseline Commodity Pricing (\$/ton)</u>
Ferrous metals	\$800
Cardboard	\$160
Plastic Bottles	\$300
Tin Cans	\$800
Aluminum Cans	\$1,500
Aluminum Cans HI-5	\$1,700
Non-ferrous metals (non-cans)	\$1,500
Glass bottles	\$5
Glass bottles HI-5	\$205

Section 6.10 Annual Settlement Process. Within 90 Days of the conclusion of each Contract Year, MRRF shall provide the County with an Annual Settlement Statement setting forth data supporting the Contract Year's Performance Guarantees, and the determination of outstanding fees or obligations of the Parties with respect to such Contract Year and a reconciliation of such amount with the amounts actually paid by each Party with respect to such Contract Year. The Annual Settlement Statement shall include the calculation of the revenues that are to be shared, as provided for under Section 6.09, "Revenue Sharing". The Annual Settlement Statement shall include sufficient documentation to allow the County to verify quantities, unit prices, and all resulting costs and revenues as applicable. The County, or MRRF, as appropriate, shall pay all known and undisputed amounts within 45 days after

the receipt of such Annual Settlement Statement. If any amount is then in dispute or is for other reasons not definitely known at the time the Annual Settlement Statement is due, the Annual Settlement Statement shall identify the subject matter and reasons for such dispute or uncertainty, and include a good faith estimate of the amount in question. The appropriate Party shall review any disputed matter within thirty (30) Days of the receipt of the notice of dispute and, if the matter cannot be resolved through discussion and negotiation, shall refer the matter to the Procurement Officer pursuant to Section 11.01.

Section 6.11 Errors in Billing. If either Party hereto shall find at any time within thirty (30) Days after the date of any payment hereunder that there has been an overcharge or undercharge, the Party finding the error shall promptly notify the other party in writing. In the event of an undercharge, the Party undercharged shall pay the amount due within thirty (30) Days of the date of the notice of error. In the event of an overcharge, the Party overcharged shall refund the overpayment to the other Party within thirty (30) Days of the date of the notice of error. If the Party receiving notice of an error in billing notifies the other Party in writing within thirty (30) Days of receipt of such notice that such Party disagrees with the allegation of error, the Parties shall meet, by telephone conference call or otherwise, within ten (10) Days of the County's response for the purpose of attempting to resolve the dispute.

Section 6.12 Late Payments. All payments hereunder shall be made without set-off or deduction. Any payment not made within the time limits specified in Article VI shall bear interest from the date on which such payment was required to have been made through and including the date such payment is actually received by the Party. Such interest shall accrue at the rate of one percent (1%) per month or as permitted by applicable law. If any portion of an invoice is disputed, interest shall not be assessed on the entire amount, only that portion finally determined to be owed. All payments made under this Article VI shall be non-refundable, and shall be made free and clear of any tax, levy, assessment, duties, or other charges.

Section 6.13 Records. Each Party shall have the right, at its sole expense during normal business hours and with reasonable advance notice, to examine the other Party's relevant records to the extent necessary to verify the accuracy of any statement, change, notice, or computation made hereunder.

Section 6.14 Price Adjustment. Pursuant to HAR 3-125-12, any adjustment in Agreement price shall be made in one or more of the following ways: By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable; by unit prices; or in such other manner as the Parties may mutually agree in writing. MRRF shall provide cost or pricing data for any price adjustments subject to the provisions of HAR Chapter 3-122.

Article VII. The County's Facilities

Section 7.01 Priorities Between Operations of the Parties. In the event of a conflict between the County's operations at the Landfill and MRRF's operations, the County's Landfill operations shall take precedence. Collecting, extracting, and disposing of Landfill Gas

components, including but not limited to Landfill Gas, to meet environmental regulations or otherwise in connection with the operation of the Landfill will take precedence over collecting Landfill Gas for commercial purposes. The County shall be free at all times to take actions that it deems necessary or appropriate in connection with its collection and disposal of Landfill Gas and its operation of the Landfill. The County shall have the right to operate the Landfill, the GCCS, the County's blower and flare, and all related equipment in such manner as the County, in its sole discretion, deems advisable, including without limitation the right but never the obligation to drill new wells, to rework and repair old wells, to abandon any well, to build, test, modify, extend, repair, dispose of or discontinue the use of any or all facilities owned or installed by the County. The County reserves the right, at all times, to sufficient Landfill Gas to meet the County's Flare Turndown Requirements, and to meet any permit, regulatory, or maintenance requirements including annual source testing and Condensate disposal. If the Landfill Gas delivery to MRRF's Facility is impaired, County will use its best efforts to resume delivery in a reasonable time frame.

Section 7.02 County's Flare. The Parties intend that the County's enclosed flare shall operate as backup to MRRF's flare. MRRF shall include in the SOP protocols related to planned and emergency maintenance or shutdown of MRRF's Facility, including without limitation its flare, that would necessitate use of the County's enclosed flare to destroy Landfill Gas.

Section 7.03 Damage to Landfill, GCCS, or other the County Facilities or Equipment. Any damage or repairs caused by MRRF or its subcontractors, vendors, or suppliers to the Landfill facilities, including the GCCS, equipment, or projects shall be paid for or repaired by MRRF to the satisfaction of the County. All construction and/or replacement shall be done with materials and equipment of the same kind constructed or product installed. If MRRF does not repair the damaged facility/area within a reasonable period of time, MRRF shall pay for all construction/installation and related costs performed by the County plus a five percent (5%) administration fee.

Article VIII. Operation and Maintenance of MRRF's Facility

Section 8.01 Maintenance of MRRF's Facility and Site. At all times during the Term, MRRF's Facility shall be designed, constructed, and operated in compliance with all Applicable Laws and Permits.

Section 8.02 MRRF's Flare. MRRF's Facility shall at all times include a combination of flare and other necessary equipment capable of destroying all of the Landfill Gas in accordance with all Applicable Laws. MRRF shall solely bear all costs and expenses associated with management and destruction of the Landfill Gas upon delivery at the Landfill Gas Interconnection Point.

Section 8.03 Condensate. Beginning on the Delivery Commencement Date and continuing until expiration of the Term or Termination of the Agreement, MRRF shall manage and dispose of the Condensate generated within MRRF's Facility and GCCS (stored in the County's condensate tank, located near the County flare) in accordance with Applicable Laws and Permits, at MRRF's sole cost. If allowed under Permits and Applicable Laws, MRRF may

dispose of Condensate on the working face of the Landfill or as otherwise directed and approved by the County. The County will work collaboratively with MRRF to determine alternative means of Condensate disposal, provided that MRRF shall reimburse the County for any reasonable out of pocket costs in connection with such collaboration.

Section 8.04 Comprehensive Inspections. Upon reasonable written notice and at County's sole cost, the County, or its designee, may periodically perform a comprehensive inspection of all facilities operated or controlled by MRRF subject to this Agreement, and relevant records of MRRF each Contract Year to determine compliance with the Agreement and Applicable Law. MRRF shall cooperate fully with such inspections, which shall not interfere unreasonably with MRRF's performance of the Agreement and operations of MRRF's Facility.

Section 8.05 Noise Containment and Odor Prevention.

- (a) MRRF shall provide for noise containment in the design and operation of MRRF's Facility as needed to reduce the noise from MRRF's Facility and be in compliance with state law.
- (b) MRRF shall take steps necessary to ensure that odors are reasonably mitigated.

Section 8.06 Expansion of MRRF's Facility. MRRF may modify or expand MRRF's Facility as needed to comply with Applicable Laws, the terms of this Agreement, and to accommodate processing of Excess Acceptable Waste. MRRF may at its sole discretion expand the facility to accommodate Excess Acceptable Waste, but is under no obligation to do so or to accept any or all Excess Acceptable Waste.

Section 8.07 Security of MRRF's Facility. MRRF shall assume full responsibility for the security of MRRF's Facility. At no cost to the County, MRRF shall construct a suitable fence to enclose and secure its Site. MRRF shall comply with all of the County's rules and requirements applicable to all persons that enter the Landfill, and shall cause MRRF's officers, directors, employees, agents, contractors, and invitees to comply with all such rules and regulations, provided that the County shall provide MRRF with copies of all such rules from time to time during the Term.

Section 8.08 Monitoring and Reporting. MRRF shall monitor MRRF's Facility in accordance with Applicable Laws and shall report results of monitoring as required by permits and regulation to the County within ten (10) Days after monitoring completion. If MRRF or one of its contractors detects an exceedance of permits or regulations concerning any of its operations, including Landfill Gas control, MRRF shall use its best efforts to notify the County within one (1) hour after an exceedance is detected. If applicable, MRRF shall coordinate and conduct periodic performance (source) testing of MRRF's control device(s) pursuant to operating permits. MRRF shall (1) promptly provide the County within 24 hours with copies of any notices sent to or received from any Governmental Body having regulatory jurisdiction with respect to any violations of Applicable Law; (2) pay any resulting direct damages, fines, judgments or awards, including liquidated damages, levies, assessments, impositions, penalties, or other charges resulting therefrom; (3) promptly prepare all public notifications required by Applicable Law; and (4) assist the County with all public relations matters

necessary to adequately address any public concern caused by such non-compliance, including, but not limited to, preparation of press releases, attendance at press conferences, and participation in public information sessions and meetings.

Section 8.09 Storage and Disposal of Materials, Supplies, and Waste Generated by MRRF.

- (a) MRRF shall be responsible for the storage and protection of any and all products, materials, equipment, and supplies in accordance with the manufacturer's instructions; product seals and labels shall be intact and legible, and sensitive products shall be stored in weather tight, climate controlled enclosures.
- (b) MRRF is responsible for proper handling, storage, transportation, and disposal (per local, state, and federal regulations) of any Hazardous Wastes, liquid wastes, or nuisance wastes (i.e., finely divided, powdery/dusty materials, strong odor, etc.) generated by MRRF.
- (c) If the operation of MRRF's Facility results in RCRA Subtitle C waste, or in any other waste that cannot be disposed of in the Landfill in compliance with Permits and Applicable Laws, then MRRF shall dispose of such waste at its sole expense and in compliance with Applicable Laws.

Article IX. Milestones and Performance Guarantees

Section 9.01 Milestones. MRRF shall have the following milestones in connection with the construction of MRRF's Facility:

Milestone	Deadline
Permits and Entitlements (Completion)	24 months from Effective Date
Project Financing Close	6 months from Permits and Entitlements (Completion)
Construction Commencement	6 months from Project Financing Close
Substantial Construction Completion	24 months from Construction Commencement
Commercial Operations Date	3 Months from Substantial Completion

The Commercial Operations Date shall be 63 months from the Effective Date, unless extended by mutual agreement in writing or due to Force Majeure. MRRF shall have the right to extend the Commercial Operation Date for a twelve-month grace period by beginning to pay the Avoided Cost Payment of fifty thousand dollars (\$50,000) per month to the County, starting on the first Day of the month following the deadline for the Commercial Operation Date. If the Commercial Operation Date has not occurred by the last Day of the twelve-month grace period, then the County shall have the

right to terminate this Agreement by notice to MRRF.

Section 9.02 MRRF's Performance Guarantees.

- (a) The following Performance Guarantees shall be the average of the preceding three Contract Years. For example, the Performance Guarantee for Contract Years 1, 2, and 3 shall be the average of those Contract Years. Thereafter, the Performance Guarantee for Contract Year 4 shall be the average of Contract Years 2, 3, and 4, and the Performance Guarantee for Contract Year 5 shall be the average of Contract Years 3, 4, and 5, and so on.
- (i) Availability Guarantee. MRRF shall guarantee that MRRF shall receive and accept for processing all Acceptable Waste and Landfill Gas at least ninety percent (90%) of the total operational hours of the Landfill. As an example: If the Landfill is open for 300 Days in a Contract Year, the Availability Guarantee shall be 270 Days.
 - (ii) Waste Diversion Guarantee. MRRF shall guarantee that Acceptable Waste shall be diverted from the Landfill at a rate of at least seventy percent (70%). Said diversion rate shall be calculated as follows: Tons of Acceptable Waste delivered minus Residue returned to the Landfill, divided by tons of Acceptable Waste. Such calculation shall exclude Construction and Demolition Waste. As an example, if the County delivers or causes to be delivered 150 tons of Acceptable Waste, the Waste Diversion Guarantee is 105 tons.
 - (iii) Waste Acceptance Guarantee. MRRF shall guarantee that all Landfill Gas and Acceptable Waste (with the exclusion of FOG, Green Waste, and Sewage Sludge) up to the per ton annual maximum limits enumerated in the definition of Excess Acceptable Waste shall be received and processed by MRRF's Facility.
- (b) Waste Acceptance Guarantee for FOG, Green Waste, and Sewage Sludge. MRRF shall guarantee that all FOG, Green Waste, and Sewage Sludge received at the Landfill shall be accepted by MRRF and processed up to the per ton annual maximum limits enumerated in the definition of Excess Acceptable Waste. This Performance Guarantee shall apply to each Contract Year beginning with the second Contract Year and shall apply to each waste type individually.
- (c) MRRF shall take any commercially practicable action (including, without limitation, making repairs, replacements, and operating and management practices changes) necessary, in light of the nature, extent, and repetitiveness of such noncompliance or anticipated non-compliance with Performance Guarantees, to continue or resume performance hereunder, and to eliminate the cause of, if reasonably possible, and to reasonably assure that such non-compliance will not recur.

- (d) Notice, Cure, and Liquidated Damages. MRRF understands and agrees that if MRRF fails to meet the Performance Guarantees, the County will suffer substantial losses, and MRRF agrees that it shall be liable for such losses. MRRF acknowledges and agrees that the Liquidated Damages are intended to compensate the County solely for MRRF's failure to meet one or more of the Performance Guarantees and shall not excuse MRRF from liability from any other breach of the requirements of the Agreement. When MRRF is given notice of delay or nonperformance of one or more Performance Guarantees specified in Section 9.02, MRRF shall cure the delay or nonperformance promptly within thirty (30) Business Days of such notice (the "Cure Period"). If such cure can not be reasonably effected within the initial Cure Period and if MRRF thereafter diligently pursues the cure to completion, the Cure Period shall be extended to 180 Days from the date of the notice (the "Extended Cure Period"). If MRRF fails to cure within the Cure Period or Extended Cure Period, as applicable, it is agreed that MRRF shall immediately pay to the County the amount of \$5,000 per Day as Liquidated Damages from the date set for cure until the earlier of the following and as limited in this section: (i) the County reasonably obtains similar services if MRRF is terminated in whole or in part for default, or (ii) until MRRF provides the services if MRRF is not terminated in whole or in part for default. At no time will the cumulative total payment of Liquidated Damages exceed \$5 million for the entire term of this Agreement. To the extent MRRF's delay or nonperformance is excused due to Force Majeure, or such reason for nonperformance is caused by the County, such Liquidated Damages shall not be due the County.

Article X. Defaults

Section 10.01 MRRF's Events of Default. Subject to the opportunity to cure provided in Section 11.02, an event of default shall occur with respect to MRRF if, for reasons other than the occurrence of an event of Force Majeure:

- (a) MRRF refuses or fails to meet the Commercial Operation Date Milestone;
- (b) MRRF fails to meet any of the Performance Guarantees described in Article IX and/or repeatedly fails or refuses to meet any of the Performance Guarantees;
- (c) MRRF abandons or discontinues the operation of MRRF's Facility, or any primary component or process of MRRF's Facility, for a period in excess of thirty (30) Days. "Primary component or process" includes those identified in Section 3.01;
- (d) MRRF makes any intentional misrepresentation of information or facts relating to MRRF's performance obligations and/or MRRF's Facility's performance;
- (e) MRRF defaults in the performance of its obligations pursuant to the terms of MRRF's financing in connection with MRRF's Facility or pursuant to the terms of

its Offtake Agreements;

- (f) MRRF fails to make any payment, including Avoided Cost Payment, to the County pursuant to this Agreement on or before the due date for such payment;
- (g) MRRF fails to comply with Applicable Laws;
- (h) Any representation or warranty made herein by MRRF shall have been false in any material respect when made;
- (i) MRRF (i) files a petition in bankruptcy, reorganization or similar proceedings under the bankruptcy laws of the United States, (ii) has filed against it a petition in bankruptcy, reorganization or similar proceedings under the bankruptcy laws of the United States which petition is not dismissed within sixty (60) Days, (iii) is adjudicated bankrupt under the bankruptcy laws of the United States, (iv) has a receiver, permanent or temporary, appointed for it by a court of competent jurisdiction, (v) requests the appointment of a receiver; (vi) makes a general assignment for the benefit of creditors, (vii) has its bank accounts, property or receivables attached and such attachment proceedings are not dismissed within sixty (60) Days, or (viii) is dissolved or liquidated;
- (j) Ownership of any or all of MRRF's Facility is transferred to an entity in violation of the terms of this Agreement; or
- (k) MRRF fails or refuses to timely perform or observe any material obligation under this Agreement that is not specifically described above as an event of default.

Section 10.02 County's Events of Default. Subject to the opportunity to cure provided in Section 11.02, an event of default shall occur with respect to the County if, for reasons other than the occurrence of an event of Force Majeure:

- (a) Failure or refusal to timely perform or observe any material obligation pursuant to this Agreement; or
- (b) Any representation or warranty made herein by the County shall have been false in any material respect when made.

Section 10.03 Notice of Default. The Party in default under this Agreement shall be referred to as the "Defaulting Party," and the other Party shall be referred to as the "Non-Defaulting Party." The Non-Defaulting Party shall deliver to the Defaulting Party a Notice of Default describing the default in reasonable detail and state the date by which the default must be cured, if applicable.

Article XI. Disputes and Remedies Following Default

Section 11.01 Disputes. Any dispute arising under or out of this Agreement shall be resolved in accordance with HRS § 103D-703 and HAR Chapter 3-126.

Section 11.02 Cure Period. In the case of a failure to make a payment hereunder when due, the Defaulting Party may cure the default within thirty (30) Days after the Defaulting Party's receipt of the Notice of Default by payment of the full amount due plus interest as provided in Article VI calculated from the date due until paid. In the case of all other defaults, the Defaulting Party shall cure the default within thirty (30) Business Days, except where the default cannot be cured within thirty (30) Business Days, in which event, if the Defaulting Party begins actions to cure the default promptly within thirty (30) Business Days and thereafter diligently pursues the cure to completion, the cure period shall be extended to 180 Days from the date of the Notice of Default. If, within the specified cure period, the Defaulting Party does not cure the default, then the Non-Defaulting Party shall have the right to suspend its performance as it pertains to that particular default under this Agreement or to terminate this Agreement by notice to the Defaulting Party, and the Non-Defaulting Party shall be entitled to all remedies available under this Agreement, or at law and in equity.

Section 11.03 Notwithstanding the provisions of Section 11.02, any breach or default by MRRF that subjects the County to any risk of loss, liabilities, legal actions, penalties, fines, with respect to any permits or authorization related to the County's operation of the Landfill and related activities, MRRF's right to cure shall be for a period equal to the lesser of thirty (30) Days or such lesser period as may be mandated by any applicable regulatory authority with respect to the County's obligation to cure or rectify any violations relating to its permits or other authorizations. Any Notice of Default given pursuant to this Section shall include a specific reference to this Section.

Section 11.04 County Remedies upon Occurrence of MRRF Default. If an event of default as described in Section 10.01 has occurred and is not subject to cure or is continuing beyond notice and cure periods:

- (a) The County may terminate this Agreement or part of this Agreement as to which there has been delay or other breach of contract, and cease to deliver all or part of the Landfill Gas and/or Acceptable Waste to MRRF. The Termination provisions of Section 4.02 shall apply;
- (b) The County may sell all or part of the Landfill Gas and/or Acceptable Waste to any other user(s) or otherwise utilize the Landfill Gas and/or Acceptable Waste;
- (c) In the event of termination of this Agreement in whole or in part, the Procurement Officer may procure similar services in a manner and upon terms deemed appropriate by the Procurement Officer. MRRF shall continue performance of the Agreement to the extent it is not terminated and shall be liable for the excess costs incurred in procuring similar services, including the costs of handling and otherwise disposing of Acceptable Waste and/or Landfill Gas;
- (d) The County may withhold from amounts due MRRF as the Procurement Officer deems to be necessary to protect the County against loss because of outstanding liens or claims of former lien holders and to reimburse the County for the excess costs incurred in procuring similar services; and/or

- (e) The County may proceed to protect and enforce any or all of its rights and remedies under this Agreement, and to exercise any or all other rights and remedies available to it at law, in equity, and/or by statute.

Section 11.05 MRRF Remedies upon Occurrence of the County Default. If an event of the County default as described in Section 10.02 above has occurred and is continuing beyond notice and cure periods, then MRRF may:

- (a) Terminate this Agreement.
- (b) Proceed to protect and enforce any or all of its rights and remedies under this Agreement, and to exercise any or all other rights and remedies available to it at law, in equity, and/or by statute.

Section 11.06 Damages.

- (a) For breach of any provision for which an express remedy or measure of damages is provided in this Agreement, the liability of the defaulting Party shall be limited as set forth in such provision. MRRF agrees to insert the substance of this Section 11.06 in all subcontracts hereunder.
- (b) If no remedy or measure of damages is expressly provided, then, in the event of MRRF Default, the County shall be entitled to all available damages, which may include, without limitation, consequential, incidental, punitive, exemplary and indirect damages. This provision shall survive the expiration or early termination of this Agreement.
- (c) Nothing in this Agreement is intended to cause the County to be, and the County shall not be, liable to MRRF for any lost business, lost profits or revenues, or other special, indirect, or consequential damages, all claims for which are hereby irrevocable waived by MRRF. Notwithstanding the foregoing, none of the payments for Acceptable Waste or any other amount specified as payable by the County to MRRF under the terms of this Agreement upon the termination of this Agreement shall be deemed consequential damages.

Section 11.07 Effect of Termination of Agreement. Upon the expiration of the Term or the Termination Date, as applicable, any amounts then owing by a Party to the other Party shall become immediately due and payable and then future obligations of the County and MRRF under this Agreement shall be terminated (other than the obligations set forth in Articles XI and XII). Such termination shall not relieve either Party from obligations accrued prior to the effective date of termination or expiration.

Article XII. Indemnification and Responsibility as Permitted by Law

Section 12.01 Indemnification by MRRF.

- (a) Indemnification. Except as provided in HRS §103D-713, MRRF shall defend,

indemnify, and hold harmless the County and directors, officers, employees, agents, representatives, subcontractors, assignees, and servants from and against any and all claims penalties, demands, actions, proceedings, liability or losses of whatsoever nature, including without limitation for reasonable attorneys' fees, for injury or death to person(s) or for damage or loss to or of property arising out of or in connection with the acts or omissions of MRRF or MRRF's employees, officers, agents, or subcontractors under this Agreement. The provisions of this Paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement for any reason.

- (b) Intellectual Property Indemnity. MRRF shall indemnify the County, its officers and employees, from liability, of any nature or kind on account of use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention articles or appliance furnished or used under this Agreement.
- (c) Notice of Claims. The County shall deliver to MRRF a notice describing the facts underlying its indemnification claim and the amount of such claim (each such notice a "Claim Notice"). Such Claim Notice shall be delivered promptly to MRRF after the County receives notice that an action at law or a suit in equity has commenced; provided, however, that failure to deliver the Claim Notice as aforesaid shall not relieve MRRF of its obligations under this Section 12.01, except to the extent that MRRF has been prejudiced by such failure.
- (d) Defense of Action. In case the County shall, without any fault on its part, be made a party to any litigation commenced by or against the County in connection with this Agreement, if requested by the County, MRRF shall assume on behalf of the County, and conduct with due diligence and in good faith, the defense of the County with counsel reasonably satisfactory to the County (including those of the County Counsel and counsel retained by the County), expenses (including but not limited to expert fees, litigation costs, and investigation costs), and liabilities incurred in the defense of any claim, action or proceeding brought against the County during the progress of the work or the provision of services pursuant to this Agreement; provided, however, that if MRRF is a defendant in any such action and the County believes that there may be legal defenses available to it that are inconsistent with those available to MRRF, the County shall have the right to select separate counsel to participate in its defense of such action at MRRF's expense. If any claim, action, proceeding or investigation arises as to which the indemnity provided for in this Article XII applies, and MRRF fails to assume the defense of such claim, action, proceeding or investigation after having been requested to do so by the County, then the County may, at MRRF's expense, contest or, with the prior written consent of MRRF, which consent shall not be unreasonably withheld, settle such claim, action, proceeding or investigation. All reasonable costs and expenses incurred by the County in connection with any such contest or settlement shall be paid upon demand to MRRF.

Section 12.02 County's Responsibility as Permitted by Applicable Law.

- (a) Limitation of Liability. The County shall be responsible, to the extent permitted by Applicable Law, for damage or injury caused by the County's officers and employees in the scope of their employment provided that the County's liability for such damage or injury has been determined by a court of competent jurisdiction or otherwise agreed to by the County, and the County shall pay for such damage or injury to the extent permitted by law and authorized by the Maui County Council pursuant to Maui County Code ("MCC" section 3.16). The County's total liability under this Agreement, if any, is strictly limited to the provisions in this paragraph.
- (b) Notice of Claims. MRRF shall deliver a Claim Notice promptly to the County after MRRF receives notice that an action at law or a suit in equity has commenced; such Claim Notice shall be delivered promptly to the County after MRRF receives notice that an action at law or a suit in equity has commenced; provided, however, that failure to deliver the Claim Notice as aforesaid shall not relieve the County of its obligations under this Section 12.02, except to the extent that the County has been prejudiced by such failure.

Section 12.03 Survival of Provisions. The provisions of this Article XII shall survive the expiration or termination of this Agreement.

Article XIII. Prevailing Wages

Section 13.01 Payment of Prevailing Wages. MRRF shall pay prevailing wages during any performance of work that constitutes a public works project as defined by Hawaii law, (including, but not limited to, construction, improvement, demolition, alteration, renovation, or repair of a publicly leased or operated building or structure, including the GCCS) and shall require compliance with all provisions of Hawaii law regarding construction of a public works project, including Chapter 104, HRS. In addition, all such agreements between MRRF and a third party for work that constitutes a public works project shall include the following provision:

"MRRF shall pay, and shall require any subcontractor to pay minimum prevailing wages (basic hourly rate plus fringe benefits), as determined by the State of Hawaii Director of Labor and Industrial Relations and published in wage rate schedules, to the various classes of laborers and mechanics employed by them in the execution of this Contract in accordance with the provisions of Chapter 104 of the Hawaii Revised Statutes. Laborers and mechanics working on a Saturday, Sunday, or a legal holiday of the State or more than eight (8) hours a day on any other day shall be paid overtime compensation at one and one-half times the basic hourly rate plus the cost of fringe benefits for all hours worked. The current State of Hawaii prevailing wage rate schedules are online at <http://hawaii.gov/labor> and shall be posted by MRRF in a prominent and easily accessible place at the job site and given to each laborer and mechanic employed under the contract, except when the employee is covered by a

collective bargaining agreement. A certified copy of all payrolls shall be submitted weekly to the County.”

Section 13.02 Indemnification. MRRF shall protect, defend, indemnify and hold the County harmless from and against any and all claims arising in whole or in part from a failure of MRRF and/or its agents, contractors, or employees to comply with the terms and conditions set out in this Article.

Article XIV. Compliance with Applicable Laws and Change in Law

Section 14.01 Compliance. MRRF shall keep fully informed of all applicable federal, state, and county laws, ordinances, codes, rules and regulations, governmental general and development plans and all changes thereto including, but not limited to, the Americans with Disabilities Act, health and safety, labor, anti-discrimination and environmental laws and regulations, and with all other laws, ordinances, codes, rules, regulations, design standards and criteria, governmental general and development plans applicable to MRRF’s performance of its obligations under this Agreement.

Section 14.02 Change in Law. Notwithstanding any other provision of this Agreement, if the governmental agencies that administer Applicable Laws or any other federal, state, or local governmental or nongovernmental agency, or any court or administrative tribunal passes, issues, or promulgates any law, rule, regulation, standard, interpretation, order, decision or judgment, excluding any change in tax law, (collectively or individually, “Legal Event”), which was not in effect and not anticipated as of the Effective Date, in the good faith judgment of one party (the “Noticing Party”), materially and adversely increases or decreases the cost of performing or materially increases or decreases the scope of a Party’s obligations under the Agreement (such “material increase or decrease” shall be a net cost increase or decrease in excess of \$20 million applicable to the remainder of the Term), and which subjects the Noticing Party to a risk of prosecution or civil monetary penalty, then the Noticing Party may give the other Party notice of intent to amend or terminate this Agreement in accordance with this Section.

- (a) Notice Requirements. The Noticing Party shall give notice to the other Party together with an opinion of counsel setting forth the following information:
- (i) The Legal Event(s) giving rise to the notice;
 - (ii) The consequences of the Legal Event(s), including any necessary change in the terms, scope, or timing of the Agreement;
 - (iii) The anticipated net loss or gain of revenue directly resulting from the Legal Event;
 - (iv) Any capital expenditure that is required or no longer required as a result of a Legal Event taking effect during the Term; and
 - (v) The Noticing Party’s proposed amendment(s) to the Agreement, and

a statement that the purpose thereof is (1) to further comply or satisfy Applicable Law or Permit requirements created or affected by the Legal Event(s); and/or (2) to eliminate or minimize the risk of prosecution or civil monetary penalty.

- (b) The Parties shall have ninety (90) Days from the giving of such notice in subsection (a) above ("Renegotiation Period") within which to negotiate, and the Parties shall negotiate in good faith an amendment to this Agreement in accordance with the Noticing Party's proposal (if any), or otherwise as the Parties may agree. The Renegotiation Period may be extended by mutual written agreement. During the Renegotiation Period, the Parties shall discuss and agree to the issues referred to in subsection (a) and the ways in which MRRF or the County, as applicable, has or will mitigate the effect of the Legal Event, including:
- (i) Providing evidence that MRRF has used reasonable endeavors (including, where practicable, competitive quotes to oblige its subcontractors) to minimize any increase in costs and maximize any reduction in costs;
 - (ii) Demonstrating how any capital expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred or would have been incurred, any foreseeable Legal Event(s) at that time have been taken into account by MRRF;
 - (iii) Giving evidence as to how the Legal Event has affected prices charged for services similar to those of this Agreement by any similar businesses to that of MRRF, including similar businesses in which MRRF or its Affiliates carry on business; and
 - (iv) Demonstrating that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by the Legal Event concerned, has been taken into account in the amount which in the Party's opinion has resulted or is required under paragraph (a) (iii) and/or (iii) above.
- (c) Termination Due to Change in Law. If this Agreement is not amended within the Renegotiation Period, the Party affected by the Legal Event shall have the option to (i) assume the costs and obligations related to such Legal Event or (ii) exercise the right to terminate the Agreement only as to the portion of the Agreement directly affected by the Change in Law. Except as otherwise required by Applicable Law, any amounts owing to either party hereunder shall be paid, on a pro rata basis, up to the date of such partial or complete termination, and any obligation hereunder that is to continue beyond expiration or termination shall so continue pursuant to its terms. No later than 30 Days from the date of termination due to change in law, the Parties shall meet to negotiate amicably

and in good faith to determine an equitable sharing between MRRF and the County of the Parties' direct, out-of-pocket costs resulting from such termination. Such direct costs shall not include consequential costs, lost or anticipated profits, unabsorbed overhead, and/or opportunity costs. In making such determination, the Parties will take into account MRRF's and the County's out of pocket costs resulting from the Termination. If the Parties cannot reach an agreement to the distribution of costs of termination under this section, the amount and sharing of such costs shall be finally determined by a court of law.

- (d) Confidentiality. All opinions of counsel presented by the Noticing Party hereunder, and any corresponding opinions given by the other party in response, shall be deemed confidential and given solely for purposes of renegotiation and settlement of a potential dispute, and shall not be deemed disclosed so as to waive any privileges otherwise applicable to said opinions.

Article XV. Independent Contractor Status and Responsibilities, Including Tax Responsibilities

Section 15.01 Independent Contractor. In the performance of services required under this Contract, MRRF is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the County shall have a general right to inspect work in progress to determine whether, in the County's opinion, the services are being performed by MRRF in compliance with this Agreement.

Section 15.02 MRRF's Employees and Agents. MRRF and MRRF's employees and agents are not by reason of this Agreement, agents or employees of the County for any purpose. MRRF and MRRF's employees and agents shall not be entitled to claim or receive from the County any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to County employees. Unless specifically authorized in writing by the County, MRRF and MRRF's employees and agents are not authorized to speak on behalf and no statement or admission made by MRRF or MRRF's employees or agents shall be attributed to the County, unless specifically adopted by the County in writing.

Section 15.03 Taxes. MRRF shall pay or cause to be paid all taxes and assessments imposed upon MRRF with respect to MRRF's Facility and operations on the Site, including without limitation, real and personal property taxes, as well as any taxes that the County is required to collect from MRRF (including but not limited to sales tax, General Excise Tax, or use tax). This Article shall be subject to HRS §103-53.

Section 15.04 Property Taxes. The Parties agree that the per ton tipping fees in Article VI as of the Effective Date are based upon the assumption that the County will exempt the payment of property taxes related to the MRRF's Facility, or otherwise credit MRRF for MRRF's payment of such annual property taxes during the Term. As of the Effective Date, no provision exists in the Maui County Code to exempt or relieve facilities such as MRRF's from payment of property taxes. When and if such a provision is enacted by the Maui County Council ("Council"), MRRF shall timely submit a completed application for such exemption.

If thereafter the County does not grant an exemption from such property taxes or if such an exemption is not enacted by the Council, MRRF shall timely pay such property taxes, and shall deduct an equal amount from any sum owed by MRRF to the County under the Annual Settlement Process identified in Section 6.10 for the applicable Contract Year in which such taxes have been paid. Should such circumstance result in the Department of Environmental Management's requiring a budget amendment for payment of all or a portion of the Annual Settlement amount, the deadline for such payment to MRRF shall be extended. Nothing in this paragraph is intended to relieve MRRF of its obligation to timely remit property taxes to the County.

Article XVI. Force Majeure

Section 16.01 Suspension of Obligations. If either Party is rendered unable, wholly or in part, by an event of Force Majeure to carry out its obligations under this Agreement, then the obligations of the Party giving such notice as described in Section 16.02, other than the obligation to make any payment due hereunder, shall be suspended during the period of any inability to perform its obligations hereunder caused by the event of Force Majeure, but for no longer period, and such cause shall, to the extent possible, be remedied with all reasonable dispatch.

Section 16.02 Procedure for Claiming Force Majeure. Any Party claiming the occurrence of a Force Majeure Event shall advise the other Party of the reasonably full particulars of such event of Force Majeure in writing or by electronic mail as soon as reasonably possible, followed by a written notice within ten (10) Days of the occurrence of the Force Majeure Event. Parties shall make reasonable efforts to avoid the adverse impacts of a Force Majeure Event and to resolve the impact(s) of the event or occurrence once it has occurred in order to resume performance. The Party claiming such event shall include with any notice all available documentation supporting the claim. If the responding Party agrees that the delay or anticipated delay is due to a Force Majeure Event, the time for performance of the obligations under this Agreement affected by such event will be extended. The responding party will notify the claiming Party in writing of the extension. If the responding Party does not agree, it shall so notify the claiming Party within ten (10) Days of receipt of the Notice; thereafter, the claiming Party may seek to resolve the dispute pursuant to Section 11.01.

Section 16.03 Termination in Consequence of Force Majeure Event. If a Force Majeure Event shall have occurred that has materially and adversely affected a Party's performance of its obligations hereunder and that has continued for a period of twenty-four (24) consecutive months, then either Party shall be entitled to terminate this Agreement upon thirty (30) Days prior written notice to the other Party. If at the end of such thirty (30) Day period such Force Majeure Event shall still continue, this Agreement shall automatically terminate. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other. By mutual agreement of the Parties, MRRF's Facility damaged or destroyed by a Force Majeure Event may be replaced by MRRF within the time frames set forth above, or as otherwise agreed in writing, and subsequent to replacement and upon commencement of operation of the replacement Facility(ies) all terms and conditions of this Agreement will remain in effect, including the remaining Term of this Agreement.

Section 16.04 Strikes and Lockouts. The Parties agree that the settlement of strikes or lockouts shall be entirely within the discretion of the Party having the difficulty, and, that the foregoing requirement that any Force Majeure remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of the opposing Party when such course is inadvisable in the sole discretion of the Party affected by the strike or lockout.

Article XVII. Insurance Requirements

Section 17.01 Maintenance of Insurance. MRRF shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work by MRRF or MRRF's agents, representatives, employees or subcontractors. The County reserves the right to request and receive a certified copy of any insurance policy, including all endorsements, related to MRRF's Facility or this Agreement. Failure to maintain the necessary insurance in accordance with the provisions set forth in this article shall constitute a material breach of this Agreement and the County shall thereafter have the option of pursuing remedies for such breach and/or immediate termination of this Agreement. Nothing in the insurance requirements of this Agreement shall be construed as limiting the extent of MRRF's responsibility for payment of damages resulting from its operations under this Agreement, including MRRF's separate and independent duty to defend, indemnify, and hold the County and its officers and employees harmless pursuant to other provisions of this Agreement.

Section 17.02 The County of Maui as Additional Insured and Named Holder of the Insurance Certificates. With the exception of Workers' Compensation and Employer's Liability insurance, the County, its officers, officials, employees, and volunteers shall be added as additional insured with respect to the work contracted for herein, and the insurance policies required herein shall not be cancelled, limited in scope of coverage, or non-renewed by MRRF on the applicable policies during the Term, provided however, should any policy required herein be cancelled and not immediately replaced, the County, in addition to other remedies, reserves the right to procure the cancelled insurance and deduct the cost, upon documentation and proof provided of such cost thereof from any money due to MRRF. Coverage must be primary in respect to the additional insured. Any other insurance carried by the County shall be excess only and not contribute with this insurance. MRRF shall submit proof of the insurance coverage(s) by providing to the County a certificate of insurance prior to the commencement of the work. Such certificates of insurance shall name the County as additional insured and holder of said certificate and shall contain the following statement:

"Should any of the policies described herein be cancelled before the expiration date thereof, notice shall be delivered to the County, Department of Corporation Counsel, Risk Management Division, 200 South High Street, Wailuku, Hawaii 96793, in accordance with policy provisions. This insurance includes coverage for the liability assumed by the insured under the Agreement between the insured and the County of Maui, dated [insert Effective Date]."

Section 17.03 Subcontractors. When a subcontractor is utilized, MRRF shall furnish or require the subcontractor to furnish the Procurement Officer within ten (10) Days after execution of the contract, or within such further time as the County may allow, with a copy of a policy or policies of insurance and certificate of insurance covering the subcontractor and the subcontractor's employees or agents in the same amount and for the same liability specified in this Article, unless a lesser amount or type of coverage is approved by the County in writing. In the event of cancellation or termination of any required policy or any substitute policy, MRRF or the subcontractor, as the case may be, shall immediately furnish the Procurement Officer with a substitute policy. Said insurance policy(ies) shall name MRRF and the County as additional insureds and holders of the insurance certificates and shall also provide a waiver by the insurer of any right of subrogation in MRRF's and the County's favor and coverage for the subcontractor's completed operations.

Section 17.04 Minimum Insurance Coverage Requirements. Unless otherwise approved by the County, the policy or policies of insurance maintained by MRRF shall provide the following minimum limit(s) and coverage(s) as specified herein, or greater amount of coverage as may be required from time to time by the County, be placed with an insurance carrier licensed to do business in the State of Hawaii with a current A.M. Best's Financial Strength Rating of no less than A (Excellent), and Financial Size Category of no less than VII. Any lesser Best's Rating will be subject to approval by the County. If the required insurance is not commercially available at a reasonable cost, the County may, in its sole discretion, accept a lower coverage amount or type of coverage. The minimum liability limits of liability may be provided by a combination of primary and Umbrella or Excess Liability policies.

(a) Commercial General Liability. Commercial General Liability by a carrier authorized to do business in the State of Hawaii on an "occurrence" form, naming the County as an additional insured and holder of the insurance certificate, to include coverage for:

- (i) Premises Operations,
- (ii) Independent Contractors,
- (iii) Products and Completed Operations,
- (iv) Broad Form Property Damage including Completed Operations,
- (v) Blanket Contractual Liability,
- (vi) Personal Injury,
- (vii) Employees named as Additional Insureds,
- (viii) Explosion, Collapse, and Underground Property Damage, and

(ix) Severability of Interest. The minimum acceptable limits of liability for such coverage shall be:

\$10,000,000 per occurrence;
\$10,000,000 general aggregate.

- (b) Automobile Liability. MRRF shall provide Automobile Liability coverage from a carrier admitted to do business in the State of Hawaii for all owned, non-owned, and hired autos, naming the County as an additional insured. The coverages maintained will be in compliance with Hawaii law. The minimum acceptable Combined Single Limit is \$6,000,000 (via combination of primary and excess limits).
- (c) HRS Chapter 383 (Unemployment Insurance), 386 (Workers' Compensation), 392 (Temporary Disability Insurance), and 393 (Prepaid Health Care) requirements. MRRF shall submit an approved certificate of compliance issued by the Hawaii State Department of Labor and Industrial Relations (DLIR). The certificate shall be valid for six (6) months from the date of issue and must be valid on the date it is received by the County. The application for the certificate shall be the responsibility of MRRF, and must be submitted directly to the DLIR and not to the County. [HRS §103D-310(c)]. MRRF shall carry workers' compensation insurance for MRRF's employees in the amounts required by Applicable Laws.

The minimum limits of liability to be maintained are as follows and MRRF shall request a waiver of subrogation in favor of the County:

Coverage A: State of Hawaii Workers' Compensation Law
Coverage B: Employer's Liability:

Bodily Injury from each accident: \$5,000,000
Bodily Injury from disease per employee: \$5,000,000
Bodily Injury from disease aggregate: \$5,000,000

- (d) Pollution Liability Insurance. The Pollution Liability policy must include a minimum limit of \$10 million per accident or occurrence, \$10 million aggregate. The policy must, on a blanket basis or by specific reference to the Agreement, extend to assumed liabilities with respect to contractual provisions. In addition to fixed site coverage related to MRRF's Site and Facility, the policy coverage must extend to losses arising from any waste, products or materials transported, shipped, or delivered via any transportation mode to a location beyond the boundaries of the Site at which MRRF or any entity for which MRRF is legally liable is performing or has performed the operations described in the Agreement. The policy must extend to off-site third party bodily injury and property damage due to releases from storage tanks (above and below ground). Coverage must include corrective action and clean-up due to releases from storage tanks.

- (e) Fire and Standard Extended Coverage Insurance. MRRF shall insure MRRF's Facility for \$1,000,000, or such other limit acceptable to the County, plus one hundred percent (100%) of the replaceable value thereof for the life of the Agreement against all loss or damage by fire at the Site and against all loss or damage covered by the Standard Extended Coverage Insurance endorsement, including vandalism and malicious mischief, by an insurance company or companies acceptable to the County. The amount of insurance may vary with the extent of MRRF's Facility completed, but shall at all times be at least equal to the replacement value. The insurance policy or policies shall be held jointly in the names of the County, MRRF, and MRRF's subcontractors, as their interests may appear.

Section 17.05 Proof of Coverage. After award of the contract, prior to the commencement of performance of services, MRRF shall furnish certificates of insurance to the County at the addresses specified, evidencing the insurance coverage, including endorsements above required. These certificates shall provide that such insurance shall not be terminated or expire without thirty (30) Days written notice to the County and MRRF shall maintain such insurance from the time MRRF commences performance of services hereunder until the completion of such services. For the purpose of this document, "commencing services" refers to any activity toward completing the project goal. If MRRF does not obtain the described insurance, or if the County is not furnished at the time specified with the requisite insurance certificates, or if the described insurance is terminated, altered, or changed in a manner not acceptable to the County, then MRRF shall not commence services and the County may withhold Landfill Gas and/or Acceptable Waste to MRRF or terminate this Agreement. Performance milestones will apply.

Section 17.06 Other Insurance Provisions. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve MRRF from liability in excess of such coverage, nor shall it preclude the County from taking such other actions as available to it under any other provision of this Agreement or otherwise in law. For any claims related to this Agreement, MRRF's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, and volunteers shall be excess of MRRF's insurance and shall not contribute with it. The submission of insurance documentation to and acceptance by the County which does not meet the requirements herein shall not be considered a waiver of MRRF's obligations or the County's rights under the terms of this Agreement.

Section 17.07 Subrogation Waiver. All insurance policies in any way related to this Agreement and secured and maintained by MRRF or its Subcontractors as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against MRRF or the County, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

Article XVIII. Representations And Warranties

Section 18.01 County's Representations and Warranties. The County hereby warrants and represents to MRRF, as of the Effective Date, that except as explicitly set forth in this Agreement to the contrary:

- (a) MRRF shall receive good and marketable title to the Landfill Gas and Acceptable Waste free and clear of all liens, claims, and encumbrances;
- (b) The County is a municipal corporation duly organized, validly existing and in good standing under the laws of the State of Hawaii and has the power to carry on its business as it is contemplated to be conducted under this Agreement;
- (c) The execution, delivery, and performance by the County of this Agreement is within the powers of the County, have been duly authorized by all necessary municipal action, and does not violate any Applicable Laws, the Maui County Charter, or the terms of any agreement to which the County is a party;
- (d) There are no bankruptcy, insolvency, reorganization, receivership, or other arrangement proceedings pending or being contemplated by it, or to its knowledge threatened against it;
- (e) To its knowledge, there are no actions, proceedings, judgments, rulings, or orders issued by or pending before any court or other governmental body that would materially adversely affect its ability to perform its obligations pursuant to this Agreement; and
- (f) To its knowledge, there is no RCRA Subtitle C permit for any portion of the Landfill.

Section 18.02 MRRF's Representations and Warranties. MRRF hereby agrees, warrants, and represents to the County, as of the Effective Date, that except as explicitly set forth in this Agreement to the contrary:

- (a) MRRF is a limited liability company duly organized and validly existing under the laws of the State of Delaware, in good standing under the laws of the State of Delaware, authorized to conduct business in the State of Hawaii, and has the power to carry on its business as it is contemplated to be conducted under this Agreement;
- (b) The execution, delivery, and performance by MRRF of this Agreement is within corporate powers of MRRF, have been duly authorized by all necessary corporate action, and does not violate any Applicable Laws, the terms of the articles of organization or by-laws of MRRF, or the terms of any agreement to which MRRF or any Affiliate of MRRF is a party;
- (c) MRRF has all necessary experience, rights, licenses, patents, copyrights, and

other approvals related to the processes and technology necessary to design, construct, equip, and operate MRRF's Facility.

- (d) There are no bankruptcy, insolvency, reorganization, receivership, or other arrangement proceedings pending or being contemplated by it, or to its knowledge threatened against it;
- (c) To its knowledge, there are no actions, proceedings, judgments, rulings or orders, issued by or pending before any court or other governmental body that would materially adversely affect its ability to perform its obligations pursuant to this Agreement; and
- (f) MRRF covenants that neither MRRF, nor any employees nor agents of MRRF, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with MRRF's performance under this Agreement, except as expressly agreed to by County.

Section 18.03 Warranty Exclusions.

- (a) The Parties agree that the implied warranties of merchantability and fitness for a particular purpose and all other warranties, express or implied, are excluded from this transaction and do not apply to the Landfill Gas and the Acceptable Waste provided by the County to MRRF hereunder.
- (b) The County makes no warranties or representations as to the quantity or quality of Landfill Gas that will be extracted from the Landfill during the term of this Agreement.
- (c) The County makes no warranties or representations as to the characteristics or quantities of Acceptable Waste provided to MRRF pursuant to this Agreement.

Article XIX. Public Information Program

Section 19.01 MRRF shall create a public information program, which may include the following as developed with County input:

- (a) Creation of a website informing the public of the status of MRRF's Facility and various public education materials and programs available associated with MRRF's Facility. Such website shall include annual data regarding MRRF's Facility's Performance Guarantees.
- (b) Issuance of newsletters and/or press releases to inform the public of MRRF's activities related to MRRF's Facility.
- (c) Preparation of fact sheets and household guides explaining State and County regulations and activities at MRRF's Facility that positively affect recycling and

renewable energy generation.

- (d) Presentations to local civic, environmental, and other groups or at public events, which will include presentation of available videos.
- (e) Providing a web-based repository of publications pertaining to waste policies and waste reduction and recycling programs, information about purchasing products made from recyclable products and directories of companies that provide these types of goods, recycling guidance documents and technologies that will be available to interested parties at MRRF's Facility or another location agreed to by the County. Such repository shall be inclusive of information or guides generated and provided by the County to MRRF.
- (f) Hosting tours of MRRF's Facility for interested members of the public and County.
- (g) Technical assistance on source and waste toxicity reduction to target users of concern.
- (h) Participation in public hearings, public meetings, and meetings of elected officials and interested groups.
- (i) Participation in State, County, and local community public events.

Article XX. Miscellaneous

Section 20.01 Assignment. Neither Party may assign its rights or obligations pursuant to this Agreement to a third party without the other Party's prior written consent, other than as a collateral assignment to MRRF's lenders in connection with MRRF's financing solely of MRRF's Facility as further set forth in Section 20.02, provided however, that 30 Days written notice be provided by MRRF to the County of such intention to assign as collateral, and further provided that the assignee pursuant to any such collateral assignment may not assign any rights or obligations hereunder to a third party without the County's prior written consent. For purposes of this Agreement, a change in direct or indirect control of MRRF shall be deemed to be an assignment of MRRF's rights and obligations under this Agreement. When in the best interest of the County and at the County's election, a successor in interest may be recognized in an assignment agreement in which the transferor, the transferee, and the County shall agree that: The transferee assumes all of the transferor's obligations; the transferor remains liable for all obligations under the Agreement but waives all rights under the Agreement as against the County; and the transferor shall continue to furnish, and the transferee shall also furnish, all required bonds or other required security. The rights, powers, and remedies of each Party shall inure to the benefit of such party and its successors and permitted assigns.

Section 20.02 Cooperation with Financing. The County acknowledges that MRRF may be financing MRRF's Facility, and the County agrees that it shall reasonably cooperate with MRRF and its financing parties in connection with such financing, including (a) the furnishing

of such usual and customary financial information, (b) the giving of such consents, estoppels, or certificates, (c) any collateral assignments, provided that MRRF shall pay the reasonable costs and expenses of the County relating to the review and negotiation of a mutually acceptable form of collateral assignment, and (d) providing such opinions of counsel and other matters as MRRF and its financing parties may reasonably request; provided, that the foregoing undertaking shall not obligate the County to materially change any rights or benefits, or materially increase any burdens, liabilities, or obligations of the County under this Agreement (except for providing notices and additional cure periods to the financing parties with respect to Events of Defaults with respect to MRRF as a financing party may reasonably request).

Section 20.03 Severability. If any provision of this Agreement is held invalid by a court having jurisdiction, the other provisions of this Agreement shall not be affected thereby. If the application of this Agreement or any of its provisions as to any person or circumstance is held invalid, the application of this Agreement and its provisions as to other persons or circumstances shall not be affected thereby.

Section 20.04 Entire Agreement. This Agreement, including all exhibits or attachments hereto, contains the complete agreement concerning the subject arrangement between the Parties and shall, as of the effective date hereof, supersede all other agreements between the Parties. The Parties stipulate that neither has made any representations with respect to the subject matter, execution, and delivery of this Agreement except as such representations are specifically set forth herein. Each Party acknowledges that the Party has relied on the Party's own judgment in entering into this Agreement. The Parties further acknowledge that any payments or representations that may have previously been made by either of them to the other are of no effect and that neither has relied thereon in connection with its dealing with the other.

Section 20.05 Notices. All notices, requests, demands and other communications provided with respect to the transactions described in this Agreement shall be in writing, shall be sent (a) by first class U.S. Certified Mail, return receipt requested, (b) by private courier service, (c) personally delivered, or (d) delivered by email, and shall be deemed to have been properly given upon actual receipt as shown by a receipt signed by the recipient and provided by the entity delivering the notice, or in the case of email by return email from the Party recipient acknowledging receipt. Notices shall be delivered to the Parties at the following addresses:

To the County:

Director
Department of Environmental Management
County of Maui
2200 Main Street, Suite 100
Wailuku, Hawaii 96793

Additionally, for all matters related to Article XVII (Insurance):

Risk Management
Department of Corporation Counsel
200 S. High Street, Third Floor
Wailuku, Hawaii 96793

To MRRF:

Maui Resource Recovery Facility, LLC
5780 Fleet Street, Suite 310
Carlsbad, California 92008

Each Party shall notify the other Party in the manner specified above of any change in the above addresses for receipt of communications. All notices, communications, and waivers under this Agreement, if applicable, to any person who has or will make a loan to MRRF to help finance MRRF's Facility shall be to the name and address specified in a notice from MRRF to the County.

Section 20.06 Officer in Charge. The Director of Department of Environmental Management, or an authorized representative, shall be the Officer-in-Charge for all services provided herein, and shall have the right to oversee the successful completion of Agreement requirements, including monitoring, coordinating, and assessing MRRF's performance and approving completed work/services with verification of same for MRRF's invoices or requests for payment. The Officer-in-Charge also serves as the point of contact for MRRF during the Term.

Section 20.07 Amendments to Agreement. This Agreement shall not be amended, modified, or supplemented without the written agreement of MRRF and the County at the time of such amendment, modification, or supplement. However, this Agreement shall, at all times, be subject to such changes or modifications by the Hawaii Public Utilities Commission as it may, from time to time, direct in the exercise of its jurisdiction.

Section 20.08 Assistance of Legal Counsel. The Parties have carefully read and fully understand all of the provisions and effects of this Agreement. The Parties shall consult with their respective counsel if any provision of this Agreement is not fully understood. The Parties are voluntarily entering into this Agreement and neither Party has made representations concerning the terms or effects of this Agreement other than those contained herein.

Section 20.09 Waivers; Approvals. No waiver of any provision of this Agreement shall be effective unless set forth in writing signed by the Party making such waiver, and any such waiver shall be effective only to the extent it is set forth in such writing. Failure by a Party to insist upon full and prompt performance of any provision of this Agreement, or to take action in the event of any breach of any such provisions or upon the occurrence of any Event of Default by MRRF or the County, as applicable, shall not constitute a waiver of any rights of such Party, and, subject to the notice requirements of this Agreement, such Party may at any

time after such failure exercise all rights and remedies available under this Agreement with respect to such Event of Default by MRRF or the County. Receipt by a Party of any instrument or document shall not constitute or be deemed to be an approval of such instrument or document. Any approvals required under this Agreement must be in writing, signed by the Party whose approval is being sought.

Section 20.10 Governing Law; jurisdiction; Forum. This Agreement shall be governed by and construed in accordance with the laws of the State of Hawaii without regard to choice of law principles. The County and MRRF irrevocably agree that any action, suit or proceeding by or among MRRF and the County may be brought in whichever of the Circuit Courts of the State of Hawaii, has subject matter jurisdiction over the dispute and waives any objection that the County and MRRF may now or hereafter have regarding the choice of forum whether on personal jurisdiction, venue, forum non convenience or on any other ground. The County and MRRF hereby agree that service of process in any action, suit or proceeding may be effected by mailing copies thereof by registered or certified mail, postage prepaid, to it at its address set forth herein. Nothing in this Agreement shall affect the right to service of process in any other manner permitted by law. The County and MRRF further agree that final judgment against it in any action or proceeding shall be conclusive and may be enforced in any other jurisdiction within or outside the State of Hawaii by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the fact and the amount of such judgment.

Section 20.11 Conflict Between Agreement and Procurement Rules. In the event of a conflict between the terms and conditions of this Agreement and the procurement rules in the HAR, the procurement rules in effect on the Effective Date shall control and are hereby incorporated by reference.

Section 20.12 Campaign Contributions. MRRF acknowledges that it is unlawful under HRS § 11-355, unless specifically permitted under that law, for MRRF, at any time during the Term of this Agreement to: (a) directly or indirectly make any contribution, or promise expressly or impliedly to make any contribution to any candidate committee or noncandidate committee, or to any candidate or to any person for any political purpose or use; or (b) knowingly solicit any contribution from any person for any purpose during the Term.

Section 20.13 Offset. The County may offset against any monies or other obligations the County owes to MRRF under this Agreement, any amounts owed to the County by MRRF under this Agreement, or any other contracts, or pursuant to any law or other obligation owed to the County by MRRF, including, without limitation, the payment of any taxes or levies of any kind or nature. The County will notify MRRF in writing of any offset and the nature of such offset. For purposes of this Section 20.13, amounts owned to the County shall not include debts or obligations which have been liquidated, agreed to by MRRF, and are covered by an installment payment or other settlement plan approved by the County, provided, however, that MRRF shall be entitled to such exclusion only to the extent that MRRF is current with, and not delinquent on, any payments or obligations owed to the County under such payment or other settlement plan. Except as otherwise set forth herein, each Party reserves to itself all rights, setoffs, counterclaims and other remedies and/or

defenses to which it is or may be entitled, arising from or out of this Agreement or arising out of any other contractual arrangements between the Parties. All outstanding obligations to make, and rights to receive, payment under this Agreement may be offset against each other.

Section 20.14 No Third Party Rights. This Agreement is only for the benefit of the Parties to this Agreement, their successors and permitted assigns and persons expressly benefited by the indemnity provisions of this Agreement. No other person (including, without limitation, tenants of the Site and Landfill) shall be entitled to rely on any matter set forth in, or shall have any rights on account of the performance or non-performance by any Party of its obligations under, this Agreement.

Section 20.15 No Agency. This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship, or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

Section 20.16 No Public Utility. Nothing contained in this Agreement shall be construed as an intent by MRRF to dedicate its property to public use or subject itself to regulation as a "public utility" (as defined in Chapter 269 HRS, as amended) or any other Applicable Law.

Section 20.17 Records Retention and Right to Audit Records. MRRF and any subcontractors shall maintain the books and records that relate to the Agreement, and any cost or pricing data for the Term and for three (3) years from the date of final payment under the Agreement or end of the Term, whichever is later. In the event that any litigation, claim, investigation, audit, or other action involving the records retained under this provision arises, then such records shall be retained for three (3) years from the date of final payment, or the date of the resolution of the action, whichever occurs later. During the period that records are retained under this section, MRRF and any subcontractors shall allow the County access to such records pursuant to HRS §103D-317 and Subchapter 19, Chapter 3-122, HAR.

Section 20.18 Confidentiality of Material. The County shall not in any way be liable or responsible for disclosure of information or records if disclosure is required under the Public Records Act (Government Code, Section 6250, et seq.), Hawaii Uniform Practices Act (HRS §92F, et seq.), or pursuant to law or legal process. County will apply exemptions to disclosures that are available under law and statute, with respect to the protection of confidential information. MRRF shall provide to the County any reasonable argument and relevant law to support MRRF's position on confidentiality of its materials, which County shall consider. MRRF shall save, defend, keep, hold harmless, and fully indemnify the County, its elected officials, officers, employees, agents, and volunteers from all damages, claims for damages, costs, or expenses, whether in law or in equity, that may at any time arise or be set up for not disclosing material provided by MRRF to the County, if expressly requested by MRRF of County to not disclose such material, pursuant to the aforementioned laws or regulations, including those arising from or connected to the County's refusal to disclose any protectable item or document to any party making a request for those items.

Section 20.19 Change of Name. When MRRF asks to change the name under which it holds

this Agreement with the County, the contract officer of the purchasing agency shall, upon receipt of a document acceptable or satisfactory to said officer indicating such change of name (for example, an amendment to MRRF's articles of incorporation), enter into an amendment to this Agreement with MRRF to effect such a change of name. The amendment to this Agreement changing MRRF's name shall specifically indicate that no other terms or conditions of this Agreement are thereby changed. All assignment contracts and amendments to this Agreement effecting changes of MRRF's name or novations hereunder shall be reported to the chief procurement officer as defined in HRS §103D-203(b) within 30 days of the date that the assignment contract or amendment becomes effective. When MRRF holds contracts with more than one purchasing agency of the County, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the County Department of Finance.

Section 20.20 Antitrust Claims. The County and MRRF recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, MRRF hereby assigns to the County any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the County under an escalation clause.

Section 20.21 Hazardous Materials and Pollution Control. MRRF shall fully comply with all federal, State of Hawaii, and County laws, statutes, regulations, and ordinances in effect or which shall come into effect during the term of the contract regarding the generation, use, storage, handling, transportation, and disposal of Hazardous Materials. If MRRF encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in HRS §128D-1, MRRF shall immediately notify the County and all other appropriate state, County, or federal agencies as required by law. MRRF shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders that the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the County determines that this Agreement requires an adjustment of the time for performance, this Agreement shall be modified in writing accordingly.

Section 20.22 Execution in Counterparts. This Agreement may be executed in counterparts, and when all counterparts have been executed, each counterpart shall be considered an original but when assembled shall constitute one and the same instrument, and shall have the same force and effect as though all of the signatories had executed a single signature page. The Parties agree that facsimile and/or electronic signatures are authorized and binding on all Parties to this Agreement.

Section 20.23 Waiver. The failure of a Party to insist upon the strict compliance with any term, provision, or condition of this Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of the Party's right to enforce the same in accordance with this Agreement. The fact that a Party does not specifically refer to one provision of the law, and

does not include other provisions shall not constitute a waiver or relinquishment of the Party's rights or the other Party's obligations under the law.

Section 20.24 Headings. The headings in this agreement are explanatory, and shall not be deemed to affect, qualify, or amplify the contents of the terms in any particular clause.


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IN WITNESS WHEREOF, the Parties hereto have duly executed and delivered this Agreement as of the date set forth above.

APPROVAL RECOMMENDED:

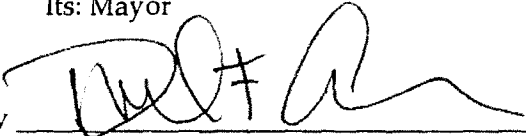
By 

Kyle K. Ginoza, P.E., Director
Department of Environmental Management

COUNTY OF MAUI


By 

Alan M. Arakawa
Its: Mayor

By 


Danilo F. Aagsalok
Its: Finance Director

APPROVED AS TO FORM
AND LEGALITY:



Richelle M. Thomson
Deputy Corporation Counsel

MAUI RESOURCE RECOVERY FACILITY, LLC

By 

Arun Sharma
Its: President

STATE OF California)
COUNTY OF San Diego) SS.

On this 6th day of January, 2014, before me personally appeared ARUN SHARMA, ~~to me personally known~~, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity. IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Stamp or Seal]



Erika M. Csaszai
Notary Public, State of California
Print Name: Erika M. Csaszai, Notary Public
My commission expires: April 12, 2017

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____	

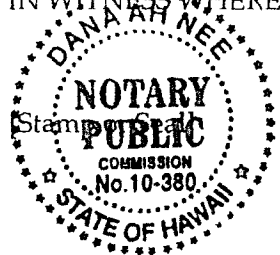
Notary Signature: _____	[Stamp or Seal]
Date: _____	

EMC
1/6/14

STATE OF HAWAII)
) SS.
 COUNTY OF MAUI)

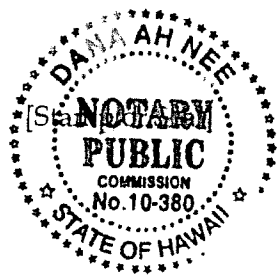
On this 8th day of January 2014, before me personally appeared **DANILO F. AGSALOG**, to me personally known, who, being by me duly sworn, did say that he is the Finance Director of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said the County of Maui, and that the said instrument was signed and sealed on behalf of said the County of Maui pursuant to Section 8-4.3 of the Charter of the County of Maui and Section 3.12.070, Maui County Code; and the said **DANILO F. AGSALOG** acknowledged the said instrument to be the free act and deed of said the County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Dana Ah Nee
 Notary Public, State of Hawaii
 Print Name: **DANA AH NEE**
 My commission expires: **NOV 14 2014**

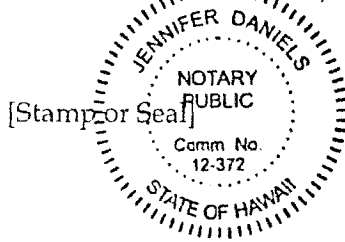
NOTARY PUBLIC CERTIFICATION			
Doc. Date:	<u>undated at time of notarization</u>	# Pages:	<u>57</u>
Notary Name:	DANA AH NEE	Judicial Circuit:	<u>2nd</u>
Doc. Description:	<u>M1016 - Maui County Integrated Waste Conversion and Energy Project Services Agreement</u>		
Notary Signature:	<u>Dana Ah Nee</u>		
Date:	<u>JAN - 8 2014</u>		

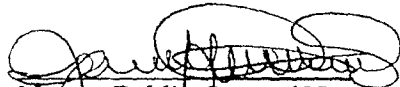


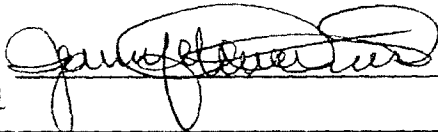
STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 8th day of January 2014 before me personally appeared ALAN M. ARAKAWA, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said the County of Maui, and that the said instrument was signed and sealed on behalf of said the County of Maui pursuant to Section 7-5.11 and Section 9-18 of the Charter of the County of Maui; and the said ALAN M. ARAKAWA acknowledged the said instrument to be the free act and deed of said the County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.




Notary Public, State of Hawaii
Print Name: **JENNIFER DANIELS**
My commission expires:

NOTARY PUBLIC CERTIFICATION			
Doc. Date:	<u>1/8/14</u>	# Pages:	<u>57</u>
Notary Name:	<u>JENNIFER DANIELS</u>	Judicial Circuit:	<u>2nd</u>
Doc. Description:	<u>Services Agreement</u> <u>Maui County Integrated Waste Conversion + Energy Project</u>		
Notary Signature:			
Date:	<u>1/8/14</u>		

