# Contract No.

This Designated Facility Agreement (“Agreement”) is between the King County, a Washington municipal corporation, acting through the King County Solid Waste Division (“Division”), located at 201 South Jackson Street, Seattle, WA 98104, and [COMPANY] (“Owner”) the Owner and operator of that certain construction and demolition (“C&D”) waste handling facility located at [ADDRESS](“Designated Facility” or “Facility”). The Division and Owner shall collectively be referred to as the “Parties”.

 **I.** **RECITALS**

1. Pursuant to RCW 36.58.040 and King County Code (KCC) 10.08.020, King County (“County”) may require generators of solid waste, including construction and demolition (“C&D”) waste, generated within its jurisdiction to make use of disposal, transfer, or resource recovery sites or facilities designated by the County.

2. Pursuant to KCC 10.04.020.W, the County’s jurisdiction for solid waste management, including C&D waste, consists of the unincorporated areas of the County and each city for which the County, by interlocal agreement, has comprehensive planning authority for solid waste management (“County Jurisdiction”). This currently includes all cities within the geographic area of the County, except the cities of Seattle and Milton.

3. Pursuant to KCC 10.30.020, the Division is authorized to enter into designated facility agreements with owners and operators of facilities that meet criteria established by the Division to receive, recycle and dispose of C&D waste.

4. Pursuant to RCW 36.58.040, the County may enter into solid waste system agreements with public or private parties to operate facilities, to designate publicly or privately owned or operated facilities as disposal sites, and to process, treat, or convert solid waste into other valuable or useful materials or products.

5. The purpose of this Agreement is to implement the foregoing authority and designate the Owner’s C&D handling facility as a Designated Facility and set forth the terms and conditions under which the Facility may receive, process, recover (recycle) and dispose of C&D waste.

 NOW THEREFORE, the Owner and the Division agree as follows:

**II.** **AGREEMENT**

1. Definitions.
	1. “Beneficial Use” means the use of solid waste as an ingredient in a manufacturing process, or as an effective substitute for natural or commercial products, in a manner that does not pose a threat to human health or the environment.
	2. “Construction and Demolition (C&D) Waste” means any nonputrescible recyclable or nonrecyclable waste that results from construction, remodeling, repair or demolition of buildings, roads or other structures and requires removal from the site of construction or demolition. Except where otherwise expressly provided, C&D Waste means C&D Waste generated in the County Jurisdiction. C&D Waste does not include land clearing materials such as soil, rock, or vegetation, or contaminated soil, friable asbestos-containing waste material as defined under Regulation III, Article 4 of the Puget Sound Clean Air Agency, unacceptable waste, garbage, sewerage, animal carcasses or any other solid waste that does not meet the definition of C&D Waste.
	3. “C&D Material Recovery Facility” (“MRF”) means a facility that processes mixed C&D Waste to extract Recyclable C&D Waste materials.
	4. “C&D Transfer Station” (“Transfer Station”) means operations that transfer C&D Waste prior to final disposal without conducting Processing.
	5. “Designated Facility” or “Facility” means a facility, including a C&D MRF or C&D Transfer Station that is authorized to accept Mixed and Nonrecyclable C&D Waste generated within the County Jurisdiction. As used in this Agreement, “Designated Facility” or “Facility” means the Owner’s Facility located at\_\_\_\_\_\_\_\_.
	6. “Mixed C&D Waste" means C&D Waste containing both Recyclable and Nonrecyclable C&D Waste material that has not been separated.
	7. “Nonrecyclable C&D Waste” means any C&D Waste that is not Recyclable C&D Waste. C&D materials used as alternative daily cover for landfills or as waste stabilizer are considered Nonrecyclable C&D Waste
	8. “Processing” or “Processed” means the separation of Recyclable C&D Waste materials from Mixed C&D Waste using multiple separation processes to maximize efficiency of separation, such as a conveyor and pick line.
	9. “Prohibited Waste” means waste designated as dangerous waste by the Washington State Department of Ecology under chapter 173-303 WAC (Dangerous waste regulations), as may be amended.
	10. “Recyclable C&D Waste” means C&D Waste material that can be kept out of or recovered from C&D Waste and reused or transformed into a usable product.. Recyclable C&D Waste may consist of a single type of recyclable material or a mixture of two or more types of recyclable material. Material used to produce hog fuel is recyclable C&D waste.
2. The Owner Shall Accept C&D Waste at Designated Facility.
	1. The Owner shall accept C&D Waste generated within the County Jurisdiction at the Designated Facility. However, the Owner may refuse to accept C&D Waste if:

(1) capacity constraints at the Facility will be exceeded,

(2) the customer has previously failed to exclude Prohibited Waste,

(3) the customer has previously failed to pay invoices, or

(4) the C&D Waste is too contaminated, such as, it contains excessive levels of garbage or wet materials that would preclude handling by the Facility.

b. The Owner shall provide the driver with written documentation stating the reason why C&D Waste was not be accepted and maintain a copy at the Facility for County inspection.

c. The Owner acknowledges and agrees this Agreement does not guarantee receipt of any minimum amount of C&D Waste at the Designated Facility.

1. Prohibited Waste. The Owner shall not accept Prohibited Waste at the Facility.
2. Final Disposal Facilities. After Processing and subject to the requirements in Section 5, the Facility shall dispose of all remaining Nonrecyclable C&D Waste at a landfill or landfills located, designed, constructed, and operated: (a) to meet or exceed the requirements of WAC 173-351, Washington State Criteria for Municipal Solid Waste Landfills, or applicable and equivalent state regulations if located outside of the State of Washington; and (b) to meet or exceed all the applicable regulatory and legal requirements of all regulatory agencies with jurisdiction where the landfill is located. The Owner shall provide the Division with the name(s) and physical address of any and all landfills utilized by the Facility for disposal of C&D Waste and shall provide proof that the landfill is certified and in compliance with any and all permit and regulatory requirements.
3. Materials Banned From Disposal. The Owner shall not dispose of C&D Waste containing Recyclable C&D Waste materials currently specified by the Director of the Division and published as the ‘Director’s List of Readily Recyclable Construction and Demolition Materials Banned from Disposal’ (“Director’s List”) on the Division website, apart from exceptions noted in the Director’s List or this Agreement. The current Director’s List including exceptions is attached to this Agreement as Exhibit A. This list may be revised by the Director, in consultation with and upon notification of the Owner, based on current market conditions and regional processing capacity.
4. Material Recovery Requirements at C&D MRFs. By January 1, 2016, the waste residual from C&D MRFs destined for disposal may not contain more than 10 percent by total combined weight of those materials listed in the Director’s List. The Division shall have the right to access, inspect and sample residuals at a Designated MRF Facility to monitor compliance with recycling requirements and to ensure that the materials listed in the Director’s List are being handled in compliance with Section 10. Sampling will occur approximately four times per year, as the Division in its sole discretion determines appropriate, and will be performed according to methodology specified in the King County C&D MRF Waste Residual Sampling Protocol, as may be amended, published on the Division website. The Owner shall allow the Division or its designee reasonable access to waste residual and outbound stockpiles for sampling. If the Facility regularly practices size reduction (such as grinding) of inbound material for purposes of producing alternative daily cover, sampling will occur just prior to the reduction.
5. Compliance with Disposal Bans at C&D Transfer Stations. The disposal ban on materials posted on the Director’s List shall not apply to C&D Transfer Stations before January 1, 2018. The Division shall form a task force with the Owners who operate a C&D Transfer Station Facility to develop procedures to enforce the ban on disposal of materials posted in the Director’s List at C&D Transfer Stations. Agreements with Owners of C&D Transfer Stations shall be amended no later than January 1, 2018 to include these requirements. In the interim, the Division and the C&D Transfer Station Facility Owner shall develop and implement an informational program to inform generators of C&D Waste of the County’s ban on disposal of materials posted in the Director’s List. The informational program shall include employees and customers of C&D Transfer Stations. The program shall include, at a minimum, posting signage at the Facility visible to incoming customers with information regarding the disposal ban, informing customers of the disposal ban when responding to requests for C&D disposal services, and preparation of printed communication regarding the disposal ban for distribution by scale house and sales staff.
6. Corrective Actions—C&D MRFs.

a. Any material violation, or finding of two or more violations of the recovery requirements documented by the sampling procedures described in Section 6 during a calendar year shall constitute grounds for designating the Facility as non-compliant with recovery requirements. The Division shall notify the Owner in writing of the Facility’s noncompliance and may suspend the Owner’s authority to accept C&D Waste at the Facility for a period and on such conditions stated in the notice or terminate this Agreement in its entirety in accordance with Section 22(c).

b. An Owner receiving a notice of suspension under Section 8 may request reinstatement based on the installment of new processing equipment and/or changes to sorting procedures. The Division will review submitted documentation and repeat sampling. This process shall be repeated as needed until compliance with recovery requirements is documented and the Director of the Division has issued written notice of reinstatement.

1. Corrective Actions-C&D Transfer Stations (Reserved). This section will be amended no later than January 1, 2018 to include corrective actions prescribed in the event that the Facility does not comply with requirements for minimizing disposal of materials posted in the Director’s List as specified in Section 8.

10. Appropriate Destination for Recyclable C&D Materials. The Owner shall ensure that recyclable C&D is sent to facilities that reuse or recycle these materials to the maximum extent feasible, and minimize disposal of any secondary processing or handling residuals.

1. Fee.
	1. Pursuant to KCC 4A.200.700 and KCC 10.30.050, as may be amended, the Owner shall pay a regulatory fee to the Division in the form of a monthly surcharge per ton on the disposal of C&D Waste generated in the County Jurisdiction. As of the date of this agreement, the regulatory fee is currently set at $4.25 per ton of C&D Waste that is disposed for the purpose of funding Division costs to manage and oversee the Division’s C&D recycling and disposal program, and including but not limited to the Owner’s performance under this Agreement.
	2. The fee shall apply to each ton of C&D Waste generated within the County Jurisdiction that is sent to the final disposal facilities in accordance with Section 4.
	3. Payment shall be calculated by first determining the percentage of the total tons of C&D Waste disposed by the Facility during each month that originates from within the County Jurisdiction. The percentage shall be calculated each month by dividing the tons of Mixed and Nonrecyclable C&D Waste accepted during the month from within the County Jurisdiction by the total tons of Mixed and Nonrecyclable C&D Waste accepted by the Facility from within and outside the County’s Jurisdiction during the month. The resulting percentage shall be multiplied by the total tons of C&D Waste shipped to a final disposal facility to calculate the number of tons applicable to the fee.

Formula:

[Tons of Mixed and Nonrecyclable C&D Waste received from the County’s Jurisdiction

÷ Total tons of Mixed and Nonrecyclable C&D Waste received by the Facility]

x Total tons of C&D Waste shipped to final disposal facilities

= Tons applicable for payment of fee.

1. Record Keeping and Audits.
	1. The Owner shall maintain complete and accurate records of all C&D Waste received, recycled, transported, disposed, or otherwise processed at the Facility pursuant to this Agreement. Records shall include the origin of each load of Mixed and Nonrecyclable C&D Waste. The Facility shall make these records available to the Division for inspection, auditing, and copying. The Facility shall use sequentially numbered transaction tickets and shall retain voided or canceled tickets for three (3) years.
	2. The Division may, at its expense, require the Owner to submit to an independent audit conducted by an auditor chosen by the Division. The audit shall address only those matters reasonably related to this Agreement.
2. Reports, Signage and Documentation. The Owner shall meet the following reporting requirements: A monthly report shall be prepared in a format prescribed by the Division and will list the following information:
	* + - 1. Inbound tons by city or unincorporated area of origin:

Tonnage of Mixed and Nonrecyclable C&D Waste received from the County’s Jurisdiction.

Tonnage of Mixed and Nonrecyclable C&D Waste and source separated Recyclable C&D received from other jurisdictions.

* 1. Outbound tons by material type and destination:

Tonnages shipped to a processor.

Tonnages by material to recycling end-markets such as manufacturing or reuse companies.

Tonnages by material to Beneficial Use end markets such as pulp and paper mills or industrial boilers.

Tonnages of Nonrecyclable C&D Waste disposed at or otherwise delivered to a landfill with identification of the landfill.

A monthly estimate of the tonnage of material remaining in stockpiles waiting processing or shipment to end markets.

* 1. Facilities that provide monthly and annual reporting to the City of Seattle under Director’s Rule SW-405.1 may use the same format for reporting to the Division, except that adequate documentation regarding calculation of the fee specified in Section 11 shall also be provided in a format prescribed by the Division.
	2. The Facility shall post a sign at the scale house directing all customers delivering C&D Waste from the County’s Jurisdiction to declare the origin of the C&D Waste. The sign shall be readily visible and legible to customers upon arrival at the scale house. The Facility shall provide a map of the County’s Jurisdiction to customers upon request, or if requested by a customer, verify the location of generation of the waste.
	3. Facilities that provide both MRF and Transfer Station operations shall note on each tip receipt if the load was Processed.
	4. The Owner shall obtain and maintain, at the Owner’s own cost and expense, all necessary permits, licenses and approvals for this Facility. The Owner is responsible for compliance with all applicable laws, statutes, codes and regulations. The Owner shall notify the Division regarding all new permits or permit modifications relating to operations at the Facility issued subsequent to the effective date of this agreement, including without limitation, land use applications, appeals, or modifications. If requested by the Division, the Facility shall provide copies of revisions to existing permits and newly issued permits to the Division within seven (7) days of the Division’s request. The Facility also shall provide, within seven (7) days of issuance, a copy of any official enforcement action regarding the Facility or its operation, including without limitation, a notice of violation or noncompliance with a statute, regulation, or permit condition.
1. Compliance with Law.
	1. The Owner shall ensure that the Facility fully complies with all applicable provisions of all applicable laws, including KCC 10.30 and any Division rules, as may be amended.
	2. Any finding by a court of competent jurisdiction or a regulatory authority that the Facility, or the landfill used by the Owner for final disposal, is in violation of applicable federal, state, regional and local laws, rules, regulations, ordinances, orders, and permits shall constitute a material breach of this Agreement and shall constitute good cause for termination of this Agreement under Section 21.a.
2. Right of Inspection.
3. In addition to Sections 6 and 7, the Owner shall allow the Division access to the Facility at all reasonable times to inspect and carry out other necessary functions under this Agreement. Division personnel will sign in at the Facility office, meet Facility requirements for use of personal protective equipment, and follow Facility safety procedures provided by any Facility escort.
4. The Division’s right to inspect and audit shall include the right to review, at an office of the Facility or affiliated company, all information from which all required Division reports are derived.
5. The Owner shall cooperate with the Division regarding the Division’s determination of whether the Facility meets the recovery requirements as provided in Section 5 and 6 of this Agreement. The Owner’s cooperation shall include providing the Division with access to all areas of the Facility where it generates, manages, stores and reloads Mixed and Nonrecyclable C&D Waste and Recyclable C&D, including without limitation to transfer vehicles, for the Division to inspect. The Owner shall provide reasonable access to Facility personnel and equipment to conduct the sampling and observations described under Sections 6 and 7 of this Agreement, in a safe location, and if reasonably possible, away from working areas and vehicle traffic.
6. Indemnification. To the maximum extent permitted by law, the Owner shall indemnify, hold harmless, and defend at its own expense the County from any and all claims, demands, damages, actions, losses, and expenses, including attorney fees, arising out of or in any way connected with, the Owner’s performance under this Agreement. Indemnification, hold harmless and defense shall include but not be limited to: 1) any and all claims (including demands, suits, penalties, losses, and judgments) related to or arising out of the Facility’s violation of any environmental, public health, or public safety requirements of any regulatory agency with jurisdiction in the course of its design, construction, operation, closure or post-closure care of facilities and 2) any and all claims (including demands, suits, penalties, losses and judgments) for any environmental damage related to or arising from the Facility’s design, construction, operation, closure or post-closure care. The Owner, by mutual negotiation, hereby waives, as respects the County only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event the County incurs attorney fees and/or costs in the defense of claims, for damages within the scope of this section, such fees and costs shall be recoverable from the Owner. In addition, King County shall be entitled to recover from the Owner fees, and costs incurred to enforce the provisions of this section. The provisions of this Section 16 shall survive the expiration or earlier termination of this Agreement.
7. Insurance. The Owner, at its own cost, shall procure by the date this Agreement is effective, and maintain for the duration of the Agreement 1) Commercial General Liability insurance against claims for injuries to persons and damages to property which may arise from or in connection with performance of this Agreement by the Owner, its agents, representatives, employees, and/or subcontractors. The limits of this insurance shall be at least $1,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage, and for those policies with an aggregate limit, $2,000,000 aggregate limit. Any deductible or self-insured retentions shall be the sole responsibility of the Owner. Such insurance shall cover the County, its officers, officials, employees, and agents as additional insureds against liability arising out of activities performed by or on behalf of the Facility pursuant to this Agreement 2) Statutory Workers Compensations and 3) Employers Liability/Stop Gap insurance in the amount of $1,000,000.
8. Confidentiality. This Agreement shall be considered a public document and will be available for inspection and copying by the public in accordance with the Public Records Act, chapter 42.56 RCW (the “Act”). If the Owner considers any portion of any record provided to the Division under this Agreement, whether in electronic or hard copy form, to be protected under law, the Owner shall clearly identify each such portion with words such as “CONFIDENTIAL,” “PROPRIETARY” or “BUSINESS SECRET.” If a request is made for disclosure of such portion, the Division will determine whether the material should be made available under the Act. If the Division determines that the material is subject to disclosure, the Division will notify the Owner of the request and allow the Owner ten (10) business days to take whatever action it deems necessary to protect its interests. If the Owner fails or neglects to take such action within said period, the Division will release the portions of record(s) deemed by the Division to be subject to disclosure. The Division shall not be liable to the Owner for inadvertently releasing records pursuant to a disclosure request not clearly identified by the Owner as “CONFIDENTIAL,” “PROPRIETARY” or “BUSINESS SECRET.”
9. Dispute Resolution. The Parties shall use their best efforts to resolve disputes regarding this Agreement in an economic and time efficient manner to advance the purposes of this Agreement.
10. Effective Date. This Agreement shall become effective on the date of final execution by both Parties and shall expire on \_\_\_\_\_\_\_\_\_, 20\_\_\_, [insert date 5 years from effective date] and shall automatically renew for a successive five year period unless extended or terminated according to the provisions of this Agreement.
11. Suspension. The Director may suspend this Agreement without notice as follows:
	* + - 1. If necessary in the reasonable opinion of the County to protect the public health, safety, or welfare, and in the case of an emergency;
				2. If the County discovers that the Facility knowingly accepted Prohibited Waste or misrepresented the nature or identification of C&D Waste generated within the County’s Jurisdiction or,
				3. If, due to a binding decision by an arbitrator or court of competent jurisdiction, the County:

May be liable for damages for allowing waste of a type specified in this Agreement to be handled at the Facility; or

May no longer allow such waste to be handled at the Facility.

* + - * 1. If the County elects to establish a different system in the future for handling solid waste, including C&D Waste.
1. Termination.
2. The Division may, in its discretion, terminate this Agreement without cause provided that such termination shall commence no sooner than 365 days after the Division provides the Owner with written notice of the Division’s intent to terminate.
3. The Owner may, in its discretion, terminate this Agreement without cause provided that such termination shall commence no sooner than 90 days after the Owner provides the Division with written notice of the Owner’s intent to terminate.
4. If the Owner fails to comply with any material provision of this Agreement, the Division may terminate this Agreement for default as follows:

(1) A “notice to cure” shall be served on the Owner by certified or registered first class mail at [INSERT ADDRESS]. The Owner shall have fifteen (15) days from the date of receipt to cure the default or provide the Division with a detailed written plan for review and acceptance, which indicates the time and methods needed to bring its performance into compliance and cure the default.

(2) If the Owner has not cured the default or the plan to cure the default is not acceptable to the Division, the Division may terminate this Agreement by serving a "notice of termination" in accordance with subsection c.1 setting forth the manner in which the Owner is in default and the effective date of termination.

1. General Conditions.
2. The Owner shall be responsible for ensuring that its contractors and agents operate in compliance with the terms and conditions of this Agreement and any Division rules.
3. This Agreement shall not confer a property right to the Owner nor vest any right or privilege in the Facility to receive specific quantities of C&D Waste from the County’s Jurisdiction during the term of this Agreement.
4. The Owner may not transfer or assign this Agreement without the prior written approval of the Division. The Division shall not unreasonably withhold consent to assignment.
5. The Owner shall inform the Division of any proposed change in ownership. The Division shall have the right to approve the change for purposes of continuing this Agreement.
6. A waiver of any term or condition of this Agreement must be in writing, signed by either the Division Director, if the Division is making the waiver, or by an authorized representative of the Owner, if the Owner is making the waiver. Waiver of a term or condition of this Agreement by either Party shall neither waive nor prejudice that Party’s right otherwise to require performance of the same term or condition or any other term or condition.
7. This Agreement shall be construed, applied, and enforced in accordance with the laws of the State of Washington.
8. If any provision of this Agreement shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Agreement shall not be affected.
9. This Agreement is the entire agreement between the Parties.

By: By:

Name: Pat D. McLaughlin

Title: Director, Solid Waste Division

Date: Date:

**Exhibit A**

**King County Solid Waste Division**

**Director’s List of Readily Recyclable Construction and Demolition (C&D) Materials Banned from Disposal**

All generators, handlers and collectors of mixed and nonrecyclable C&D Waste generated within the jurisdiction of King County shall deliver or ensure delivery to a designated C&D receiving facility. The following C&D Waste disposal bans apply to generators, handlers, collectors, and privately- and publicly-owned facilities designated by King County to manage C&D Waste, as authorized under King County Code Title 10:

As of January 1, 2016, the following materials are banned from disposal:

1. Concrete, asphalt paving and bricks, unpainted, without a hazardous constituent, and not attached to other materials.
2. Metal, ferrous and nonferrous – includes composite, multi-metal products or products with nonmetal contaminants but metal content must be more than 90 percent by weight of the material.
3. Cardboard – includes with tape, staples, and other fasteners and is dry and free of contamination such as paint, grease, grime or dirt.
4. Unpainted new construction gypsum scrap that is dry and does not have adhering spackling compound or excessive water damage that would prevent recycling.
5. Unpainted/untreated wood – excludes particle board and laminated veneer wood.

As of January 1, 2017, the following additional materials shall be included in the disposal bans:

1. Plastic film wrap used as packaging – dry and free of excessive contamination such as paint, grease, grime, or dirt that would prevent recycling.
2. Tear-off composite asphalt roofing shingles.

Exceptions:

* 1. Bans do not apply where C&D Wastes are painted, have hazardous or asbestos containing constituents, are glued, nailed or otherwise connected to other materials, are present only in very small quantities, or are generated during disaster emergency situations where disaster debris needs to be removed quickly and recycling options are not available.
		+ - 1. Waste residual from designated C&D Material Recovery Facilities (MRFs) may contain up to 10 percent by total combined weight of the materials listed above, based on the sampling methodology specified in the King County C&D MRF Waste Residual Sampling Protocol.
				2. Bans do not apply to privately- and publicly-owned Transfer Stations before January 1, 2018.