



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

This Agreement (“Agreement”) is effective on July 10, 2023 (“Effective Date”) by and between City of San Diego, a government municipality conducting business at 5161 Convoy Street, San Diego, CA 92111 (the “Service Provider”) and Mattress Recycling Council California, LLC, a Delaware limited liability company having its offices at 501 Wythe Street, Alexandria, VA 22314 (“MRC”), each individually a “Party,” and collectively referred to as the “Parties.”

RECITALS

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

Whereas, MRC and the Service Provider wish to enter into this Agreement, which describes the terms and conditions under which the Service Provider will provide the Services described herein to MRC.

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

ARTICLE 1 – DEFINITIONS

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

- 1.4 “Effective Date” means the date that the Parties’ obligations begin under this Agreement. The Effective Date, shown above, is the date that the Agreement is executed by the last party to sign and is approved by the City Attorney in accordance with San Diego Charter section 40.
- 1.5 “Foundation” means a ticking-covered structure used to support a Mattress or sleep surface. The structure may include constructed frames, foam, box springs, or other materials, used alone or in combination.
- 1.6 “Guidelines” mean the Mattress Recycling Council’s California Mattress Recycling Program Collection Guidelines, which provide an overview of the Program and which are amended from time to time. MRC reserves the right to update, change, modify, amend, add or remove terms, or otherwise alter the Guidelines at any time without prior notice. The current and effective Guidelines are posted and maintained at <https://mattressrecyclingcouncil.org/wp-content/uploads/MRC-CA-State-Guidelines.pdf>. Notwithstanding any other term of this Agreement, MRC will provide notice of any amendments to the Guidelines via email to Service Provider at the email address set forth below in Article 12. The effective Guidelines as of the date of this Agreement are contained in Attachment E.
- 1.7 “Materials and Activities” mean materials, supplies, tools, vehicles, equipment, labor, water, light, power, facilities, construction of any nature, supervision, and all other services, acts, activities, resources, and goods, but not Collection Containers, necessary for or otherwise used by the Service Provider to collect, pack, and otherwise comply with and fully perform its obligations under the Agreement.
- 1.8 “Mattress” means resilient material or a combination of materials that is enclosed by a ticking (the outermost layer of fabric or related material of a Mattress) that is intended or promoted for sleeping upon, Foundations, Renovated Mattresses, Renovated Foundations, and futon Mattresses. “Mattress” does not include any of the following: (i) an unattached mattress pad, an unattached mattress topper, including any item with resilient filling, with or without ticking, that is intended to be used with or on top of a mattress, (ii) a sleeping bag or pillow, (iii) a car bed, (iv) juvenile products, including a carriage, basket, dressing table, stroller, playpen, infant carrier, lounge pad, crib or bassinet mattress, crib bumper, or any pad for such juvenile product, (v) a product that contains liquid or gaseous filled ticking, including any water bed and or any air mattress that does not contain upholstery material between the ticking and the mattress core, and/or (vi) any upholstered furniture that does not otherwise contain a detachable mattress, including, without limitation, a fold-out sofa bed, sleeper sofa or folding cot.
- 1.9 “Non-Conforming Units” are Program Products that must be disposed of as solid waste because they are contaminated or too damaged to recycle.
- 1.10 “Non-Program Products” mean products not covered by the Program, including out of state Units. Non-Program Products include: sleeping bags, pillows, an unattached mattress pad or mattress toppers (even items with resilient filling intended to be used with or on top of a mattress), car bed, crib or bassinet mattress, juvenile products or the pads used for such juvenile products, waterbeds, air mattresses that contain no upholstery material (such as a camping mattress), units manufactured by California Prison Industry Authority and sofa beds.

- 1.11 “Program Products” means and includes Mattresses, as defined herein, Foundations, and Renovated Mattresses or Renovated Foundations.
- 1.12 “Program” means the California Used Mattress Recycling Program created by MRC.
- 1.13 “Recycle” or “Recycling” means the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become solid waste and returning them to the economic mainstream in the form of a raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace. Recycling does not include, incineration, pyrolysis, distillation, or biological conversion other than composting.
- 1.14 “Recycler” means an entity that engages in the manual or mechanical separation of Mattresses to substantially recover components and commodities contained in Mattresses for the purpose of reuse or recycling.
- 1.15 “Renovate” or “Renovation” means altering a used Mattress or Foundation for the purpose of resale and includes one or more of the following: (a) replacing the Mattress ticking or filling; (b) adding additional filling; (c) rebuilding a used Mattress or (d) replacing components with new or post-consumer materials unless the material is a clean recycled material, consists of used electronic parts or controls, or is a used Mattress base that is not covered by ticking. Material sent to renovation will be considered Recycled material.
- “Renovate” or “Renovation” does not include any of the following: (a) stripping a Mattress of its ticking or filling without adding new material; (b) sterilizing or sanitizing a Mattress without otherwise altering the Mattress; (c) altering a Mattress by a Renovator when a person retains the altered Mattress for lease, rental or personal use or (d) refurbishing that disqualifies a Mattress for a yellow wholesale renovator tag to be affixed to the Mattress, in accordance with the regulations adopted by the Department of Consumer Affairs.
- 1.16 “Retailer” means any party who sells Mattresses in California or offers to a Consumer a Mattress in California through any means, including, but not limited to, by remote offering, including sales outlets or catalogs, electronically through the internet, by telephone, or through the mail.
- 1.17 “Services” means all services for which Service Provider is responsible, as described in this Agreement and in the Attachments hereto, including any and all Materials and Activities.
- 1.18 “State” means the State of California.
- 1.19 “Temporary Collection Events” mean an event hosted by the Service Provider to Consolidate Program Products at locations within the State that are short in duration and not at permanent collection facilities.
- 1.20 “Transportation Providers” or “Transporter” means a contractor hired by MRC or Service Provider to transport Program Products from the Collection Facilities or Temporary Collection Events.
- 1.21 “Unit” means a single Mattress or box spring dropped off at or collected from a California resident or business at no charge. For example, an individual Mattress and an individual box spring would each constitute a single Unit.

ARTICLE 2 – TERM OF AGREEMENT

- 2.1 This Agreement will commence upon the Effective Date and will remain in full force and effect for a period of two (2) years (the “Initial Term”). The Service Provider may extend this Agreement for three (3) additional successive one (1) year terms (“Additional Term”) by providing MRC with written notification of its intent to exercise an Additional Term at least thirty (30) days prior to the expiration of the Initial Terms or any successive Additional Terms. Either Party may terminate the contract for any reason upon thirty (30) days’ notice. The term of this Agreement shall not exceed five (5) years unless approved by the San Diego City Council by ordinance.
- 2.2 If the agreement is terminated, the Service Provider will, at no additional cost to MRC, immediately make all Collection Containers available for pick up by MRC’s Transporter.

ARTICLE 3 – GENERAL OBLIGATIONS OF THE SERVICE PROVIDER

- 3.1 In consideration of MRC’s payments, if any, to the Service Provider for Services, and for activities undertaken at MRC’s expense, the Service Provider will perform the Services provided for in Attachment A (“Scope of Services”) in conformity with the Program and Guidelines, except to the extent the Program and/or Guidelines conflict with the terms of this Agreement or any applicable Law.
- 3.2 The Service Provider will manage all Program Products Consolidated at the Collection Facilities only in accordance with Attachment A and will not dispose of Program Products in any other method without the prior written approval of MRC.
- 3.3 The Service Provider is responsible for and will manage, at its sole expense, any and all Non-Program Products it collects at the Collection Facilities or places in Collection Containers. MRC accepts no responsibility for such Non-Program Products and will not pay Service Provider any consideration in connection with such Non-Program Products.
- 3.4 The Service Provider will not charge any fees to California residents, businesses (including Mattress Retailers) or other entities that drop off Program Products with the Service Provider, up to the maximum number as specified in Attachment D. Nothing in this Agreement prohibits the Service Provider from charging fees to California residents, businesses, or other entities for bulky or curbside collection of Program Products, dropping off Non-Program Products, or dropping off Program Products in excess of the quantities specified in Attachment D.
- 3.5 The Service Provider will inspect the Collection Containers upon arrival and determine whether they are in proper condition for use. MRC or its contractor is responsible for replacing any defective Collection Containers and repairing normal wear-and-tear to the Collection Containers. The Service Provider will notify MRC as soon as it becomes aware if at any point during the term of the Agreement a Collection Container(s) is not in proper condition for use and will not use any such defective Collection Containers until they are repaired or replaced by MRC or its contractor. If a Collection Container is functional but is delivered in a damaged condition, the Service Provider will notify MRC or its contractor in writing of the nature and location of such damage upon the arrival of the Collection Container.

- 3.6 The Service Provider will inspect each Unit before placing it in a Collection Container to confirm whether it is a Program Product. Service Provider will separate Non-Conforming Units, including Units contaminated with bed bugs or otherwise unsuitable for recycling, and will dispose of such Units as solid waste.

ARTICLE 4 – SERVICE PROVIDER REPRESENTATIONS AND WARRANTIES

The Service Provider represents, covenants, and warrants that: it is a government municipality in good standing and qualified to conduct business in California, and has all necessary approval, capacity, and authority to enter into this Agreement and fully perform its obligations under this Agreement.

ARTICLE 5 – MRC OBLIGATIONS

- 5.1 Upon receiving a request from the Service Provider, MRC will arrange for timely pick-up of Program Products Consolidated by the Service Provider. MRC or an MRC contractor will, at its expense, arrange for the transport to a Recycler.
- 5.2 MRC will make available to the Service Provider consumer brochures and signs identifying the site as an MRC drop-off location.
- 5.3 Unless the Service Provider elects to provide its own Collection Containers, MRC will assign, via email, a MRC-approved Transporter. MRC's Transporters will provide Collection Containers to the Service Provider. All Collection Containers furnished by a Transporter will remain the property of the Transporter.
- 5.4 The MRC represents, covenants, and warrants that: it is a nonprofit organization in good standing and qualified to conduct business in California, and has all necessary approval, capacity, and authority to enter into this Agreement and fully perform its obligations under this Agreement.

ARTICLE 6 – TITLE AND RISK OF LOSS

- 6.1 The Service Provider (and not MRC) has title to and risk of loss and liability for any and all Program Products, Non-Conforming Units and Non-Program Products that the Service Provider receives. Notwithstanding the foregoing, once a Transportation Provider accepts for transportation any Program Products collected by the Service Provider under this Agreement and Consolidated on a Collection Container, title to and risk of loss as to those Program Products, will transfer to that Transportation Provider. MRC at no time takes title to or assumes liability for any Program Products, Non-Conforming Units or Non-Program Products. However, MRC will require in its contracts with its Transportation Providers that they accept title and risk of loss immediately upon accepting any Program Products for transportation from the Service Provider.
- 6.2 MRC is not responsible for any injury to persons or damage to property resulting from the use, misuse, or failure of any equipment used by the Service Provider, or by any of its employees or contractors, unless such equipment is furnished, rented, or loaned to the Service Provider by MRC, or its third party contractors, and is defective or deficient.

ARTICLE 7 – CONSIDERATION AND PAYMENT

- 7.1 As consideration under this Agreement, MRC or its contractors will; (i) facilitate the transportation of Program Products by Transportation Providers as set forth in this Agreement; (ii) pay the Service Provider for Services rendered as set forth in this Agreement; and (iii) perform other services incidental to the management of the Program.
- 7.2 MRC will pay Service Provider for Services rendered in the amount set forth in Attachment B (“Compensation Rates”). No other payment or reimbursement will be made for the Service Provider’s Collection of Program Products, furnishing of the Materials and Activities, or its performance of the Services.
- 7.3 The Service Provider will invoice MRC on a monthly basis, either by hardcopy or electronically, as determined by MRC. Invoices must include the information included in Attachment C (“Model Invoice”) and must state:
- a. the unique, identifying invoice number;
 - b. the specific categories of Services provided for under the Agreement;
 - c. the specific number of Units consolidated;
 - d. copies of each transportation Bill of Lading or equivalent shipping documentation; and
 - e. any additional information as agreed to in writing by the Parties that is relevant to the Services being performed by the Service Provider.
- 7.4 MRC reserves the right to refuse payment of any invoice or portion thereof that is not received in an acceptable form or any invoice that is not submitted to MRC for payment within ninety (90) days of Services being rendered. MRC must notify the Service Provider in writing if any invoice or portion thereof is not in an acceptable form and allow the Service Provider thirty (30) days to resubmit the form in the manner requested by MRC. Service Provider must submit invoices within ninety (90) days of the date the Services were performed by the Service Provider.
- 7.5 All amounts invoiced by the Service Provider to MRC, or paid by MRC to the Service Provider, are subject to audit by MRC, as described below in ARTICLE 8 – AUDIT AND INSPECTION RIGHTS OF MRC.
- 7.6 The Service Provider will submit invoices to:

To: Mattress Recycling Council California, LLC
Attn: Accounts Payable
Phone: 1-855-229-1691
E-mail: payables@mrc-us.org
Address: 501 Wythe Street, Alexandria, VA 22314

MRC will send Service Provider payments to:

To: City of San Diego
Attn: Sam Alatorre
Phone: 858-492-5037
E-mail: salatorre@sandiego.gov
Address: 9601 Ridgehaven Court, San Diego, CA 92123

- 7.7 Provided that the Service Provider has supplied the required information and otherwise performed its obligations under this Agreement, MRC will pay such invoice within thirty (30) days of the date that MRC receives the invoice. In the event MRC has a good-faith objection to an invoice, MRC will pay the undisputed amount pursuant to the terms of this Agreement and notify in writing the Service Provider of said objections and describe in reasonable detail the basis for the objections. During any such dispute, the Service Provider will continue with its responsibilities under this Agreement and will not stop providing the Services unless this Agreement is terminated. MRC will make all payments due to the Service Provider over which there is no good-faith dispute.
- 7.8 MRC's payment of all or a part of an invoice neither relieves the Service Provider of any of its obligations under this Agreement nor constitutes a waiver of any claims by MRC.
- 7.9 The Service Provider warrants that, to the best of its knowledge, all documents, including invoices, billings, back-up information for invoices, and reports, submitted by the Service Provider to MRC to support amounts invoiced in connection with the Services truly reflect the facts about the activities and transactions to which they pertain. The Service Provider warrants that MRC, for whatever purpose, may rely upon all such documents and the data therein as being complete and accurate. The Service Provider will promptly notify MRC upon discovery of any instances where the Service Provider becomes aware of any discrepancies in relation to documents under this Article.

ARTICLE 8 – AUDIT AND INSPECTION RIGHTS OF MRC

- 8.1 MRC may audit and inspect, the Service Provider's Collection Facilities during the Collection Facilities' hours of operation, as well as any other site at which the Service Provider performs the Services. MRC will provide the Service Provider with at least twenty-four (24) hours' notice before any such audit or inspection.
- 8.2 The Service Provider will permit MRC to audit, examine, and make excerpts and transcripts, for any books or records, and to make audits of any invoices, materials, records, and other data related to all other matters covered by this Agreement.

ARTICLE 9 – INDEMNIFICATION

- 9.1 The Service Provider, and its successors and assigns (collectively, the "Indemnifying Party"), will, to the fullest extent allowed by law, indemnify, defend, and hold harmless MRC and its sole member (as identified under MRC's Certificate of Incorporation), and their member companies, officers, directors, stockholders, employees, successors, assigns, attorneys, agents, and invitees (collectively, the "Indemnified Parties") from and against any and all claims,

demands, actions, losses, liabilities, damages, and all expenses and costs incidental thereto (collectively, "Claims"), including cost of defense, litigation, settlement, and reasonable attorney's fees, resulting from injuries to or death of persons, including but not limited to employees of either Party hereto, and damage to or destruction of property or loss of use thereof, including but not limited to the property of either Party hereto, arising out of, pertaining to, or resulting from the active negligence or willful misconduct of the Indemnifying Party, or the active negligence or willful misconduct of employees, contractors, or subcontractors acting on behalf of the Indemnifying Party, or for which the Indemnifying Party is legally liable under law excepting only such injury, death, or damage caused by the active negligence or willful misconduct of an Indemnified Party.

9.2 MRC, and its successors and assigns (collectively, the "MRC Indemnifying Party"), will, to the fullest extent allowed by law, indemnify, defend, and hold harmless the Service Provider and its officials employees, contractors, subcontractors, successors, assigns, attorneys, agents, and invitees (collectively, the "MRC Indemnified Parties") from and against any and all claims, demands, actions, losses, liabilities, damages, and all expenses and costs incidental thereto (collectively, "Claims"), including cost of defense, litigation, settlement, and reasonable attorney's fees, resulting from injuries to or death of persons, including but not limited to employees of either Party hereto, and damage to or destruction of property or loss of use thereof, including but not limited to the property of either Party hereto, arising out of, pertaining to, or resulting from the active negligence or willful misconduct of the MRC Indemnifying Party, or the active negligence or willful misconduct of employees, contractors, or subcontractors acting on behalf of the MRC Indemnifying Parties, or for which the MRC Indemnifying Party is legally liable under law excepting only such injury, death, or damage caused by the active negligence or willful misconduct of an MRC Indemnified Party.

9.3 The following provisions apply to Paragraphs 9.1 and 9.2 above:

- a. This indemnity will not be limited by the types and amounts of insurance or self-insurance maintained by the Indemnifying or Indemnified Parties or their contractors;
- b. Nothing in this indemnity will be construed to create any duty to, any standard of care with reference to, or any liability or obligation, contractual or otherwise, to any third party; and
- c. The provisions of this indemnity will survive the expiration or termination of this Agreement.

9.4 MRC WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR INCIDENTAL DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY EXCEPT AS SET FORTH IN SECTION 9.2, EVEN IF ADVISED OF SUCH POTENTIAL DAMAGES. NOTHING IN THIS AGREEMENT CONSTITUTES A WAIVER OR LIMITATION OF ANY RIGHTS THAT MRC MAY HAVE UNDER THE APPLICABLE LAW.

9.5 SERVICE PROVIDER WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR INCIDENTAL DAMAGES, WHETHER

BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY EXCEPT AS SET FORTH IN SECTION 9.1, EVEN IF ADVISED OF SUCH POTENTIAL DAMAGES. NOTHING IN THIS AGREEMENT CONSTITUTES A WAIVER OR LIMITATION OF ANY RIGHTS THAT SERVICE PROVIDER MAY HAVE UNDER THE APPLICABLE LAW.

ARTICLE 10 – INSURANCE

10.1 The Service Provider must maintain, at its own expense, the policies of the following minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
a. Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
b. Workers Compensation	Statutory

10.2 The Required Insurance, except for worker's compensation insurance, must contain or be endorsed to contain MRC California, LLC and its sole member and their officers, directors, agents, and employees, as additional insureds and a waiver of subrogation in favor of MRC California, LLC and its sole member and their officers, directors, agents, and employees. The Required Insurance policies (except for worker's compensation) must contain (i) a written statement in the policies or in endorsements thereto that they are each primary insurance to any other insurance available to the Service Provider or to any additional insureds or additional named insureds, and (ii) a separation of insureds provision stating that the insurance applies separately to each insured against whom a claim is made or a suit is brought and that the actions or omissions of any insured that might give rise to application of an exclusion to coverage apply only to that insured actually committing the actions or omissions.

10.3 Service provider must submit a Letter of Self-Insurance of insurance before Services begin. Letters of Self-Insurance are to be sent via electronic mail to: contracts@mrc-us.org.

10.4 Service Provider will endeavor to provide MRC with notification of any cancellation or change in Service Provider's insurance coverage during the period of the Agreement with MRC with not less than thirty days' notice prior to the date said cancellation or change becomes effective.

10.5 In the event the Letter of Self-Insurance required by this Article should expire or be cancelled during the term of this Agreement, Service Provider agrees to provide, at least thirty days prior to said expiration or cancellation, a new Letter of Self-Insurance evidencing coverage, as provided for herein, for not less than the remainder of the Agreement.

- 10.6 Compliance by Service Provider with the foregoing requirements to carry insurance and furnish certificates will not relieve Service Provider from liability assumed under the provisions of this Agreement.
- 10.7 Both Parties will require all third parties that it uses to provide any services under this contract to comply with the same insurance requirements specified above.
- 10.8 Service Provider shall have the right to self-insure with respects to any of the insurance to be carried by Service Provider under article 10.

ARTICLE 11 – ASSIGNMENT AND SUBCONTRACTING

- 11.1 Neither Party may assign, novate, or otherwise transfer (including transfer by operation of law) this Agreement or the obligations and rights hereunder without the express written consent of the other Party, which may not be unreasonably delayed or withheld.
- 11.2 MRC reserves the right to subcontract its duties and rights under this Agreement (including the conduct of audits, inspections and monitoring activity) to third parties. MRC agrees not to use subcontractors that are included on the Service Provider's List of Debarred Persons set forth at the following link: https://www.sandiego.gov/sites/default/files/debarred_persons.pdf Service Provider agrees that such subcontractors to MRC will have the same rights and responsibilities as MRC, unless otherwise noted.

ARTICLE 12 – NOTICES

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

To: Mattress Recycling Council California, LLC
Attn: Gayle Hanlon, Senior Counsel
E-mail: gahanlon@mrc-us.org
Address: 501 Wythe Street, Alexandria, VA 22314

To: City of San Diego
Attn: Julie Sands
E-mail: jsands@sandiego.gov
Address: 9601 Ridgehaven Court, San Diego, CA 92123

ARTICLE 13 – INDEPENDENT CONTRACTOR STATUS

- 13.1 The Parties intend that the Service Provider, in performing the Services specified herein, is acting as an independent contractor and that the Service Provider will

control the Services and the manner in which it is performed. This Agreement is not intended and may not be construed to create the relationship between the Parties of agent, servant, employee, partnership, joint venture, or association.

- 13.2 Each Party, or its subcontractors, as appropriate, is solely liable and responsible for providing all compensation and benefits due to, or on behalf of, all persons performing Services on its behalf in connection with this Agreement. Neither Party has any liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of the other Party.
- 13.3 Each Party understands and agrees that all persons performing Services pursuant to this Agreement are, for purposes of Workers' Compensation liability, solely employees of that Party and not employees of the other Party. Each Party is solely liable and responsible for furnishing any and all Workers' Compensation benefits to its employees as a result of any injuries arising from or connected with any Services performed by or on behalf of that Party pursuant to this Agreement.
- 13.4 MRC has no authority to manage, direct, or supervise employees, representatives, or agents of the Service Provider, including how they perform the Services and achieve compliance with applicable Law. MRC does not have responsibility for making day-to-day and critical decisions regarding the Services, including the management or supervision of any activities comprising the Services.
- 13.5 Third-party Transportation Providers are independent contractors and are not employees, partners, or agents of either Party. Neither Party is liable for the acts or omissions of third-party Transportation Providers under this Agreement.

ARTICLE 14 – CONFIDENTIALITY/PUBLICITY

- 15.1 The Service Provider will not disclose any confidential details in connection with this Agreement to any person or entity without MRC's prior written authorization, except as may be otherwise provided hereunder or required by law. MRC will identify any confidential documents and label each page as confidential. However, in recognizing the Service Provider's need to identify its services and related clients to sustain it, MRC will not inhibit the Service Provider from publishing its role in the Program within the following conditions:
 - a. The Service Provider may utilize and develop publicity material regarding the MRC Program only upon the prior written consent of MRC, which consent will not be unreasonably withheld; and
 - b. During the term of the Agreement, the Service Provider will not, and will not authorize another to, publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name of MRC without the prior written consent of MRC, which consent will not be unreasonably withheld.
- 15.2 The Collection Facilities may be listed, referenced, or advertised as collection sites by MRC for the Program during the term of this Agreement.

ARTICLE 16- UNCONTROLLABLE CIRCUMSTANCES

- 16.1 Neither Party will be liable for its failure to perform hereunder, in whole or in part, due to contingencies beyond its reasonable control (“Uncontrollable Circumstance(s)”), including, but not limited to riots, war, fire, acts of God or terrorism, injunction, compliance with any applicable federal, state, local, and other laws, ordinances, rules, regulations or orders of any public body having jurisdiction, whether now existing or hereafter created. For further clarification, Uncontrolled Circumstances do not include fluctuations in commodity or scrap prices, demand for such materials, or other such changes that affect the economic condition of the market as it relates to recycling and recycled goods.
- 16.2 The Parties will use their best efforts to overcome or remove any Uncontrollable Circumstance and to minimize the effect of such Uncontrollable Circumstance and any costs resulting therefrom.
- 16.3 Each Party will assume the risk of all losses and damages directly incurred by them except as otherwise limited pursuant to the terms of this Agreement, which arise out of an Uncontrollable Circumstance event. Neither Party should be entitled to recover from the other revenues lost due to the occurrence of an Uncontrollable Circumstance, provided further, however, that each Party is obligated in good faith and to the extent not detrimental to its interests and within any applicable provision of law, to jointly attempt to mitigate the damages, costs and expenses arising out of an Uncontrollable Circumstance event.
- 16.4 The Party asserting that an Uncontrollable Circumstance exists will, as a condition precedent to the right to claim the benefits of this Section, promptly after becoming aware of such Uncontrollable Circumstance, and in any event, within fifteen (15) calendar days from the date on which said Party becomes or should have become aware of the occurrence of such Uncontrollable Circumstance, notify the other party of such event. This Party will then, within fifteen (15) days of such initial notice, provide a written notice of the effect, if any, on either Party's obligations under this Agreement, and available areas of mitigation or saving of the costs associated with such event. Each Party will continue to keep the other Party advised with respect to the anticipated impact of such Uncontrollable Circumstance.

ARTICLE 17 – MISCELLANEOUS PROVISIONS

- 17.1 **No Waiver.** The failure at any time to enforce any provision of this Agreement or failure to exercise any right herein granted does not constitute a waiver of such provision or of such right thereafter to enforce any or all of the provisions of this Agreement.
- 17.2 **Selective Waiver.** Either Party may waive any default by the other Party under this Agreement by an instrument in writing to that effect and no such waiver will extend to any subsequent or other default by the other Party. No failure or delay on the part of either Party to exercise any right hereunder operates as a waiver thereof. Either Party may elect to selectively and successively enforce its rights hereunder, such rights being cumulative and not alternative.

- 17.3 **Entire Contract/Order of Precedence.** This Agreement and all Attachments and exhibits hereto, and all referenced documents, including the Guidelines, constitute the entire agreement between the Parties with respect to the matters herein, and integrates, merges, and supersedes all prior negotiations, representations, or agreements relating thereto, whether written or oral, except to the extent they are expressly incorporated herein. The provisions of this Agreement and the accompanying documents are to be construed and interpreted as consistent whenever possible. Any conflicts in this Agreement and the accompanying documents will be resolved in accordance with the following descending order of precedence:
- a. Attachment A (“Scope of Services”);
 - b. Attachment B (“Compensation Rates”);
 - c. The terms of this Agreement
 - d. Attachment E (“Guidelines”);
 - e. Attachment D (“Collection Facility Information”); and
 - f. Attachment C (“Model Invoice”).
- 17.4 **Amendment or Modification.** Unless otherwise provided herein, no amendments, changes, alterations, variations, or modifications to this Agreement will be effective unless in writing and signed by the respective duly authorized officers of the Parties hereto.
- 17.5 **Additional Sites.** Service Provider, either currently or in the future, may have additional sites, solid waste facilities, collection facilities or subsidiaries (“Additional Sites”) that it wishes to add to this Agreement. Additional Sites may become a Service Provider under this Agreement by executing its own Compensation Rate form in Attachment B and Collection Facility Information form in Attachment D. The Additional Sites will then be governed by the terms of this Agreement and the Attachments hereto (including its personalized Compensation Rate form in Attachment B and personalized Collection Facility Information form in Attachment D). Any changes or modifications made by an Additional Site to Attachment B and Attachment D will not affect other Service Providers that exist under this Agreement, nor will it change or modify any of the other Service Providers’ terms, conditions, responsibilities and/or liabilities under this Agreement.
- 17.6 **Governing Law/Venue.** This Agreement is executed and intended to be performed in the State of California, and the laws of that State will govern its interpretation and effect.
- 17.7 **Severability.** If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof will remain in full force and effect and will in no way be affected, impaired, or invalidated thereby.
- 17.8 **Calendar Days.** Any reference to the word “day” or “days” herein will mean calendar day or calendars days, respectively, including weekends and Federal Holidays, unless otherwise expressly provided. If a deadline falls on a weekend or Federal Holiday, the next business day will be the applicable deadline.

- 17.9 **No Third-Party Beneficiary.** This Agreement is intended solely for the benefit of the Parties hereto, and no third party has any right or interest in any provision of this Agreement or as a result of any action or inaction by any Party in connection therewith.
- 17.10 **Authorization.** Each Party represents and warrants that it has full power and authority to enter into this Agreement and to perform its obligations set forth herein. The representative(s) signing this Agreement on behalf of each Party represents that he/she has the authority to execute this Agreement on behalf of the applicable Party and to bind it to its contractual obligations hereunder.
- 17.11 **Electronic Signatures.** Unless otherwise prohibited by law or Service Provider policy, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a writing as set forth in Evidence Code Section 1550. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the Service Provider.
- 17.12 **Survival of Terms.** All services performed and deliverables provided pursuant to this Agreement are subject to the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Agreement or any extension thereof. Further, the terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Agreement will so survive, including but not limited to: ARTICLE 4 – SERVICE PROVIDER REPRESENTATIONS AND WARRANTIES; ARTICLE 6 – TITLE AND RISK OF LOSS; ARTICLE 8 – AUDIT AND INSPECTION RIGHTS OF MRC; ARTICLE 9 – INDEMNIFICATION; ARTICLE 10 – INSURANCE; ARTICLE 13 – INDEPENDENT CONTRACTOR STATUS; ARTICLE 14 – CONFIDENTIALITY/PUBLICITY; and ARTICLE 16 – MISCELLANEOUS.

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

By:

DocuSigned by:

CATHERINE LYONS

BB4006FD86874EF

Catherine Lyons, Manager
**Mattress Recycling Council
California, LLC**

C. Abarca

Claudia Abarca, Director
City of San Diego

July 6, 2023

DATE

7/9/2023

DATE

DocuSigned by:

Gayle Harlan

DC458C7203EC4ED

MRC Legal Approval

APPROVED: MARA W. ELLIOTT, City Attorney

as to form

BY

Nicole Denow

Nicole Denow
Deputy City Attorney

July 10, 2023

DATE

ATTACHMENT A: SCOPE OF SERVICES

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

1. Provide the Services necessary to Consolidate acceptable Program Products, up to the maximum number specified in Attachment D, that are dropped off by individual California residents, businesses (including Mattress retailers) or other entities, for pick up by Transportation Providers.
2. Include no Non-Program Products, no Non-Conforming Units and no Units that are unsuitable for recycling, including Units contaminated with bed bugs, in the Collection Containers.
3. Notify MRC assigned Transporter *before* collection containers are full to allow adequate time for Transporter to schedule pick-up services.
4. Provide to MRC a minimum of ninety (90) days' advance notice of any Temporary Collection Events conducted by the Service Provider that include the collection of Program Products dropped off by individual California residents free of charge to be picked up by Transportation Providers at the Temporary Collection Event.

ATTACHMENT B: COMPENSATION RATES

Service Provider: City of San Diego

Service	Description	Unit Price
<p><u>Program Product Consolidation</u></p>	<p>MRC will compensate Service Provider for all Program Products dropped off by California residents, businesses (including Mattress retailers) or other entities; for which a fee has not been collected and which Service Provider Consolidates in a Collection Container.</p> <p>The Service Provider will not place Non-Program Products, Non-Conforming Units or Units that are unsuitable for Recycling, including Units contaminated with bed bugs, in Collection Containers.</p>	<p>\$2.70 per Unit¹</p>

MRC and Service Provider hereby agree to the foregoing compensation rates, in accordance with the terms set forth herein.

MRC initials: ^{DS}
u

Service Provider initials: JS

No sooner than one year following the effective date of this Agreement, and on an annual basis thereafter, the compensation rates may be adjusted based on actual percentage change to the Solid Waste Collection Producer Price Index (PPI) published by the Bureau of Labor Statistics (Series ID: PCU5621115621112) for the most recent available twelve-month period using published finalized numbers, not preliminary numbers. To be eligible for these adjustments, Service Provider makes a written request that is received by MRC no more than sixty days but at least thirty days in advance of the eligible adjustment effective date. No annual PPI adjustment will be made absent a written request. In each case, the PPI adjustment will be made for the most recent available and finalized twelve-month period only. Published preliminary PPI numbers released by the Bureau of Labor Statistics will not be included. Annual PPI adjustments that are not requested by Service Provider in accordance with this paragraph are forfeited.

ATTACHMENT C: MODEL INVOICE

Invoice Date: _____

Service Provider: _____

Collection Facility Location: _____

Unique Identifying Invoice Number: _____

Dates of Service: _____

Service (refer to Attachment B of Agreement for definitions of below Service terms)	Quantity of Units	Unit Price	Invoiced Amount
Program Product Consolidation		\$2.70 per Unit	
TOTAL			

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

Name: _____


Company Title: _____

ATTACHMENT D: COLLECTION FACILITIES**Service Provider: City of San Diego**

Full name of site	Miramar Landfill
Full address of site	5161 Convoy Street, 92111
Phone number for general public	858-694-7000
Days/hours open to the public	Monday–Friday 7 am–4 pm
Website address	https://www.sandiego.gov/environmental-services/recycling
Contact person's name and title	Anais Putnam & Recycling Specialist II
Contact person's phone number & email address	(858) 627-3318 & aputnam@sandiego.gov
Maximum # of units per vehicle, per day for residents	10
Maximum # of units per vehicle, per day for other entities	10
Drop-off residency requirement? (list cities, towns, counties or eligible residential areas)	CA
Will mattresses collected as part of bulky curbside programs be placed in the MRC container? (Yes or No, if yes, complete the supplemental table.)	No

MRC and Service Provider hereby agree that all facilities listed in Attachment D are covered by the terms and conditions set forth in this Agreement.

MRC initials: 

Service Provider initials: 

ATTACHMENT E: COLLECTION SITE GUIDELINES

[see attached PDF]

ATTACHMENT E



BYE BYE MATTRESS
CALIFORNIA
COLLECTION GUIDELINES

PUBLISHED NOVEMBER 2020



TABLE OF CONTENTS

Program Materials	4
Materials Collection & Handling	7
Transportation & Processing	9
Recordkeeping	10
Program Withdrawal & Termination	11

About the Guidelines

Staff at all participating collection sites must be knowledgeable regarding these guidelines before accepting mattresses. For simplicity, these guidelines will refer to mattresses and box springs as mattresses. These guidelines describe the program and what is required to participate. MRC reserves the right to update, change, modify, amend, add or remove terms or otherwise alter these guidelines at any time with or without prior notice.

About the Mattress Recycling Council

In 2013, California enacted Senate Bill 254 as amended which requires mattress manufacturers to create a recycling program for mattresses discarded in the state. The bedding industry established the Mattress Recycling Council (MRC) to develop and operate the mattress recycling program known as Bye Bye Mattress.

What MRC Provides

MRC provides the following to participating collection sites:

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

CONTACTS

MRC Program Coordinators

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Santa Barbara, Ventura

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Humboldt, Lake, Marin, Mendocino,
Napa, San Francisco, San Mateo, Santa
Clara, Santa Cruz, Solano, Sonoma

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Sacramento, Shasta, Sierra, Siskiyou,
Sutter, Tehama, Trinity, Yolo, Yuba

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San Bernardino, San Diego

Jennifer Duran

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Kings, Madera, Mariposa, Merced, Mono,
Monterey, San Benito, San Joaquin,
Stanislaus, Tulare, Tuolumne

PROGRAM MATERIALS

INCLUDED PRODUCTS

Mattresses: Defined as any sleep surface covered with ticking or fabric that contains resilient material such as steel innersprings, foam, fiber or other filling or upholstery materials, used alone or in combination, regardless of size or shape. This definition includes foam mattresses.

Futons: See mattress definition above. Futon mattresses must be detachable from the frame or base to be accepted. (Futon mattresses that do not detach from the frame or base are not included.)

Box springs (also commonly called foundations): A ticking or fabric-covered structure used to support a mattress or sleep surface and may be comprised of a frame, foam, springs or other structure, or other materials, used alone or in combination, regardless of whether the product is stationary or adjustable.

All items accepted for recycling by MRC must have been used and discarded in the state of California.



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

PROGRAM MATERIALS

EXCLUDED PRODUCTS

- Adjustable bases not covered in ticking or fabric
- Air mattresses that contain no upholstery material (such as camping beds)
- Car beds
- Collapsible roll-away beds
- Fold-out sofa beds
- Futon frames or bases
- Juvenile products including, carriages, baskets, dressing tables, strollers, playpens, infant carriers, lounge pad, crib bumpers
- Loose bedding, blankets or sheets
- Mattresses infested with bed bugs or other living organisms
- Mattress pads and toppers
- Metal bed frames
- Out-of-state mattresses
- Pillows and cushions
- Severely damaged, twisted, wet, frozen or soiled mattresses
- Sleeping bags
- Water beds



PROGRAM MATERIALS

MATTRESS INSPECTION AND EXAMINATION

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

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

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

Bed Bug Identification

Mattresses and box springs infested with bed bugs are unacceptable for recycling and should be disposed of through your existing solid waste stream. Staff at collection sites should evaluate program materials for evidence of bed bug infestation. A bed bug training webinar is available on the Mattress Recycling Council's website. The webinar focuses on dispelling health-related myths, bed bug identification and best practices for protecting facility staff. It can be found here: <https://mattressrecyclingcouncil.org/resources/>



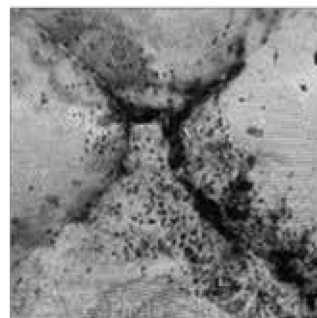
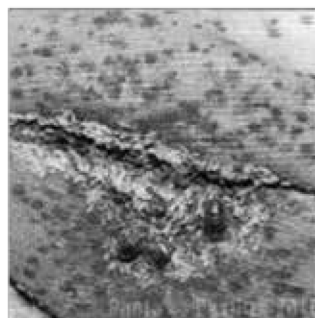
Bed bugs are tan to brown in color, but may appear redder if they have fed.

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

Nymphs look like adults in shape but are smaller.

Eggs are white and barrel-shaped.

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



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

MATERIALS COLLECTION & HANDLING

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

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

See page 7 for photos and guidelines

MATERIALS COLLECTION & HANDLING

LOADING MATTRESSES IN STORAGE CONTAINERS

Expected number of mattresses that should fit in various container sizes:

Container Type	Number of Mattresses
20-foot sea container	30-45
28-foot trailer	60-95
40-foot sea container	75-95
40-yard roll-off container	35-50
48-foot trailer	110-180
53-foot trailer	125-190

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



TRANSPORTATION & PROCESSING

TRANSPORTERS

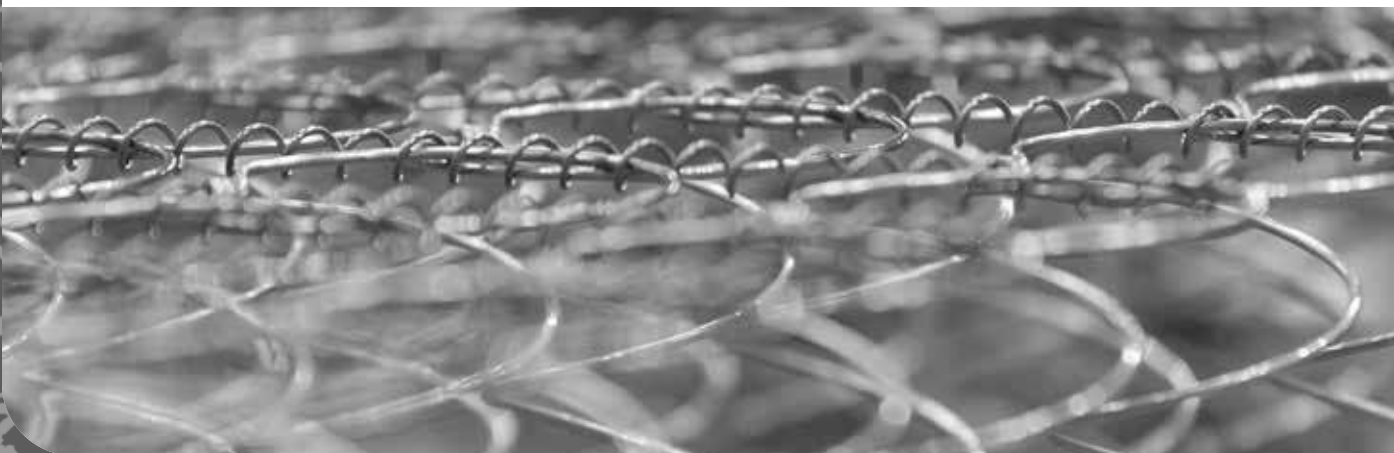
MRC will assign each collection site a transporter to provide a storage container and transport services.

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

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

RECYCLERS

Recyclers under contract with MRC will meet established recycling standards and accurately account for all mattresses received, the mattress components recycled (e.g., foam, steel, wood, fiber, etc.) and any residual disposal. Collection sites will be assigned an MRC recycler to best service your facility.



RECORDKEEPING

Bill of Lading:

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

PROGRAM WITHDRAWAL & TERMINATION

A collection site's participation in the Bye Bye Mattress program in California is voluntary. Either party may withdraw from participation in accordance with the terms in your contract. Written notice to the other party is required. MRC reserves the right to remove any collection site not in compliance with these guidelines from further participation in the program.

