PROJECT:

REGIONAL RECYCLING SYSTEM FOR PROCESSING AND MARKETING OF RECYCLABLES

and

MILWAUKEE MATERIALS RECOVERY FACILITY

Construction and Operating Agreement

between

The City of Milwaukee

and

Resource Recovery Systems, LLC
d/b/a "ReCommunity"

[DATE OF AGREEMENT]

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CONSTRUCTION AND OPERATING AGREEMENT

This Construction and Operating Agreement ("Contract") is made and entered by and between Resource Recovery Systems, LLC, d/b/a ReCommunity ("Contractor"), a Delaware limited liability company, and The City of Milwaukee, Wisconsin ("City"), a municipal corporation, as of the ____ day of _____, 2014.

RECITALS

WHEREAS, the execution of this Contract will help the City satisfy the material recycling requirements under state law; and

WHEREAS, pursuant to the joint City/Waukesha County ("County") Request for Proposal RFP#118-2013, including Addenda 1 through 5, and the Contractor's Proposal, the Contractor was selected to operate and maintain the Joint Material Recycling Facility, and to construct, operate and maintain the County Transfer Station, in accordance with the terms and conditions of this Contract; and

WHEREAS, pursuant to the noted RFP, the Contractor was selected in reliance on the skill, expertise and past successful experience of the Contractor with similar projects, including operating a publicly-owned MRF, maintaining the quality of Marketable Recovered Materials, successfully marketing of commodities, and ensuring openness and accountability with public funding; and

WHEREAS, the construction of the County Transfer Station is being implemented through a separate Construction and Operating Agreement between the County and the Contractor, with financial support from the City via an Intergovernmental Cooperation Agreement between the City and the County (the "IGA").

NOW, THEREFORE, for the consideration and the mutual promises set forth in this Contract, the Contractor and the City agree as follows:

ARTICLE I
SCHEDULES/ENTIRETY OF AGREEMENT

Section 1.01 Schedules. The following Schedules, attached hereto, are incorporated by reference. In the case of any discrepancies between the Schedules and this Contract, the Schedules shall prevail.

Diagram 1 – Key Term Operational Flow Chart
Schedule 1 – Notices, Contacts, and Authorized Representatives
Schedule 2 – Recoverable and Marketable Recovered Material Standards

Schedule 3 – Contractor Insurance Requirements for Ongoing Operation
Schedule 4 – Joint MRF Contract Payments
Schedule 5 – Required Joint MRF Reports
Schedule 6 – Joint MRF Operation and Maintenance Plan Requirements
Schedule 7 – Entity Equipment List
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Schedule 9 – Contractor Marketing Requirements
Schedule 10 – Approved Third Party Processing Contracts
Schedule 11 – Joint MRF Retrofit
Schedule 12 – Parental Guarantee
Schedule 13 – Rolling Stock Owned or Leased by Contractor
Schedule 14 – Joint MRF Site

Section 1.02 Entire Agreement. While noting that the IGA and the County's Construction and Operating Agreement will be executed simultaneously herewith, except as provided below, all negotiations, proposals, and contracts between these Parties prior to the date of this Contract with respect to the subject matter hereof, written or oral, are void. Except as provided below, there are no contracts or understandings between these Parties other than those written or specified in this Contract, which includes the attached Schedules. The entire agreement of the Parties with respect to the transactions contemplated herein is contained in the documents listed below. The documents listed below are incorporated into and together comprise all terms of this Contract.

(a) All Schedules attached hereto.

(b) This Contract.

(c) The Contractor's Proposal.

(d) The RFP.

In the event of any conflict in any of the terms of the foregoing, the order of priority of such terms shall be in descending order of the above list (e.g., specific provisions of the Schedules shall have first priority).

ARTICLE II
DEFINITIONS

Section 2.01 Definitions. In this Contract, the following words and phrases shall have the following meanings. Capitalized terms not otherwise defined below or elsewhere in this Contract shall have the definitions assigned to them in Section X of the RFP.

"Average Commodity Revenue" or "ACR" for any month means such month's Marketable Recovered Material Revenue divided by the total tons of Marketable Recovered Material in such month based on outbound scale weights. Source-separated and/or presorted loads should not be included in this calculation.

"Building" means the structure that is housing the Joint MRF operations.

"Business Day" means each Monday, Tuesday, Wednesday, Thursday and Friday that is not a recognized Entity Holiday.

"Bypass Charge" is the charge described in **Section 11.03**.

"CCR" refers to the group of City and County representatives tasked with certain administrative and management tasks related to the operation of the Joint MRF and as defined in **Section I(c) of the IGA** between the City and County, executed contemporaneously herewith.

"Change in Law" means the adoption, promulgation, issuance, modification or administrative or judicial change in interpretation of any applicable laws after the Contract Date that has a materially negative financial impact on the benefits expected by the Entity or the Contractor, excluding any changes that impact the Contractor's income taxes.

"City" means the City of Milwaukee, in the State of Wisconsin.

"City Equipment" means the equipment, if any, owned by the City, used at the Joint MRF, and as may be listed in **Schedule 11**.

"City Payment" means the payment made to the City by the Contractor on a monthly basis, as prescribed in **Article XI** and **Schedule 4** of this Contract.

"City Property" means (i) those areas or other property that may be near or adjacent to the Joint MRF Site that are not used by the Contractor for Joint MRF purposes, as specified in **Attachment A** to the IGA, including but not limited to including but not limited to parking areas, driveways, fueling station(s), storage units, and/or other buildings; (ii) City-owned Equipment, as specified in **Attachment B** to the IGA; and (iii) City-owned Joint MRF building and grounds, including exterior walls, insulation, roofs and doors, electric and other utility services to the building, HVAC mechanicals, asphalt drives/parking, storm and sanitary sewers, two on-site truck scales, and the retaining wall along the Menomonee River, as specified in **Attachment C** to the IGA.

"City Ton(s)" means tons of Recyclable Materials collected on behalf of the City and delivered to the Joint MRF, unless otherwise specified herein.

"Composition Analysis" "Composition Analysis" means an analysis of Recyclable Material to determine the average percentages by weight of marketable commodities that comprise Recoverable Material (as specified in **Table 2-2** of **Schedule 2** in both the City and County Operating Agreements) and materials not Recoverable though Processing in each Ton of Recyclable Material delivered by the County, City, Third Party, or other source.

"Conditions Precedent" are those respective conditions precedent to the Parties' obligations hereunder as set forth in **Article IV**.

"Contaminated Recyclable Material" means material that is normally considered Recoverable Material, but is not processed due to some type of contamination, other than Hazardous or Infectious Waste.

"Contract" means this Construction and Operating Agreement.

"Contract Date" means the date on which this Contract becomes effective, which shall commence once it is signed by the Parties.

"Contractor" means Resource Recovery Systems, LLC, d/b/a ReCommunity, a limited liability company formed under the laws of the State of Delaware, or its administrators, successors or assigns.

"Contractor Payment" means the payment made by the City to the Contractor on a monthly basis, as prescribed in **Article XI** and **Schedule 4** of this Contract.

"Contractor's Proposal" means the November 12, 2013 proposal to the RFP and all subsequent clarifications and follow-up documents submitted by the Contractor in response to the RFP.

"County" means the County of Waukesha in the State of Wisconsin.

"County Operating Agreement" means the Construction and Operating Agreement between the County and the Contractor executed contemporaneously herewith including provisions similar to those contained herein, as needed to design, build, and operate the Joint MRF dated as of the date hereof.

"County Transfer Station" means the Transfer Station located at 220 S. Prairie Ave. Waukesha WI 53186.

"Day" shall mean a calendar day, beginning at 12:01 A.M. in the central time zone of the

United States coinciding with the calendar day, whether or not a Sunday or Legal Holiday.

"Direct Costs" means costs in connection with any cost or expense incurred by either Party. For payment of Direct Costs by the other Party, the Entity or the Contractor shall provide documentation describing the reason for incurring the Direct Cost, the amount of the Direct Cost, the event or Section of this Contract giving rise to the Party's right to incur the Direct Cost, and that the Direct Cost is at a fair market value price for the service or materials supplied. With respect to Direct Costs incurred by the Contractor, the amount shall be increased to provide for the payment of a profit only when expressly authorized pursuant to the terms of this Contract.

"Education Fee" means a fee, as described in **Section 11.04**, shown in **Schedule 4**, and charged to the Contractor for each Ton of Recyclable Material delivered to the Joint MRF by the County and City to fund recycling outreach, education, and promotion activities and campaigns to improve recycling rates payable to each of the City and County according to their respective Tons.

"Engineer" or "Entity Engineer" is an engineer designated by the Entity (or either of the City or County, as may be applicable), acting personally or through any assistants authorized in writing by the engineer, to oversee the design, construction, and Processing that may occur under this Contract.

"Entity" refers to the City and the County, jointly, whereby each will exercise its individual powers as Responsible Units, but also working cooperatively for the joint purpose of Processing and marketing of Recyclables at the Joint MRF. Where "Entity" is used herein, it means both the City and the County.

"Entity Equipment" means the equipment owned jointly by the Entity and used to convey, sort, bail, and/or otherwise Process Recyclable Material delivered to the Joint MRF. Entity Equipment includes but is not limited to conveyors, sorting stations, disc screens, scanners, bailers, push walls, and material bunkers. A detailed list of initial Entity Equipment is contained in **Schedule 7**. For the avoidance of doubt, Entity Equipment does not include Rolling Stock (**Schedule 13**) or City Property (**Attachments A-C of the IGA**).

"Entity Holiday" means New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day or other County or City recognized Holidays as may be designated from time to time by the County or City.

"Equipment Repair & Replacement Fee" or "ERF" means the fee established in the ERP to be charged for each ton of Recyclable Material delivered to the Joint MRF.

"Equipment Replacement Plan" or "ERP" means a multi-year plan for the future repair

and/or replacement of Entity Equipment. The ERP shall include a list of Entity Equipment, an anticipated equipment Repair & Replacement schedule, Repair & Replacement costs, depreciation/inflationary adjustment, and an Equipment Repair & Replacement Fee, as shown in **Schedule 8**.

"Equipment Reserve Fund" means a dedicated capital fund that holds paid ERFs (including interest earned thereon) to be used exclusively for the purpose of implementing and satisfying the ERP for the mutual benefit of both the County and City, as described in more detail in the IGA.

"Federal" means the government of the United States, including all agencies.

"Force Majeure Event" means a natural disaster, flood, fire, riot, explosion or similar occurrences, acts of the public enemy, wars, blockades, insurrections, riots, restraints of governments and people, civil disturbances, acts of terrorism or similar occurrences, actions or decrees of governmental bodies.

"Hazardous Waste" means any material or substance which, as of the Contract Date, and for the duration of this Contract (adopting any future changes in the statutory definitions of the following statutes or regulations or any newly promulgated statutes or regulations), and by reason of its composition or characteristics is (a) hazardous waste, substance or material as defined in the Solid Waste Disposal Act, 42 USC §6901 et seq., as amended, replaced or superseded, and the regulations implementing same; (b) material the disposal of which is regulated by the Toxic Substances Control Act, 15 USC §2601, et seq., as amended, replaced or superseded, and the regulations implementing same; (c) special nuclear or by-products material within the meaning of the Atomic Energy Act of 1954; (d) hazardous waste substance or material as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §6901 et seq. as amended, replaced or superseded, and the regulations implementing same; or (e) treated as hazardous waste or substance or material under applicable federal, state, or local law. If any governmental agency or unit having appropriate jurisdiction shall determine that substances are hazardous or harmful to health when processed at the MRF/TS, then any substances or materials shall be Hazardous Waste for purposes of this Contract.

"IGA" means the Intergovernmental Cooperation Agreement between the City and County relating to the construction and operation of a joint recycling facility executed contemporaneously herewith.

"Infectious Waste" means any of the following when not generated from a household or from a farm operation or agricultural business: (1) cultures and stocks of infectious agents and associated biological, including laboratory waste, biological production wastes, discarded live

and attenuated vaccines, culture dishes, and related devices; (2) liquid human and animal waste, including blood and blood products and body fluids, but not including urine or materials stained with blood or body fluids; (3) pathological waste; (4) sharps; (5) contaminated wastes from animals that have been exposed to agents infectious to humans, these being primarily research animals; and (6) waste treated as Infectious Waste pursuant to federal, state, or local laws. If any governmental agency or unit having appropriate jurisdiction shall determine that substances are infectious, then any substance shall be Infectious Waste by purpose of this Contract.

"Joint MRF" means the Building, Entity Equipment, truck scales and grounds located at 1313 West Mount Vernon Avenue, Milwaukee, WI, 53233, and used as a material recovery facility to process Recyclables for both the County and City. For the avoidance of doubt, the Joint MRF does not include City Property as listed in **Attachments A and B**, but may include City Property as listed in **Attachment** C of the IGA.

"Joint MRF Site" means the property and grounds on which the Joint MRF is located, as specified in **Schedule 14**, but does not include City Property as listed in **Attachment A** of the IGA.

"Joint MRF Site" means collectively the property and grounds on which the Joint MRF is located, but not including City Property as listed in **Attachments A and B** of the IGA.

"Landfill" means any licensed solid waste disposal facility to which the Entity may designate Waste to be taken, provided that any such Landfill accepts material in accordance with all applicable laws.

"Legal Holiday" means New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas Day.

"*Marketable Recovered Material*" means those Recoverable Materials that, after Processing at the Joint MRF, are sold on the open market using reasonable efforts, even at a negative value, unless the Entity has instructed the Contractor not to market at current prices. **Schedule 2, Table 2-2** contains a list of Marketable Recovered Material, which may be amended from time to time, with approval from the Entity, to meet current market conditions and to provide the Entity with the best product value.

"Marketable Recovered Material Revenue" means all revenue received by the Contractor from the sale of Marketable Recovered Materials under this Contract, minus any Direct Costs associated with transporting materials to market and marketing fees (e.g., broker's fees, finder's fees).

"*Non-Conforming Load*" means any load with (a) less than eighty percent (80%) Recoverable Material; (b) greater than twenty percent (20%) Contaminated Recyclable Material; or (c) a load that is otherwise unable to be Processed because it (i) may be a substantial endangerment to public or employee health or safety; or (ii) will materially and adversely affect the operation of the Joint MRF/TS (i.e., entire load is frozen or previously baled).

"Non-Recoverable" means those materials not included in **Schedule 2, Table 2-1**.

"*Non-Recoverable Residue*" means that portion of Residue that remains after Recyclable Material is Processed, which cannot be recovered or otherwise marketed or sold.

"Operating Month" means each calendar month commencing with the month in which the Operations Commencement Date occurs and ending with the month in which the Term ends.

"Operation and Maintenance Plan" or "O&M Plan" means the document prepared by the Contractor in conformance with **Section 6.04** to provide overall background and guidance necessary for the proper operation and maintenance of the Joint MRF, with minimum requirements outline in **Schedule 6**.

"Operations Commencement Date" means the date that the Contractor shall commence Processing of City Recyclable Material at the Joint MRF, which shall be no earlier than _____ Business Days and no later than _____ Business Days after the date that Contractor receives the Operations Notice to Proceed.

"Operations Notice to Proceed" means the written notification from the City delivered to the Contractor that all of the Conditions Precedent of the City have been satisfied or waived and the Joint MRF construction, as detailed in **Schedule 11** has been completed. Such written notification shall be delivered to Contractor no later than two (2) Business Days after all of the Conditions Precedent of the City have been satisfied or waived.

"Participating Municipality" means a municipality within Waukesha County for which the County serves as Responsible Unit under Chapter 287 Wisconsin Statutes.

"Party" or "Parties" means either the County or the Contractor, or both.

"Performance Guarantee(s)" means the guarantee(s) set forth in **Article X**.

"Person" means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, or government or political subdivision thereof.

"*Process*" "Processed" or "Processing" means the separation, sorting, crushing, baling, shredding, flattening or other treatment of Recyclable Material, into Marketable Recovered Materials and Residue.

"Processing Fee" means the fee charged by the Contractor to the City, County, and/or any Third Party, for each ton of Recyclable Material each respectively delivers to the Joint MRF, in accordance with **Schedule 4**.

"Receiving Time" means the specific days and hours of the day that Contractor shall receive Recyclable Material at the Joint MRF for Processing, and which shall be 7:00 a.m. to 4:00 p.m. weekdays that are Business Days. Additional or different hours may be mutually agreed to by the Parties.

"*Recoverable Material*" means those Recyclable Materials that must be accepted and Processed at the Joint MRF, as listed in **Schedule 2, Table 2-1**, or other materials which the Parties by mutual agreement may designate as Recoverable Material from time to time.

"*Recyclable Material*" or "Recyclables" means the portion of source-separated and/or Single Stream materials delivered to the Joint MRF that are able to be Processed by the Contractor under **Section 9.01**, which may contain Recoverable Material and Non-Recoverable Residue.

"*Rejected Material*" means materials delivered to the Joint MRF but not able to be Processed by the Contractor under (a) **Section 9.01(c)(iv)** because it contains Hazardous Waste and/or Infectious Waste; or (b) **Section 9.01(c)(ii)** and **Section 9.02(a)** because the load is a Non-Conforming Load.

"*Residue*" means that portion of Recyclable Material that remains after Processing and designated for Landfill disposal. Residue may contain Non-Recoverable Residue and Recoverable Materials.

"Responsible Unit" means the unit of government is responsible for complying with the applicable solid waste reduction, recovery and recycling laws under Chapter 287 of the Wisconsin Statutes.

"Retrofit" means Contractor's work to be performed at the Joint MRF set forth in **Article VI** and **Schedule 11**.

"Retrofit Notice to Proceed" means the written notification from the City delivered to the Contractor that all of the Conditions Precedent of the City have been satisfied or waived, the Construction Plan, and Final Specifications required by **Section 6.01** have been approved such

that the Retrofit can commence. Such written notification shall be delivered to Contractor no later than two Business Days after all of the foregoing events have occurred.

"Retrofit Notice to Proceed Date" means the date which the City has specified in the Retrofit Notice to Proceed that the Contractor may proceed with the Retrofit, and which date shall be no later than two Business Days after delivery of the Retrofit Notice to Proceed.

"RFP" means the joint City and County Request for Proposals #118-2013, released in August 2013, entitled *Regional Recycling System for Processing and Marketing of Single Stream Recyclables,* and including Addenda 1 through 5.

"Rolling Stock" means any machinery owned or leased by Contractor that is self-propelled, mobile or portable, including but not limited to compactors, semi-tractors, semi-trailers, forklifts, front-end loaders, and any other mobile equipment used at the Joint MRF or Transfer Station as specified in **Schedule 13.** For the avoidance of doubt, Rolling Stock excludes vehicles used to collect Recyclables from residents, City Property (**Attachments A-C** to the IGA), and Entity Equipment (**Schedule 7**).

"Shared Revenue" means that portion of Marketable Recovered Material Revenue that is shared with the County, City, and/or a Third Party source, as designated in this Contract or other applicable Third Party contract.

"*Single Stream*" means materials that are not sorted into separate commodities by the depositor and that may include commingled Recyclable Materials and Rejected Materials.

"State" means the State of Wisconsin and all of its appropriate administrative, contracting and regulatory agencies and offices.

"Sub-contractor" means the individual, firm, partnership, or corporation to whom the Contractor, with the written consent of the Entity, sublets, assigns, or otherwise disposes of any part of the work covered by the Contract.

"Term" is defined in Section 18.01.

"Third Party" means a party that is not the County, a Participating Municipality, or the City, or their agents. As referenced herein, "Third Party" generally refers to those Third Parties that deliver Recyclables to the Joint MRF under contractual arrangements with Contractor that have been approved by the Entity.

"Ton" means two thousand (2,000) pounds.

"*Waste*" or "Waste Material" means material to be disposed of at a Landfill, specifically including Residue and Rejected Materials.

"Waste Disposal Costs" means all Direct Costs incurred by the Contractor for the disposal of Waste Materials.

Section 2.02 Terms Generally and Intended Operation of Key Terms. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation", except as the context may otherwise require. The words "agree," "Contract," "approval" and "consent" shall be deemed to be followed by the phrase "which shall not be unreasonably withheld or unduly delayed," except as the context may otherwise require.

In addition, the intended operational flow of all the *italicized and underlined* terms in **Section 2.02** are demonstrated in the flow-chart attached to this Operating Agreement as Diagram 1.

Section 2.03 Exercise of Rights and Obligations.

(a) Whenever under the terms of this Contract an action is permitted or required by the Entity, that action may only be exercised through the joint direction of the City and the County acting through the CCR. Contractor is entitled to rely upon the direction of the CCR with respect to such Entity actions, and need not take any further action with respect to Entity actions if it receives inconsistent or contradictory direction with respect thereto from the City and the County, other than to notify the CCR of the inconsistency/contradiction and request unanimous direction from the City and the County through the CCR.

(b) For all purposes hereunder, Contractor shall be entitled to rely on any instructions from any one of the individuals identified in **Schedule 1** as CCR representatives as being instructions from the CCR, so long as such individual indicates in such instructions that he is acting on behalf of the CCR.

(b) If the City exercises a right conferred hereunder that conflicts with an express right or instruction from the County in the Contractor's reasonable view, the Contractor shall do nothing and request clarifying instructions and direction from the CCR.

ARTICLE III
GENERAL SCOPE OF WORK

Section 3.01 General Scope of Work. The Contractor agrees to furnish all of the materials, equipment, and labor necessary to perform all of the work and operations, and to abide by all the

duties and responsibilities applicable to it, for the services to be provided hereunder in conformance with the requirements of this Contract, including its Schedules and amendments, if any, and the Contractor's Proposal and RFP.

ARTICLE IV
CONDITIONS PRECEDENT

Section 4.01 Conditions Precedent. The City shall not be obligated to perform under this Contract unless the conditions precedent in **Section 4.02** and **Article V** are satisfied. The Contractor shall not be obligated to perform under this Contract unless the conditions precedent in **Section 4.03** are satisfied.

Section 4.02 Conditions to City Obligations.

(a) No action, suit, proceeding or official investigation shall have been commenced by any Person or publicly announced or commenced by any federal, State or local governmental authority or City in any federal, State or local court, that seeks to enjoin, assess civil or criminal penalties against, assess civil damages against or obtain any judgment, order or consent decree with respect to the City or the Contractor, provided, however, that any such action, suit, proceeding or investigation would, if adversely determined, materially affect this Contract, or the performance by the Parties of their obligations hereunder or the transactions contemplated hereby.

(b) No change shall have occurred after the Contract Date and on or before the Retrofit Notice to Proceed Date in any applicable Federal, State or local law, or any applicable federal, State or local rule, regulation or ordinance hereunder, or in the interpretation thereof by any applicable regulatory authority, that would make the execution or delivery by the City or the Contractor of this Contract, a violation of such law, rule, regulation or ordinance.

(c) The County shall have executed the IGA and the County Operating Agreement, or will execute those agreements contemporaneously with the execution of this Contract.

(d) Certificates of insurance, and certified copies of insurance policies if requested, as required by **Article VII**, shall have been delivered to the City and approved by Corporation Counsel.

(e) The financial assurances required by **Article V** shall have been delivered to the City and approved by Corporation Counsel.

Section 4.03 Conditions to Contractor Obligations.

(a) No action, suit, proceeding or official investigation shall have been commenced by any Person or publicly announced or commenced by any federal, State or local governmental authority or agency in any federal, state or local court, that seeks to enjoin, assess civil or criminal penalties against, assess civil damages against or obtain any judgment, order or consent decree with respect to the City or the Contractor, provided, however, that any such action, suit, proceeding or investigation would, if adversely determined, materially affect this Contract, or the performance by the Parties of their respective obligations hereunder or the transactions contemplated hereby.

(b) No change shall have occurred after the Contract Date and on or before the Retrofit Notice to Proceed Date in any applicable federal, State or local law, or any applicable federal, State or local rule, regulation or ordinance there under, or in the interpretation thereof by any applicable regulatory authority, that would make the execution or delivery by the City or the Contractor of this Contract a violation of such law, rule, regulations or ordinance.

(c) The County of Milwaukee shall have executed the IGA and the County Operating Agreement, or will execute those agreements contemporaneously with the execution of this Contract.

(d) All permits and approvals necessary to operate the Joint MRF as contemplated herein have been obtained and are in full force and effect.

ARTICLE V
FINANCIAL ASSURANCES

Section 5.01 Performance and Payment Bonds. Prior to execution of this Contract, the IGA, and the County Construction and Operating Agreement, the Contractor agrees to provide the Entity with Performance Bonds and Payment Bonds guaranteeing the Contractor's full and faithful performance of all its obligations under this Contract, including payment of Sub-contractors, as further specified below. The Performance and Payment Bonds shall be from a surety company licensed to do business in the State of Wisconsin. The Entity shall be named as a beneficiary, as specified below, and the form of the Performance and Payment Bonds shall be acceptable to and approved by the Entity in its reasonable discretion. The Entity may make a demand upon the Performance and Payment Bond to compensate it for damages, losses, costs or expenses sustained by the Entity due to a default under this Contract by the Contractor.

(a) Joint MRF Construction work: A separate Performance and Payment Bond, with the Entity as beneficiary, shall be required during the construction phase of work for any aspect of construction work for the Joint MRF. The amount of the Performance and Payment Bond for construction work, if applicable, shall be 100% of the proposed costs for design, equipment, labor and services during TS construction phase.

(b) Joint MRF Service work: The Performance and Payment Bond for the on-going service work for the Joint MRF under the Contract must state that all services shall be executed in accordance with the conditions of this Contract and all applicable regulations, and shall remain in effect for the entire Term. The amount of the Performance and Payment Bond, with the Entity as beneficiary, shall be based on the annual costs of processing Entity Recyclable Material. The Performance and Payment Bond must be renewable automatically on an annual basis without amendment. The Performance and Payment Bond shall require the Entity and the Contractor to be notified in writing by the issuer a minimum of sixty (60) days prior to any proposed changes to the Performance and Payment Bond, including non-renewal. In the event of non-renewal, the Contractor shall provide the Entity evidence of the new source of surety within twenty-one (21) days after the Entity's receipt of the non-renewal notice.

Section 5.02 Payment Guarantee. Contemporaneous with the execution of this Contract, Contractor's parent, RE Community Holdings II, Inc., shall execute a guaranty of all of Contractor's obligations hereunder. The City may resort to this guaranty without first seeking recovery from any other source. The guaranty shall be in substantially the same form as the guaranty attached hereto as Schedule 12.

Section 5.03 Contract Not an Asset. It is agreed that in the event the Contractor shall be adjudged bankrupt, a receiver appointed or a general assignment for the benefit of creditors is made or it is proven insolvent or fails in business that the Contract shall not be an asset of the Contractor. A memorandum of this provision shall be recorded by the Contractor on any privately owned site used by the Contractor for the performance of the work specified in the Contract.

ARTICLE VI
JOINT MRF CONSTRUCTION; OPERATION AND MAINTENANCE OF THE JOINT MRF BY CONTRACTOR; RECORDS AND AUDIT

Section 6.01 Joint MRF Construction

(a) Within 90 days of the execution of this Contract, Contractor shall submit to the City for approval a Construction Schedule as defined in Schedule 11.

(b) Within 30 days of approval by the City of the Construction Schedule referenced in sub (a), Contractor shall submit to the City for approval Final Specifications as defined in Schedule 11.

(c) Upon receipt of a Retrofit Notice to Proceed, the Contractor shall retrofit the Joint MRF in accordance with the requirements of Schedule 11 and the approved Final Specifications.

Section 6.02 Overall Operational Responsibilities.

(a) The Contractor shall, at its sole cost and expense, provide management, supervision, personnel, materials, equipment, services and supplies necessary to operate, maintain and repair the Joint MRF, and shall use all reasonable efforts to sell Marketable Recovered Materials. This shall be done in a manner consistent with good engineering, operational management and maintenance practices and procedures in order to receive Recyclable Material from the City during the Receiving Time, and to Process such Recyclable Material and recover and market industry acceptable materials there from all in accordance with the terms of this Contract to the maximum extent of available Joint MRF Processing capacity. The Contractor shall timely communicate with the Entity and expressly acknowledges that time is of the essence, especially as to notice of any significant operational or equipment changes. Regular electronic means (i.e., phone and e-mail messages) shall be the acceptable forms communication, in addition to all other reporting and notice requirements as specified herein.

(b) After the Operations Commencement Date and subject to the Contractor's rejection rights set forth in **Section 9.01(c)**, the Contractor shall receive City Tons during the Receiving Time, and shall Process City Tons in accordance with the standards of this Contract.

(c) The Contractor shall transport and dispose of Waste Materials pursuant to **Section 9.04**.

(d) The Contractor shall operate and maintain the Joint MRF in such a manner so that the Joint MRF will receive and Process Recyclable Material in accordance with its guarantees set forth in **Article X**.

(e) The Contractor shall use all reasonable efforts to market and sell all Marketable Recovered Materials produced by the Joint MRF in accordance with the minimum specifications and **Schedule 9** of this Contract, and to obtain the best consistent price for Marketable Recovered Materials derived from the sale thereof. The disposal of

Marketable Recovered Materials at a waste-to-energy facility or Landfill shall not be treated as marketing of such materials.

(f) Contractor is responsible for the acts of all Sub-contractors.

(g) Upon reasonable notice, be responsive to requests for information from the public and permit designated City personnel or trained volunteers to conduct the public on tours of portions of the Joint MRF at reasonable hours to be agreed to by the Parties.

Section 6.03 Personnel.

(a) The Contractor shall employ competent laborers and mechanics for the work under this Contract. The Contractor shall staff the Joint MRF with the number of hourly and salaried employees as required to: (i) be consistent with good management and industry standards and practices for materials recovery facilities; (ii) enable the Contractor to meet the daily Guaranteed Capacity and material quality required in this Contract (as specified in **Article X,** the O&M plan); and (iii) perform all of the Contractor's obligations and duties in a timely and efficient manner.

(b) A staffing plan for the Joint MRF shall be included in the O&M Plan described below. All of the Contractor's personnel shall be appropriately trained in accordance with all applicable rules, regulations and law so that the Joint MRF will be operated and maintained in accordance with and consistent with applicable law and good industry standards and practices for materials recovery facilities. A detailed list of job descriptions for each of the personnel and associated training requirements shall be maintained by the Contractor as a component of the O&M Plan. If the Contractor determines that in order to perform its obligations and to meet its guarantees under this Contract, it requires more staff than set forth in the O&M Plan, the additional necessary staff shall not entitle the Contractor to an increase in Processing Fee.

Section 6.04 O&M Plan

(a) Attention to the operation and maintenance of the Joint MRF Building and Site, Entity Equipment and Rolling Stock shall be a high priority for the Contractor. The Contractor shall prepare and implement an O&M Plan for the Joint MRF meeting at least the minimum standards in **Schedule 6** and provide a copy to the Entity no later than 240 days after execution of this Contract. This O&M Plan will provide the overall background and guidance necessary for proper Joint MRF operation. This document shall be in addition to and supplement the manufacturer's operation and maintenance manuals supplied for all Entity Equipment.

(b) The O&M Plan, and subsequent revisions to it, must be approved by the Entity and such approval not to be unreasonably conditioned, withheld, or delayed. Any proposed revisions to the O&M Plan shall be delivered by the Contractor to the Entity as soon as practicable, but in no case any more than 10 days after such revision has been proposed. The Contractor shall evaluate the O&M Plan at least annually and shall recommend necessary revisions and submit a revised/updated O&M Plan, as necessary, to the CCR as part of the Annual Operating Report required by **Schedule 5**. Amendments to the Operation and Maintenance Plan shall be dated and made in accordance with the procedures established within the Plan and this **Section 6.04**.

(c) In addition to the obligations stated elsewhere in the Contract, the Contractor agrees to maintain the Joint MRF, Entity Equipment, and Rolling Stock in accordance with the O&M Plan and follow the programs and procedures contained in the O&M Plan.

(d) At the end of the Term**,** the Joint MRF will be relinquished to the City. All of the Rolling Stock will remain the property of the Contractor. The Joint MRF, including Entity Equipment, shall be fully operable and in a condition that reflects consistent, high quality maintenance, normal wear and tear excepted. Contractor shall have fourteen (14) days after the end of the Term to remove all of its property and equipment from the Joint MRF.

Section 6.05 *Intentionally Omitted*

Section 6.06 Repair and Maintenance of the Joint MRF/TS Buildings and Sites.

(a) The Contractor shall, at its sole cost and expense, (i) operate and maintain the Joint MRF Building and the Joint MRF Site, including City Property to the extent that City Property may include Joint MRF Building and/or Site as listed or detailed in **Attachment C** to the IGA, in a good, clean, orderly and litter-free condition, and consistent with its performance guarantees set forth in **Article X,** the O&M Plan, and its other obligations set forth in this Contract; (ii) maintain and repair the Building structures, particularly when visible defects in the interior and exterior have occurred, resulting from damage caused on or after the Operations Notice to Proceed Date by Contractor or its employees, agents, Sub-contractors and invitees; (iii) on a daily basis, inspect and clean-up properties adjacent to the Joint MRF where litter and debris from the Joint MRF has accumulated, and City grants Contractor the right to enter onto adjacent properties controlled by the City for that exclusive purpose; and (iv) enforce a No-Smoking policy within the Joint MRF Buildings. Notwithstanding the foregoing, the Contractor shall not be responsible for pavement or drainage damage or issues not caused by the Contractor or its employees, agents, Sub-contractors and invitees, except that Contractor shall notify the Entity of any such problems or damage as soon as practicable.

(b) The Entity reserves the right on not less than two (2) days' notice to Contractor to clean up the Joint MRF Site for which Contractor is responsible to maintain, if not properly maintained by the Contractor, and charge the Contractor for its Direct Costs and any additional Liquidated Damages for Failure to Perform in **Article XV** to which either or both may be entitled.

(c) Maintenance of the Joint MRF Building and related infrastructure is to include cleaning, painting, door repair, electrical distribution from the breakers to the Entity Equipment or County Equipment, inside lighting (replacement lamps and ballasts only), fire protection, security systems, and plumbing. Any damage to the Building caused by Contractor, or its employees or agents shall be promptly repaired. The Entity reserves the right to have its representatives inspect the Building at any time to determine if the Building and its systems are being adequately maintained.

(d) The Contractor will have access to, and use of, offices, washroom, lunchroom, maintenance spaces and educational room at the Joint MRF. The Contractor is responsible for maintaining these spaces, including providing high quality cleaning services and maintaining lighting. The education rooms and associated access ways must be clean and ready for its primary purpose at any time.

Section 6.07 Entity Equipment Maintenance and Repairs.

(a) Contractor shall, at its sole cost and expense, maintain all Entity Equipment and ERP-scheduled property in good operating condition in accordance with applicable manufacturer's standards and the adopted O&M Plan under **Section 6.04**. This includes preventive maintenance such as regular inspections, cleaning, painting, fluid replacement, equipment testing, and proper adjustments. Contractor shall perform all tests or testing as may be required by this Contract, and applicable permits, laws, rules and regulations, including those pertaining to the environment and the Occupational Safety and Health Act of 1970, as amended.

(b) Contractor shall, at its sole cost and expense, complete all necessary repairs of Entity Equipment (**Schedule 7**) and ERP-scheduled property where each repair is under two-thousand five-hundred dollars ($2,500) in cost. Where any repair costs for Entity Equipment (**Schedule 7**) or ERP-scheduled property is $2,500 or more, the Entity shall be responsible for the cost of such repair, unless the need to replace the equipment arises from an intentional, wrongful or negligent act of Contractor or its agents or Sub-contractors, in which case Contractor shall not be entitled to reimbursement for such costs from the Entity. Where such repair is more than two-thousand five-hundred dollars ($2,500) in cost, Contractor must obtain approval of the CCR in advance of such repair

(other than in case of emergency) and (i) will provide Direct Cost documentation related to such repair to the CCR; (ii) where reasonable, may advance the cost of such repair and later invoice that repair cost to the Entity according to the terms of this Contract and/or the IGA; and (iii) shall make a good faith recommendation to the CCR whether repair or replacement of Entity Equipment or ERP-scheduled property will be most cost-effective. Repairs to Entity Equipment or ERP-scheduled property shall be first reimbursed to the Contractor through the Equipment Reserve Fund. However, if any single or substantially contemporaneous Entity Equipment or ERP-scheduled property repair, purchase, and/or replacement cost exceeds the capital in the Equipment Reserve Fund, the Contractor shall immediately notify the CCR and obtain a second express approval from the CCR before replacing and/or repairing equipment and if approved, such costs shall be allocated among the County and City as specified in the IGA.

(c) Contractor shall maintain an adequate spare parts inventory, and maintain such inventory, in order to repair and replace the same, if necessary, in a timely fashion and so as not to disrupt the operation of the Joint MRF.

(d) The Entity and the City each reserves the right to have its representatives inspect Entity Equipment and City Equipment, as applicable, at any reasonable time to determine if it is being adequately maintained.

(e) Contractor shall notify the City or CCR if any City Equipment, ERP-scheduled property, or Entity Equipment, should fail or be seriously damaged as to significantly disrupt Joint MRF operations.

(f) Notwithstanding any of the foregoing, if the Entity or City in good faith determines that a repair to Entity, ERP-Scheduled, or City Equipment is due to negligence of the Contractor, the Contractor shall be responsible for the total cost of the repair or equivalent quality replacement regardless of cost.

Section 6.08 Entity Equipment Replacement or New Purchase.

(a) Contractor shall advise the CCR and request its permission to replace or purchase new equipment when it believes in good faith that Entity Equipment (**Schedule 7**) or ERP-scheduled property should be replaced or new equipment acquired due to (i) unscheduled breakdowns or other depreciation; (ii) if repairing the equipment may not be commercially reasonable or cost efficient; or (iii) under other commercially reasonable circumstances. If Contractor replaces Entity Equipment, ERP-scheduled equipment, or purchases new equipment, Contractor shall provide Direct Cost documentation related to such purchases to the CCR. The Contractor may advise the CCR and request its permission to replace or newly purchase Entity or ERP-scheduled equipment when such

replacement or purchase is called for under the ERP (**Schedule 8**). Contractor shall cooperate with the Entity on preparing and updating the ERP (**Schedule 8**) on no less than an annual basis, which shall be reviewed and approved by the CCR. Contractor shall contribute a per ton fee to the Equipment Reserve Fund, as specified in **Article XI** and **Schedule 4**. Contractor shall cooperate with the Entity on periodic Entity Equipment or ERP-scheduled equipment replacement and purchase activities by participating in discussions and planning for scheduled replacements or purchases; assisting in development of equipment specifications; obtaining competitive bids in accordance with any applicable County procurement requirements; providing copies of bids to the Entity for review and approval; providing cost estimates for overseeing and verifying installation; providing as-built drawings to the Entity; and managing the overall replacement process.

(b) All costs associated with Entity Equipment or ERP-scheduled property replacement or purchase costing more than two-thousand five-hundred dollars ($2,500), if not purchased directly by the Entity, (i) shall be approved by the CCR prior to purchase; (ii) shall be documented as Direct Costs; (iii) shall be reimbursable to the Contractor by the Entity; and (iv) shall not include the salaries and benefits of regular Joint MRF staff. The Entity and City expressly reserve the right to directly purchase any replacement equipment. All Entity Equipment or ERP-scheduled property replacement costs shall be paid in accordance with the terms of this Contract and the IGA. If the Entity deems the competitive bids obtained by the Contractor to be unacceptable, the Entity reserves the right to obtain additional bids. Replacement purchases or purchases of new Entity Equipment or ERP-scheduled property shall be first reimbursed to the Contractor through the Equipment Reserve Fund, if the Equipment was not purchased directly by the Entity. In no event shall Contractor be required to purchase replacement or new equipment on behalf of the Entity or City, unless the need to replace the equipment arises from an intentional, wrongful or negligent act of Contractor or its agents or Sub-contractors, in which case Contractor shall not be entitled to reimbursement for such costs from the Entity or City. If any single or substantially contemporaneous Entity Equipment or ERP-scheduled property purchase or replacement cost exceeds the capital in the Equipment Reserve Fund, the Contractor shall immediately alert the CCR and obtain a second express approval from the CCR before replacing or purchasing equipment and if approved, such costs shall be allocated among the County and City as specified in the IGA. For any new or replacement Entity Equipment, the Contractor shall update the Entity Equipment List in **Schedule 7** and provide the Entity updated as-built Computer-Aided Drafting and Design (CADD) files, including equipment dimensions and position within the Joint MRF Building.

Section 6.09 City Equipment Replacement or New Purchase. The City shall be responsible for

all City Equipment replacement costs and new purchases.

Section 6.10 Operating Period; Receiving Time; Legal Holidays.

(a) The Contractor shall operate the Joint MRF during periods it deems necessary to carry out its obligations under this Contract. The Contractor shall use reasonable efforts to comply with reasonable requests of the Entity with respect to the operating times of the Joint MRF. In response to any such requests to operate the Joint MRF outside of designated Receiving Times, the Contractor and City may negotiate a Processing Fee premium in good faith.

(b) The Contractor shall keep the Joint MRF open for receiving Recyclable Material from the City, County and Participating Municipalities during the Receiving Time. Subject to applicable State regulations and any permit issued thereunder, the Contractor may receive Recyclable Material at the Joint MRF/TS at such additional times as the Contractor may desire. In addition to the foregoing, the Receiving Time shall be adjusted consistent with any change pursuant to **Section 6.10(a)**.

(c) The Contractor agrees to increase the Receiving Time, and accordingly receive Recyclable Material at the Joint MRF/TS at hours other than the Receiving Time, if (i) requested by the Entity to accommodate unusual quantities of Recyclable Material resulting from an emergency or from programs of the Entity, City, County or any Participating Municipality designed to promote clean-up of an area serviced by the Joint MRF/TS, and (ii) the Joint MRF/TS is able, in the reasonable judgment of the Contractor, to receive such additional quantities of Recyclable Material in excess of the system capacity set forth in **Section 10.01** without adversely affecting the Contractor's operation or maintenance of the Joint MRF, or its performance guarantees set forth in **Article X** and the O&M Plan, and (iii) the Entity provides the Contractor with reasonably adequate advance written notice of such delivery of Recyclable Material to enable the Contractor to respond to any such request. Moreover, to the extent that such increased Receiving Time was specifically requested by Entity, Contractor shall be entitled to be reimbursed for the Direct Costs related to such increased Receiving Time.

Section 6.11 Inspection; Recordkeeping; Internal Controls; Reporting.

(a) Inspection of the Joint MRF/TS

(i) The City or the Entity may at any time, at its own cost and expense and with the full cooperation of the Contractor, inspect the Joint MRF to determine whether the Contractor is in compliance with all of its obligations under this Contract. If such inspection shall reveal that the Contractor is not in compliance

with such obligations, the Contractor shall be provided a written report with the results of any such inspection, and shall be subject to a Notice of Default pursuant to **Article XIV**. At the Contractor's cost and expense, the Joint MRF shall be re-inspected within thirty (30) days to determine if the non-compliance has been corrected.

(ii) In connection with such inspections or visits, the City or Entity as applicable shall, on behalf of itself, its agents and representatives, comply, and cause its agents and representatives to comply, with all reasonable rules and regulations adopted by the Contractor.

(iii) Inspections by Federal, State, County, or City officials pertaining to permits or licenses necessary for the operation of the Joint MRF may be conducted without prior notice to the Contractor, except as otherwise provided by applicable law. The Contractor shall notify the Entity of any such inspections.

(b) Recordkeeping

(i) The Contractor shall prepare and maintain proper, accurate and complete books and records and account for all its transactions related to the City, Entity, and Contractor's rights and obligations hereunder (but not confidential business information) in accordance with industry standards. All inbound and outbound load weights shall be recorded. Records shall be maintained for all market sales weights, pricing, Marketable Recovered Material, Recoverable Material, Residue, Rejected Material, and Waste, payments, invoices, bills of lading, accounts receivable, shipping costs, pricing of materials and other records associated with implementing and operating the Joint MRF business operations.

(ii) All Joint MRF Building, Entity Equipment, and City Equipment maintenance, including all preventative maintenance, shall be recorded, reported monthly and organized in an electronic maintenance data tracking system available anytime at the Entity's or City's request, as applicable.

(iii) The Contractor shall establish and maintain an automated computerized information system to provide storage and ready retrieval of all information it is required to prepare and maintain pursuant to this Contract. The Contractor shall make reasonable efforts to provide real time electronic data and reports required in this Section through a secure Internet connection.

(iv) The City and Entity shall have access to all Contractor records involving the Joint MRF operation, including the transfer and processing of material from all

sources.

(v) The Contractor shall maintain electronic records of all information required to be tracked and reported under this Contract for seven (7) years after the Contract expires or is terminated.

(vi) The Contractor shall, upon the request of the City or Entity, provide all marketing arrangements and contracts, whether informal or formal, to which it is a party and under which Recyclables from the Joint MRF are marketed, and shall provide copies of all written contracts within two weeks of a written request to do so by the City. If the Entity determines that a marketing arrangement violates the Contractor's obligations hereunder, then the Contractor shall cease marketing materials under the arrangement or provide written explanation to the Entity why the Contractor believes it has not violated such obligation.

(c) Internal Controls. The Contractor shall implement internal controls to prevent waste, fraud, and abuse, and to accurately account for the processing, sale, or disposal of all material delivered to the Joint MRF. Internal controls may include, but are not limited to staff training; security systems and cameras; multiple employees being assigned record keeping duties and tracking incoming and outgoing tonnage; scale calibration; regular bale inventories; cross-compliance monitoring; and mass balance analysis of material. The Contractor shall propose the internal controls it will use, which controls shall become part of the O&M Plan that shall be approved by the Entity and updated from time to time.

(d) Reporting. Contractor shall provide the Entity (as to the Joint MRF) all reports of the operation of the Joint MRF as required by **Schedule 5**, and as briefly summarized below:

(i) Daily Reports. The Contractor shall, by the close of each Business Day, provide the daily reports contained in **Schedule 5** of this Contract.

(ii) Monthly Reports. The Contractor shall, on or before the twentieth (20^{th}) Day of each Operating Month, provide the operating data and monthly reports contained in **Schedule 5**.

(iii) Quarterly Report. The Contractor shall, on or before each April 20, July 20 and October 20 during the Term, provide a Quarterly Report providing the information required in **Schedule 5** for the three-month period ending the immediately preceding March 31, June 30 and September 30, respectively.

(iv) Annual Operating Report. The Contractor shall, on or before February 15 of each year with respect to the previous calendar year, provide an Annual Operating Report providing the information required in **Schedule 5**.

(v) SEC Reports. The Contractor shall provide the Entity during the Term with copies of any annual financial filing(s), if any, required by the Securities and Exchange Commission, filed by the Contractor's parent corporation or entity.

Section 6.12 Marketing Plan. The Contractor shall prepare a Marketing Plan in accordance with the requirements of **Schedule 9** to carry out its responsibilities in this Contract. This plan shall be provided to the Entity no later than the Operations Commencement Date. Any substantial revision to the Marketing Plan must be delivered to the City within 10 days of revision and is subject to approval by the Entity. The Marketing Plan shall, at a minimum, include the information required in **Schedule 9**, and shall include: investigation of long term market arrangements, invoicing and payment of processed materials, transport of materials to markets, and market reports. The Contractor is encouraged to secure local markets for processed materials. The Contractor shall cooperate with Entity-initiated and Entity-managed efforts to develop materials markets.

Section 6.13 Third Party Tonnage.

(a) Acceptance Encouraged. The Contractor is encouraged to accept and Process Third Party Recyclables at the Joint MRF in accordance with this Section.

(b) Written Contracts Required. Other than one-time or similarly infrequent delivery of Recyclable Material to the Joint MRF by a Third Party (allowable with the approval of the CCR, so long as the terms for such Third Party delivery of materials are commercially reasonable given this **Section 6.13**), written contracts between the Contractor and a Third Party shall be required for Third Party Processing, unless otherwise agreed to by the CCR. All Third Party contracts shall be approved by the CCR, subject to sub (e) below, and shall contain terms substantially similar to that shown in **Schedule 10**.

(c) Third Party Fees, Costs, and Shared Revenues. Subject to sub (e) below and as specified in **Schedule 4**, Third Parties shall pay: the then-applicable Equipment Repair & Replacement Fee and Processing Fee, that shall be at least equal to the Fees paid by the City, unless such fees are otherwise negotiated and expressly approved by the CCR, and all Waste Disposal Costs and other Direct Costs (under (f) below) attributable to the Third Party Tonnage. Subject to sub (e) below, Third Parties shall receive a Shared Revenue payment as specified herein, or as otherwise specified in the applicable Third Party contract and expressly approved by the CCR. These Third Party Fees, Costs, and Shared Revenues shall recorded and reported to the City per **Section 6.11**.

(d) Composition Analysis. A Composition Analysis, as specified under **Section 9.07**, shall be conducted on all Third Party Recyclable Material Tonnage, which shall be transmitted by the Contractor to the CCR. In accordance with **Schedule 4**, and based upon the results of the most recent Third Party Composition Analysis, all Third Party Shared Revenue payments shall be adjusted based on the Third Party Composition Analysis and the ACR.

(e) Contract Approvals. So long as any proposed Third Party contract (i) is substantially similar to the contract(s) in **Schedule 10**; (ii) complies with subs (c)-(d) above; (iii) does not provide terms more favorable to the Third Party than to the Entity unless expressly approved by the CCR; and (iv) does not cause the daily capacity of the Joint MRF to be exceeded, the Entity agrees that:

(I) until total Recyclable Material (over a calendar year) reaches sixty-thousand (60,000) tons, the Entity shall be deemed to have approved a proposed Third Party contract; and

(II) after total Recyclable Material (over a calendar year) reaches sixty-thousand (60,000) tons, (A) the Entity will not unreasonably condition, delay, or withhold approval of any proposed Third Party Processing contract; and (B) if the Entity does not respond to a request for approval of the Third Party Processing contract within ten (10) business days, the Entity shall be deemed to have approved such request.

(f) Contractor Costs Related to Third Parties. Any increased operational costs incurred as a result of a Third Party Processing contract, such as staffing, overtime pay, and utilities, shall be borne entirely by the Contractor or Third Party. The Entity shall not be responsible for any increased costs from Third Party contracts, and no such costs shall be passed along to the Entity in any form.

Section 6.14 Joint MRF Educational Programs. Since public education on residential recycling is critical to a successful recycling program, the Contractor will be an active participant in the recycling education programs for the Entity. At a minimum, the Contractor shall:

(a) Pay to the County and the City the per ton Education Fee specified in **Article XI** for the purpose of funding recycling education programs at the sole discretion of the County and the City; and

(b) Provide the opportunity for safe on-site tours through the Joint MRF for students and adults to learn about the recycling process and the various technologies involved in

each step in the processing of recyclables.

(c) The Contractor shall reasonably assist the County, City, and/or Entity, at no cost, in development of a public relations campaign for the transition to the ability to receive Single Stream Recyclables and agrees to assist in seeking and securing favorable press in the County and/or City about recycling.

(d) Provide an educational specialist and professional design team, at no cost, to work with the City to invest in and design the ideal education center and program. The education center and program design will include:

Phase 1: Discovery Phase. Contractor specialists will conduct a 1-2 day discovery session with City team to review initial plan, ideas, content, goals, budget, and timeline.

Phase 2: Design Phase. Contractor will provide a professional design team to create an overall education center proposal including education designs and ideas.

Phase 3: Implementation Phase. Upon agreed education strategy and design, the Contractor will invest in education center collateral, technology, and kiosks that may include, but is not limited to, touch-screen kiosks, live-feed video systems to City facility, Bin-it-to-Win-it, community activities, games, competitions, events, customized virtual MRF tour video, flyers, website, and facility signage, with the aggregate cost thereof to Contractor not to exceed $20,000. These sums shall be expended on items other than those listed in **Schedule 11, Table 11-1**.

(e) The Entity reserves the right to negotiate with the Contractor on educational program efforts as described above to improve recycling educational opportunities.

(f) The Contractor shall, in accordance with **Schedule 11**, be responsible for upgrading the technology of the existing education room at the Joint MRF and of the learning center to allow visitors a virtual tour of the Joint MRF.

Section 6.15 Visiting Rights and Tours.

(a) The County, City, and/or and their representatives and invitees (except for competitors of the Contractor), and representatives of regulatory agencies shall have the right to visit the Joint MRF. The Contractor understands that periodic educational tours are conducted by City staff or their representatives as an important part of the education program. For these tours, the City will provide the Contractor with reasonable notice (at least 36 hours) and advanced schedules if available, and agrees to conduct such tours in a

manner so as to minimize interference with Contractor's performance of its obligations.

(b) In connection with visits and tours, the City shall comply, and shall cause its agents, representatives, employees or invitees to comply, with all rules and regulations adopted by the Contractor, including receiving instructions as to safety procedures.

(c) The Contractor shall provide, at no cost, a plant manager or comparably trained staff to guide group tours of the Joint MRF and also assist in the development of brochures and take-home material for visitors.

(d) Nothing herein shall in any way limit the Entity's absolute right to enter, visit or inspect the Joint MRF at any time, provided that the Entity complies with all reasonable established safety procedures.

Section 6.16 Access to Information.

(a) If requested, the Contractor shall provide the City and its financial professionals and/or the Entity and its financial professionals access to and furnish them with information, records and reports regarding powers, duties, activities, organization, property, financial transactions, utility bills, repair costs, and repair history for Entity Equipment, City Equipment, and methods of operation, or any other information, records and reports that relate directly or indirectly to the services being rendered pursuant to this Contract. The Contractor shall also allow the City and its financial professionals and/or the Entity and its financial professionals to inspect all Entity Equipment, City Equipment, and Joint MRF/TS facilities that are used or made use of by the Contractor in rendering its services pursuant to this Contract. All financial records of Contractor described in this Section shall be maintained for a period of seven years following termination of this Contract.

(b) Any information, records and reports provided to or obtained by the Entity or City or their financial professionals pursuant to the preceding paragraph, or which the Entity or City or their financial professionals otherwise come into possession of pursuant to this Contract, shall be subject to the provisions of Wisconsin's Public Records Law, including provisions regarding limitations upon access based upon trade secret information and State or Federal restrictions.

Section 6.17 Audit.

(a) The Contractor shall provide to the Entity pertinent financial data relative to performance under this Contract. All inbound and outbound load weights shall be recorded using certified scales. All market sales weights, pricing, rejects and payments

shall be recorded. All Residue shall be weighed and recorded. All Entity Equipment and City Equipment repairs and related costs shall be recorded and supported by invoices where applicable. Entity Equipment and City Equipment maintenance including all preventative maintenance shall be recorded and organized in a maintenance data tracking system. Said records, accounts and expenses shall be kept in accordance with generally accepted accounting principles and conform as far as possible to the requirements of the Entity and shall at all reasonable times be open to inspection by the Entity or its designee.

(b) Annual Operational Audit. A certified audit shall be made annually of the books and accounts of Contractor related to the operation of the Joint MRF/TS by an independent firm of certified public accountants acceptable to the Entity, unless waived by the Entity. Not later than four months after the close of each calendar year, a report of such audit shall be furnished to the Entity. Such audit shall be prepared in accordance with generally accepted auditing standards and the report shall contain:

(i) Complete financial statements presenting fairly the financial position and the results of operations under this Contract including balance sheets, income statements, and statements of cash flows.
(ii) The auditor's opinions on such financial statements.
(iii) Complete footnote disclosure as required by the American Institute of Certified Public Accounts.
(iv) The auditor's comments regarding the manner in which the Contractor has carried out the requirements of the Contract, effectiveness of internal controls, and the auditor's recommendation for any changes or improvements.
(v) A list of the insurance policies in force at the end of the calendar year setting out as to each policy the amount of the policy, the risks covered, the name of the insurer, and the expiration date of the policy.

(c) Audited Financial Statement of Parent. The Contractor shall also provide to the Entity each year during the Term and when issued by its auditor a copy of the auditor's report of Contractor's parent's audited financial statements. Such audited financial statements shall be prepared in accordance with generally accepted auditing standards, and the report shall, at a minimum contain:

(i) Complete financial statements presenting fairly the financial position and the results of operations of the parent, including balance sheets, income statements, and statement of cash flows.
(ii) The auditor's unqualified opinions on such financial statements.
(iii) Complete footnote disclosure as required by the American Institute of Certified Public Accounts.

(d) All expenses incurred in the making of the audits required in this Section shall be paid by the Contractor. The Contractor further agrees to furnish a copy of each such audit report to the City. City officers shall have the right to discuss with said auditors the contents of the audit and to obtain such additional information as it or they may reasonably require.

ARTICLE VII
CONTRACTOR'S INSURANCE, SAFETY, AND LOSS CONTROL

Section 7.01 Insurance. The Contractor agrees that it will, at all times during the Term, keep in force and effect insurance policies, at its own cost and expense, as set forth in **Schedule 3**, issued by a company or companies authorized to do business in the State of Wisconsin and satisfactory to the City. Such insurance shall be primary, and all insurers must be rated A-VIII or better by A.M. Best. The insurer must be satisfactory to the Entity.

Section 7.02 Certificates of Insurance. Upon issuance of the insurance policies required under **Section 7.01** and upon each insurance policy renewal thereafter during the Term, the Contractor shall furnish the City with a certificate of insurance and upon request, certified copies of the required insurance policies. The certificate shall reference this Contract, the City and its agencies, officers, employees and representatives as additional insured and the worker's compensation waiver of subrogation. The Contractor shall provide the City with thirty (30) days advance notice of cancellation, non-renewal, or material reduction of coverages, scope or limits during the Term. The Contractor shall not commence any work under this Contract, nor shall the Contractor allow any Sub-contractors to commence any such work, until the aforementioned documents, have been obtained and approved by the City. No payments or disbursements under this Contract shall be made if such proof has not been furnished. Failure to submit an insurance certificate, as required, can make the Contract void at the City's discretion.

Section 7.03 Insurance Proceeds. The proceeds of any insurance recoveries from the policies required to be maintained pursuant to this **Article VII** shall be paid to the Contractor and applied for the purpose and benefit of this Contract with the consent of the Entity or County as appropriate, unless proceeds are payable to the City or County as additional insured, in which case the proceeds shall be paid to City or County Treasurers, who shall apply the proceeds as directed by the County or City.

Section 7.04 No Limitation. Nothing contained in this **Article VII** shall be construed or deemed as limiting the Contractor's obligations under this Contract to pay damages or other costs and expenses as may be specifically provided for in other Articles of this Contract, or as required at law or in equity.

Section 7.05 Safety of Persons and Property. The Contractor shall institute measures necessary

to ensure that a safe working environment is provided for all employees working at the Joint MRF and comply with all environmental, OSHA and other regulatory requirements including those for hand sorting of recyclables. All employees involved in Joint MRF operations shall be sufficiently trained in the facility's safety procedures, which should include but are not limited to hazard recognition, lock-out/tag-out, safe vehicle operation, and duties and procedures to follow in the event of a fire, natural disaster, or other contingency. Said procedures shall be included in the O&M Plan. All workers shall be issued adequate personal protective equipment to perform their daily assignments safely. This may include, but is not limited to, work gloves of appropriate material and construction, safety glasses, safety shoes or protective eye goggles, and earplugs or other approved hearing protection. Contractor shall establish and maintain safety procedures, signage, and alarms for the Joint MRF for the protection of employees of the Contractor and visitors, at a level consistent with applicable law and with good industry standards and practices for materials recovery facilities.

The Entity will have the right to inspect the Joint MRF at any time during Operating Hours to verify compliance with the provisions of this **Section 7.05**.

Section 7.06 Notice of Incident. The Contractor shall promptly report and give full details in writing to the City any incidents arising out of its performance of this Contract or that otherwise occur at the Joint MRF which cause an OSHA recordable injury to Persons, personal injury to any Person or any property damage.

Section 7.07 Loss Control Inspections. The City shall have the right, but not the duty, to have its own representative visit the Joint MRF Site at any time without prior notice to the Contractor for the purpose of conducting safety inspections. The Contractor shall cooperate with the City's representative during such inspections, provide access to the Joint MRF, provide access to and furnish requested information related to Contractor's safety program, and promptly correct any safety hazards that may be identified during such inspections.

The Contractor shall promptly furnish the City with copies of any memorandums, notes, letters, or reports documenting loss control or safety inspections the Contractor performs at the Joint MRF or has had performed on its behalf.

Section 7.08 Joint MRF Site Security and Shared Use. The Contactor is responsible for the security of the Joint MRF Building, Joint MRF Site, and scale house (see **Attachment C** to the IGA and **Schedule 14** hereto). Doors and gates will remain locked during non-working hours, and the Contractor will take all necessary steps to maintain Joint MRF Site security (see **Attachment C** to the IGA and **Schedule 14** hereto). The west end of the existing Joint MRF grounds will continue to be used by the City for parking and fueling of its vehicles. The City will be responsible for site security for that portion of the Joint MRF Site (see **Schedule 14**) and those grounds and Buildings not used for the Joint MRF (see **Attachment A** to the IGA).

Contractor shall maintain security cameras at key locations such as the tip floor and loading docks and shall maintain digital recordings of all videos at least sixty (60) days.

ARTICLE VIII
INDEMNIFICATION AND WAIVER

Section 8.01 Indemnification. The Contractor shall protect, indemnify, and hold harmless the City and its officers, officials, employees, agents and consultants (the "City Indemnified Parties"), from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions and reasonable attorneys' fees, and shall defend the City Indemnified Parties in any proceeding or suit, including appeals, for personal injury to, or death of, any person or persons, or for loss or damage to property, arising out of the acts or omissions of the Contractor in the performance (or breach or nonperformance) of the Contractor's obligations under this Contract. This includes any injury, death, damage or loss arising from or connected to the operation of and activities at the Joint MRF/TS, and specifically includes claims or causes of action based upon Wisconsin's safe place law. The Contractor is not, however, required to protect, indemnify or hold harmless any City Indemnified Party for loss or claim resulting from performance (or nonperformance) of the City's obligations under this Contract or the negligence or willful misconduct of any City Indemnified Party. The Contractor's indemnity obligation is for the exclusive benefit of the City Indemnified Parties and in no event shall such indemnity inure to the benefit of any third Person. The protection afforded to the City by the Contractor by this paragraph shall not be limited by any limitation elsewhere in this Contract of the City's remedies for breach or default by the Contractor.

Section 8.02 Waiver. The City shall not be liable to the Contractor or its employees for any injuries to Contractor's employees arising out of the performance of the Contract. The Contractor agrees to waive any and all rights of recovery from the City for worker's compensation claims made by its employees and shall ensure that its worker's compensation insurance policy is endorsed with such a waiver whereby the insurer gives up its right to subrogate claims against the City. Furthermore, the Contractor agrees that the indemnification and hold harmless provisions within this Contract extend to any claims brought by or on behalf of any employee of the Contractor.

Section 8.03 Payment and Defense. Any obligation of the Contractor to act under this **Article VIII** shall commence upon notice of any claim, charge or demand of potential liability, loss, fine, penalty or charge against any City Indemnified Party. The Contractor may elect to defend any liability, loss, fine, penalty or charge with its counsel and may settle any matter by applying the settlement; provided however, no payment, confession of judgment, or acknowledgment of liability, loss, fine, penalty or charge shall be made against the City or any other City Indemnified Party, and no settlement finalized without the City's express written consent, and the City further reserves the right to select its own counsel in defense of the matter. Any

obligation of the Contractor to make payment under this **Article VIII** shall become due and payable when and as any liability, loss, fine, penalty or charge incurred by the City Indemnified Party becomes due and payable. Time is of the essence in the performance of the obligations under this **Article VIII**.

Section 8.04 Survival. This **Article VIII** shall survive termination of this Contract.

ARTICLE IX
DELIVERY, PROCESSING, AND ANALYSIS OF RECYCLABLE MATERIAL

Section 9.01 Receipt of Recyclable Material; Rejection Rights.

(a) Recyclable Material Delivery. The City shall, for the Term, cause to be delivered to the Joint MRF all Recyclable Material that is within its control.

(b) Priority. The Contractor shall give priority to Recyclable Material delivered by or on behalf of the Entity. The Contractor must provide a backup Processing plan to assure that materials will be received, processed or suitably stored during times of Joint MRF Equipment failure or other Joint MRF downtime. Said plan shall be included in the O&M Plan prepared in accordance with **Section 6.04** and **Schedule 6**.

(c) Rejection of Deliveries. The Contractor may reject deliveries of: (i) Recyclable Material delivered at hours other than the Receiving Time; (ii) any Non-Conforming Load pursuant to **Section 9.02**; (iii) Recyclable Material which the Joint MRF is unable to accept or Process as a result of a Force Majeure Event; and (iv) Hazardous Waste or Infectious Waste pursuant to **Section 9.06**. Unless otherwise required by applicable laws, the Contractor shall only exercise its right of rejection of an entire load in a reasonable and equitable manner, under the terms and procedures set forth in the Operation and Maintenance Plan and/or **Section 9.02**, which shall include appropriate prior warnings and which shall not be capricious or arbitrary. Warnings are to be provided directly to the person responsible for delivering materials, with a copy to the City. Contractor shall notify the City within two (2) hours of any such rejection, stating the date and the time of rejection, the hauler's name, the source of the material (if known), and reason for rejection.

(d) The Contractor shall not permit separate sorting or scavenging of Recyclable Material or Contaminated Recyclable Material at the Joint MRF by any other Person.

Section 9.02 Inadvertent Deliveries of Non-Conforming Loads. The City and Entity shall use reasonable efforts to cause only Recyclable Material to be delivered to the Joint MRF and to minimize the quantities of Non-Conforming Loads. However, inadvertent deliveries of Non-

Conforming Loads shall not constitute a breach of the City's obligations.

(a) The Contractor shall provide for the removal of rejected Non-Conforming Loads from the tip floor at its expense as a Waste Disposal Cost to the City if attributable to City Tons and shall track, report, and provide notice to the City as to the identity of the party who delivered any load requiring removal and disposal. The Contractor is authorized to recover removal and disposal expenses from any Third Party responsible for delivery of Non-Conforming Loads to the Joint MRF/TS pursuant to **Section 11.09(a)(iii)** and **Schedule 4**.

(b) Nothing in this Contract by itself shall be construed to mean that the inadvertent receipt of Non-Conforming Loads at the Joint MRF/TS Sites creates on the part of the City or the Contractor, any ownership interest in, or confers on the City or the Contractor any title to those materials.

Section 9.03 Weighing Material; Computer System; Records; Testing of Scales.

(a) Weighing Material. The Contractor shall be responsible for operating and maintaining in good condition the truck scales and associated computer equipment at the Joint MRF during Receiving Time. All inbound and outbound loads are to be weighed, tracked by vehicle in accordance with the protocol in the approved O&M Plan required by **Schedule 6**, and relayed to the City and County offices on a daily basis according to the reporting standards in **Schedule 5**. The Contractor shall be responsible for annual state licensing and inspections for the scale systems.

(b) Computer System. Contractor shall use its scale software. All other computer equipment (hardware, software, and peripherals), along with Internet access and associated equipment for the operation of the Joint MRF shall be provided and maintained by the Contractor. The Contractor shall provide the Entity secure Internet access to real time scale ticket and reporting data, as further specified as necessary, in the O&M Plan.

(c) Records. The Contractor shall maintain accurate weigh scales records for the purposes of determining the total weight of Recyclable Material delivered to the Joint MRF, and the weight of Residue, Rejected Material, and Marketable Recovered Materials, which leave the Joint MRF. Since these records form the basis of all required reports, invoices and payments under this Contract, it is understood that accuracy of these records and associated record retention and backup procedures are of utmost importance. The City shall have the right to station an employee at the scales at any time and request data from the system in an agreed to electronic format for all scale records throughout the Term.

In the event that actual data for the preceding Operating Month is not available to the Contractor, then any such data shall be estimated by the Contractor and shall be the basis for the Contractor's invoice for the Operating Month. Any estimate of such data shall be adjusted in any succeeding Operating Month when such information becomes available to the Contractor.

(d) Testing. The Contractor, at its sole expense, shall test and recalibrate the Joint MRF weigh scales as often as may be required by State law. Either Party may request more frequent testing of the weigh scales at the requesting Party's cost and expense. If any test of the weigh scales indicates that the scales do not meet the accuracy requirements of applicable State law, Contractor shall cease use of the scale, notify the Entity, and provide a plan for temporary weighing of materials. The Parties shall discuss the propriety of any need for reconciliation or adjustments of payments made hereunder.

Section 9.04 Removal and Disposal of Waste Material. In accordance with all applicable laws, the Contractor shall, at its cost and expense, promptly remove and transport all Waste Materials from the Joint MRF Site for disposal or storage, except that the City shall be responsible for all Waste Disposal Costs attributable to City Tons. The Entity reserves the right to designate the Landfill that will receive these materials. The Contractor may recover the full cost related to the disposal of Waste Material from a Third Party that is attributable specifically to that Third Party's Tons.

Section 9.05 Storage. Recyclable Material, Residue, Non-Conforming Load, Hazardous Waste, Infectious Waste, Marketable Recovered Materials, or Rejected Material shall be stored separately in areas at the Joint MRF designated for that purpose in accordance with all applicable permits and laws. There shall be no outside storage of processed or unprocessed materials, unless authorized by the Entity.

Section 9.06 Hazardous and Infectious Waste.

(a) Prevention of Delivery. The City shall use public education programs to educate its constituencies to prevent and avoid the delivery to the Joint MRF of Hazardous Waste or Infectious Waste.

(b) Prevention of Acceptance. The Contractor shall use reasonable efforts, such as load inspections, to avoid the deposit or acceptance of Hazardous Waste or Infectious Waste at the Joint MRF.

(c) Removal, Transport and Disposal. If Hazardous Waste or Infectious Waste is delivered to the Joint MRF, such Hazardous Waste or Infectious Waste shall be

contained, set aside, isolated and maintained separately by the Contractor from all other materials in the Joint MRF, and the City shall be immediately notified of the location, general character and amount of such material. The Contractor shall promptly remove or cause to be removed, such Hazardous Waste or Infectious Waste from the Joint MRF and shall transport and dispose of, or shall provide for the transport and disposal of, such material in accordance with applicable local, State and Federal law, at a duly licensed and permitted Hazardous Waste or Infectious Waste disposal facility.

(d) Expenses. All costs incurred by the Contractor for Hazardous Waste or Infectious Waste containment, removal, clean up and disposal attributable to City Tons shall be reimbursed by the City as a Waste Disposal Cost. The Contractor shall use reasonable efforts to identify the source of the Hazardous Waste or Infectious Waste by noting the load on which the subject wastes were delivered. The Contractor will cooperate with the City in any attempts for cost recovery from the party(ies) responsible for delivering the Hazardous or Infectious Wastes.

(e) Nothing in this Contract by itself shall be construed to mean that the inadvertent receipt of Hazardous or Infectious Materials at the Joint MRF Site creates on the part of the City or the Contractor, any ownership interest in, or confers on the City or the Contractor any title to those materials.

Section 9.07 Composition Analyses of Incoming Loads.

(a) A minimum of once per year, at the Contractor's expense and as designated by the Entity, the Contractor shall perform a Composition Analysis of incoming loads from each source of Recyclables to establish average percent by weight of each Marketable Recovered Material shown in **Schedule 2, Table 2-2** and Non-Recoverables. The Contractor shall provide the City with a written proposed protocol for this analysis within three months after the Contract Date. The Entity will approve or amend the proposed protocol within thirty (30) days after receipt. After approval, the protocol shall be incorporated into the O&M Plan. Such initial approval does not negate the Entity's right to amend the protocol with Contractor's consent, nor does it prohibit the Contractor from proposing an amended protocol, prior to successive Composition Analyses. An acceptable reference for this protocol is the following standard: ASTM D5231-92(2008) Standard Test Method for Determination of the Composition of Unprocessed Municipal Solid Waste. The City may observe the Composition Analysis process.

(b) The Composition Analysis will be used to: (i) prorate Waste Disposal Costs between the County, City and Third Party sources; (ii) prorate Shared Revenue payments to the County, City and Third Party sources based on average percentage by weight of each type of Marketable Recovered Material; (iii) prorate overall Shared Revenue payments to the County, City and Third Party sources based on average percentage by

weight of Non-Recoverable; and (iv) analyze the effectiveness of public recycling education programs. If the Composition Analysis is conducted by Processing material through the Joint MRF, the results will also be used to measure Contractor compliance with the performance standards under **Article X**. At a minimum, the protocol for a Composition Analysis shall provide for the following to be described in detail:

(i) Number of loads, Tons and streams sampled;

(ii) Methods of keeping analysis samples separate from other, regular incoming materials and outbound commodities.

(iii) Specific sorting guidelines as to how each Marketable Recovered Material commodity and Non-Recoverable shall be defined for purposes of the sorting and analyses;

(iv) Methods of separating each Marketable Recovered Material into their respective outbound commodity product categories such that the sampled material is as representative as possible of regular, full operations and product quality.

(v) Methods of weighing each Marketable Recovered Material commodity, Recoverable Materials, and Non-Recoverable;

(vi) Methods of recording raw data of weights;

(vii) Methods of analysis of raw data, including statistical significance of averages based on number of samples proposed;

(viii) Minimum advanced notice to the City of date and time for each Composition Analysis.

(ix) Guaranteed turn-around time on the report back to the City of findings, results and analysis of each Composition Analysis.

(c) The Contractor shall use the results of the most recently completed Composition Analysis to adjust Shared Revenue payments and Waste Disposal Costs prospectively. Prior to the completion of a Composition Analysis at the Joint MRF, Shared Revenue payments to the County, City and Third Party sources shall be adjusted for Residue and material composition based on the most recent data for their respective Recyclable Material.

Section 9.08 Residue Analysis.

(a) Residue shall be sampled (minimum 500 lb. sample) and sorted at least once per month, or as otherwise agreed between the CCR and Contractor, at the Contractor's expense unless otherwise directed by the Entity to ascertain the percentage by weight of each Recoverable Material within the Residue. Each sort shall be documented and results reported to the City within one week of completion. At least one week in advance of the sort, the City shall be invited to send a representative to observe sampling and sorting.

(b) If the Residue Analysis results show non-compliance with the maximum rate of Recoverable Materials in Residue specified in **Section 10.03** below, the Contractor shall be responsible for Bypass Charges under **Section 11.03** and shall make modifications to Processing as needed to ensure future compliance with the acceptable standard. The Entity may order additional on-demand testing at Contractor's sole cost until the minimum Recoverable Material rate in **Section 10.03** is met.

Section 9.09 Marketable Recovered Material Analysis.

(a) A Marketable Recovered Material Analysis collects data on the composition of processed, ready to be baled or sold, or baled (if bunkers cannot be accessed) Marketable Recovered Material. The purposes of the Marketable Recovered Material Analysis are to evaluate the effectiveness of the processing equipment and determine compliance with market specifications for each type of Marketable Recovered Material, as noted in Section 10.02. Unless waived by the Entity based on ACR data, a Marketable Recovered Material Analysis shall be conducted at the Joint MRF at least once per year, at the Contractor's expense, and at a time of mutual convenience. Marketable Recovered Material Analysis protocol and procedures shall be prepared by the Contractor, approved by the Entity, and documented in the O&M Plan. If the results of a Marketable Recovered Material Analysis lead to an action plan under **Section 10.02**, the City may require additional Marketable Recovered Material Analyses at the expense of the Contractor until compliance with **Section 10.02** is demonstrated. The protocol for conducting the Marketable Recovered Material Analysis shall be stated in the approved O&M Plan.

(c) A Marketable Recovered Material Analysis shall be completed by September 30th of each year and the data submitted to the Entity within three Business Days thereafter, unless Contractor proposes and the Entity approves an alternate schedule.

(d) Product Sampling Considerations. Samples will be taken from Marketable Recovered Materials that are baled, ready to be baled or ready to be shipped loose. Analysis results will be compared to commodity specifications for the Marketable Recovered Materials, such as those listed in **Schedule 2**, **Table 2-2**.

Section 9.10 Mass Balance Analysis. A mass balance analysis requires the Contractor to account for all tonnage entering and leaving the Joint MRF during a specified calendar year. The Contractor shall prepare a mass balance analysis for the first calendar year of operations of the Joint MRF and include the results in its annual report. The Entity reserves the right to request a mass balance analysis for subsequent calendar years as part of the required annual reporting.

The mass balance analysis shall include, but is not limited to the following:

a. Beginning of year inventory:
    i. Previous year Processed materials not yet shipped (bunkers, bales, etc.)
    ii. Previous year unprocessed materials (on tip floor/equipment)
b. Statement of all incoming loads for the specified year
c. Statement of all outbound materials for the specified year
d. Composition of incoming loads, prorated by source
e. Composition of outbound materials (including Waste)
f. End of year inventory:
    i. Processed materials not yet shipped (bunkers, bales, etc.)
    ii. Unprocessed materials (on tip floor/equipment)
g. Final report, including all supporting data, summarizing the incoming and outbound material weights by commodity with a detailed explanation regarding any significant differences.

ARTICLE X
CONTRACTOR PERFORMANCE STANDARDS AND GUARANTEES

Section 10.01 Guaranteed Joint MRF Processing Capacity. The Contractor hereby guarantees, subject to modifications due to a Force Majeure Event, that the Joint MRF shall be operated and maintained in such a manner that (i) it is capable of Processing a minimum of thirty-five (35) tons of Recyclable Material per hour of equipment operation and (ii) the system shall be able to process no less than sixty-thousand (60,000) tons per year with typical utilization of one eight-hour shift per day. Adequate tip floor space and bale storage area must be maintained such that no materials are stored outside, either Processed or unprocessed, and that additional Recyclable Materials may be accepted from the Entity and Processed throughout the Receiving Time. Contractor must keep up with processing such that no material is stored in an unprocessed form more than five (5) days. Compliance with this guarantee is subject to performance testing consistent with the protocol prepared by the Contractor, approved by the Entity, and recorded in the O&M Plan within sixty (60) days of the Operations Commencement Date.

Section 10.02 Quality of Marketable Recovered Materials. The Contractor guarantees that the

Joint MRF shall be operated and maintained so that the Marketable Recovered Materials meet commodity market specifications, consistent with the Contractor's Proposal and **Schedule 2**. The results from any Marketable Recovered Material Analysis completed pursuant to **Section 9.09** will be compared to commodity specifications for the Marketable Recovered Materials listed in **Schedule 2**. If any variances from commodity specifications are shown to be affecting marketability of the material, the Contractor shall prepare and implement an action plan to address the issue, unless otherwise waived by the Entity.

Section 10.03 Recoverable Material in Residue. The Contractor shall achieve a high level of recovery from the stream of Recyclable Materials delivered to the Joint MRF. Residue shall not contain more than one and one-half percent (1.5%) of Recoverable Materials by weight, as listed in **Schedule 2 (Table 2-1)** (i.e., Contractor shall recover ninety-eight and one-half percent (98.5%) by weight of all Recoverable Material contained in the incoming stream of Recyclables). Compliance shall be measured by conducting a monthly Residue Analysis under **Section 9.08**, following standards and protocol approved by the Entity and documented in the O&M Plan.

Section 10.04 Air Quality. The Contractor shall minimize dust and exhaust fumes in the Joint MRF Building to the maximum extent commercially practicable.

Section 10.05 Performance Testing. The performance standards contained in this Article shall be subject to testing to verify compliance. All performance testing shall be conducted in accordance with the standards and protocols contained in the O&M Plan. The Contractor may, upon prior written notice to the City, and at the Contractor's cost and expense, conduct a performance test to demonstrate that any problems revealed by a prior test have been corrected. The testing standards and protocols in the O&M Plan may be updated from time to time by mutual consent of the Entity and the Contractor.

Section 10.06 Evaluation of Joint MRF Performance. At the beginning of each calendar year the Contractor shall provide to the Entity a performance report which shall include an evaluation of the Joint MRF operation relative to the performance goals contained in this Contract and the Operations and Maintenance Plan. The evaluation shall include appropriate recommendations for action or improvement, as applicable. Said evaluation shall be included in the Annual Operating Report described under **Section 6.11(d)**.

Section 10.07 Final Evaluation of Building and Entity Equipment. The Entity shall deliver a written "Joint MRF/TS Evaluation Report" to the Contractor, no less than one hundred and twenty (120) days prior to the end of the Term. Said report will evaluate the Joint MRF/TS Buildings, Entity Equipment and City Equipment in terms of overall condition, useful life remaining, and whether they have been maintained according to terms of this Contract. The report will also set forth any Contractor action, including maintenance and repairs, that may be

required to meet the obligations of this Contract. Any required Contractor actions shall be completed a minimum of fifteen (15) days prior to the end of the Term.

ARTICLE XI
PAYMENTS BASED UPON REVENUES, FEES, AND OPERATING COSTS

Section 11.01 Payments.

(a) Payment to the City by Contractor. Each Operating Month, the Contractor shall pay the City based on **Schedule 4**, under **Sections 11.02**, **11.03**, and **11.04**, and as otherwise specified herein. A sample City Payment calculation spreadsheet shall be approved by the Entity and included in the O&M Plan.

(b) Payment to the Contractor by the City. Each Operating Month, the City shall pay the Contractor based on **Schedule 4**, under **Sections 11.05**, **11.08**, and **11.09**, and as otherwise specified herein. A sample Contractor Payment calculation spreadsheet shall be approved by the Entity and included in the O&M Plan.

Section 11.02 Shared Revenue and Fees.

(a) Shared Revenue. Each Operating Month, the Contractor shall pay the City Shared Revenue based on **Schedule 4**, utilizing the ACR and the most recent Composition Analysis under **Section 9.07**. The Contractor shall pay the City a monthly percentage of Shared Revenue from Third Party Processing in accordance with **Schedule 4**. A sample Shared Revenue calculation spreadsheet shall be approved by the Entity and included in the O&M Plan.

(b) Fees. If a Third Party Processing contract approved under **Section 6.13** allocates a portion of the per ton Third Party Processing Fee to the City, the portion of the Third Party Processing Fee allocated to the City shall be included in the monthly City Payment under **Section 11.01**, as further specified in **Schedule 4**.

Section 11.03 Bypass Charge. The Contractor shall pay the Entity a Bypass Charge when a Residue Analysis determines that the Contractor did not comply with the performance standard under **Section 10.03** for Recoverable Material in Residue during the previous Operating Month. The amount of the Bypass Charge shall be calculated according to the below formula. A sample Bypass Charge calculation spreadsheet shall be approved by the Entity and included in the O&M Plan.

(a) Difference between the tons of permitted (according to **Section 10.03**) missed Recoverable Residue and the actual tons of missed Recoverable Residue (i.e., using the

latest Residue Analysis projected out to the total number of tons of Recoverable Materials, estimated based upon the total number of Recyclable Material tons adjusted by the latest Composition Analysis, delivered by the County, City, or Third Party, and Processed by Contractor during the previous Operating Month);

MULTIPLIED BY

(b) the ACR for the previous Operating Month;

MULTIPLIED BY

(c) eighty percent (80%)

Section 11.04 Education Fee. The Contractor shall pay the Education Fee monthly to the County per County Ton for the previous Operating Month, as shown in **Schedule 4**.

Section 11.05 Processing Fee. The City or a Third Party shall pay the Contractor the Processing Fee per their respective Tons Processed for the Previous Operating Month, subject to annual adjustment and reconciliation based on the number of total tons delivered to the Joint MRF during the previous year and projected tons for the coming year, as described in **Schedule 4**.

Section 11.06 *Intentionally Omitted*

Section 11.07 Equipment Repair & Replacement Fee (ERF). The Equipment Repair & Replacement Fee, as shown in **Schedule 4**, shall be a per ton fee as shown in **Table 4-3** that is initially paid equally by the Contractor and the City (50% each) based on the total City Tons for the previous Operating Month. All Equipment Repair & Replacement Fees shall be paid to the Entity and deposited into the Equipment Reserve Fund, which shall be managed by the Entity, as described further in the IGA. ERF payments shall be made independent of the City Payment, Contractor Payment, or any payment to a Third Party under **Section 11.01**. The Contractor shall pay to the Entity one hundred percent (100%) of the ERF for all Third Party Tons delivered to the Joint MRF, as described in **Section 6.13** and **Schedule 4,** unless otherwise negotiated and mutually agreed with respect to Third Party Tons of source separated or presorted Recyclable Material. In no event shall Contractor be required to contribute more to the Equipment Reserve Fund than as provided for in this Section and in **Schedule 4,** regardless of any shortfall in the Reserve Fund, including upon the termination of this Contract.

Section 11.08 Fee Adjustment. From the Contract Date to the next December 31, the monthly fees shall be as stated below, but thereafter shall be subject to adjustment as specified further in **Schedule 4**, based on the total Tons of Recyclable Materials delivered to the Joint MRF for the previous calendar year and the estimated anticipated Tons of Recyclable Materials for the

coming year, as well as other past and anticipated future performance, costs, prices, and other relevant factors.

(a) Processing Fee paid to the Contractor by the County or City under **Section 11.05** shall initially be $30.00 per their respective Tons of Recyclable Material as of the Contract Date**.** Processing Fee paid to the Contractor by a Third Party under **Section 11.05** shall be $41.00 per Third Party Ton or as otherwise specified in contract. Annual adjustments and/or year-end reconciliations regarding Processing Fees shall be according to **Table 4-2** of **Schedule 4**.

(b) Intentionally Omitted.

(c) Education Fee paid by the Contractor to the Entity under **Section 11.04**, shall initially be $2.00 per Ton of Recyclable Material as of the Contract Date. Adjustments shall be guided by **Table 4-4** of **Schedule 4**.

(d) Equipment Repair & Replacement Fee paid by the Contractor to the Entity under **Section 11.07**, shall initially be $8.00 per Ton of Recyclable Material as of the Contract Date. Adjustments shall be guided by **Table 4-4** of **Schedule 4**.

Section 11.09 Contractor Operating Costs and Expenses.

(a) Reimbursable Contractor Operating Costs and Expenses.

(i) Waste Disposal Costs. The City shall reimburse the Contractor for all actual Waste Disposal Costs for City Tons incurred under **Section 9.04** for the previous Operating Month, in accordance with the Waste Disposal Cost shown in **Schedule 4**, or as otherwise provided for herein. The Entity reserves the right to determine which Landfill the Contractor shall use for the disposal of Waste.

(ii) Expenses and Costs to Repair, Replace, or Purchase Equipment. Subject to **Article VI**, for Entity Equipment or ERP-scheduled property replacement, purchase, or repairs, the Contractor shall be reimbursed from the Equipment Reserve Fund unless the capital available in the ERF is insufficient to cover the CCR-approved replacement/repair, in which case the City and County shall in equal shares reimburse the Contractor, as further specified in **Sections 6.07(b), 6.08(a)-(b)**. For all other equipment replacement, purchase, or repairs, the Contractor shall be reimbursed by the party who owns the equipment, according to **Articles VI** and **XI** and the IGA (and its applicable **Attachments**).

(iii) Cost Increases Due to Third Party Tonnage. Any increase in Contractor's

Joint MRF operating expenses related exclusively to and directly attributable to Third Party tonnage may be passed through to the respective Third Party, but shall in no case be payable by the Entity or City, as specified in **Sections 6.13(c)** and **6.13(f)**.

(iv) Cost to Market Recovered Materials. Contractor shall reduce Marketable Recovered Material Revenue only by those Direct Costs related exclusively to and directly attributable to the transportation and marketing/sale (i.e., broker's fees and finder's fees) of Marketable Recovered Material.

(v) Costs Associated With Requested Extra Receiving Time. Any Direct Costs related to Entity-requested extended Receiving Time in accordance with **Section 6.10(c)**.

(b) Non-Reimbursable Contractor Operating Costs and Expenses. Other than expressly permitted above in **Section 11.09(a)**, Contractor shall not pass any other Operating Costs onto the Entity, County, City or any Third Party, unless otherwise mutually agreed to in writing by the Parties.

Section 11.10 Survival. Any obligation of payment to a Party that accrued under this **Article XI** prior to termination or expiration of this Contract shall survive termination or expiration of this Contract.

ARTICLE XII
FORCE MAJEURE EVENTS, CHANGE IN LAW, AND MATERIAL UNANTICIPATED CHANGE IN CIRCUMSTANCES

Section 12.01 Notice.

(a) If the performance of any part of this Contract by Contractor is delayed or rendered impossible by reason of a Force Majeure Event, Contractor shall immediately give notice to the Entity of the nature of such conditions and the extent of delay and shall do everything commercially reasonable to resume performance. If the period of nonperformance exceeds twenty-one (21) days from the receipt of notice of the Force Majeure Event, the Entity may, by giving written notice, terminate this Contract. If the period of nonperformance exceeds ninety days (90) from the receipt of notice of the Force Majeure Event and the Entity has not made a determination regarding whether to terminate the Operating Agreements, the Contractor and Entity shall negotiate in good faith the Contractor's ongoing Direct Costs, if any, resulting from such nonperformance.

(b) If the ability of the City to compensate the Contractor under this Contract is delayed by reason of a Force Majeure Event, the City shall immediately give notice to the Contractor of the nature of such conditions and the expected date that compensation will be made. Section 66.0135, Wisconsin Statutes, shall not apply to any late payment by City due to circumstances under this paragraph.

Section 12.02 Cooperation: Risk of Loss. The Parties shall use their best efforts, and shall cooperate, to overcome or remove any Force Majeure Event and to mitigate the effect such Force Majeure Event has on the Joint MRF operations. However, each Party assumes the risk of any loss, damage, cost or expense it incurs or suffers which results from a Force Majeure Event.

Section 12.03 Reduced Capacity. If a Force Majeure Event results in the Joint MRF being unable to receive or Process Recyclable Material to its full capacity, the Contractor shall continue to operate the Joint MRF, if feasible and commercially practicable, to the extent of its reduced capacity and find an alternative solution wherein the remaining Recyclable Material is responsibly processed under the guidelines of this Contract.

Section 12.04 Processing Priority. The Contractor must make the Entity's Recyclable Materials first priority for Processing. If a Force Majeure Event results in the Joint MRF suspending operations or operating at a reduced capacity, the Contractor shall find an alternative solution wherein the unprocessed Entity Recyclable Material is responsibly processed under the guidelines of this Contract to the extent possible, and the Contractor and Entity shall agree upon allocation of Direct Costs in excess of those typically payable under this Contract.

Section 12.05 Change in Law. If there is any Change in Law, and the Entity and the Contractor agree in good faith that the economic position of the County, City, and/or Contractor has been materially impacted by such Change in Law, then Contractor and the County, City or Entity, as appropriate, may renegotiate the economic terms of this Contract, the County's Construction and Operating Agreement, and/or the IGA to address such economic impact. If there has been a material adverse change in the economic position of the City and Contractor caused by a Change in Law, the Parties may negotiate a satisfactory agreement to amend the economic terms of this Contract. If the Parties cannot agree, then the adversely affected Party may terminate this Contract with six (6) months' notice to the City without further obligation, subject to **Section XIV**.

Section 12.06 Material and Unanticipated Change in Circumstances. If there is any material change in one of the circumstances listed below ("Listed Material Change"), and the Entity and the Contractor in good faith agree that (i) the economic position of the County, City, and/or Contractor has been significantly adversely impacted by Listed Material Change and (ii) the change was not reasonably foreseeable at the outset of this Contract, the County's Construction and Operating Agreement, and/or the IGA, then the Contractor and the Entity may renegotiate

the economic terms of this Contract, the County's Construction and Operating Agreement, and/or the IGA to address such economic impact. If there has been a material adverse change in the economic position of the County, City, and/or Contractor caused by a Listed Material Change, the parties may negotiate a satisfactory agreement to amend the economic terms of this Contract. If the parties cannot agree, then the adversely affected party may terminate this Contract with six (6) months' notice to the City without further obligation, subject to **Section XIV**. Such Listed Material Changes exclusively include:

(a) As demonstrated in an annual Composition Analysis, a material change in the percentage of any one commodity that substantially impacts the Contractor's costs and revenues or ability to Process the Recyclable Materials; and/or

(b) Material changes in fuel costs.

ARTICLE XIII
CASUALTY TO THE FACILITY

Section 13.01 Casualty to the Joint MRF. If all or substantially all of the Joint MRF is destroyed or damaged by tornado, fire or other casualty, the Entity shall have the right to declare this Contract terminated without any damages payable to Contractor if it shall have notified Contractor of such termination within ninety (90) days of such destruction or damage. If substantially less than all of the Joint MRF is destroyed or damaged by tornado, fire or other casualty, the Entity may, at its option, undertake to repair the damage or destruction at its own expense (shared equally between the City and County or by other mutual agreement) or may terminate this Contract with some measure of appropriate severance damages payable to Contractor.

ARTICLE XIV
TERMINATION

Section 14.01 Termination for Cause. As further specified in **Section V** of the IGA (to the extent applicable), the following circumstances shall constitute a breach and default of this Contract, unless such breach and default resulted from a Force Majeure Event.

(a) the failure of the City or the Contractor to perform any of its material obligations under this Contract;

(b) the failure of the Entity to perform extra-Contractual obligations herein and/or under the IGA; and/or

(c) the failure of the Contractor to meet any of the performance guarantees under this

Contract.

In the case of such breach and default, but subject to the defaulting Party's right in **Section 14.02** concerning notice of the circumstances of default and the right to correct or cure, a default that remains following such notice and cure period shall entitle the non-defaulting Party to declare this Contract terminated and/or to seek legal and/or equitable remedies, including damages, as permitted under Wisconsin law.

Section 14.02 Notice of Default. If the City, Entity, or Contractor believes a party is in default and has breached this Contract, it may not exercise any of its rights set forth in **Section 14.01** unless (a) it gives the other Party written notice of the facts which it believes constitute the default no less than 75 days prior to the effective date of termination, and (b) the breaching Party was given no less than 30 days to correct or cure the default.

Section 14.03 Termination Without Cause.

(a) Intentionally Omitted..

(b) Contractor reserves the right to terminate this Contract without cause if it has not received - the Retrofit Notice to Proceed by _____, 2014, unless such failure is caused by Contractor's failure to otherwise comply with this Contract

(c) The City shall have the rights to otherwise terminate this Contract without cause subject to the provisions outlined in **Section V(a)** of the IGA.

Section 14.04 Termination Upon An Event of Force Majeure. In addition to the above termination rights, City shall also be entitled to terminate this Contract if a Force Majeure Event prevents the City, Entity, or the Contractor from meeting any of their respective obligations as set forth in this Contract and/or the IGA.

Section 14.05 Cumulative Rights. All rights and remedies conferred on the Parties by this Article and applicable provisions in the IGA are cumulative and no one remedy is exclusive of any other remedy.

Section 14.06 Performance Guaranty Right. Nothing in this Article limits the right of the City or Entity to make a demand upon any payment bond, performance bond, or other guarantee in accordance with its terms.

Section 14.07 Transfer of Operations on Termination or Expiration. If this Contract is terminated pursuant to this Article or expires pursuant to **Section 18.01**, the Contractor shall cooperate and work with the City to achieve a prompt and smooth transition of the Joint MRF/TS operation to another entity, if applicable.

ARTICLE XV
LIQUIDATED DAMAGES FOR FAILURE TO PERFORM

Section 15.01 Liquidated Damages for Failure to Perform.

(a) The failure by the Contractor to perform an obligation gives the City the rights set forth in **Article XIV**. In addition, the parties agree that the Entity may, in its sole discretion, require the Contractor to pay the following amounts for the following acts of nonperformance as a form of liquidated damages if the Contractor does not cure such failure to perform within the noted timeframe. These amounts shall be aggregate amounts for each stipulated act of nonperformance under both this Contract and the County Operating Agreement (e.g., the Entity may collect $100 per day, not $200 per day, under both this Contract and the County Operating Agreement for each failure under subsection (i) below).

(i) Failure to meet guaranteed processing throughput and capacity standards under **Section 10.01**: $100 per day if not cured within 14 Business Days of Notice thereof.

(ii) Failure to provide City Payment under **Section 11.01**: $200 per day if not cured within 7 Business Days of Notice thereof.

(iii) Failure to conduct a monthly Residue Analysis under **Section 9.08**: $100 per day if not cured within 7 Business Days of Notice thereof.

(iv) Failure to meet Marketable Recovered Material quality standards under **Section 10.03**: $100 per day if not cured within 14 Business Days of Notice thereof.

(v) Failure to provide a daily, monthly, quarterly or annual report or statement under **Section 6.11(d)**: $50 per day if not cured within 7 Business Days of Notice thereof.

(vi) Failure to notify the Entity of any significant safety incident or pre-scheduled safety inspection under **Article VII**: $100 per incident if not cured within 7 Business Days of Notice thereof.

(vii) Failure to conduct the annual Composition Analyses under **Section 9.07**: $100 per day if not cured within 21 Business Days of Notice thereof.

(viii) Failure to properly maintain the Entity Equipment or City Equipment under **Article VI**: $100 per day if not cured within 14 Business Days of Notice thereof.

(ix) Failure to complete an annual Marketable Recovered Material Analysis under **Section 9.09**: $100 per day if not cured within 14 Business Days of Notice thereof.

(x) Failure to conduct a mass balance analyses under **Section 9.10**: $100 per day if not cured within 14 Business Days of Notice thereof.

(xi) Failure to properly maintain the Joint MRF/TS Building and grounds under **Article VI**: (e.g., litter collection and general clean-up, painting and repairs): $100 per day if not cured within one Business Day of Notice thereof.

(b) However, if any of the listed acts of nonperformance entitle the City or Entity to proceed under **Article XIV**, the City or Entity may choose to do so instead of requiring a payment as set forth above, and the above liquidated damages shall not in any way preclude or limit the recovery of actual damages.

(c) The City or Entity will not require payment for any of the listed acts of nonperformance if the nonperformance was beyond the Contractor's control.

ARTICLE XVI
REPRESENTATIONS

Section 16.01 Representations of Contractor.

(a) The Contractor is qualified to do business in the State of Wisconsin and is duly qualified to do business wherever necessary to carry on the business and operations contemplated by this Contract.

(b) The Contractor has the power, authority and legal right to enter into and perform its obligations set forth in this Contract, and the execution, delivery and performance: (i) has been authorized by its governing body, (ii) do not require the approval of any governmental officer or body, other than those permits or approvals contemplated to be obtained after the date of execution of this Contract, (iii) will not violate any judgment, order, law or regulation applicable to the Contractor or any provisions of the Contractor's articles of organization or limited liability company agreement and (iv) do not constitute a default under, or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the Contractor under any contract or instrument to which the

Contractor is a party or by which the Contractor or its assets may be bound or affected.

(c) The Contractor holds, or is expressly authorized under, the necessary patent rights, licenses and franchises to design, construct, and operate the Joint MRF pursuant to the terms of this Contract.

(d) This Contract has been entered into and delivered and constitutes a legal, valid and binding obligation of the Contractor, fully enforceable in accordance with its terms.

(e) There is no action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the best of the Contractor's knowledge, threatened against the Contractor, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Contractor of its obligations or the other transactions contemplated, or which, in any way, would adversely affect the validity or enforceability of this Contract, or any other contract or instrument entered into by the Contractor in connection with the transactions contemplated.

(f) There has been no material adverse change in the Contractor's financial condition since the initial submission of financial information pursuant to the RFP.

ARTICLE XVII
RECORDS AND CONFIDENTIALITY

Section 17.01 Public Records Law. Records shall be maintained in accordance with requirements prescribed by the Entity with respect to all matters covered by this Contract. It is understood that the City is bound by Wisconsin Public Records Law, and as such, all of the terms of this Contract are subject to and conditioned on the provisions of Wis. Stat. Section 19.21, *et seq*. Contractor acknowledges that it is obligated to assist the City in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Contract, and that the Contractor must defend and hold the City harmless from liability under that law. Except as otherwise authorized, these records shall be maintained for a period of seven (7) years after receipt of the final payment under this Contract.

Section 17.02 City Obligations and Confidentiality

(a) The City shall hold in strict confidence any Confidential Information which it obtains from the Contractor and shall take all reasonable precautions to prevent disclosure of Confidential Information to third parties, except for disclosure of Confidential Information to third parties permitted under this Contract. The City shall only use Confidential Information for purposes of its rights and interest in the Joint MRF/TS and under this Contract. The Contractor recognizes and agrees, however, that

disclosure of Confidential Information may be required: (1) if required to enable the Engineer to perform the Engineer's responsibilities in connection with its duties for the City; (2) if disclosure to any governmental agency is necessary to obtain and maintain any permits, licenses, or other approvals with respect to the construction and operation of the Joint MRF/TS pursuant to Federal, State or local regulatory requirements or (3) if disclosure is required pursuant to **Section 9.02(b)**. The City shall promptly notify the Contractor of any request or need for disclosure of Confidential Information and the purpose of the request or need. Prior to any disclosure contemplated herein, the Contractor, at its sole cost and expense may participate with the City in discussions with the requesting party and may comment on the scope of the proposed release of the requested Confidential Information.

(b) The rights and obligations of the Parties with respect to the Confidential Information are subject to Wisconsin's Public Records Law, Wis. Stat. §§ 19.31-19.39. The City shall promptly give Contractor notice of its receipt of any request for Confidential Information made under Wisconsin's Public Records Law. The City shall consult with Contractor prior to submitting any response unless the City, in its sole judgment, determines that as a matter of Wisconsin law the information cannot be kept confidential. The Parties acknowledge and agree that the determination of the confidentiality of any information subject to the Contract shall be determined as an issue of Wisconsin law. All costs associated with attempting to keep Contractor information confidential, including costs incurred by the City, shall be paid by Contractor. The Contractor acknowledges that these costs may include attorney fees of the requesting party if a lawsuit is required for the requesting party to obtain the documents. Notwithstanding anything else provided in this Contract, the Contractor acknowledges and understands that the City has no obligation to refrain from producing claimed Confidential Information if it determines, in its sole discretion, that such disclosure is required by Wisconsin's Public Records Law. If the Contractor disagrees with the City's determination that information must be produced, its sole remedy is to seek a protective order from a court of competent jurisdiction, at its sole cost and expense.

Section 17.03 Identification of Confidential Information. Any document or portion of a document containing Confidential Information which is delivered by Contractor into the possession of the City, its representative or consultant, shall by clearly labeled with the words "Confidential Information".

Section 17.04 Survival. This Article shall survive termination of this Contract.

ARTICLE XVIII
MISCELLANEOUS

Section 18.01 Term. Unless sooner terminated in accordance with the provisions of this Contract, the Term of this Contract (the "Term") shall commence upon execution hereof by both the City and Contractor and shall continue in effect until the last day of the month in which falls the tenth (10th) anniversary of the Operations Commencement Date, with an option to extend the Contract an additional 5 years at the sole discretion of the Entity. This option shall be exercised in writing and delivered to the Contractor. The Entity will provide a notice of renewal or cancellation of the Contract to the Contractor a minimum of 6 months prior to the expiration of the Contract.

Section 18.02 Compliance with Laws. The Contractor shall comply with all applicable laws, regulations, ordinances, codes, and rules and any permits applicable to the operation of the Joint MRF, and shall be responsible for obtaining all applicable permits and approvals for its employees and Sub-contractors, at its costs and expense. The City will assist the Contractor as needed to obtain any permits. The Contractor shall be liable for any fines issued with respect to any failure to comply with such laws, ordinances, codes, regulations, rules or permits for which it is responsible hereunder, and shall defend and hold the County and the City harmless from any such fines issued.

Section 18.03 Assignment. The Contractor may not assign its obligations under this Contract without the prior consent of the City, such consent not to be unreasonably conditioned, withheld or delayed. Assignment shall not relieve the Contractor or any guarantor of Contractor from their obligations hereunder. Further, any Performance Bonds and the Payment Bonds shall remain in full force and effect.

Section 18.04 Subcontracts. The Contractor shall use all reasonable efforts to assure that all contracts with its Sub-contractors and suppliers are assignable to the Entity . Additionally, the Contractor shall use all reasonable efforts to obtain subcontracts which include competitive warranties and guarantees of services, materials and equipment.

Section 18.05 Authorized Representatives; Notices. For purposes of this Contract, the Parties' authorized representatives and Entity (CCR) representatives are as shown in **Schedule 1**. Either Party or the Entity (CCR) may change its authorized representative and/or address for notice at any time by written notice to the Parties as set forth below. All notices, demands, requests and other communications hereunder that are not routine operational issues shall be directed to the contacts listed in **Schedule 1**. Such notices shall be deemed sufficient and properly given if personally delivered or sent by recognized overnight courier, signature required, to the persons and addresses shown in **Schedule 1**. All notices, demands, requests and other communications hereunder that are routine operational issues shall be sent as set forth in **Schedule 1**. Any notice hereunder signed on behalf of the notifying Party by a duly authorized attorney at law shall be valid and effective to the same extent as if signed on behalf of such Party by a duly authorized

officer or employee.

Section 18.06 Relationship of the Parties. Neither the City nor the Contractor shall have any responsibility to perform services for or to assume contractual obligations which are the obligation of the other Party. The Contractor agrees that it is an independent contractor with respect to the services provided pursuant to this Contract. Nothing in this Contract shall be considered to create the relationship of employer and employee between the Parties or their respective employees.

Section 18.07 Waiver. Unless otherwise specifically provided by the terms of this Contract, no delay or failure to exercise a right or to declare any breach of this Contract shall impair the right or shall be construed to be a waiver of a default, but the right may be exercised from time to time and as often as may be deemed expedient. Any waiver shall be in writing and signed by the Party granting the waiver. If any representation, warranty or covenant contained in this Contract is breached by either Party and waived by the other Party, the waiver shall be limited to the particular breach waived and shall not be deemed to waive any other breach under this Contract. One or more waivers by any Party of any term of this Contract will not be construed as a waiver of a subsequent breach of the same or any other term. The consent or approval given by any Party with respect to any act by the other Party requiring such consent or approval shall not be deemed to waive the need for further consent or approval of any subsequent act by such Party.

Section 18.08 Article and Section Captions: References. The Article and Section headings and captions in this Contract are included for convenience only and shall not be considered a part of the Contract or affect in any manner the construction or interpretation of the Contract.

Section 18.09 Amendment. No amendment, modification, change or extension of this Contract shall be effective unless it is in writing and executed by the Parties.

Section 18.10 Contract Governed by Wisconsin Law. This Contract shall be governed by the laws of the State of Wisconsin. Any court actions between the Parties shall be in the Circuit Court for Milwaukee County, Wisconsin, and each Party hereto expressly consents to the jurisdiction of said courts.

Section 18.11 Successors and Assigns. This Contract shall be binding upon and inure to the benefit of the respective successors, permitted assigns, administrators and trustees of the City and the Contractor.

Section 18.12 Execution of Documents. This Contract may be executed in any number of duplicate originals, any of which shall be regarded for all purposes as an original, but together make a single Contract.

Section 18.13 Severability. In the event that any provision of this Contract in any respect shall, for any reason, be determined to be invalid, illegal or unenforceable by a court of competent jurisdiction, the other terms of this Contract shall remain in full force and effect and be construed in such a manner as to implement and give effect to the intentions of the Parties as reflected in the Contract. To the extent necessary to have such effect, the Parties shall negotiate in good faith for necessary amendments, modifications or supplements of or to this Contract.

Section 18.14 Further Assurances. Each Party agrees to, and shall use all reasonable efforts to, provide such information, execute and deliver any instruments and documents and take such action as may be necessary or reasonably requested or required by the other Party which are not inconsistent with the provisions of this Contract and which do not involve the assumption of obligations other than those provided for in this Contract in order to give full effect to this Contract and to carry out the intent of this Contract.

Section 18.15 Survival of Obligations. The obligations and rights of the Contractor and City which have accrued as of the termination of this Contract shall survive any termination of this Contract and shall continue until the obligations are satisfied.

Section 18.16 Protection of the Public and of Work and Property. The Contractor shall take all necessary and reasonable precautions for the protection and safety of the public and to adequately protect adjacent private and public property. It shall continuously maintain adequate protection of all work from damage, and shall take all reasonable precautions to protect the Entity's and City's property from injury or loss arising in connection with this Contract. It shall make good any damage, injury or loss to its work and to the property of the Entity resulting from lack of reasonable protective precautions or actions (or inactions) of its employees or agents. The Contractor shall obtain and maintain sufficient insurance to cover damage to any Entity or City property at the site by any cause as provided herein.

In an emergency affecting the safety of life, of the Joint MRF or related equipment, or of adjoining property, the Contractor is, without special instructions or authorization from the Engineer, permitted to act at its reasonable discretion to prevent the threatened loss or injury. It shall also so act, without appeal, if authorized or instructed by the Engineer.

Section 18.17 Reciprocity of Contracts. In express recognition and support of their covenant of good faith and fair dealing, and for valuable consideration already given each other throughout the joint procurement process, the City gives the County the following third party beneficiary rights in this Contract with Contractor: The City may not amend or revoke this Contract in any manner that is adverse to the County with respect to its rights under the IGA and/or County Operating Agreement without the express written agreement of the County; such consent may not be unreasonably withheld.

Section 18.18 Certain Changes to IGA. The City agrees that it shall not agree to any amendment to Section V(a) or Attachments A, B, or C of the IGA (as in effect on the date hereof) that adversely affects Contractor's rights or obligations hereunder, unless consented to by Contractor, such consent to not be unreasonably withheld.

Section 18.19 Non-Discrimination Agreement. In connection with the performance of work under this Contract, the Contractor agrees not to discriminate against any employee, applicant for employment, or actual or potential recipients of services because of sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, past or present membership in the military service, familial status, or based upon affiliation with, or perceived affiliation with, any of these protected categories. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available for employees and applicants for employment, notices setting forth the provisions of the non-discrimination clause.

Section 18.20 Residents Preference Program

Section 18.21 Service Contract Wage Requirement Provisions

Section 18.22 Prompt Payment Policy

Section 18.23 Slavery Affidavit

[REMAINDER OF PAGE INTENTIONALLY BLANK. SIGNATURE PAGES FOLLOW.]

IN WITNESS WHEREOF, the City and the Contractor have caused this Contract to be executed by their duly authorized officers or representatives, and have caused this Contract to be dated as of the date and year first written above.

CITY OF MILWAUKEE, WISCONSIN

By: _____

ATTEST:

_____

RESOURCE RECOVERY
SYSTEMS, LLC

By_____
Sean P. Duffy
Its President and Chief Operating Officer

ATTEST:

_____

LIST OF SCHEDULES

Diagram 1 – Key Term Operational Flow Chart
Schedule 1 – Notices, Contacts, and Authorized Representatives
Schedule 2 – Recoverable and Marketable Recovered Material Standards
Schedule 3 – Contractor Insurance Requirements for Ongoing Operation
Schedule 4 – Joint MRF Contract Payments
Schedule 5 – Required Joint MRF Reports
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Schedule 7 – Entity Equipment List
Schedule 8 – Equipment Replacement Plan
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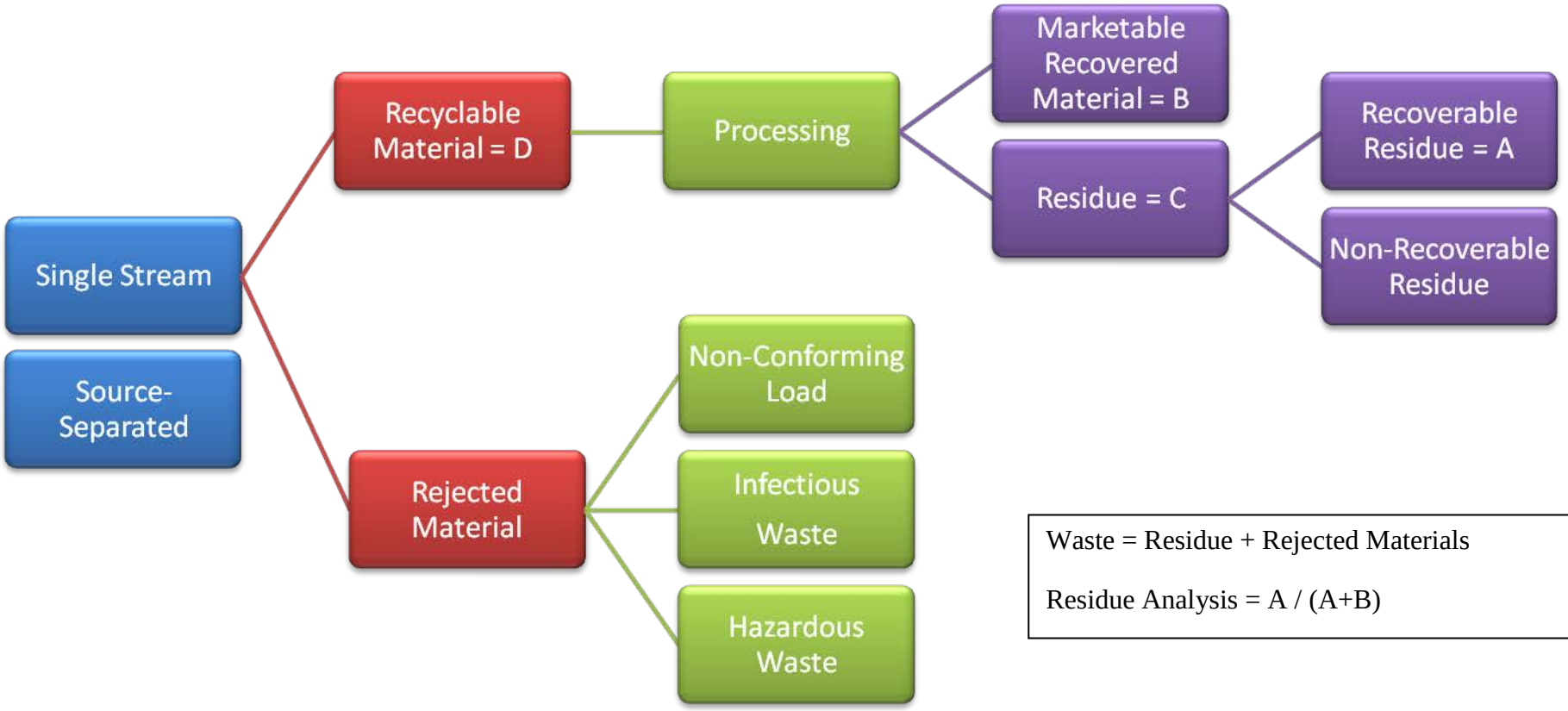
Schedule 10 – Approved Third Party Processing Contracts
Schedule 11 – Retrofit
Schedule 12 – Parental Guarantee
Schedule 13 – Rolling Stock Owned or Leased by Contractor
Schedule 14 – Joint MRF Site

DIAGRAM 1: Flow Chart



Waste = Residue + Rejected Materials

Residue Analysis = A / (A+B)

SCHEDULE 1
NOTICES, CONTACTS, AND AUTHORIZED REPRESENTATIVES

Notices:

Any notices required or permitted under this Contract shall be delivered in accordance with **Section 18.06** of this Contract, in all cases addressed as follows:

If to the City:
City of Milwaukee
Commissioner of Public Works
841 N Broadway Rm 501
Milwaukee WI 53202

If to the Contractor:
Resource Recovery Systems, LLC
c/o ReCommunity Recycling
809 West Hill Street
Charlotte, NC 28208
Attn: President
Attn: General Counsel

Daily Contacts and Authorized Representatives

Any Party may designate authorized representative(s) other than those listed above to serve as the contact for routine operational issues under this Contract. A list of these contacts is provided below, which shall be updated as needed to remain current for the duration of this Contract.

For the City:
Rick Meyers
Resource Recovery Program Manager
City of Milwaukee DPW
841 N Broadway Rm 620
Milwaukee WI 53202
(414) 286-2334
Rick.Meyers@Milwaukee.gov

For the Contractor:

_____
_____
_____
_____

For CCR Representatives:

Rick J. Meyers, Resource Recovery Program Manager
City of Milwaukee
841 N. Broadway, Rm. 620
Milwaukee, WI 53202
414-286-2334
Rick.meyers@milwaukee.gov

Perry Lindquist, Land Resources Manager
plindquist@waukeshacounty.gov
Dept. of Parks and Land Use
515 W. Moreland Blvd., Room AC 248
Waukesha, WI 53188
262-896-8300

SCHEDULE 2
RECOVERABLE AND MARKETABLE RECOVERED MATERIAL STANDARDS

1. Recoverable Material

Recoverable Materials shall be those specified in Table 2-1. The Contractor is encouraged to accept and recover additional materials where this can result in reducing the Waste disposed by Entity communities. The Contractor and Entity may mutually agree to modify the Recoverable Material list in Table 2-1 based upon prevailing market conditions in an effort to maximize Marketable Recovered Material Revenues for the project. Any revisions to Table 2-1 shall be documented as an amendment to this Schedule 2.

Table 2-1
Recoverable Materials

Commodity Category	Recoverable Material	Details
Fiber	Old Corrugated Cardboard	Old corrugated containers (cardboard) and that have liners of Kraft, jute, or test liner. Wax and plastic-coated cardboard is not acceptable.
	Old News Print	Newspapers, inserts, loose or placed in Kraft (brown) paper bags.
	Old Magazines	Old magazines containing glossy coated paper, including catalogues, glossy fillers or mailers, loose or placed in Kraft (brown) paper bags
	Kraft (brown) paper bags	All sizes of loose, bundled or bagged Kraft paper grocery sacks
	Junk mail	All dry, loose or bagged bulk mail consisting of paper or cardboard. All unopened junk mail and envelopes with window are acceptable
	High Grade Paper	High-grade paper – all dry, loose or bagged white and colored ledger and copier paper, note pad paper (no backing), loose leaf fillers, computer paper (continuous-form perforated white bond or green-bar paper)
	Boxboard	All non-corrugated cardboard, commonly used in dry food and cereal boxes, shoe boxes, and other similar packaging. Wax and plastic-coated boxboard is not acceptable.

Commodity Category	Recoverable Material	Details
	Telephone Books	Paperback books included
	#52 Cartons	Paper milk and fruit juice container, gable and flat tops
Glass	Container Glass	Glass containers of various colors
Plastics	#1 PET Bottles	Blow-molded (bottle-necked)
	#1 PET Thermoforms	Separate or combined with bottles based on best market value
	#2 Natural HDPE Bottles	Blow-molded (bottle-necked)
	#2 Colored HDPE Bottles	Blow-molded (bottle-necked)
	#2, #4, #5 and #7 Mixed Plastics	All HDPE, LDPE and PP tubs, cups, lids and trays
	Bulky Rigid Plastics	Large polyethylene and polypropylene items
Metals	UBC Aluminum and/or all food and beverage aluminum	Aluminum food and beverage cans, aerosol cans, foil and foil trays and wrappers
	Steel/Tin Cans	Tin plated, food and beverage containers
	Scrap Metal	Metal pots and pans

The Recoverable Materials listed in the above **Table 2-1** are subject to the following size and quality parameters:

SIZE:

1. Fiber- is based on materials being whole, un-shredded, and larger than 4" by 4". Residue Audit excludes bundles, catalogs, and phone books or generally any material that is 3 dimensional in character.

2. Plastic Containers-is based on 3- dimensional objects larger than 2" by 2". Clumped plastic and interlocked items that are not plastic containers will be excluded from test results.

3. Glass containers – is based on objects larger than 4" by 4"

4. Tin/steel cans-is based on pieces between 2" and 8" having a ferrous metal content of >60%. Clumped and interlocked items that are not Ferrous will be excluded from test results.

5. Aluminum (AL)-is based on all pieces between 2" and 8" having a Non-Ferrous portion or element in their construction. Clumped and interlocked items that are not Aluminum will be excluded from test results.

6. If applicable, all of the incoming bags are pulled at the pre-sort and opened manually. Any Recyclable Material in unopened bags or containers within the residue will be excluded from the test results.

QUALITY:

1. Containers must be free and clear of food and or liquid

2. Fiber must be at moisture level less than 15%

3. Material must not be frozen, clumped together, comingled in a container such as a bag, box or previously baled.

2. Quality of Marketable Recovered Material

Under **Section 10.02**, the Contractor guarantees that the Joint MRF is operated and maintained to produce the Marketable Recovered Material in **Table 2-2**. Unless the Entity and Contractor mutually agree on alternate market specifications, all Marketable Recovered Material shall meet commodity or bale specifications consistent with the Contractor's Proposal or published by the Institute for Scrap Recycling Industries (ISRI) or the Association for Post-Consumer Plastic Recyclers (APR). The Marketable Recovered Material shown in **Table 2-2** may be amended with approval from the Entity, to meet market conditions and to provide the Entity with the best product value.

Table 2-2
Commodities and Marketable Recovered Materials

Commodity	Marketable Recovered Material
Fiber	Old Corrugated Cardboard (OCC)
	Old News Print (ONP #8)
	Mixed Paper
	#52 Cartons
Glass	Mixed Glass
Plastics	#1 PET Bottles
	#1 PET Thermoforms (may be combined with #1 PET Bottles or Mixed Plastics)
	#2 Natural HDPE Bottles
	#2 Colored HDPE Bottles
	#2, #4, and #5 Mixed Plastics
	Bulky Rigid Plastics
Metals	UBC Aluminum and/or all food and beverage aluminum
	Steel/Tin Cans
	Scrap Metal

The Marketable Recovered Materials listed in the above **Table 2-2** are subject to the following size and quality parameters:

SIZE:

1. Fiber- is based on materials being whole, un-shredded, and larger than 4" by 4". Residue Audit excludes bundles, catalogs, and phone books or generally any material that is 3 dimensional in character.

2. Plastic Containers-is based on 3- dimensional objects larger than 2" by 2". Clumped plastic and interlocked items that are not plastic containers will be excluded from test results.

3. Glass containers – is based on objects larger than 4" by 4"

4. Tin/steel cans-is based on pieces between 2" and 8" having a ferrous metal content of >60%. Clumped and interlocked items that are not Ferrous will be excluded from test results.

5. Aluminum (AL)-is based on all pieces between 2" and 8" having a Non-Ferrous portion or element in their construction. Clumped and interlocked items that are not Aluminum will be excluded from test results.

6. If applicable, all of the incoming bags are pulled at the pre-sort and opened manually. Any Recyclable Material in unopened bags or containers within the residue will be excluded from the test results.

QUALITY:

1. Containers must be free and clear of food and or liquid

2. Fiber must be at moisture level less than 15%

3. Material must not be frozen, clumped together, comingled in a container such as a bag, box or previously baled.

SCHEDULE 3
CONTRACTOR INSURANCE REQUIREMENTS FOR ONGOING OPERATION

As required under **Article VII** of this Contract, the Contractor shall maintain the following insurance policies at all times during the Term:

1. Workers' Compensation and Employer's Liability:

Workers' Compensation		
Employer's Liability		Statutory
Liability injury by accident	each accident	$100,000
Bodily injury by disease	each employee	$100,000
	Policy limit	$500,000

To Include:

- Other States coverage
- United States Longshoremen and Harbor Workers Compensation Act Endorsement (if transport of waste of any type includes delivery to sites where material is stored adjacent to navigable bodies of water or must be loaded on vessels, scows, barges, etc.).

2. General Liability Insurance:

Limits of Liability		
Bodily injury/property damage	each occurrence	$1,000,000
	General aggregate	$1,000,000
	Products/completed Operations aggregate	$1,000,000

To Include:

- Occurrence coverage
- Commercial general liability insuring agreement
- Coverage for the following hazards:
    - Premises/operations
    - Products/completed operations
    - Independent contractors
- Contractual liability for risks assumed in this Contract
- General aggregate limit to apply to each site
- The City, its boards, commissions, agencies, officers, agents and employees are to be named as an additional insured to this General Liability Insurance policy.

3. Motor Vehicle Liability:

Limit of Liability		
Bodily injury/property damage	each accident	$1,000,000

To include:

- Coverage for the operation of any owned, non-owned, or hired motor vehicle Contractual liability for risks assumed in the Contract
- Pollution Liability – Broadened Coverage for Coverage Autos Endorsement
- MCS – 90 Endorsement

4. Umbrella:

Limits of Liability

Bodily injury/personal injury/ Advertising injury/property damage	each occurrence	$10,000,000
	General aggregate	$10,000,000
	Products/completed Operations aggregate	$10,000,000

To Include:

- Occurrence form will apply over the primary employer's liability, general liability, and automobile liability limits.
- The City, its boards, commissions, agencies, officers, agents and employees are to be named as an additional insured to this Umbrella policy.

5. Pollution Legal Liability and Environmental Impairment Liability (EIL)

Limits of Liability

Bodily injury/property damage	each loss	$10,000,000
	Aggregate	$10,000,000

To Include:

- Insuring agreement which will protect against sudden and gradual occurrences at:
    - City of Milwaukee owned transfer stations and self-help center sites and Waukesha County Transfer facility
    - Landfills
    - Other permitted disposal facilities
    - Deletion of contractual exclusion from the insuring agreement
    - Explanation of terms with regard to the time period and cost for extended discovery period.
    - Defense costs shall be outside the policy limit.

SCHEDULE 4
JOINT MRF/TS CONTRACT PAYMENTS[1]

Monthly Payment to City by Contractor:

The City Payment under **Section 11.01(a)** of the Contract shall be based on the following negotiated fees and revenue payments, and the following formula, unless otherwise later modified by the CCR, with the consent of the Contractor:

80% Shared Revenue[2] **under Section 11.02** per City ton of Marketable Recovered Materials (below); plus

Bypass Charge under **Section 11.03** (if any); plus

Education Fee under **Section 11.04** per City Ton (below); plus

2.5% Shared Revenue under **Section 11.02** on Third Party Tons (below) of Recyclable Material to City; plus

Processing Fee[3] under **Section 11.02(b)** per Third Party Ton (below) of Recyclable Material paid to each of the County and City by Contractor.

Monthly Payment to Contractor by City[4]:

The Contractor Payment under **Section 11.01(b)** of the Contract shall be based on the following negotiated fees and revenue payments, and the following formula, unless otherwise later modified by the CCR, with the consent of the Contractor:

Processing Fee[5] under **Section 11.05** per City Ton (below); plus

Waste Disposal Costs under **Section 11.09(a)(i)** (below); plus

[1] Sample spreadsheets showing the proper calculation of Payments, in accordance with **Article XI** and this **Schedule 4** shall be prepared by the Contractor, approved by the Entity within sixty (60) days of Contract Date and incorporated in the O&M Plan.

[2] The Contractor also retains 20% of Shared Revenue **under Section 11.02** on City Tons of Marketable Recovered Materials.

[3] The Processing Fee is subject to adjustment under **Section 11.08(a)**.

[4] The City also will pay 50% of the Equipment Replacement Fee under **Section 11.07** per City Ton to the Entity, according to **Tables 4-1** and **4-3**.

[5] See note 3.

50% of any Entity Equipment or ERP-scheduled property repair or replacement costs not covered by the Equipment Reserve Fund under **Section 11.09(a)(ii)** (below); plus

100% of any City Equipment repair or replacement costs under **Section 11.09(a)(ii)**; plus

Under **Sections 6.10(c)** and **11.09(a)(v)**, Direct Costs related to increased Receiving Times.

Monthly Payments on Third Party Tons:

Payments related to Third Party Tons of Recyclable Material shall be as follows, unless the Third Party contract specifies otherwise or later modified by the CCR, with the consent of the Contractor:

75% Shared Revenue under **Section 11.02** on Third Party Tons (below) payable by Contractor to Third Party;

2.5% Shared Revenue under **Section 11.02** on Third Party Tons (below) payable by Contractor to City;

2.5% Shared Revenue under **Section 11.02** on Third Party Tons (below) payable by Contractor to County;

20% Shared Revenue under **Section 11.02** on Third Party Tons (below) retained by Contractor;

Processing Fee under **Section 11.05** per Third Party Ton (below) paid by Third Party to Contractor;

Processing Fee under **Section 11.02(b)** per Third Party Ton (below) paid by Contractor to each of the County and City by Contractor;

Equipment Repair & Replacement Fee under **Section 11.07** per Third Party Ton (below) paid by the Third Party to the Contractor;

Equipment Repair & Replacement Fee under **Section 11.07** per Third Party Ton (below) paid to the Entity by Contractor;

Waste Disposal Costs under **Section 11.09(a)(i)** or other Direct Costs under **Section 11.09(a)(iii), (v)** paid by the Third Party to Contractor; and

Bypass Charge on Third Party Tons under **Section 11.03** (if any) paid by the Contractor in equal shares to the City and County.

Table 4-1
Fees, Costs, and Revenues

Description of Fees, Costs, and Revenues	Rate/Unit
Processing Fee – Under **Sections 11.02(b)** and **11.05**, a per ton fee paid by each of the County, City, and/or Third Party to the Contractor based upon their respective Tons of Recyclable Material delivered to the Joint MRF. After the first partial year of operation, ending December 31, and at the close of each succeeding year, the per ton Processing Fee shall be adjusted annually based upon actual Tons of Recyclable Material delivered in the prior year and projected Tons, as agreed upon by CCR and Contractor, for the coming year according to **Table 4-2**. After the first partial year of operation, ending December 31, and at the close of each succeeding year, reconciliations shall be conducted comparing the prior year's paid-in Processing Fees and Processing Fee payments based upon actual Tons of Recyclable Material delivered and reconciled payments shall be made by Contractor, County, or City as necessary to comport with **Table 4-2**.	$30.00/ton[6] for City and County Tons $41.00/ton for Third Party Tons (unless that contract specifies otherwise) $1.00/ton for Third Party Tons (payable to each of County and City, $2/ton total)

[6] As also discussed in **Section 11.08(a)**, the Processing Fee as listed in **Table 4-2** payable by City, County, and Third Parties shall be adjusted on July 1 of each year in the same proportion that the Consumer Price Index (CPI) for all Urban Consumers, all items, U.S. Midwest (1982-84=100 unless otherwise noted) on such July 1 changed from the previous July 1. If this index becomes unavailable the successor CPI factor published by the U.S. Government as agreed to by both parties shall be used.

Education Fee – Under **Section 11.04**, a per ton fee payable by Contractor to each of the County and City based upon the Tons of Recyclable Material each respectively delivers to the Joint MRF. As of the Contract Date, the Education Fee shall be $2.00 per ton of RM, subject to monthly adjustment under **Table 4-4**.	$2/ton[7]
Equipment Repair & Replacement Fee – Under **Section 11.07**, a per ton fee payable by Contractor, City, County, and/or Third Parties to the Entity (to be deposited in the Equipment Reserve Fund) based upon respective Tons of Recyclable Material delivered to the Joint MRF and as further specified in **Tables 4-3** and **4-4**. As of the Contract Date, the Equipment Repair & Replacement Fee shall be $8.00 per ton. After the first partial year of operation, ending December 31, the per ton Equipment Repair & Replacement Fee shall be adjusted annually (as well as appropriate accompanying adjustments to **Table 4-4**) based upon actual Tons of RM delivered in the prior year and projected Tons, as agreed upon by CCR and Contractor, for the coming year and other factors described in this Agreement.	$8/ton[8]
Waste Disposal Costs – the actual per ton fee paid by Contractor to dispose of Residue and Rejected Materials (i.e., Waste), reimbursable in whole by each of the County, City, or Third Party to Contractor under **Section 11.09(a)(i)** based upon their respective Tons of Waste as determined by the Composition Analysis. As of the Contract Date, the actual Waste Disposal Costs will be $59.00 per ton.	$59/ton[9]
Direct Costs Related to Request Increases in Receiving Times – Under **Sections 6.10(c)** and **11.09(a)(v)**, City, County, and/or Entity Direct Costs related to increased Receiving Times.	varies

[7] See below for further specification on the calculation of the Education Fee in **Table 4-4**.

[8] See below for further specification on the calculation of the ERF in **Table 4-4**.

[9] Waste Disposal Costs are variable. As of the Contract Date, the Waste Disposal Costs shall be $59/ton. The Entity has the right to designate a Landfill of its choosing (perhaps to take advantage of reduced pricing through a separate procurement process for trash disposal services or if State legislation is passed to exempt MRF Residue from State tipping fees).

Equipment Repair or Replacement Costs – As to Entity Equipment or ERP-scheduled property, so long as approved by the CCR, these actual Direct Costs shall be paid out of the Equipment Reserve Fund (directly to seller if Equipment purchased by Entity or to reimburse Contractor if Equipment purchased by Contractor) and if the capital in that Fund is insufficient, these actual Direct Costs shall be paid by each of the City and County in equal shares according to **Article VI** and **Section 11.09(a)(ii)**. As to all other equipment, these actual Direct Costs shall be paid by the party who owns the equipment, according to **Article VI**, **Section 11.09(a)(ii)**, and the IGA.	varies
Shared Revenue – Percentage of Marketable Recovered Material Revenue payable by the Contractor to each of the City, County, and/or Third Party on their respective tons of Marketable Recovered Material or Recyclable Material, as applicable, after adjustment based upon the most recent Composition Analysis and the applicable ACR (which may differ for Third-Parties) under **Section 11.02**.	80% for City and County. See **Schedule 10** for Third Parties

Table 4-2
Processing Fee Based on Total Annual Tons of Recyclable Material Delivered to the Joint MRF from Any Source

Annual Tonnage[10]	Processing Fee (Per Ton)[11]
42,500 or less[12]	$39.75
48,000	$37.80
51,000	$35.85
54,000	$33.90
57,000	$31.95
60,000 or greater	$30.00

[10] If the actual tonnage falls between any of the tonnages listed in the Table above, the monthly Processing Fee paid to Contractor will be extrapolated to a dollar figure between the two set forth above by a linear proration, using the nearest full ton figures and rounding to the nearest penny ($0.01) per ton.

[11] If actual volume falls below 45,000 tons, the entity will pay the Processing Fee as if 45,000 tons had been delivered.

Equipment Repair & Replacement Fee (ERF)

As of the Contract Date the ERF shall be $8 per Ton of Recyclable Material, and shall be subject to annual adjustment based upon numerous factors as specified in this Contract, including, for example, the Equipment Replacement Plan. The ERF shall be paid in accordance with **Tables 4-3** and **Table 4-4** below. All ERF payments shall be paid monthly based on tons of Recyclable Material delivered to the Joint MRF, as noted below, and shall be paid independent of the County and City Payment.

Table 4-3
Equipment Repair & Replacement Fees[13]

Party	% Share of ERF	Share of ERF At Outset of Contract
City ERF payable to Entity on City Tons delivered to Joint MRF	50%	$4/City Ton
County ERF payable to Entity on County Tons delivered to Joint MRF	50%	$4/County Ton
Contractor ERF payable to entity on City or County Tons delivered to Joint MRF	50%	$4/City or County Ton
Contractor ERF payable to Entity on Third Party Tons delivered to Joint MRF	100%	$8.00/Third Party Tons

[13] Examples: If the City delivers 1,000 tons of Recyclables to the Joint MRF, the Contractor and the City each pays $4/ton x 1,000 tons = $4,000 to the ERF. If a Third Party delivers 1,000 tons, the Contractor pays $8/ton x 1,000 tons = $8,000 to the ERF.

Table 4-4

Equipment Repair & Replacement Fee (ERF) and Education Fees (Edu) Adjustments For Entity Tons Based On Monthly Average Commodity Revenues (ACR)[14]

ACR	Edu	ERF
$0	$0.00	$0.00
$96	$0.00	$0.00
$98	$0.67	$1.33
$100	$1.33	$2.67
$102	$2.00	$4.00
$130	$2.00	$4.00
$132	$2.13	$4.27
$134	$2.27	$4.53
$136	$2.40	$4.80
$138	$2.53	$5.07
$140	$2.67	$5.33
$142	$2.80	$5.60
$144	$2.93	$5.87
$146	$3.07	$6.13
$148	$3.20	$6.40
$150	$3.33	$6.67
$152	$3.47	$6.93
$154	$3.60	$7.20
$156	$3.73	$7.47
$158	$3.87	$7.73
$160	$4.00	$8.00

As to the Education Fee and ERF, if the monthly average ACR drops below $102 over any month, the Contractor's Education Fee shall be payable as specified in **Table 4-4**, to be approved by the CCR in writing, which shall designate the new per ton Education Fee and ERF. If such an adjustment is made, and the monthly average ACR later is at or above $130, the Contractor's Education Fee and ERF shall be upwardly adjusted using **Table 4-4** until the Contractor's Education Fee and ERF payments "catch-up" to the intended contribution under the originally-applicable fee schedule. Sample spreadsheets showing the calculation of adjusted Education Fees, in accordance with **Article XI** and this **Schedule 4**, shall be prepared by the Contractor, approved by the Entity within sixty (60) days of Contract Date and incorporated in the O&M Plan. At termination, there shall be no "make-whole" payment by Contractor for any shortfall in

[14] ERF payments by Contractor shall be adjusted according to this table only as to Entity Tons. If the actual ACR falls between any of the ACR's listed in **Table 4-4** above, the contributions per ton paid to the Entity will be extrapolated to the nearest penny ($0.01) per ton.

the “catch-up” Education Fee.

SCHEDULE 5
REQUIRED JOINT MRF/TS REPORTS

At a minimum, the following reports shall be prepared by the Contractor and made available to the Entity and as requested. The formats and content shall be specified and approved by the Entity. As part of the data sharing requirements, records shall be kept on a daily and cumulative basis regarding County and City Tons and shall be available to the Entity upon request. All reporting shall be disseminated by an agreed upon electronic format and the Contractor may provide reporting, as appropriate, through access to a real-time, internet database program with proper training to Entity staff.

1. ENTITY EQUIPMENT FAILURE REPORT

For any failure of Entity Equipment which results in, or is expected to result in Joint MRF downtime in excess of 8 hours, the Contractor shall provide prompt notice of any Entity Equipment failures to authorized representatives, as provided in **Schedule 1**. The report shall include the equipment name, number, a brief description of the failure, when it occurred, impacts on the operation and the remedy.

2. DAILY REPORTS

The Contractor shall, by the close of each Business Day, provide a report to the Entity containing the following data:

(i) **Receiving report** of all scale weight tickets for all material delivered, sorted by origin of material and showing at a minimum, the chronological ticket number, date, time scaled in and out, hauler name, truck number, type of material received (i.e., residential, commercial, Third Party), weight of material (gross, tare, and net) in pounds and tons, and subtotals of tons by origin.

3. MONTHLY REPORTS

The Contractor shall report on an Operating Month and year-to-date basis. Monthly reports shall be an accumulation of the daily reports and shall be provided to the Entity by the 20th Day of the following Operating Month. At a minimum, the reports shall contain the following data:

(i) **Monthly totals of all incoming loads** for each Participating Municipality, as weighed and reported in Daily Reports.

(ii) **Monthly totals of Third Party Recyclables**, as weighed and reported in Daily Reports.

(iii) **Bale production by material** (commodity specific bale counts and data records).

(iv) **Shipping report by materials** for all outbound shipments, all data related to bills of lading, including tons, bales, pricing, and destination.

(v) **Product sales records** shall be recorded in Contractor scale system at the time of shipment. Contractor will provide access to on-demand customer portal for access to current material sales invoices and other pertinent information. Contractor will also provide a commodity revenue schedule.

(vi) **Product quality** reports including Marketable Recovered Material Analysis on material type and volume with comparison to operational targets, contractual commitments, market specifications for Marketable Recovered Material Quality (**Schedule 2**), and commodity market feedback.

(vii) **Residual weights** for all shipments, all data related including tons and disposal invoices.

(viii) **Maintenance and Equipment records** will be provided by the Contractor through a computerized maintenance program and reports shall be provided including, at a minimum, the history of work (scheduled and unscheduled) for each asset in the

database, equipment inventories, spare part inventory, PM status (scheduled repair), repair costs, and notes to repair orders.

(ix) **Safety reports** shall include all safety audits (annual) and necessary corrective action, accident reports and investigations, monthly safety report (OSHA 300) including total hours worked, OSHA recordable incidents, all first aide related incidents, lost time events, number of days away from work with provided incident ratios.

(x) **Marketing Report** including totals of all outbound products (including process residuals) and revenues received/tipping fees charged by commodity.

(xi) **Operating Report and Costs** including tons processed, tons shipped, tons residue/rejected, operating days, staffing (total employees, labor costs, labor hours, average hours/employee), utilities (gas, electric, water, supplies, equipment lease, fuel, insurance, residue disposal, equipment repairs, contracted services, Processing Fee and recycling revenue. Also, written summary of key issues addressed, including, but not limited to, complaints (e.g., noise, litter, etc...) and their resolutions.

(xii) **Revenue share and monthly statement** including the support for the calculation of all aspects of the City Payment.

(xiii) **Performance reports** including the average daily throughput (tons per hour), major downtime, equipment installation/modifications, rejected or downgraded loads.

4. QUARTERLY REPORTS

Quarterly reports shall complement the monthly reports and include the following additional data not included in the monthly reports:

(i) **Personnel reports** including a list of personnel, titles and job descriptions as requested. The Contractor shall notify the Entity in advance of any major changes in the Contractor's Joint MRF/TS management personnel and/or contact person(s).

(ii) **Training Programs and Incentives** provided to staff.

(iii) **Goals** proposed for next quarter based on key areas of improvement.

5. ANNUAL OPERATING REPORTS

Annual operating reports shall be submitted by February 15 of each year for the previous calendar year. At a minimum, the annual reports shall contain the following data:

(i) **Mass Balance Analyses** (as specified in **Section 9.10**).

(ii) **Joint MRF Performance Report** (as specified in **Section 10.05**).

(iii) **O&M Plan** (as specified in **Section 6.04**).

(iv) **Annual Financial Report and Revenue Summary** including price per ton, or tipping fee charge per ton, by Operating Month, and average for the year, and by commodity (including process residuals).

(v) **Marketing Report.** including totals of all outbound products (including process residuals) and revenues received/tipping fees charged by commodity.

(vi) **Summary Review, Analyses, and Recommendations** of significant performance issues of the year including operations, supply development (including discussion of new Third Party Recyclables initiatives), market revenues, safety and Contractor – City communications. The Contractor shall make annual recommendations for continuous improvement on all such issues as appropriate. The Entity and Contractor will meet each year to review and discuss the Contractor's recommendation and to develop an annual action plan to implement the Contractor's recommendations.

SCHEDULE 6
JOINT MRF OPERATION AND MAINTENANCE PLAN REQUIREMENTS

As required under **Sections 6.04 and 6.05** of this Contract, the Contractor shall provide an Operation and Maintenance Plan for the Joint MRF within 30 days of the Operations Commencement Date. The Operation and Maintenance Plan shall, at a minimum, include the following information.

Section	Title	Subsection
1	Purpose	
2	Definitions	
3	Hours of Operation	
		Receiving
		Processing* (Transfer)
		Additional Shifts
		Holidays
4	Management Goals*	
5	Staffing	
		Titles and Number of Personnel by Title
		Job Descriptions
		Hiring Procedures/employee incentives
		Equal Employment Opportunity Policy
		Training Program
		Policies
		Safety Committee
6	Operations	
		Traffic Control Plan
		Backup Processing Plan
		Internal Controls
		Performance Guarantees
		Reporting Procedures
		Grounds and Off-site Debris Management
		Housekeeping Procedures
		Receiving Protocol/Load Inspection
		Processing Procedures
		Alternate Processing Plan* (Transfer)
		Residue/Reject Handling
		Grading Protocol for Contamination
		Marketable Recovered Material Quality
		Inventory and Bale Count Procedure*
		Tools and Equipment List
		Composition Analysis Protocol
		Mass Balance Analysis Protocol
		Environmental Controls Procedure

		Residue Analysis Protocol
		Marketable Recovered Material Analysis
		Performance and Throughput Testing Protocol*
		Storage Calculations
7	Storage	
8	Maintenance and Preventive Maintenance	
		Entity Equipment Maintenance Schedule and Tracking
		Contractor Equipment Maintenance Schedule and Tracking
		Building and Grounds
		Housekeeping Standards and Schedule
		Inspection Plan
		Spare Parts
		Audits
		Tools and Supplies
9	Sub-contracting Procedures	
10	Marketing Plan*	
		Guaranteed Floor Price(s)
		End Products, Markets and Price
		Material Shipment Process
11	Fire and Safety	
		Emergency Procedures
		Limited Use Elevator
		Fire Prevention and Training
		Safety Policy and Procedures
		Administration
		Hazardous Waste Handling
		Training
		Reporting
		Written Safety Manuals
12	City Relationship/Oversight	
13	Access	
		Management and City Staff
		Joint MRF Tours and Visitors (Public)
14	Communication	
		Employees Within Joint MRF
		With City
15	Records and Reports	ACR Sample Calculation
		Shared Revenue Sample Calculation
		Bypass Charge Sample Calculation
		Sample Reports
16	Forms	

SCHEDULE 7
ENTITY EQUIPMENT LIST

In accordance with **Sections 6.07 and 6.08**, Contractor shall maintain the following Entity Equipment List and associated CADD file, including the year equipment was installed, replaced or significantly updated:

Item	MFR	Model #	Description	Width	Length	HP	Quantity
1	BHS	MB-50	BHS Metering Bin Capacity: 50 cu. yd. (38 cu. m) Metering Bin Head Chute			25,2	1
2	BHS	CBI-72	System Infeed Chainbelt	72”	51’	20	1
3	BHS	LPSS-72	Pre-Sort Conveyor	72”	108’	10	1
6	BHS	LPST-60	Pre-Sort Residue Collection Conveyor	60”	48’	3	1
7	BHS	LPST-36	Pre-Sort Residue Transfer Conveyor	36”	33’	3	1
8	BHS	OCC98-11-10	BHS OCC Separator®	98”		7.5,7.5	1
10	BHS	WCScreen	BHS Debris Roll Screen® 84-15-15-7			5,5,7.5	1
11	BHS	LPSS-72	OCC QC Conveyor	72”	50’	3	1
12	BHS	LPSTC-72	OCC Unders Collection Conveyor	72”	44’	3	1
13	BHS	LPSTC-72	NS #1 Infeed Conveyor	72”	50’	3	1
14	BHS	NS132-24F	BHS NewSorter® #1	132”		7.5,7.5,5	1
16	BHS	LPSTC-72	NS #2 Infeed Conveyor	72”	40’	3	1
17	BHS	NS120-24F	BHS NewSorter® #2	120”		5, 7.5, 5	1
19	BHS	LPSTC-72	PS Infeed Conveyor	72”	60’	5	1
20	BHS	PS132-26F	BHS Polishing Screen	132”		7.5,7.5,5,3	1
22	BHS	LPST-48	NS #1 Overs Collection Conveyor	48”	23’	3	1
23	BHS	LPSS-60	News Post Sort Conveyor #1	60”	40’	3	1
24	BHS	LPST-48	NS #2 Overs Collection Conveyor	48”	22’	3	1
25	BHS	LPSS-60	News Post Sort Conveyor #2	60”	40’	3	1
26	BHS	LPSTC-42	PS Overs Collection Conveyor	42”	29’	3	1
27	BHS	LPST-36	PS Overs Transfer Conveyor	36”	48’	3	1
28	BHS	LPSS-48	Mixed Fiber Post Sort Conveyor	48”	37’	3	1
29	BHS	LPS-54	News Post Sort Reversing Conveyor #1	54”	8’	3	1
30	BHS	LPS-54	Mixed Fiber Post Sort Reversing Conveyor	54”	8’	3	1
31	BHS	LPS-54	News Post Sort Reversing Conveyor #2	54”	8’	3	1
32	BHS	LPST-72	OCC Reversing Leveling Conveyor	72”	68’	5	1
33	BHS	LPST-72	News Reversing Leveling Conveyor	72”	69’	5	1
34	BHS	LPST-72	Mixed Fiber Reversing Leveling Conveyor	72”	69’	5	1
38	BHS	LPSTC-36	Fiber Return Conveyor	36”	42’	3	1
39	BHS	LPST-42	Container Return Conveyor #1	42”	24’	3	1
40	BHS	LPST-42	Container Return Conveyor #3	42”	24’	3	1
41	BHS	LPST-42	Container Return Conveyor #2	42”	24’	3	1
42	BHS	LPST-36	Post-Sort Container Collection Conveyor	36”	35’	3	1
43	BHS	LPSTC-30	Container Collection Conveyor	30”	30’	3	1
44	BHS	HDPC-36	Container Transfer Conveyor #1	36”	28’	3	1
45	BHS	LPSS-30	Container Pre-Sort Conveyor	30”	55’	5	1

Item	MFR	Model #	Description	Width	Length	HP	Quantity
48	BHS	LPSTC-42	Container Transfer Conveyor #2	42”	37’	3	1
49	BHS	LPST-60	PET Infeed Conveyor	60”	12’	3	1
50	BHS	ACL-96	PET Accl Conveyor	96”	22’	10	1
52	BHS	CS-48	HDPE Infeed Conveyor	48”	29’	3	1
53	BHS	ACL-84	HDPE Accl Conveyor	84”	22’	10	1
55	BHS	LPSTC-48	HDPE Default Collection Conveyor	48”	19’	3	1
56	BHS	LPSTC-36	HDPE Default Transfer Conveyor	36”	19’	3	1
57	BHS	HDPC-48	Mixed Plastic Infeed Conveyor	48”	26’	3	1
58	BHS	ACL-72	Mixed Plastic Accl Conveyor	72”	22’	8	1
60	BHS	CS-48	AL Infeed Conveyor	48”	29’	3	1
62	BHS	LPSS-30	PET QC Conveyor	30”	47’	3	1
63	BHS	LPSS-30	AL QC Conveyor	30”	32’	3	1
64	BHS	LPSS-30	HDPE Sort Conveyor	30”	47’	3	1
65	BHS	LPSS-30	Mixed Plastic QC Conveyor	30”	33’	3	1
73	BHS	LPST-30	HDPE-N Collection Conveyor	30”	24’	3	1
81	BHS	LPST-24	AL Collection Conveyor	24”	32’	2	1
82	BHS	LPST-24	PET Collection Conveyor	24”	20’	2	1
83	BHS	LPST-24	Aseptic Collection Conveyor	24”	20’	2	1
84	BHS	LPSS-30	Residue QC Conveyor	30”	28’	3	1
85	BHS	LPST-30	Container Residue Conveyor	30”	62’	5	1
86	BHS	LPST-48	Container Residue Transfer Conveyor	48”	62’	5	1
87	BHS	LPST-48	Residue Collection Conveyor	48”	145’	10	1
88	BHS	LPST-30	Container Presort Residue Collection Conveyor	30”	24’	3	1
89	BHS	LPSTC-30	Third Sort Collection Conveyor	30”	32’	3	1
90	BHS	LPST-48	Residue Loadout Reversing Conveyor	48”	16’	3	1
92	BHS	HDS-48	Container Bunker Reversing Conveyor	48”	87’	8	1
93	BHS	CBH-72	Fiber Metering Baler Infeed Chainbelt	72”	101’	30	1
95	BHS	CBI-72	Baler Infeed Chainbelt #2	72”	93’	25	1
96	BHS	IC-36	DRS Unders Conveyor	36”	29’	3	1
97	BHS	ICC-36	DRS Unders Transfer Conveyor	36”	23’	3	1
98	BHS	ICC-36	Nihot Infeed Conveyor	36”	44’	3	1
100	BHS	PDG-CB	Glass Diverter Gate			1	1
110	BHS	LPST-48	Bypass Collection Conveyor	48”	51’	5	1
111	BHS	LPSTC-48	Bypass Transfer Conveyor	48”	57’	5	1
114	BHS	LPSTC-48	Residue Collection Conveyor	48”	83’	8	1
35	BHS	KWF	OCC Walking Floor			20	1
36	BHS	KWF	Mixed Fiber Walking Floor			20	1
37	BHS	KWF	News Walking Floor			50	1
46	BHS	SE-7422-SC2	Container Electromagnet	48”		3,10	1
51	BHS	SpydIR-96T	PET NRT SpydIR™ T Up Eject	96”		0.5	1
54	BHS	SpydIR-84R	HDPE NRT SpydIR™ Up Eject	84”		0.5	1
59	BHS	SpydIR-72R	Mixed Plastic NRT SpydIR™ Up Eject	72”		0.5	1
61	BHS	ECSCM100	Container line ECS	40”		2,2	1
66	BHS	CLS-24	PET Leveling Screw Conveyor			3	1
67	BHS	CLS-24	HDPE-C Leveling Screw Conveyor			3	1

Item	MFR	Model #	Description	Width	Length	HP	Quantity
68	BHS	CLS-24	HDPE-N Leveling Screw Conveyor			3	1
69	BHS	CLS-24	Mixed Plastic Leveling Screw Conveyor			3	1
70	BHS	CLS-24	AL Leveling Screw Conveyor			3	1
71	BHS	CLS-24	Aseptic Leveling Screw Conveyor			3	1
72	BHS	CLS-24	FE Leveling Screw Conveyor			3	1
74	BHS	KWF	PET Walking Floor			20	1
75	BHS	KWF	HDPE-C Walking Floor				1
76	BHS	KWF	HDPE-N Walking Floor				1
77	BHS	KWF	Mixed Plastic Walking Floor				1
78	BHS	KWF	AL Walking Floor				1
79	BHS	KWF	FE Walking Floor				1
80	BHS	KWF	Aseptic Walking Floor				1
99	BHS	SDS 650-C XL	Nihot SDS			15,4,3,2,1.	1
101	BHS	SCCON	Leveling Screw Conveyor			3	1
103	BHS	FCS-3-8-25HP	Post Sort Film Collection			25,7.5	1
105	BHS	CR	Control Room			10	1
106	BHS	ACP-350-TAS	Air Compressor			75	1
109	BHS	80TR10HEI-SYS	Dust Collector	14”		2,30	1
5	BHS	PLAT-ST>16	Pre-Sort Platform Plated Walls Push Walls				1
9	BHS	PLAT-OCC	OCC Structure & Platforms Walkway Standard Landing Stairs				1
15	BHS	PLAT-NS-PS-P&S	Walkways and stairs				1
18	BHS	PLAT-NS-PS-P&S	Walkways and stairs				1
21	BHS	PLAT-NS-PS-P&S	Walkways and stairs				1
47	BHS	ST-MAG-SS	Container Line Magnet Structure				1
91	BHS	LBB	Post-Sort Platform				1
102	BHS	ST-VS	Glass Loadout Structure				1
104	BHS	PLAT-RAS	RAS Support Structure				1
105	BHS	PLAT-WW	Screen Line Access Walkway				1
107	BHS	LBB	Container Line Platform				1
108	BHS	ST-SDS	SDS Platform				1
112	BHS	PBGw-H	Container Bunker Conveyor Gate #1				1
113	BHS	PBGw-H	Container Bunker Conveyor Gate #2				1
120	BHS		Control System				
121	BHS		SCADA System				
201	VDBC	HBC120S	Fiber baler	38’-7”	8’-2”	120	
202	IB	TR12-T100HP	Automatic auto-tie 2 ram baler			100	
203	CPG		Film Compactor			3	
204			Camera system with DVR				
205			Maintenance equipment				
206			Safety equipment - eye wash stations, signage, air monitors				

SCHEDULE 8
EQUIPMENT REPLACEMENT PLAN

In accordance with **Sections 6.07 and 6.08** and IGA Section III, the Contractor shall cooperate with the Entity on preparing and updating an Equipment Replacement Plan, which shall be approved by the Entity.

		Replacement	Life	Escalator	1	1.04	1.07	1.11	1.15	1.19	1.23	1.27	1.32	1.36	1.41	1.46	1.51
		Cost		Year	1	2	3	4	5	6	7	8	9	10	11	12	13
Conveyors																	
2	Chain belt	$ 20,400	7								25,077						
3	Slider bed	$ 32,876	3				35,218			39,047			43,292			47,998	
6	Slider bed	$ 12,176	3				13,044			14,462			16,034			17,777	
7	Slider bed	$ 5,023	3				5,380			5,965			6,614			7,333	
11	Slider bed	$ 15,220	5						17,466								
12	Slider bed	$ 13,394	3				14,348			15,908			17,637			19,555	
13	Slider bed	$ 15,220	4					16,875				19,365				22,221	
16	Slider bed	$ 12,176	4					13,500				15,492				17,777	
19	Slider bed	$ 18,265	4					20,250				23,238				26,666	
22	Slider bed	$ 4,668	4					5,175				5,938				6,815	
23	Slider bed	$ 10,147	3				10,870			12,051			13,362			14,814	
24	Slider bed	$ 4,465	4					4,950				5,680				6,518	
25	Slider bed	$ 10,147	3				10,870			12,051			13,362			14,814	
26	Slider bed	$ 5,150	4					5,709				6,552				7,518	
27	Slider bed	$ 7,306	4					8,100				9,295				10,666	
28	Slider bed	$ 7,509	3				8,044			8,918			9,888			10,963	
29	Slider bed	$ 1,826	3				1,957			2,169			2,405			2,667	
30	Slider bed	$ 1,826	3				1,957			2,169			2,405			2,667	
31	Slider bed	$ 1,826	3				1,957			2,169			2,405			2,667	
32	Slider bed	$ 20,700	4					22,950				26,336				30,221	
33	Slider bed	$ 21,004	4					23,288				26,723				30,665	
34	Slider bed	$ 21,004	4					23,288				26,723				30,665	
38	Slider bed	$ 6,393	4					7,088				8,133				9,333	
39	Slider bed	$ 4,262	3				4,565			5,062			5,612			6,222	
40	Slider bed	$ 4,262	3				4,565			5,062			5,612			6,222	
41	Slider bed	$ 4,262	3				4,565			5,062			5,612			6,222	
42	Slider bed	$ 5,327	3				5,707			6,327			7,015			7,777	
43	Slider bed	$ 3,805	3				4,076			4,519			5,011			5,555	
44	Slider bed	$ 4,262	3				4,565			5,062			5,612			6,222	
45	Slider bed	$ 6,976	3				7,473			8,285			9,186			10,185	
48	Slider bed	$ 6,570	3				7,038			7,803			8,652			9,592	
49	Slider bed	$ 3,044	3				3,261			3,615			4,008			4,444	
50	Acceleration	$ 11,162	3				11,957			13,257			14,698			16,296	
52	Slider bed	$ 5,885	3				6,304			6,990			7,750			8,592	
53	Acceleration	$ 9,766	3				10,462			11,599			12,861			14,259	
55	Slider bed	$ 3,856	3				4,130			4,580			5,077			5,629	
56	Slider bed	$ 2,892	3				3,098			3,435			3,808			4,222	
57	Slider bed	$ 5,276	3				5,652			6,267			6,948			7,703	
58	Acceleration	$ 8,371	3				8,967			9,942			11,023			12,222	
60	Slider bed	$ 5,885	3				6,304			6,990			7,750			8,592	
62	Slider bed	$ 5,961	3				6,386			7,080			7,850			8,703	
63	Slider bed	$ 4,059	3				4,348			4,821			5,345			5,926	
64	Slider bed	$ 5,961	3				6,386			7,080			7,850			8,703	
65	Slider bed	$ 4,186	3				4,484			4,971			5,512			6,111	
73	Slider bed	$ 3,044	3				3,261			3,615			4,008			4,444	
81	Slider bed	$ 3,247	3				3,478			3,856			4,276			4,741	
82	Slider bed	$ 2,029	3				2,174			2,410			2,672			2,963	
83	Slider bed	$ 2,029	3				2,174			2,410			2,672			2,963	
84	Slider bed	$ 3,551	3				3,804			4,218			4,677			5,185	
85	Slider bed	$ 7,864	3				8,424			9,340			10,355			11,481	
86	Slider bed	$ 12,582	3				13,478			14,944			16,568			18,370	
87	Slider bed	$ 29,426	3				31,522			34,949			38,749			42,961	
88	Slider bed	$ 3,044	3				3,261			3,615			4,008			4,444	
89	Slider bed	$ 4,059	3				4,348			4,821			5,345			5,926	
90	Slider bed	$ 3,247	3				3,478			3,856			4,276			4,741	
92	Slider bed	$ 17,656	3				18,913			20,969			23,249			25,777	
93	Chain belt	$ 40,400	8									51,400					
94	Chain belt	$ 30,000	8									38,168					
95	Chain belt	$ 37,200	8									47,329					
96	Idler	$ 4,414	5						5,065					6,016			
97	Idler	$ 3,501	5						4,017					4,771			
98	Idler	$ 6,697	5						7,685					9,127			
110	Slider bed	$ 10,350	3				11,087			12,292			13,629			15,111	
111	Slider bed	$ 11,568	3				12,391			13,739			15,232			16,888	
114	Slider bed	$ 16,844	3				18,044			20,005			22,180			24,592	

Screens/ separators														-				
8	OCC Screen	$ 30,000	10											40,887				
10	DRS	$ 50,000	10											68,145				
14	ONP1	$ 37,500	10											51,109				
17	ONP2	$ 37,500	10											51,109				
20	Polishing	$ 37,500	10											51,109				
46	Electromagnet	$ 25,000	10											34,072				
61	ECS	$ 35,000	10											47,701				
99	Nihot Separator	$ 75,500	10											102,899				
Walking Floors																		
35	OCC	$ 27,000	10											36,798				
36	Mixed Fiber	$ 27,000	10											36,798				
37	News	$ 27,000	10											36,798				
74	PET	$ 27,000	12													39,419		
75	HDPEc	$ 27,000	12													39,419		
76	HDPEn	$ 27,000	12													39,419		
77	Mixed plastic	$ 27,000	10											36,798				
78	Al	$ 27,000	12													39,419		
79	Fe	$ 27,000	12													39,419		
80	Aseptic	$ 27,000	12													39,419		
Leveling Screws																		
66	PET	$ 10,000	10											13,629				
67	HDPEc	$ 10,000	10											13,629				
68	HDPEn	$ 10,000	10											13,629				
69	Mixed plastic	$ 10,000	10											13,629				
70	Al	$ 10,000	10											13,629				
71	Aseptic	$ 10,000	10											13,629				
72	Fe	$ 10,000	10											13,629				
101	SCCON	$ 10,000	10											13,629				
Optical Sorters																		
51	PET 96"	$ 45,000	10											61,330				
54	HDPE 84"	$ 45,000	10											61,330				
59	Mixed plastic 72"	$ 45,000	10											61,330				
Motors/gearboxes		$ 15,000	1		15,000	15,525	16,068	16,631	17,213	17,815	18,439	19,084	19,752	20,443	21,159	21,900	22,66	
Other																		
1	Metering Bin	$ 40,000	6							47,507						58,399		
100	Glass diverter	$ 12,500	3				13,390			14,846			16,460			18,250		
103	Film collection	$ 50,000	6							59,384						72,998		
106	Air compressor	$ 25,000	6							29,692						36,499		
109	Dust Collector	$ 30,000	10											40,887				
	Platforms/structures	$ 1,200,000	30															
	Electrical Controls	$ 45,000	1		45,000	46,575	48,205	49,892	51,639	53,446	55,316	57,253	59,256	61,330	63,477	65,699	67,99	
	SCADA System																	
	Mechanical Installation																	
	Electrical Installation																	
	Engineering																	
	Project Management																	
	Commissioning																	
	Testing																	
	Freight																	
Balers																		
	Fiber Baler re-line	$ 40,000	5						45,901					54,516				
	Container re-line	$ 25,000	3				26,781			29,692			32,920			36,499		
	Wire tiers	$ 90,000	5						103,277					122,661				
	Hydraulic	$ 25,000	5						28,688					34,072				
Other Stationary Equipment																		
	Film compactor	$ 16,500	7								20,283							
	Scale	$ 15,000	10											20,443				
	Sort Cabins	$ 5,000	5						5,738					6,814				
	Fuel station	$ 1,000	10											1,363				
	Cameras	$ 15,000	10											20,443				
	Dock levelers	$ 27,500	5						31,557					37,480				
	Truck locks	$ 18,000	7								22,127							
	Roll up doors	$ 358,000	15															
	Siding	$ 8,000	1		8,000	8,280	8,570	8,870	9,180	9,501	9,834	10,178	10,534	10,903	11,285	11,680	12,08	
	Sprinklers	$ 9,500	1		9,500	9,833	10,177	10,533	10,901	11,283	11,678	12,087	12,510	12,948	13,401	13,870	14,35	
	Ventilators	$ 108,500	15															
	Tip floor	$ 125,000	8									159,035						
	Parking lot	$ 125,000	8									159,035						
	Escalation - 3.5%			**Annual Spend**	$ 77,500	$ 80,213	$ 490,966	$ 237,099	$ 338,327	$ 680,927	$ 162,753	$ 727,044	$ 603,523	$ 1,351,465	$ 109,321	$ 1,272,614	$ 117,10	
				Fund Balance	$ 401,300	$ 809,464	$ 816,641	$ 1,087,648	$ 1,267,590	$ 1,115,297	$ 1,491,751	$ 1,314,698	$ 1,272,166	$ 492,911	$ 967,244	$ 289,958	$ 780,08	
				Tonnage growth	2.0%													
				Tons inbound	60,000	61,200	62,424	63,672	64,946	66,245	67,570	68,921	70,300	71,706	73,140	74,602	76,09	

SCHEDULE 9
CONTRACTOR MARKETING REQUIREMENTS

The Contractor shall have, at a minimum, the following marketing responsibilities:

- Develop a Marketing Plan and submit for approval by the Entity within 30 days prior to commencement of operations of the Joint MRF. The plan shall:
    - Obtain highest net prices for Marketable Recovered Materials from markets that will prove beneficial to the project relative to revenues and consistency of sales, service and payment.
    - Provide for materials shipment process, including methods to invoice buyers for payment of Processed materials shipped.
    - Identify opportunities to expand accepted items.
    - Identify, develop and contract for stable, long-term market arrangements.
    - Identify new and emerging markets, especially in the Midwest region.
    - Secure domestic and export end markets, provide planned end markets for each commodity, provide and follow required end market commodity specifications.
- Transport all processed materials to markets.
- Provide monthly market reports to City.
- Provide annual report of end markets and market conditions.

SCHEDULE 10
APPROVED THIRD PARTY PROCESSING CONTRACTS

The following Third Party Processing contracts have been approved by the Entity under **Section 6.13** of this Contract.

Contract Execution Date	Third Party Name	Contract Term (years)	Estimated Annual Tonnage	3rd Party Processing Fee ($/ton)		Shared Revenues (%)			Equipm Repair Replace Fund Contrib ($/to
				Contractor (total)	Entity Share	3rd Party	Contr.	Entity	
March __, 2014	Advanced Disposal Systems	7 yrs.	15,000 Tons	$41/ton	$2/ton	75%	20%	5%	$8/to

SCHEDULE 11
CITY MATERIALS RECOVERY FACILITY CONSTRUCTION PROJECT

CITY OF MILWAUKEE, WISCONSIN

DEPARTMENT OF PUBLIC WORKS

INFRASTRUCTURE SERVICES DIVISION

_____

PROJECT MANUAL

GOVERNING THE

City of Milwaukee Materials Recovery Facility Construction Project

1313 West Mt. Vernon Avenue
Milwaukee, Wisconsin 53233

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Article I: General Conditions

Section 1.01: Department of Public Works General Conditions

1. Contracting Officer

The contracting officer shall be the Commissioner of Public Works of the City of Milwaukee hereinafter referred to as Commissioner.

General Specifications:

Provisions of the Department of Public Works General Specifications dated January 31, 1992, and subsequent addenda except as may be modified or expanded upon in this project manual, shall apply to all contractors and subcontractors working on the Project. Copies of the General Specifications may be obtained from the Department of Public Works General Office, Room 501 Zeidler Municipal Building, 841 North Broadway, Milwaukee, Wisconsin, or from the Infrastructure Services Division, Room 602, Zeidler Municipal Building.

2. Additional Definitions Unique to this Schedule 11:

A. Addenda: Written or graphic instruments issued prior to the execution of the contract which modify or interpret the bidding documents, including drawings and project manual by additions, deletions, clarifications or corrections. Addenda will become part of the contract documents when the contract is executed.

B. Adjustment Date: June 1, 2014.

C. Project Drawings: Drawings of the work to be done as listed hereafter in Attachment 1 Technical Specifications and Attachment 2 Drawing Schedule.

D. Facilities Manager: The Facilities Manager of the Infrastructure Services Division.

E. MRF: The "Joint MRF" per Section 2.01 of the Contract.

F. Owner: City of Milwaukee.

G. Project: Project means the construction of the MRF and all related work specifically under this Schedule 11.

H. Project Inspector: The authorized representative of the Commissioner assigned to make detailed inspection of any or all portions of the work and materials thereof. These inspections are not a

substitute to those required by the Department of Neighborhood Services for permit and code compliance.

I. Substantial Completion or Operating Condition means completion of the project sufficient to commence operations (but prior to completion of punchlist items or final testing and acceptance) as evidenced by delivery by the contractor to the City the of “Certificate of Substantial Completion” and, to the extent required for operations, the “Certificate of Occupancy.”

J. Working Day: A working day shall be any calendar day where, in the opinion of the Commissioner or his duly authorized representative, it is reasonable for the Contractor to start and continue work, except that unless the Contractor actually starts and continues work on days of inclement weather, Saturdays, Sundays, and nationally-recognized legal holidays, such days shall not be considered as working days.

3: Terms Generally

The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation," except as the context may otherwise require. The words "agree," "contract," "approval" and "consent" shall be deemed to be followed by the phrase "which shall not be unreasonably withheld or unduly delayed" except as the context may otherwise require.

4: Notices Generally

Unless specifically provided elsewhere in this Schedule, at least fifteen (15) Days prior written notice shall be required to be given by one Party to the other Party of any breach of this Schedule by the other Party of or failure to fulfill any requirement of this Schedule, in order to allow the Party receiving the notice to cure the breach, or to commence and diligently pursue the cure of the breach which cannot reasonably be cured during the fifteen-Day period, or to allow the Party time to prepare for, question or contest the fact that any requirement of this Schedule has not been fulfilled.

5: References

Except as otherwise indicated, all references to sections and articles are to sections and articles of this Project (Schedule 11).

6. Control of Work and Materials:

A. Detail and Shop Drawings: Shop drawings and other additional drawings may be required for the new construction work; however, no shop drawings or other submittals shall be required for the MRF equipment (although general arrangement diagrams showing the layout of such equipment will be provided). Shop drawings for new construction work shall

be prepared by the Contractor as and to the extent set forth in Attachment 1 Technical Specifications. Prints shall be the same size as contract documents when practical. Prints of each drawing shall be submitted to the Facilities Manager for approval before proceeding with the work. Changes ordered by the Facilities Manager shall be made and revised prints submitted as above. The Facilities Manager's approval of drawings shall not relieve the contractor of responsibility for errors.

B. Primary Lines and Grades: The City of Milwaukee will mark two building corners along a line and will establish a benchmark, with a relative elevation, within close proximity to the site. Once established by the City, the contractor shall preserve all points and benchmark as long as needed during construction. The contractor will bear all costs associated with re-establishing points and benchmark.

C. Construction Lines and Grades: The contractor must bear sole responsibility for the correct transferal of all construction lines and grades from the primary lines and grades points. He shall take such measurements from existing work as may be necessary to insure the proper construction of his work.

F. Consignment and Delivery of Materials: The materials for the work shall be the responsibility of the contractor and he shall be responsible for the delivery of all materials required for the completion of the contract.

7. Samples and Tests:

A. Method of Sampling: Samples of the materials proposed or furnished for the new construction work may be taken by the Commissioner at any time at the point of manufacture, point of delivery or site of work; however, no samples shall be taken or required for the MRF equipment. Samples for the new construction work will be selected, as far as practicable, in accordance with standard methods of sampling such materials as specified in the standard of the American Society for Testing Material. All sampling shall be done by authorized representatives of the Commissioner. Selections will be in an orderly and systematic manner, insuring samples representative of the lot.

B. A.S.T.M. Standards: Wherever the abbreviation A.S.T.M. is used in connection with the number of a standard specification, the specification referred to shall be the Standard of the American Society for Testing Materials, designated by that number, including all revisions in effect on the date of award of the contract. Should a revised or amended standard be issued by the American Society for Testing Materials which, in the opinion of the Commissioner, conflicts with or causes undesirable changes in the standards referred to

herein, the Commissioner reserves the right, by means of addenda to the project manual, to continue under the provisions of the pertinent standard referred to herein.

C. Cost of Test Specimens and Samples: All test specimens of metals and all samples of non-metals required for tests shall be performed by consultants engaged by, and paid by, the City.

D. Costs of Tests: All tests on test specimens of metals shall be performed by consultants engaged by, and paid by, the City. In all cases, the testing procedure will be in accordance with Standard A.S.T.M. tests for such materials. Subsequent tests of non-metals requested by the contractor, when such tests are permitted by A.S.T.M. Specifications and approved by the Commissioner or subsequent tests ordered by the Commissioner will be made at the expense of the contractor.

8. Project Coordination:

A. Contractors are required, so far as possible, to arrange work and to dispose of materials so as not to interfere with the work or storage of materials of other contractors or City forces engaged upon the work.

B. Contractors shall give full cooperation to other trades and furnish any information necessary to permit the work of all trades to be installed satisfactorily and with the least possible interference or delay.

C. Where the work of a contractor will be installed in close proximity to the work of other trades, or where there is evidence that the work of a contractor will interfere with the work of other trades, he shall assist in working out space conditions to make satisfactory adjustments.

D. If a contractor installs work before coordinating it with other trades or so as to cause interference with work of other trades, he shall make necessary changes in his work to correct the condition without extra charge.

E. Contractors are required to join their work to that of others in a proper manner, and in accordance with the spirit of the plans and project manual, and to perform the work in the proper sequence in relation to that of other contractors, and as may be directed by the Project Inspector.

9. Supervision of Work:

A. Contractors shall furnish the services of an experienced engineer or superintendent.

B. He shall be constantly in charge of the installation of the work together with all subcontractors, skilled workers, helpers, and labor required to unload, transfer, erect, connect up, adjust, start, operate and test each system.

C. He shall be thoroughly acquainted with and be responsible for the various subcontractors' work so that it is properly coordinated and supervised to the satisfaction of the Commissioner of Public Works or his representative.

D. Upon written notice to a contractor of the lack of such coordination and supervision, the Commissioner of Public Works may authorize such services as may be required and deduct the cost of this service at an hourly rate of $60.00 per hour per worker from the contract for the work.

10. Technical Specifications and Drawings:

A. Governing order of Contract Documents:

1. The following provision modifies DPW General Specifications Item 2.1.3.1:

Anything mentioned in the Attachment 1 Technical Specifications and not shown on the drawings or shown on the drawings and not mentioned in the Technical Specifications, shall be as if shown on or mentioned in both. In case of difference between drawings and Technical Specifications, the Technical Specifications shall govern. In case of any discrepancy in drawings or Technical Specifications, the matter shall be immediately submitted to Infrastructure Services Division for decision. Said discrepancy shall not be adjusted by the contractor.

B. All contractors shall have complete sets of plans and project manuals on the job site at all times.

11. Safety Regulations:

All work shall be done in accordance with the safety requirements referenced in the International Building Code, as adopted and amended by the State of Wisconsin and OSHA.

12. Code Rules:

The rulings, regulations and laws of the following shall be complied with in the completion of this project:

International Building Code, as amended and adopted by the State of Wisconsin
Plumbing and Drainage Codes of the City of Milwaukee
Ordinances of the City of Milwaukee
National Board of Fire Underwriters
OSHA
NFPA
FAA
NEC
IEEE
UL

Rev. 3/04

Section 1.02: Inspection Charges

The Contractor will be charged a fee for inspection for each and every day such inspection is required after the time allowed for completion has expired.

The amount of the fee for inspection shall be $325.00 per day.

The time allowed for completion is stated in Section 4.02 of this Schedule 11 and shall start with the date on the Notice to Proceed which will be sent to the Contractor directly following the signing of the contract. The time allowed includes the time required for fabricating and procuring material and doing the work at the building site.

The Contractor shall be charged for inspection provided by the City or by an agent for the City for each and every day inspection is required on all construction projects after the time allowed for completion has expired. This per diem rate for inspection, when provided by the City, shall include the cost of inspection, construction supervision, clerical, and administrative costs, traffic engineering, vacations, pensions, holidays, overtime, and other similar overhead charges. This charge for inspection will be deducted from monies due the Contractor at the completion of the contract. The amount of the per diem charge shall be set forth in the Bureau Specifications.

An inspector shall be assigned to the project upon notice from the Commissioner to the Contractor to start work. Inspections chargeable to the Contractor under this Section shall be made when required to confirm completion of all or an agreed portion of the work,

Section 1.03: Prevailing Wage Scale

ALL CONTRACTS SUBJECT TO PREVAILING WAGE LAWS AWARDED BY THE DEPARTMENT OF PUBLIC WORKS ARE SUBJECT TO THE PREVAILING WAGE RATES IN ATTACHMENT 11, AS MAY BE AMENDED BY THE STATE OF WISCONSIN.

CONTRACTORS ARE REQUIRED TO UTILIZE THE WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT'S "DICTIONARY OF OCCUPATIONAL CLASSIFICATIONS AND WORK DESCRIPTIONS" TO DETERMINE THE APPROPRIATE JOB CLASSIFICATIONS AND WAGE RATES FOR THEIR EMPLOYEES. THIS DOCUMENT CAN BE FOUND ON THEIR WEBSITE AT DWD.WISCONSIN.GOV; TYPE "DICTIONARY" IN THE SEARCH BOX.

Section 1.04: Performance Bond and Payment Bond

For all Public Works contracts over $25,000, the contractor is to submit to the Commissioner, prior to or at the time of execution of the contract, a performance bond and a payment bond in the form provided by the City in Attachment 9 in an amount equal to 100% of the Contract price. For contracts of $10,000 or more, but not over $25,000, the contractor may be requested, in lieu of 100% bonds, to provide an irrevocable letter of credit or a performance bond and a payment bond in an amount equal to 50% of the contract price. The bonds required on any contract will be based on the estimated contract amount and will be specified in the bid specifications. All bonds must be executed by a surety company authorized to do business in the State of Wisconsin and must be accompanied by a Power-of-Attorney for the Attorney-in-Fact. The performance bond and the payment bond must be submitted as separate instruments. The performance bond shall also cover all work required under the guarantee provisions of the contract.

Section 1.05: Assignments and Subletting

Any subcontracting of this agreement is mutually recognized by all parties only to the extent of its approval and acceptance by the Commissioner at the time of the award of this contract. The Contractor shall not subsequently assign this contract or any interest therein, nor subcontract the work or any part thereof, without written consent of the Commissioner having first been obtained. Prior to execution of the Contract, the Contractor shall submit a list of manufacturers for approval by the Commissioner as subcontractors. If the Contractor submits subsequent written request to the Commissioner for substitution(s) of listed subcontractor(s), the Contractor shall give the Commissioner written assurance that the Contractor will save the City harmless from any damages which may arise from litigation between the original subcontractor(s) and the Contractor as a result of such substitution(s). The decision of the Commissioner shall be final in determining consent for said substitution(s). It is incumbent upon the Contractor to notify the Surety of such consent granted by the Commissioner for said substitution(s), or as permitted under this Schedule.

If the Contractor shall so assign or subcontract without such consent or as not permitted under this Schedule, the Commissioner shall have the right to rescind this contract and to declare the same null and

void or to re-let the work to some other competent party, thereupon adjusting and determining the damages to the City arising thereby, and the Contractor shall be liable to the City for such damages as the Commissioner shall so adjust and determine, which adjustment and determination thereof, shall be final and conclusive on the parties thereto.

The Contractor assumes full liability for all acts and omissions of any subcontractor or of anyone employed directly or indirectly by either said Contractor or any subcontractor or activities, and this liability shall be in addition to any other legal liability of the Contractor. Neither the approval nor endorsement of the Commissioner nor anything contained in the contract documents shall be construed as creating any contractual relationship between any subcontractor and the City.

Consent to the assignment or subletting of this contract or of any part thereof or any alterations which may be made in the terms of this contract or in the work to be done under it or the granting of any extension of time for the performance of the contract or any other forbearance on the part of either the Commissioner or Contractor to the other shall not in any way release the Contractor or Surety or their heirs, executors, administrators, successors, or assigns from their liability hereunder.

The Contractor, to the extent practicable, shall maintain a list of all subcontractors and suppliers performing work or furnishing materials under each formal contract. This list must be submitted to the Commissioner upon request.

Section 1.06: Liens and Taxes

Any and all taxes and license or permit fees imposed by the Federal, State, and local municipalities are the sole responsibility of the Contractor. Any and all liens or claims of damages which may be chargeable to the Contractor are the sole responsibility of the Contractor. Commissioner reserves the right to withhold a sufficient amount from the contract payment to indemnify the City against such liens or claims of damages.

No materials or supplies for the work shall be purchased by the Contractor or by any subcontractor subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.

Article II: General Requirements

Section 2.01: Summary of Work:

1. Project Description:

The Project will replace the existing City of Milwaukee dual-stream processing system with a Single-Stream Processing system (Joint MRF) and will provide related property improvements. The Contractor shall be responsible for final design, construction, installation, documents, approvals, and permitting, as well as soliciting proposals/bids for the construction of the site and building improvements. Work must accommodate Owner's occupancy requirements.

Capital

The City will fund identified and agreed upon capital costs for the items listed in Attachment 1 and as described below. The Contractor will fund the capital for and maintain ownership of all Rolling Stock associated with the MRF.

Equipment and Rolling Stock Standards

The Contractor shall design, build, and construct all Entity Equipment and City equipment and the City shall purchase all Entity Equipment and City equipment as outlined in Attachment 1. All Rolling Stock shall be suitable for use. The completed system shall be capable of achieving the Acceptance and Performance Standards under the conditions the MRF will be operated.

The Contractor shall provide as-built Computer-Aided Drafting and Design (CADD) files showing all equipment and positions within the building at the MRF and all final construction drawings.

Exclusions from Work

Refer to Attachment 12 for Work not included in the scope of this Project (Schedule 11) unless added pursuant to Article IX, Extra Work and Credits.

2. Work by Others:

A. Not Applicable

3. Scheduling of Work:

A. The contractor shall provide a construction schedule as required in Section 6.03 which includes all phases of construction, indicating the anticipated start and completion times for

each of those phases. The contractor shall provide that complete schedule at the Pre-Construction Meeting arranged by the City.

B. All work, unless otherwise specifically approved or permitted hereunder, is to be done during normal working hours.

C. Contractor must notify the City 48 hours in advance before starting work.

D. The contractor shall sign in and identify all personnel working at the site on a daily basis with the supervisor in charge at the site. All personnel leaving the site will sign out prior to departure.

E. Shut downs of any equipment and connections to any equipment must be arranged in advance with the Project Inspector from Infrastructure Services Division. Power outages must be scheduled for Saturdays where practical.

F. Dispose of all removed materials in legal manner.

G. The contractor shall provide a construction schedule which includes all phases of construction. The contractor shall provide that complete schedule at the Pre-Construction Meeting arranged by the City.

H. Project Total working days does not include submittals and submittal approval, acquisition and preparation of materials, and work off-site.

4. Use of Premises:

A. General: Contractor shall have limited use of premises for construction operations.

B. Use of Site: Contractor is required to submit proposed site use plan to Owner for approval.

i. Owner occupancy: Allow for Owner occupancy of Project site. Accommodate City use of site and on-going transfer operations of Recyclable Material from beginning of Project work until the Operations Commencement Date.

ii. Include proposed dumpster storage locations and proposed truck loading and unloading locations.

C. Use of Building: Maintain existing building in a weather-tight condition throughout construction period, except for pre-existing building conditions and except as otherwise required to perform the work. Repair damage caused by construction operations. Take reasonable steps to protect building and its occupants during construction period.

5. Owner's Occupancy Requirements:

Owner (including its agents and contractors) will occupy the premises during the entire construction period. This includes the City's operator contracted to receive and transfer Recyclable Material and maintain the existing building. Within the building, the northwest corner is the most regularly and intensively used area of occupancy. Cooperate with the Owner during construction operations to minimize conflicts and facilitate Owner usage. Perform the Work so as not to interfere with Owner's operations. Provide not less than 72 hours' notice to Owner of activities that will affect Owner's operations.

6. Work Restrictions:

A. On-site Work Hours: Work generally shall be performed during normal business working hours of 7 a.m. to 6 p.m., Monday through Friday, unless otherwise agreed to by Owner.

B. Work that is potentially disruptive to the owner shall take place between the hours of 4 p.m. to 7 a.m., or on Saturday, and requires notification of the Owner.

C. Existing Utility Interruptions: Do not interrupt utilities serving facilities occupied by Owner or others unless permitted under the following conditions and then only after arranging to provide temporary utility services according to requirements indicated:

i. Endeavor to notify Owner not less than 7 calendar days in advance of proposed utility interruptions (unless such interruption is shown on a schedule delivered to Owner.

ii. Do not proceed with utility interruptions without Owner's permission.

D. If Contractor requests approval to perform work on hours other than those set forth in Section 6.A above, and the Owner rejects Contractor's request, the delay attributable to Contractor's inability to work at such times beyond those set forth in Section 6.A above shall be deemed to be delays caused by an Uncontrollable Circumstance.

Section 2.02: Project Meetings

1. Pre-Construction Meeting:

A. Soon after the award of the contract and prior to the start of construction, the contractor shall attend a pre-construction conference with representatives of the City.

B. The contractor shall have at the meeting responsible representatives from subcontractors who are to perform major work on the project.

C. The purpose of the meeting is to discuss in detail the plans and specifications. The discussion shall include:

1. Schedule
2. Equipment
3. Material Storage
4. Traffic Control
5. Inspection Requirements
6. Protection Procedures for the structure, adjacent facilities, environment, and personnel.
7. Hours of Work

D. The Contractor shall submit the construction schedule to the engineering firm engaged and paid by the City to perform certain project administration and oversight services for the benefit of the City (the "Engineer") at this meeting and a listing of subcontractors and their work. The contractor shall describe, in detail, when each portion of the work is expected to be accomplished. The subcontractors shall participate in the discussion. The architect/engineer will serve to interpret the contract documents should such questions arise.

E. Any other questions that the contractor or his subcontractors have about the work or its scheduling shall be raised at these meetings.

F. Requirements for contract administration and construction operations will be defined for participants.

G. The architect/engineer will determine time, date, and place of the meeting.

2. Progress Meetings:

A. Bi-weekly meetings will be held for the purpose of coordinating and expediting the work.

B. Attendance at project meetings by the contractor is mandatory. The contractor shall submit an updated construction schedule at these meetings and a short narrative should be written, describing the cause of any delays and intended action to remedy these delays.

C. Contractor shall give a verbal report of progress on the project, discuss the work schedule for the coming period, and present all conflicts, discrepancies, or other difficulties for resolution.

Section 2.03: Submittals and Permits

1. Submittals:

A. Comply with the requirements of the General Conditions and as follows:

1. Shop drawings and other submittals may be required for the new construction work; however, no shop drawings or other submittals shall be required for the MRF equipment (although general arrangement diagrams showing the layout of such equipment will be provided). Forward Submittals when available. No work requiring submittals, as indicated on any shop drawing, samples, hardware list, etc., shall be started until those submittals have been reviewed and work authorized.

2. All submittals must be thoroughly reviewed by the Contractor for conformance to contract documents, prior to submission to the City, or its agents, for review. Shop drawings and catalog information shall be stamped "Reviewed By" and signed by the Contractor's reviewer. The Contractor shall review all subcontractor submittals prior to submittal to the City for compliance with contract documents and to coordinate all work.

3. Include with each submittal a transmittal letter signed and dated by the contractor containing the following:

a. Name of Contractor
b. Name of Project
c. List of Submittals
d. Name of Manufacturer or Supplier
e. Additional information as required for the items being provided.

B. Shop Drawings, Catalog Information, Calculations, and Samples:

1. Shop Drawings: Submit one blue/black line print review. The City will notify the contractor in writing and return one copy marked "REVIEWED - NO EXCEPTIONS TAKEN" with minor or no notations. The City will also notify the contractor in writing and return one copy, along with comments, when the drawings are marked either "REJECTED" or "REVISE AND RESUBMIT". For those shop drawings, the contractor will be responsible for resubmitting a new print.

2. Catalog Information and Calculations: Submit four copies for City's record and additional numbers of copies required for the contractor's purpose. The City will notify the contractor in writing and return the contractor's copies, with or without notation, marked either "REVIEWED - NO EXCEPTIONS TAKEN", "REVISE AND RESUBMIT", OR "REJECTED". Catalog information or calculations marked "REVISE AND RESUBMIT" or "REJECTED" must be resubmitted in the same quantities as originally required.

3. Samples: Submit two samples of requested materials for the City's records and additional samples, if desired, to be returned to the contractor. The City will notify the contractor in writing, whether the samples are approved or rejected. If they are rejected, new samples must be resubmitted as originally required.

4. Corrections or comments made on the submittals during the review do not relieve the contractor from compliance with requirements of the contract documents. The check is only for review of general conformance with the design concept of the project and general compliance with the information given in the contract documents. Contractors are responsible for conforming and correlating all quantities and dimensions; selecting fabrication processes and techniques of construction; coordinating their work with that of all other trades; and performing their work in a safe manner.

C. "Or Equal": Whenever the words "or equal" or similar term is used, it shall mean as determined by the Commissioner of Public Works or agent. All drawings, data and bulletins necessary to make an "or equal" determination shall be submitted to the Facilities Manager of INFRASTRUCTURE SERVICES SECTION. Such review shall apply to design only and shall in no way relieve the contractor from the responsibilities as outlined in Item 2B above. Evaluation of "or equal" products will be made at the time of shop drawing submission. Any change required in design and coordination between all contractors, subcontractors, or trades due to the use of "or equal" materials shall become the contractor's responsibility. Any costs for detailed engineering reviews and/or any costs to incorporate "or equal" products will be borne by the Contractor, subject to Article IX of this Schedule, as a Development Cost (but subject to the GMP).

2. Permits:

A. The Contractor shall prepare all applications for and shall apply for, but the Owner will pay for (outside of the GMP), the general building and occupancy permits.

B. Contractors shall obtain, from the City of Milwaukee Department of City Development and/or other government or private agencies, all special permits as may be necessary in their work.

C. Contractors shall obtain all permits to occupy or work in the public way as may be necessary for their work.

D. Contractors shall notify the City and/or appropriate utilities when making utility connections as part of the project.

3. Inspection:

A. INFRASTRUCTURE SERVICES DIVISION will provide daily inspection to verify compliance with contract documents, identify contractors and crews on the job, verify compliance with contract conditions (EBE, residency, wage requirements), and record job progress and conditions.

B. Contractors shall arrange with the Department of Neighborhood Services/Construction Trades Division and permit issuing agencies for all code compliance inspections as required by all permits including, but not limited to, the general building and all special permits issued by that agency.

C. Contractors shall arrange with the appropriate City agency for compliance inspections, as required, for all permits including, but not limited to, curb and pavement cuts and patches, and public way occupancy and utility connections.

Section 2.04: Job Site Utilities, Facilities and Security

1. Building Security:

A. General

1. Buildings are not generally open to the public. Contracted work in these buildings can take place at any time. It is essential that contractors understand and abide by security policy.

B. Scope

At the beginning of any project, a copy of this policy and procedure statement will be added to specifications for bid consideration and shall be distributed at the pre-construction meeting. All contractors and all sub-contractors shall be held responsible for following the procedures.

C. Contractors

Contractors shall abide by City Security Policy and Procedures at all times during the scope of their participation in a project. Failure to comply will result in the contracted employee being escorted from the premises.

1. All access should be arranged in advance through the Engineer or other City representative. Contractors shall enter and exit only through those doors designated by Engineer or other City Representatives.

2. Contractors will sign in on pre-approved forms and also wear City issued identification badges (in the City Hall Complex).

3. If after hours work is required in the outlying buildings, all subcontractors and trades will arrange appropriate security and lock-up procedures with the contractor, in advance and in writing to the satisfaction of the Engineer or other City representative. Any work completed at night shall be left “open” for City inspection of the work. The contractor shall notify the Engineer or other City representative 24 hours in advance of after-hours work in writing, indicating the type of work to be done and the security measures to be taken by the contractor.

4. The Contractor is responsible to maintain the security of the space they are working on during construction to the reasonable satisfaction of DPW-Infrastructure Services Division and the City agent (if different).

2. Temporary or Trial Usage:

The Owner, with prior written approval of Contractor, shall have the right to make temporary or trial usage of any mechanical device, machinery, apparatus, equipment, work, material or construction supplied under contract before final completion or acceptance of the work, and the same shall not be construed as evidence of acceptance of the work by the owner.

3. Occupying During Construction:

The owner will occupy the premises while work is in progress. Contractor is to coordinate his work as to not interfere with the owner's operation or compromise building security.

4. Temporary Hoists, Lifts:

Contractors and subcontractors requiring hoists or lifts shall provide their own and remove upon completion of work.

5. Temporary Ladders, Scaffolds:

A. Contractors and subcontractors requiring scaffolds, chutes, and ladders shall provide their own and remove them upon completion of work.

B. Each contractor shall furnish and maintain equipment such as fixed ladders, chutes, and the like as required for proper execution of their work.

6. Electrical Power:

A. Contractor may use existing outlets for power. Contractor is to supply his own extension cords. All current used for the Project will be provided and paid by the City of Milwaukee.

B. OSHA regulations require that employers use either ground fault circuit interrupters or an assured equipment grounding conductor problem in addition to any other regulations for equipment grounding conductors.

7. Water:

Contractor may use existing hose bibs for water. Contractor is to supply his own hoses. Contractor's hoses shall be leak free and contractor is to regulate the flow to limit it to project related use. The cost of the water will be paid for by the City.

8. Toilet Facilities:

Contractor may use existing toilet facilities in the building but will then be responsible to ensure that the facility is kept in a sanitary condition.

9. Parking:

Contractor is responsible for parking of vehicles. Parking areas for Contractor and workers will be provided by the City at or in the vicinity of the project site.

10. Barricades and Signage:

Contractor is to provide barricades and signage as required by OSHA and City/State Codes for their work.

11. Construction Jobsite Office:

The City will provide jobsite office space for the Contractor, subcontractors, Engineer and City representatives.

12. Construction Storage, Staging Area

Sufficient space will be provided east of the current MRF building (or as mutually agreed to) for receiving, storage, and staging of equipment. This storage shall be coordinated with and not affect ongoing City operations on the site.

Section 2.05: Construction Waste Management

1.

1. WASTE MANAGEMENT GOALS:

Develop Construction Waste Management Plan that results in end-of-Project rates for the reuse/recycling of **75%** percent by weight or volume of total waste generated by the Project. Submit end of project recycling rates (from salvage until project completion) and landfill rates demonstrating the amount of construction debris recycled.

Reduce: The Project shall generate the least amount of waste and methods shall be used that minimize waste due to error, poor planning, breakage, mishandling, contamination, or similar factors. Promote the resourceful use of materials to the greatest extent possible.

Recycle: As many of the waste materials not able to be eliminated in the first place or salvaged for reuse shall be recycled. Waste disposal in landfills shall be minimized to greatest extent possible.

Section 2.06: Materials and Equipment

1. MATERIALS:

A. Furnish materials of the type, qualities, and characteristics specified. The specification of a trade name and catalog number is intended to establish quality, type, character, and operating characteristics of the material required. Materials by other manufacturers of equal specifications will be accepted, excepting as may be specifically stated otherwise.

B. Materials shall be delivered adequately protected, in merchantable condition, and in original unbroken packages if normally packaged. They shall be stored and handled so as to protect and maintain their merchantable condition.

C. The Commissioner of Public Works or his representative shall have the right to reject material not in compliance with the project manual, as well as damaged material, and the contractor shall remove such material from the construction site when and as directed.

2. EQUIPMENT:

A. Internal combustion engine and compressor shall be equipped with mufflers to reduce noise to a minimum and shall not be operated in enclosed areas without adequate ventilation.

B. All materials and work procedures used shall be in accordance with all air pollution control regulations in effect at the work site.

3. HAZARDOUS MATERIAL REQUIREMENTS:

A. The requirements set forth in the OSHA Hazard Communication Standard, 29CFR19101.1200, U.S. Environmental Protection Agency (EPA), and Wisconsin Department of Natural Resources in the Wisconsin Administrative Code NR600, shall be met by each on-site contractor.

1. Material Safety Data Sheets (M.S.D.S.):

a. All contractors, which may/may not include the City of Milwaukee, shall provide the M.S.D.S. for all hazardous chemicals to which any person may be exposed at the work site.

b. A master list will be kept in the office of the Project Supervisor/Construction Manager and updated as materials are delivered.

2. Container Labeling:

a. Each container of hazardous material at the work site shall be clearly labeled with:

(1) Identity of the hazardous chemical(s).

(2) Appropriate hazard warning(s).

(3) Name and address of the manufacturer.

B. The City of Milwaukee reserves the right to stop the work of a contractor if compliance with OSHA regulations is inadequate. Work will not proceed until all applicable safety and health procedures are implemented by the contractor.

4. MATERIAL STORAGE:

A. The storage areas shall be kept in good order and free of all rubbish and debris.

B. Coordinate the delivery and storage of all materials and equipment with the Infrastructure Services Division Project Inspector.

C. Designate receiving/storage areas for incoming products so that they are delivered according to installation schedule and placed convenient to work area in order to minimize waste due to excessive materials handling and misapplication.

D. Store and protect products in accordance with manufacturers' instructions.

E. Store with seals and labels intact and legible.

F. Store sensitive products in weather tight, climate controlled, enclosures in an environment favorable to product.

G. For exterior storage of fabricated products, place on sloped supports above ground.

H. Cover products subject to deterioration with impervious sheet covering. Provide ventilation to prevent condensation and degradation of products.

I. Prevent contact with material that may cause corrosion, discoloration, or staining.

J. Provide equipment and personnel to store products by methods to prevent soiling, disfigurement, or damage.

K. Arrange storage of products to permit access for inspection. Periodically inspect to verify products are undamaged and are maintained in acceptable condition.

5. PROTECTION:

A. The Contractor shall take reasonable steps to protect the work from damage from the commencement of work to the date of final acceptance.

B. All construction work and traffic shall remain within the construction area.

C. All damage caused by the Contractor shall be corrected or repaired by the Contractor or responsible subcontractor causing same at his or their own expense.

D. All open pipes, pipe threads, fittings, and insulation must be protected during construction.

6. REVISIONS:

The City reserves the right to make modifications to the work to a reasonable extent as building conditions may require, or as may be required to conform to code rulings, or manufacturer's standards, subject to Article IX of the Schedule as a Commissioner-Initiated Change.

Section 2.07: Cleaning and Project Close-Out

1. GENERAL:

Article 2.5.4 of the General Requirements of City of Milwaukee Department of Public Works shall be supplemented as specified hereinafter.

2. SAFETY CLEANING:

Safety cleaning: Each contractor is responsible for safety cleaning, which includes but is not limited to the following:

A. Keep work areas, passageways, ramps, stairs, free of debris and scrap.

B. Form and scrap lumber shall have nails withdrawn or bent over and lumber shall be stacked or removed.

C. Remove spills of oil, grease, or other liquids immediately or sprinkle with sand.

D. Hazardous material shall be handled in accordance with Section 2.06. Each container of hazardous material at the work site shall be clearly labeled with:

a. Identity of the hazardous chemical(s).

b. Appropriate hazard warning(s).

3. PROGRESS CLEANING:

A. Contractor and subcontractor shall remove his rubbish and debris from building site promptly upon its accumulation, and prior to the contractor's regular Friday general clean up. Contractor shall perform broom cleaning of all appropriate surfaces each Friday afternoon.

B. Combustible waste shall be stored in fire resistive containers and disposed of regularly.

C. Oily, flammable or hazardous wastes such as caustics, acids, harmful dusts, etc., shall be stored in appropriate covered containers.

D. All solvents and cleaners used on this project must be rated as containing low or no volatile organic compounds (VOC's).

4. DISPOSAL:

A. No burning of rubbish or debris will be allowed at site. No rubbish shall be thrown through opening or from heights without proper protection. Where dust will be generated or flying debris is likely to occur, provide dust tight chutes or other means to control dust.

B. Containers: Contractor shall provide mobile industrial type waste containers in the number and size required, placed at adequate locations to handle debris or provide other methods of disposing of debris.

C. Oil, flammable or hazardous wastes such as, but not limited to, caustics, acids, harmful dusts, etc., shall be placed in properly marked containers as necessary and disposed of at a site designed for such wastes.

5. FINAL CLEANING:

A. Immediately prior to substantial completion.

B. Contractors shall expedite or perform thorough cleaning, sweeping and washing of work to remove from work and equipment provided under his contract, all foreign matter, spots and soil, so as to put all such work and equipment, including finishes, in a complete and finished condition ready for acceptance and use intended.

C. The contractor is responsible for final sweeping and dusting not covered by other subcontractors. This general cleaning shall include all areas and floors of the building, including the site outside the building, excluding walls (interior and exterior) ceilings and structural steel.

D. All solvents and cleaners used on this project must be rated as containing low or no volatile organic compounds (VOC's).

6. CHARGES:

A. If Contractor does not remove rubbish or clean building as specified above, Owner (after providing Contractor with notice and a reasonable opportunity to cure) reserves right to have work done by others at contractor's expense.

B. Employees of the owner who are required to clean up any rubbish or to sweep any floors will record all hours involved to complete such work. The cost incurred by the owner for this special cleaning and sweep-up work shall be charged against the contract price of the Contractor.

7. RECORD DRAWINGS:

A. At the completion of work and prior to final payment, the contractor shall provide DPW Facilities Management and Development with three (3) marked up sets of prints showing all changes or variations from contract drawings, and not specified on change order drawings theretofore issued. CADD versions of the final drawings showing all construction and equipment are required for the sole use of the City.

B. Other contractors shall provide one (1) marked up set of prints showing all changes or variations from contract drawings.

C. Drawings shall show complete layout of revised piping, equipment, etc., as actually installed.

8. OPERATING INSTRUCTIONS AND MAINTENANCE MANUALS:

.The Contractor shall, upon completion of all work, provide such training and deliver such operating and maintenance manuals as is required by the Contract.

9. GUARANTEES:

A. Each contractor shall guarantee to replace or repair promptly at his own expense, as directed by the Commissioner of Public Works or his agent, all workmanship or materials in which defects may develop within one (1) year from the date of final acceptance of his

work. This guarantee includes all damage done to the City due to faulty equipment, poor installation or poor construction.

B. Guarantee periods other than the one year time period and all other warrantees shall be included in the Operations Manual and forwarded to the City at the close out of the project.

Section 2.08: Records

Contractor shall keep (and require their subcontractor(s) to keep) accurate, full and complete books and accounts showing operation, transactions and financial conditions directly related to the construction of the project. All books, accounts and financial statements kept or prepared by or for the contractor shall be in accordance with generally accepted or tax basis accounting principles consistently applied. Said Records and accounts shall be kept for a period of seven (7) years following the completion of project (the Document Retention Period).

During the Document Retention Period the Commissioner and the City Comptroller, shall have the right, upon reasonable written notice to the contractor, to examine, copy, audit the foregoing books, accounts and records during normal business hours.

Article III: Scope of Work

Section 3.01: Intent of Schedule Documents

The true intent of the Schedule documents is to provide for the construction, execution, and completion in every detail of a complete work or improvement which the Contractor undertakes to do in full compliance with the Schedule documents and in accordance with recognized engineering and construction principles. The contractor shall perform all items of work covered and stipulated in the proposal and perform altered and extra work, all in accordance with the lines, grades, typical sections, and dimensions given and shall furnish, unless otherwise provided in the Schedule documents, all material, implements, machinery, equipment, tools, supplies, transportation, electric power and labor necessary to the prosecution and completion of the work.

The Contractor agrees to furnish all of the materials, equipment and labor necessary to perform all of the work, and to abide by all the duties and responsibilities applicable to it for the Project in accordance with the requirements and provisions of the following Attachments which are incorporated as a part of this Project:

- Attachment 1 - Technical Specifications and Design
- Attachment 2 - Shop Drawing Schedule
- Attachment 3 - MRF Site Map and Other Existing Drawings
- Attachment 4 - Schedule of Capital Values
- Attachment 5 - Performance Guarantee and Acceptance Testing
- Attachment 6 - Facility Material Delivery Standards
- Attachment 7 - Not-To-Exceed MRF Equipment Drawdown and Milestone Schedule
- Attachment 8 - Parental Guarantee
- Attachment 9 - Performance Bond and the Labor and Material Bond
- Attachment 10 - DPW Standard Contract Forms
- Attachment 11 - DPW Prevailing Wage Scale
- Attachment 12 – Exclusions from Work
- Attachment 13 - Anticipated Asphalt and Sprinkler Change Work

Article IV: Time of Completion

Section 4.01: Commencement of Work

Promptly after the Notice to Proceed Date, the Contractor shall begin the design and permitting of the MRF in accordance with the terms of the Contract and this Schedule 11.

Section 4.02: Notice to Proceed and Completion Schedule

The entire work under this Project shall be Substantially Complete (sufficient to commence operations) within 259 consecutive Days, plus any extensions granted by the Commissioner, Notice to Proceed Date (such date, as extended for Uncontrollable Circumstance, is referred to as the "Required Operations Condition Date"). The City shall expeditiously review all drawings, specifications, and requests for permits. As used herein, the "Notice to Proceed Date" shall mean the date that is later of (i) Contractor's receipt of a written Notice to Proceed from the City and (ii) Contractor's receipt of initial payment for MRF equipment per Attachment 7. Section 4.03: Damages for Failure to Complete on Schedule

Failure to achieve Operating Condition by the date that is thirty days following the Required Operations Condition Date (the "Liquidated Damages Commencement Date") shall obligate the Contractor to pay the City, as a deduction from the monies owed to the Contractor, as liquidated damages and not as a penalty, an amount equal to $4,100 for each Working Day of delay thereafter beginning on the Working Day following the liquidated damages Commencement Date and ending on the date that Operation Condition is achieved. Such liquidated damages are hereby agreed to be (1) a reasonable pre-estimate of damages the City will incur as a result of delayed completion of the work, and (2) should the City impose liquidated damages, the City's sole and exclusive damage remedy on account of the Contractor's delay in completing the work.

Section 4.04: Covenant to Continue Work

During resolution of any dispute under this Project and subject to the provisions of this Article IV, the Contractor and the City shall each continue to perform all of their respective obligations under this Contract (including, without limitation, paying all undisputed amounts as and when due) without interruption or slowdown.

Article V: The Project Sum

Section 5.01: Total Project Sum

The City shall pay to the Contractor for the performance of the Project an amount (sometimes referred to as the "Project Sum") equal to the sum of (a) the Contractor's Fee plus (b) the Development Cost; provided, however, that the Project Sum shall not exceed Fifteen Million Nineteen Thousand Six Hundred Twenty-Five Dollars ($15,019,625) (the "Guaranteed Maximum Price" or "GMP"). The Guaranteed Maximum Price shall be subject to adjustments pursuant to this Schedule 11 and any applicable attachments hereto.

The Contractor's Fee is set forth in Section 6.02 below. The "Development Cost" means all costs incurred by Contractor in performing the work, including: (a) wages, salaries, benefits and associated labor burden costs for workers, supervisory and administrative personnel engaged in performing, administering or providing services in support of the work; (b) payments made to contractors, subcontractors, suppliers, architects, engineers, consultants and other parties providing services relating to the work; (c) costs of materials, utilities, services and equipment, whether rented or purchased; (d) costs of removal of equipment, materials and debris; (e) costs of storage and shipping of materials and equipment; (f) premiums and self-insured retentions for insurance and bonds; (g) sales, use and similar

taxes and charges relating to the work; (h) fees, assessments and other charges for permits, licenses, inspections and approvals; (i) fees and charges for tests and inspections; (j) royalties and license fees, if any; (k) costs for computers, cellular phones, electronic equipment and software; (l) legal, mediation and arbitration costs; (m) travel, room, board and expenses for personnel while travelling or temporarily relocated for performance of the work; (n) costs incurred in taking action to prevent or respond to any actual or threatened damage, injury or loss; and (o) costs of repairing or correcting damaged, defective or nonconforming work; (p) general administrative, general conditions and general requirements costs incurred by Contractor and others performing work.

Section 5.02: Adjustments

The amount paid shall be adjusted to cover changes in the work ordered by the Engineer but not required by the Project pursuant to Article IX, Extra Work and Credits. Increases or decreases in adjustments shall be determined only by a written Change Order between the City and Contractor under Article IX: Extra Work and Credit.

Section 5.03: Allowances

The GMP shall be increased by the amount, if any, that the Development Cos for any allowance items listed in Attachment 4 exceeds the amount specified in Attachment 4, but as determined by Section 9.03 of this Schedule.

Article VI: Design and Construction of the MRF

Section 6.01: Agreement to Construct

(a) The Contractor agrees, on and after the Notice to Proceed Date, but subject to the terms and conditions of this Schedule 11, to cause the MRF to be designed, constructed, started up, and Acceptance Tested in accordance with the requirements of this Project, including the specifications contained in Attachment 1 (Technical Specifications) and all other Project documents. In this connection, the Contractor shall furnish or cause to be furnished all work, labor, materials, testing, instrumentation, supervision, equipment, tools, temporary facilities and items required for the design, construction, start-up and Acceptance Testing except for the furnishing of Recyclable Material.

(b) Contracts and subcontracts entered into by the Contractor for the design, construction, start-up and Acceptance Testing of the MRF shall neither supersede nor abrogate any of the terms or provisions of this Contract.

(c) The Contractor shall prepare the MRF site for construction; pay all costs, royalties, fees, license payments, insurance (as provided in Article XI), and similar expenses required with respect to the Contractor's performance under this Contract unless otherwise provided for in this agreement; and adopt all required or reasonable precautions to prevent injury or damage to persons and property in or about the MRF and MRF site in compliance with requirements of the City of Milwaukee Public Works Department Standard Specifications.

Section 6.02: Contractors Fee

The Contractor will be paid a fixed fee for construction management of $402,624 (the “Contractor’s Fee”) as identified in the detailed Capital Costs in Attachment 4 (Schedule of Capital Values). No other allowance will be allowed for the Contractor's overhead and profit for any other costs identified in Attachment 4 (Schedule of Capital Values), The Contractor’s Fee is included in the Project Sum and shall be invoiced and paid in three equal installments; the first invoice shall be submitted upon commencement of the work (which, for the avoidance of doubt, shall mean the design and other pre-construction services to begin promptly following execution of the Contract), the second shall be submitted four months thereafter, and the final submission shall be made upon substantial completion.

Section 6.03: Construction and Progress Monitoring

(a) For the purpose of construction and progress monitoring, the City and the Engineer shall have full access to the MRF site without requirements for advance approval identified in Section 17.02. The Contractor shall review the design, construction plans and specifications for the MRF with the City and the Engineer so that the City and the Engineer may verify that the Work, and pertaining plans and specifications as provided in Attachment 1 (Technical Specifications), conform to the intent of and do not materially deviate from Attachment 1 (Technical Specifications). The review and verification shall in no way alter the obligations of the Contractor under this Schedule. The Contractor shall provide the City with the critical path method schedule ("CPM Documents") developed by the Contractor for the design, construction, start-up, and Acceptance Testing of the MRF after the estimated Notice to Proceed Date which shall be incorporated in Attachment 7 (Not-To-Exceed MRF Equipment Drawdown and Milestone Schedule). Beginning with the second month following the Notice to Proceed Date, the Contractor shall provide the City on the 25th Day of each calendar month with monthly updates of the CPM Documents as described in 6.03(d). The City shall cause its representatives while on the MRF site to comply with all reasonable safety and security rules adopted by the Contractor and shall not interfere with the Work by the Contractor at the MRF site. The Contractor acknowledges that the Engineer has been designated by the City to review and monitor engineering and construction progress, to assist the City in its review and approval of payments to the Contractor, to review and advise the City with respect to proposed material changes to the specifications set forth in Attachment 1 (Technical Specifications) or changes to the Work, to review and advise the City with respect to the validity of any written notice from the Contractor that an Uncontrollable Circumstance has occurred, to review and approve on behalf of the City the Acceptance Test plan for the MRF described in Section 10.02, to review the results of any Acceptance Test made in accordance with the plan, and to advise the City that the Acceptance Test standards demonstrating the performance guarantees set forth in Attachment 5 (Performance Guarantee and Acceptance Testing), have been satisfied or the extent to which they have been satisfied. The City and the Contractor agree that activities by the Engineer are for the sole benefit of the City and do not relieve the City or the Contractor of its obligations under this Schedule. The Contractor agrees to cooperate with all reasonable requests for information made by the Engineer in connection with the performance of the duties for the City.

(b) In every case, the Contractor warrants and guarantees that title to all Work, materials and equipment covered by an application for payment will have passed to the City upon receipt by the

Contractor of payment for materials and equipment, except that title to the MRF equipment shall not pass to the City until the Contractor has been paid in full for the equipment and the MRF equipment supplier has been paid in full by the Contractor. In the event of a claim, the Contractor shall defend title of all Work, equipment and material and shall obtain good and marketable title to the same on behalf of the City. The Contractor is not making any warranties with respect to title to the MRF site.

(c) The Contractor shall perform the Work and complete the MRF in accordance with the terms of this Project. Neither approval of any progress payment by the City, the recommendation of Acceptance, any payment by the City to the Contractor under this Project, any use or occupancy of the MRF or any part by the City, any failure to do so, nor any correction of defective Work by the City shall constitute an Acceptance of any Work which is not completed or accomplished in accordance with this Project.

(d) Beginning with the Notice to Proceed Date and ending with the later of Acceptance or final payment by the City pursuant to Section 8.07, the Contractor shall prepare and submit to the City on the 25th Day of each calendar month a written report with the monthly CPM update that describes by specific reference to CPM milestone(s) the percentages of the Work on the MRF that have been completed up to and including the 20th Day of the calendar month, including the nature of the Work completed in terms of major categories of Work, such as labor, equipment, materials, testing and services.

(e) The Contractor will not be obligated by this Section 6.03 to delay any Work (including, but not limited to, procurement and construction activities) it has undertaken or plans to undertake pursuant to the terms and provisions of this Project. If the Contractor proceeds with any Work under this Project without allowing the Engineer at least seven (7) Days' prior notice for the Engineer to perform its monitoring activities, then the Contractor proceeds with the Work solely at its own risk, including, but not limited to, the risk that the City may exercise its right to have the work uncovered for the purpose for inspection for compliance with the requirements of Attachment 1 (Technical Specifications), or the risk that the Engineer may be unable to verify the progress of the Work stated in the Contractor's application for payment under Section 8.04. The failure of the Contractor to give the required notice shall not otherwise relieve the City of its obligations and duties for all work completed in accordance with Attachment 1 (Technical Specifications). Contractor's timely delivery of a detailed Work schedule prior to the commencement of construction, shall satisfy the seven (7) Day period set forth above in this paragraph only to the degree that such detailed Work remains accurate with regards to specific Work and specific beginning and end dates for that Work.

The Engineer's monitoring and review, as set forth above, shall not in any way be construed as relieving Contractor of any of its obligations, responsibilities or liabilities under this Contract. Notwithstanding anything in the Contract to the contrary, the Contractor shall at all times remain fully responsible and liable to carry out and fulfill all of its obligations and duties under this Contract.

(f) The Engineer has the right to inspect any or all work. The Engineer has authority to stop the work whenever stoppage may be appropriate to insure the proper execution of the Contract. The Engineer has the authority to reject all work and materials which do not conform to the requirements of this Schedule 11 and to decide questions which arise in the execution of the work. The Engineer will act reasonably, in good faith, impartially, and in conformance with professional standards. Contractor must

comply with the Engineer's orders, but may apply for compensation under Article IX of this Schedule, which shall be determined by the Commissioner in accordance with that Section.

(g) The Engineer shall, within a reasonable time after their presentation to the Engineer, make decisions in writing on all claims of the City or the Contractor and on all other matters relating to the execution and progress of the work or the interpretation of the Project documents.

(h) The Contractor agrees to make available any information reasonably necessary to permit monitoring activities. The Contractor agrees to deliver to the Engineer copies of all drawings, specifications and other documents prepared or intended for use by the Contractor in constructing the MRF. The drawings and other documents shall be delivered to the Engineer so as to allow the Engineer sufficient time to review the documents for conformance to the intent of Attachment 1 (Technical Specifications). The City shall not require drawings in any greater detail than required by the Contractor. Any review by the City or by the Engineer of the initial drawings and specifications for the building construction shall be completed within 7 Days of receipt, and any review of shop drawings or other submittals shall be completed within 3 days of receipt, unless otherwise agreed to by the Parties in writing. Any delays arising from the City's unreasonable delay in review shall be subject to the General Specifications regarding delay.

Section 6.04: Office

The Contractor shall establish and maintain an office at the MRF site during the term of this Project where it shall keep all material and relevant books, records, drawings and specifications, and other documentation required by this Project, subject to the right of the Contractor to store noncurrent records and materials at another location reasonably satisfactory to the City and accessible to the City on reasonable notice.

Section 6.05: Laydown, Staging and Parking

The Contractor shall provide all laydown and staging areas, as well as areas for temporary construction parking and field offices. The City shall provide the MRF site for staging at no additional cost.

The Contractor will limit its staging area for storage of materials and equipment to the area immediately adjacent to the construction site as agreed to by the City. Expansion beyond this limit will not be allowed without written approval from the City. Upon completion of construction all staging areas will returned to original conditions.

Section 6.06: Utility Connections

The City shall obtain on a timely basis all necessary easements, rights-of-way, or authorizations for and shall construct or cause to be constructed in sufficient size all electric, telecommunications, sewer, water, storm water runoff and natural gas to a location at the perimeter of the MRF site, consistent with the Contractor's MRF site layout. The Contractor shall, in a timely manner, provide the City with all necessary design information, and shall specify all technical requirements necessary for the City to obtain needed easements and to perform the construction. The Contractor shall be responsible for obtaining all necessary temporary electrical and other connections utilized during construction of the MRF from the boundary of the MRF site to the MRF. Within the MRF site, the Contractor shall design, construct and

maintain all conduits and pipelines for sewer, electrical connections, telecommunications, water, natural gas, if applicable, and storm water runoff including any required retention. The cost of all design and construction shall be included in the Project Sum. The Contractor shall not be responsible for the cost of all utilities utilized at the site prior to the Commencement of Operations, including, but not limited to, water, sewer, natural gas and electricity.

Section 6.07: Permits and Environmental Requirements

The Contractor, at its cost and expense, shall on a timely basis obtain all permits, licenses and approvals required for the design, construction, start-up, and Acceptance Testing and operation of the MRF except the building permit and as set forth in Section 6.06. The Contractor shall obtain but the City shall pay for (outside of the GMP) the City's building permit at no cost to the Contractor. The Contractor shall furnish to the City all necessary information, data and assistance within its purview for the preparation of any applications or documents required for all local, State or federal permits, licenses and approvals in a timely and expeditious manner.

Section 6.08: Regulatory Requirements

The Contractor shall comply with all requirements of any applicable environmental laws and regulations or other applicable laws, ordinances, codes, regulations and rules and any permits issued, which are necessary for the design, construction, start-up, and Acceptance Testing of the MRF.

Section 6.09: MRF Site Condition

The Contractor shall make personal investigations of the site of the Work and of existing structures and shall determine to its own satisfaction the conditions to be encountered, the nature of the ground, the difficulties involved, and all other factors affecting the work proposed under this Project. The Contractor shall be responsible for identifying all deficiencies to the City. Nothing in this paragraph shall make the Contractor responsible for conditions at the site that differ from the reports and materials provided to the Contractor, unless the Contractor knew of the condition.

Section 6.10: MRF Site Subsurface Conditions

If the Contractor encounters subsurface or otherwise concealed or unknown conditions at the MRF site that the Contractor did not know of, Article IX, Extra Work and Credits, shall apply as if the resulting impact was a Commissioner-Initiated Change Order. The Contractor is not required to perform separate geophysical borings or MRF site investigations prior to the Notice to Proceed Date.

Section 6.11: MRF Site

After the Notice to Proceed Date, the City shall grant to the Contractor the right to enter upon the MRF site for all of the purposes set forth in this Project. If for any reason the MRF site is moved, the change shall be treated as a Work Change pursuant to Section 9.03.

Section 6.12: Disposal

The Contractor shall provide, at its sole cost, for the hauling and disposal or off-site storage of construction waste and any Residue attributed to test processing prior to achieving Operating Condition. The Contractor shall haul waste materials to a properly licensed solid waste facility. The Contractor shall use all reasonable efforts to remove the materials consistent with reasonable operating procedures and

shall remove and dispose of the waste consistent with all federal, State and local laws. The Contractor shall be responsible for on-site storage and loading for removal of all materials from the MRF site prior to achieving the Operating Condition.

Section 6.13: Equipment

The equipment to be provided by the Contractor shall be the equipment listed and described in Attachment 1 (Technical Specifications). If any of the equipment specified in Attachment 1 (Technical Specifications), to be installed in the MRF specifically includes the phrase "or equal", or otherwise clearly reflects an intent that the Contractor may substitute other equal equipment for items specified in Attachment 1 (Technical Specifications), or if, pursuant to Article IX, a Work Change is authorized to be made, then the Contractor may substitute an item of equipment for the item originally specified in Attachment 1 (Technical Specifications), but only upon the prior written approval of the City and the Engineer. Approval may not be unreasonably withheld. For the purposes of this Section 6.13, the word "equal" means the equivalent to the specified item in form, fit, function, quality, performance, reliability, and maintainability.

Section 6.14: Security

The Contractor shall take reasonable efforts to protect the MRF, MRF site and all equipment and fixtures constituting the MRF so that they are secure against trespass, tampering, damage and theft.

Section 6.15: Responsibility for Work

The Contractor assumes full responsibility for any and all materials and equipment on the site used in the construction and agrees to make no claims against the City for damages to the materials and equipment from any cause except a negligent or willful act of the City. Until Final Acceptance of the MRF, the Contractor shall be responsible for damage to or destruction of the project (except for any part covered by partial completion and Acceptance as described in Section 10.02). The Contractor shall make good all work damaged or destroyed before Acceptance. All risk of loss remains with the Contractor until Acceptance of the work at the Full Acceptance Standard as described under Section 10.02, or Acceptance at the Minimum Acceptance Standard as described under Section 10.03. Risk insurance is required.

Section 6.16: Operation and Maintenance Manual

The Contractor shall develop an operation and maintenance manual (O&M Plan) for the MRF in accordance with the Contract (Section 6.04 of the Contract). This manual will provide the overall background and guidance necessary for proper facility operation. This document shall be in addition to and supplement the manufacturer's operation and maintenance manuals supplied for all mechanical equipment.

Article VII: Employment of Labor

Section 7.01: Residence Preference Program (RPP)

Chapter 309 of the Milwaukee Code of Ordinances established a Residence Preference Program which is implemented through establishment of the percentages of worker hours to be performed by unemployed residents of a special impact area. These percentages are established by the Department and are stated in the Request for Proposals. Failure to comply with these requirements may result in payments being withheld, contracts canceled, debarment from bidding for up to two years, or any other remedy available to the City at law or in equity. For this construction project the RPP requirement is 20%. This does not apply to specialized labor associated specifically with the installation of the MRF equipment.

Section 7.02: Hours of Labor and Overtime Pay

a) The service of all laborers and mechanics who are now or may hereafter be employed by any contractor or subcontractor of the City of Milwaukee upon any of the public works of this City is hereby limited to days other than Saturdays, Sundays, and legal holidays recognized by the City and restricted to 40 hours per week, of which no more than ten hours shall occur in any one calendar day, and except as the Commissioner may approve to conform with occupational practices or as specifications may require. No officer of the City government or any such contractor or subcontractor, whose duty it shall be to employ, direct, or control the services of such laborers or mechanics, may require or permit any such laborer or mechanic to work on Saturdays, Sundays, and legal holidays or more than 40 hours per week and ten hours in any calendar day, except in cases where, in the opinion of the Commissioner, an emergency exists.

b) In such instances where overtime work has been permitted and laborers or mechanics are required to work more than ten hours per day or 40 hours per week or at times other than the normal work day or work week, they shall be paid by the contractor in accordance with the prevailing overtime wage laws. When, and only when, an emergency has been declared to exist and the Commissioner, after the signing of a contract, has ordered in writing that work on a project be carried on in excess of ten hours per day or 40 hours per week, it shall be the duty of the City to reimburse the contractor over and above the price agreed upon for the performance of such work in the amount of the premium paid for overtime work or work performed at times other than the normal work day or work week in accordance with the prevailing overtime wage rates plus any premium paid for necessary materials because of delivery during times other than the normal work day or work week.

Section 7.03: Minimum Wage Rate

In accordance with Wisconsin law, building and construction industry trade workers employed upon public works contracts by any contractor or subcontractor shall be paid no less than the wage rates and fringe benefits approved for their respective trades or occupations. Such wage rates shall be incorporated into the contract. In addition, a schedule of wage rates and hours of labor shall be kept posted in at least one

conspicuous and easily accessible place on the site of the project or, if there is no common site, at the place normally used by the city to post public notices.

Section 7.04: Unclassified Employees

a) In case it becomes necessary for the Contractor or any subcontractor to employ on the work covered by the contract documents any person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non-manual workers) for whom no minimum wage rate is herein specified, the Contractor shall immediately notify the Commissioner who shall promptly thereafter furnish the Contractor with the minimum wage rate for such person.

b) Apprentices are considered unclassified employees and their rates are not furnished in the minimum wage scale. Contractors/subcontractors employing apprentices are required to furnish a copy of the signature page of their indenture papers and a copy of their rate sheet with the paid rate highlighted. The Commissioner shall determine whether or not a person so employed was properly paid or if an underpayment exists.

Section 7.05: Minimum Wage - Time Reports

The Contractor hereby agrees to make a sworn report or affidavit within ten days following the Contractor's completion of a contract, or every three months, whichever occurs first, and shall procure and submit a like sworn report or affidavit from every subcontractor employed in the work to the Commissioner, listing every employee employed on or under this contract or subcontract, and shall include for the specified period but not be limited to the employee's name, address, type of work performed, total hours worked, hourly rate, gross earnings, and employer's contribution to vacation, welfare, and pension trust funds. Said reports or affidavits from the Contractor or subcontractor shall include a statement that each and every employee has been paid in full the amount prescribed by the Common Council and that there has not been, nor is to be, any rebate or refund of any part of said wages by employee to employer.

The Commissioner or other officers are hereby ordered not to pass any estimate for payment on any contract in which the Contractor or subcontractor has failed to comply with all the provisions of the foregoing sections, and no estimate shall be processed for payment until the Commissioner is satisfied that the provisions of the foregoing specifications have been fully complied with.

Section 7.06: Provision of Wisconsin Statutes and Administrative Code Pertaining to Municipal Wage Rates

Pursuant to Section 66.293 Wisconsin Statues and Section IND 90.13 and 90.14 of the Wisconsin Administrative Code, each contractor and subcontractor is subject to the following requirements.

Each contractor, subcontractor, or agent thereof participating in a project shall keep full and accurate records clearly indicating the name and trade or occupation of every laborer, worker, or mechanic employed in connection with the project and an accurate record of the number of hours worked by each employee and the actual wages paid therefore.

Upon completion of the project and prior to final payment therefore, each contractor shall file with the municipality an affidavit stating compliance with the provisions and requirements of the Wisconsin Statutes and Administrative Code and that said contractor has received evidence of compliance from each subcontractor. No municipality may authorize final payment until such an affidavit is filed in proper form and order.

Upon completion of the subcontractor's portion of the work and prior to final payment, each subcontractor shall file with the contractor an affidavit stating that said subcontractor has fully complied with the provisions and requirements of Section 66.293 (3) Wisconsin Statutes and the Wisconsin Administrative Code Chapter IND 90.

In accordance with Section 66.293 (3) (h), each contractor shall file with the City copies of the subcontractor's affidavit prescribed under IND 90.13 Wisconsin Administrative Code.

Section 7.07: Days of Work and Shift Regulations

No work shall be performed under the contract on Saturdays, Sundays, or legal holidays without at least one (1) Working Day's prior notice to a City representative, except with the approval of the Commissioner.

Section 7.08: Wage and Hours Disputes

Whenever a dispute arises between the Contractor or Surety and the City as to the determination whether there is compliance with the provisions of the contract documents as to the hours of labor, wages, character, and classification of workers employed, the determination of the Commissioner shall be final, and in case of violations of said provisions, the Commissioner may declare the contractor in default and order the Surety to perform or re-let upon advertisement, the remaining portion of the contract as provided by Wisconsin law.

Section 7.09: Disqualification of Contractor

As provided by Wisconsin law, whenever any contractor or subcontractor engaged in any public work of the City has been found by the Commissioner, officer, or employee of the City or by a court of competent jurisdiction to have infringed any prevailing wage law, in that event any such contractor or subcontractor shall not be deemed to be a competent and reliable bidder in the sense of Section 7-14 of the Milwaukee City Charter, and such contractor or subcontractor shall not be allowed to compete in securing future contracts with the City by such individual, or partner, or agent, or by any corporation of which such individual is a member, for a period of two years. A second violation by such individual, or partner, or

agent, or by any corporation of which such individual is a member, shall disqualify such individual, or such partner, agent, or corporation from competing or doing any future City work for a period of three years.

Section 7.10: Lien Law

All provisions of Section 7-32, Milwaukee City Charter, shall be binding upon the Contractor.

Section 7.11: Discrimination in Employment

In accord with Section 109-15, Milwaukee Code and federal guidelines, it shall be unlawful for any private employer performing work within the City involving any public works of the City to willfully refuse to employ or to discharge any person otherwise qualified because of sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, past or present membership in the military service, familial status, or based upon affiliation with, or perceived affiliation with any of these protected categories. The private employer agrees not to discriminate for the same reason in regard to tenure, terms, or conditions of employment; to deny promotion or increase in compensation solely for these reasons; to publish offer of employment based on such discrimination; to adopt or enforce any rule or employment policy which discriminates between employees; to seek such information as to any employee as a condition of employment; or to penalize any employee or discriminate in the selection of personnel for training, solely on the basis of sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, past or present membership in the military service, familial status, or based upon affiliation with, or perceived affiliation with any of these protected categories.

The Contractor shall include or cause to be included in each subcontract covering any of the work covered by this contract, a provision similar to the above paragraph, together with a clause requiring such insertion in further subcontracts that may in turn be made.

Section 7.12: Americans With Disabilities Act

Contractor (Vendor, Consultant, Lessee, etc.) agrees that Contractor will comply with all applicable requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, et seq.

Section 7.13: Forms for Reporting Requirements
See Forms in Attachment 10 (DPW Standard Contract Forms)

Section 7.14: Work Rule Relief
If Contractor requests approval to perform work on hours other than those set forth in the applicable provisions of Article 7 above, or to have workers work more than 40 hours per week or 10 hours per day as set forth in the applicable provisions of Article 7 above, and the Owner or Commissioner rejects

Contractor’s request, the delay attributable to Contractor’s inability to work at such times or to have worker work beyond those hours shall be deemed to be delays caused by an Uncontrollable Circumstance.

Article VIII: Project Sum; Construction Invoices; Payments

Section 8.01: Project Sum Payments

The City agrees to pay the Contractor the Project Sum for the Work pursuant to the Drawdown Schedule set forth in Attachment 7 (Not-To-Exceed MRF Equipment Drawdown and Milestone Schedule), Attachment 4 (Schedule of Capital Values) and this Article VIII.

Section 8.02: Project Sum

(a) The Project Sum shall be subject to the Guaranteed Maximum Price (GMP) pursuant to Article V, subject to adjustment pursuant to Section 8.04 and other applicable provisions of this Schedule 11. The Guaranteed Maximum Price shall be valid up to the Adjustment Date specified in Article I.

(b) If the Notice to Proceed Date has not occurred on or before the Adjustment Date, the Project Sum and the cost of any Work Change undertaken with respect to the MRF pursuant to Article VIII, unless the City and the Contractor, negotiating in good faith, otherwise agree with respect to the Work Change, shall be adjusted based upon Contractor's demonstrated increase in Development Cost for the work.

Section 8.03: Termination for Late Notice to Proceed

If the Notice to Proceed and other conditions precedent to commencement of construction work at the project site has not occurred on or before August 1, 2014, then this Project may be terminated as of 12:00 a.m. on the agreed date by either Party by written notice to the other, and the provisions of Article XIV shall be applicable.

Section 8.04: Method of Payment

(a) The Contractor shall submit applications for payment to the Engineer for review and signoff.

(b) Based upon applications for payment submitted by the Contractor to the City once per month (on that day of each month as the Parties may agree in writing), the City shall, subject to the conditions set forth, and subject to the provisions of Section 8.08, make construction progress payments to the Contractor upon receipt of a properly submitted and correct Application for Payment and all supporting documentation. The parties acknowledge that there is a Guaranteed Maximum Price and that no payments by the City to the Contractor shall exceed that price unless there is a Work Change pursuant to Section 8.08 or the GMP is otherwise adjusted pursuant to this Schedule 11.

(c) Pay application and certificate for payment shall be AIA document G702 (or mutually agreed similar document). Payments shall be based on Attachment 4, detailed schedule of capital values, and on the basis of (i) percent of work complete to date with respect to the building construction work and (ii) the actual amounts payable to the MRF equipment supplier(s) with respect to all such equipment, as provided in Attachment 7, not-to-exceed MRF Equipment Drawdown and CPM Milestone Schedule.

(d) The Application for Payment shall constitute a representation by the Contractor to the City that the design and construction have progressed to the point indicated, the quality of the Work covered by the application is in accordance with the Schedule 2, Technical Specifications and Design/Construction documents produced under the terms of this agreement and the Contractor is entitled to payment in the amount requested. Such Application for Payment shall be accompanied by lien waivers and other documentation from Contractor, subcontractors, suppliers and others performing any portion of the Work as may be required by Owner.

In conjunction with the Contractor's application for each progress payment pursuant to this Section 8.04, the Contractor shall prepare and submit to the City an itemized and sworn application for payment supported by the data substantiating the Contractor's right to payment as the City may reasonably require. Each application for payment shall be accompanied by a certificate from the Contractor which shall provide as follows:

> "This Application for Payment, when added to the amounts previously drawn by the Contractor, does not exceed the total amount expended, incurred or allocated to the Work in accordance with the detailed Schedule of Capital Values (Attachment 4), including transfers for services or products within internal divisions of the Contractor, by the Contractor for labor, materials, overhead, profit and other expenses under this Project on behalf of the City to the date of this Application for Payment."

(e) The City shall, within twenty-one (21) Days after receipt of the Contractor's application for payment, either approve the application for payment, in writing with a copy to the Contractor, in the amount requested in the application for payment, or notify the Contractor in writing of its reasons for withholding its approval of all or any portion of the application. In the latter case, the Contractor shall make the necessary corrections and resubmit its application for payment subject to the same procedures applicable to its original application for payment.

The City may decline to approve the Contractor's application for payment and will withhold its approval in whole or in part, to the extent reasonably necessary to protect the City, if in the opinion of the Engineer in the exercise of its reasonable engineering judgment, the Work has not progressed to the point indicated in the application for payment, or the quality of the Work is not in accordance with the specifications set forth in Attachment 1 (Technical Specifications), or if the Contractor is, for specified reasons, not entitled to all or any portion of the payment sought. The City shall approve that portion of the application which is not in dispute. If the Contractor and the City cannot agree on a revised amount, the City will promptly issue its approval for payment of any further amount that the Engineer, in the exercise of reasonable judgment, believes is properly payable to the Contractor. The Engineer may also decline to certify payment or, because of subsequently discovered evidence or subsequent inspections, may reduce in whole or any part of any future payments to the extent of nullification of any approval for payment previously issued, to the extent as may be necessary in the Engineer's opinion to protect the City from loss because of defective Work not remedied. In this case, the City shall give written notice to the Contractor describing the Work in question and the basis for reducing its payment.

When the grounds for withholding or nullifying approval for payment are removed, application for payment of the amounts withheld because of the dispute shall be resubmitted by the Contractor as

part of the Contractor's next monthly invoice, and shall be paid by the City in accordance with this Section 8.04.

(f) No additional compensation will be provided for additional equipment, materials, personnel, overtime or special charges required to perform the work within the time requirements of the Project. In situations where an extension of time in Work completion is appropriate, the Contractor understands and agrees that the only available adjustment for events that cause any delays in Work completion shall be extension of the required time for Work completion and that there shall be no adjustments in the payment amount due the Contractor on account of the delay.

Section 8.05: Payment for Work Changes

Payment by the City for any Work Change undertaken pursuant to the provisions of Article IX shall be in accordance with the provisions agreed to by the Parties pursuant to Article IX.

Section 8.06: Final Inspection and Application for Final Payment

(a) Within fifteen (15) Days of receipt of notice from the Contractor that the MRF has been completed and constructed in accordance with Attachment 1 (Technical Specifications), the Engineer will complete a final inspection of the MRF with the Contractor and will notify the Contractor in writing within thirty (30) Days whether or not the MRF is defective or incomplete or otherwise not in compliance with this Project. The Contractor shall promptly take action as may be necessary to remedy defects, complete the MRF or otherwise bring the MRF into full compliance with this Project.

(b) After the Contractor has completed corrections or other action in compliance with this Project, or after the lapse of the thirty (30) Day period in the previous paragraph, and delivered all maintenance and operating instructions, schedules, guarantees, certificates and other documents and material as required by this Project, the Contractor may make application for final payment following the procedure for progress payments set forth in Section 8.04. The application for final payment shall be accompanied by the Contractor's affidavit of payment of all debts and claims for payment, waivers of claims for payment from all subcontractors and material providers of the first tier, and their sureties who performed services or supplied equipment or materials for the Contractor pursuant to this Project and which shows the Contractor has no pending disputes, in a form provided by the City, which form shall be reasonable, as to both form and content; however, all such affidavit(s) and waivers from the Contractor and subcontractors and material providers and any sureties that performed work shall be subject to receipt of amounts to be paid from the remaining payments of the Project Sum. If any subcontractor or material provider fails to furnish a waiver, the Contractor may instead furnish a bond or other collateral or establish a reserve satisfactory to the City to indemnify the City against any lien or claim, which shall be provided as a part of the Contractor's application for final payment.

Section 8.07: Final Payment

Regarding payment for all sums other than those attributable to the MRF equipment, if, on the basis of observations and review of the Work and final inspection the City confirms that the Contractor has fulfilled all of its obligations under this Project, the City will pay the Contractor the final payment in accordance with Section 8.04, including any amount retained by the City, except as applicable by the provision of Section 8.09. Final payment for the MRF equipment shall be governed by Article X.

Upon the completion of the work by the Contractor pursuant to the terms of this contract and according to the contract documents and the true intent and meaning of this contract and after the acceptance of the work by the Commissioner, the City shall pay the Contractor, subject to any retainer or guarantee provisions in the contract documents, any balance then remaining due and payable by the terms of this contract.

Final payment may be withheld if prevailing wage statements are not filed or if there is noncompliance with requirements concerning the hiring of residents, disadvantaged businesses and apprentices. If these deficiencies are not satisfied within one (1) year of completion of the work, the department, following a final notification to the Contractor, may close out the contract account and retain the contract proceeds permanently.

All monies paid or owed by the City to the Contractor shall be and constitute a trust fund, in the hands of the Contractor only, to the amount of all claims due and to become due or owing from the Contractor for lienable labor and materials until all such claims have been paid. The using of such monies by the Contractor for any other purpose until all such claims have been paid is, as declared by Section 779.02(5), and 779.16 Wisconsin Statutes, punishable as therein provided by law.

Final Payment to Terminate Liability of City

a) The acceptance by the Contractor of the "Final Payments" provided for in the contract shall operate as, and shall be, a release to the City and its representatives from all claims by the Contractor for anything done or furnished for or relating to the work or for any act or neglect of the City or of any person relating to or affecting the work, except for (i) claims previously made that have not been denied by the time of final payment, (ii) claims covered by the City's builder's risk property insurance, (iii) claims arising under the Contract and not under this Schedule 11.

b) It is the City's policy to pay all invoices within 30 days. If the City does not make payment within 45 days after receipt of properly completed supporting payment and other required contract documentation, the City shall pay simple interest beginning with the 31st calendar day at the rate of one percent per month (unless the amount due is subject to a good-faith dispute and, before the 45th day of receipt, notice of the dispute is sent to the contractor by first-class mail, personally delivered, or sent in accordance with the notice provisions in the contract). If there are subcontractors, consistent with s.66.0135(3), Wis. Stats., the Contractor must pay the subcontractors for satisfactory work within seven days of the contractor's receipt of payment from the City of Milwaukee, or seven days from receipt of a properly submitted and approved invoice from the subcontractor, whichever is later. If the contractor fails to make timely payment to a subcontractor, the contractor shall pay interest at the rate of 12 percent per year, compounded monthly, beginning with the 8th calendar day. Reference Common Council File No. 101137 adopted January 2011.

Section 8.08: Certification of Payment of Project Sum and Costs for Work Changes

If requested by the City, the Contractor shall provide a certification of qualifying costs allocated to the work in accordance with the detailed Schedule of Capital Values (Attachment 4) with each monthly invoice submitted pursuant to this Article VIII and Attachment 7 (Not-To-Exceed MRF Equipment Drawdown and Milestone Schedule), and, if applicable, for the cost of any Work Change undertaken pursuant to Article IX.

Section 8.09: Retainage

(a) The City shall withhold a retainage amount in the amount of 5% of each monthly payment otherwise due and payable to the Contractor for all costs other than for MRF equipment (with no retainage on costs for MRF equipment). The retainage described in this Section 8.09 may be applied by the City to complete the performance of the Contractor's obligations pursuant to this Project if the Contractor defaults in the performance of its obligations, after providing Contractor with notice and an opportunity to cure such defaults.

(b) Within 15 Days after the City has been advised in writing that the Operating Condition has been achieved, the Engineer shall meet with the Contractor to review the Work of the Contractor, and to estimate, in the Engineer's reasonable judgment, the cost of completing or correcting, if necessary, any punchlist work. Within ten Days following the review and estimation, the Engineer shall, if completion or correction of any Work is in the reasonable judgment of the City and Engineer deemed necessary, deliver to the Contractor a written statement specifying the following:

(i) The amount of the retainage then held by the City that the City will continue to retain until the completion or correction of any of the Work, which shall not exceed 150% of the amount that the City and the Engineer reasonably believe to be the cost of completing or correcting any Work. The notice shall set forth in reasonable detail the basis for determining the amount of retainage to be withheld by the City.

(ii) The amount of the retainage in excess of that amount specified in (i) above which shall be paid by the City to the Contractor within thirty (30) Days following delivery of the notice.

Section 8.10: Subcontracts

Contractor, as soon as practicable after the execution of this agreement, shall furnish to the City in writing the names of all persons or entities the contractor intends to obtain bids from in connection with this construction work. Contractor shall obtain multiple bids for each portion of work estimated to be $15,000 or more. All bids shall include in completed form the Disclosure of Ownership, Bid and Non-Collusion Affidavit attached as Attachment 10. Contractor shall notify City of bidders it intends to select for each portion of work, and shall notify City of the results of the bid.

The City hereby approves the award of subcontractors to the parties providing the MRF equipment and related items who were selected based on bidding and awards that occurred prior to the date hereof, without any requirement for obtaining additional bids or obtaining any additional City approval.

The contractor shall maintain an updated schedule of subcontractor's bids and provide this to the City. An updated schedule shall be provided to the City as bids are received. The Contractor shall not change this bid schedule except as allowed for in the Schedule 11.

Article IX: Extra Work and Credits

Section 9.01: Revision of Plans

In case the Commissioner deems it advisable or necessary in the execution of the work to make any alteration which will increase or diminish the quantity of labor or material or the expense of the work, such alterations shall not annul or vitiate the contract nor release the Surety. The Contractor shall furnish the necessary labor, material, etc., to complete the work as altered within the time limit originally specified as extended for delays attributable to Uncontrolled Circumstances. The difference in cost of the work so altered shall be added to or deducted from the amount otherwise due the Contractor, as the case may be, and shall be determined in accordance with the methods specified in this chapter.

Section 9.02: Authority for Altered Work

No alteration in the work under the contract shall be made without a written order from the Commissioner. No verbal suggestion or order of any employee of the Department of Public Works or of any other person shall be construed as authorizing any claims on the part of the Contractor for extra compensation for labor, materials, or other items pertaining to such work, or for damages or any other expense because of the Contractor's compliance therewith.

Verbal orders and suggestions as to the performance of the work may be given from time to time by representatives of the Commissioner, but when, in the opinion of the Contractor, such orders or suggestions involve extra work for which added compensation should be received, a written order from the Commissioner authorizing such work shall be requested. In the event of any disagreement as to the amount of work involved under any authorized order for extra work, it is specifically agreed by all parties that the decision of the Commissioner shall be binding and conclusive.

Notwithstanding the foregoing, after notice in writing to the Commissioner, Contractor may make changes to the Plans and Specifications to the extent required by applicable laws or governmental authorities or agencies or otherwise as necessary to obtain any and all building permits or other governmental approvals, licenses, permits or consents without the consent or approval of the Commissioner except to the extent that any such change will require a material modification in the design of the Project. Developer may also make "Field Decision changes" (as such term is hereinafter defined) without the consent of the Commissioner. "Field Decision Changes" shall mean (i) changes that are so minor as to have no material effect on the design, quality, utility or scope of the Project.

Additional changes to the Plans and Specifications may occur under one of two sets of circumstances, both of which shall require the written approval of the Commissioner. (1) First, the Contractor may request a change that does not alter the scope of the Project beyond that contemplated in Attachment 4 hereto, which change shall not increase the Project Cost or extend the Completion Date ("Contractor-Initiated Changes"). Contractor-Initiated Changes may amend or revise a contract or subcontract entered into by Contractor. Contractor may use MRF Equipment Contingency Funds per Attachment 4 to pay any increased costs relating to Contractor-Initiated Changes. Change Orders for Contractor -Initiated Changes shall be initiated by a written request from Contractor to the Commissioner setting forth in reasonable detail, the requested change. The Commissioner shall approve or disapprove Contractor -Initiated Change Orders within one (1) Business Day of receiving the same, provided that the Commissioner may only disapprove of any such Change Order to the extent that such Change Order would adversely alter the design, quality, utility or scope of the Project and/or fail to comply with applicable laws. If the Commissioner does not provide written approval or objections to the proposed Contractor -Initiated Change Order with one (1) Business Day, the proposed Change Order shall be deemed approved. (2) Second, the Commissioner may request a change that alters the scope of the Project beyond that contemplated in Attachment 4 hereto, which change may increase or decrease the Project Guaranteed Maximum Price and/or adjust the Completion Date ("Commissioner-Initiated Changes"). The City shall be solely responsible to pay any increases in the Project Cost arising out of Commissioner-Initiated Changes; in no event shall Contractor be responsible for any increased Project Cost, nor shall MRF Equipment Contingency Funds be used to fund any increased Project Cost attributable to Commissioner-Initiated Changes. Change Orders for Commissioner-Initiated Changes shall be initiated by a written request change to the scope of the Project. Upon receipt of such a written request, Contractor shall, within a reasonable time, prepare a proposed written Change Order for the Commissioner's review setting forth: (a) the appropriate change in the Project, (b) the amount of adjustment, if any, in the Project Cost and the Purchase Price, and (c) the extent of adjustment, if any, in the Completion Date, all of which shall occur without penalty to Contractor. The Commissioner shall approve or disapprove any proposed Change Order for the Commissioner-Initialed Changes within two (2) Business Days of receiving the same. If the Commissioner does not provide written approval or objections to the proposed Commissioner-Initiated Change Order within such two (2) Business Day period, the proposed Change Order shall be deemed disapproved.

Any approved Change Order shall immediately (a) become part of the Plans and Specifications (and shall control any inconsistencies in the Plans and Specifications), and (b) to the extent specified in the Change Order, cause the Project Cost, the MRF Equipment Contingency Funds and the Purchase Price and Completion Date to be adjusted accordingly.

For purposes of determining potential relief to the Contractor under this Schedule, any delay in the commencement or progress of the work by any Uncontrollable Circumstance or the other circumstances described in Section 9.06 shall be treated as a delay caused by a Commissioner-Initiated Change; provided, however, that the Commissioner shall have no obligation to grant any requested increase in the Guaranteed Maximum Price for such delays unless and until

the aggregate number of days of delay for such items exceeds ninety (90) days of delay, and only those costs incurred after the 90th day shall be considered.

Section 9.03: Basis of Payment or Credit for Altered Work

The method of determining the basis of payment or credit resulting from such altered work shall be:

a) By the UNIT BID PRICE named in the proposal for like items of work.

b) By a SUPPLEMENTAL SCHEDULE OF PRICES stated by the Contractor in the proposal when such bids are requested and when the Unit Bid Price is not applicable.

c) By the predetermined FIXED UNIT PRICE contained in the "Supplemental Schedule" included in the contract documents when the Unit Bid Price is not applicable or when a Supplemental Schedule of Prices bid by the Contractor was not required.

In the event that none of the three foregoing methods are applicable, the Commissioner reserves the right to employ any of the following methods:

d) By Unit Prices submitted by the Contractor and accepted by the Commissioner.

e) By a Cost Plus 15% Basis. Cost is hereby defined as the actual Development Cost incurred for such altered work (but excluding overhead and profit). Fifteen percent (15%) shall be added thereto for Contractor's overhead and profit for work performed directly by Contractor. Unless otherwise agreed to by the Commissioner, the aggregate limitation on the amount of profit and overhead that the Contractor and all direct and lower tier subcontractors can charge for changes involving subcontractors shall be twenty percent (20%) of the direct Development Cost attributable to such change. Contractor shall not charge for Contractor's overhead and profit on costs payable to BHS for changes to the BHS furnished equipment).

f) The parties acknowledge and agree that: (1) certain change order work generally involving sprinkler replacement and exterior asphalt, as more particularly described in Attachment 13, will be required as Commissioner-Initiated Change work (the "Anticipated Ashphalt and Sprinkler Change Work"); (2) Contractor shall solicit competitive bids from trade contractors for the Anticipated Ashphalt and Sprinkler Change Work and shall seek the Commissioner's approval of the subcontracts for the Anticipated Ashphalt and Sprinkler Change Work; (3) in lieu of the mark-ups for overhead and profit set forth in clause e) above, (A) the Contractor shall charge seven and five-tenth percent (7.5%) of the Development Cost for Anticipated Ashphalt and Sprinkler Change Work and (B) the amounts charged by the subcontractors for such Anticipated Ashphalt and Sprinkler Change Work shall be actual amounts charged by the successful bidders for such work (without regard to

the aggregate twenty percent (20%) mark-up for overhead and profit set forth in clause e).

Section 9.04: Claims for "Cost Plus" Extra Work

Claims for such extra work shall not be considered unless the Contractor presents to the Commissioner's representative on the work an itemized statement in duplicate of the hours of labor, quantities of materials, etc., upon which payment is to be based. The Commissioner's representative shall verify such amounts and shall retain the original for the Commissioner and return the duplicate copy to the Contractor. The verification of such items by the Commissioner's representative shall not in itself be construed as authorization or acceptance of such claims. No claims will be considered until the original bills, receipts, or vouchers have been furnished to the Commissioner by the Contractor.

Section 9.05: Time Limit for Filing Claims for Extra Work

Claims for extra work shall be filed not later than thirty days after the Date of Completion.

Section 9.06: Change to Completion Date

When the official notice requires completion of the contract by a specific calendar date or a specified number of calendar/work days from date of order to proceed, all work required to be completed by such date (including cleanup of the work site, where applicable) must be substantially complete by that date, including any extensions that have been granted. However, upon written request from the Contractor, an extension of time shall be granted by the Commissioner for such time as the Commissioner determines (subject to Section 9.07 below) that the Contractor was delayed due to conditions beyond control of the Contractor, such as strikes and other labor actions, governmental regulations, shortage of building material, fires, floods, unanticipated delays in receiving licenses, permits or approvals for the work, any act or neglect of the Owner or any of the Owner's representatives, concealed or unknown conditions encountered during performance of the work, changes in the work, any impediment to access to the site, unanticipated delay in deliveries, adverse weather conditions, other Uncontrollable Circumstances, and other reasons specified in this Schedule and the General Specifications. This additional time allowance does not automatically impact total project costs; however, Contractor may apply for compensation under Article IX of this Schedule, which shall be determined by the Commissioner in accordance with that Section.

Section 9.07: Determinations by Commissioner

Upon receiving a written request from the Contractor for an extension of time, an increase in the GMP or other relief under this Schedule, the Commissioner shall investigate and make a determination in writing as to whether the Contractor is entitled to the requested relief. If the Contractor disagrees with such determination, the Contractor can dispute the determination in accordance with applicable law.

Article X: Start-up and Acceptance Testing

Section 10.01: Start-Up Operations Prior to Acceptance

(a) On and after Substantial Completion, the Contractor will operate and maintain the joint MRF as defined in the Contract. During the initial phase of operation, Contractor will conduct employee training, testing, system optimization, and tuning in preparation for the performance of an Acceptance Test. Within 90 days of the date of achieving Substantial Completion (Operating Condition), Contractor will schedule an Acceptance Test pursuant to Section 10.02.

Section 10.02: Acceptance Test Procedures; Acceptance

(a) Testing. The Contractor shall be responsible for start-up operations of the MRF and for the performance and execution of Acceptance Testing, and shall furnish all labor, supervision, materials, services, equipment and instrumentation necessary to perform and execute the Acceptance Tests except for the furnishing of Recyclable Material. The Contractor shall not be authorized to commence Acceptance Testing until the MRF is Substantially Complete as determined by the Engineer

(b) Test Plan. Prior to the ninety (90) Days notice of start-up required by Section 10.02(c), the Contractor shall prepare and submit a test plan to the City for review and approval. The test plan shall define a test program as to each test objective and procedure described in Attachment 5 (Performance Guarantee and Acceptance Testing), and shall set forth in detail the procedures to be used, the specific measurements to be made, the proposed usage of permanent and temporary instrumentation, the organization of the test team, the staffing and monitoring requirements during start-up and Acceptance Testing, the Acceptance Testing schedule, the estimated Recyclable Material quantities and delivery schedules required for the Acceptance Testing, and the operating and maintenance schedule during the Acceptance Testing. The plan shall also make provision for measuring and determining the Processing capability of the MRF, and the quality and quantities of Marketable Recovered Materials produced for sale, as well as a determination of the compliance of the MRF with the terms and conditions of applicable permits, licenses, laws and regulations. The test plan shall in all respects conform to the requirements of Attachment 5 (Performance Guarantee and Acceptance Testing).

(c) Notice of Substantial Completion and Acceptance Test. The Contractor shall give the City (i) ninety (90) Days prior written notice of the approximate date of achieving Operating Condition in preparation for Processing of Recyclable Material and ii) at least ten (10) Days prior written notice of the schedule for Acceptance Testing, the date and time of the Acceptance Tests. The Contractor may at its cost and expense test the MRF at any time for its own purposes. The test shall not be treated as an Acceptance Test for purposes of this Project, but the information obtained including results shall be made available to the City.

(d) Inspection. The City shall have the right, at the City's expense, to verify the preparation for, and the conduct of, Acceptance Testing pursuant to the test plan and the provisions of Attachment 5 (Performance Guarantee and Acceptance Testing), for the purpose of verifying compliance with the approved Acceptance Test plan and verifying the integrity of the Acceptance Test results. The Contractor shall cooperate fully with the City in this regard.

(e) Test Results. The Contractor, upon completion of the Acceptance Tests, shall furnish the City with a written report, certified by the Contractor, describing (i) the Acceptance Tests conducted, including whether the MRF operates at the Full Acceptance Standard or at a standard equal to or greater than the Minimum Acceptance Standard or at a lesser level, (ii) the results of the Acceptance Tests, (iii) whether any of the performance guarantees set forth in Attachment 5 (Performance Guarantee and Acceptance Testing), were satisfied and (iv) the Contractor's estimate of the date of initiation of succeeding Acceptance Testing, if necessary .

If the MRF operates at Full Acceptance Standard as set forth in Attachment 5, the Acceptance Test is deemed to be successful and complete as it relates to any and all requirements of this Schedule, including but not limited to milestone payments referenced in this Schedule Attachment 7.

If the MRF operates at less than Full Acceptance Standard as set forth in Attachment 5, the Contractor may take corrective action to correct any deficiencies and repeat the Acceptance Test.

If within twelve (12) months of the date of achieving Operating Condition an Acceptance Test certifying that the MRF operates at Full Acceptance Standard has not been completed and accepted, the last five percent milestone payment for BHS system equipment referenced in this Schedule Attachment 7 shall be waived by the Contractor. (i)If the MRF operates at the Minimum Acceptance Standard set forth in Attachment 5, such waiver of final payment by the Contractor will be the sole and complete remedy to the City for failure to meet the Acceptance Standards or (ii) If the MRF operates below the Minimum Acceptance Standard set forth in Attachment 5, the last five percent milestone payment for BHS system equipment shall be waived, and the Contractor shall pay the City as its sole and complete remedy for such shortfall an additional sum of $75,000 for every 0.5 ton/hour that the System Throughput test results fall below the minimum standard (33.25 tons/hour); Commissioner may set off these sums from amounts due the Contractor under the Contract.,payable within 14 months of the date of achieving Operating Condition.

Article XI: Liability and Insurance

Section 11.01: Liability Insurance

The following insurance requirements shall apply to the Project (construction portion of the contract).

Each Prime Contractor must furnish to the City of Milwaukee, prior to the start of work, certificates of insurance which confirm that the Prime Contractor has the types and amounts of insurance referenced in Sections (a) through (d). The Prime Contractor shall require all of its subcontractors to carry the same types and amounts of coverage as required of the Prime or may instead provide the coverage for any or all subcontractors. The Prime Contractor is fully responsible for assuring subcontractor compliance with all the insurance requirements specified herein.

a) WORKER'S COMPENSATION AND EMPLOYEES LIABILITY

Coverage Amounts

Worker's Compensation	Statutory	
Employer's Liability		
Bodily Injury by Accident	each accident	$100,000
Bodily Injury by Disease	each employee	$100,000
Bodily Injury by Disease	policy limit	$500,000

To Include

Other state's coverage
United States Longshoremen and Harbor
Worker's Endorsement (Required only when the
contract Involves work on navigable bodies of water)

b) COMMERCIAL GENERAL LIABILITY

Limits of Liability

Bodily Injury/Property Damage	each occurrence	$1,000,000
general aggregate	$1,000,000	
products/completed Operations aggregate	$1,000,000	
Personal Injury	aggregate	$1,000,000

To Include

Occurrence form
Premises/operations coverage
Products/completed operations coverage including extension of coverage for two (2) years after acceptance of work by the City of Milwaukee
Independent contractors (Owners/Contractors Protective) coverage
Contractual liability for risks assumed in this agreement
No exclusion for explosion, collapse, or underground occurrences

c) AUTOMOBILE LIABILITY

Limits of Liability

Bodily Injury/Property
Damage each accident $1,000,000

To Include

Coverage on all owned, non-owned, and hired vehicles

d) UMBRELLA LIABILITY

Limits of Liability

Personal Injury/Property
Damage each occurrence $14,000,000
aggregate $14,000,000

To Include

Occurrence form
First dollar defense coverage
Insuring agreement which will provide excess protection to the primary coverages

For coverages referred to in section 2.9.7.(b), (c), and (d), the City of Milwaukee shall be named as an additional insured.

The worker's compensation and employers liability certificate should confirm that thirty (30) days notice of cancellation must be provided. For all other insurance coverages referenced above, sixty (60) days notice of cancellation must be provided.

A separate certificate need not be filed if the Prime Contractor has a current certificate on file with the City of Milwaukee. It is the responsibility of the Prime Contractor to make this determination and to provide evidence of coverage if a previous certification has been filed. No Prime Contractor or Subcontractor shall perform any work under the contract after a certificate has expired or been canceled unless a new or renewal certificate is provided prior to the expiration or cancellation date of the previous certificate. The Prime Contractor shall have the responsibility of ensuring that valid certificates are on file for itself and all Subcontractors it plans to use.

Article XII: Protection against Liability

Section 12.01: Protection against Liability

To the fullest extent permitted by law, the Contractor shall be responsible for and shall save the City

harmless from, and defend the City against, all liability for damages arising from the performance of the work, provided that such liability is attributable to bodily injury, sickness, disease or death, or to injury or destruction of tangible property (subject to Section 17.17 below), but only to the extent caused by the negligence of the Contractor, the Contractor's agents, employees, workers, and subcontractors.

Article XIII: Unforeseen Delay

Section 13.01: Unforeseen Delay

If the City is prohibited or enjoined from proceeding with the work or from authorizing its prosecution, either before or after its commencement, by reason of any litigation or otherwise, the Contractor shall not be entitled to any damages by reasons of the delays thereby caused, except for the actual cost of protection of such work as the Contractor may have underway for the cost of removal and replacement of such tools, plant, and materials, as the Contractor may have delivered upon the work site, and such cost is to be determined by the Commissioner. The time of completion shall be extended for the aggregate delay as determined by the Commissioner (subject to Section 9.07 above).

Article XIV: Termination

Section 14.01: Termination of Contract for Cause

If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Schedule, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Schedule, the City shall thereupon have the right to terminate this Contract by giving written notice to the Contractor of such termination, specifying the effective date thereof, at least 30 days before the effective date of such termination (and such termination shall be of no force or effect if the Contractor commences curing such default during said 30 day period and thereafter continues pursuing such cure through completion). The City may relet the work to be performed under this Contract to some other competent party, or employ persons and secure material for the completion of same, and charge the costs thereof to the Contractor. In such event, all finished or unfinished work accomplished by the Contractor under this Contract shall, at the option of the City, become its property and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Contract by the Contractor, and the City may withhold any payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the City from the Contractor is determined.

Section 14.02: Termination for Convenience of the City

Prior to commencement of operations, the City may terminate the Contract at any time for any reason by giving at least ten (10) days notice in writing to the Contractor. If the Contract is terminated by the City as provided herein, the Contractor will be paid an amount which bears the same ratio to the total compensation as the work actually performed bears to the total work of the Contractor covered by this Schedule, less payments of compensation previously made, plus costs incurred by reason of such termination (including demobilization and amounts payable to subcontractors and suppliers).

Article XV: Warranties and Guarantees of Equipment and Material

Section 15.01: Warranty

The Contractor warrants, commencing on substantial completion and ending on the first anniversary of substantial completion, its workmanship against defects including but not limited to design and construction within acceptable standards in the industry, and warrants the equipment and materials furnished under this Contract, so far as the same are of its own manufacture, against defects in material and workmanship under normal use as contemplated by this Contract. The Contractor's obligation and liability with respect to any nonconforming work shall be limited solely to correcting such nonconforming work to the extent required by this paragraph. The warranty obligations in this paragraph are the sole warranty provided by the Contractor; and to the fullest extent permitted by law, the warranty and correction obligations of this paragraph supersede, and the Contractor expressly disclaims, any and all other express or implied warranties of any type, including, but not limited to, any warranty of fitness for a particular purpose, habitability or merchantability.

The processing system will be designed to operate at 35 tons per run hour. Expected machine uptime is > 92%. Factoring in paid breaks, the system is rated to process 241 tons in one eight hour shift. The Contractor shall require a performance warranty be executed by its equipment supplier, wherein guarantees are provided by the equipment supplier for:

a. Throughput
b. Recovery of recyclables
c. Quality (purity) of commodities produced
d. Staffing
e. Uptime
f. Disk replacement life

Attainment of the performance warranty specifications is verified by the completion of an acceptance test. Satisfactory completion of the acceptance test is a condition of the release of the final payment for the MRF equipment. Failure to meet the performance warranty requires the supplier to complete modifications and design changes as necessary, at its sole expense, in order to meet the warranty conditions. Once completed and the final payment for the MRF equipment is made, there is an additional requirement for an acceptance test following one year of service to verify the system continues to perform at its rating; with remedies provided by the supplier should any performance metric fail to meet its guarantee.

Section 15.02: Survival

The Contractor shall use its reasonable efforts to obtain warranties and guarantees of material and equipment not manufactured by the Contractor which are assignable to the City and shall assign the warranties and guarantees to the City effective upon termination of this Contract. The Contractor's warranty of its workmanship, and of the equipment and materials as specified, and its obligation to assign warranties and guarantees as specified, shall survive termination of this Contract only to the extent warranties are in effect at the time of termination and only for the remaining period of the warranties.

Article XVI: Confidentiality

Section 16.01: Records

Both parties understand that the City is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Schedule 11 are subject to and conditioned on the provisions of Wis. Stat. § 19.21, et. seq. Contractor acknowledges that it is obligated to assist the City in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Schedule 11, and that the Contractor must defend and hold the City harmless from liability under that law. Except as otherwise authorized, those records shall be maintained for a period of seven (7) years after receipt of final payment under this Schedule 11.

Article XVII: Miscellaneous

Section 17.01: Project Term

Unless sooner terminated in accordance with the provisions of this Contract, or unless extended pursuant to Article IX, this Project shall commence on the Contract Date and continue in effect until twelve (12) months following the Acceptance Date.

Section 17.02: Visitation Rights

(a) During the term of this Project, the City and its representatives and invitees, and representatives of regulatory agencies shall have the right to visit the MRF in the presence of a Contractor representative if approved in advance by the Contractor (approval shall not be reasonably withheld) and, provided that the visitation shall be conducted in a manner so as to minimize interference with the Contractor's performance of its obligations under this Contract.

(b) In connection with the visits, the City shall comply, and shall cause its agents, representatives, employees or invitees to comply, with all reasonable rules and regulations adopted by the Contractor, including a requirement that each Person visiting the MRF site shall sign a statement containing terms and conditions reasonably satisfactory to the Contractor, which may require, among other things, that each Person agree to assume the risk of injury during the inspection or visit but not the risk of injury due to the intentional or negligent acts or omissions of the Contractor.

(c) Nothing herein shall in any way limit the City's absolute right to enter, visit or inspect the MRF at any time, provided that the City complies with all reasonable established safety procedures.

Section 17.03: Industry Property Rights

(a) The Contractor shall pay all royalties and license fees, if any, relating to the design, construction, start-up and Acceptance Testing of the MRF. The Contractor warrants that the design, construction, start-up and Acceptance Testing of the MRF and the contemplated operation of the MRF or the use of any component unit or the use of any article, machine or process, or a combination of any or all of them, by the City or any third Person shall not infringe any patent, trademark or copyright of any other third Person. The Contractor shall defend any claim or lawsuit brought against the City or any of its officials, officers, board of directors, employees or representatives, including any claim or lawsuit for infringement of any patent, trademark or copyright relating to the design of the MRF; or for the unauthorized use of trade secrets by reason of the design, construction or operation of the MRF. The Contractor may, at its option, acquire the rights of use under infringed patents, or modify or replace infringing equipment with equipment equivalent in quality, performance, useful life and technical characteristics and development so that the equipment does not infringe, and the Contractor shall indemnify the City and the City Indemnified Parties and hold each and all harmless against all liability, judgments, decrees, damages, interest, costs and expenses (including reasonable attorneys' fees) recovered against the City and City Indemnified Parties sustained by any or all by reason of any actual or alleged infringement of any patent, trademark or copyright or the unauthorized use of any trade secret.

(b) This Section 17.03 shall survive termination of this Contract.

Section 17.04: Compliance with Laws

Contractor shall comply with all laws and regulations applicable to the design, construction, start-up and Acceptance Testing of the MRF. In connection with the performance of work under this Contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of sex, sexual preference, race, religion, color, national origin or handicap. This includes but is not limited to the following: recruitment or recruitment advertising; employment, upgrading, demotion or transfer; layoff and selection for training, including apprenticeship, in accordance with rules and regulations promulgated by the federal (Compliance Responsibility for Equal Employment Opportunity—Chapter 60, 60.1, 4, No. 1-7) and State (Standards and Procedures for Executive Directive 1975-6, Section II.C, IV.C and V. A&B) agencies and related federal and State laws and regulations.

Section 17.05: Notices under Schedule 11

All notices, demands, requests and other communications pertaining to this Project (Schedule 11 of the Contract) shall be deemed sufficient and properly given if in writing and delivered in person to the following addresses or sent by certified or registered mail, postage prepaid with return receipt requested, at the addresses and shall be effective on receipt:

(a) If to the City:

Michael Krause
Architectural Project Manager
City of Milwaukee

841 N Broadway, Room 602
Milwaukee, Wisconsin 53202

Or

Rebecca Rabatin
Project Coordinator
City of Milwaukee
841 N Broadway, Room 602
Milwaukee, Wisconsin 53202

(b) If to the Contractor:

Sean Duffy, President
ReCommunity
809 West Hill Street
Charlotte, NC 28208

Either Party may, by like notice, designate any further or different addresses to which subsequent notices shall be sent. Any notice signed on behalf of the notifying Party by an authorized attorney at law shall be valid and effective to the same extent as if signed on behalf of the Party by an authorized officer or employee.

Section 17.06: Relationship of the Parties

Neither Party to this Contract shall have any responsibility to perform services for or to assume contractual obligations which are the obligation of the other Party, and except as provided nothing shall constitute either Party as a partner, agent or representative of the other Party, or to create any fiduciary relationship between the Parties.

Section 17.07: Waiver

Unless otherwise specifically provided by the terms of this Contract, no delay or failure to exercise a right resulting from any other breach of this Contract shall impair the right or shall be construed to be a waiver, but the right may be exercised from time to time and as often as may be deemed expedient. Any waiver shall be in writing and signed by the Party granting the waiver. If any representation, warranty or covenant contained in this Contract is breached by either Party and waived by the other Party, the waiver shall be limited to the particular breach waived and shall not be deemed to waive any other breach under this Contract.

Section 17.08: Article and Section Captions;

The Article and Section headings and captions in this contract are included for convenience only and shall not be considered a part of the Contract or affect in any manner the construction or interpretation of the Contract.

Section 17.09: Amendment

No amendment, modification or change to this Contract shall be effective unless in writing and executed by the Parties.

Section 17.10: Contract Governed by Wisconsin Law

This Contract shall be governed by the laws of the State of Wisconsin.

Section 17.11: Successors and Assigns

This Contract shall be binding upon and inure to the benefit of the respective successors, permitted assigns, administrators and trustees of the City and the Contractor.

Section 17.12: Execution of Documents

This Contract may be executed in any number of duplicate originals, any of which shall be regarded for all purposes as an original.

Section 17.13: Severability

In the event that any provision of this Contract in any respect shall, for any reason, be determined to be invalid, illegal or unenforceable, the Parties shall negotiate in good faith for amendments, modifications or supplements of or to this Contract or the other appropriate actions as shall, to the maximum extent practicable, implement and give effect to the intentions of the Parties as reflected in the Contract. The other terms of this Contract shall remain in full force and effect.

Section 17.14: Prompt Payment Policy

It is the City's policy to pay all invoices within 30 days. If the City does not make payment within 45 days after receipt of properly completed supporting payment and other required contract documentation, the City shall pay simple interest beginning with the 31st calendar day at the rate of one percent per month (unless the amount due is subject to a good faith dispute and, before the 45th day of receipt, notice of the dispute is sent to the contractor by first-class mail, personally delivered, or sent in accordance with the notice provisions in the contract). If there are subcontractors, consistent with s.66.0135(3), Wis. Stats., the prime contractor must pay the subcontractors for satisfactory work within seven days of the contractor's receipt of payment from the City of Milwaukee, or seven days from receipt of a properly submitted and approved invoice from the subcontractor, whichever is later. If the contractor fails to make timely payment to a subcontractor, the contractor shall pay interest at the rate of 12 percent per year, compounded monthly, beginning with the 8th calendar day.

Reference Common Council File No. 1001137 adopted January 2011.

Section 17.15: Hazardous Waste

The City acknowledges and agrees that: (a) the Contractor has not created or contributed to the creation of or existence of any Hazardous Waste at the Site or the violation of any law or regulation relating to Hazardous Waste at the Site, or to the release of any Hazardous Material at or from the Site, prior to the date of commencement of performance of the work; (b) the scope of the work does not include the remediation, handling, transporting and disposal of any Hazardous Waste; (c) the City shall indemnify, defend and hold harmless the Contractor, its subsidiaries and affiliates, its engineers, consultants and subcontractors, and their respective officers, agents and employees, from and against any claim, demand, cause of action, judgment, damage, loss, expense, fine, penalty, including, without limitation, attorneys' fees, or other obligation, including but not limited to those based in whole or in part on strict liability, arising out of or resulting from (i) any Hazardous Waste not

released by the Contractor and (ii) costs of remediation of a Hazardous Material solely by reason of performing the work.

Section 17.16: Fair Employment Practice

The Contractor, its agents or sub-Contractors, shall comply with Chapter 112 of Title IX of the Code of the City of Milwaukee.

Section 17.17: Mutual Waiver of Consequential Damages

The Contractor and City waive claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes damages incurred by the City for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of services or productivity of employees; and damages incurred by the Contractor for office expenses, losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work. Nothing in this section precludes the imposition of liquidated damages in accordance with the requirements of this Schedule.

Section 17.18: Action by City

Any consent or approval required by the City may not be unreasonably withheld, conditioned or delayed.

Attachment 1 - Technical Specifications

Item #	MFR	Model #	Description	Width	Length	HP	Quantity
1	BHS	MB-50	BHS Metering Bin Capacity: 50 cu. yd. (38 cu. m) Metering Bin Head Chute			25,2	1
2	BHS	CBI-72	System Infeed Chainbelt	72"	51'	20	1
			Conveyor Type: Chainbelt				
			E-Stop Station(s)				2
			InFeed Chute				
			Photo Eyes				2
			Pit Plates				
			Support Bents				
3	BHS	LPSS-72	Pre-Sort Conveyor	72"	108'	10	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Gravity Take Up				
			Skirt Walls				
			Conveyor Bend				
			Conveyor Under Skirting				
			Emergency Pull Cord				
			Start Stop Station				
6	BHS	LPST-60	Pre-Sort Residue Collection Conveyor	60"	48'	3	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
7	BHS	LPST-36	Pre-Sort Residue Transfer Conveyor	36"	33'	3	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
8	BHS	OCC98-11-10	BHS OCC Separator®	98"		7.5,7.5	1
			Shafts: 21 total on 2 decks				
			IFO: Variable				
		OCCUCTD	OCC Unders Chute				1
10	BHS	WCScreen	BHS Debris Roll Screen® 84-15-15-7			5,5,7.5	1
		DRSOC	DRS Unders Chute				1
		DRSUC2D	DRS Glass Chute				1
11	BHS	LPSS-72	OCC QC Conveyor	72"	50'	3	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
			Conveyor Under Skirting				
			Emergency Pull Cord				
			Post Sort Conveyor End Enclosure				
12	BHS	LPSTC-72	OCC Unders Collection Conveyor	72"	44'	3	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
13	BHS	LPSTC-72	NS #1 Infeed Conveyor	72"	50'	3	1
			Conveyor Type: Sliderbed				
			Support Bents				

			Skirt Walls				
14	BHS	NS132-24F	BHS NewSorter® #1	132"		7.5,7.5,5	1
			Shafts: 24 total				
			IFO: Variable				
			Motors: SEW (2) 7.5 HP, 5 HP ((2) 5.5 kW, 4.0 kW)				
		NS-OC >120	NS Overs Chute #1				1
		NS-2SUC >120	NS Unders Chute #1				1
16	BHS	LPSTC-72	NS #2 Infeed Conveyor	72"	40'	3	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
17	BHS	NS120-24F	BHS NewSorter® #2	120"		5, 7.5, 5	1
			Shafts: 24 total				
			IFO: Variable				
			Motors: SEW (2) 5 HP, 7.5 HP ((2) 4.0 kW, 5.5 kW)				
		NS-OC >120	NS Overs Chute #2				1
		NS-2SUC >120	NS Unders Chute #2				1
19	BHS	LPSTC-72	PS Infeed Conveyor	72"	60'	5	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
20	BHS	PS132-26F	BHS Polishing Screen	132"		7.5,7.5,5,3	1
			Shafts: 26 total				
			IFO: 2" x 2" (51mm x 51mm)				
			Motors: SEW (2) 7.5 HP, 5 HP ((2) 5.5 kW, 4.0 kW)				
		PS-OC >120	PS Overs Chute				1
		PS-CSUC >120	PS Containers Chute				1
		PS-3SUC >120	PS Third Sort Unders Chute				1
22	BHS	LPST-48	NS #1 Overs Collection Conveyor	48"	23'	3	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
23	BHS	LPSS-60	News Post Sort Conveyor #1	60"	40'	3	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
			Conveyor Under Skirting				
			Emergency Pull Cord				
			Post Sort Conveyor End Enclosure				
24	BHS	LPST-48	NS #2 Overs Collection Conveyor	48"	22'	3	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
25	BHS	LPSS-60	News Post Sort Conveyor #2	60"	40'	3	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
			Conveyor Under Skirting				
			Emergency Pull Cord				

			Post Sort Conveyor End Enclosure				
26	BHS	LPSTC-42	PS Overs Collection Conveyor	42"	29'	3	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
27	BHS	LPST-36	PS Overs Transfer Conveyor	36"	48'	3	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
			Conveyor Chute Small				
			Conveyor Bend				
28	BHS	LPSS-48	Mixed Fiber Post Sort Conveyor	48"	37'	3	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
			Conveyor Under Skirting				
			Emergency Pull Cord				
			Post Sort Conveyor End Enclosure				
29	BHS	LPS-54	News Post Sort Reversing Conveyor #1	54"	8'	3	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
30	BHS	LPS-54	Mixed Fiber Post Sort Reversing Conveyor	54"	8'	3	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
31	BHS	LPS-54	News Post Sort Reversing Conveyor #2	54"	8'	3	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
32	BHS	LPST-72	OCC Reversing Leveling Conveyor	72"	68'	5	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
			Reversing Conveyor				
33	BHS	LPST-72	News Reversing Leveling Conveyor	72"	69'	5	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
			Reversing Conveyor				
34	BHS	LPST-72	Mixed Fiber Reversing Leveling Conveyor	72"	69'	5	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
			Reversing Conveyor				
38	BHS	LPSTC-36	Fiber Return Conveyor	36"	42'	3	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				

39	BHS	LPST-42	Container Return Conveyor #1	42"	24'	3	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
40	BHS	LPST-42	Container Return Conveyor #3	42"	24'	3	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
41	BHS	LPST-42	Container Return Conveyor #2	42"	24'	3	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
42	BHS	LPST-36	Post-Sort Container Collection Conveyor	36"	35'	3	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
43	BHS	LPSTC-30	Container Collection Conveyor	30"	30'	3	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
44	BHS	HDPC-36	Container Transfer Conveyor #1	36"	28'	3	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
45	BHS	LPSS-30	Container Pre-Sort Conveyor	30"	55'	5	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
			Conveyor Bend				
			Stainless Steel Section				
			Conveyor Under Skirting				
			Emergency Pull Cord				
48	BHS	LPSTC-42	Container Transfer Conveyor #2	42"	37'	3	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
			Stainless Steel Section				
49	BHS	LPST-60	PET Infeed Conveyor	60"	12'	3	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
50	BHS	ACL-96	PET Accl Conveyor	96"	22'	10	1
			Conveyor Type: Acceleration				
			Support Bents				
			Skirt Walls				
52	BHS	CS-48	HDPE Infeed Conveyor	48"	29'	3	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
			Conveyor Bend				
53	BHS	ACL-84	HDPE Accl Conveyor	84"	22'	10	1

			Conveyor Type: Acceleration				
			Support Bents				
			Skirt Walls				
55	BHS	LPSTC-48	HDPE Default Collection Conveyor	48"	19'	3	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
56	BHS	LPSTC-36	HDPE Default Transfer Conveyor	36"	19'	3	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
57	BHS	HDPC-48	Mixed Plastic Infeed Conveyor	48"	26'	3	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
58	BHS	ACL-72	Mixed Plastic Accl Conveyor	72"	22'	8	1
			Conveyor Type: Acceleration				
			Support Bents				
			Skirt Walls				
60	BHS	CS-48	AL Infeed Conveyor	48"	29'	3	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
			Conveyor Bend				
62	BHS	LPSS-30	PET QC Conveyor	30"	47'	3	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
			Conveyor Bend				
			Conveyor Under Skirting				
			Emergency Pull Cord				
			Post Sort Conveyor End Enclosure				
63	BHS	LPSS-30	AL QC Conveyor	30"	32'	3	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
			Conveyor Bend				
			Conveyor Under Skirting				
			Emergency Pull Cord				
			Post Sort Conveyor End Enclosure				
64	BHS	LPSS-30	HDPE Sort Conveyor	30"	47'	3	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
			Conveyor Bend				
			Conveyor Under Skirting				
			Emergency Pull Cord				
			Post Sort Conveyor End Enclosure				
65	BHS	LPSS-30	Mixed Plastic QC Conveyor	30"	33'	3	1
			Conveyor Type: Sliderbed				
			Support Bents				

			Skirt Walls				
			Conveyor Bend				
			Conveyor Under Skirting				
			Emergency Pull Cord				
			Post Sort Conveyor End Enclosure				
73	BHS	LPST-30	HDPE-N Collection Conveyor	30"	24'	3	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
81	BHS	LPST-24	AL Collection Conveyor	24"	32'	2	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
82	BHS	LPST-24	PET Collection Conveyor	24"	20'	2	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
83	BHS	LPST-24	Aseptic Collection Conveyor	24"	20'	2	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
84	BHS	LPSS-30	Residue QC Conveyor	30"	28'	3	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
			Conveyor Bend				
			Conveyor Under Skirting				
			Emergency Pull Cord				
			Post Sort Conveyor End Enclosure				
85	BHS	LPST-30	Container Residue Conveyor	30"	62'	5	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
86	BHS	LPST-48	Container Residue Transfer Conveyor	48"	62'	5	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
			Conveyor Bend				
87	BHS	LPST-48	Residue Collection Conveyor	48"	145'	10	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Gravity Take Up				
			Skirt Walls				
88	BHS	LPST-30	Container Presort Residue Collection Conveyor	30"	24'	3	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
			Conveyor Chute Small				
89	BHS	LPSTC-30	Third Sort Collection Conveyor	30"	32'	3	1
			Conveyor Type: Sliderbed				

			Support Bents				
			Skirt Walls				
90	BHS	LPST-48	Residue Loadout Reversing Conveyor	48"	16'	3	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
92	BHS	HDS-48	Container Bunker Reversing Conveyor	48"	87'	8	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
			Reversing Conveyor				
93	BHS	CBH-72	Fiber Metering Baler Infeed Chainbelt	72"	101'	30	1
			Conveyor Type: Chainbelt				
			Pit Plates				
94		CBI-72	Baler Infeed Chainbelt #1	72"	75'	20	1
	BHS		Conveyor Type: Chainbelt				
			E-Stop Station(s)				2
			InFeed Chute				
			Photo Eyes				2
			Pit Plates				
			Support Bents				
95	BHS	CBI-72	Baler Infeed Chainbelt #2	72"	93'	25	1
			Conveyor Type: Chainbelt				
			E-Stop Station(s)				2
			InFeed Chute				
			Photo Eyes				2
			Pit Plates				
			Support Bents				
96	BHS	IC-36	DRS Unders Conveyor	36"	29'	3	1
			Conveyor Type: Idler				
			Support Bents				
			Skirt Walls				
97	BHS	ICC-36	DRS Unders Transfer Conveyor	36"	23'	3	1
			Conveyor Type: Idler				
			Support Bents				
			Skirt Walls				
98	BHS	ICC-36	Nihot Infeed Conveyor	36"	44'	3	1
			Conveyor Type: Idler				
			Support Bents				
			Skirt Walls				
100	BHS	PDG-CB	Glass Diverter Gate			1	1
110	BHS	LPST-48	Bypass Collection Conveyor	48"	51'	5	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
111	BHS	LPSTC-48	Bypass Transfer Conveyor	48"	57'	5	1
			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
			Conveyor Bend				
114	BHS	LPSTC-48	Residue Collection Conveyor	48"	83'	8	1

			Conveyor Type: Sliderbed				
			Support Bents				
			Skirt Walls				
35	BHS	KWF	OCC Walking Floor			20	1
36	BHS	KWF	Mixed Fiber Walking Floor			20	1
37	BHS	KWF	News Walking Floor			50	1
46	BHS	SE-7422-SC2	Container Electromagnet	48"		3,10	1
51	BHS	SpydIR-96T	PET NRT SpydIR™ T Up Eject	96"		0.5	1
			EjecΘon Valve Block				
			Integrated EjecΘon Hood				
			SpliΣer Roller and Drive				
			SpliΣer Chute				
			Electrical Control Panel				
			Eject Up				
54	BHS	SpydIR-84R	HDPE NRT SpydIR™ Up Eject	84"		0.5	1
			EjecΘon Valve Block				
			Integrated EjecΘon Hood				
			SpliΣer Roller and Drive				
			SpliΣer Chute				
			Electrical Control Panel				
59	BHS	SpydIR-72R	Mixed Plastic NRT SpydIR™ Up Eject	72"		0.5	1
			EjecΘon Valve Block				
			Integrated EjecΘon Hood				
			SpliΣer Roller and Drive				
			SpliΣer Chute				
			Electrical Control Panel				
61	BHS	ECSCM100	Containerline ECS	40"		2,2	1
66	BHS	CLS-24	PET Leveling Screw Conveyor			3	1
67	BHS	CLS-24	HDPE-C Leveling Screw Conveyor			3	1
68	BHS	CLS-24	HDPE-N Leveling Screw Conveyor			3	1
69	BHS	CLS-24	Mixed Plastic Leveling Screw Conveyor			3	1
70	BHS	CLS-24	AL Leveling Screw Conveyor			3	1
71	BHS	CLS-24	Aseptic Leveling Screw Conveyor			3	1
72	BHS	CLS-24	FE Leveling Screw Conveyor			3	1
74	BHS	KWF	PET Walking Floor			20	1
75	BHS	KWF	HDPE-C Walking Floor				1
76	BHS	KWF	HDPE-N Walking Floor				1
77	BHS	KWF	Mixed Plastic Walking Floor				1
78	BHS	KWF	AL Walking Floor				1
79	BHS	KWF	FE Walking Floor				1
80	BHS	KWF	Aseptic Walking Floor				1
99	BHS	SDS 650-C XL	Nihot SDS			15,4,3,2,1.	1
101	BHS	SCCON	Leveling Screw Conveyor			3	1
103	BHS	FCS-3-8-25HP	Post Sort Film Collection			25,7.5	1
			Pipe Selection: -Spiral Lock Pipe: - 8" dia.				
			Trunk Pipe Selection: -Spiral Lock Pipe: - 14" dia.				

			Elbow Selection: -Pneumatic 90 degree Elbows & Transitions-8" dia.				
			Trunk Elbow Selection: -Pneumatic 90 degree Elbows & Transitions-1	" dia.			
105	BHS	CR	Control Room			10	1
			HVAC for Domestic Cabins/Rooms				
			Control Room Square Footage: 144 Sq Feet				
106	BHS	ACP-350-TAS	Air Compressor			75	1
			Air Compressors PKG Model No: ACP-350-TAS				
			AC PKG Description: 75 Hp Air Compressor (Hi Dust)				
			AC Pkg Tank Size: Horizontal Dry Tank 660 Gallon				
			Drain Valve Description: ENL-5 Electric No Loss Drain Valve				
			Oil Water Separator Description: Oil/Water Separator				
			Safety Valve Description: Safety Valve				
			Pressure Gauge Description: Pressure Gauge				
			Manual Drain Valve Description: Manual Drain Valve				
109	BHS	80TR10HEI-SYS	Dust Collector	14"		2,30	1
			Pipe Selection: -Spiral Lock Pipe: - 14" dia.				
5	BHS	PLAT-ST>16	Pre-Sort Platform Plated Walls Push Walls				1
			Throw Chute 24" x 24" Qty				
			Throw Chute 60" x 30" Qty				8
9	BHS	PLAT-OCC	OCC Structure & Platforms Walkway Standard Landing Stairs				1
15	BHS	PLAT-NS-PS-P&S	Walkways and stairs				1
18	BHS	PLAT-NS-PS-P&S	Walkways and stairs				1
21	BHS	PLAT-NS-PS-P&S	Walkways and stairs				1
47	BHS	ST-MAG-SS	Container Line Magnet Structure				1
91	BHS	LBB	Post-Sort Platform				1
			Photo Eye Qty				9
			Powered Bunker Gates w/Hoists				6
			Throw Chute 24" x 24" Qty				20
			Throw Chute 48" x 24" Qty				18
102	BHS	ST-VS	Glass Loadout Structure				1
104	BHS	PLAT-RAS	RAS Support Structure				1
			Non Caged Ladders				
105	BHS	PLAT-WW	Screen Line Access Walkway				1
107	BHS	LBB	Container Line Platform				1
			Photo Eye Qty				21
			Powered Bunker Gates w/Hoists				7
			Throw Chute 24" x 24" Qty				7

			Throw Chute 48" x 24" Qty				5
108	BHS	ST-SDS	SDS Platform				1
			Walkway				
			Caged Ladders				
112	BHS	PBGw-H	Container Bunker Conveyor Gate #1				1
113	BHS	PBGw-H	Container Bunker Conveyor Gate #2				1
120	BHS		Control System				
		It will generally consist of the following components:					
		▪ Hoffman NEMA 12 rated enclosure					
		▪ Allen Bradley components mounted on removable back panel					
		▪ Lockable, fused disconnect for 460/3/60 service					
		▪ Power distribution block					
		▪ Control power transformer, 460VAC-240 -120VAC					
		▪ Indicating fuse holders for 120VAC control power circuits					
		▪ Fuses with indicating statuses for all ACVF drives and motor starters					
		▪ (Input) line reactors for each ACVF drive					
		▪ Allen Bradley ACVF drive for variable speed control required motors					
		▪ Output contractors for emergency stop isolation for each of the ACVF drives					
		▪ Master control relay for isolation of control power for emergency stop conditions, Category 1 circuit					
		▪ Allen Bradley Compact Logix PLC					
		▪ Wire duct for running control and power wire inside enclosure					
		▪ One 120VAC/1/60 outlet for computer power					
		▪ Numbered terminal strips for all connecting field wiring including motor leads					
		▪ Hardwired, lighted, emergency stop button on front of enclosure					
		▪ Color touch screen, operator interface panel (HMI) in remote enclosure					
		▪ Two-signal light and horn sets to annunciate starting of equipment					
		▪ One Internet VPN appliance used for remote internet access					
		▪ HMI allows for a single one button system start/stop in automatic mode					
		▪ HMI has a reset button which allows remote reset for each of the ACVF drives					
		▪ HMI displays alarm banner's and alarm history screen to assist in trouble shooting faults included					
		▪ HMI has access to all ACVF drives for maintenance purposes called drive interface which allows access to all parameters for each drive					
		▪ HMI can individually start and stop all motors in maintenance mode					
121	BHS		SCADA System				
		The BHS SCADA System is focused on the data acquisition aspect of SCADA, utilizing a PC-based system to interface with the Programmable Logic Controller (PLC) system to collect data, store it in a database, and allow access for reporting purposes.					
		It will collect data from the following places/items:					
		▪ Motor hours					
		▪ Motor start cycles					
		▪ Motor amps (when available)					
		▪ Motor speed					
		▪ All system alarms					
		▪ System start/stop events					
		▪ In-feed start/stop events					
		▪ Downtime					
		▪ Estimated Production					
		▪ BHS Screens					
		▪ Power Monitoring					
		▪ Motors					

		The SCADA System will provide the following reporting capabilities:					
		▪ Overall Equipment Efficiency					
		▪ Production Rate					
		▪ Staffing Chart Configuration/Verification					
		▪ Downtime Tracking					
		▪ Event Logging					
		▪ Equipment Power Tracking					
		▪ Preventive Maintenance Planning and Tracking					
122	BHS		Design Engineering				
			Project Management				
			Installation supervision				
			Training and Performance Testing				
123	BHS		Equipment Installation Labor				
124	BHS		Freight				
201	VDBC	HBC120S	Fiber baler	38'-7"	8'-2"	120	
			Wire tier			3	
			Motor Counter pressure pump			1.5	
			Motor needle installation			12.5	
			Oil cooling fan			4	
			Oil circulation pump			6.2	
202	IB	TR12-T100HP	Automatic auto-tie 2 ram baler			100	
			International			100	
203	CPG		Film Compactor			3	
204	TBD		Camera system with DVR				
205	TBD		Maintenance equipment				
206	TBD		Safety equipment - eye wash stations, signage, air monitors				
BLD1	TBD	Design Build for Building Modifications for MRF operation					
			Engineering and design				
			Construction Management				
			Permitting				
			Removal of wall at tip floor for infeed installation				
			Installation of equipment pits				
			Under conveyor sprinklers				
			Block walls for glass bunker				
			Blocks for tip floor walls				
			Lights and receptacles for work platforms				
			Sort Cabins (5) w/ lights and heat				
			Fueling station for rolling stock				
			Electrical Service to MCC's				
			Electrical service to Balers				
			Repair separation wall for conveyor penetrations				
			Tip floor repairs - 5,000 SF only				
			Remove existing concrete ramps				
			New door opening in separation wall (4)				
			Recessed truckwell at NW corner				
BLD2	TBD	Design Build for Building Repairs/ Upgrades					
			Engineering and design				
			Construction Management				
			Permitting				
			Learning Center upgrades, as mutually developed including live video feed from MRF				

			Office and training room painting, flooring, ceiling panels				
			Re-lamp production area with high efficiency T5 fluorescent fixtures				
			Replace office HVAC unit				
			Building exhausters 20,000 cfm ea.			7.5	7
			Upgrade electrical service to 2000A				
	TNR	HDE/HDL	New rollup doors				9
			Remove existing doors. Replace with siding				15
			Install new truck doors at new truckwell				4
			Replace damaged exterior siding - 5,000 SF only				
SALV	SCE	Removal and Salvage of Existing Equipment					
			Remove equipment				
			Transportation and salvage				
			Fill existing pits				
			Remove concrete bunker walls				

Attachment 2 - Shop Drawing Schedule

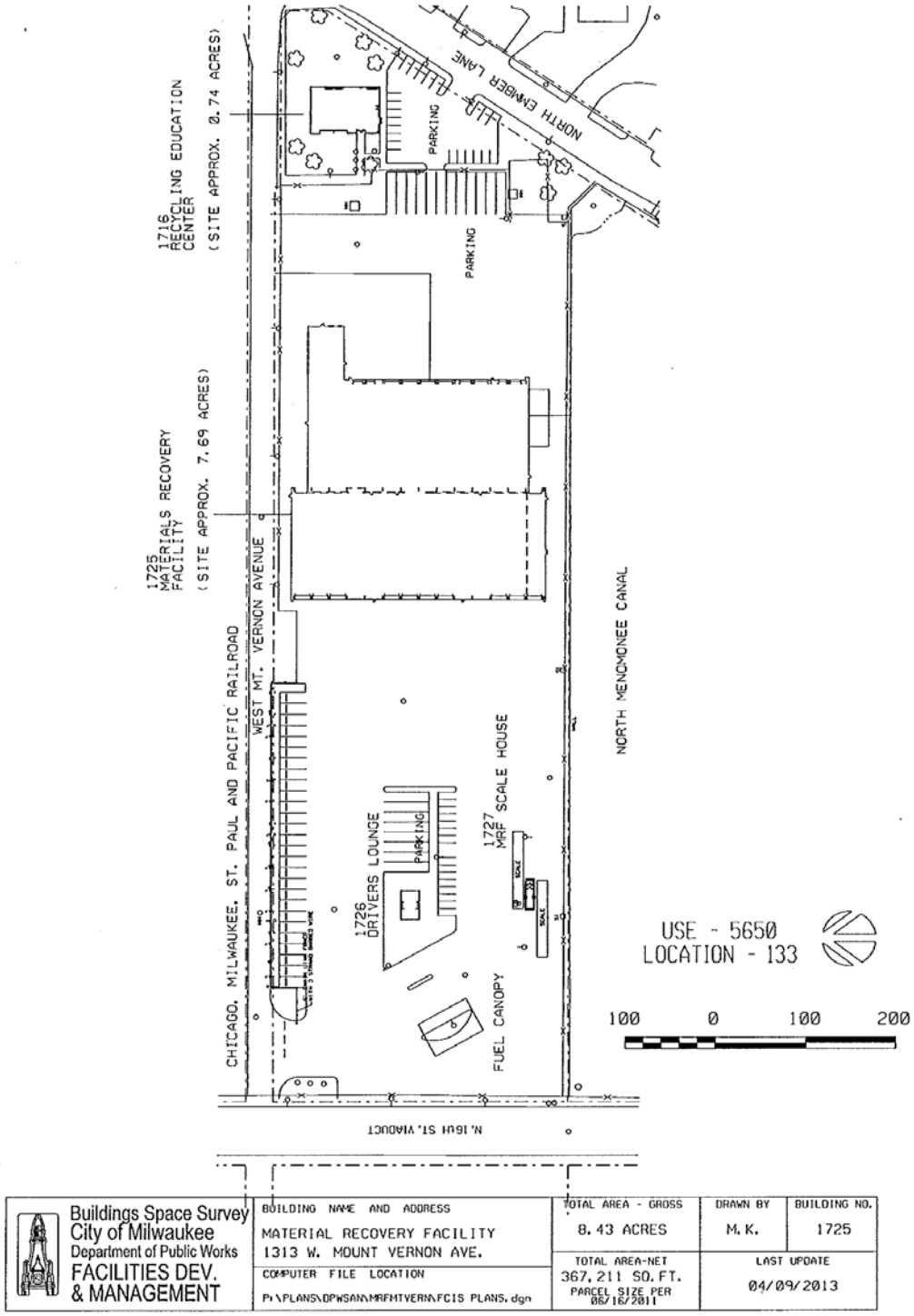
The following listed shop drawings accompany and form a part of the project contract documents along with this project manual and generally illustrate the nature of the work.

Sheet No.	Title
	Title Drawings
000	Title Sheet
	Contractor Proposal and Shop Drawings
	BHS Equipment Layout
	Architectural Drawings
205	Roof Plan
400	West Elevation

DRAWINGS, ETC. GO HERE

Attachment 3 - MRF Site Map and Other Existing Drawings

Include other existing site drawings here as appropriate



Attachment 4 - Schedule of Capital Values

Additional details for line items below will be provided in this Schedule of Capital Values

Capital Costs[1]		
MRF Equipment		
Attachment 1 items #1 through #206	$11,256,323	
Engineering	$1,030,721	
		$12,287,044
Building Modifications for MRF Operation		
Attachment 1 item # BLD1	$1,194,736	
Engineering	$86,004	
		$1,280,740
Building Repairs/ Upgrades		
Attachment 1 item# BLD2	$814,301	
Engineering	$58,275	
		$872,576
Equipment Removal and Salvage		
Attachment 1 item# SALV		$88,280
Contingency		$490,985
Guaranteed Maximum Price (GMP)		**$15,019,625**

1. See detailed Capital Cost Estimate sheet provided as part of this Schedule of Values for more details related to Capital Costs.

Milwaukee/Waukesha RFP #118-2013
Capital Cost Estimate
ReCommunity

1 Milwaukee City Existing MRF Equipment

3 New MRF Equipment
4 Milwaukee Building Modifications

	qty	ea	1	3	4	
Interior clean and paint						By City
Exterior paving						By City
Fencing and gates						By City
Building roof and gutter replacement						By City
Downspout replacement						By City
Remove and salvage existing MRF equipment			$ 37,800			quote SCE
Fill existing pits			$ 30,055			quote SCE
Remove concrete bunkers			$ 20,425			quote SCE
Contingency			$ 25,034			
35 tph processing system				$ 10,148,595		BHS quote
Prevailing wage premium				$ 514,832		
2 ram baler				$ 481,500		
Fiber baler				$ 800,007		
Remove tip wall at infeed				$ 20,425		estimate
Film Compactor				$ 25,000		estimate
Install new conveyor pits				$ 210,000		estimate
Under conveyor sprinkler				$ 125,000		estimate
Glass bunkers				$ 15,000		estimate
Sollenberger/mafia blocks				$ 10,000		estimate
Platform lights and receptacles				$ 40,000		estimate
Sort Cabins w/ HVAC	5	$ 25,000		$ 125,000		estimate
Fuel station				$ 2,500		estimate
Elec Service to MCC's				$ 60,000		estimate
Elec Service to Balers				$ 45,000		estimate
Tools and maint equipment				$ 44,500		estimate
Office Equip incl cameras				$ 45,000		estimate
Safety equip				$ 5,500		estimate
Repair separation wall	5,250	$ 12.00		$ 63,000		estimate
Employee Services upfits				$ -	$ 12,000	allowance
Tip floor repairs	5,000	$ 25.00		$ 125,000		allowance
Remove concrete ramps	4,000	$ 9.00		$ 20,425		estimate
Lighting upgrade					$ 65,000	estimate
Building exhausters	7	$ 19,500			$ 136,500	estimate
Upgrade electrical service to 2,000A					$ 175,000	estimate
New doors 10 x 12 between bldg	4	$ 15,000		$ 60,000		estimate
Construct new truck well NW side				$ 240,000		estimate
Sales Tax						not included
General Conditions and Construction Management	15%			$ 344,349	$ 58,275	
Contingency	3%			$ 407,119		
Exterior Doors					$ 358,801	see door schedule
Office & education center repairs					$ 27,000	
Exterior siding	5,000	$ 8.00			$ 40,000	allowance
Contingency					$ 55,983	
Total paid by City (salvage equipment)			$ 113,314			
Total paid by Entity (50/50)				$ 13,977,752		
Total paid by City (building repairs)					$ 928,559	

Attachment 5 - Performance Guarantee and Acceptance Testing

Acceptance Testing – Acceptance Testing will be performed following commissioning as follows:

ACCEPTANCE CRITERIA

RECOVERY RATE

Recovery rate will be equal to or greater than 98.5% for Recoverable Materials. No more than 1.5% by weight of the total Recoverable Materials per Schedule 2 (Table 2-1) will be contained in the residue

PRODUCT QUALITY

Purity levels will be determined by weighing non-target and prohibitive material within each of the individual streams after manual post sorting. Acceptance Criteria = Actual purity rate % greater than below targets are achieved for PET, Aluminum, OCC and at least one other Material Type.

1 – (Non-Target Material Weight/Total Material Collected Weight) = Purity Rate %

Material Type	Purity Rate %
ONP (News lines #1 and #2)	96 %
Mixed Paper (Polishing Screen paper line)	95 %
OCC (Corrugated)	97 %
PET	95%
Mixed Plastics	95%
Ferrous	97%
Aluminum (Non-Ferrous)	97%

OLD NEWSPAPER SPECIFICATIONS (ONP)

Total prohibitives plus outthrows may not exceed 4% by weight. Outthrows counted for this purpose will be restricted to rigid pieces greater than 64 square inches in size with at least one outside dimension being a minimum of 8".

RESIDENTIAL MIXED PAPER SPECIFICATIONS (MP)

Total prohibitives plus outthrows may not exceed 5% by weight. Outthrows counted for this purpose will be restricted to pieces greater than 64 square inches with at least one outside dimension being a minimum of 8".

SYSTEM THROUGHPUT

The system is guaranteed to be able to process a material stream having a composition within the allowable range shown for the acceptance test protocol at 35 tons per run hour or 241 tons per day (one standard shift based on a 92% uptime factor). Minimum Acceptance Standard is 95% of 35 tons per hour or 33.25 tons per hour.

OPERATIONAL CONDITIONS

The system will achieve the performance levels quantified herein, based upon the following operational conditions:

- The actual material characterization is within 15% of the Material Characterization as indicated herein. If any commodity is outside of the 15% allowance, recovery and purity acceptance criteria will be adjusted to the highest commercially viable achievable rates, at the reasonable discretion of the Contractor.
- The material shall not have excessive moisture (>15%), not previously baled, nor be frozen.
- If applicable, all of the incoming bags are pulled at the pre-sort and opened manually. Any unopened bags downstream will be excluded from the recovery and purity calculations.

MATERIAL CHARACTERIZATION

Material	**Composition**
Aluminum	0.7%
Cartons & Aseptic Packaging	0.2%
Ferrous Cans	2.5%
Glass	21.0%
Mixed Rigid Plastics	0.30%
OCC	10.2%
ONP / Mixed Fiber	48.4%
Plastic – Mix # 2,4, 5	0.70
Plastic-HDPE-C	1.40%
Plastic-HDPE-N	1.7%
Plastic-PET	3.9%
Scrap Metal	0.50%
Non-recyclables (Residue)	8.5%
Total	**100.0%**

PRODUCT QUALIFICATION STANDARDS

The recovery and purity rates for the commodities in the Recovery and Purity sections are dependent on the definitions of Schedule 2 (Table 2-1) and the following:

1. Fiber- is based on materials being whole, un-shredded, and larger than 4” by 4”.
    a. Recovery guarantee excludes bundles, catalogs, and phone books or generally any material that is 3 dimensional in character.
    b. Corrugated (OCC)-only pieces >8” by 8” will be included in Rejected Material calculation.
    c. If paper from the NewSorter and Polishing Screens are blended as a single product, then this material will be considered Mixed Paper for the purposes of this Acceptance Test.
2. Plastic Containers-Optical sorters are designed to sort whole, un-shredded plastic containers only. Objects that cannot be used in performance calculations include: clumped or interlocked containers; black or dark colored items; objects less than 2” by 2”. Manual sorting may be required to recover containers with fluid; items that are muddy, dirty, or covered greater than 50% by label; are otherwise obscured by other material; very thin or lightweight objects with

unpredictable aerodynamics. Manual quality control may be required to remove materials of so-called material-identical properties that cannot be differentiated by optical sorters (this includes some textiles (PET); DVDs/CDs and polymer laminates.

3. Glass containers – is based on objects larger than 2" by 2"
4. Tin/steel cans -The Ferrous metal guarantee is restricted to all pieces between 2" and 8" having a ferrous metal content of >60%. Clumped and interlocked items that are not Ferrous will be excluded from test results.
5. Aluminum (AL)- The Non-Ferrous guarantee is restricted to all pieces between 2" and 8" having a Non-Ferrous portion or element in their construction. These materials include foils, beverage cartons, tetra-pak, etc. In addition if a non-ferrous item has a rogue item stuck or jammed to it then this will also be considered acceptable material.

ACCEPTANCE TEST PROTOCOL

Starting Criteria	At any time within first 90 days after commissioning of the plant.
Duration	One day
Success Criteria	Contractor shall demonstrate under controlled and sustained conditions that the processing system is capable of meeting the Acceptance Criteria stated herein.
Re-testing	Should the Acceptance Criteria fail to be met, a corrective action plan will be put in place by Contractor which shall include a re-test(s) as soon as practical, but in no case more than 6 months following the Start-up Date. Contractor reserves the right, with agreement of the City, to perform any re-test(s) on only those acceptance criteria which were not met.

The following protocol procedure shall be used to establish and calculate the performance guarantee of the processing equipment at the MRF and to specifically determine the tons per hour throughput capacity of the SS processing system.

Product Quality Test

Recovered commodities will be in accordance to the defined product specifications as defined herein.

The Acceptance test for the processing system shall commence on a date mutually agreed to. Contractor, the City and the manufacturer's personnel shall be on-site to verify and validate the testing in accordance with this protocol. The Acceptance test duration for each process system shall be for a period on one (1), eight (8) hour shift which includes two (2) 15-minute breaks.

Throughput Rate Test

To establish a clear and accurate inventory of the amount of Acceptance test material on the tip floor area prior to the Acceptance test date, Contractor shall process all material on the designated tip floor to zero levels prior to the Acceptance test period. If zero levels cannot be

achieved prior to the Acceptance test period, all remaining material will be moved to a designated area on the tip floor to segregate it from the Acceptance test material.

No processing shall take place on the Day prior to the Acceptance test date to allow for sufficient accumulation of acceptable test material to be available for the Acceptance test period. All material received at MRF the Day of the Acceptance test date shall be stored on a designated section of the tip floor and segregated from this testing material until the performance test has been completed and validated by Contractor and the manufacturer's personnel.

All Acceptance test material received at the MRF shall be weighed and accounted for utilizing the MRF scale system. Contractor and the manufacturer shall agree and validate the total amount of Acceptance test material received for the use of the Acceptance test period.

Contractor will begin processing the Acceptance test material beginning at 7:00 a.m. on the established Acceptance test date and will continue processing until all designated Acceptance test material is processed.

This Acceptance test shall simulate as closely as practical, normal operating conditions. The process systems shall be sufficiently staffed – as per manufacturer stated staffing levels and properly maintained, as required under normal operating conditions.

Throughput Calculation

To establish the guaranteed throughput capacity rates for each process system, the following formula shall be used:

(Total Acceptance test material) divided by (total actual process time duration) equal (tons processed per hour). The total actual process time duration the processing systems, shall include the duration of time from the start time in the morning to the end time in which all Acceptance material is processed, excluding any downtime caused by neglect, poor maintenance and/or foreign objects damaging or interfering with the Plant, and lunch and employee breaks. Daily system capacity equals number of tons processed per hour multiplied by Acceptance test process time (hrs.).

Ex: 240 tons processed / 7.45 total process time duration = 32.21 tons processed per hour. 32.21 tons/hr x 16 hrs = 515.36 tons daily system capacity.

Residue Testing Procedure

The following test procedure shall be used for the Residue rate measurement.

Residue generated during the Acceptance test period either loose (in open top containers or delivered into a compactor box) or baled will be tagged and placed in a designated area

segregated from all other loose or baled materials and approved by Contractor and the manufacturer's personnel.

Upon completion of the Acceptance test period, all Acceptance test Residue generated loose (in open top containers or delivered into a compactor box) and baled will be transported to the MRF scale so that a total net weight of all Residue generated during the Acceptance test period can be established. All Recoverable Materials as defined herein will be separated from the residue and weighed so that a confirmation of the total weight of lost Recoverable Materials can be determined.

Acceptance Test Completion Documentation

The successful completion of the Acceptance Test shall be reported to the City, along with documentation of the results achieved.

Attachment 6 - Facility Material Delivery Standards

(Refer to Schedule 2 of the Contract, Table 2-1)

Attachment 7 - Not-To-Exceed MRF Equipment Drawdown and CPM Milestone Schedule

Drawdown Schedule:

MRF Equipment payment terms

35 tph processing system (BHS).

- 10% down payment with order
- 30% on issuance of approval drawings
- 40% 12 weeks from signed approval drawings
- 15% installation of BHS equipment substantially complete
- 5% on successful completion of Acceptance Test

Two ram baler (International)

- 5% down payment
- 30% after approval of GA drawings
- 30% upon shipment of equipment
- 30% installation substantially complete
- 5% on start-up of this equipment

Fiber baler (Bollegraaf)

- 5% down payment
- 30% after approval of GA drawings
- 30% upon shipment of equipment
- 30% installation substantially complete
- 5% on start-up of this equipment

All other

- 25% down payment with order
- 70% upon installation substantially complete
- 5% on start-up of this equipment

(Includes MRF equipment shipping and handling costs; MRF equipment, mechanical/electrical installation. There is no retainage on MRF equipment payments.)

MRF Timeline:

- Contract with City executed = week 0
- Place order for processing system = week 1
- General Arrangement Drawings reviewed and approved = week 10
- System Engineering and Manufacturing = weeks 11 thru 28

- Shipment of Equipment = weeks 22 thru 28
- Installation = weeks 24 thru 32
- Commissioning = weeks 33, 34
- Startup = week 35

CPM Milestone Schedule – as required in Section 6.03:

Attachment 8 - Parental Guarantee

(See Schedule 12 for the parental guarantee.)

Attachment 9 - Performance Bond and the Labor and Material Bond

Attachment 10 - DPW Standard Contract Forms

This Schedule will include additional administrative documents as required by the City of Milwaukee

Attachment 11 - DPW Prevailing Wage Scale

Insert wage scale here

Attachment 12 - Exclusions from Work

1) Correction of pre-existing violations of code or legal requirements is excluded. New construction will meet current codes and regulations.

2) Alterations, repairs, or modifications to existing building fire protection and alarm system is excluded. Scope of Project includes the design and installation of fire suppression system associated with the installation of the conveyors and processing system.

3) Alterations, repairs, or modifications to building plumbing systems are excluded except as required for this project as included in Attachment 1.

4) High voltage feed and main stepdown transformer is excluded, and is assumed to be provided by others under direct contract with the City. Scope of Project begins at 480V secondary of main step down transformer.

5) Repairs to existing lighting panels or wiring are excluded. Fixtures in processing area will be replaced as and to the extent described using existing wiring and breaker panels.

6) Exterior lighting repairs or upgrades are excluded.

7) Special foundation requirements for pit construction or tip floor replacement based on unsuitable soils are excluded. Slab on grade construction is assumed.

8) Additional costs imposed by concrete construction during winter conditions is excluded.

9) Roof repairs or replacements, including repairs to existing curbs for roof exhausters, is excluded. Use of and modification to existing curbs as required for new exhaust work is included and as required for new work in Attachment 1.

10) Removal/replacement of ventilation louvers in processing area east wall is excluded.

11) Alterations, repairs, or modifications to gutters or downspouts are excluded except as required for new work in Attachment 1.

12) Alterations, repairs, or modifications outside the perimeter of the building including seawall, fencing, drainage, parking lot or other site paving is excluded, except as may be required for the installation of the truck loading docks or as otherwise required for new work in Attachment 1.

13) Repairs to truck scales are excluded. Scope of Work relating to truck scales includes new computer interface and software only.

14) Repairs or replacement of lighting in tipping floor area is excluded.

15) Site survey is excluded.

16) Utility connection fees are excluded.

17) Security system, except video monitoring as specified, is excluded.

Attachment 13 - Anticipated Asphalt and Sprinkler Work

SCHEDULE 12
PARENTAL GUARANTEE

THIS GUARANTY AGREEMENT is made and dated as _____, 2014, from RE Community Holdings II, Inc., a corporation organized and existing under the laws of Delaware (together with any permitted successors and assigns hereunder, the "Guarantor"), to the City of Milwaukee City, Wisconsin (the "City").

RECITALS

The City and Resource Recovery Systems, LLC (the "Company"), a Delaware limited liability company, entered into a Contract for Services dated _____, 2014 (the "Contract").

The Company is a wholly-owned subsidiary of the Guarantor.

The City will enter into the Contract only if the Guarantor guarantees the performance by the Company of all of the Company's responsibilities and obligations under the Contract as set forth in this Guaranty Agreement ("the Guaranty").

In order to induce the execution and delivery of the Contract by the City and in consideration thereof, the Guarantor agrees as follows:

ARTICLE I
DEFINITIONS AND INTERPRETATION

Section 1.1. DEFINITIONS. For the purposes of this Guaranty, the following words and terms shall have the respective meanings set forth as follows. Any capitalized word or term used but not defined herein is used as defined in the Contract.

"Obligations" means the amounts payable by, and the covenants and agreements of, the Company pursuant to the terms of the Contract.

"Transaction Agreement" means any agreement entered into by the Company or the City in connection with the transactions contemplated by the Contract, including, but not limited to, the Contract and any supplements thereto.

Section 1.2. INTERPRETATION. In this Guaranty, unless the context otherwise requires:

(A) References Hereto. The terms "hereby", "hereof", "herein", "hereunder" and any similar terms refer to this Guaranty, and the term "hereafter" means after, and the term "heretofore" means before, the date of execution and delivery of this Guaranty.

(B) Gender and Plurality. Words of the masculine gender mean and include

correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

(C) Persons. Words importing persons include firms, companies, associations, general partnerships, limited partnerships, trusts, business trusts, corporations and other legal entities, including public bodies, as well as individuals.

(D) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Guaranty shall be solely for convenience of reference and shall not constitute a part of this Guaranty, nor shall they affect its meaning, construction or effect.

(E) Entire Agreement. This Guaranty constitutes the entire agreement between the parties hereto with respect to the transactions contemplated by this Guaranty. Nothing in this Guaranty is intended to confer on any person other than the Guarantor, the City and their permitted successors and assigns hereunder any rights or remedies under or by reason of this Guaranty.

(F) Counterparts. This Guaranty may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Guaranty.

(G) Applicable Law. This Guaranty shall be governed by and construed in accordance with the applicable laws of the State of Wisconsin.

(H) Severability. If any clause, provision, subsection, Section or Article of this Guaranty shall be ruled invalid by any court of competent jurisdiction, the invalidity of any such clause, provisions, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Guaranty shall be construed and enforced as if such invalid portion did not exist provided that such construction and enforcement shall not increase the Guarantor's liability beyond that expressly set forth herein.

(I) Approvals. All approvals, consents and acceptances required to be given or made by any party hereto shall be at the sole discretion of the party whose approval, consent or acceptance is required.

(J) Payments. All payments required to be made by the Guarantor hereunder shall be made in lawful money of the United States of America.

ARTICLE II
GUARANTY COVENANTS

Section 2.1. GUARANTY TO THE AUTHORITY. The Guarantor hereby absolutely, presently, irrevocably and unconditionally guarantees to the City for the benefit of the City (1) the full and prompt payment when due of each and all of the payments required to be credited or made by the Company under the Contract (including all amendments and

supplements thereto) to, or for the account of, the City, and (2) the full and prompt performance and observance of each and all of the Obligations. Notwithstanding the unconditional nature of the Guarantor's obligations as set forth herein, the Guarantor shall have the right to assert the defenses provided in Section 2.4 hereof against claims made under this Guaranty.

Section 2.2. RIGHT OF AUTHORITY TO PROCEED AGAINST GUARANTOR. This Guaranty shall constitute a guaranty of payment and of performance and not of collection, and the Guarantor specifically agrees that in the event of a failure by the Company to pay or perform any Obligation guaranteed hereunder, the City shall have the right to proceed first and directly against the Guarantor under this Guaranty and without proceeding against the Company or exhausting any other remedies against the Company which the City may have. Without limiting the foregoing, the Guarantor agrees that it shall not be necessary, and that the Guarantor shall not be entitled to require, as a condition of enforcing the liability of the Guarantor hereunder, that the City (1) file suit or proceed to obtain a personal judgment against the Company, (2) make any other effort to obtain payment or performance of the Obligations from the Company other than providing the Company with any notice of such payment or performance as may be required by the terms of the Contract or required to be given to the Company under Applicable Law, (3) foreclose against or seek to realize upon any security for the Obligations, or (4) exercise any other right or remedy to which the City is or may be entitled in connection with the Obligations or any security therefor or any other guarantee thereof. Upon any unexcused failure by the Company in the payment or performance of any Obligation and the giving of such notice or demand, if any, to the Company as may be required in connection with such Obligation, the liability of the Guarantor shall be effective and shall immediately be paid or performed.

Section 2.3. GUARANTY ABSOLUTE AND UNCONDITIONAL. The obligations of the Guarantor hereunder are absolute, present, irrevocable and unconditional and shall remain in full force and effect until the Company shall have fully discharged the Obligations in accordance with their respective terms, and except as provided in Section 2.4 hereof, shall not be subject to any counterclaim, set-off, deduction or defense (other than full and strict compliance with, or release, discharge or satisfaction of, such Obligations) based on any claim that the Guarantor may have against the Company, the City or any other person. Without limiting the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged or in any way modified by reason of any of the following (whether with or without notice to, knowledge by or further consent of the Guarantor):

1. the extension or renewal of this Guaranty or the Contract up to the specified Terms of each agreement;

2. any exercise or failure, omission or delay by the City in the exercise of any right, power or remedy conferred on the City with respect to this Guaranty or the Contract except to the extent such failure, omission or delay gives rise to an applicable statute of limitations defense with respect to a specific claim;

3. any permitted transfer or assignment of rights or obligations under the

Contract by any party thereto;

4. any renewal, amendment, change or modification in respect of any of the Obligations or terms or conditions of any Transaction Agreement;

5. the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, moratorium, arrangement, composition with creditors or readjustment of, or other similar proceedings against the Company or the Guarantor, or any of the property of either of them, or any allegation or contest of the validity of this Guaranty or any other Transaction Agreement in any such proceeding (it is specifically understood, consented and agreed to that, to the extent permitted by law, this Guaranty shall remain and continue in full force and effect and shall be enforceable against the Guarantor to the same extent and with the same force and effect as if any such proceeding had not been instituted and as if no rejection, stay, termination, assumption or modification has occurred as a result thereof, it being the intent and purpose of this Guaranty that the Guarantor shall and does hereby waive all rights and benefits which might accrue to it by reason of any such proceeding);

6. except as permitted by Sections 3.1 or 3.2 hereof, any sale or other transfer by the Guarantor or any Affiliate of any of the capital stock or other interest of the Guarantor or any Affiliate in the Company now or hereafter owned, directly or indirectly, by the Guarantor or any Affiliate, or any change in composition of the interests in the Company;

7. any failure on the part of the Company for any reason to perform or comply with any agreement with the Guarantor;

8. the failure on the part of the City to provide any notice to the Guarantor which is not required to be given to the Company as a condition to the enforcement of Obligations pursuant to the Contract;

9. any failure of any party to the Transaction Agreements to mitigate damages resulting from any default by the Company or the Guarantor under any Transaction Agreement;

10. the merger or consolidation of any party to the Transaction Agreements into or with any other person, or any sale, lease, transfer, abandonment or other disposition of any or all of the property of any of the foregoing to any person;

11. any legal disability or incapacity of any party to the Transaction Agreements; or

12. the fact that entering into any Transaction Agreement by the Company or

the Guarantor was invalid or in excess of the powers of such party. Should any money due or owing under this Guaranty not be recoverable from the Guarantor due to any of the matters specified in subparagraphs (1) through (12) above, then, in any such case, such money, together with all additional sums due hereunder, shall nevertheless be recoverable from the Guarantor as though the Guarantor were principal obligor in place of the Company pursuant to the terms of the Contract and not merely a guarantor and shall be paid by the Guarantor forthwith. Notwithstanding anything to the contrary expressed in this Guaranty, nothing in this Guaranty shall be deemed to amend, modify, clarify, expand or reduce the Company's rights, benefits, duties or obligations under the Contract. To the extent that any of the matters specified in subparagraphs (1) through (12) would provide a defense to, release, discharge or otherwise affect the Company's Obligations, the Guarantor's obligations under this Guaranty shall be treated the same.

Section 2.4. DEFENSES, SET-OFFS AND COUNTERCLAIMS. Except as otherwise provided herein, the Guarantor shall be entitled to exercise or assert any and all legal or equitable rights or defenses which the Company may have under the Contract or under Applicable Law (other than, for example, bankruptcy or insolvency of the Company, see Article 2.3.5, and any defense which the Company has expressly waived in the Contract, see Article 2.5), and the obligations of the Guarantor hereunder are subject to such counterclaims, set-offs or deductions which the Company is permitted to assert pursuant to the Contract if any. The Guarantor reserves the right to bring independent claims (not arising from the Contract) against the City, provided however, any such claims shall not be used to set-off or deduct from any claims which the City may have against the Guarantor arising from this Guaranty.

Section 2.5. WAIVERS BY THE GUARANTOR. The Guarantor hereby unconditionally and irrevocably waives:

1. notice from the City of its acceptance of this Guaranty;

2. notice of any of the events referred to in Section 2.3 hereof, except to the extent that notice is required to be given as a condition to the enforcement of Obligations;

3. to the fullest extent lawfully possible, all notices which may be required by statute, rule of law or otherwise to preserve intact any rights against the Guarantor, except any notice to the Company required pursuant to the Contract or Applicable Law as a condition to the performance of any Obligation;

4. to the fullest extent lawfully possible, any statute of limitations defense based on a statute of limitations period which may be applicable to guarantors (or parties in similar relationships) which would be shorter than the applicable statute of limitations period for the underlying claim;

5. any right to require a proceeding first against the Company;

6. any right to require a proceeding first against any person or the security provided by or under any Transaction Agreement except to the extent such Transaction Agreement specifically requires a proceeding first against any person (except the Company) or security;

7. any requirement that the Company be joined as a party to any proceeding for the enforcement of any term of any Transaction Agreement;

8. the requirement of, or the notice of, the filing of claims by the City in the event of the receivership or bankruptcy of the Company; and

9. all demands upon the Company or the Guarantor and all other formalities the omission of any of which, or delay in performance of which, might, but for the provisions of this Section 2.5, by rule of law or otherwise, constitute grounds for relieving or discharging the Guarantor in whole or in part from its absolute, present, irrevocable, unconditional and continuing obligations hereunder.

Section 2.6. SUBORDINATION OF RIGHTS. The Guarantor agrees that any right of subrogation or contribution which it may have against the Company as a result of any payment or performance hereunder is hereby fully subordinated to the rights of the City hereunder and under the Transaction Agreements and that the Guarantor shall not recover or seek to recover any payment made by it hereunder from the Company until the Company and the Guarantor shall have fully and satisfactorily paid or performed and discharged the Obligations giving rise to a claim under this Guaranty.

Section 2.7. SEPARATE OBLIGATIONS; REINSTATEMENT. The obligations of the Guarantor to make any payment or to perform and discharge any other duties, agreements, covenants, undertakings or obligations hereunder shall (1) to the extent permitted by Applicable Law, constitute separate and independent obligations of the Guarantor from its other obligations under this Guaranty, (2) give rise to separate and independent causes of action against the Guarantor and (3) apply irrespective of any indulgence granted from time to time by the City. The Guarantor agrees that this Guaranty shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Company is rescinded or must be otherwise restored by the City, whether as a result of any proceedings in bankruptcy, reorganization or similar proceeding, unless such rescission or restoration is pursuant to the terms of the Contract, or any applicable Transaction Agreement or the Company's enforcement of such terms under Applicable Law.

Section 2.8 TERM. This Guaranty shall remain in full force and effect from the date of execution and delivery hereof until all of the Obligations of the Company have been fully paid and performed.

ARTICLE III
GENERAL COVENANTS

Section 3.1. MAINTENANCE OF CORPORATE EXISTENCE.

(A) Consolidation, Merger, Sale or Transfer. The Guarantor covenants that during the term of this Guaranty it will maintain its corporate existence. Notwithstanding the above, the Guarantor may dispose of all or substantially all of its assets and thereafter dissolve, or consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it, provided, in each case that the conditions in (1) and (2) below are satisfied. The Guarantor may consolidate with or merge into another entity, or permit one or more other entities to consolidate with or merge into it, or sell or otherwise transfer to another entity all or substantially all of its assets as an entirety and thereafter dissolve if (1) the successor entity is the Guarantor, or the successor entity (if other than the Guarantor) (a) assumes in writing all the obligations of the Guarantor hereunder and, if required by law, is duly qualified to do business in the State, and (b) delivers to the City an opinion of counsel to the effect that its obligations under this Guaranty are legal, valid, binding and enforceable subject to applicable bankruptcy and similar insolvency or moratorium laws, and (2) any such transaction does not result in a material decline in credit standing of the Guarantor.

(B) Continuance of Obligations. If a consolidation, merger or sale or other transfer occurs as permitted by this Section 3.1, the provisions of this Section 3.1 shall continue in full force and effect and no further consolidation, merger or sale or other transfer shall be made except in compliance with the provisions of this Section 3.1. No such consolidation, merger or sale or other transfer shall have the effect of releasing the initial Guarantor from its liability hereunder unless a successor entity has assumed responsibility for this Guaranty as provided in this Section 3.1.

Section 3.2. ASSIGNMENT. Without the prior written consent of the City, this Guaranty Agreement may not be assigned by the Guarantor, except pursuant to Section 3.1 hereof. In the event that the Company is sold and the Guarantor desires to assign the Guaranty Agreement to the successor company or its parent, such assignment may be permitted if (a) the successor company or parent guarantor has equal or stronger financial strength, and (b) the City consents to such assignment in writing, which consent may be withheld in the City's sole discretion.

Section 3.3. BINDING EFFECT. This Guaranty shall inure to the benefit of the City and its permitted successors and assigns and shall be binding upon the Guarantor and its successors and assigns.

Section 3.4. AMENDMENTS, CHANGES AND MODIFICATIONS. This Guaranty may not be amended, changed or modified or terminated and none of its provisions may be waived, except with the prior written consent of the City and of the Guarantor.

Section 3.5. NOTICES. Any notices or communications required or permitted

hereunder shall be in writing and shall be sufficiently given if faxed (with acknowledgment of receipt and followed by mailing of hardcopy), delivered in person, or sent by overnight courier to the following addresses, or to such other addresses as any of the recipients may from time to time designate by notice given in writing.

If to the Guarantor: RE Community Holdings II, Inc.
809 West Hill Street
Charlotte, North Carolina 28208
Phone: (704) 697-2000
Fax: (704) 375-2949
Attention: Chief Executive Officer and General Counsel

If to the City: _____
_____
_____

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed in its name and on its behalf by its duly authorized officer as of the date first above written.

RE Community Holdings II, Inc.

By: _____

Its

Accepted and Agreed to by:

CITY OF MILWAUKEE, WISCONSIN

By: _____

Its

SCHEDULE 13
ROLLING STOCK

SCHEDULE 14
JOINT MRF SITE