

**INTERGOVERNMENTAL COOPERATION AGREEMENT
BETWEEN WAUKESHA COUNTY AND THE CITY OF MILWAUKEE
REGARDING A REGIONAL RECYCLING SYSTEM FOR PROCESSING AND
MARKETING RECYCLABLES**

THIS INTERGOVERNMENTAL COOPERATION AGREEMENT (“Agreement”) is made by and between the City of Milwaukee, a municipal corporation (“City”) and Waukesha County a body corporate and politic (“County”), both serving as Responsible Units (“RU”) under Chapter 287 Wisconsin Statutes.

RECITALS

WHEREAS, both the County and City each own a Material Recovery Facility (“MRF”) that historically has been operated under private contract and has processed similar annual quantities of residential recyclables; and

WHEREAS, between 2007 and 2012, a series of independent studies were completed by both the County and the City to determine the best future path for recyclable processing to adapt to the industry trend of single-stream collection and processing systems; and

WHEREAS, in 2013, the County and City executed an intergovernmental cooperation agreement and subsequently accepted proposals for the processing and marketing of combined County and City recyclables at either a privately-owned and operated MRF or a publicly-owned and privately-operated MRF; and

WHEREAS, in December 2013, after completing a competitive proposal review process, members of the joint County/City technical and financial review committees unanimously recommended an Intent to Award to Resource Recovery Systems, LLC d/b/a “ReCommunity” for their proposal to process County and City single-stream recyclables at the existing Milwaukee MRF;

WHEREAS, the Parties desire to cooperate in the construction and operation of a joint single-stream MRF at the existing Milwaukee MRF for the processing of all recyclables for which they are a RU and other third-party recyclables, it being determined to be advantageous to their citizens to do so by maximizing the return on investment and the recovery of public costs, including recycling collection costs;

WHEREAS, the Parties intend that various fees to be charged for the transfer, processing, and/or handling of recyclables shall entirely or very nearly offset the ongoing operating expenses for this joint MRF, that capital costs and improvements for the Entity Equipment be shared equally between the County and City, that capital costs and improvements for property owned separately and exclusively by each of the County and City be paid separately by the owner of

that property, and that revenues and profits generated by the operation of this joint MRF, including revenues from the processing of other third-party recyclables, be shared between the County and City.

NOW, THEREFORE, in consideration of these premises, the County and City, under the authority of sections 66.0301 and 287.13, Wis. Stats., hereby mutually agree as follows:

SECTION I GENERAL AGREEMENT

- (a) Purpose. The purpose of this Agreement is to establish the parameters under which the County and the City will work cooperatively to implement the Operating Agreements and to define funding, oversight, revenue distribution, and other terms involved in the construction, operation, and maintenance of the Joint MRF for the recovery of each Party's recyclable material for which each is responsible as a RU under Chapter 287 of the Wisconsin Statutes, and other Third Party Recyclable Material.
- (b) Definitions. Unless defined elsewhere in this Agreement, the following terms shall have the following meanings:
1. "Average Commodity Revenue" or "ACR" for any month means such month's Marketable Recovered Material Revenue divided by the total tons of Marketable Recoverd Material in such month based on outbound scale weights. Source-separated and/or presorted loads should not be included in this calculation.
 2. "Bypass Charges" means charges paid by the Contractor when the Contractor's Processing produces more than 1.5% of Recoverable Residue tons relative to all Recoverable Material tons, as determined by a Residue Analysis.
 3. "Capital Costs" mean fixed, one-time, up-front expenses or other costs, not less than \$5,000, with a minimum useful life of not less than two years, including but not limited to modifications to buildings or grounds, the purchase of new Equipment, and contracted services for design, construction, and/or installation necessary to improve the Joint MRF, County Transfer Station, or City Property to effect the general intent of this Agreement and the related Operating Agreements.
 4. "City Operating Agreement" means the Construction and Operating Agreement executed contemporaneously herewith between the City and the Contractor to design, build, and operate the Joint MRF or any agreement with a successor Contractor.
 5. "City Property" means (i) 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** hereto, including but not limited to parking areas, driveways, fueling station(s), storage units, and/or other buildings, which shall be

- reviewed and updated as specified herein, (ii) City-owned equipment, as listed or described in **Attachment B**, which shall be reviewed and updated as specified herein, 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 specifically listed and described in **Attachment C**, which shall be reviewed and updated as specified herein and per the City and County Operating Agreements.
6. “Composition Analysis” means an analysis of Recyclable Material to determine the average percentages by weight of marketable commodities that comprise Recoverable Material and materials not Recoverable through Processing. The frequency of Composition Analyses should be determined by the CCR, but in no case shall Composition Analyses occur less frequently than every calendar for tons delivered by the County, City, or Third Party.
 7. “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.
 8. “Contract Date” means the date on which this Contract becomes effective, which shall commence once it is signed by the Parties.
 9. “Contractor” means the entity contracted to design, build, operate and maintain the Joint MRF and the County Transfer Station (including any of its directors, agents, assigns, subcontractors, or related entities). For Section II herein, the 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. For all other sections, it means ReCommunity or the entity then under contract with the County and/or City pursuant to an Operating Agreement.
 10. “County Operating Agreement” means the Construction and Operating Agreement executed contemporaneously herewith between the County and the Contractor to design, build, and operate the County Transfer Station and to operate the Joint MRF, or any agreement with a successor Contractor.
 11. “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 and/or the City and County Operating Agreements.

12. "Education Fee" means a fee, specifically defined and explained in the City and County Operating Agreements and schedules thereto, 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. Such fee shall be set at \$2.00 per ton at the outset of this Agreement and updated as specified herein and per the City and County Operating Agreements.
13. "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.
14. "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 and precise list of initial Entity Equipment shall be contained in a schedule to the City and County Operating Agreements, which will be amended from time to time as Entity Equipment is replaced and purchased anew, as authorized herein and per the City and County Operating Agreements. For the avoidance of doubt, Entity Equipment does not include City Property (**Attachments A-C** hereto).
15. "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, which shall be set at \$8.00 per ton at the outset of this Agreement and updated as specified herein and per the City and County Operating Agreements.
16. "Equipment Replacement Plan" or "ERP" means a multi-year plan for the future replacement of Entity Equipment. The ERP shall include a list of equipment, an anticipated equipment replacement schedule, replacement costs, depreciation adjustment, and an Equipment Replacement Fee. An ERP shall be established at the outset of this Agreement, and shall be contained in a precise and detailed schedule to and/or in the text of the City and County Operating Agreements, which will be amended from time to time, as authorized herein and per the City and County Operating Agreements.
17. "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 herein.

18. "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.
19. "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 Joint MRF, then any substances or materials shall be Hazardous Waste for purposes of this Contract.
20. "IGA" means this Intergovernmental Cooperation Agreement between the City and County relating to the construction and operation of the Joint MRF and County Transfer Station.
21. "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.

22. “Joint MRF,” unless otherwise specified in this Agreement, 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** (as specified therein), but may include City Property as listed in **Attachment C** of this IGA.
23. “Joint MRF Site” means the property and grounds on which the Joint MRF is located, as specifically diagrammed or otherwise described/demonstrated in a schedule to the City and County Agreements. For avoidance of doubt, the Joint MRF does not include City Property as listed in **Attachment A** hereto.
24. “Joint MRF Operating Expenses” means any cost associated with the on-going operation and maintenance of the Joint MRF (e.g., costs for utilities, supplies, insurance, consulting services, cleaning, and inspections). Unless otherwise specifically allocated among the City, County, and/or a Third Party under this Agreement or the City and County Operating Agreements, the Contractor shall be solely responsible for such Joint MRF Operating Expenses.
25. “*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. Quality standards for such saleable materials shall be specifically and precisely defined and listed in table(s) included in a schedule to both the City and County Operating Agreements, 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.
26. “Marketable Recovered Material Revenue” means all revenue received by the Contractor from the sale of Marketable Recovered Materials under the Operating Agreements, minus any Direct Costs associated with transporting materials to market and marketing fees (e.g., broker’s fees, finder’s fees).
27. “*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).
28. “*Non-Recoverable Residue*” means that portion of Residue that remains after Recyclable Material is Processed, which cannot be recovered or otherwise marketed or sold.

29. “Operating Agreement(s)” means either or both the City and/or County operating agreement between the respective RU and the Contractor to design, build, and operate the Joint MRF and (in the case of the County only) the County Transfer Station.
30. “Participating Municipality” means a municipality within Waukesha County for which the County serves as Responsible Unit under Chapter 287 Wisconsin Statutes.
31. “Party” or “Parties” means either or both of the City and/or County, as the context of the usage of the term may require.
32. “Process” “Processed” or “Processing” means the separation, sorting, crushing, baling, shredding, flattening or other treatment of Recyclable Material, into Marketable Recovered Materials and Residue.
33. “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 the applicable payment schedule attached to and/or in the text of the City and County Operating Agreements. At the outset of this Agreement, the Processing Fee shall be \$30.00 per ton for City and County tons and \$41.00 per ton for Third Party tons, unless otherwise specified in a Third Party contract. The Processing Fee shall be updated as specified herein and per the City and County Operating Agreements.
34. “Recoverable Material” means those Recyclable Materials that must be accepted and Processed at the Joint MRF, which shall be further and more precisely defined and listed in table(s) included in a schedule to and/or in the text of both the City and County Operating Agreements, which may be amended from time to time by mutual agreement of the Parties.
35. “Recyclable Material” or “Recyclables” means the portion of Single Stream and/or pre-sorted materials delivered to the Joint MRF that are able to be Processed by the Contractor (according to the specific requirements detailed in the City and County Operating Agreements), which may contain Recoverable Material and Non-Recoverable Residue.
36. “Regional Recycling System” means the Single-Stream recycling program managed and operated by both the City of Milwaukee and Waukesha County.
37. “Rejected Material” means materials delivered to the Joint MRF but not able to be Processed by the Contractor (a) because it contains Hazardous Waste and/or Infectious Waste; or (b) because the load is a Non-Conforming Load.

38. “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.
39. “Responsible Unit” or “RU” means the unit of government responsible for complying with the applicable solid waste reduction, recovery and recycling laws under Chapter 287 of the Wisconsin Statutes.
40. “Shared Revenue” means that portion of Marketable Recovered Material Revenue that is shared with the County, City, and/or a Third-Party source, according to the terms of the City and County Operating Agreements, other applicable Third-Party contracts, and this IGA.
41. “Single Stream” means materials that are not sorted into separate commodities by the depositor and that may include commingled Recyclable Materials and Rejected Materials.
42. “Third Party” means a party that is not the County, City, a Participating Municipality, 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.
43. “Transfer Fee” means a fee payable by County or Third Party to Contractor to transport materials from the County Transfer Station to the Joint MRF, according to the terms of the County Operating Agreement, the applicable payment schedule attached thereto, or other applicable contracts.
44. “Transfer Station” or “TS” means a facility where Recyclable Material is dropped off by collection trucks and compacted in a large semitrailer for transportation to the Joint MRF. The County Transfer Station, including exterior walls, insulation, roofs and doors, electric and other utility services to the building, HVAC mechanicals, asphalt drives/parking, storm and sanitary sewers, and/or on-site truck scale(s), shall be owned exclusively by the County and shall be the exclusive responsibility of the County and Contractor, as further specified in the County Operating Agreement.
45. “Waste” or “Waste Material” means material to be disposed of at a landfill, specifically including Residue and Rejected Materials.
46. “Waste Disposal Costs” means all Direct Costs incurred by the Contractor for the disposal of Waste Materials.

NOTE: The intended operational flow of all the italicized and underlined terms in this definitional **Section I.b.** are demonstrated in the flow-chart attached to this IGA.

- (c) Term. The term of this Agreement shall be fifteen (15) years. After the initial fifteen (15) year term, this Agreement shall be renewed automatically for one additional ten (10) year term, unless otherwise amended or terminated. Any Party that wishes not to renew this Agreement at the end of the then current term shall provide written notice of such intent to the other Party not later than 365 days prior to the end of the then current term. Unless otherwise agreed between the Parties, a failure to timely provide such notice of non-renewal shall render said notice invalid and the Agreement shall automatically renew pursuant to the terms of this Agreement. However, thereafter, this Agreement shall terminate at the conclusion of the first ten-year renewal term, unless thereafter extended by the Parties by written amendment to this Agreement. This Agreement is also subject to termination under the provisions in Section V below.
- (d) Responsible Unit (RU) Status. Nothing in this Agreement changes the current or future RU status of the County or the City under Wisconsin recycling law.
- (e) County/City Representatives (“CCR”). The County’s Director of the Department of Parks & Land Use and the City’s Commissioner of the Department of Public Works shall each appoint an employee representative to serve as the primary contact for implementing this Agreement, and may appoint additional representatives to work on specific tasks. These individuals (a minimum of two) shall constitute the CCR. The CCR shall be the primary administrative and managerial body tasked with overseeing all aspects of the Joint MRF, including oversight of the Contractor’s construction and operational obligations under the City and County Operating Agreements, key ongoing operational decisions, oversight of financial flows, the diligencing and retention of experts and consultants on an as-needed basis, and the adjustment of fees on no less than an annual basis. It shall work cooperatively, communicate between entities, and convey decisions, documents, and other information relating to the implementation of this Agreement and any resulting contracts to relevant City, County, Third-Party, and Contractor personnel. The specific duties of the CCR include Joint MRF planning, fee adjustments on no less than an annual basis, hiring consultants, preparing request for proposals, administering bidding processes, evaluating and ranking proposals, negotiating contracts, approving ERP-scheduled and other equipment repairs, replacements, or new purchases, setting standards for reports, payments and audits, assisting with the gathering and dissemination of data necessary for budgeting and auditing, obtaining and evaluating reports, preparing financial statements, hiring an independent auditor as specified herein, evaluating operations, making program improvements, administering the Equipment Replacement Plan and monitoring the Equipment Reserve Fund, making recommendations to the Contractor regarding grounds and building maintenance, and attempting to resolve any conflicts relating to the Joint MRF or this Agreement. All decisions of the CCR must be unanimous.
- (f) Procurement Procedures. City procurement requirements shall apply to the initial construction and equipping of the Joint MRF, as described in Section II, and all future Entity

Equipment and City-owned equipment modifications, repairs and replacements. County procurement requirements shall apply to the construction and equipping of the County Transfer Station under Section II. For other procurement needs, such as future consulting services, the CCR shall follow mutually agreed upon processes existing in the County and the City.

- (g) Compliance Cooperation. The Parties agree to work cooperatively to ensure that the Joint MRF is constructed, operated, maintained, expanded, modified and closed in compliance with Chapters 281, 285, 287 and 289 to 299 of the Wisconsin Statutes.
- (h) Operating Agreements. Each Party shall enter into and maintain during the life of this Agreement such Operating Agreements with the Contractor that are necessary so that each of the County and City may satisfy their respective obligations under this Agreement. The County and City each have the respective right to review and approve the other Party's Operating Agreement. Once an Operating Agreement has been executed and becomes effective, neither the City nor the County may execute any new amendment, addenda, exhibit, or similar, nor any modification or other change to the Operating Agreement then in effect without the consent of the other Party, which shall not be unreasonably withheld. Notwithstanding the foregoing, the County shall not need the City's consent to any modification relating to the County's Transfer Station unless such modification has a material impact on Joint MRF operations or finances.
- (i) Ownership. Entity Equipment, detailed and precisely listed in a schedule to the City and County Operating Agreements, as amended from time to time, shall be jointly owned by the County and City. Any equipment used or located at the County Transfer Station, except as otherwise specified in the County Operating Agreement, is the exclusive property of the County. Grounds, buildings, and/or other property listed or described in **Attachment A** shall be owned exclusively by the City and shall not be used for the Joint MRF. Equipment listed or described in **Attachment B** shall be owned exclusively by the City. Grounds, buildings, and/or other property listed or described in **Attachment C** shall be owned exclusively by the City and used in the Joint MRF. Each of **Attachment B-C** shall be reviewed and updated as specified herein and per the City Operating Agreements. Only that Equipment and/or other property used at the Joint MRF and specifically listed and designated as owned (or leased) exclusively by the Contractor in a schedule to the City and County Operating Agreements shall be the sole property of the Contractor.

SECTION II INITIAL CONSTRUCTION AND EQUIPMENT

- (a) CCR-Approved Plans. The design, installation, construction, and/or equipping of the Joint MRF and County Transfer Station shall be carried out in accordance with the Operating Agreement(s) and/or plans approved by the CCR. In addition, the CCR must provide written

prior approval for any material change to the plans (e.g., change orders), specifically including but not limited to any changes that result in material cost variations.

- (b) City's Obligations. The City shall execute and implement a Operating Agreement(s) for the design, installation, construction, and equipping of the Joint MRF in accordance with CCR-approved plans and to satisfy the City's obligations under this Agreement. The City shall be responsible for fifty percent (50%) of the total not to exceed Capital Costs for Entity Equipment, including any Capital Cost changes due to CCR-approved change orders. The City shall be solely responsible for the not to exceed Capital Costs for any Equipment or other building and grounds upgrades, for any property listed in **Attachments B-C**, as well as any Capital Cost changes due to CCR-approved change orders. The City shall not be responsible for any Capital Costs related to Contractor-owned property as specifically listed or described in a schedule to the City and County Operating Agreements.
- (c) County's Obligations. The County shall execute and implement a Operating Agreement(s) for design, installation, construction, and/or and equipping of the County Transfer Station and to satisfy the County's obligations under this Agreement. The County shall be responsible for fifty percent (50%) of the total not to exceed Capital Costs for Entity Equipment, including any Capital Cost changes due to CCR-approved change orders. The County shall be solely responsible for the not to exceed Capital Costs of the Transfer Station, including any Capital Cost changes due approved by the County. The County shall not be responsible for any Capital Costs related to property owned by the Contractor as listed on a schedule to the City and County Operating Agreements.
- (d) Payment Process for Shared Capital Costs. One-hundred percent (100%) of the Capital Costs that must be shared under **Sections II.b.-c.** above (i.e., related to Entity Equipment), shall be invoiced by the Contractor to the City. The City shall pay the invoices in full and then invoice the County for fifty percent (50%) of those shared costs. The County shall reimburse the City within 30 days of the date the invoice is received. The City shall provide the County copies of all invoices related to these shared Capital Costs.
- (e) Construction Inspection. To ensure compliance with CCR-approved plans and specifications, the CCR shall develop a construction inspection plan, as well as select and contract with a qualified construction inspection services firm to inspect Entity Equipment and other equipment, grounds, and/or Buildings to be used for the Joint MRF. The County and City shall equally share the costs of such inspection services. The City or County may provide staff assistance for such inspections, with reasonable costs equally shared, as approved by the CCR.

- (f) Prevailing Wage. To the extent that the Operating Agreements for the construction of the Joint MRF and/or County Transfer Station is considered a “Public contract” within the meaning of section 66.0901, Wis. Stats., and therefore subject to the prevailing wage requirements, it shall be the City’s obligation to apply to the Department of Workforce Development for any necessary prevailing wage rate determinations in accordance with section 66.0903(3), Wis. Stats., as they relate to the Joint MRF, and the County’s obligation as they relate to the County Transfer Station.
- (g) Compliance Obligations. As to the property owned jointly by the City and the County, the CCR shall take all reasonable efforts to ensure compliance with relevant laws, rules, regulations, and contract provisions with respect thereto, with costs for such compliance allocated between the City and County (and Contractor) as specified herein and per the City and County Operating Agreements and/or in the Operating Agreements. As to the property owned exclusively by the City, the City shall be responsible for compliance with relevant laws, rules, regulations, and contract provisions with respect thereto. As to the property owned exclusively by the County, the County shall be responsible for compliance with relevant laws, rules, regulations, and contract provisions with respect thereto.

SECTION III ONGOING JOINT MRF OPERATIONS

- (a) Recyclables Delivery. All Recyclables collected under the recycling programs of the County and City, serving as RU, shall be delivered to the Joint MRF for processing.
- (b) City’s Obligations. The City shall process its Recyclables through the Joint MRF. The City agrees to the financial rights, obligations, processes and procedures outlined in Section III.d.-e. below.
- (c) County’s Obligations. The County and Participating Municipalities shall process their Recyclables through the Joint MRF. The County agrees to the financial rights, obligations, processes and procedures outlined in Section III.d.-e. below.
- (d) Financial Rights and Obligations. The City and County agree to the financial rights and obligations specified in this **Section III**, as well as the applicable Operating Agreement(s). Any reference to tons or tonnage in this subsection shall be based on the reports under **Section III.d.7.** below.
1. Fees. As of the Contract Date, the below fees shall be set at the rates specified. On no less than an annual basis, the CCR shall review and amend these per ton fees as necessary, with the consent of the Contractor, audit results (where available) as specified in this **Section III(e)**, prior year financial statements and reconciliations, past performance, the Equipment Replacement Plan, and/or other relevant information. Responsibility for these fees is as specified below. Fees shall be

invoiced monthly and collected by the Contractor, except where otherwise noted in this Section. Fees shall be further specified in the City and County Operating Agreements, in a table and schedule including the relevant schedules to each.

- Equipment Replacement Fee. The initial ERF shall be \$8.00 per ton. The City shall pay the Entity 50% of the ERF for each ton of Recyclable Material it delivers to the Joint MRF. The County shall pay the Entity 50% of the ERF for each ton of Recyclable Material it delivers to the Joint MRF. The Contractor shall pay (a) the Entity 50% of the ERF for each ton of Recyclable Material delivered to the Joint MRF by the City and County; and (b) Entity 100% of the ERF for each ton delivered to the ERF by any Third-Party. Notwithstanding the foregoing, at the inception of this Agreement, the Contractor shall not be obligated to pay the proportionate shares of the ERF specified above if ACR is less than (or greater than) defined dollar values per ton of Marketable Recovered Materials as specifically set forth in the City and County Operating Agreements, in which case the Contractor will pay the ERF according to a sliding-scale, specified in a table and schedule attached to the City and County Operating Agreements, as amended from time to time by the CCR, with the consent of the Contractor. In addition:

(A) The CCR shall undertake all reasonable efforts to ensure that the ERF rate it establishes each year will generate sufficient capital to satisfy and comply with the Equipment Replacement Plan, as amended from time to time by the CCR.

(B) All ERF payable to the Entity shall be received by the RU selected by the CCR and deposited into the Equipment Reserve Fund, a dedicated capital fund (as of the Contract Date, the Equipment Reserve Fund shall be maintained and managed by the City). The responsible RU shall receive ERF for the sole purpose of financing ongoing Entity Equipment or other equipment repairs, replacements, purchases, and capital improvements as contemplated in the ERP, as amended from time to time by the CCR, for the joint and mutual benefit of the County and City as contemplated in this Agreement. The responsible RU shall ensure that the capital balances in the Equipment Reserve Fund are credited for a commercially reasonable rate of interest. The CCR shall approve and recommend all expenditures from the Equipment Reserve Fund. The responsible RU may be compensated from the Reserve Fund for reasonable costs to manage the capital fund, as approved by the CCR. The responsible RU shall make all appropriations necessary to effect the CCR's recommendations and the ERP, as amended from time to time by the CCR.

(C) On no less than an annual basis, the CCR shall review and amend the Equipment Replacement Plan if necessary, considering the advice of the Contractor, audit results (where available) as specified in this **Section III(e)**, prior year financial statements and reconciliations, past performance, and/or other relevant information.

- Processing Fee. The Processing Fee initially shall be \$30.00 per ton for City and County tons of Recyclable Material delivered to the Joint MRF. The Processing Fee shall be \$41.00 per ton for Third-Party tons of Recyclable Material delivered to the Joint MRF, unless otherwise specified in a Third Party contract. The Contractor shall pay the City and County \$1.00 each per Third Party ton delivered to the Joint MRF, unless otherwise specified in a Third Party contract. The City, County, and Third-Part(ies) shall pay the applicable Processing Fee to the Contractor for each ton of Recyclable Material each delivers to the Joint MRF.
 - Transfer Fee. The Transfer Fee shall be paid by the County or Third Party to the Contractor related to each respective ton delivered to the County Transfer Station.
 - Education Fee. The Education Fee shall initially be \$2.00 per ton of Recyclable Material. However, if the ACR is less than 102 per ton of Recyclable Material or greater than 130 per ton of Recyclable Material, the Contractor shall pay adjusted Education Fees according to a sliding-scale, specified in a table and schedule attached to the City and County Operating Agreements, as amended from time to time by the CCR, with the consent of the Contractor. The Contractor shall pay the Education Fee directly to the County and City for each ton of material each respectively delivers to the Joint MRF for processing. Any Education Fees collected under this Agreement may be used by the City and County for recycling education, advertising, for public tours of the Joint MRF, and/or to improve and increase recycling participation in both communities. The CCR may provide input and suggestions as how to use any Education Fees to forward these objectives.
2. Ongoing Capital Improvements, Maintenance, Upkeep of Equipment and Other Property. The Contractor shall maintain, repair, replace and otherwise manage Entity Equipment, grounds, and buildings, according to the applicable sections of the City and County Operating Agreements. As specified further therein, upon a specific request of the Contractor to purchase new Entity Equipment or ERP-scheduled equipment, and/or upon the request of the Contractor to expend more than \$2,500 to repair, maintain, or replace Entity Equipment, ERP-scheduled equipment, or other property, the relevant party (the CCR in the case of ERP-schedule equipment and

Entity Equipment) shall review such request and shall approve or deny the expenses. If approved expenses are unrelated to Entity Equipment or ERP-scheduled equipment, they shall be allocated as specified in **Section II.b-c.** above. If such expenses are related to Entity Equipment or ERP-scheduled Equipment and are approved by the CCR, they shall be paid by the Entity out of the Equipment Reserve Fund. However, if the moneys in the Equipment Reserve Fund are insufficient to cover any single or substantially contemporaneous Entity Equipment or ERP-scheduled equipment repair, purchase, and/or replacement costs, then (a) the Contractor shall immediately notify the CCR and obtain a second express approval before replacing and/or repairing such equipment and (b) if approved, such costs shall be allocated and processed as specified in **Section II.d.** above, unless otherwise agreed in writing by the City and County.

On no less than an annual basis, the CCR shall review and amend (a) the schedules to the City and the County Operating Agreements which detail and precisely list (i) Entity Equipment; (ii) the Equipment Replacement Plan; and (b) **Attachments B-C** hereto, as the CCR deems necessary, considering the advice of the Contractor, audit results (where available) as specified in this **Section III(e)**, prior year financial statements and reconciliations, the Equipment Replacement Plan (as amended), past performance, and/or other relevant information.

The Entity reserves the right to purchase replacement or new Entity Equipment or ERP-scheduled equipment. Each of the County or City is free to purchase equipment at any time, and such equipment shall be the exclusive property of the purchasing RU.

3. **No Rent Charged to County.** Notwithstanding the City's initial and ongoing financial obligations to maintain the buildings and grounds used for the Joint MRF and surrounding the Joint MRF, the City shall not charge the County rent related to its shared use of the Joint MRF building and grounds under this Agreement.
4. **Joint MRF Operating Expenses.** As specified in the applicable sections of, schedules to, and/or text of the City and County Operating Agreements, the Contractor shall be reimbursed for the actual Direct Costs attributable to the expenses enumerated below; all other Joint MRF Operating Expenses shall not be reimbursable to the Contractor. For the avoidance of doubt, consulting or other expenses related to work requested and/or retained exclusively by the CCR shall be payable by the Entity in equal shares, unless (a) otherwise agreed by the City and County in writing or (b) directly attributable to County- or City-specific demand.

- Waste Disposal Costs. The County and City shall reimburse the Contractor for all actual Waste Disposal Costs related to their respective tons, as calculated based upon the Composition Analysis and as further specified in the City and County Operating Agreements. The Entity reserves the right to determine which landfill the Contractor shall use for the disposal of Waste.
 - Expenses and Costs to Repair, Replace, or Purchase Entity Equipment or other equipment. For costs above \$2,500 related to Entity Equipment or ERP-scheduled equipment replacement, purchase, or repairs, the Contractor shall be reimbursed from the Equipment Reserve Fund unless the capital available in the Equipment Reserve Fund is insufficient to cover the CCR-approved replacement/repair, in which case the City and County shall in equal shares (unless otherwise agreed by the City and County in writing) reimburse the Contractor, as further specified in the City and County Operating Agreements. For all other equipment replacement, purchase, or repairs, the Contractor shall be reimbursed by the party who owns the equipment, according to the applicable provisions of this IGA and the City and County Operating Agreements.
 - Cost Increases Due to Third Party Tonnage. Any increase in Contractor's Joint MRF/TS 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 County, as further specified in the City and County Operating Agreements.
 - 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.
5. Shared Revenues. Each month, the Contractor shall pay the County, City, and any Third Party their Shared Revenue, as further specified in the applicable sections of and a schedule to the City and County Operating Agreements. As to tons delivered by each of the City and County, the City and County shall receive 80% and the Contractor shall receive 20% of the Marketable Recovered Material Revenue based upon their respective tons delivered to the Joint MRF, the most recent Composition Analysis, and the ACR. As to tons delivered by Third Parties, the City and County shall each receive 2.5%, the Contractor shall receive 20%, and the Third Party shall receive 75% of the Marketable Recovered Material Revenue based upon the respective Third Party tons delivered to the Joint MRF, the most recent Composition Analysis, and the ACR, unless otherwise specified in a Third Party contract.

6. Bypass Charges. Each of the City and County shall be entitled to Bypass Charges per their respective tons, payable by the Contractor, as further specified in the applicable sections of, schedules to, and/or text of the City and County Operating Agreements.
7. Third-Party Processing. As specified further in the City and County Operating Agreements, other than one-time or similarly infrequent delivery of Recyclable Material to the Joint MRF by a Third-Party, written contracts between the Contractor and a Third-Party shall be required for Third-Party processing unless otherwise agreed to by the CCR. All written Third-Party contracts shall be approved by the CCR or as otherwise permitted under limited circumstances detailed in the City and County Operating Agreements. Third-Party tonnage shall include Fee, Revenue, and cost terms no more favorable to the Third-Party than to the Entity, unless otherwise approved by the CCR.
8. Invoices and Reports. The Contractor shall be required to submit invoices monthly, as well as monthly, quarterly, and annual reports to the County, City, and CCR in accordance with the applicable sections of and schedule to the City and County Operating Agreement(s), and CCR requirements and standards. Reports shall include, but not be limited to, actual tons of material processed by source, processing costs, operating expenses, other expenses, fee income by type, Marketable Recovered Material Revenue, Waste Disposal Costs, and any other payments or expenses attributable to the City, County, and/or Third-Part(ies).
9. Composition Analysis. Contractor, at its own expense as limited herein, shall conduct a Composition Analysis no less than annually on incoming loads from all sources, according to the applicable terms of the Operating Agreement(s). The results of the Composition Analysis shall determine the type and amount of Recoverable Materials and Residue per ton of Recyclable Material. The results of the Composition Analysis shall be used to (a) calculate Shared Revenue payments to City, County, and/or Third Parties based on type and amount of Recoverable Materials and Residue per ton of Recyclable Material; and (b) to adjust Waste Disposal Costs to allocate same among City, County, and/or Third Parties. The City or County may request to ignore anomalous Composition Analysis results as to their respective tons as approved by the CCR. The CCR may establish reasonable additional metrics for the Composition Analysis to assess. The CCR shall approve the methodology used to conduct the Composition Analysis. The Contractor shall conduct a Composition Analysis upon request of the CCR, but in no case shall the CCR request more than four Composition Analyses in any twelve month period. Should the CCR request two or more Composition Analyses in any twelve month period or should the City or County individually request a Composition Analysis at any time, then the County and City in equal shares or the requesting RU alone, as the case may be, shall respectively bear the cost of such Composition Analysis. The

CCR shall use the results of the most recently completed Composition Analysis to adjust Waste Disposal Cost and Shared Revenue calculations, and to assist with setting the Annual Budget for the subsequent year. Prior to completion of a Composition Analysis, the most recent data from the County and City shall be used to develop the necessary metrics to enable Shared Revenue payments; the Composition Analysis to be completed as soon as practicable.

10. CCR Oversight. For the avoidance of doubt, in addition to the rights and obligations otherwise specified in this IGA, the CCR shall review and approve the process, timing, and methodology used to review and amend all fees, Composition Analysis calculations, costs or operating expenses payable by the Entity, and Shared Revenue payments. Furthermore, on no less than an annual basis, the CCR shall review and amend, if appropriate, (a) the schedules to the City and the County Operating Agreements which detail and precisely list (i) Entity Equipment; (ii) the Equipment Replacement Plan; and (iii) fee, revenue, and cost schedules and adjustments thereto; and (b) **Attachments B-C** hereto, considering the advice of the Contractor, audit results (where available) as specified in this **Section III(e)**, prior year financial statements and reconciliations, the Equipment Replacement Plan (as amended), past performance, and/or other relevant information. The CCR may at any time conduct or order an audit of the Joint MRF operations or finances, the cost of which shall be shared equally by the County and the City (see also **Section III.e.3** below).
11. Processing Contingency. As further specified in the applicable sections of and a schedule to the City and County Operating Agreements, the CCR shall develop a business continuity plan to account for any time during the implementation of this Agreement that the Joint MRF is not able to accept recyclable material due to a Force Majeure Event or otherwise. The business continuity plan shall address the methodology and cost allocation of transporting recyclables to an alternate facility for processing until such time as processing can continue at the Joint MRF. The business continuity plan shall be incorporated into the Operating Agreements as needed.

(e) Financial Controls.

1. Budgets. Prior to the beginning of each calendar year, the CCR shall prepare an Annual Budget in accordance with generally accepted accounting principles for the Joint MRF and related services. Such Annual Budgeting process shall: (a) conduct a Composition Audit and review past Composition audits where relevant; (b) set the per tonnage fees noted above which shall apply during the year; (c) make necessary adjustments to **Attachments B-C** hereto, as well as the schedules to the City and the County Operating Agreements which detail and precisely list Entity Equipment, the Equipment Replacement Plan, and fee, revenue, and cost schedules; (d) project operating expenses for the Joint MRF and County Transfer Station; and (e) project

revenues from processing and transfer of Recyclable Material tonnage from all sources. To create an Annual Budget, the CCR shall consider the advice of the Contractor, Audit results (where available), prior year financial statements and reconciliations, the Equipment Replacement Plan, past performance, and/or other relevant information. The CCR may select and contract with a qualified accounting firm to assist with the preparation of the Annual Budget. The County and City shall equally share the costs of such services. The City or County may provide staff assistance for such services, with reasonable costs equally shared, as approved by the CCR. The CCR shall make every reasonable effort to prepare its budget sufficiently early so that each of the County and City may use it in the preparation of their respective Budgets.

Unless already required or addressed by an RU's annual budgeting process, prior to the beginning of each calendar year, the County and the City shall also each prepare their own independent annual budgets specific to their financial responsibilities to the Regional Recycling System and related services, property, and equipment, based upon the CCR's Annual Budget (if completed and available), the advice of the Contractor, Audit results (where available), prior year financial statements and reconciliations, the Equipment Replacement Plan, past performance, and/or other relevant information. The County and City shall share their budget information with each other, including the previous year's actuals, and each shall obtain applicable budget approvals within their respective organization as necessary throughout the calendar year.

2. Financial Statements. At the end of each calendar year, the CCR shall prepare auditable financial statements in accordance with generally accepted accounting principles. Such financial statements shall address all of the above-noted fees, operating expenses, and revenues. The required financial statements include a cash flow statement, balance sheet, and income statement. In addition, the CCR shall prepare a reconciliation comparing the projections from that year's budget to actual performance, including appropriate explanations for material differences or other relevant information. The CCR may select and contract with a qualified accounting firm to assist with the preparation of the financial statements. The County and City shall equally share the costs of such services. The City or County may provide staff assistance for such services, with reasonable costs equally shared, as approved by the CCR.
3. Independent Annual Audit. At the end of each of the first five calendar years of this Agreement, the CCR shall select and contract with a qualified independent accounting firm to conduct an audit and to present appropriate audit reports, unless the CCR determines that such audit would be substantially duplicated by an audit specific to the Joint MRF that is required of the Contractor under the City and County

Operating Agreements. Where the CCR elected to retain an accounting firm to assist with the preparation of annual budgets and/or financial statements, the accounting firm contracted to conduct an audit must be a different firm. 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 unqualified 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.
- (vi) A reconciliation of actual versus expected costs, operating expenses, revenues, and fees, including fee recommendations for the upcoming calendar year;
- (vii) A compliance audit looking at whether and to what degree the CCR, the Contractor, the City, and the County are complying with the terms of this Agreement and Operating Agreement(s), and all applicable laws and regulations.

Such audit shall be completed by the end of June of each year. At the end of year six of this Agreement and for each subsequent year, whether to engage an independent auditor for this purpose shall be at the sole discretion of the CCR. The City and County shall equally share the costs of such independent annual auditing services. The City or County shall provide staff assistance and shall respond in a reasonable timeframe to all information requests from such independent auditor.

In addition, the County and City shall each maintain the individual right to, at their own expense, review the accounting, or conduct or order an audit of the Joint MRF operations or finances.

**SECTION IV
STATEMENT OF COMMITMENT; DISPUTE RESOLUTION**

- (a) Cooperation. The Parties are entering into this Agreement with a full understanding that the success of the Joint MRF depends upon the commitment of the Parties to work diligently and cooperatively to accomplish their mutual objectives with respect to the Joint MRF. In order to do so, the Parties agree to each use their best efforts to implement and carry out this Agreement.
- (b) Resolution of Disputes. The Parties acknowledge and agree that they shall endeavor to resolve any and all issues that may arise under this Agreement in good faith and in the spirit of cooperation consistent with the intent of this Agreement. When a disputed issue arises, the CCR shall commence negotiations with respect thereto. If the issue cannot be satisfactorily resolved within sixty (60) days of commencement of negotiations, either Party may, by providing written notice to the other Party, request a meeting between the County’s Director of the Department of Parks & Land Use and the City’s Commissioner of the Department of Public Works (collectively, “Department Heads”). Within five (5) business days of receipt of such written notice, the Department Heads shall set a time and place to meet no later than fifteen (15) business days from the date of receipt of the notice in an attempt to resolve a dispute. If the Department Heads cannot resolve the dispute, both Parties may mutually agree to mediation or either Party may pursue any remedy to which they are entitled under this Agreement, at law, or in equity.

**SECTION V
TERMINATION AND WINDING UP**

- (a) Termination Without Cause. Notwithstanding Section I(c) above, this Agreement may be terminated without cause by the County or the City at any time upon a simple majority vote by the legislative body of either Party, provided that at least one (1) year of notice of the effective date of termination is provided to the other Party. If a Party elects to terminate without case under this provision, and the non-terminating Party suffers costs and expenses as a result of such termination that it cannot reasonably cover, then the terminating Party shall be responsible for those increased costs as specified below (“Liquidated Damages”), payable within 30 days of the submission of an invoice to be submitted by the non-terminating Party to the terminating Party 365 days after the termination under this provision takes effect.

Liquidated Damages = (A + B + C) x Total number of non-terminating party tons delivered to a recycling facility over the 365 days after the effective date of the termination.

where

- A = (the average per Recyclable Material ton Processing Fees paid by the non-terminating party over the 365 days after the effective date of the termination)
 MINUS
 (the average per Recyclable Material ton Processing Fees paid by the non-terminating party over the 365 days prior to the effective date of the termination)
- B = (the average Waste Disposal Costs per Recyclable Material ton paid by the non-terminating party over the 365 days after the effective date of the termination)
 MINUS
 (the average Waste Disposal Costs per Recyclable Material ton by the non-terminating party over the 365 days prior to the effective date of the termination)
- C = (the average per Recyclable Material ton cost to transport Recyclable Material to a recycling facility paid by the non-terminating party over the 365 days after the effective date of the termination)
 MINUS
 (the average per Recyclable Material ton cost to transport Recyclable Material to the Joint MRF paid by the non-terminating party over the 365 days prior the effective date of the termination)

(b) Termination Upon Breach. Notwithstanding Sections I(c) and V(a) above but subject to Section IV(b), either Party may terminate this Agreement based upon the other Party's material breach of this Agreement, so long as (i) the terminating Party provides the non-terminating Party and Contractor written notice of at least 150 days, (ii) such written notice explains and describes the nature of the material breach in reasonable detail; and (iii) the breaching party was given a reasonable period of time to cure.

(c) Winding Up. Unless otherwise agreed in writing, the following procedure shall be used to wind up the affairs of the Joint MRF, whether such winding up was caused by termination due to legislative vote or material breach.

1. Disposition of Entity Equipment. Prior to termination of this Agreement, each Party shall obtain an appraisal of all jointly-owned Equipment from a qualified equipment appraiser, unless the Parties agree on a single appraiser. The Party whose appraiser arrives at the highest value for the Equipment shall have the first right to purchase all Equipment by paying one half (1/2) of the averaged appraised value of the two appraisals to the other Party. If the first party declines the option to purchase the Equipment, the other Party may purchase the Equipment for the same price. If only one appraiser is used to value the Equipment, the Party not seeking to terminate this

Agreement shall have the first right to purchase the Equipment by paying the other Party one half (1/2) of the appraised value of the Equipment. If that Party declines the option to purchase the Equipment, the other Party may purchase the Equipment for the same price. If neither Party wishes to purchase the Equipment, the Equipment shall be sold in a commercially reasonable manner, and the value obtained split equally between the Parties after all costs of said sale are paid from the sale proceeds.

2. Settling of Accounts. Upon termination of this Agreement at calendar year-end, a certified independent audit shall be completed by a mutually-agreed upon accounting firm for the last three calendar years of Joint MRF operations, if no such audits had been conducted over that same period. If such audits were conducted and/or if the Agreement is terminated mid-calendar year, then a closing partial-year independent audit shall be completed according to the requirements set forth in Section III.e.3. above except that the final independent audit(s) shall also include: (i) a reconciliation comparing the projections from the final year's budget to actual performance, including appropriate explanations for material differences or other relevant information; (ii) a review of the tonnage reports and ERF payments made by the City and County over the entire term of the Agreement; (iii) a recommended distribution of any balance remaining in the ERP capital fund based on the proportional contributions made to the fund by the City and County; and (iv) any other recommendations necessary to fulfill the intended financial operations and rights and obligations set forth in this Agreement and the Operating Agreement(s). Such audit shall be completed within six months of termination.
3. Damages from Breach of Operating Agreement. Except in the case of termination based upon a material breach, if a Party's decision to terminate this Agreement under **Section V(a)** causes or requires the other Party to breach an Operating Agreement, the terminating Party shall indemnify the non-terminating Party from all consequences of such breach, including but not limited to the payment of all damages that may be assessed against the non-terminating Party and the non-terminating Party's reasonable attorneys' fees.

SECTION VI MISCELLANEOUS PROVISIONS

- (a) Entire Agreement. The entire agreement of the Parties with respect to the subject matter hereof is contained in this Agreement and the contemporaneously-executed Operating Agreement(s). This Agreement supersedes any other intergovernmental cooperation agreement on this subject matter, including but not limited to any and all related oral negotiations, and that certain March 28, 2013 Intergovernmental Cooperation Agreement

Between City of Milwaukee and Waukesha County Regarding A Request for Proposals for Recycling Services.

- (b) Modification. This Agreement may only be modified by a writing signed by both Parties and identified as an amendment to or modification of this Agreement.
- (c) Authorizing Resolutions. This Agreement is entered into by the Parties pursuant to authority granted under section 66.0301, Wis. Stats., and other provisions of the Wisconsin Statutes. By resolution or ordinance adopted by its governing body, each Party has authorized and directed the representatives of the governing body to enter this Agreement on behalf of the Party.
- (d) No Separate Legal Entity. Nothing contained in this Agreement shall be construed or deemed to create a separate legal entity among the Parties and/or Contractor.
- (e) Condition Precedent. The Parties' obligations under this Agreement are conditioned upon the Parties each entering into Operating Agreements with the Contractor and the approval of said contracts by their respective governing bodies.
- (f) Indemnification.
 1. Each Party retains for itself all legal responsibility for injuries, claims, or losses arising from or caused by the acts or omissions of its agents or employees acting within the scope of their employment. Nothing in this Agreement shall be construed as an assumption or indemnification by one Party of any legal liability of the other Party, except as expressly set forth in **Section V.b.3**. The obligations of the Parties under this provision shall be subject to the limitations set forth in Wis. Stat. § 893.80 and Wis. Stat. § 895.46 and shall survive the expiration or termination of this Agreement.
 2. The City shall retain for itself all legal responsibility for any injuries, claims or losses relating to the Joint MRF building or grounds identified in Attachment A, column 4.
 3. The Parties agree not execute any Operating Agreement with the Contractor unless such Operating Agreement requires the Contractor to defend, indemnify, and hold the Parties and the CCR harmless in any and all liability claims that may arise from the services provided under the Operating Agreement, as further specified in **Article VIII** of the City and County Operating Agreement.
- (g) Insurance. The CCR shall ensure that all contracts executed under this Agreement contain appropriate insurance requirements to protect the County and the City. For the Joint MRF, the CCR shall also ensure that applicable insurance coverage, such as fire and general liability, is maintained for the Entity Equipment, the Joint MRF, and the Joint MRF site at all

times and at appropriate levels. The costs for insurance on jointly-owned Entity Equipment (as precisely listed in schedules to each of the City and County Operating Agreements) shall be shared equally by the County and the City. The City shall be solely responsible for the costs of insurance relating to its property as specified in **Attachments Bf-C**. Notwithstanding the foregoing, insurance requirements shall be further specified in the applicable sections of and a schedule to the City and County Operating Agreements, and the Operation and Maintenance Plan for the Joint MRF.

- (h) Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of the provisions of this Agreement.
- (i) Governing Law. This Agreement is entered into and shall be construed in accordance with the laws of the State of Wisconsin.
- (j) Effective Date. This Agreement shall become effective and binding on both the County and the City upon the last date of execution by either party.
- (k) Severability. If any provision of this Agreement is finally determined by a court of competent jurisdiction to be invalid or unenforceable, this Agreement shall be construed as if the invalid or unenforceable provision had been deleted from the Agreement and the balance of the Agreement shall continue in full force and effect.
- (l) Nonwaiver. No provision of this Agreement will be deemed waived by reason of one Party delaying or failing to enforce the provision on one or more occasion. Any waiver of a provision given on one occasion shall not obviate the need to obtain future waivers of the same provision or excuse a future breach of that provision.
- (m) Notices. Any notices required or permitted under this Agreement shall be in writing and shall be considered given upon delivery, if personally delivered or emailed with evidence thereof, or one (1) business day after deposit with a nationally-recognized commercial courier, or two (2) business days after deposit in the United States Postal Service, certified or registered mail, postage prepaid, in all cases addressed as follows:

If to the County: Waukesha County
515 W. Moreland Blvd., Room AC 248
Waukesha, WI 53188
Attn: Director, Dept. of Parks & Land Use

If to the City: City of Milwaukee
841 North Broadway, Room 516
Milwaukee, WI 53188
Attn: Commissioner, Dept. of Public Works

- (n) Local Rules. The County and the City shall each abide by all applicable laws, rules and regulations affecting the operation of the Joint MRF and the delivery of recyclable materials to the facility.
- (o) No Assignment. No Party to this Agreement may assign its interest in this Agreement to any other entity or individual without the express written consent of the other Party.
- (p) Counterparts. This Agreement may be executed in one or more counterparts, which, when combined with the other counterparts, shall constitute and be a completely executed document and one single agreement. Signatures submitted by photocopy, facsimile or electronic transmission shall be deemed original, fully enforceable against the Party whose signature is represented thereon; but no one Party's signature shall be binding until all signatures have been added hereto.
- (q) Force Majeure. Except as otherwise specifically provided herein, no Party shall be considered in default in the performance of any of its obligations under this Agreement when there is an occurrence of an event of Force Majeure, as defined in this subsection (q), and the result is a delay or failure to perform the obligation, and no Party shall be liable to the other for any loss or damage suffered as a result of such delay or failure. If performance is delayed or rendered impossible by an event of Force Majeure, the Party claiming a Force Majeure event shall immediately give notice to the other Party of the nature of such conditions, the extent of the delay expected, and the estimated capital costs to resume performance, and shall use its best efforts to promptly resume performance. If the expected delay is greater than one-hundred eighty (180) calendar days, or the estimated capital costs is greater than fifty percent (50%) of the initial capital costs under Section II of this Agreement, the Party receiving the notice shall have the right to terminate this Agreement by giving written notice to the other party. "Force Majeure," as used herein, shall mean any condition affecting a party in connection with this Agreement, which condition is beyond the reasonable control of the Party, including without limitation: acts of God, natural disaster, flood, fire, riot explosion, war or actions or decrees of governmental bodies.

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