

ENROLLED ORDINANCE 168-117

APPROVAL OF INTERGOVERNMENTAL COOPERATION AGREEMENT  
BETWEEN WAUKESHA COUNTY AND THE CITY OF MILWAUKEE  
REGARDING THE CONSTRUCTION AND PRIVATE  
OPERATION OF A JOINT RECYCLING FACILITY

WHEREAS, both Waukesha County and the City of Milwaukee 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 publically-owned and privately operated MRF, and

WHEREAS, in December 2013, after completing a competitive proposal review process, officials from 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, and

WHEREAS, the competitive proposal process has determined collaborating to process recyclable tonnage to be advantageous to Waukesha County by perpetuating municipal tax relief, continue private sector operation of processing and continued operation without tax levy, and

WHEREAS, the County and City desire to cooperate in the construction and private operation of a joint single stream MRF at the existing Milwaukee MRF for the processing of all recyclables for which they are a Responsible Unit and other Third-Party recyclables, and

WHEREAS, Wisconsin Statutes Sections 66.0301 and 287.13 provide the authority for the County and City to enter into an Intergovernmental Cooperation Agreement for the construction and private operation of a joint recycling facility.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that the Intergovernmental Cooperation Agreement between Waukesha County and the City of Milwaukee for the construction and private operation of a joint recycling facility, which is on file in the Office of the County Clerk, is hereby approved.

BE IT FURTHER ORDAINED that the County Executive or designee may execute the Intergovernmental Cooperation Agreement on behalf of Waukesha County.

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 BETWEEN WAUKESHA COUNTY AND THE CITY OF MILWAUKEE  
 REGARDING THE CONSTRUCTION AND PRIVATE  
 OPERATION OF A JOINT RECYCLING FACILITY

Presented by:  
 Executive Committee

Approved by: Land Use, Parks,  
 and Environment Committee

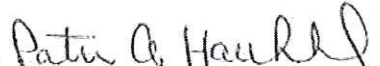
Approved by:  
 Finance Committee



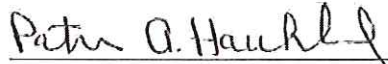
Paul L. Decker, Chair



James A. Heinrich, Chair



Patricia A. Haukohl, Chair



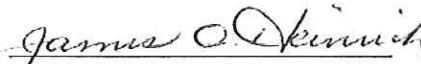
Patricia A. Haukohl



Jim Batzko




Daniel J. Draeger



James A. Heinrich



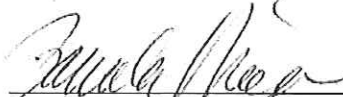
Walter L. Kolb



Pamela Meyer



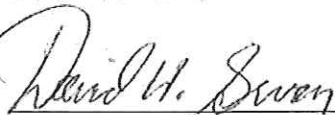
Duane E. Paulson



Pamela Meyer

*absent*

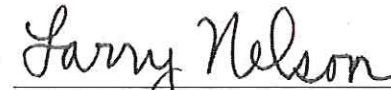
Richard Morris



David W. Swan

*Absent*

Fritz Ruf



Larry Nelson



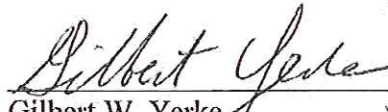
Peter M. Wolff



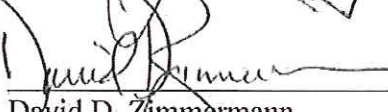
Thomas J. Schellinger



William J. Zaborowski



Gilbert W. Yerke



David D. Zimmermann

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, was presented to the County Executive on:

Date: 4/8/14,   
 Kathleen Novack, County Clerk

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, is hereby:

Approved: X

Vetoed: \_\_\_\_\_

Date: \_\_\_\_\_, Daniel P. Vrakas  
 Daniel P. Vrakas, County Executive

Digitally signed by Daniel P. Vrakas  
 DN: cn=Daniel P. Vrakas, o=Waukesha County,  
 ou=Waukesha County Executive,  
 email=countyexec@waukeshacounty.gov, c=US  
 Date: 2014.04.14 12:20:13 -05'00'

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APPROVAL OF INTERGOVERNMENTAL COOPERATION AGREEMENT  
 BETWEEN WAUKESHA COUNTY AND THE CITY OF MILWAUKEE  
 REGARDING THE CONSTRUCTION AND PRIVATE  
 OPERATION OF A JOINT RECYCLING FACILITY

Presented by:  
 Executive Committee

Approved by: Land Use, Parks,  
 and Environment Committee

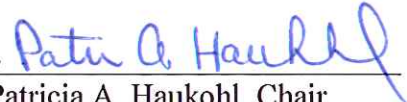
Approved by:  
 Finance Committee



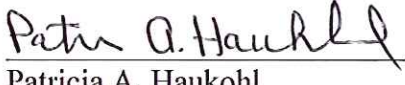
Paul L. Decker, Chair



James A. Heinrich, Chair



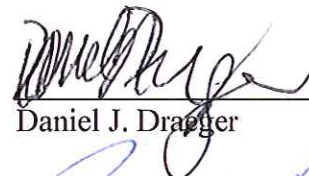
Patricia A. Haukohl, Chair



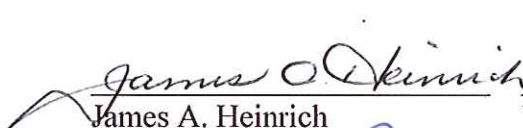
Patricia A. Haukohl



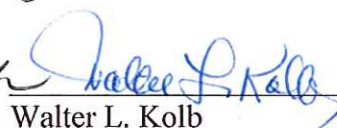
Jim Batzko



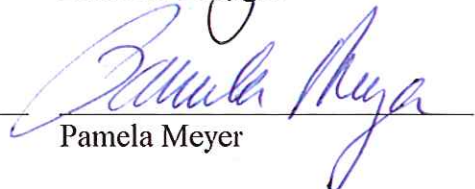
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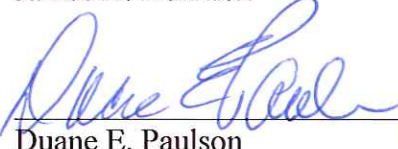
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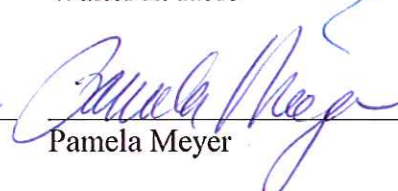
Walter L. Kolb



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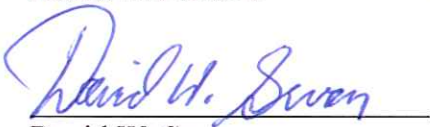
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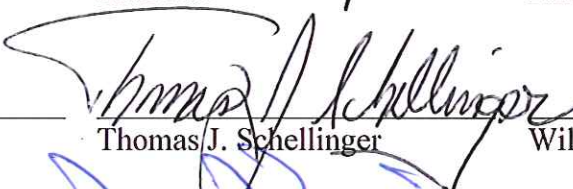
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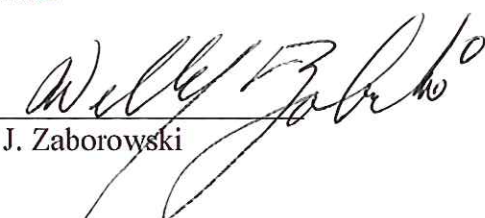
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Date: 4/8/14,   
 Kathleen Novack, County Clerk

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Approved: \_\_\_\_\_

Vetoed: \_\_\_\_\_

Date: \_\_\_\_\_, \_\_\_\_\_  
 Daniel P. Vrakas, County Executive



FISCAL NOTE

APPROVAL OF INTERGOVERNMENTAL COOPERATION AGREEMENT BETWEEN WAUKESHA COUNTY AND THE CITY OF MILWAUKEE REGARDING THE CONSTRUCTION AND PRIVATE OPERATION OF A JOINT RECYCLING FACILITY

This ordinance authorizes Waukesha County and the City of Milwaukee to enter into an Intergovernmental Agreement for the construction and private operation of a joint recycling facility. The terms of the proposed agreement are to last 15 years, with an automatic 10 year extension, unless otherwise amended or terminated. Under terms of the agreement, Waukesha County would agree to make a one-time start-up investment estimated at \$7.71 million dollars to cover costs associated with the conversion of the current Waukesha County MRF into a transfer station, and equipment and some building costs at the Milwaukee MRF location. The City of Milwaukee would own the Milwaukee MRF building and be responsible for maintaining the building. Waukesha County's investment is budgeted in Capital Project 201409, which will be proposed to be modified and approved in a separate board action.

Investments made by the City and County can be summarized as follows:

Item	Share of Costs		
	Waukesha County	City of Milwaukee	Total
New MRF Equip (a.)	\$7,060,000	\$7,060,000	\$14,120,000
MRF Building Improvements		\$5,353,000	\$5,353,000
Conversion of Old MRF to Transfer Station (b.)	\$650,000		\$650,000
<b>Total (c.)</b>	<b>\$7,710,000</b>	<b>\$12,413,000</b>	<b>\$20,123,000</b>

(a.) This includes contingency funding.

(b.) The County's cost to ship recyclable material from the transfer station to the Milwaukee MRF is estimated to be \$380,300 in the first full year. At estimated tonnage levels, this would come to approximately \$4.7 million over 15 years on a net present value basis, and therefore would nearly equal Waukesha County's cost to the City's initial investment.

(c.) These are not to exceed numbers subject to negotiation.

Based on the most recently negotiated contract rates, the investment in this agreement is estimated to earn an average annual return on investment of about 8.9% over the first 15 year term of the agreement. This excludes any savings participating Waukesha County communities may realize from the change to single stream collection.

The operating impact of this agreement will be included in the 2015 and later operating budgets. This would include a projected, annual \$1 million dividend payment to participating municipalities as tax relief.



Lawrence M. Dahl  
Accounting Services Manager  
3/17/2014

**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

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

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.



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.

- (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

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.

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.

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.

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



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

**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 cause 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

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

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

The County and the City have duly approved this Agreement and authorized its execution as set forth below:

**For the City of Milwaukee:**

\_\_\_\_\_ Date  
(Typed name)

\_\_\_\_\_ Date  
(Typed name)

**For Waukesha County:**

\_\_\_\_\_ Date  
(Typed name)

\_\_\_\_\_ Date  
(Typed name)

**Attachments**

- Attachment A City-owned building, grounds, and other property schedule (not used for the Joint MRF)
- Attachment B City-owned Equipment schedule (some used for the Joint MRF and some not used for the Joint MRF, as indicated)
- Attachment C City-owned building, grounds, and other property schedule (used for the Joint MRF)

**Diagrams**

- Diagram 1 Flow Chart showing operation of key definitional terms

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE 04/08/14

(ORD) NUMBER-1680117

1 .....  
 3 R. MORRIS.....  
 5 J. BRANDTJEN.....NAY  
 7 J. GRANT.....AYE  
 9 J. HEINRICH.....AYE  
 11 F. RUF.....AYE  
 13 P. DECKER.....AYE  
 15 W. KOLB.....AYE  
 17 D. PAULSON.....AYE  
 19 C. CUMMINGS.....AYE  
 21 W. ZABOROWSKI.....AYE  
 23 K. HAMMITT.....AYE  
 25 G. YERKE.....AYE

2 D. Zimmermann.....AYE  
 4 J. BATZKO.....AYE  
 6 .....  
 8 P. HAUKOHL.....AYE  
 10 D. SWAN.....AYE  
 12 P. WOLFF.....AYE  
 14 P. MEYER.....AYE  
 16 M. CROWLEY.....AYE  
 18 L. NELSON.....AYE  
 20 T. SCHELLINGER....AYE  
 22 P. JASKE.....AYE  
 24 D. DRAEGER.....AYE

TOTAL AYES-21

TOTAL NAYS-01

CARRIED X

DEFEATED \_\_\_\_\_

UNANIMOUS \_\_\_\_\_

TOTAL VOTES-22