

ENROLLED ORDINANCE 174-026

APPROVE SECOND AMENDMENT TO THE CONSTRUCTION AND OPERATING AGREEMENT BETWEEN WAUKESHA COUNTY AND RESOURCE RECOVERY SYSTEMS, LLC AND MODIFY THE 2019 COUNTY BUDGET FOR THE MATERIAL RECOVERY FACILITY (“MRF”)

WHEREAS, since 1990, Waukesha County has served as a Responsible Unit (“RU”) for recycling under Chapter 287 of the Wisconsin Statutes for twenty-five (25) participating municipalities, with two (2) additional municipalities joining the County program in 2015; and

WHEREAS, as part of the recycling program from 1991 to 2014, all recyclables collected by participating municipalities were processed at a County-owned Material Recovery Facility (“MRF”) located in the City of Waukesha; and

WHEREAS, after several years of studies, in 2014, the Waukesha County Board adopted ordinances 168-17 and 168-18 authorizing the execution of an Intergovernmental Agreement (“IGA”) with the City of Milwaukee (“City”) and an agreement with Resource Recovery Systems, LLC to design, build and operate a new single-stream MRF in a City-owned building located in Milwaukee dated May 5, 2014 (“Agreement”); and

WHEREAS, a similar design, build, operate agreement was executed between the City and Resource Recovery Systems, LLC., and the new Joint City/County MRF began operation in March 2015; and

WHEREAS, in October 2017, Resource Recovery Systems, LLC was acquired by Republic Services, Inc.; and

WHEREAS, due to depressed markets for the sale of recyclable materials, the economic conditions of operating a MRF have significantly changed, which required the renegotiation of the operating agreement with Republic Services, Inc.; and

WHEREAS, after 9 months of joint negotiations among the City, the County and Republic Services, Inc., terms for an amendment to the City and County operating agreements with Republic Services, Inc. have been agreed to; and

WHEREAS, amendments to the Agreement also require amendments to the adopted 2019 MRF budget to account for higher operating costs, reduced sales resulting from depressed recycled material market conditions, and reductions to community dividends based on lower revenues; and

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that the Second Amendment to the Construction and Operating Agreement between Waukesha County and Republic Services, Inc. is hereby approved.

BE IT FURTHER ORDAINED that the Material Recovery Facility’s (MRF) 2019 Budget be modified by reducing operating expenses by \$237,180 reflecting reductions in community dividend payments partially offset by additional costs related to processing fees and waste disposal costs; decreasing other revenues by \$745,750 due to changes to material sales rates,

equipment repair and replacement fees, and education fees; and increasing MRF Fund Balance by \$508,570 to offset remaining adjustment balances.

FISCAL NOTE

APPROVE SECOND AMENDMENT TO THE CONSTRUCTION AND OPERATING AGREEMENT BETWEEN WAUKESHA COUNTY AND RESOURCE RECOVERY SYSTEMS, LLC AND MODIFY THE 2019 COUNTY BUDGET FOR THE MATERIAL RECOVERY FACILITY (“MRF”)

This ordinance amends an existing contract between the County and Republic Services, Inc. (formerly Resource Recovery Systems, LLC) in the operation of the material recovery facility (MRF). The agreement has six years remaining, with a possible five-year extension (calendar year 2030).

Operating costs for the MRF are increased nearly \$670,000 largely from a change in the processing fee assessed by the vendor on all County tonnage, increasing from \$32/ton to \$50/ton in the new agreement or \$530,320 associated with increased costs to increase the quality of the materials to meet market demands. The waste disposal fees paid by the vendor to dispose of waste comingled with recyclable materials also increase \$139,500 to \$279,000, reflecting an increase in the budgeted residue rate for tonnage from 9% to 20%. The ordinance also reduces the dividend payment to partner communities by \$907,000 reflecting reduced material sales and higher operating costs. The remaining dividend of \$645,000 reflects agreements to reimburse communities for hauling and recycling carts.

Revenue (excluding fund balance) decrease approximately \$746,000. This includes a reduction in material sales revenues of nearly \$841,000 mainly due to a reduction in the estimated gross revenue per ton (from \$100/ton to \$80/ton) to reflect market experience. Additional changes include an increase in the residue rate as noted previously, and a modification to the revenue cost-sharing schedule resulting in a minimum of \$20/ton for the vendor when the revenue per ton is less than \$100/ton. This is offset with an increase in fees for equipment repair and replacement of \$75,000. Rates change from \$4/ton (when revenues are higher than \$98/ton) to a fixed \$5/ton, regardless of price flexibility. Similarly, the vendor-paid education fee is no longer subject to price flexibility and is set at \$2/ton, resulting in a revenue increase of \$20,000. The ordinance also increases fund balance by \$508,570 due to the reduction in revenues of \$745,750 being only partially offset with expenditure reductions. At the end of 2018, the MRF has an unaudited, estimated cash balance of approximately \$4.30 million.

MRF 2019 Budget	Adopted		Modified Budget
	Budget	Adjustments	
MRF Operations	\$1,768,841	\$669,820	\$2,438,661
Community Dividends	\$1,552,500	(\$907,000)	\$645,500
Recycling and Solid Waste Programs	\$1,078,994		\$1,078,994
<b>Total Expenditures</b>	<b>\$4,400,335</b>	<b>-\$237,180</b>	<b>\$4,163,155</b>
General Government	\$1,050,000		\$1,050,000
Material Sales	\$2,280,750	(\$840,750)	\$1,440,000
Equipment Replacement Fee	\$150,000	\$75,000	\$225,000
Education Fee	\$40,000	\$20,000	\$60,000
Other Revenue	\$295,250	\$0	\$295,250
Subtotal Revenue	\$3,816,000	(\$745,750)	\$3,070,250
Fund Balance	\$1,053,100	\$508,570	\$1,561,670
<b>Total Revenues</b>	<b>\$4,869,100</b>	<b>(\$237,180)</b>	<b>\$4,631,920</b>
<b>Operating Income/(Loss)</b>	<b>\$468,765</b>	<b>\$0</b>	<b>\$468,765</b>
<b>Cash Flow from Operations</b>	<b>\$75,926</b>	<b>(\$508,570)</b>	<b>(\$432,644)</b>

The Department estimates that over the remaining six years of the contract material sales will recover slowly due to improved markets and efforts to increase the quality of materials. The Department has indicated further adjustments to preserve fund balance can include further revisions to the community dividends and enacting a material processing fee.

*Linda Witkowski*

Linda Witkowski  
 Budget Manager  
 5/8/2019  
 JE# 2019-00004819

APPROVE SECOND AMENDMENT TO THE CONSTRUCTION AND OPERATING AGREEMENT BETWEEN WAUKEHA COUNTY AND RESOURCE RECOVERY SYSTEMS, LLC AND MODIFY THE 2019 COUNTY BUDGET FOR THE MATERIAL RECOVERY FACILITY ("MRF")

Presented by: Land Use, Parks & Environment Committee

Approved by: Executive Committee

Approved by: Finance Committee

David D. Zimmerman      Paul L. Decker      absent  
 David D. Zimmerman, Chair      Paul L. Decker, Chair      James A. Heinrich, Chair

Kathleen M. Cummings      James A. Heinrich      Timothy Dondlinger  
 Kathleen M. Cummings      James A. Heinrich      Timothy Dondlinger

Keith Hammitt      Christine M. Howard      Tyler J. Foti  
 Keith Hammitt      Christine M. Howard      Tyler J. Foti

William A. Mitchell      Larry Nelson      Thomas A. Michalski  
 William A. Mitchell      Larry Nelson      Thomas A. Michalski

absent      David W. Swan      Richard Morris  
 Thomas J. Schellinger      David W. Swan      Richard Morris

Steve Whittow      Peter M. Wolff      Duane E. Paulson  
 Steve Whittow      Peter M. Wolff      Duane E. Paulson

absent      David D. Zimmermann      Ted Wysocki  
 Chuck Wood      David D. Zimmermann      Ted Wysocki

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

Date: 5/30/19, Margaret Wartman  
 Margaret Wartman, County Clerk

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

Approved: X  
 Vetoed: \_\_\_\_\_

Date: 5/30/19, Paul Farrow  
 Paul Farrow, County Executive

# Joint MRF Operating Agreement

## Background

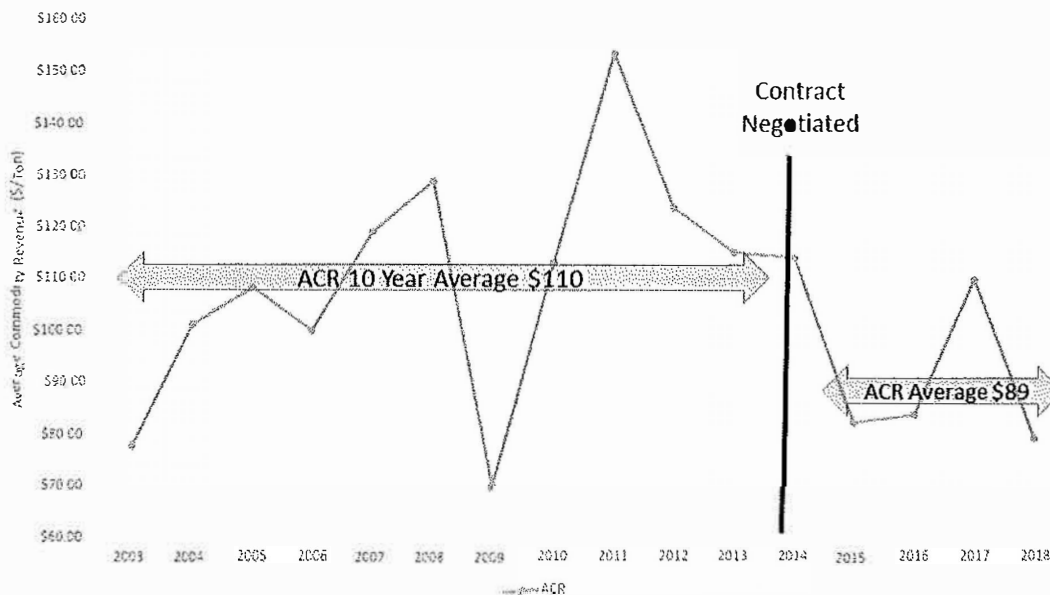
In March 2014, after a highly competitive RFP process, the City of Milwaukee and Waukesha County ("Entity") both executed contracts with ReCommunity, LLC, which is now owned by Republic Services Inc. ("Republic"). The contracts covered the design, construction and operation of a new \$15 million Joint Entity Materials Recovery Facility ("Joint MRF") to be located in an existing City-owned building in Milwaukee. The Joint MRF began operation in March 2015, with all partner communities delivering their collected recyclables to the facility for processing. Several performance measures were included in the contract to ensure the efficient operation and maintenance of the facility, and the greatest return on investment for the Entity.

## The Markets

Prior to selecting the successful contractor for the Joint MRF, an economic model was developed to evaluate proposals and determine the best business plan for the Entity. Under the accepted proposal, the Entity receives 80% of the revenue from recyclable material sold on the commodity markets, which is used to pay for recyclable processing, as well as support Entity program costs and dividend payments to community partners. With this arrangement, the most impactful assumption in the model is the per ton value of the recyclables sold, which is referred to as the Average Commodity Revenue (ACR). An ACR value of \$100 per ton was chosen as the modeling standard to compare proposals, which was more conservative than the \$110 per ton 10-year historic average at the time.

However, since the Joint MRF began operating in 2015, the markets have struggled to meet \$100/ton, as shown in Figure 1. In fact, since 2015, ACR values have averaged 19% lower than the previous 10 years (\$1.25 million in lost revenue/year). The depressed recyclable commodity values are a result of international market factors, such as Chinese import bans. Even though the Joint MRF generally sells material in the Midwest markets, the loss of overseas export markets caused a flood of recyclable materials in the US, which has driven down commodity values.

Figure 1 – Average Commodity Revenue: 2003-2018



## Operational Impacts

At the same time recyclable markets have been suppressed, the material quality demands increased. More staff were needed to implement quality control measures and maintain equipment in peak condition. Equipment processing speed needed to be reduced to ensure material quality. In a strong economy, wage increases for MRF staff were also necessary to meet labor market demands. All of this has caused MRF operating costs to increase significantly. In addition, more capital investment is needed for equipment upgrades necessary to improve efficiency and material quality.

## Renegotiating the Agreement

Due to the rapidly rising MRF operating costs, the Entity was required to renegotiate the economic terms of the operating agreement with Republic. This process began in June of 2018. The Entity engaged the services of a consultant to help with the negotiations and fiscal analysis involved. Republic provided evidence of the increased operating cost and reduced revenues, showing a net loss of over \$1 million at the Joint MRF during 2018.

Republic issued a "termination notice" in November 2018, which was disputed by the Entity's legal counsel. However, if the Entity were to litigate the issue with Republic, a new processor would need to be found through a Request for Proposal process during a period of depressed recycling markets. Surveys by the consultant showed the Entity would have likely paid an even higher processing fee than what was negotiated through this 9-month long process. Therefore, it was recommended to finish the term of the contract while the market continues to adjust. Below is a summary of negotiated terms.

**Table 1**  
**Comparison of Current and Renegotiated Agreement Terms**

Item	Current Agreement	Negotiated Agreement	Fiscal Impacts
Processing Fee <i>(County pays)</i>	\$32/ton; sliding scale based on inbound tons	\$50/ton; if ACR > \$100 fee is reduced; \$40 at ACR $\geq$ \$150; no sliding scale on tons	Increased County costs of \$558K/yr.; no need to rely on 3 <sup>rd</sup> party tons
Revenue Sharing	80% County/20% Republic	80% County/20% Republic with first \$20/ton to Republic; if ACR > \$165, County share increases	At ACR of \$80, reduced revenue of \$100K/yr.
Equipment Repair & Replacement Fee <i>(County &amp; Republic pay)</i>	50% County/50% Republic; sliding scale; no Republic fee if ACR < \$98	Fixed \$5/ton Republic; no sliding scale	At \$80 ACR, is an increase of \$150K of County funding to Reserve Fund; more sustainable; previous \$600K in deferrals
Education Fee <i>(Republic pays)</i>	\$2/ton Republic on sliding scale; no fee if ACR < \$98	Fixed \$2/ton Republic; no sliding scale	More reliable funding for education
Agreement Length	10 years with (1) 5-yr. extension at County discretion	10 years with (1) 5-yr. mutually agreed extension	6 years remaining + possible 5-year extension

**SECOND AMENDMENT TO THE CONSTRUCTION AND OPERATING  
AGREEMENT**

between

**WAUKESHA COUNTY**

and

**RESOURCE RECOVERY SYSTEMS, LLC D/B/A MILWAUKEE RECYCLING**

This is the Second Amendment to the Construction and Operating Agreement entered into by and between the Waukesha County and Resource Recovery Systems, LLC (“Contractor”) on or around May 1, 2014 (“Contract”).

Whereas, Republic Services, Inc. acquired the ownership interests in RECommunity Holdings II, Inc., parent company of Resource Recovery Systems, LLC, as of October 1, 2017; and

Whereas, the Parties desire to amend certain economic and renewal terms of the Contract;

Now, therefore, in consideration of the mutual covenants hereinafter stated, the Parties do hereby agree as follows:

1. Schedule 4(a), attached hereto, is hereby appended to Schedule 4, and is effective and in place of Schedule 4, beginning January 1, 2019.

2. Section 1.01 is hereby amended to include “Schedule 4(a) – Joint MRF Contract Payments starting January 1, 2019” immediately after “Schedule 4 – Joint MRF Contract Payments.”

3. Article XI is hereby deleted and replaced, effective January 1, 2019, with the attached Article XI.

4. With the exception of Section 1.01, Schedule 4 itself, and Article XI, which shall all be amended as described above, all other instances of the term “Schedule 4” throughout the Contract shall be replaced with the term “Schedule 4, or, starting January 1, 2019, Schedule 4(a).”

5. Section 18.01 is hereby deleted and replaced with the following: “Section 18.01 Term. Unless sooner terminated in accordance with the provisions of this Contract, the Term of this Contract (the “Term”) shall commence upon execution hereof by both the County and Contractor and shall continue in effect until the last day of the month in which falls the tenth (10th) anniversary of the Operations Commencement Date, with an option to extend the Contract an additional 5 years if exercised by both Parties in writing. Each Party shall provide the other with notice of its desire to extend the Contract as provided herein no later than 6 months before the Contract’s expiration date, and if both Parties desire to extend the Contract, the extension shall be executed no later than 4 months prior to the expiration of the Contract.”

6. The definition of the term "Operations Commencement Date" in Article II, Section 2.01 is hereby deleted and replaced with the following: "means March 16, 2015, which is the date that the Contractor commenced Processing of City Recyclable Material at the Joint MRF, as specified in **Schedule 11.**"

7. The terms of this Second Amendment shall apply retroactively to January 1, 2019.

8. This Second Amendment may be executed in multiple parts. Signatures to this Second Amendment transmitted by facsimile or by electronic mail shall be valid and effective to bind the Party so signing.

This constitutes the entire Second Amendment to the Contract. All other covenants, provisions, terms and conditions of the Contract shall remain in full force and effect until further amended by mutual agreement of the Parties.

IN WITNESS WHEREOF, Waukesha County and the Contractor have caused this Amendment to be executed on the dates set forth below.

**WAUKESHA COUNTY, WISCONSIN**

By: \_\_\_\_\_  
Dale R. Shaver, Director  
Department of Parks and Land Use  
Waukesha County

Dated this \_\_\_\_ day of \_\_\_\_\_, 2019.

Approved as to Form and Execution:

\_\_\_\_\_  
Erik G. Weidig  
Corporation Counsel

Dated this \_\_\_\_ day of \_\_\_\_\_, 2019.



**RESOURCE RECOVERY SYSTEMS, LLC**

By: \_\_\_\_\_  
(Signature)

Its: \_\_\_\_\_  
(Title of Officer)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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

Section 11.01 Payments

- (a) Payment to the County by Contractor. Each Operating Month, the Contractor shall pay the County based on **Schedule 4, or, starting on January 1, 2019, Schedule 4(a)**, under **Sections 11.02, 11.03, and 11.04**, and as otherwise specified herein. A sample County Payment calculation spreadsheet shall be approved by the Entity and included in the O&M Plan.
- (b) Payment to the Contractor by the County. Each Operating Month, the County shall pay the Contractor based on **Schedule 4, or, starting on January 1, 2019, Schedule 4(a)**, under **Sections 11.05, 11.08, and 11.09**, and as otherwise specified herein. A sample Contractor Payment calculation spreadsheet shall be approved by the Entity and included in the O&M Plan.

Section 11.02 Shared Revenue and Fees

- (a) Shared Revenue. Each Operating Month, the Contractor shall pay the County Shared Revenue based on **Schedule 4, or, starting on January 1, 2019, Schedule 4(a)**, utilizing the ACR and the most recent Composition Analysis under **Section 9.07**. The Contractor shall pay the County a monthly percentage of Shared Revenue from Third Party Processing in accordance with **Schedule 4, or, starting on January 1, 2019, Schedule 4(a)**. A sample Shared Revenue calculation spreadsheet shall be approved by the Entity and included in the O&M Plan.
- (b) Fees. If a Third Party Processing contract approved under **Section 6.13** allocates a portion of the per ton Third Party Processing Fee to the County, the portion of the Third Party Processing Fee allocated to the County shall be included in the monthly County Payment under **Section 11.01**, as further specified in **Schedule 4, or, starting on January 1, 2019, Schedule 4(a)**.

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

- (a) Difference between the tons of permitted (according to **Section 10.03**) missed Recoverable Material in Residue and the actual tons of missed Recoverable Material in Residue (i.e., using the latest Residue Analysis projected out to the total number of tons of Recoverable Materials, estimated based upon the total number of Recyclable Material tons adjusted by the latest Composition Analysis,

delivered by the County, City, or Third Party, and Processed by Contractor during the previous Operating Month);

MULTIPLIED BY

- (b) the ACR for the previous Operating Month;

MULTIPLIED BY

- (c) eighty percent (80%)

Section 11.04 Education Fee. The Contractor shall pay the Education Fee monthly to the County per County Ton for the previous Operating Month, as shown in **Schedule 4, or, starting on January 1, 2019, Schedule 4(a)**.

Section 11.05 Processing Fee. The County or a Third Party shall pay the Contractor the Processing Fee per their respective Tons Processed for the Previous Operating Month, subject to annual adjustment and, prior to January 1, 2019, reconciliation based on the number of total tons delivered to the Joint MRF during the previous year and projected tons for the coming year, as described in **Schedule 4, or, starting on January 1, 2019, Schedule 4(a)**.

Section 11.06 *Intentionally Omitted*

Section 11.07 Equipment Repair & Replacement Fee (ERF). The Equipment Repair & Replacement Fee, as shown in **Schedule 4, or, starting on January 1, 2019, Schedule 4(a)**, shall be a variable per ton fee as shown in **Table 4-3 or Table 4-3(a)**, as applicable, that is initially paid equally by the Contractor and the County (50% each) based on the total County Tons for the previous Operating Month. All Equipment Repair & Replacement Fees shall be paid to the Entity and deposited into the Equipment Reserve Fund, which shall be managed by the Entity, as described further in the IGA. ERF payments shall be made independent of the County Payment, Contractor Payment, or any payment to a Third Party under this **Article XI**. The Contractor shall pay to the Entity one hundred percent (100%) of the ERF for all Third Party Tons delivered to the Joint MRF, as described in **Section 6.13** and **Schedule 4, or, starting on January 1, 2019, Schedule 4(a)**, unless otherwise negotiated and mutually agreed with respect to Third Party Tons of source separated or presorted Recyclable Material. In no event shall Contractor be required to contribute more to the Equipment Reserve Fund than as provided for in this Section and in **Schedule 4, or, starting on January 1, 2019, Schedule 4(a)**, regardless of any shortfall in the Reserve Fund, including upon the termination of this Contract.

Section 11.08 Fee Adjustment. From the Contract Date to the next December 31, the monthly fees shall be as stated below, but thereafter shall be subject to adjustment as specified further in **Schedule 4, or, starting on January 1, 2019, Schedule 4(a)**. Prior to January 1, 2019, this shall be based on the total Tons of Recyclable Materials delivered

to the Joint MRF for the previous calendar year and the estimated anticipated Tons of Recyclable Materials for the coming year, as well as other past and anticipated future performance, costs, prices, and other relevant factors.

- (a) Processing Fee paid to the Contractor by the County or City under **Section 11.05** shall initially be \$30.00, and starting January 1, 2019, \$50.00, per their respective Tons of Recyclable Material as of the Contract Date. Processing Fee paid to the Contractor by a Third Party under **Section 11.05** initially shall be \$41.00 per Third Party Ton or as otherwise specified in contract. Annual adjustments and/or year-end reconciliations regarding Processing Fees shall be according to **Table 4-2** of **Schedule 4, or, starting on January 1, 2019, Table 4-2(a) of Schedule 4(a).**
- (b) *Intentionally Omitted*
- (c) Education Fee paid by the Contractor to the Entity under **Section 11.04**, shall initially be \$2.00 per Ton of Recyclable Material as of the Contract Date. Adjustments shall be guided by **Table 4-4** of **Schedule 4, or, starting on January 1, 2019, Schedule 4(a).** Starting January 1, 2019, the Education Fee paid by the Contractor to the County shall be \$2.00 per Ton of County Recyclable Material and shall not be subject to future adjustments.
- (d) Equipment Repair & Replacement Fee paid by the Contractor to the Entity under **Section 11.07**, shall initially be \$8.00 per Ton of Recyclable Material as of the Contract Date. Adjustments shall be guided by **Table 4-4** of **Schedule 4**; however, starting January 1, 2019, the Equipment Repair & Replacement Fee paid by the Contractor to the Entity that is applicable to City or County Tons shall be \$5.00 per Ton of Recyclable Material and shall not be subject to future adjustments as set forth in **Table 4-3(a) to Schedule 4(a).** For sake of clarity, **Table 4-4** does not appear in **Table 4(a)** and shall cease to apply starting January 1, 2019.

#### Section 11.09 Contractor Operating Costs and Expenses

- (a) Reimbursable Contractor Operating Costs and Expenses
  - (i) Waste Disposal Costs. The County shall reimburse the Contractor for all actual Waste Disposal Costs for County Tons incurred under **Section 9.04** for the previous Operating Month, in accordance with the Waste Disposal Cost shown in **Schedule 4, or, starting on January 1, 2019, Schedule 4(a).** or as otherwise provided for herein. The Entity reserves the right to determine which Landfill the Contractor shall use for the disposal of Waste.
  - (ii) Expenses and Costs to Repair, Replace, or Purchase Equipment. Subject to **Article VI**, for Entity Equipment or ERP-scheduled property replacement, purchase, or repairs, the Contractor shall be reimbursed from

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

- (iii) Cost Increases Due to Third Party Tonnage. Any increase in Contractor's Joint MRF operating expenses related exclusively to and directly attributable to Third Party tonnage may be passed through to the respective Third Party, but shall in no case be payable by the Entity or County, as specified in Sections 6.13(c) and 6.13(f).
  - (iv) Cost to Market Recovered Materials. Contractor shall reduce Marketable Recovered Material Revenue only by those Direct Costs related exclusively to and directly attributable to the transportation and marketing/sale (i.e., broker's fees and finder's fees) of Marketable Recovered Material.
  - (v) Costs Associated With Requested Extra Receiving Time. Any Direct Costs related to Entity-requested extended Receiving Time in accordance with Section 6.10(c).
- (b) Non-Reimbursable Contractor Operating Costs and Expenses. Other than expressly permitted above in Section 11.09(a), Contractor shall not pass any other Operating Costs onto the Entity, County, City or any Third Party, unless otherwise mutually agreed to in writing by the Parties.

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

**SCHEDULE 4(a)**  
**JOINT MRF CONTRACT PAYMENTS<sup>1</sup>**

**Monthly Payment to County by Contractor:**

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

Shared Revenue<sup>2</sup> under **Section 11.02** per County ton of Marketable Recovered Materials (below); plus

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

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

Shared Revenue under **Section 11.02** on Third Party Tons (below) of Recyclable Material paid to each of the County and City; plus

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

**Monthly Payment to Contractor by County<sup>4</sup>:**

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

Processing Fee<sup>5</sup> under **Section 11.05** per County Ton (below); plus

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

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<sup>1</sup> Sample spreadsheets showing the proper calculation of Payments, in accordance with **Article XI** and this **Schedule 4(a)** shall be prepared by the Contractor, approved by the Entity and incorporated in the O&M Plan.

<sup>2</sup> The applicable Shared Revenue percentage is per Table 4-2(a) of this Schedule 4(a).

<sup>3</sup> The Processing Fee is subject to adjustment under **Section 11.08(a)**.

<sup>4</sup> The County also will pay a portion of the Equipment Repair & Replacement Fee under **Section 11.07** per County Ton to the Entity, according to **Tables 4-1(a)** and **4-3(a)**.

<sup>5</sup> See note 3.

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

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

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

**Monthly Payments on Third Party Tons:**

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

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

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

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

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

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

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

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

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

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

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

**Table 4-1(a)  
Fees, Costs, and Revenues**

Description of Fees, Costs, and Revenues	Rate/Unit
<p><b>Processing Fee</b> – Under <u>Sections 11.02(b)</u> and <u>11.05</u>, a per ton fee paid by each of the County, City, and/or Third Party to the Contractor based upon their respective Tons of Recyclable Material delivered to the Joint MRF. Entity Processing Fee is according to <u>Table 4-2(a)</u>. Third Party Processing Fee is according to each respective Third Party contract. For source separated or presorted tons of Entity or Third Party Recyclable Material, the Entity and Contractor may agree to waive or provide for an alternate Processing Fee.</p>	<p>Variable<sup>6</sup> for City and County Tons</p> <p>As specified in respective Third Party contracts</p>
<p><b>Education Fee</b> – Under <u>Section 11.04</u>, a fixed per ton fee payable by Contractor to each of the County and City based upon the Tons of Recyclable Material each respectively delivers to the Joint MRF.</p>	<p>\$2/ton</p>
<p><b>Equipment Repair &amp; Replacement Fee</b> – Under <u>Section 11.07</u>, a per ton fee payable by Contractor, City, County, and/or Third Parties to the Entity (to be deposited in the Equipment Reserve Fund) based upon respective Tons of Recyclable Material (RM) delivered to the Joint MRF and as further specified in <u>Table 4-3(a)</u>. The per ton Equipment Repair &amp; Replacement Fee shall be adjusted annually based upon actual Tons of RM delivered in the prior year and projected Tons, as agreed upon by CCR and Contractor, for the coming year and other factors described in this Agreement, as further specified in <u>Table 4-3(a)</u>.</p>	<p>\$10/ton</p>
<p><b>Waste Disposal Costs</b> – the actual per ton fee paid by Contractor to dispose of Residue and Rejected Materials (i.e., Waste), reimbursable in whole by each of the County, City, or Third Party to Contractor under <u>Section 11.09(a)(i)</u> based upon their respective Tons of Waste as determined by the Composition Analysis.</p>	<p>Varies<sup>7</sup></p>
<p><b>Direct Costs Related to Request Increases in Receiving Times</b> – Under <u>Sections 6.10(c)</u> and <u>11.09(a)(v)</u>, City, County, and/or Entity Direct Costs related to increased Receiving Times.</p>	<p>Varies</p>



Description of Fees, Costs, and Revenues	Rate/Unit
<p><b>Equipment Repair or Replacement Costs</b> – As to Entity Equipment or ERP-scheduled property, so long as approved by the CCR, these actual Direct Costs shall be paid out of the Equipment Reserve Fund (directly to seller if Equipment purchased by Entity or to reimburse Contractor if Equipment purchased by Contractor) and if the capital in that Fund is insufficient, these actual Direct Costs shall be paid by each of the City and County in equal shares according to <u>Article VI</u> and <u>Section 11.09(a)(ii)</u>. As to all other equipment, these actual Direct Costs shall be paid by the party who owns the equipment, according to <u>Article VI, Section 11.09(a)(ii)</u>, and the IGA.</p>	<p>Varies</p>
<p><b>Shared Revenue</b> – Percentage of Marketable Recovered Material Revenue payable by the Contractor to each of the City, County, and/or Third Party on their respective tons of Marketable Recovered Material or Recyclable Material, as applicable, after adjustment based upon the most recent Composition Analysis and the applicable ACR (which may differ for Third-Parties) under <u>Section 11.02</u>. Entity revenue share is according to <u>Table 4-2(a)</u>. Additionally, for source separated or presorted tons of Entity or Third Party Recyclable Material, the Entity and Contractor may agree to alternate revenue sharing terms.</p>	<p>Varies for City and County. See <u>Schedule 10</u> for Third Parties</p>

<sup>6</sup> As also discussed in Section 11.08(a), the Processing Fee as listed in Table 4-2(a) payable by City and County shall be adjusted on July 1 of each year, starting in 2020, in the same proportion that the Consumer Price Index (CPI) for all Urban Consumers, all items, U.S. Midwest (1982-84=100 unless otherwise noted) on such July 1 changed from the previous July 1. If this index becomes unavailable the successor CPI factor published by the U.S. Government as agreed to by both parties shall be used. The Processing Fees payable by Third Parties to Contractor shall be subject to an adjustment in the same or greater amount as this adjustment unless otherwise approved by the Entity.

<sup>7</sup> Waste Disposal Costs are variable. The Entity has the right to designate a Landfill of its choosing.

**Table 4-2(a)  
Revenue Share and Processing Fee Based on ACR**

ACR (\$/ton)	Revenue Share		Processing Fee <sup>8</sup> (\$/ton)
	Entity	Contractor	
<\$0	0%	100%	\$50.00
\$5	0%	100%	\$50.00
\$10	0%	100%	\$50.00
\$15	0%	100%	\$50.00
\$20	0%	100%	\$50.00
\$25	20%	80%	\$50.00
\$30	33%	67%	\$50.00
\$35	43%	57%	\$50.00
\$40	50%	50%	\$50.00
\$45	56%	44%	\$50.00
\$50	60%	40%	\$50.00
\$55	64%	36%	\$50.00
\$60	67%	33%	\$50.00
\$65	69%	31%	\$50.00
\$70	71%	29%	\$50.00
\$75	73%	27%	\$50.00
\$80	75%	25%	\$50.00
\$85	76%	24%	\$50.00
\$90	78%	22%	\$50.00
\$95	79%	21%	\$50.00
\$100	80%	20%	\$50.00
\$105	80%	20%	\$49.00
\$110	80%	20%	\$48.00
\$115	80%	20%	\$47.00
\$120	80%	20%	\$46.00
\$125	80%	20%	\$45.00
\$130	80%	20%	\$44.00
\$135	80%	20%	\$43.00
\$140	80%	20%	\$42.00
\$145	80%	20%	\$41.00
\$150	80%	20%	\$40.00
\$155	80%	20%	\$40.00
\$160	80%	20%	\$40.00
\$165	81%	19%	\$40.00
\$170	81%	19%	\$40.00
\$175	82%	18%	\$40.00
\$180	82%	18%	\$40.00
\$185	83%	17%	\$40.00
\$190	83%	17%	\$40.00
\$195	84%	16%	\$40.00
>\$200	84%	16%	\$40.00

<sup>8</sup> When applicable, Processing Fee shall be prorated using the two nearest fees shown in **Table 4-2(a)**. Starting in 2020, the Processing Fee as listed in **Table 4-2(a)** payable by City and County shall be adjusted on July 1 of each year in the same proportion that the Consumer Price Index (CPI) for all Urban Consumers, all items, U.S. Midwest (1982-84=100 unless otherwise noted) on such July 1 changed from the previous July 1. If this index becomes unavailable, the successor CPI factor published by the U.S. Government as agreed to by both parties shall be used. The Processing Fees payable by Third Parties to Contractor shall be subject to the same adjustment unless otherwise approved by the Entity.

**Table 4-3(a)**  
**Equipment Repair & Replacement Fee (ERF)**

<b>Party &amp; Description of ERF Contribution to the Equipment Reserve Fund (Entity)</b>	<b>ERF Contribution as of 1/1/2019 (ERF = \$10/ton)</b>	<b>Is ERF Contribution Subject to Annual Adjustment per this Agreement and the IGA?</b>
City ERF contribution payable to Entity on City Tons delivered to Joint MRF	\$5/City Ton	Yes
County ERF contribution payable to Entity on County Tons delivered to Joint MRF	\$5/County Ton	Yes
Contractor ERF contribution payable to Entity on City or County Tons delivered to Joint MRF	\$5/City or County Ton	No <sup>10</sup>
Contractor ERF contribution payable to Entity on Third Party Tons delivered to Joint MRF	\$10.00/Third Party Ton	Yes

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\* All ERF payments shall be paid monthly based on tons of Recyclable Material delivered to the Joint MRF and shall be paid independent of the County and City Payment. Examples: If the County delivers 1,000 tons of Recyclables to the Joint MRF, the Contractor and the County each pays \$5/ton x 1,000 tons = \$5,000 to the Equipment Reserve Fund. If a Third Party delivers 1,000 tons, the Contractor pays \$10/ton x 1,000 tons = \$10,000 to the Equipment Reserve Fund.

<sup>10</sup> Since the Contractor's portion of the ERF contribution for City and County tons is not adjusted annually, any increase in the ERF will be absorbed by the Entity and Third Party. Example: If ERF = \$12/ton, then Contractor pays \$5/ton, City and County each pay \$7/ton, and Third Party pays \$12/ton.



# Voting Results for Ordinance 174-O-032

Approve Second Amendment to the Construction and Operating Agreement Between Waukesha County and Haveloka Recovery Systems, LLC And Amend The 2019 County Budget For The Mental Recovery Act (MRA)

Passed By Majority Vote

AYE: 24 NAY: 1

ABSENT: 0

D1 - Foti	AYE
D2 - Zimmermann	Motion
D3 - Morris	AYE
D4 - Batzko	AYE
D5 - Dondlinger	AYE
D6 - Walz	AYE
D7 - Grant	NAY
D8 - Michalski	AYE
D9 - Heinrich	AYE
D10 - Swan	AYE
D11 - Howard	AYE
D12 - Wolff	AYE
D13 - Decker	AYE

D14 - Wood	AYE
D15 - Mitchell	AYE
D16 - Crowley	AYE
D17 - Paulson	AYE
D18 - Nelson	AYE
D19 - Cummings	Second
D20 - Schellinger	AYE
D21 - Gaughan	AYE
D22 - Wysocki	AYE
D23 - Hammitt	AYE
D24 - Whittow	AYE
D25 - Johnson	AYE