

Public Infra -  
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### RECYCLING AGREEMENT

This Recycling Agreement (AGREEMENT) is entered into by and between Manitowoc County, Wisconsin, a quasi-municipal corporation (COUNTY) and the  City  Village  Town of Manitowoc, a municipal corporation created pursuant to the Laws of the State of Wisconsin (MUNICIPALITY).

WHEREAS, 1989 Wisconsin Act 335 requires that each municipality develop, implement, and operate an effective recycling program; and

WHEREAS, Wis. Stat. § 66.0301 authorizes governmental bodies to enter into mutual agreements under the provisions of Section 66.3001 of Wisconsin Statutes; and

WHEREAS, the MUNICIPALITY wishes to enter into an agreement with the COUNTY under which the COUNTY will assist in developing, implementing, and operating a comprehensive recycling program and will operate a solid waste Materials Recycling Facility (MRF) to ensure a stable and secure outlet for recyclables for commercial, industrial, institutional, residential, and multi-family residential facilities;

**NOW, THEREFORE**, in consideration of the premises set forth above, and the mutual agreements, covenants, promises, and obligations set forth below, the sufficiency of which is hereby acknowledged, the parties agree as follows:

**1. TERM.** (a) The term of this AGREEMENT is for the period from May 1, 2014 through April 30, 2019.

**2. TERMINATION IN THE EVENT OF DEFAULT.** (a) A party is in default if it fails to observe or perform any material agreement, condition, covenant, obligation, or term required by this AGREEMENT.

(b) A party may terminate this AGREEMENT upon a default of the other party provided that it gives the other party a 30-day written notice specifying the nature of the default which gives the other party a reasonable period of time in which to cure the default and the defaulting party fails to cure the default within that period of time.

(c) Either party may terminate this AGREEMENT by giving a 30-day written notice if circumstances beyond the control of either party result in a party's inability to perform its obligations under this AGREEMENT for a period of more than 6 months.

(d) This AGREEMENT will become null and void as of the date of termination, except that the termination will not limit or otherwise affect the respective rights and obligations of the parties that have accrued as of the termination date.

**3. DEFINITIONS.** In this AGREEMENT:

“Hauler” means any person, corporation, or other entity who delivers recyclable material to the MRF for the MUNICIPALITY under this AGREEMENT.

“Hazardous substance” means any extremely hazardous substance as defined by Federal or State statute or that is included in a list published by the United States Environmental Protection Agency (EPA), Wisconsin Department of Natural Resources (DNR), or any other governmental agency.

“MRF” means the Solid Waste Materials Recycling Facility which is owned and/or operated by or on behalf of the COUNTY for the receipt, storage, processing, and marketing of recyclable materials.

“Recyclable material” means any material that can be processed and returned to the economic mainstream in the form of raw materials or products and that is required to be recycled by state law or administrative rule; that complies with all type, form, preparation, quality, and other requirements for recycling at the MRF; or that the COUNTY deems acceptable. This term does not include any hazardous material, toxic substance, or toxic waste.

“Toxic substance” means any substance that contains a toxic chemical as defined by Federal or Wisconsin statute or as designated by the EPA, DNR, or any other governmental agency.

“Toxic waste” means any waste material delivered to the MRF that contains a toxic chemical as defined by Federal or Wisconsin statute or as designated by the EPA, DNR, or any other governmental agency.

#### **4. COUNTY’S RIGHTS AND RESPONSIBILITIES.**

(a) The COUNTY’s Public Works Department, under policy oversight by the COUNTY’s Public Works Committee and Solid Waste Management System Advisory Committee, is the operating department responsible for performing the COUNTY’s responsibilities under this AGREEMENT.

(b) The COUNTY agrees to provide a fully operational MRF to receive, process, store, and market recyclable materials that the MUNICIPALITY delivers to the MRF in accordance with the terms of this AGREEMENT. The MRF is designed to process all material on the day it is received and its operating procedures will minimize the time for queuing, weighing, and dumping of material.

(c) Acceptable material. The COUNTY will receive store, process, and market all recyclable material that is banned from landfill sites by any local, State, or Federal code, guideline, regulation, rule, standard, or statute, provided that the material does not:

1. Impair the strength or durability of MRF structures or equipment;

2. Create any flammable or explosive conditions at the MRF;
3. Contain chemical or other properties which, in the opinion of the COUNTY, are deleterious or capable of causing material damage to any part of the MRF, its personnel, or the public; or
4. Include any hazardous material or toxic substance.

The COUNTY may determine that it is impractical for it to receive, process, store, or market some otherwise acceptable material and may, with the written consent of the MUNICIPALITY, establish an alternative method or process for the recycling of such material.

The COUNTY may, at its sole discretion, accept other specialty items at the MRF to be recycled.

(d) Recyclable materials must originate from residences within the boundaries of the MUNICIPALITY unless the COUNTY has expressly agreed in writing to accept recyclable materials originating from areas outside the MUNICIPALITY's boundaries or from other sources within the MUNICIPALITY.

(e) The MUNICIPALITY or its hauler may not separate out any recyclable material for delivery elsewhere, unless the MUNICIPALITY has notified the COUNTY and the COUNTY has approved the delivery of the recyclable material to an alternate recycling facility.

(f) Normal Hours of Operation. The MRF will normally accept recyclable material on Monday through Friday from 8:00 AM to 4:00 PM and on Saturday from 8:00 AM to 12:00 Noon, excluding the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and at such other times as may be designated by the COUNTY.

(g) Emergencies and Exceptional Circumstances. In the event of an emergency or exceptional circumstance and upon receipt of notice from the MUNICIPALITY at least one-half hour prior to the posted closing time, the COUNTY shall make reasonable efforts to keep the MRF open for the receipt of recyclable material. Recyclable material received as the result of an emergency or under exceptional circumstances may not be processed on the same day that it is received.

(h) Accepting, Weighing, and Unloading. The COUNTY will provide scales, other devices, or other methods for determining the quantity of all delivered recyclable material.

1. Accepting and Weighing Material. The COUNTY will accept and weigh material delivered by the MUNICIPALITY in the forms specified by the County. If the material fails to meet the COUNTY's standards, the COUNTY will notify the MUNICIPALITY. The MUNICIPALITY must address any substandard materials or

the COUNTY may, at its option, reject the material or charge the MUNICIPALITY to handle the material. If the materials are rejected, the MUNICIPALITY must immediately remove the materials or the COUNTY will remove the materials at the MUNICIPALITY's expense.

2. Weighing System. The COUNTY will provide a system to adequately measure and record the quantity of waste coming into the MRF and the quantity of material leaving the MRF. If a scale is used, it shall be certified for accuracy by a private contractor, with the results to be submitted to the Wisconsin Department of Agriculture, Trade and Consumer Protection.

3. Minimizing Wait and Unloading Times. The COUNTY will operate the MRF in a manner that best minimizes the time for queuing, weighing, and unloading material. If requested by either party, the COUNTY and the MUNICIPALITY will jointly examine possible changes in operational procedures and the design of the recycling MRF to expedite these processes.

(i) Approval of Delivery Vehicles. The COUNTY will review delivery vehicle types for their compatibility with the efficient operation of the MRF prior to their use for the delivery of materials at the MRF and will certify those vehicle types that meet the COUNTY's criteria. The MUNICIPALITY agrees to use certified delivery vehicles or vehicles that are designed to facilitate the unloading of material. If special handling is required, the MUNICIPALITY must make arrangements with the COUNTY at least 24 hours in advance.

(j) Vehicle Service. Vehicles delivering material under this AGREEMENT will be weighed and unloaded on a first come, first serve basis.

(k) Contaminated Loads and Excess Nonrecyclables. Acceptable materials delivered to the MRF may not be contaminated or contain more than 5 percent nonrecyclable material by weight. The COUNTY may, at its own discretion and expense, measure the amount of contamination and nonrecyclable material in any load.

(l) Rejection. The COUNTY may reject any load delivered to the MRF if the load has an unacceptable level of contamination or nonrecyclable material.

(m) Surcharge. The COUNTY will notify the MUNICIPALITY of any load that is found to have an excessive amount of contamination or nonrecyclable material. The MUNICIPALITY will be charged for the cost to transport and dispose of the contamination and nonrecyclable material that is in excess of the normal 5 percent standard.

(n) Force Majeure. The COUNTY is not required to accept material if the operation of the MRF is impaired by an extraordinary event or circumstance beyond the COUNTY's control, such as an act of war; extreme conditions, such as earthquake, fire, flood, storm, tornado, or other natural disaster; failure or interruption of electric or other utility service; labor dispute; riot; or terrorist activity. The COUNTY shall notify the MUNICIPALITY in

the event of such an occurrence and shall take reasonable steps to minimize the delay, damages, or impact of such an occurrence. Neither party is entitled to terminate this AGREEMENT under paragraph 2 in such circumstances.

In the event that the operation of the MRF is impaired by an extraordinary event or circumstance beyond the COUNTY's control, the COUNTY may take one or more of the following steps:

1. Request that the MUNICIPALITY limit and delay deliveries to the MRF.
2. Restrict the type or quantity of material delivered to the MRF and apportion the restrictions based on the MUNICIPALITY'S delivery history.
3. Direct that recyclable material be delivered to another location in Manitowoc County.
4. Make other temporary arrangements that are mutually acceptable to the MUNICIPALITY.
5. Temporarily suspend the operation of the MRF provided that it makes reasonable efforts to resume the operation of the MRF. If the MRF is not operational for a period of five or more consecutive days and the COUNTY fails to provide the MUNICIPALITY with an acceptable alternative to receive the MUNICIPALITY's recyclable material, the MUNICIPALITY may arrange to have its recyclable material delivered to another recycling facility for the duration of the suspension.

(o) Revenue. The COUNTY is entitled to receive any and all revenue from the sale of recycled materials processed by the COUNTY under this AGREEMENT.

(p) Records. The COUNTY will keep records on all transactions under this AGREEMENT and will supply the MUNICIPALITY with the information necessary for the MUNICIPALITY to complete the required DNR reports regarding processing and marketing of recyclables.

## **5. MUNICIPALITY'S RIGHTS AND RESPONSIBILITIES.**

(a) The MUNICIPALITY will retain the responsible unit designation for purposes of Wis. Stat. Ch. 287.

(b) The MUNICIPALITY agrees to encourage and facilitate the delivery of recyclable material to the COUNTY and to take such steps as it deems necessary, including, without limitation, the adoption of any regulations, resolutions, rules, and ordinances that may be necessary to comply with its obligations under State and Federal codes, laws, and regulations.

(c) The MUNICIPALITY agrees that it will not contract for the delivery of recyclable material to any party other than the COUNTY during the term of this AGREEMENT.

(d) The MUNICIPALITY is responsible for the collection and residential pickup of all recyclable material within its jurisdiction and is responsible for the delivery of recyclable material to the COUNTY's facilities.

(e) The COUNTY recognizes that the MUNICIPALITY has the right to determine the means by which recyclable material is transported to the COUNTY's facilities and that the MUNICIPALITY may make arrangements with third parties to provide delivery services or may use its own resources to provide delivery services.

(f) The MUNICIPALITY agrees that the MUNICIPALITY and any hauler that it uses to deliver recyclable material to the COUNTY will comply with any regulations, requirements, or rules established by the COUNTY regarding the manner in which recyclable material is to be delivered to the COUNTY.

(g) The MUNICIPALITY agrees that it will take all necessary action to assure that the material it delivers to the MRF complies with COUNTY standards and that it will take all reasonable actions necessary to assure that it does not deliver any hazardous material or toxic substance to the MRF.

## **6. MUTUAL OR SHARED OBLIGATIONS AND RIGHTS.**

(a) CONTACTS. Each party shall designate an authorized representative to receive notice regarding the performance of this AGREEMENT and any changes in policies, procedures, and requirements for dispute resolution, emergencies, and normal operations. Any notice given under this AGREEMENT must be in writing and may be delivered in person or by certified mail, delivery service, email, or facsimile transmission addressed as follows:

If to COUNTY:                   Manitowoc County Public Works Department  
Jeff Beyer, Director  
1028 South 9th Street  
Manitowoc, WI 54220  
E-mail: [jeffbeyer@co.manitowoc.wi.us](mailto:jeffbeyer@co.manitowoc.wi.us)  
Fax: 920-683-4475

If to MUNICIPALITY: City of Manitowoc  
Jennifer Hudon, City Clerk  
900 Quay Street  
Manitowoc, WI 54220  
E-mail: [jhudon@manitowoc.org](mailto:jhudon@manitowoc.org)  
Fax: 920-686-6959

Either party may, in writing, designate another person or address where notice is to be given.

Notice in person is deemed given at the time of delivery. Notice by certified mail is deemed given when accepted for delivery by the U.S. Postal Service. Notice by delivery service is deemed given when received by the delivery service. Notice by facsimile is deemed given at the time shown on a successful transmission result report. Notice by email is deemed given at the time shown on an electronic delivery confirmation report. The party giving notice has the burden of proving when notice was given.

(b) **INSPECTION.** The COUNTY will, upon reasonable notice, make the MRF's processing and delivery areas available to the MUNICIPALITY for inspection during the MRF's regularly scheduled hours.

(c) **INSURANCE.** Each party shall maintain its own liability insurance in such form and amount as it deems sufficient to address the risks arising out of this AGREEMENT.

(d) **NOTICE AND REMOVAL OF HAZARDOUS MATERIAL, TOXIC SUBSTANCES, AND TOXIC WASTE.** The COUNTY will immediately notify the MUNICIPALITY in the event of the delivery of any hazardous material, toxic substances, and toxic waste to the MRF, and the MUNICIPALITY will promptly remove the hazardous material, toxic substances, and toxic waste from the MRF.

(e) **PUBLIC EDUCATION.** The MUNICIPALITY is the responsible party under State law for education on how materials are to be separated and placed for collection, recycling, reuse, and volume reduction. This AGREEMENT assigns the COUNTY as the lead agency for providing education on how materials are to be separated and placed for collection, recycling, reuse, volume reduction, and related activities. The MUNICIPALITY agrees that it will secure COUNTY's prior approval of any information the MUNICIPALITY provides to the media regarding the operation of the MRF.

**7. FUNDING.** (a) The COUNTY will use the revenues from the sale of recyclables, property tax levy, and such other methods or resources available to it as it deems appropriate to support the operation of the MRF and its associated activities.

(b) The MUNICIPALITY will use tax levy, state recycling funds, user base fees, and such other methods or resources available to it as it deems appropriate to support the recycling program, in order to have an effective recycling program to the point of where the recyclables are delivered to the MRF.

**8. INDEMNIFICATION.** (a) The COUNTY agrees to defend, hold harmless, and indemnify the MUNICIPALITY for any and all liability of every kind and character, including liability arising from or for actions, causes of action, costs, charges, claims, damages, demands, expenses, fees, judgments, liens, losses, obligations, penalties, proceedings, reasonable attorney fees, settlements, and suits, for injury to persons, death, or damage to property (collectively "CLAIMS") arising in connection with or directly or indirectly out of the COUNTY's processing of recyclable material under this AGREEMENT. The COUNTY agrees that its duty to defend, hold harmless, and indemnify the MUNICIPALITY applies to all CLAIMS whether it is alleged that the MUNICIPALITY was

negligent and without regard to whether such claims are groundless, false, or fraudulent. In the event that the MUNICIPALITY is determined to be negligent, the COUNTY will be relieved of its duty to indemnify the MUNICIPALITY only to the extent of the MUNICIPALITY's negligence as determined by mutual agreement or by judgment entered by a court of competent jurisdiction. The COUNTY agrees that its duty to defend, hold harmless and indemnify the MUNICIPALITY will survive the termination of this AGREEMENT.

(b) The MUNICIPALITY agrees to defend, hold harmless, and indemnify COUNTY and its agents, boards, commissions, committees, departments, employees, officials, and officers for any and all liability of every kind and character, including liability arising from or for actions, causes of action, costs, charges, claims, damages, demands, expenses, fees, judgments, liens, losses, obligations, penalties, proceedings, reasonable attorney fees, settlements, and suits, for injury to persons, death, or damage to property (collectively "CLAIMS") arising in connection with or directly or indirectly out of the MUNICIPALITY's collection, transportation, and delivery of recyclable material under this AGREEMENT. The MUNICIPALITY agrees that its duty to defend, hold harmless, and indemnify the COUNTY applies to all CLAIMS whether it is alleged that the COUNTY was negligent and without regard to whether such claims are groundless, false, or fraudulent. In the event that the COUNTY is determined to be negligent, the MUNICIPALITY will be relieved of its duty to indemnify the COUNTY only to the extent of the COUNTY's negligence as determined by mutual agreement or by judgment entered by a court of competent jurisdiction. The MUNICIPALITY agrees that its duty to defend, hold harmless and indemnify the COUNTY will survive the termination of this AGREEMENT.

**9. ASSIGNMENT.** This AGREEMENT may not be assigned by the COUNTY without the consent of the MUNICIPALITY, which consent shall not be unreasonably withheld.

**10. AMENDMENT.** This AGREEMENT may not be amended or modified except by a written agreement that expressly states that it is an amendment to this AGREEMENT and that is signed by a duly authorized representative of each party.

**IN WITNESS WHEREOF**, the parties, intending to be legally bound, have executed this AGREEMENT on the dates shown below.

**COUNTY**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

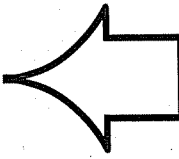


**CITY OF MANITOWOC**

By: \_\_\_\_\_  
Justin M. Nickels, Mayor

By: \_\_\_\_\_  
Jennifer Hudon, City Clerk

Date: \_\_\_\_\_



**STATE OF WISCONSIN     )**  
**) ss.**  
**COUNTY OF MANITOWOC )**

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014, the above signed Justin M. Nickels, Mayor, and Jennifer Hudon, City Clerk, of the City of Manitowoc, Wisconsin and acknowledged that they executed the foregoing instrument as such Officers of said City, by its authority.

\_\_\_\_\_  
Deborah A. Neuser, Notary Public  
Manitowoc County, Wisconsin  
My commission expires 8/17/14