

RECYCLING AGREEMENT

This Recycling Agreement (“AGREEMENT”) is entered into by and between Manitowoc County, Wisconsin, a body corporate pursuant to Wis. Stat. § 59.01 (“MANITOWOC COUNTY”) and the _____ of _____, a municipal corporation created pursuant to the Laws of the State of Wisconsin (“MUNICIPALITY”).

WHEREAS, 1989 Wisconsin Act 335 requires MUNICIPALITY to develop, implement, and operate an effective recycling program; and

WHEREAS, Wis. Stat. § 66.0301 authorizes governmental bodies to enter into intergovernmental cooperative agreements; and

WHEREAS, MANITOWOC COUNTY operates a Materials Recycling Facility (“MRF”), which helps ensure a stable and secure outlet for recyclables for commercial, industrial, institutional, residential, and multi-family residential facilities in Manitowoc County; and

WHEREAS, MUNICIPALITY wishes to enter into an agreement with MANITOWOC COUNTY whereby MANITOWOC COUNTY will assist MUNICIPALITY in developing, implementing, and operating a comprehensive recycling program;

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

1. RECITALS. The foregoing Recitals are hereby incorporated as if fully set forth herein and are hereby made a part of this AGREEMENT.

2. DELIVERY OF RECYCLABLE MATERIALS. MUNICIPALITY agrees to deliver to MANITOWOC COUNTY and MANITOWOC COUNTY agrees to receive from MUNICIPALITY all “RECYCLABLE MATERIAL” (as defined herein) delivered to MANITOWOC COUNTY from MUNICIPALITY. For this AGREEMENT, “RECYCLABLE MATERIAL” means any material that originates from single family residences within the boundaries of MUNICIPALITY and is required to be recycled by state law. RECYCLABLE MATERIAL does not include any “HAZARDOUS MATERIAL” or “TOXIC SUBSTANCE” (as those terms are defined herein). “HAZARDOUS MATERIAL” means any hazardous substance as defined by Federal or State law 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. “TOXIC SUBSTANCE” means any substance that contains a toxic chemical as defined by Federal or State law or as designated by the EPA, DNR, or any other governmental agency.

3. **TERM.** This AGREEMENT shall commence on May 1, 2019 at 12:00 a.m. and end on April 30, 2034 at 11:59 p.m., unless terminated at an earlier date pursuant to Paragraph 16 of this AGREEMENT.

4. **MANITOWOC COUNTY'S RIGHTS AND RESPONSIBILITIES.**

a. MANITOWOC COUNTY shall provide a MRF to receive, process, store, and market the RECYCLABLE MATERIAL that MUNICIPALITY delivers to MANITOWOC COUNTY in accordance with the terms of this AGREEMENT.

b. MANITOWOC COUNTY shall accept RECYCLABLE MATERIAL at the MRF on such days and at such times as reasonably established by MANITOWOC COUNTY from time to time.

c. MANITOWOC COUNTY shall provide a system to adequately measure and record the quantity of RECYCLABLE MATERIAL MUNICIPALITY delivers to the MRF.

d. MANITOWOC COUNTY shall operate the MRF in a manner that minimizes the time for queuing, weighing, and unloading of RECYCLABLE MATERIAL. Vehicles delivering RECYCLABLE MATERIAL under this AGREEMENT will be weighed and unloaded on a first come, first serve basis.

e. MANITOWOC COUNTY shall be entitled to receive any and all revenue from the sale of RECYCLABLE MATERIAL delivered to MANITOWOC COUNTY under this AGREEMENT.

f. MANITOWOC COUNTY shall keep records on all transactions under this AGREEMENT and will supply MUNICIPALITY with the information necessary for MUNICIPALITY to complete any required reports regarding processing and marketing of RECYCLABLE MATERIAL.

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

a. If MUNICIPALITY operates a source-separated collection program at the time of entering into this AGREEMENT, MUNICIPALITY, or its "HAULER" (as defined herein), shall deliver all RECYCLABLE MATERIAL it collects to MANITOWOC COUNTY's MRF. For this AGREEMENT, "HAULER" means any person, corporation, or other entity who collects RECYCLABLE MATERIAL for MUNICIPALITY. If MUNICIPALITY operates a single-stream or dual-stream collection program and does not source separate recyclable materials at the time of entering into this AGREEMENT, MUNICIPALITY, or its HAULER, shall deliver to the MRF a prescribed amount of "SUBSTITUTE MATERIAL" (as defined herein) in such amount (or amounts if more than one type of material) as determined and approved by MANITOWOC COUNTY. The amount of SUBSTITUTE MATERIAL to be delivered to the MRF shall be determined on a case by case basis, based on the historic average weight of

recyclables and their associated value as delivered to the MRF. For this AGREEMENT, "SUBSTITUTE MATERIAL" means any or all of a combination of mixed paper, corrugated cardboard, or plastic containers.

b. MUNICIPALITY, or its HAULER, shall take all necessary action to ensure that all RECYCLABLE MATERIAL it delivers to the MRF complies with MANITOWOC COUNTY standards including, but not limited to, all type, form, preparation, quality, and other requirements for recycling as determined by MANITOWOC COUNTY.

c. MUNICIPALITY shall retain the responsible unit designation for purposes of Wis. Stat. ch. 287.

d. MUNICIPALITY, or its HAULER, shall use delivery vehicles for RECYCLABLE MATERIAL that are compatible with the efficient operation of the MRF as determined by MANITOWOC COUNTY. If special handling is required, MUNICIPALITY must make arrangements with MANITOWOC COUNTY at least 24 hours in advance.

e. Unless otherwise approved by MANITOWOC COUNTY, MUNICIPALITY shall not contract for residential RECYCLABLE MATERIAL to be delivered to any location other than MANITOWOC COUNTY's MRF.

f. Unless otherwise approved by MANITOWOC COUNTY, MUNICIPALITY, or its HAULER, shall not separate out any RECYCLABLE MATERIAL for delivery other than to MANITOWOC COUNTY's MRF.

g. MUNICIPALITY shall ensure that any HAULER that MUNICIPALITY uses to deliver RECYCLABLE MATERIAL to MANITOWOC COUNTY complies with all rules, regulations, requirements, and/or policies established by MANITOWOC COUNTY regarding the manner in which RECYCLABLE MATERIAL is to be delivered to MANITOWOC COUNTY.

6. UNACCEPTABLE MATERIAL. If MUNICIPALITY, or its HAULER, delivers RECYCLABLE MATERIAL that fails to meet MANITOWOC COUNTY's standards for any reason, including, but not limited to, contamination, excess non-recyclables, or the presence of any HAZARDOUS MATERIAL or TOXIC SUBSTANCE, MANITOWOC COUNTY may either reject the material or provide MUNICIPALITY notice of the deficiency with an opportunity to cure. If MANITOWOC COUNTY rejects the material, MUNICIPALITY must immediately remove the rejected material or MANITOWOC COUNTY may remove the material at MUNICIPALITY's expense. If MUNICIPALITY is permitted to cure the deficiency, MUNICIPALITY shall immediately correct and address any substandard material. If MUNICIPALITY fails to immediately correct and address the substandard material, MANITOWOC COUNTY may charge MUNICIPALITY for all costs incurred by MANITOWOC COUNTY to handle, process, and/or dispose of the material. If MANITOWOC COUNTY offers MUNICIPALITY the opportunity to cure but MUNICIPALITY refuses, the material shall be

deemed rejected and MUNICIPALITY must immediately remove the rejected material or MANITOWOC COUNTY may remove the material at MUNICIPALITY's expense.

7. **INSPECTION.** MANITOWOC COUNTY shall, upon reasonable notice, make the MRF's processing and delivery areas available to MUNICIPALITY for inspection during the MRF's regularly scheduled hours.

8. **NOTICE AND REMOVAL OF HAZARDOUS MATERIAL AND TOXIC SUBSTANCE.** MANITOWOC COUNTY shall immediately notify MUNICIPALITY in the event of the delivery of any HAZARDOUS MATERIAL or TOXIC SUBSTANCE to the MRF, and MUNICIPALITY shall promptly remove the HAZARDOUS MATERIAL or TOXIC SUBSTANCE from the MRF.

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

10. **FUNDING.**

a. MANITOWOC COUNTY shall 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. MUNICIPALITY will use tax levy, state recycling funds, user base fees, and such other methods or resources available to it to have an effective recycling program whereby MUNICIPALITY's RECYCLABLE MATERIAL is delivered to the MRF.

11. **YARD WASTE.** MANITOWOC COUNTY agrees to provide one or more yard waste compost sites for use by MUNICIPALITY during the term of this AGREEMENT. Yard waste compost sites are presently located at 3000 Basswood Road, Manitowoc and 4189 Woodland Drive, Two Rivers. MANITOWOC COUNTY is not responsible for the collection or transportation of yard wastes to any yard waste compost site.

12. **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.

13. **INDEMNIFICATION.** MUNICIPALITY agrees to defend, hold harmless, and indemnify MANITOWOC 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 MUNICIPALITY's collection, transportation, and delivery of RECYCLABLE MATERIAL under this AGREEMENT. MUNICIPALITY agrees that its duty to defend, hold harmless, and indemnify MANITOWOC COUNTY applies to all CLAIMS whether it is alleged that MANITOWOC COUNTY was negligent and without regard to whether such claims are groundless, false, or fraudulent. In the event that MANITOWOC COUNTY is determined to be negligent, MUNICIPALITY will be relieved of its duty to indemnify MANITOWOC COUNTY only to the extent of MANITOWOC COUNTY's negligence as determined by mutual agreement or by judgment entered by a court of competent jurisdiction. MUNICIPALITY agrees that the rights and obligations set forth in this Paragraph shall survive the termination or expiration of this AGREEMENT.

14. IMMUNITY. MANITOWOC COUNTY is a governmental entity entitled to governmental immunity under law, including Wis. Stat. § 893.80. Nothing contained in this AGREEMENT shall waive the rights and defenses to which MANITOWOC COUNTY may be entitled under law, including all immunities, limitations, and defenses under Wis. Stat. § 893.80 or any subsequent amendment thereof. The rights and obligations set forth in this Paragraph shall survive the termination or expiration of this AGREEMENT.

15. NOTICE. Any notice given under this AGREEMENT shall be in writing and shall be deemed to have been properly given when delivered in person or by certified mail, return receipt requested, postage prepaid, addressed as follows:

If to MANITOWOC COUNTY:

COPY to:

If to MUNICIPALITY:

16. TERMINATION.

a. A party may terminate this AGREEMENT if the other party fails to perform any of the covenants, conditions, or obligations imposed on it by this AGREEMENT where the failure continues for a period of fifteen (15) days after written notice to the defaulting party.

b. Either party may terminate this AGREEMENT by giving at least thirty (30) days written notice if circumstances beyond the control of the notifying party result in the party's inability to perform its obligations under this AGREEMENT for a period of more than six (6) months.

c. MANITOWOC COUNTY may terminate this AGREEMENT by giving MUNICIPALITY at least 120 days written notice if it determines that it is no longer in MANITOWOC COUNTY's best interest to operate the MRF.

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.

17. RESERVATION OF RIGHTS; NO WAIVER.

a. No condition, covenant, or term of this AGREEMENT shall be waived unless the waiver is made in writing and signed by duly authorized representatives of both parties.

b. The failure of MANITOWOC COUNTY to take action with respect to any breach by MUNICIPALITY of any covenant, condition, or obligation in this AGREEMENT shall not be a waiver of such covenant, condition, or obligation or a subsequent breach of the same or any other covenant, condition, or obligation.

18. CHOICE OF LAW. This AGREEMENT shall be construed and enforced in accordance with the laws of the State of Wisconsin. Any lawsuit related to or arising out of a dispute under this AGREEMENT shall be commenced and tried in the circuit court of Manitowoc County, Wisconsin, and MANITOWOC COUNTY and MUNICIPALITY agree to submit to the exclusive jurisdiction of the circuit court of Manitowoc County, Wisconsin for such lawsuits.

19. NON-APPROPRIATION OF FUNDS, SUSPENSION OF SERVICES. If MANITOWOC COUNTY fails to appropriate sufficient funds to carry out its obligations under this AGREEMENT at any time during the term of this AGREEMENT, or any extension thereof, this AGREEMENT shall become null and void upon written notice to MUNICIPALITY.

20. ASSIGNMENT PROHIBITED. This AGREEMENT shall not be assigned without the written consent of the other party. Any assignment shall expressly provide for the assignee to assume and become bound by all of the assigning party's obligations under this AGREEMENT. No assignment shall relieve a party of any of its obligations, express or implied,

under this AGREEMENT. The assigning party shall provide the other party with an executed copy of any assignment.

21. INDEPENDENT CONTRACTOR STATUS. The parties agree and understand that they shall perform their obligations under this AGREEMENT as independent parties to the AGREEMENT. Nothing in this AGREEMENT shall be construed to make either party an agent, employee, employer, partner, or representative of the other party or to otherwise create any other association between the parties.

22. THIRD PARTY BENEFICIARIES. This AGREEMENT shall not provide any person not a party to this AGREEMENT with any remedy, claim, liability, reimbursement, cause of action, or other right in excess of those existing without reference to this AGREEMENT.

23. FORCE MAJEURE.

a. MANITOWOC COUNTY is not required to accept RECYCLABLE MATERIAL from MUNICIPALITY if the operation of the MRF is impaired by an extraordinary event or circumstance beyond MANITOWOC 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. MANITOWOC COUNTY shall notify 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 in such circumstance.

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

1. Request MUNICIPALITY to limit and delay deliveries to the MRF.
2. Restrict the type or quantity of RECYCLABLE MATERIAL delivered to the MRF and apportion the restrictions based on 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 MUNICIPALITY.
5. Temporarily suspend operation of the MRF, provided MANITOWOC COUNTY makes reasonable efforts to resume the operation in a timely manner. If the MRF is not operational for a period of five (5) or more consecutive days, and MANITOWOC COUNTY fails to provide MUNICIPALITY with an acceptable alternative to receive MUNICIPALITY's RECYCLABLE MATERIAL, MUNICIPALITY may arrange to

have its RECYCLABLE MATERIAL delivered to another recycling facility for the duration of the suspension.

24. SIGNATURE AUTHORITY. The persons signing this AGREEMENT warrant that they have been authorized to enter into this AGREEMENT by and on behalf of their respective parties and that they have full and complete authority to bind their respective parties by executing this AGREEMENT.

25. PARAGRAPH HEADINGS. All paragraph and subparagraph headings contained in this AGREEMENT are for convenience in reference only, and are not intended to define or limit the scope of any provision.

26. COUNTERPARTS. This AGREEMENT may be executed in several counterparts, each of which shall be taken to be an original, and all collectively but one instrument.

27. MODIFICATION. This AGREEMENT may not be altered, amended, or modified except by a written agreement which expressly states that it constitutes an amendment to this AGREEMENT and which has been signed by duly authorized representatives of the parties.

28. SEVERABILITY. The provisions of this AGREEMENT are severable and if any condition, covenant, or term is found to be invalid, unenforceable, or void by a court of competent jurisdiction, then the remainder of the AGREEMENT shall remain in full force and effect and shall not in any way be affected, impaired, or invalidated.

29. ENTIRE AGREEMENT. This AGREEMENT constitutes the entire agreement between the parties and supersedes any and all other agreements, oral or written, between the parties with respect to its subject matter. Each party acknowledges that no agreement, inducement, promise, or representation has been made by or on behalf of any party except as specifically set forth herein. Each party agrees that no agreement, promise, or statement that is not contained in this AGREEMENT shall be binding on any party. Each party acknowledges and agrees it has relied on its own judgment in entering into this AGREEMENT.

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

[Signatures on Following Page]

MANITOWOC COUNTY

MUNICIPALITY

By: _____
Gerard Neuser
Director, Public Works Department

By: _____
Its: _____

Date: _____

Name: _____

By: _____
Jessica Backus
County Clerk

Date: _____

Date: _____