



MEETING NOTICE
RAMSEY/WASHINGTON RECYCLING & ENERGY BOARD

Date: Thursday, September 7, 2023

Time: 2:00 p.m. – 4:00 p.m.

Commissioners, Key staff, Presenters:

Ramsey County Environmental Health | 2785 White Bear Ave N. | 2nd Floor Conference Room
Maplewood, MN | 55109 | [Map](#)

Public: Members of the public are encouraged to participate remotely or may attend at the Maplewood address.
[Microsoft TEAMS](#) | Phone Conference ID: 523 766 882# | Call In (audio only): 1-323-792-6297

AGENDA:

- I. Call to Order, Introductions**
- II. Approval of Agenda** Action Page 1
- III. Approval of Minutes – July 27, 2023** Action Page 2
- IV. Consent Agenda – No items.**
- V. Governance – No items.**
- VI. Management and Administration**
 - a. Feedstock Supply Agreement with DemCon HZI BioEnergy, LLC Action Page 7
 - b. Refuse-Derived Fuel Management & Site Visit Update Information Page 71
 - c. State of Minnesota Waste Delivery Agreement Action Page 73
 - d. 2024 Tip Fee Communications Information Page 87
- VII. Policy - No items.**
- VIII. Updates and Reports** Information Page 88
 - a. Joint Activities Updates
 - i. Food Waste Prevention Update
 - ii. Food Scraps Pickup Program Update
 - b. Facility Updates
 - c. Procurement Report Page 89
- IX. Other**
 - a. Invitation for Comments from Ex Officio R&E Board Members: Information
MPCA and City of Newport
- X. Adjourn**

NEXT MEETING: R&E Board | Thursday, October 5, 2023 | 10:00 a.m. – 12:00 p.m. | Ramsey County EH Maplewood



**RAMSEY/WASHINGTON
RECYCLING & ENERGY**
CONNECTING VALUE TO WASTE

THURSDAY, JULY 27, 2023
RAMSEY/WASHINGTON RECYCLING & ENERGY BOARD MINUTES

A meeting of the Ramsey/Washington Recycling & Energy Board (R&E Board) was held at 10:00 a.m. on Thursday, July 27, 2023, at Ramsey County Environmental Health Offices, 2785 White Bear Avenue North, Suite 350, Maplewood, Minnesota. Members of the public attended remotely or in person at the Maplewood address.

MEMBERS PRESENT

Commissioners Karla Bigham, Michelle Clasen, Stan Karwoski, Gary Kriesel – Washington County
Commissioners Nicole Frethem, Trista Martinson, Rafael Ortega, Victoria Reinhardt, Mai Chong Xiong – Ramsey County

MEMBERS NOT PRESENT

Commissioner Fran Miron - Washington County
Commissioner Mary Jo McGuire (alternate) - Ramsey County

EX-OFFICIO MEMBERS PRESENT

Dave Benke, Minnesota Pollution Control Agency (MPCA)

EX-OFFICIO MEMBERS ATTENDING REMOTELY

Tom Ingemann, City of Newport

ATTENDING AT RAMSEY ENVIRONMENTAL HEALTH, MAPLEWOOD

Leigh Behrens, Dave Brummel, Melissa Finnegan, Rae Eden Frank, Annalee Garletz, Kelli Hall, Sam Hanson, Sam Holl, Sara Hollie, Caleb Johnson, Kevin Johnson, Katie Keller, Jennefer Klennert, Nate Klett, Cassie Lefeber, Andrea McKennan, Jim Redmond, Michael Reed, John Ristad, Jody Tharp, Darren Tobolt

ATTENDING REMOTELY

Kate Bartelt, Gary Bruns, Tammy Christopherson, Ben Clark, Max Dalton, Angiulo Damiani, Dan Donkers, Amanda Erickson, Sam Ferguson, Tabatha Hansen, Jamie Giesen, Filsan Ibrahim, Hannah Keller, Juna Ly, Ashley Marston, Rob Murray, Jennifer Nguyễn Moore, Dan Rahkola, Gabe Reynolds, Uriel Rosales Tlatenchi, Minette Saulog, John Springman, Ryan Tritz, Jenna Venem, Ami Wazlawik, Caleb Werth, Joua Yang, Susan Young

CALL TO ORDER/APPROVAL OF THE AGENDA

Vice Chair Reinhardt called the meeting to order at 10:01 a.m. Introductions of attendees in Maplewood were made. Commissioner Martinson moved, seconded by Clasen, to approve the agenda as presented.

Hearing no further discussion, Vice Chair Reinhardt requested a voice vote.

Ayes: 8 Nays: 0 Motion Carried.

APPROVAL OF MINUTES

Commissioner Bigham moved, seconded by Xiong, to approve the minutes of June 15, 2023.

Hearing no further discussion, Vice Chair Reinhardt requested a voice vote.

Ayes: 8 Nays: 0 Motion Carried.

GOVERNANCE

Joint Powers Agreement Amendment

Dave Brummel, Washington County and R&E Joint Leadership Team (JLT), shared that on July 18, 2023, both Ramsey County and Washington County approved the Third Amended and Restated Ramsey/Washington Recycling and Energy Joint Powers Agreement.

Bylaws Amendment

Commissioner Martinson moved, seconded by Karwoski, to approve Resolution R&EB-2023-10, Bylaws Amendment. The R&E Board approves the amendments to the Bylaws as proposed.

Hearing no further discussion, Vice Chair Reinhardt requested a voice vote.

Ayes: 8 Nays: 0 Motion Carried.

MANAGEMENT AND ADMINISTRATION

Facility & Finance Committee (F&FC) Report

Commissioner Martinson, F&FC chair, presented a brief overview of budget information discussed at the F&F Committee meeting on July 13, 2023.

2023 Joint Activities Budget Update

Sam Hanson, Joint Activities manager, shared that the Joint Activities Budget has an anticipated \$2.5 million budget surplus. Primary factors for anticipated unspent funds by the end of 2023 include that some current joint activities are not fully implemented, and several planned joint activities were put on hold entirely. Additionally, actual costs for the food scraps pickup program are lower than original projections. The best available information was used for estimates when building the budget in 2021. When going through the request for proposals (RFP process for vendors, budgeted amounts were found to be much higher than needed for the production, storage and distribution of bags. The budget has been right-sized for 2024-2025.

2023 Facility and Equipment Maintenance and Replacement (EM&R) Budgets Update

Sam Holl, R&E Center facility manager, said a 1.48% variance is forecast for the Facility Budget. Revenue is anticipated to be \$45k over the approved budget, with a projected 443k tons processed in 2023.

Operating costs include personnel costs associated with hiring and training additional staff for the new lines as they come online, the use of contracted staff and the increase in insurance premiums. Overall, the Facility Budget is projected to have a \$871k deficit at year-end.

The EM&R Budget is projected to have a \$400k surplus for equipment/maintenance and a \$250k surplus for recyclables revenue, for a total surplus of \$650k.

Commissioner Ortega arrived.

Anaerobic Digestion Agreement Update

Kevin Johnson, Husch Blackwell, provided an update on the tentative vendor anaerobic digester agreement with Dem-Con Companies, LLC and Hitachi Zosen Inova USA LLC (Dem-Con HZI BioEnergy, LLC). The letter of interest (LOI) was approved in early March, and since then, the vendor retained outside counsel to interact on this agreement. The LOI expired July 7, 2023, and the last issues around revenue sharing were resolved that day. The agreement is anticipated to be completed in the first week of August and brought to the full board for review and approval.

Approval of 2024 - 2025 Budgets

Michael Reed, Ramsey County and R&E Joint Leadership Team (JLT, presented a recap of the budget cycle schedule. It was requested that the board approve the 2024-2025 budgets.

Commissioner Martinson moved, seconded by Bigham, to approve Resolution R&EB-2023-11, Approval of 2024-2025 Budgets. The R&E Board:

- Approves the 2024–2025 Joint Activities Budget.
- Recommends that the Ramsey and Washington County Boards approve the 2024–2025 Joint Activities Budget.
- Approves the 2024–2025 Facility Budget, including the 2024–2025 Equipment Maintenance & Replacement Budget.
- Establishes the tipping fee at the R&E Center for waste from Ramsey and Washington counties at \$121 per ton in 2024 and \$130 per ton in 2025.

Hearing no further discussion, Vice Chair Reinhardt requested a voice vote.

Ayes: 9 Nays: 0 Motion Carried.

2023 Personnel Complement Increase and Salary Plans

Kelli Hall, R&E human resources manager, explained the request for approval of the addition of an HR generalist, a contract specialist and an executive director to the 2023 complement. Approval would result in the ability to begin recruitment immediately, with hiring anticipated in the fourth quarter of 2023. Additionally, a budget analyst will be hired in 2023 as a reclassified position. A deputy director and joint activities positions will be hired in 2024 as part of the 2024–2025 budget. Salary plans for these positions are new classifications for R&E, and Hall reviewed how compensation plans were researched and developed.

Commissioner Frethem moved, seconded by Xiong, to approve Resolution R&EB-2023-12, 2023 Personnel Complement Increase. The R&E Board hereby:

- Authorizes the addition of 3.0 FTE to the 2023 Recycling & Energy staff complement: 1.0 FTE contract specialist, 1.0 FTE executive director and 1.0 FTE human resources generalist and authorizes the Joint Leadership Team to make necessary budget adjustments.
- Approves the salary schedules for the positions of budget analyst, contract specialist, deputy director, executive director and human resources generalist.

Hearing no further discussion, Vice Chair Reinhardt requested a voice vote.

Ayes: 9 Nays: 0 Motion Carried.

UPDATES AND REPORTS

Joint Activities Updates

Sam Hanson, R&E Joint Activities manager, provided updates on BizRecycling and the Food Scraps Pickup Program.

BizRecycling Update

Started in 2014, BizRecycling is R&E's longest-standing program, and Jessica Paquin was hired in 2016 as R&E's first program coordinator. The 2022-2025 strategic plan focuses on impact growth by keeping core competencies in recycling and organics and in technical assistance and grants. Hanson reviewed BizRecycling's grant portfolio, with new grant opportunities in waste reduction and innovation, food recovery and a bin-only grant. Existing partnerships and new partners in both counties were highlighted.

Progress in building community capacity was shared. The stated goals are to advance a learning network for peers and businesses and build community capacity to implement best practices. Current efforts include thirteen apartment recycling specialists who educate peers and coordinate recycling in their home buildings. Technical providers are being paired with cultural representatives for outreach and assistance. Over the last 18 months, 231 businesses received services, with \$1.2 million invested through grants and 131 apartments received services, with \$540k invested through grants.

Hanson shared a video highlighting BizRecycling work done with Mano a Mano International, a non-profit organization that recovers unused medical supplies and shares them with people in Bolivia.

Commissioner Kriesel asked what size apartment buildings qualify for the apartment recycling specialist program. Hanson said the program is open to any residential property with more than four units in areas identified as climate impacted. Four buildings, which vary in size, are currently participating.

Commissioner Ortega inquired whether apartment buildings owned by families who own multiple buildings are being approached. Hanson said outreach is being done through our consultants to make connections and find owners who may be interested in the program.

Commissioner Kriesel asked why climate impact is a consideration in this program. Jessica Paquin, BizRecycling program coordinator, said Ramsey County has a map and tool that identifies neighborhoods more vulnerable to climate impacts, often consisting of marginalized populations with fewer resources to mitigate and adapt to climate challenges. Targeting outreach efforts in these communities allows BizRecycling to offer resources in an equitable way, fostering climate resiliency and emphasizing the vital link between environmental health and social wellbeing.

Commissioner Karwoski asked about outreach to businesses. Hanson said the program is always looking for businesses that may be interested in the grant program. Referrals come in many ways, such as word of mouth, social media, consultant outreach and counties through their inspection teams.

Commissioner Karwoski asked if there is an organization that works collaboratively with large corporations across the country to manage waste reduction. Hanson stated that connecting with the right decision makers is challenging, whether at local stores or corporate offices. Commissioner Reinhardt shared that there is a National Recycling Coalition.

Commissioner Xiong inquired about availability of reports regarding savings experienced by participants and how much haulers are charging those businesses for recycling. Hanson said consultants collect data and report annually on participant savings, which depend on multiple factors. Consultants are aware of current recycling pricing and help businesses evaluate hauler bills.

Commissioner Xiong asked when businesses would not see savings. Hanson said if a business is throwing away a lot of recyclable items, they can lower the cost of trash by implementing recycling. If the difference isn't large enough, they may not experience cost savings.

Commissioner Reinhardt said an assessment is done before the business makes decisions. They aren't required to implement recommendations, but the assessment raises awareness, and funds help them bridge the gap to put recycling practices in place. She said it would be helpful for the board to have an overview of where the grants have been awarded.

Commissioner Martinson said it would be helpful to have pamphlets commissioners can hand out to constituents so commissioners can help spread the word about the availability of the grants, especially for small businesses.

Food Scraps Pickup Program Update

A celebration of the pilot program kickoff was held on July 17, 2023. Five news outlets were present, and R&E received excellent event coverage. There was great attendance by commissioners and city, county and state officials. Hanson thanked staff who worked for months on the event, particularly Caleb Werth, Shannon Conk, Sam Ferguson and Ben Clark. He thanked R&E Center facility staff, who adjusted schedules and made the facility look great.

Annalee Garletz, R&E food scraps pickup program supervisor, presented a brief update on the program. A survey of the pilot area was recently completed, with 200 survey responses and 18 people participating in focus groups. A more in-depth update will be presented in August.

Facility Updates

Sam Holl, R&E Center facility manager, provided updates.

- Processing enhancements – Projects are ongoing, with commissioning for both lines anticipated in the first week of August.
- Refuse-derived fuel (RDF) request for information (RFI) – One proposal was received from Xcel Energy. Xcel is working on their business development plan and the discussions are positive, with real alternatives to combustion. Consultants and staff are researching other opportunities. Staff, consultants and commissioners will be touring a facility in Oregon in August to assess new technology.
- Transfer station sortation – Contracts are anticipated to be brought to the board in October. Three transfer stations submitted proposals; however, geographically, they did not cover both county’s needs.

Procurement Report

Michael Reed presented the report for the period June 1, 2023, through June 30, 2023.

ADJOURN

Vice Chair Reinhardt declared the meeting adjourned at 11:28 a.m.

ATTESTED TO:

Approved: _____
September 7, 2023

Approved: _____
September 7, 2023



**RAMSEY/WASHINGTON
RECYCLING & ENERGY**
CONNECTING VALUE TO WASTE

R&E BOARD MEETING DATE:	September 7, 2023			AGENDA ITEM:	VI.a			
SUBJECT:	Feedstock Supply Agreement with Dem-Con HZI BioEnergy, LLC							
TYPE OF ITEM:	<input type="checkbox"/>	INFORMATION	<input type="checkbox"/>	POLICY DISCUSSION	<input checked="" type="checkbox"/>	ACTION	<input type="checkbox"/>	CONSENT
SUBMITTED BY:	Joint Leadership Team (JLT)							

R&E BOARD ACTION REQUESTED:

1. Approve the feedstock supply agreement between Dem-Con HZI BioEnergy, LLC and the R&E Board.
2. Delegate authority to the R&E Board Chair to sign the approved feedstock supply agreement.

EXECUTIVE SUMMARY:

On March 1, 2023, the R&E Board approved a letter of intent (LOI) between R&E and a Dem-Con & Hitachi Zosen Inova USA LLC joint venture (now known as Dem-Con HZI BioEnergy) for the key terms of an organic material feedstock supply agreement (Resolution R&EB-2023-04). The LOI states that it shall terminate sixty (60) days after the effective date of the LOI, but that the date can be extended upon mutual written agreement. R&E staff and Dem-Con HZI negotiated in good faith to complete an agreement during this period, but both parties concluded that more time was needed. On April 27, 2023, the board approved an extension of the LOI termination date to July 7, 2023 (Resolution R&EB-2023-07).

Although the LOI expired on July 7, both parties continued to work toward completing the agreement as quickly as possible. Staff and attorneys for R&E continued negotiating with Dem-Con HZI BioEnergy and their attorneys, with meetings at least once per week. Several detailed drafts of the agreement have been exchanged since the LOI was approved. The speed of progress varied as differing viewpoints on how to implement the revenue/cost-share component and financial obligations in the event of termination of the agreement presented themselves; however, staff and Dem-Con HZI Bioenergy were able to come to an agreement on a fully negotiated agreement on August 28, 2023.

Although the LOI approval resolution from March allowed the board chair to execute the agreement, staff, in consultation with the R&E Board leadership, felt it was appropriate to bring the completed agreement to the R&E Board for final review and approval.





ATTACHMENTS:

1. Draft resolution
2. Feedstock Supply Agreement with Dem-Con HZI BioEnergy, LLC
3. Memorandum from HuschBlackwell: Summary and Analysis of Proposed Feedstock Supply Agreement with Dem-Con HZI Bioenergy LLC
4. Memorandum from Ehlers: Revenue / Cost Sharing Mechanism in Dem-Con HZI Feedstock Supply Agreement

SUBJECT: Feedstock Supply Agreement with Dem-Con HZI BioEnergy, LLC

FINANCIAL IMPLICATIONS:

Estimated R&E expenses for the agreement will gradually increase as the food scraps pickup program expands and once the anaerobic digestion facility begins operations in 2026 and begins accepting organic-rich material from the R&E Center. Cost projection ranges will be presented with the final agreement. Changes in commodity pricing for biochar and renewable natural gas will adjust the organic material feedstock tipping fee that R&E pays to Dem-Con HZI BioEnergy once the anaerobic digestion facility begins operation.

AUTHORIZED SIGNATURES	DATE
JOINT LEADERSHIP TEAM	8/28/23
	
	8/30/23
RAMSEY COUNTY ATTORNEY	8/30/23
	
WASHINGTON COUNTY ATTORNEY	8/29/23
	



RESOLUTION R&EB-2023-13

WHEREAS, The Ramsey/Washington Recycling & Energy Board (“R&E Board”) is governed by the Amended and Restated Joint Powers Agreement by and between Ramsey County and Washington County dated July 18, 2023 (“Joint Powers Agreement”); and

WHEREAS, Ramsey and Washington Counties have committed to continue to protect and ensure the public health, safety, welfare and environment of each county’s residents and businesses through sound management of solid and hazardous waste generated in each county; and

WHEREAS, Ramsey and Washington Counties have in place County Solid Waste Management Plans (“Management Plans”) approved by the Commissioner of the Minnesota Pollution Control Agency, which state the policy goal of maintaining and improving an integrated system of solid waste management that supports Minnesota’s hierarchy of solid waste management, with an emphasis on waste reduction, reuse, recycling and composting before the remaining solid waste is managed through resource recovery; and

WHEREAS, The Management Plans also include policies that affirm the processing of waste for recovering energy, recyclables and other beneficially usable materials as the preferred method to manage solid waste that is not reduced, reused or recycled; and

WHEREAS, The R&E Board, and its predecessor, the Ramsey/Washington County Resource Recovery Project Board (“Project Board”), have conducted extensive evaluation and analysis of methods to enhance recovery of value from the waste stream and have designed system changes to assist in meeting state recycling goals; and

WHEREAS, As part of that evaluation, the Project Board and R&E Board investigated and evaluated different solid waste management processing technologies, including source separation of organics and processing of mixed municipal solid waste to remove high-value materials; and

WHEREAS, The R&E Board has the authority to negotiate with vendors and make purchases directly under Minn. Stat. § 473.811, subd. 4b, and direct negotiations will enable the R&E Board to employ the identified strategy for working with finalists to ensure the best solution for R&E’s needs is available; and

WHEREAS, The R&E Board (R&EB-2022-08) closed the end-use markets for byproducts from the R&E Center RFP process and authorized the JLT to pursue and negotiate contracts with select end-use market vendors who submitted proposals as part of the phase II process using the direct purchase authority as outlined in Minn. Stat. § 473.811, subd. 4b; and

WHEREAS, After a competitive negotiation period, R&E staff recommended the R&E Board agree to the proposed letter of intent from Dem-Con Companies, LLC and Hitachi Zosen Inova USA, LLC; and

WHEREAS, The R&E Board approved the letter of intent between the Dem-Con Companies, LLC and Hitachi Zosen Inova USA LLC joint venture and the R&E Board on March 1, 2023 (R&EB-2023-04); and

WHEREAS, On May 3, 2023, the R&E Board approved an extension of the termination date for the letter of intent to July 7, 2023; and

WHEREAS, Both parties continued to work on negotiating a final feedstock supply agreement and a proposed final agreement was reached the week of August 28, 2023. NOW, THEREFORE, BE IT

RESOLVED, The R&E Board hereby approves the feedstock supply agreement between Dem-Con HZI BioEnergy, LLC and the R&E Board. BE IT FURTHER

RESOLVED, The R&E Board delegates authority to the R&E Board Chair to sign the approved feedstock supply agreement on behalf of the R&E Board.

Fran Miron, Board Chair
September 7, 2023

Attest
September 7, 2023

FEEDSTOCK SUPPLY AGREEMENT
BY AND BETWEEN
DEM-CON HZI BIOENERGY, LLC
AND
THE RAMSEY/WASHINGTON RECYCLING AND ENERGY BOARD
DATED AS OF SEPTEMBER [__], 2023

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**FEEDSTOCK SUPPLY AGREEMENT
BY AND BETWEEN
DEM-CON HZI BIOENERGY, LLC
AND
THE RAMSEY/WASHINGTON RECYCLING AND ENERGY BOARD**

This Feedstock Supply Agreement (this “**Agreement**”) is made effective as of the date signed by the Supplier (the “**Effective Date**”), by and among between Dem-Con HZI BioEnergy, LLC (“**Operator**”), a Minnesota limited liability company with a primary place of business at 13020 Dem-Con Drive, Shakopee, MN and the Ramsey/Washington Recycling and Energy Board, a Minnesota joint powers board entity formed pursuant to Minn. Stat. §471.59 whose members are Ramsey and Washington Counties (the “**Counties**”), 100 Red Rock Road, Newport, MN 55055 (the “**Supplier**” and together with the Operator, each a “**Party**” and collectively, the “**Parties**”).

RECITALS

WHEREAS, Supplier will in 2023 begin producing two types of organic material at the Recycling & Energy Center that it owns and operates in Newport, MN, which will consist of organic food scraps (“**OFS**”) and organic rich material (“**ORM**”);

WHEREAS, Operator intends to develop a facility using anaerobic digestion technology (“**AD Process**”) and pyrolysis or gasification technology (high temperature decomposition of organic material with little or no oxygen) to produce biochar (“**Biochar Process**”) to be located on a parcel of real property situated at or near 13020 Dem-Con Drive, Shakopee, MN (the “**Plant**”) to convert Feedstock supplied by Supplier into RNG, Biochar, and other potential products (“**Products**”), which may be eligible to receive local, state or federal incentives or other tradeable Environmental Attributes, and which use of such Products shall allow the Feedstock from Supplier to count toward the Recycling Goals; and

WHEREAS, Supplier desires to pay Operator for processing and conversion of Feedstock delivered by Supplier to Operator at the Plant into Products, and Operator desires to receive Feedstock and payment from Supplier for such Feedstock on the terms and conditions set forth in this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the above Recitals, which are incorporated herein and made a part hereof, and the mutual promises and covenants set forth herein, and intending to be legally bound, Operator and Supplier mutually agree as follows:

ARTICLE 1 DEFINITIONS

Unless the context otherwise specifies or requires, capitalized terms used herein shall have the meanings set forth in this Agreement:

- 1.1 “*Acceptance Shortfall*” has the meaning provided for in Section 4.6(b).
- 1.2 “*AD Commencement*” means the milestones included on **Schedule B** have been completed and the Plant has capacity to process Feedstock in at least Fifty Percent (50%) of the minimum average daily delivery amounts set forth on **Schedule D** to produce RNG and Biochar.
- 1.3 “*AD Commencement Date*” means the date on which Operator provides notice to Supplier that AD Commencement of the Plant has been achieved.
- 1.4 “*AD Commencement Outside Date*” means Twelve (12) months following the AD Commencement Target, as such date is extended due to a Permitted Delay.
- 1.5 “*AD Commencement Target Date*” means December 31, 2026, subject to day-for-day extension for any periods of Permitted Delays.
- 1.6 “*Agreement*” means this Feedstock Supply Agreement and any exhibits, tables or schedules attached hereto as the same may be amended from time to time.
- 1.7 “*Annual Commitment*” means Feedstock in the amounts set forth in the “Annual Commitment” column of **Schedule D**.
- 1.8 “*Annual Commitment Minimum*” means Feedstock in the amounts set forth in the “Annual Commitment Minimum” column of **Schedule D**.
- 1.9 “*Applicable Law(s)*” means any statute, law, regulation, ordinance, rule, judgment, order, decree, legally binding directive or requirements, or any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing by any Governmental Authority that is applicable to and/or binding upon, as the context may require, (i) either or both of the Parties, (ii) this Agreement, or (iii) the Plant and/or Feedstock.
- 1.10 “*Bankruptcy*” has the meaning provided for in Section 12.1(d).
- 1.11 “*Biochar*” means a charcoal-like substance that can capture, store and/or sequester carbon, produced using the Biochar Process.
- 1.12 “*Biochar Process*” has the meaning provided in the Recitals to this Agreement.

- 1.13 “**Business Day**” means the hours from 8:00 a.m. to 5:00 p.m. Central Time, excluding Saturdays, Sundays and scheduled holidays observed by the Chicago Board of Trade, Chicago, Illinois, USA.
- 1.14 “**Central Time**” means the local time in Minnesota at any relevant time, taking into account daylight savings time, if applicable.
- 1.15 “**Commercially Reasonable**” means reasonable, diligent and good-faith efforts, actions or decisions as such applicable Party would normally use to accomplish a similar objective under similar circumstances, taking into account such Party’s resources, including commitment of personnel, equipment and financial resources in connection with such efforts, actions or decisions, and without requiring that a Party take all possible actions available or take any actions that would not be reasonable based on the totality of the circumstances.
- 1.16 “**Contract Year**” means each period of twelve (12) consecutive months starting with the first Contract Year beginning on the AD Commencement Date.
- 1.17 “**Daily Maximum**” means Feedstock in the amounts set forth in the “Daily Maximum” column of **Schedule D**.
- 1.18 “**Daily Minimum**” means Feedstock in the amounts set forth in the “Daily Minimum” column of **Schedule D**.
- 1.19 “**Data Practices Act**” has the meaning provided for in Section 9.1.
- 1.20 “**Data Practices Rules**” has the meaning provided for in Section 9.1.
- 1.21 “**Delivery**” (or any variations thereof) means Feedstock has been placed at or tendered to the Delivery Point and unloaded in the location specified by Operator.
- 1.22 “**Delivery Point**” means the Plant’s pit bunker receiving facility, as such location and facility will be detailed in a notice from Operator to Supplier.
- 1.23 “**Delivery Schedule**” has the meaning provided for in Section 5.3.
- 1.24 “**Designated Logistics Individual**” has the meaning provided for in Section 5.2.
- 1.25 “**Designated Pricing Individual**” has the meaning provided for in Section 6.1.
- 1.26 “**Dispute Notice**” has the meaning provided for in Section 14.3(a).
- 1.27 “**Durable Compostable Bag**” or “**DCB**” means a plastic bag that is made from biodegradable plastic and certified as compostable by the Biodegradable Products Institute.
- 1.28 “**Early Termination Trigger Date**” has the meaning provided for in Section 3.2.
- 1.29 “**Effective Date**” has the meaning provided for in the introductory paragraph hereof.

- 1.30** “*Environmental Attributes*” means any and all presently existing or future attributes arising from the Biochar Process and/or AD Process including but not limited to the capture and/or sequestration of carbon in Biochar, all emissions reductions or tradeable offset credits related to the displacement of traditional natural gas by RNG, including environmental air quality credits, emissions reduction credits, carbon credits, Renewable Energy Identification Numbers (“*RINS*”) generated pursuant to the U.S. Environmental Protection Agency’s Renewable Fuel Standard (“*RFS*”) program, Low Carbon Fuel Standard (“*LCFS*”) credits generated pursuant to the California Air Resources Board (“*CARB*”)’s Low Carbon Fuel Standard program, the State of Washington’s Clean Fuel Standard, the State of Oregon’s Clean Fuels Program, or any similar program creating environmental credits related to low carbon or renewable fuel standards, offsets and allowances. Notwithstanding any other provision in this definition, Environmental Attributes do not include: (a) any Federal Tax Credits, (b) the Products themselves, and (c) accelerated depreciation benefits related to the Plant’s status as a generator of RNG or other Products.
- 1.31** “*Event of Default*” has the meaning provided for in Section 12.1.
- 1.32** “*Federal Tax Credit*” means any federal income tax credits applicable to the Plant, including, but not limited to, those available under Sections 45 or 48 of the Internal Revenue Code of 1986, as amended, the Inflation Reduction Act of 2022, and any other federal tax credits arising in lieu thereof.
- 1.33** “*Fees*” has the meaning provided for in Section 3.2(a).
- 1.34** “*Feedstock*” means OFS and ORM that meets the Feedstock Specifications.
- 1.35** “*Feedstock Specifications*” has the meaning provided for in Section 4.2.
- 1.36** “*Force Majeure*” has the meaning provided for in Section 10.2.
- 1.37** “*Governmental Authority*” means any federal, state, local, municipal, or other governmental authority of any nature, including any governmental agency, branch, department, official or entity and any court or other tribunal having jurisdiction over (i) the Parties, (ii) this Agreement; (iii) the operation of the Plant and/or the Feedstock.
- 1.38** “*Grant Funds*” has the meaning provided for in Section 3.2(b).
- 1.39** “*Impurities*” means non-organic or plastics or heavy particles (e.g. sand, gravel, stones, glass, metal, hard plastic, seashells, fruit pips, etc.)
- 1.40** “*Indemnified Party*” has the meaning provided for in Section 11.2(a).
- 1.41** “*Indemnifying Party*” has the meaning provided for in Section 11.2(a).
- 1.42** “*Initial Biochar Rate*” has the meaning provided for in **Schedule C**.
- 1.43** “*Initial RNG Rate*” has the meaning provided for in **Schedule C**.

- 1.44 “**Levelized Monthly Fee**” means the Fees paid by Supplier to Operator on a monthly basis equal to 1/12th of the aggregate Fees for the Annual Commitment Minimum.
- 1.45 “**Logistics**” means activities related to or connected with transporting, storing and otherwise handling Feedstock prior to Delivery to Operator hereunder.
- 1.46 “**Minimum Pricing**” has the meaning provided for in Section 3.2(a).
- 1.47 “**Nonconforming Feedstock**” means OM that does not conform to the Feedstock Specifications.
- 1.48 “**OFS**” means organic food scraps.
- 1.49 “**OFS Fee**” has the meaning provided for in Section 3.2(a).
- 1.50 “**OM**” means OFS and ORM, collectively.
- 1.51 “**Operator**” has the meaning provided for in the introductory paragraph hereof.
- 1.52 “**Operator Cover Damages**” has the meaning provided for in Section 12.10(b).
- 1.53 “**Operator Damage Cap**” means the aggregate maximum financial liability of Five Million Dollars (\$5,000,000) that Operator may have to Supplier arising under this Agreement.
- 1.54 “**Operator Third-Party Delay**” means a delay in AD Commencement caused by a delay in Operator’s third-party suppliers in performing under applicable service or supply contracts, which delay is not caused by Operator.
- 1.55 “**ORM**” means organic rich material.
- 1.56 “**ORM Fee**” has the meaning provided for in Section 3.2(a).
- 1.57 “**Party**” shall mean either Operator or Supplier, as the context requires, and “**Parties**” shall mean both Operator and Supplier.
- 1.58 “**Payment Bond**” means the financial assurance bond, securing Operator’s performance of its obligations under this Agreement in an amount of Five Million Dollars (\$5,000,000).
- 1.59 “**Permits**” means the material permits necessary for the siting, construction and operation of the Plant, including those set forth on Schedule 1.8 attached hereto.
- 1.60 “**Permitted Delay**” means the aggregate number of days of delay due to (a) Force Majeure events, (b) Permitting Delay, and (c) any breach of or noncompliance by Supplier with this Agreement.
- 1.61 “**Permitting Delay**” means a delay in the AD Commencement caused by a delay in obtaining any necessary permits required for commissioning and operating the Plant, which delay is not caused by Operator after using Commercially Reasonable efforts to obtain such permits.

- 1.62 “*Plant*” has the meaning provided for in the Recitals.
- 1.63 “*Pre-AD Operations*” means Operator’s initial acceptance and processing of OFS through standard industrial composting to produce compost material that meets the Class I or Class II standards established under Minn. Admin. R. 7035.2836 and the Recycling Goals, in each case as in effect as of the date of this Agreement.
- 1.64 “*Pre-AD Operations Term*” means the period beginning as of the Effective Date to the AD Commencement Date or the earlier termination of this Agreement.
- 1.65 “*Products*” has the meaning ascribed to it in the Recitals.
- 1.66 “*Prudent Operator Practices*” means the practices, methods, standards and acts engaged in or approved by a significant portion of the applicable segment of the anaerobic digester or RNG market pertaining to facilities of the type, similar size and location to the Plant that, in the exercise of Commercially Reasonable judgment, in light of the facts that are known (or reasonably should have been known) at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with Applicable Law, permits, codes, standards, and equipment manufacturer’s recommendations. Prudent Operator Practices is not limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods, standards and acts generally acceptable or approved by a significant portion of the applicable segment of the anaerobic digester or RNG industry in the relevant region, during the relevant period.
- 1.67 “*Qualified Third-Party Processor*” means a third-party facility located within the states of Minnesota, Wisconsin, Iowa, North Dakota or South Dakota and such facility is capable of complying with and meeting Supplier’s Recycling Goals.
- 1.68 “*Recycling Goals*” means the recycling goals developed and published by the Counties pursuant to Minn. Stat. 115A.551; Subd. 2a, as in effect as of the date of this Agreement.
- 1.69 “*Remaining Grant Funds*” has the meaning provided for in Section 3.2(b).
- 1.70 “*Renewal Term*” has the meaning provided for in Section 2.3.
- 1.71 “*Revenue*” means the net revenue received by Operator and derived from Supplier’s Feedstock, from or with respect to Operator’s sale of RNG and Biochar and any Environmental Attributes associated with or attributed to such RNG and Biochar, or the process of producing such RNG or Biochar, less any refunds and/or offsets associated with such revenue and less any broker and commission fees incurred in connection with such sales.
- 1.72 “*RNG*” means renewable natural gas.
- 1.73 “*Scale*” means truck scales maintained and operated by Operator pursuant to the Prudent Operator Practices and located reasonably near the Delivery Point.
- 1.74 “*Supplier Cover Damages*” has the meaning provided for in Section 12.10(a).

- 1.75 “*Term*” has the meaning provided for in Section 2.3.
- 1.76 “*Terminal*” means the site and facilities of the applicable terminal operator (with respect to such Transport Carrier) serving the Plant operations.
- 1.77 “*Testing Costs*” has the meaning set forth in Section 2.1.
- 1.78 “*Transport Carrier*” means the transportation carrier engaged by Supplier to Deliver Feedstock to Operator.

ARTICLE 2 TERM

- 2.1 **Pre-AD Operations Term.** During the Pre-AD Operations Term, Operator may provide anaerobic digestion of the OFS and/or ORM in connection with the testing or start-up of the Plant during the Pre-AD Term, with any third-party transportation and laboratory testing fees related to such testing (“*Testing Costs*”) split evenly between the Parties. Testing will occur upon a mutually agreed upon schedule. Either Party may conduct additional testing at its own cost. The Fees for processing any Feedstock Delivered during the Pre-AD term will be an amount equal to Supplier’s then-current cost of composting and/or disposing of OFS and ORM, as applicable.
- 2.2 **AD Term.** Unless terminated earlier according to its terms, the term of operations under this Agreement shall be twenty (20) years from the AD Commencement Date (the “*AD Term*”).
- 2.3 **Renewal Term.** The AD Term may be extended for two (2) additional five (5) year periods (each, a “*Renewal Term*”) upon mutual written consent of the Parties executed at least one hundred eighty (180) days prior to the end of the Initial Term or any Renewal Term (or shorter period to which the Parties may mutually agree in a writing executed by the Parties). Collectively, the Initial Term and any Renewal Term are referred to herein as the “*Term.*”

ARTICLE 3 PRE-AD OPERATIONS TERM; PLANT DEVELOPMENT

- 3.1 **Supplier Covenants.** During the Pre-AD Operations Term, Supplier hereby covenants to the following:
- (a) Supplier shall provide assistance, as reasonably requested by Operator, with any Grant Fund applications related to the Plant and its operations; and
 - (b) Supplier shall provide Operator with monthly reports regarding the quantity and quality of OFS and/or ORM produced by Supplier during the Pre-AD Operations Term and shall provide, as reasonably requested by Operator and when such materials are available, representative samples of such materials for testing, with such testing to occur upon a mutually agreed upon schedule and Testing Costs split equally between the Parties.

3.2 Termination for Convenience During Pre-AD Operations Term. This Agreement may not be terminated in the first year of the Pre-AD Operations Term except as described in Article 12 hereof. Following the first anniversary date of the Effective Date (“**Early Termination Trigger Date**”), Supplier shall have a termination right, exercisable upon delivery of written notice to Operator within 60 days following the Early Termination Trigger Date, to terminate this Agreement if, and only if, Operator is not able to offer the Minimum Pricing as described in 3.2(a) below. Supplier may waive this condition by providing written notice to Operator. Upon such Supplier termination, neither Party shall have any further obligations or liabilities under this Agreement, except for those in Articles 9, 11 and 14 or otherwise provided herein.

- (a) Prior to the end of the first year of the Pre-AD Operations Term, Operator will have confirmed in writing it will initially offer the services during the AD Term, specifically including production and sale of Products from Supplier Feedstock at a maximum initial per ton fee for OFS (“**OFS Fee**”) of One Hundred Seven Dollars (\$107) and at a maximum initial per ton fee for ORM (“**ORM Fee**”) of One Hundred Fifteen Dollars (\$115) (the OFS Fee and ORM Fee collectively, as adjusted the “**Fees**”) and (the Fees described in this Section 3.2(a), the “**Minimum Pricing**”). The Fees’ Minimum Pricing shall be adjusted on January 1, 2024 and on January 1 of each subsequent year by the percentage increase of the US Consumer Price Index (CPI)-Urban Midwest during the prior calendar year.
- (b) In the event Operator confirms the Minimum Pricing above, and total grant funds (excluding any funds that would void or reduce the Federal Tax Credits available to Operator in connection with the Plant) received by or allocated to Operator from any source for design, construction and/or operation of the Plant (“**Grant Funds**”) exceed the minimum amount of Grant Funds necessary to achieve the Minimum Pricing (“**Remaining Grant Funds**”), including anticipated Revenue from sales of Products, the Remaining Grant Funds shall be used by Operator, on an amortized basis over the remaining Term to reduce the Fees charged to Supplier by amounts that are consistent with remaining Grant Funds, but only to the extent that such use does not conflict with the terms under which such Grant Funds are awarded. At the time Operator confirms the Minimum Pricing, Operator shall provide Supplier with a written summary of the various financial elements that enabled Operator to achieve Minimum Pricing, including all Grant Funds and how any Remaining Grant Funds will be amortized and applied to the Fees over the remaining Term.

3.3 Plant Development. Operator shall use Commercially Reasonable efforts to achieve AD Commencement prior to the AD Commencement Target Date, including by undertaking the following development responsibilities and covenants in the Pre-AD Operations Term:

- (a) Operator will use Commercially Reasonable efforts to achieve the Minimum Pricing pursuant to Section 3.2 above.
- (b) Operator will use its Commercially Reasonable efforts to achieve AD Commencement prior to the AD Commencement Target Date. Upon notice from Operator, the AD Commencement Target Date shall be automatically extended during the pendency of

any event of Force Majeure, Operator Third-Party Delay, or Permitting Delay, or as mutually agreed by the Parties (on a Commercially Reasonable basis), on a day-for-day basis up to the AD Commencement Outside Date. However, the AD Commencement Target Date shall not be extended beyond the AD Commencement Outside Date unless mutually agreed in a written amendment to this Agreement.

- (c) In its efforts to achieve AD Commencement, Operator shall use Commercially Reasonable efforts to achieve the milestones set forth in **Schedule B – Development Milestones** and shall notify Supplier in writing following achievement of each such milestone. Operator shall also provide any additional evidence reasonably requested by Supplier that any such milestone has been achieved, including certifications from an officer of Operator.
- (d) If Operator anticipates a delay in AD Commencement because it is unable, despite using Commercially Reasonable efforts, to achieve any of the critical milestones identified in **Schedule B** by the applicable deadline, then Operator may extend the timeframe to achieve such milestones as set forth in this Agreement so long as the following conditions are satisfied:
 - 1) At least thirty (30) days prior to the applicable completion deadline set forth in **Schedule B** for the relevant milestone, Operator submits to Supplier (x) a written description of the reason for the failure; and (y) a reasonably detailed recovery plan for completing all necessary work to achieve completion of the missed milestone by a date certain;
 - 2) Operator shall commence the work contemplated by the recovery plan as soon as reasonably practicable after submitting such recovery plan to Supplier; and
 - 3) Operator shall be solely responsible for the costs or expenses incurred by Operator as a result of the formulation and implementation of the recovery plan.
- (e) Prior to the AD Commencement Date, Operator shall submit monthly progress reports to Supplier, advising Supplier of the current status of the completion of the development milestones identified in **Schedule B**, any significant developments or delays and Operator's best estimate of the AD Commencement Date. Except as otherwise provided, Operator shall have no liability under this Agreement, and it shall not be an Event of Default hereunder, in the event Operator does not achieve any such milestone by the corresponding date set forth on **Schedule B**.

3.4 AD Commencement.

- (a) Except for Force Majeure, Operator Third-Party Delay or a Permitting Delay, if the Operator fails to achieve AD Commencement by the AD Commencement Target Date, Operator shall, until the AD Commencement Date occurs (but not beyond the AD Commencement Outside Date), reimburse Supplier for Supplier's reasonably verifiable and documented transportation and landfill disposal costs as liquidated damages associated with the ORM Feedstock that Operator is unable to accept for

processing, which shall not exceed One Hundred Twenty-Five Percent (125%) of the Minimum Pricing, as adjusted, and shall not exceed a total of Two Million Dollars (\$2,000,000).

- (b) Operator shall notify Supplier of the date on which Operator believes the Plant has achieved AD Commencement (an “*AD Commencement Notice*”). An AD Commencement Notice shall include written evidence of the completion of the applicable milestones set forth on **Schedule B** that had not then been shown as completed in prior progress reports.

3.5 Supplier’s Covenants During AD Term.

During the AD Term, Supplier hereby covenants and agrees to:

- (a) Pay Operator the Levelized Monthly Fee, adjusted for any Delivery in excess of the monthly pro rata portion of the Annual Commitment Minimum and as may be further adjusted in accordance with Section 6.3.
- (b) Establish, monitor and communicate Logistics with Operator so that Feedstock is shipped and Delivered in accordance with the applicable Delivery Schedule.
- (c) Deliver Feedstock in compliance with the Feedstock Specifications and delivery procedures (including the Daily Minimum and Daily Maximum) set forth in Article 5 below.
- (d) Inform Operator of any problem, issue or delay regarding any Delivery or shipment of Feedstock within one (1) Business Day by email (with confirmed receipt by direct reply) and telephone, after Supplier becomes aware of any such problem, issue or delay.
- (e) Perform the responsibilities outlined in this Agreement, except as may otherwise be set forth in this Agreement.

3.6 Operator’s Covenants During AD Term. In addition to, and without limiting Operator’s other obligations hereunder, Operator covenants and agrees to, at its sole cost and expense:

- (a) Perform the responsibilities outlined in this Agreement in accordance in all material respects with Prudent Operator Practices, except as may otherwise be set forth in this Agreement.
- (b) Inform Supplier of any Nonconforming Feedstock or defects in quantity, timing, or other matters regarding any Delivery or shipment of Feedstock within one (1) Business Day after Operator becomes aware of any such defects.
- (c) Provided the Feedstock supplied by Supplier meets the Feedstock Specifications, produce commercially salable RNG and Biochar, and other Products, all of which will be capable of being utilized to establish compliance with the Recycling Goals. In the

event the Recycling Goals are amended as a result of a change in law or policy by the State of Minnesota, the Parties shall use Commercially Reasonable efforts to render the Products to comply with the Recycling Goals while maintaining substantially the same economic and commercial benefits of the respective Parties to this Agreement.

- (d) Record and monitor Feedstock input and the resulting RNG and Biochar, and other Products output derived directly from Supplier's Delivered Feedstock from the Plant and provide written reports on such inputs and outputs to Supplier along with the monthly invoice to Supplier.
- (e) Provide Supplier operations data, in form that Operator collects in connection with its normal operations or in a form as reasonably requested by Supplier, to assist Supplier with its annual report on the greenhouse gas emissions reductions achieved through use of Supplier's Feedstock.
- (f) Other than Impurities and incidental parts of DCB material that is removed from digestate produced from the AD Process, ensure that OFS meeting the Feedstock Specifications is not deposited by Operator in a landfill or used as landfill cover by Operator.
- (g) Operator may, in its reasonable discretion, divert up to a maximum of Ten Percent (10%) of the OFS accepted each year to a compost facility and ensure that such OFS is processed into marketable compost that enables the OFS Feedstock to comply with the Recycling Goals. Supplier shall pay the applicable OFS Fee for such accepted and diverted OFS Feedstock.

ARTICLE 4 FEEDSTOCK PURCHASE AND QUALITY

- 4.1 Quantity Forecasts.** Subject to Section 4.5, below, during the AD Term, Supplier shall Deliver to Operator and pay Operator the Fees, as adjusted, for processing of, and Operator shall take Delivery from Supplier and accept payment for, Feedstock up to the applicable Annual Commitment volumes listed in **Schedule D**.
- 4.2 Quality.** Supplier shall cause the Feedstock supplied to Operator pursuant to this Agreement to meet, at a minimum, the Feedstock Specifications provided in **Schedule A** attached hereto and incorporated herein by this reference (the "**Feedstock Specifications**").
- 4.3 Specification and Inspection.** At the Delivery point, Supplier shall: (a) weigh Feedstock using the Scale and (b) allow Operator to inspect, test, weigh, and grade each Delivery of Feedstock for compliance with the Feedstock Specifications.
- 4.4 Nonconforming Feedstock.** OM that does not conform to the Feedstock Specifications (the "**Nonconforming Feedstock**"), will be rejected by Operator in its reasonable discretion. Operator shall provide written notice to Supplier of such rejection within one Business Day of Delivery. Supplier shall be responsible for removing all Nonconforming Feedstock within 24 hours of the date of delivery or date Supplier is notified that such

material is Nonconforming Feedstock, whichever is later. Supplier may replace the Nonconforming Feedstock with an acceptable type and/or quality of Feedstock upon mutually agreed upon Delivery terms.

4.5 Quantity. Supplier may deliver and Operator shall accept ORM Feedstock in amounts up to 2,000 tons per year greater than the 20,000 annual tonnages set forth in **Schedule D**.

4.6 Failure to Meet Minimums.

(a) **Annual Commitment.** If Supplier fails to Deliver the Annual Commitment in a Contract Year, Supplier shall pay Operator, within 45 days following such Contract Year, an additional liquidated damages amount equal to Twenty-Five Percent (25%) of the total Fees associated with the Delivery Shortfall. The delivery shortfall amount shall be the Annual Commitment for the Contract Year less the amount of total Feedstock actually delivered to Operator; *provided that* such delivery shortfall is not due to Operator's failure to accept Deliveries in the Contract Year and all Feedstock delivered to Operator through mitigation efforts of either Party has been included in the actual Feedstock delivered totals for such Contract Year (such remaining shortfall, the "*Delivery Shortfall*").

(b) **Weekly Minimum.** Operator shall pay Supplier as liquidated damages an amount equal to \$1,000 per week toward Supplier's costs for alternative management of Feedstock for each week in which Operator fails to accept Delivery of Eighty Percent (80%) of the Annual Commitment (as adjusted to a weekly basis), provided that such failure is not a result of Supplier's failure to Deliver Feedstock in conformance with the Feedstock Specifications ("*Acceptance Shortfall*"). In addition, Operator shall reimburse Supplier for any Levelized Monthly Fees paid by Supplier for Feedstock (of any amount) that would have been Delivered but for Operator's failure to accept such Feedstock. The payments set forth in this Section 4.6(b) will be made on a monthly basis.

ARTICLE 5 DELIVERY, SCHEDULING AND LOGISTICS

5.1 Delivery. Delivery of Feedstock hereunder shall take place at the Delivery Point. The quantity of each Delivery of Feedstock to Operator shall be as determined by Operator on the Scale immediately prior to Delivery of the Feedstock to Operator at the Delivery Point, but may not exceed the Daily Maximum tonnage unless otherwise approved by the Operator in writing prior to the date of such attempted Delivery. All Deliveries of Feedstock will comply with legal shipping weight limits.

5.2 Designated Logistics Individual. Each Party shall designate (and may re-designate from time to time) in writing to the other Party, a qualified, full-time, individual for daily operational and Logistics issues who shall interact directly with the representative of the other Party relating to such matters for all operational and Logistics matters with respect to the transactions contemplated herein (the "*Designated Logistics Individual*").

- 5.3 Delivery Schedule.** The Parties shall jointly develop a monthly Delivery schedule (the “*Delivery Schedule*”), the format of which will be mutually agreed upon by the Parties, which will serve as the formal planning tool for Logistics purposes during the Pre-AD Term and AD Term. The Delivery Schedule shall conform to the Supplied Quantities, Daily Minimum and Daily Maximum tonnage and Annual Commitment of Feedstock to be Delivered by Supplier to Operator, in accordance with **Schedule D**. The Delivery Schedule shall be submitted by Operator to Supplier in writing prior to the first scheduled Delivery during the Pre-AD Term and no later than 30 days prior to each Delivery Schedule month during the AD Term, or as agreed by the Parties. The specific format of the Delivery Schedule will be created with mutual consent of both Parties to accommodate the terms of this Article 5 and the Parties shall work in good faith to jointly develop the Delivery Schedule on mutually agreeable terms.
- 5.4 Delivery Schedule Monthly Plan Deviations.** The Parties recognize the need to maintain a degree of flexibility to accommodate the initial operations of the Plant and unexpected changes in the Plant operating capacity. Upon notification by either Party of any substantial deviations to the Delivery Schedule, the Parties shall work in good faith to jointly resolve any such discovered deviations and correct such deviations within fifteen (15) days following first notification.

ARTICLE 6 PRICING, BILLING AND PAYMENTS

- 6.1 Designated Pricing Individual.** During the Term, each Party shall designate (and may re-designate from time to time) in writing to the other Party a qualified, full-time individual to interact directly with the other Party for all pricing and payment matters with respect to the transactions contemplated herein (the “*Designated Pricing Individual*”). The Designated Logistics Individual and the Designated Pricing Individual may be the same individual.
- 6.2 Pricing Limit.** Operator shall invoice the Fees (as adjusted) to Supplier during the AD Term, provided that such Fees shall not exceed the lowest fee paid by any Public Entity to Operator, as defined in Minn. Stat. Section 16C.073, subd. 1(g), supplying organic food scrap material to the Plant that is Delivered with plastic compostable or other bags that require pre-processing and has the same or higher actual average contamination percentage as the OFS supplied by Supplier (“*Pricing Limit*”). During the Term, Operator shall not be bound by the Pricing Limit in any Contract Year in which Supplier fails to meet the Annual Commitment Minimum in **Schedule D** and in the Contract Year immediately following such failure to deliver the Annual Commitment Minimum.

Any contracts entered into by Operator with third parties when the Pricing Limit is not in effect will not be bound or limited by the Pricing Limit for the term of such contract, even if the Pricing Limit subsequently becomes effective. For any Contract Year when the Pricing Limit is in effect, an officer of Operator will certify that the Operator is in compliance with the Pricing Limit. If requested by Supplier in writing, Operator will provide documentation of such compliance within fifteen (15) business days of the date of such request.

- 6.3 Billing and Payment.** Operator shall generate monthly invoices on the tenth (10th) day of each month setting forth the Levelized Monthly Fee and any additional Fees for Delivered Feedstock. Such invoices shall also credit or reimburse Supplier, as applicable, for: a) any failure by Operator to accept Feedstock for which the Levelized Monthly Fee is intended to cover (such amount to be the pro-rated Levelized Monthly Fee for the portion of the month affected by such acceptance failure) and b) fees paid to Operator associated with Feedstock delivered to Operator by third parties sourced through the mitigation efforts of Supplier or Operator during the period. Invoices will indicate both the Fees owed by Supplier to Operator, and the total amount of any revenue or cost sharing payments, calculated in accordance with **Schedule C**, which is hereby incorporated into and made a part of this Agreement, credited or charged against the gross invoiced amount payable by Supplier. Supplier is responsible for any applicable taxes associated with the processing and management of Feedstock due to the nature of such Feedstock, excluding those taxes based upon Operator's income. Operator will include in its monthly invoices a ledger setting forth the Annual Commitment and progress toward such Annual Commitment relative to the elapsed portion of the Contract Year. Operator will invoice Supplier for any amounts owing due to failure to meet the Annual Commitment in an invoice delivered within Forty-five (45) days following the end of the applicable Contract Year. Pursuant to Minn. Stat. §471.425, subd.2(c), payments to Operator shall be due within Forty-five (45) days of the date the invoice is received. Pursuant to Minn. Stat. §471.425, sub.4(b), a late fee of One and One-Half Percent (1.5%) will be assessed against undisputed invoices not paid with Forty-five (45) days of receipt.

ARTICLE 7 POSSESSION AND TITLE

- 7.1 Title; Risk of Loss.** The Feedstock shall be Delivered FOB to its complete unloading at the Delivery Point. With the exception of Nonconforming Feedstock, title to, possession of, and risk of loss of or damage to the Feedstock Delivered according to this Agreement shall transfer from Supplier to Operator upon Operator's acceptance of Feedstock pursuant to Section 4.4. Regardless of whether Operator has provided notice of Nonconforming Feedstock to Supplier pursuant to Section 4.4, Operator shall not take title to Nonconforming Feedstock and will not be responsible for the removal or disposal of any Nonconforming Feedstock.

ARTICLE 8 REPRESENTATIONS & WARRANTIES

- 8.1 Representations and Warranties of Operator.**
- (a) The Operator is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Minnesota and has the requisite corporate power and authority to develop and operate the Plant.
 - (b) The Operator possesses the requisite power, authority and capacity to execute and deliver this Agreement and each other document, instrument, agreement or certificate

contemplated hereby (the “*Ancillary Documents*”) to which it is a party, to perform its obligations hereunder and thereunder, and to consummate the transactions contemplated hereby and thereby. Operator’s execution, delivery, and performance of its obligations under this Agreement and the Ancillary Documents to which it is a party and the consummation of the Transaction contemplated hereby and thereby have been duly and validly authorized by all necessary corporate or individual action on the part of the Operator required by law, the Operator’s governing documents or otherwise. This Agreement has been, and each Ancillary Document to which Operator is a party has been duly executed and delivered by Operator and, when duly executed and delivered by the other parties hereto or thereto, constitutes, or will constitute, a legal, valid and binding obligation of Operator, enforceable against Operator in accordance with its terms, except (i) to the extent that enforceability may be limited by applicable bankruptcy, insolvency, reorganization or other laws affecting the enforcement of creditors’ rights generally and (ii) that the availability of equitable remedies, including specific performance, is subject to the discretion of the court before which any proceedings thereof may be brought.

8.2 Representations and Warranties of Supplier.

- (a) The Supplier is a Minnesota joint powers board entity formed pursuant to Minn. Stat. §471.59, whose members are Ramsey and Washington Counties, duly organized, validly existing and in good standing under the laws of the State of Minnesota and has the requisite power and authority to enter into this Agreement.
- (b) The Supplier possesses the requisite power, authority and capacity to execute and deliver this Agreement and the Ancillary Documents to which it is a party, to perform its obligations hereunder and thereunder, and to consummate the transactions contemplated hereby and thereby. Supplier’s execution, delivery, and performance of its obligations under this Agreement and the Ancillary Documents to which it is a party and the consummation of the Transaction contemplated hereby and thereby have been duly and validly authorized by all necessary corporate or individual action on the part of the Supplier required by law or otherwise. This Agreement has been, and each Ancillary Document to which Supplier is a party has been duly executed and delivered by Supplier and, when duly executed and delivered by the other parties hereto or thereto, constitutes, or will constitute, a legal, valid and binding obligation of Supplier, enforceable against Supplier in accordance with its terms, except (i) to the extent that enforceability may be limited by applicable bankruptcy, insolvency, reorganization or other laws affecting the enforcement of creditors’ rights generally and (ii) that the availability of equitable remedies, including specific performance, is subject to the discretion of the court before which any proceedings thereof may be brought.
- (c) The Supplier has good and valid title to the Feedstock, free and clear of liens or encumbrances. The Supplier hereby represents and warrants that it is the sole owner (or lessee, as applicable) of the Feedstock.

ARTICLE 9 DATA PRACTICES

- 9.1** Pursuant to Minn. Stat. §13.05, subd. 11, services provided to Supplier by Operator pursuant to this Agreement are a government function, and therefore all data created, collected, received, stored, used, maintained, or disseminated by Operator in performing such services under this Agreement shall be governed by the Minnesota Government Data Practices Act, Minn. Stat. Chap. 13, as amended (the “*Data Practices Act*”), and Minnesota Rules implementing the Data Practices Act (the “*Data Practices Rules*”). Operator is subject to the requirements of the Data Practices Act and Data Practices Rules and must, for purposes of this Agreement when performing a government function, comply as if it is a governmental entity subject to the Data Practices Act and Data Practices Rules. The remedies contained in §13.08 of the Data Practices Act shall apply to Operator when Operator is performing a government function.

ARTICLE 10 FORCE MAJEURE

- 10.1 Force Majeure.** Except as provided in Section 12.10, neither Party will be liable to the other for any failure to perform obligations under this Agreement, in full or in part, to the extent such performance is prevented by an event of Force Majeure, and for the period made reasonably necessary by such Force Majeure. To be excused from performance pursuant to this Article 10, the Party affected must provide written notice of such Force Majeure to the other Party as soon as possible after the occurrence of the event or cause relied on, including: (i) full details of the Force Majeure event or cause; (ii) the obligations that cannot be performed due to Force Majeure; and (iii) actions to be taken to remedy the inability to perform. The obligations of the Party giving such notice, so far as they are affected by Force Majeure, shall (except as otherwise provided in Article 12) be suspended during the continuance of any inability so caused, but for no longer period, and such cause shall, so far as possible, be remedied with all reasonable dispatch.
- 10.2 Definition of Force Majeure.** The term “*Force Majeure*,” as used in this Agreement, shall mean any cause or event not reasonably foreseeable by, and not within the reasonable control of, the Party claiming suspension of its performance hereunder and which, by the exercise of Commercially Reasonable efforts, such Party is unable to prevent or overcome. Subject to the immediately preceding criteria, Force Majeure shall include: acts of God, acts of the public enemy (including terrorism), explosions or fires, tornadoes, drought, wars, blockades, insurrections, riots, rebellion, sabotage, epidemics, pandemics, landslides, lightning, earthquakes, storms, or floods. For the avoidance of doubt, “*Force Majeure*” shall not include changes in Applicable Law or market changes affecting the organic material disposal or feedstock marketplace generally or the affected Party’s payment obligations to the other Party set forth in this Agreement. For the avoidance of doubt, Supplier shall not be responsible for any Fees (including Levelized Monthly Fees) associated with Feedstock that cannot be delivered due to Force Majeure being experienced by Operator.
- 10.3** Upon the occurrence and during the continuance of any Force Majeure events as described in this Section, the Party declaring Force Majeure shall continue to pay the other Party for

its Delivery Shortfall or Acceptance Shortfall, in accordance with Section 4.6(a) and 4.6(b), as the case may be, and both Parties agree to use Commercially Reasonable efforts to mitigate the damages.

ARTICLE 11 INDEMNITY AND LIMITATIONS ON LIABILITY

11.1 Indemnification.

- (a) Operator agrees to defend, indemnify, and hold harmless Supplier, its officials, officers, agents, volunteers and employees from any third-party liability, claims, causes of action, judgments, damages, losses, costs, or expenses, including reasonable attorney's fees, resulting directly from any negligent act or omission of Operator in connection with the services provided pursuant to this Agreement.
- (b) Supplier agrees to defend, indemnify, and hold harmless Operator from any third-party liability, claims, causes of action, judgments, damages, losses, costs or expenses, including reasonable attorney's fees, resulting directly from any negligent act or omission of Supplier in connection with its delivery of the Feedstock or Nonconforming Feedstock or performance of any other services provided pursuant to this Agreement. The liability limits in Minn. Stat. Chap. 466 shall apply to Supplier's indemnity.
- (c) Operator agrees to defend, indemnify, and hold harmless Supplier, its officials, officers, agents, volunteers, and employees from any liability, claims, causes of action, judgments, or losses arising in connection with Operator's performance under this Agreement under the federal Comprehensive Environmental Response, Compensation and Liability Act, as amended (also known as "Superfund"), the Minnesota Environmental Response and Liability Act ("**MERLA**"), as amended, and other applicable federal, state and local law, unless such liability is the result of Supplier's actions or omissions (including, for the avoidance of doubt, delivery of Nonconforming Feedstock).
- (d) Supplier agrees to defend, indemnify, and hold harmless Operator, its officials, officers, agents, volunteers, and employees from any liability, claims, causes of action, judgments, or losses under the federal Comprehensive Environmental Response, Compensation and Liability Act, as amended (also known as "Superfund"), the Minnesota Environmental Response and Liability Act ("**MERLA**"), as amended, and other applicable federal, state and local law, if such liability is the result Supplier's actions or omissions in performance of this Agreement (including, without limitation, delivery of Nonconforming Feedstock).

11.2 Procedures.

- (a) Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 11 may apply, the Party seeking indemnification (the

“*Indemnified Party*”) shall provide notice thereof to the other Party (the “*Indemnifying Party*”); *provided* that a delay in providing such notice shall limit the obligations of the Indemnifying Party only to the extent that such delay actually prejudices the ability of the Indemnifying Party to contest the claim or defend the proceeding.

- (b) The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, *provided, however*, if the defendants in any such action include both the Indemnified Party and the Indemnifying Party, and the Indemnified Party shall reasonably conclude that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party’s expense.
- (c) If an Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may contest, settle, or pay such claim at the expense of the Indemnifying Party, *provided, however*, that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party’s counsel that such claim is meritorious or otherwise warrants settlement.

ARTICLE 12 DEFAULT AND TERMINATION

12.1 Events of Default by Either Party. An “*Event of Default*” shall mean, with respect to a Party, the occurrence of any of the following events:

- (a) Such Party fails to make, when due, any payment required pursuant to this Agreement;
- (b) Any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made;
- (c) Such Party materially fails to perform any material covenant, condition, or obligation set forth in this Agreement; or
- (d) Such Party becomes insolvent, or suffers or consents to or applies for the appointment of a receiver, trustee, custodian or liquidator of itself or any of its property, or generally fails to pay its debts as they become due, or makes a general assignment for the benefit of creditors; such Party files a voluntary petition in bankruptcy, or seeks reorganization, in order to effect a plan or other arrangement with creditors or any other relief under the Bankruptcy Code, Title 11 of the United States Code, as amended or recodified from time to time, or under any state or federal law granting relief to debtors (collectively “*Bankruptcy*”).

12.2 Supplier Default. The following shall be an “*Event of Default*” by Supplier:

Failure of Supplier to Deliver the Annual Commitment during any Contract Year, provided that such failure is not caused by Operator’s failure to accept the Annual

Commitment in such Contract Year. However, this Section 12.2 will not be considered an Event of Default if Supplier is fully paying the associated Fees (including via the Levelized Monthly Fee) and any liquidated damages when due as set forth in Section 4.6(a) of this Agreement. If Supplier is unable to deliver the Annual Commitment for four (4) consecutive Contract Years, Operator may terminate this Agreement by providing Sixty (60) days advance written notice and Supplier thereafter shall owe Operator the damages outlined in Section 12.10(a) below.

12.3 Operator Default. The following shall be an “*Event of Default*” of Operator:

Failure of Operator to accept the Annual Commitment during any Contract Year, provided that such failure is not caused by Supplier’s failure to deliver the Annual Commitment during such period. However, this Section 12.3 will not be considered an Event of Default if Operator is paying Supplier the liquidated damages set forth in Article 4.6(b) of this Agreement. If Operator is unable to accept the Annual Commitment for a period of four (4) consecutive Contract Years, Supplier may terminate this Agreement by providing Sixty (60) days advance written notice and Operator shall thereafter owe Supplier the damages outlined in Section 12.10(b) below.

12.4 Right to Cure. Except as otherwise expressly provided for herein, the defaulting Party shall have forty-five (45) days (or, in the event of a payment Event of Default under Section 12.1(a), five (5) Business Days) after receipt of a notice thereof from the non-defaulting Party to cure the Event of Default. If the Event of Default is not reasonably able to be cured within the time period provided herein despite the defaulting Party’s Commercially Reasonable efforts to cure such Event of Default, the period to cure such default may be extended by an additional sixty (60) days upon written notice.

12.5 Rights and Obligations on Termination or Default. Upon termination of, or default under, this Agreement, whether contained in this Article 12 or otherwise contained in this Agreement:

Any rights of a Party to payments accrued through termination of this Agreement shall remain in effect and, unless otherwise specified herein, all payments and monetary obligations of the respective Parties required pursuant to this Agreement through and after such date of termination shall be made pursuant to this Agreement. Supplier’s obligation to pay the Fees associated with the Annual Commitment and liquidated damages pursuant to Article 4 of this Agreement shall survive any termination of this Agreement by Operator due to an Event of Default by Supplier or upon termination of this Agreement by Operator due to Supplier’s extended Force Majeure event under Section 12.9. However, Supplier payment obligations shall be limited to the mitigation and damages measures provided in Section 12.10(a). Likewise, Operator’s obligation to pay damages to Supplier pursuant to termination of this Agreement by Supplier due to an Event of Default by Operator or upon termination of this Agreement by Supplier due to Operator’s extended Force Majeure event under Section 12.9, shall be governed by Section 12.10(b).

- 12.6 Non-Waiver of Future Default.** No waiver by either Party of any Event of Default by the other Party in the performance of any of the provisions of this Agreement will operate or be construed as a waiver of any other or future default or defaults, whether of a like or of a different character.
- 12.7 Termination by Mutual Agreement.** This Agreement may be terminated upon mutual written agreement between the Parties.
- 12.8 Termination.** Except as otherwise set forth in this Agreement, the Parties may terminate this Agreement upon written notice, as follows:
- (a) By Supplier, if the condition included in Section 3.2 is not met, in which case neither Party shall have any obligations with respect to this Agreement, other than those set forth in Articles 9, 11 and Article 14.
 - (b) By either Party, if, after using Commercially Reasonable efforts, Operator receives a written notice that a required Permit, including but not limited to an air emissions permit, has been denied or will not be issued in a form that allows Operator to comply with the terms of this Agreement, in which case neither Party shall have any obligations with respect to this Agreement, other than those set forth in Articles 9, 11 and Article 14.
 - (c) By either Party if, after using Commercially Reasonable efforts, the Plant fails to achieve AD Commencement by the AD Commencement Outside Date, in which case neither Party shall have any obligations with respect to this Agreement, other than those set forth in Articles 9, 11 and Article 14.
 - (d) By the non-defaulting Party, if an Event of Default is not cured within the time periods provided in Section 12.4. Notwithstanding a Party's efforts to cure an Event of Default, if an Event of Default not otherwise excused by Force Majeure is continuing for a period in excess of the time allotted in Section 12.9, the non-defaulting Party may terminate this Agreement.
 - (e) By the non-defaulting Party, if the other Party violates any Applicable Law which prevents the performance of its obligations under this Agreement, or which constitutes a material breach of this Agreement.
- 12.9 Termination for Force Majeure.** If an event of Force Majeure shall occur and continue for a period of One (1) year from the date the Party claiming relief due to Force Majeure gives the other Party written notice thereof, either Party shall have the right to terminate this Agreement by furnishing written notice to the other Party with termination effective on the date stated in such written notice, but no later than 60 days from the date of such written notice, *provided however*, the Party declaring Force Majeure may toll the other Party's right to terminate this Agreement for up to three (3) years from the first anniversary date of the Force Majeure by (i) demonstrating its Commercially Reasonable efforts to cure the impact of such Force Majeure and (ii) paying the other Party damages for the Delivery Shortfall or Acceptance Shortfall, in accordance with Section 4.2(a) and 4.2(b), as the case may be, and, both Parties agree to use Commercially Reasonable efforts to mitigate the

damages. In the event the Plant is not capable of accepting Supplier's Feedstock prior to expiration of the three (3) year period, or the Party declaring Force Majeure fails to pay the other Party the damages described in the preceding sentence, then this Agreement shall terminate and the Party not declaring Force Majeure shall have the rights outlined in Section 12.10 below.

12.10 Damages Mitigation and Measures. Each Party shall have a duty to mitigate damages pursuant to this Agreement, and each shall use Commercially Reasonable efforts to minimize any damages it may incur because of the other Party's non-performance of this Agreement, including with respect to a Force Majeure event, and/or termination of this Agreement as a result of an Event of Default of the other Party.

In connection with a Supplier Delivery Shortfall, as described in Section 4.6(a), each Party shall reasonably cooperate to use Commercially Reasonable efforts to mitigate such Delivery Shortfall. Supplier's mitigation efforts to secure alternative sources of Feedstock shall take priority over Operator's mitigation efforts, provided that Supplier's mitigation efforts comply with Supplier's Supply Quantities in **Schedule D**, Feedstock Specifications described in **Schedule A**, and do not interrupt Operators' AD Process and Delivery Schedule. Operator's efforts to mitigate a Delivery Shortfall is subordinate to its requirement to secure Twenty Thousand (20,000) tons of feedstock annually from a third-party.

- (a) Termination of this Agreement by Operator. If this Agreement is terminated by Operator pursuant to either (i) an Event of Default by Supplier, or (ii) an event of Force Majeure declared by Supplier per Section 12.9 above, Supplier shall continue to pay Operator the Fees, as adjusted, as provided in Section 4.6(a) and Section 6.3 (the "**Supplier Cover Damages**"). This Section 12.10(a) shall survive termination of this Agreement.
- (b) Termination of this Agreement by Supplier. If this Agreement is terminated by Supplier due to: (i) an Event of Default of Operator or (ii) an event of Force Majeure declared by Operator per Section 12.9 above, Supplier shall have no further liability to Operator and Operator shall be liable for Supplier's actual damages incurred in delivering its Feedstock to a Qualified Third-Party Processor ("**Operator Cover Damages**"). Operator Cover Damages shall be Supplier's actual damage measured annually, on the first anniversary date this Agreement is terminated, and each anniversary date thereafter, until the Operator Damage Cap is reached. Operator's Cover Damages shall be limited to the lesser of: (i) Supplier's actual costs, measured by the difference in the Fees paid by Supplier to Operator in accordance with this Agreement and the actual expenses of Supplier incurred for processing its Feedstock by the Qualified Third-Party Processor and (ii) the amount equal to one hundred twenty-five percent (125%) of the Fees, as adjusted, as of the date this Agreement is terminated; multiplied by Supplier's Annual Commitment. Operator's aggregate financial liability to Supplier for all damages, including Operator Cover Damages, shall not exceed the Operator Damage Cap. Supplier shall invoice Operator, within 45 days following each 12-month period following the date this Agreement is terminated, and such invoice shall describe in detail the aggregate Supplier Cover

Damages it has incurred during such period along with supporting invoices and expense reports. This Section 12.10(b) shall survive termination of this Agreement.

- (c) Upon written request by Supplier, Operator shall obtain a Payment Bond within 90 days of such request. Supplier shall pay Operator for all its costs and expenses incurred in obtaining and maintaining such Payment Bond throughout the Term.

12.11 LIMITATION OF LIABILITY. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE. THE PARTIES AGREE THAT ANY LIQUIDATED DAMAGES, DELAY DAMAGES, INDEMNIFICATION FOR THIRD-PARTY DAMAGES, OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR HEREIN, ARE NOT INTENDED BY THEM TO REPRESENT SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES.

12.12 Cumulative Rights and Remedies. The rights and remedies under this Article 12 are cumulative and not exclusive. Upon an Event of Default or termination, the non-defaulting Party shall additionally have such other and further rights as may be provided at law or in equity and such rights may be exercised in such order and combination as the non-defaulting Party may determine.

**ARTICLE 13
INSURANCE**

13.1 Operator Insurance Requirements.

Operator agrees that in order to protect itself, as well as Supplier, it will at all times during the Term have and keep in force the following insurance protection with the minimum limits specified:

- a. Commercial General Liability on an occurrence basis with contractual liability coverage:

	Limits
General Aggregate	\$3,000,000
Products-completed Operations Aggregate	\$3,000,000
Personal and Advertising Injury	\$2,000,000
Each Occurrence	\$2,000,000

- b. Vehicle Liability

	Limits
Combined single limit each occurrence coverage for bodily injury and property damage covering owned;	\$2,000,000

non-owned, and hired vehicles.

c. Worker's Compensation and Employer's Liability

Workers' Compensation	Statutory
All States Endorsement	
Employer's Liability. Bodily injury by:	
Accident - Each Accident	\$500,000
Disease - Policy Limit	\$500,000
Disease - Each Employee	\$500,000

d. Pollution Legal Liability Insurance:

Per Claim	\$1,000,000
Aggregate	\$3,000,000

Pollution Legal Liability Insurance must cover sudden accidental and non-sudden gradual occurrences. Said insurance shall include coverage for liability arising out of property damage or bodily injury to third parties in an amount not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate. The Pollution Legal Liability Insurance shall include an endorsement providing pollution liability coverage for covered vehicles. Coverage must also provide for claims arising from the discharge, dispersal release or escape of any irritant or contaminant into or upon land, any structure, the atmosphere, watercourse or body of water, including groundwater. This shall include on and off-site clean up and emergency response costs and claims arising from any disposal sites. If this policy is provided on a "claims made" basis, coverage shall be maintained for a minimum of two (2) years after the term of this Agreement. An umbrella or excess policy over primary liability insurance coverages is an acceptable method to provide the required insurance limits but only to the extent the umbrella (or excess) policy(ies) provide coverage at least as broad as the underlying primary coverages.

The above establishes minimum insurance requirements. It is the sole responsibility of Operator to determine the need for and to procure additional insurance which may be needed in connection with this Agreement.

Supplier shall not deliver any Feedstock until Operator has obtained the required insurance and filed with Supplier a properly executed Certificate of Insurance establishing compliance. The Certificate(s) must name Supplier as the certificate holder and must evidence Supplier as an additional insured on a primary and noncontributory basis with respect to coverage(s) for all operations covered under this Agreement. It is understood that Operator shall not list Supplier as an additional insured with respect to Workers' Compensation. Waiver of subrogation is required for all insurance coverages and shall be so noted on the Certificate. The Certificate shall state that the insurer will provide to Supplier thirty (30) days written notice prior to cancellation or non-renewal of any described policies. If any of the required insurance policies do not contain a 30-day notice provision, Operator agrees that upon notice of cancellation from an insurer, it shall fax or

email a copy of the cancellation notice to Supplier within five (5) business days. The Certificate must provide for ten (10) days’ notice to certificate holder for cancellation due to non-payment of premium.

Operator shall furnish to Supplier updated Certificates during the term of this Agreement as insurance policies expire. If Operator fails to furnish proof of insurance coverages, Supplier may withhold payments and/or pursue any other right or remedy allowed under contract, law, equity, and/or statute. Supplier does not waive any rights or assume any obligations by not strictly enforcing the requirements set forth in this section.

13.2 Supplier Insurance Requirements. Supplier agrees that in order to protect itself, as well as Operator it will at all times during the term of the Agreement have and keep in force the following insurance protection with the minimum limits specified:

- a. Commercial General Liability on an occurrence basis with contractual liability coverage:

	Limits
General Aggregate	\$3,000,000
Products-completed Operations Aggregate	\$3,000,000
Personal and Advertising Injury	\$2,000,000
Each Occurrence	\$2,000,000

- b. Vehicle Liability

	Limits
Combined single limit each occurrence coverage for bodily injury and property damage covering owned; non-owned, and hired vehicles. The pollution legal liability insurance shall include an endorsement providing pollution liability coverage for covered vehicles.	\$2,000,000

- c. Worker's Compensation and Employer's Liability

Workers' Compensation	Statutory
All States Endorsement	
Employer's Liability. Bodily injury by:	
Accident - Each Accident	\$500,000
Disease - Policy Limit	\$500,000
Disease - Each Employee	\$500,000

- d. Pollution Legal Liability Insurance:

Per Claim	\$1,000,000
Aggregate	\$3,000,000

Supplier shall deliver to Operator a properly executed Certificate of Insurance establishing compliance with the requirements set forth herein. The Certificate(s) must name Operator as the certificate holder and must evidence Operator as an additional insured on a primary

and noncontributory basis with respect to coverage(s) for all operations covered under this Agreement. It is understood that Supplier shall not list Operator as an additional insured with respect to Workers' Compensation. Waiver of subrogation is required for all insurance coverages and shall be so noted on the Certificate. The Certificate shall state that the insurer will provide to Operator thirty (30) days written notice prior to cancellation or non-renewal of any described policies. If any of the required insurance policies do not contain a 30-day notice provision, Supplier agrees that upon notice of cancellation from an insurer, it shall fax or email a copy of the cancellation notice to Operator within five (5) business days. The Certificate must provide for ten (10) days' notice to certificate holder for cancellation due to non-payment of premium.

Supplier shall furnish to Operator updated Certificates during the term of this Agreement as insurance policies expire. Operator does not waive any rights or assume any obligations by not strictly enforcing the requirements set forth in this section.

13.3 Non-Waiver. Notwithstanding the foregoing, other than the damages measures provided in Section 12.10 and the limitations of liability provided in Section 12.11, nothing herein shall be construed to constitute a waiver by either Party of claims, causes of action or other rights which either Party may have or hereafter acquire against the other Party for damage or injury to such damaged Party's agents, employees, invitees, property, equipment or inventory, or third-party claims against the other Party hereto for damage or injury to other persons or the property of others.

ARTICLE 14 MISCELLANEOUS

14.1 Assignment. Neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent may not be unreasonably withheld, conditioned or delayed. Operator shall provide Supplier with written notice following a change in control of Operator in a stock transaction. Notwithstanding anything herein to the contrary, Operator shall, without written notice to or consent from Supplier to the terms of any grant of a collateral interest, be permitted to grant a collateral security interest in this Agreement to Operator's lender or lenders without the consent of Supplier.

14.2 Records and Audit Rights.

Operator agrees:

- (a) To maintain records as required pursuant to Minn. Stat. §16C regarding all services provided in the performance of this Agreement and payments for the services set forth herein.
- (b) That Supplier, the State Auditor or Legislative Auditor, or any of their duly authorized representatives at any time during normal business hours, and as often as they may deem reasonable and necessary for a minimum of six years from the end

of this Agreement pursuant to Minn. Stat. §16C.05, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, and accounting procedures and practices of Operator that are relevant to its performance, and determination of the agreed upon payments under this Agreement.

14.3 Dispute Resolution.

- (a) **Dispute Notice.** The Parties shall make a diligent, good faith attempt to resolve all disputes before either Party commences litigation with respect to the subject matter of any dispute. If the representatives of the Parties are unable to resolve a dispute within Forty-five (45) days after either Party gives written notice to the other of a dispute, either Party shall, by sending a dispute notice to the other Party, submit the dispute to non-binding mediation (a “*Dispute Notice*”). If Parties are unable to resolve any portion of the claims asserted in the Dispute Notice within two (2) months following the date the Dispute Notice is given, either Party may initiate proceedings specified in Section 14.3(b) (*Governing Law; Venue*) to obtain resolution of the dispute.
- (b) **Governing Law; Venue.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Minnesota applicable to agreements made and to be performed within such State, without giving effect to any choice or conflict of law provision or rule (whether of the State of Minnesota or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Minnesota. The Parties specifically disclaim application of the United Nations Convention on Contracts for the International Sale of Goods. Each Party hereby irrevocably waives, and shall cause its subsidiaries and affiliates to waive, all right to a trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement or the transactions contemplated hereby. All actions at law or in equity brought by either Party arising out of or in connection with this Agreement shall be brought exclusively in the state or federal courts located in Ramsey County, Minnesota, and the Parties hereby waive any provision of law providing for a change of venue in such proceedings to any other jurisdiction.
- (c) **Continuation of Performance.** Unless otherwise agreed in writing or as set forth in this Agreement, the Parties shall each continue to perform their respective obligations hereunder during any proceeding by the Parties in accordance with this Section.

14.4 Inurement. This Agreement will inure to the benefit of and be binding upon the respective successors and permitted assigns of the Parties, and Operator shall cause the same to be assumed by and to be binding upon any successor owner or operator of the Plant.

14.5 Entire Agreement. This Agreement together with the agreements referred to herein as executed pursuant hereto, including, but not limited to, any confidentiality agreements previously executed by the Parties, constitute the entire agreement between the Parties with respect to the subject matter contained herein and any and all previous agreements, written or oral, express or implied, between the Parties or on their behalf relating to the matters contained herein shall be given no effect.

- 14.6 Amendments.** There will be no modification of the terms and provisions hereof except by the mutual agreement in writing signed by the Parties. Any attempt to so modify this Agreement in the absence of such writing signed by the Parties shall be considered void and of no effect.
- 14.7 Furnishing of Information and Further Action.** The Parties will, upon request, provide such additional information and take or obtain such further action as may be reasonably required to allow the Parties to efficiently and effectively carry out their respective obligations hereunder and to determine and enforce individual or collective rights under this Agreement.
- 14.8 Faithful Performance and Good Faith.** The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement, (a) when this Agreement specifically references the consent, approval, or similar action by a Party, then unless another standard is expressly specified in this Agreement, such consent or approval shall not be unreasonably withheld, conditioned or delayed, and (b) all determinations, requirements, specifications or similar actions shall be Commercially Reasonable.
- 14.9 Relationship.** The relationship of Supplier and Operator established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed to give either Party the power to unilaterally direct and control the day-to-day activities of the other or to be considered an agent of the other; to constitute the Parties as partners, joint venturers, co-owners or otherwise; or to allow either Party to create or assume any obligation on behalf of the other Party for any purpose whatsoever. Except as otherwise provided herein, nothing contained in this Agreement shall be construed as conferring any right or benefit on a person not a Party to this Agreement.
- 14.10 Notice Addresses.** All demands, notices, communications, and reports provided for in this Agreement will be in writing and will be sent by electronic mail, personally delivered, or sent by reputable overnight courier service (delivery charges prepaid), or by registered or certified mail, postage prepaid, return receipt requested, to any party at the address specified below, or at such address, to the attention of such other Person, and with such other copy, as the recipient party has specified by prior written notice to the sending party pursuant to the provisions of this Section 14.10. All notices, demands, and other communications hereunder may be given by any other means (including electronic mail), but will not be deemed to have been duly given unless and until it is actually received by the intended recipient; *provided, however,* that notice given by electronic mail will be deemed to have been given when sent so long as no electronic notice is delivered to the sending party indicating that the electronic mail could not be delivered.

Supplier Contact:

Sam Holl
Facility Manager
Ramsey/Washington Recycling and Energy
100 Red Rock Road
Newport, MN 55055

Operator Contact:

Bill Keegan
Dem-Con HZI BioEnergy, LLC
13020 Dem-Con Drive
Shakopee, MN 55379

Where this Agreement indicates that notice or information may be provided electronically or by email, such notice or information shall be deemed provided if sent to the email address for such party indicated above and shall be effective as of the date sent if sent prior to 5:00 p.m. Central Time on a Business Day, otherwise effective as of the next Business Day. Either Party may give notice to the other Party (in the manner herein provided) of a change in its address for notice. Any notice or other written matter shall be deemed to have been given and received: if delivered by hand, certified mail or delivery service on the date of delivery or the date delivery is refused; and, if sent by fax before or during normal business hours, on the Business Day of the sending of the notice and the machine-generated evidence of receipt or if after normal business hours, on the Business Day following the sending of the notice and the machine generated evidence of receipt.

14.11 Costs to be Borne by Each Party. Operator and Supplier shall each pay their own costs and expenses incurred in the negotiation, preparation and execution of this Agreement and of all documents referred to herein.

14.12 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Signatures to this Agreement executed and/or transmitted electronic signature process with the U.S. federal ESIGN Act of 2000 (e.g., DocuSign), by facsimile transmission, by email in “portable document format” (.pdf) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing the original signature.

14.13 Severability. Any provision of this Agreement which is or becomes prohibited or unenforceable in any jurisdiction shall not invalidate or impair the remaining provisions of this Agreement, and the remaining terms of this Agreement shall be amended so as to most closely conform to the original intent of the Agreement without the offending provision, and as so amended shall continue in full force and effect.

14.14 Headings. The Article and Section headings used herein are for convenience and are not for interpretation.

14.15 Waiver. No delay or omission in the exercise of any right, power or remedy hereunder shall impair such right, power or remedy or be construed to be a waiver of any default or acquiescence therein.

14.16 Incorporation of Exhibits/Schedules. The Exhibits and Schedules attached hereto form an integral part of this Agreement and are hereby incorporated herein by reference.

14.17 Interpretation.

- (a) This Agreement shall not be interpreted against the Party drafting or causing the drafting of this Agreement. All Parties hereto have participated in the preparation of this Agreement.
- (b) Capitalized terms listed in this Agreement shall have the meanings set forth in Article 1 - Definitions or as otherwise defined in this Agreement, whether in the singular or the plural or in the present or past tense. Words not otherwise defined in this Agreement shall (i) have meanings as commonly used in the English language, (ii) be given their generally accepted meaning consistent with Prudent Operator Practices, and (iii) be given their well-known and generally accepted technical or trade meanings.
- (c) The following rules of interpretation shall apply: (1) The masculine shall include the feminine and neuter; (2) references to “Articles,” “Sections” or “Schedules” shall be to articles, sections, or schedules of this Agreement except as the context may otherwise require; (3) all Schedules are incorporated into this Agreement (*provided, however, that in the event of a conflict with the terms of this Agreement, the Agreement shall control*); and (4) use of the words “include” or “including” or similar words shall be interpreted as “include without limitation” or “including, without limitation.”

14.18 Nondiscrimination and Compliance with Law.

- (a) During the performance of this Agreement, Operator agrees to comply with the provisions of Minn. Stat. §181.59, specifically Operator agrees:
 - (1) that, in the hiring of common or skilled labor for the performance of any work under this Agreement, or any subcontract, no contractor, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates;
 - (2) that no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work on account of race, creed, or color;
 - (3) that a violation of these provisions is a misdemeanor; and
 - (4) that this Agreement may be canceled or terminated by Supplier, and all money due, or to become due under the Agreement, may be forfeited for a second or any subsequent violation of these provisions.
- (b) Operator agrees to comply with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 and not discriminate on the basis of disability in the admission or access to, or treatment of employment in its services, programs, or activities. Operator agrees to hold harmless and indemnify Supplier from costs, including but not limited to

damages, reasonable attorney's fees, and staff time, in any action or proceeding brought alleging a violation of ADA and/or Section 504 caused by Operator.

14.19 Contractor Debarment, Suspension, and Responsibility.

Federal Regulation 45 CFR 92.35 prohibits Supplier from purchasing goods or services with federal money from contractors who have been suspended or debarred by the federal government. Similarly, Minn. Stat. §16C.03, subd. 2(3) provides the Commissioner of Administration with the authority to debar and suspend contractors who seek to contract with Supplier. Contractors may be suspended or debarred when it is determined through a duly authorized hearing process that they have abused the public trust in a serious manner.

14.20 Firearms Prohibited.

Unless specifically required by the terms of this Agreement, no provider of services pursuant to this Agreement, including but not limited to employees, agents or subcontractors of Operator shall carry or possess a firearm on Supplier's premises or while acting on behalf of Supplier pursuant to the terms of this Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement by their respective proper signing officers as of the Effective Date.

[Signature pages follow]

OPERATOR:

Dem-Con HZI Bioenergy, LLC

By: _____

Printed Name: _____

Title: _____

Date: _____

SUPPLIER:

Ramsey/Washington Recycling & Energy Board

By: _____

Printed Name: Fran Miron

Title: Chair

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
Robert Roche
Assistant Ramsey County Attorney

By: _____
John Ristad
Assistant Washington County Attorney

Schedule A Feedstock Specifications¹

1. Feedstock

Supplier will supply the Operator with Feedstock which consists of OFS in DCBs, and ORM recovered from mixed municipal solid waste (MMSW).

2. Contaminants in Feedstock

The OFS shall not contain substances that cause the compost end products to not be in compliance with the requirements of Minnesota Rule specifications for compost and Applicable Laws. The ORM shall not contain any substances that cause the biochar end product to exceed the International Biochar Initiative (IBI) specifications for biochar. The Feedstock shall not contain substances that cause the compost, biochar or other Products to exceed the United States Environmental Protection Agency (EPA) or Minnesota hazardous waste standards. Operator shall have the burden of proof to demonstrate that failure of Products to meet such standards were due to Supplier's feedstock and Supplier shall not be responsible for any Products that fail to meet such standards due to feedstock derived from other suppliers to Operator's Plant.

3. Process Damaging Substances

The Feedstock shall be free of process damaging substances, which may inhibit or stop the biological processes during digestion, including, but not restricted to pesticides, medical drugs (including all types of antibiotics), or solvents that individually or collectively inhibit or stop the biological processes during digestion. If such substances are present in the Feedstock all performance and process guarantees are void and the load will be rejected. Operator shall have the burden of proof to demonstrate such failure is due to Supplier's feedstock and Supplier shall not be responsible for failure to meet such standards due to feedstock derived from other suppliers to Operator's Plant.

4. Feedstock Characteristics

The design and process calculations, related to the Kompogas® Anaerobic Digestion, are based on the characteristics of the Feedstock delivered to the plant and ultimately fed (after pre-treatment) into the Kompogas® Anaerobic Digester. Feedstock loads not in compliance with the limiting values listed in Tables below are subject to rejection and/or additional charges.

¹ Sample collection methods and analysis protocols to be mutually agreed upon by the Parties.

TABLE A-1: Organic Waste Characteristics for Feedstock

Parameter	Limiting Value	
	Min	Max
Total Solids [%TS of OM by weight]	25%	90%
Volatile Solids [%TS by weight]	50%	100%
Biogas Yield [NI of biogas per kg]	150	
pH-value [-]	2.0	12.5
Content of impurities in OFS [% by volume] ¹	0%	5%
Content of impurities in ORM [% by weight] ¹	0%	30%
Particle dimensions, excluding length of long pieces [inches]	0	2.5
Long Pieces length [inches] ²	0	8
Content of Long Pieces [Volume% of OM] ²	0	10

¹ Impurities has the meaning provided for in Section 1.39 of this Agreement.

² Long pieces per length limits defined in this table.

5. Heavy Metals

Heavy metals present in the Feedstock will be present in the end products produced regardless of digestion process (i.e. high solids, low solids, etc.), pyrolysis, gasification, mechanical screening/processing, etc. There are standards set by the EPA, the State of Minnesota, and the IBI for the heavy metals content of the end products. Based on these limitations, the following table was developed which provides the maximum heavy metals content in the Feedstock being delivered to the facility.

TABLE A-2: Feedstock Acceptance Levels – Heavy Metals

Parameter	Feedstock Limiting Value
	Not To Exceed (mg/kg)*
Arsenic (As)	1.06
Cadmium (Cd)	3.90
Chromium (Cr)	111.29
Cobalt (Co)	28.72
Copper (Cu)	124.95
Lead (Pb)	29.47
Mercury (Hg)	5.00
Molybdenum (Mo)	1.80
Nickel (Ni)	42.00
Selenium (Se)	4.52
PCB	0.60
Zinc (Zn)	280.00

*These Feedstock Limiting Value Not To Exceed numbers were set based on using the more conservative of the EPA biosolids land application rates, IBI standards, and MPCA Class I compost standards and a concentration factor of 10.

Schedule B Development Milestones

The following schedule of Plant milestones is based on the current understanding of the proposed project, material supply chains, and estimated state and local permitting. Supplier and Operator use Commercially Reasonable efforts to collaborate to expedite the permitting and approval process.

<u>Description</u>	<u>Date of Completion</u>
Agreement Execution	August 2023
Grant Procurement	August 2024
Secure Offtake Agreements or Letters of Intent	August 2024
Local Permitting	August 2024
State Permitting	September 2024
Site Preparation	2 months after confirming Minimum Pricing
Foundation	3 months after confirming Minimum Pricing
Building Construction	6 months after confirming Minimum Pricing
HZI Equipment Installation	24 months after Confirming Minimum Pricing
AD Commencement Target Date	December 31, 2026

Schedule C
REVENUE/COST SHARE SCHEDULE

1. Renewable Natural Gas (RNG) and Biochar:

- (a) The initial RNG sales price rate shall consist of the RNG sales prices in contracts or letters of intent obtained by Operator for the Plant, including all Environmental Attributes and all other sources of Revenue to be paid to Operator under its initial RNG sales contracts or letters of intent, for a total blended sale price rate measured in dollars and cents per MMBtu (“**Initial RNG Rate**”). Similarly, the initial Biochar sales price rate shall consist of the Biochar sales prices in contracts or letters of intent obtained by Operator for the Plant, including all Environmental Attributes and all other sources of Revenue to be paid to Operator under its initial Biochar sales contracts or letters of intent, for a total blended sale price rate measured in dollars and cents per ton (“**Initial Biochar Rate**”).
- (b) The Initial RNG Rate and Initial Biochar Rate shall be provided to Supplier in writing at the time Minimum Pricing is confirmed pursuant to Section 3.2(a) of this Agreement.
- (c) During the Term of this Agreement, Operator will use Commercially Reasonable efforts to obtain the highest rates for the sale of RNG, Biochar, and/or Environmental Attributes based on the available markets, with a risk profile acceptable to both Parties. The Parties agree that Operator will initially use Commercially Reasonable efforts to sell Fifty percent (50%) of the Plant’s RNG through contracts less than Five (5) years, and Fifty Percent (50%) through longer term contracts of Ten (10) years or less, with the condition that such contracts and contract profile will support the Operator’s financing of the Plant and its operations. Prior to entering into any letters of intent or contracts for the sale of RNG, Biochar, and/or Environmental Attributes, Operator shall consult with Supplier by providing in writing the proposed terms and conditions that are pertinent to the Revenue and cost sharing provisions of this Schedule C and shall allow Supplier five (5) business days to provide written comments to Operator on such proposed terms and conditions. For avoidance of doubt, Operator shall have the sole authority and discretion to enter into agreements for the sale of Products with terms and conditions acceptable to Operator in its sole discretion. The final terms and conditions pertinent to the Revenue and cost sharing provisions of this Schedule C in Operator’s letters of intent and contracts for sale of RNG, Biochar, and/or Environmental Attributes shall be subject to the audit rights provided in Section 14.2 of this Agreement.
- (d) There will be no revenue or risk share at the Initial RNG and Biochar Rates. Thereafter, Eighty Percent (80%) of any Revenue obtained by Operator through the actual sale of RNG above the Initial RNG Rate on a dollars and cents per MMBtu basis, and through the sale of Biochar above the Initial Biochar Rate on a dollars and cents per ton basis, shall be credited to Supplier on a monthly basis according to the pro rata share of RNG sales (measured as MMBtu’s sold) and Biochar sales (measured as tons sold) that are attributable to Supplier’s pro rata share of the overall

amount of Feedstock supplied to the Plant (the “*RNG and Biochar Revenue Share*”). Similarly, eighty percent (80%) of any Revenue reduction incurred by Operator through sale of RNG below the Initial RNG Rate on a per MMBtu basis, and the sale of Biochar below the Initial Biochar Rate on a per ton basis, shall be charged to Supplier on a monthly basis according to the pro rata share of RNG sales (measured as MMBtu’s sold) and Biochar sales (measured as tons) that are attributable to Supplier’s pro rata share of the overall amount of Feedstock supplied to the Plant (the “*RNG and Biochar Cost Share*”). For the avoidance of doubt, the Parties acknowledge that the Revenue obtained from initial actual sales of RNG and Biochar may be at rates that are different from the Initial RNG and Biochar Rates.

- (e) Supplier’s pro rata share shall be equal to the total tons of Supplier Feedstock (including Feedstock that Supplier may secure from third parties to mitigate a Delivery Shortfall) divided by the total tons of Feedstock digested at the Plant as determined on a monthly basis. For avoidance of doubt, any feedstock secured by Operator to mitigate any Delivery Shortfall shall not be included in Supplier’s pro rata share of Revenue.
- (f) Following is an example calculation for RNG and Biochar revenue and cost sharing:
 - i Supplier delivers 50,000 tons of the 70,000 tons processed annually at the Plant. Supplier’s pro rata share would be 71% ($50,000/70,000 \times 100 = 71\%$).
 - ii If the monthly RNG sales rate increases or decreases \$5/MMBtu from the Initial RNG Rate and the total product produced is 2,000 MMBtu in a month, then the total monthly adjustment generated from RNG sales compared to the Initial RNG Rate the for a given month is \$10,000 ($\$5 \times 2,000 = \$10,000$).
 - iii The Revenue share to Supplier would be \$5,680 for that month [$(\$10,000 \times 71\%) \times 80\% = \$5,680$]. Operator would credit Supplier that amount. If it is a \$5/MMBtu decrease, then Operator would invoice Supplier that amount.
 - iv For the avoidance of doubt, separate calculations will be made for Biochar and RNG on a monthly basis any time the RNG or Biochar sales rate is different than the Initial RNG/ Biochar Rate.

2. Revenue Share of New Technologies Benefits.

If the Plant is adapted to no longer produce RNG and/or Biochar, or to reduce the production of RNG and/or Biochar, to produce any other Products resulting from new technological developments, an updated revenue sharing agreement will be negotiated by the Parties at such time.

**Schedule D
Supplied Quantities²**

OFS & ORM Minimum Annual Tonnage							
Year	OFS TYP Commitment Minimum	OFS TYP Commitment Maximum	ORM	Daily Minimum	Daily Maximum	Annual Commitment Minimum	Annual Commitment
2026 ³	16,244	18,720	20,000	110	190	36,224	38,720
2027	22,786	26,292	20,000	140	220	42,786	46,292
2028	26,634	30,000	20,000	150	230	46,634	50,000
2029 through duration of Term	30,000	30,000	20,000	150	230	50,000	50,000

² Delivery minimum and maximum is based on an assumption of 262 days per year that the Plant will be open to accept Delivery.

³ To be adjusted for first calendar year after AD Commencement Date.

Schedule 1.8

Permits

1. Environmental Assessment Worksheet with MPCA.
2. MPCA solid waste permit, if required
3. MPCA air permit
4. Local zoning permit (Conditional Use Permit)
5. MPCA industrial stormwater and construction stormwater permits
6. Wastewater discharge permit
7. Building permit
8. Scott County solid waste license
9. Additional permits to be obtained by the third parties providing engineering, procurement and construction services and interconnection services.

MEMORANDUM

Date: September 1, 2023

To: Ramsey/Washington Recycling & Energy Board

From: Kevin D. Johnson, Partner
Kevin.Johnson@huschblackwell.com

Sara Bergan, Partner
Sara.Bergan@huschblackwell.com

Re: **Summary and Analysis of Proposed Feedstock Supply Agreement with Dem-Con HZI Bioenergy LLC**

1. Introduction & Overview

At the March 1, 2023 meeting of the Ramsey/Washington Recycling & Energy Board (“R&E”) we presented an analysis memorandum regarding the key provisions and risks associated with the Letter of Intent for an organic material feedstock supply agreement (“LOI Memo”) between R&E and a joint venture now established as Dem-Con HZI Bioenergy, LLC (“DC/HZI”), under which DC/HZI would finance, design, construct, own and operate a 70,000 ton per year anaerobic digestion and biochar production facility (“Plant”) in Shakopee, MN to which R&E would supply 50,000 tons per year of feedstock. The LOI Memo is attached as Attachment A for reference. Since the LOI was approved by the Board, the Parties have been negotiating the terms of a final organic material Feedstock Supply Agreement (“Agreement”) based on the executed LOI. This memorandum summarizes the proposed Agreement that R&E staff is now bringing to the Board for approval.

The Agreement details the terms upon which R&E (as “Supplier”) will deliver organic material feedstock to DC/HZI (as “Operator”) to process the feedstock into renewable natural gas (“RNG”) and a digestate material through the anaerobic digestion process, with the digestate then being processed into a biochar product (“Biochar”) through either a pyrolysis or gasification process. So long as Supplier’s feedstock meets specifications, Operator covenants that the resulting end products from the Plant will enable Supplier’s feedstock to count toward the Recycling Goals of Ramsey and Washington Counties.

The LOI had envisioned that pyrolysis would be the technology used to produce Biochar from the digestate. However, during the Agreement negotiations DC/HZI requested that gasification be

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added as another optional technology to produce Biochar due to potential permitting delays for pyrolysis as well as potential cost saving advantages for gasification. Thus, the Agreement provides for either technology to be used to produce Biochar product.

The Agreement provides for a pre-operation development phase of three to four years (“Pre-AD Term”) under which Operator undertakes certain actions related to permitting, financing, development, construction and testing of the Plant in order to cause the Plant to reach commercial operation (“Commencement Date”). The operational phase of the Agreement (“AD Term”) is 20 years, with two potential 5-year renewal terms upon mutual agreement. During the AD Term, Supplier is obligated to deliver organic food scraps (“OFS,” which are the food scrap bags collected through the Food Scraps Pickup program) and organic rich material (“ORM,” which is the organic material separated from mixed municipal solid waste delivered to the R&E Center in Newport) in increasing annual commitment amounts, subject to certain routine daily minimums and maximums and to feedstock quality specifications set forth in the Agreement. The target date for AD Commencement is the end of 2026 with an “Outside Commencement Date” of December 31, 2027, after which either Party can terminate the Agreement without further obligation if it has not been met.

In order to facilitate a stable revenue stream necessary for financing the estimated \$100 million capital cost of the Plant, the Agreement is structured largely as a “put or pay” contract whereby Supplier is responsible for a required amount of feedstock delivery and payments to Operator of the associated Fees for handling the material. Except for certain limited exceptions that are described in greater detail below, Supplier is expected to pay the monthly portion of the annual fees as a “Levelized Monthly Payment,” whether the feedstock is delivered or not. Supplier is responsible for additional liquidated damages (25% of the then current Fees) on any actual feedstock Delivery Shortfall below the Annual Commitment and Operator is responsible for liquidated damages (\$1000 per week) associated with its failure to accept feedstock committed to the Plant.

2. Pre-AD Term

There will be a period of time (three to four years) before the Plant Commencement during which the food scraps (“OFS”) will be composted at the Shakopee Mdewakanton Sioux Community (“SMSC”) composting facility in Shakopee. The LOI contemplated a contract between the SMSC and DC/HZI with R&E paying for the services at certain rates. After further discussion the Parties agreed that it would be more efficient for R&E to directly contract with SMSC during the Pre-AD Term at the same prices as provided in the LOI, and R&E staff are currently completing the contracting process with SMSC.

Before the end of the first year of the Pre-AD Term, Operator is to have confirmed certain initial pricing conditions, and Supplier has a right to terminate the Agreement if the initial pricing conditions are not confirmed. Operator must confirm an initial Fee for OFS of \$107 per ton, and an initial Fee for ORM of \$115 per ton. These initial Fees are the same as those in the LOI. If Operator cannot satisfy this condition within twelve (12) months of the effective date of the Agreement, Supplier will have the option, but not the requirement, to terminate the Agreement

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without penalty. If the condition is satisfied, the Parties would be bound to proceed under the terms of the Agreement and such Fees will increase on an annual basis, based upon the annual Consumer Price Index percentage increase from the prior year.

The Parties agree that grant funds may be available to help achieve the initial pricing. If the grant funds exceed what is necessary to deliver the initial pricing, Operator has agreed to use any remaining grant funds to reduce Supplier's Fees for managing the feedstock during the AD Term.

During the Pre-AD phase, Operator is expected to meet certain permitting and construction milestones and give Supplier regular monthly reports on its progress. If Operator misses the Commencement Target Date, it must pay Supplier's costs for continuing to dispose of the ORM instead of having it processed at the Plant.

3. AD Term

The Feedstock to be delivered must meet certain characteristics, deemed the Feedstock Specifications. These specifications are set forth in detail on Schedule A of the Agreement and are consistent with those set out in the LOI.

Schedule D of the Agreement sets forth the Annual Commitment amounts, including the annual and daily delivery maximum and minimums. The Annual ORM commitment is 20,000 tons throughout, with an option to deliver up to 2000 tons per year additional ORM. The OFS amounts increase over time until 30,000 tons per year is achieved. Although modified slightly, the delivery requirements are consistent with those in the LOI. The Parties are to jointly develop a monthly delivery schedule that will serve as a formal planning tool for delivery logistics. Each Party designates a logistics individual, and the Agreement anticipates that the Parties will need to be flexible and work together on logistics and delivery adjustments throughout the AD Term.

4. Invoicing and Payments

Supplier is to make Levelized Monthly Payments based on the monthly pro-rata portion of the Fees associated with the feedstock delivery Annual Commitment. Operator's monthly invoices will track Supplier's progress toward the Annual Commitment.

If Supplier fails to meet its Annual Commitment and such failure is not due to Operator failure to accept and has not been mitigated with third-party feedstock deliveries, Supplier will pay Operator an additional 25% of the Fees associated with the "Delivery Shortfall" amount.

Conversely if Operator fails to accept delivery of 80% of the Annual Commitment (as adjusted to a weekly basis), Operator will pay Supplier \$1,000 per week. Operator shall also reimburse Supplier for Levelized Monthly Fee payments made for tons not accepted.

There is also a Pricing Limit (most favored nation) provision under which Operator commits to not provide a lower priced fee to any other public entity that is delivering similar organic material

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that has the same or higher average contamination as Supplier's Feedstock. The Pricing Limit does not apply if Supplier is not meeting its Annual Commitment Minimum amount. The Pricing Limit provision is consistent with the LOI.

5. Revenue/Cost Sharing

The Parties have also agreed to a revenue and cost sharing arrangement. At the time the initial Fee pricing is confirmed as described above, Operator will also share its initial RNG and Biochar (inclusive of all environmental attributes that enhance the value of the products) sales prices (the "Initial Rates") to set the baseline for future revenue and risk sharing. Operator is entitled to all revenue based on the Initial Rates but future increases above the Initial Rates are subject to a revenue sharing arrangement whereby Supplier is entitled to 80% of the additional revenue above the Initial Rates. Likewise, if revenue decreases below the Initial Rates, Supplier is responsible for 80% of such reduction below the Initial Rates.

The revenue/cost sharing arrangement was a major component of the negotiation of the Agreement and the details are somewhat different than as envisioned in the LOI. However, the overall goals and basic economic framework of the arrangement remain true to the intent of the LOI.

6. Force Majeure

The LOI did not outline details on how to address Force Majeure (acts of God such as floods, explosions, and other uncontrollable events). The Parties agreed that an event of Force Majeure affecting Supplier shall only relieve Supplier's obligation to deliver feedstock but shall not relieve Supplier's obligation to pay the Fees. However, Supplier will not be obligated to pay Fees during the pendency of an Operator Force Majeure event prohibiting deliveries. Both Parties must mitigate the effects of the Force Majeure event. If an event of Force Majeure is continuing for one year, either Party shall have the right to terminate the agreement upon 60-days written notice. The Party declaring Force Majeure, however, can toll (delay) the other Party's right to terminate for up to three (3) years from the first anniversary date of the Force Majeure (4 years total) by continuing to pay the Fees and associated liquidated damages for the shortfalls. In the event the event the Plant is not capable of accepting Supplier's feedstock at the expiration of the 4-year Force Majeure period, or the Party declaring Force Majeure fails to pay, the Agreement automatically terminates.

7. Default, Termination and Damages

The consequences of events of default, mitigation, damages, and certain options for early termination of the Agreement were not fully detailed in the LOI and have since been heavily negotiated between the Parties. In addition to customary events of default, failure by Supplier to deliver the Annual Commitment during any Contract Year (that is not due to Operator's failure to accept) shall be an event of default unless Supplier remains current on payment of its Fees and liquidated damages. If Supplier has not delivered its Annual Commitment for 4 consecutive Contract Years, Operator may terminate the agreement. There is a mirroring event of default and termination provision for Operator's failure to accept the Annual Commitment.

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In the case of termination of the Agreement by Operator for Supplier default or extended Force Majeure, Supplier must continue to pay the Operator the Fees and liquidated damages under the Agreement for the remainder of the Term, but the Parties are required to mitigate the damages and Supplier's payment obligations are only on the actual Delivery Shortfall or any difference in the Fees paid for mitigation or "cover" tons of feedstock. In the case of termination of the Agreement by Supplier for Operator default or extended Force Majeure, Operator is liable for Supplier's actual damages incurred in delivering its feedstock to another organic material facility (which must be located in the 5-state Upper Midwest area). Operator's liability to Supplier is subject to an annual limitation of 125% of the annual Fees that would have been paid under the Agreement and an aggregate cap of \$5 million. Supplier can also at any time during the Agreement require the Operator to obtain a payment bond in support of this \$5 million obligation, with the cost of obtaining and maintaining such bond at Supplier's cost.

8. Key Potential Risks and Benefits

The key potential risks of the Agreement are essentially the same as those discussed in the attached LOI Memo, with the primary risk related to the "put or pay" arrangement with the possible inability of R&E to supply the required feedstock amounts that meet the specifications, but still being required to pay Fees and liquidated damages for undelivered feedstock. Another key risk is that the revenue/cost sharing arrangement does not prove fruitful over time and R&E must bear the additional cost of decreased value in the RNG and Biochar markets. A third key risk is the possibility that DC/HZI cannot confirm the initial pricing of the Fees or cannot fully develop the Plant and commence operations by the Outside Commencement Date, in which case the Agreement could terminate, and R&E will have lost significant time in obtaining valuable recycling capacity for its organic feedstock material.

Conversely, the key potential benefits of the Agreement are a long-term public/private partnership arrangement involving R&E, DC/HZI, and SMSC that results in 50,000 tons of organic material generated in the East Metro being recycled into new products that serve to help Ramsey and Washington Counties meet their Recycling Goals, reduce greenhouse gas emissions, and further reduce reliance on landfills.

ATTACHMENT A

MEMORANDUM

Date: February 22, 2023

To: Ramsey/Washington Recycling & Energy Board

From: Kevin D. Johnson, Partner
Kevin.Johnson@huschblackwell.com

Re: **Analysis of Proposed Letter of Intent with Dem-Con/Hitachi Zosen Inova**

I. Introduction

The purpose of this memo is to provide an overview and risk analysis of the key provisions of the proposed Letter of Intent (LOI) for a twenty (20) year organic material supply agreement (OM Agreement) with a joint venture consisting of Dem-Con Companies, LLC and Hitachi Zosen Inova USA LLC (DC/HZI). The LOI has been proposed by Ramsey/Washington Recycling & Energy Board (R&E) staff for approval by the R&E Board.

First, it is important to note that the LOI is not a binding agreement between R&E and DC/HZI. Although certain provisions specifically identified in the LOI related to the negotiation process are binding, the LOI instead provides a non-binding outline of the key provisions to be embodied in an OM Agreement to be negotiated after approval of the LOI. There will not be a final OM Agreement unless and until both parties execute that agreement.

A key feature of the LOI is that it does provide an exclusive period to negotiate with just DC/HZI for a final OM Agreement. R&E has conducted an extensive request for proposal process that resulted in direct negotiations with two potential anaerobic digestion project developers. By executing this LOI, R&E will have decided to exclusively negotiate a final agreement with DC/HZI until an agreement is reached, or the end of a 60-day negotiation period, whichever is sooner. The 60-day negotiation period could be extended of both parties so agree.

II. Overview of Key Provisions of Proposed Transaction

The LOI has two basic time periods correlating to R&E's delivery of organic materials in conjunction with DC/HZI's development of an anaerobic digestion facility (AD Facility), which is to be located at the current Dem-Con recycling and solid waste management facility in Shakopee, Minnesota.

R&E will be producing increasing amounts of organic food scrap (OFS) material from its new food scrap bag (FSB) collection program over the next several years, and the LOI sets out a four-year period beginning this year in which OFS material will be composted. In addition, R&E will later this year begin producing organic-rich material (ORM) at the Recycling & Energy Center (R&E Center) from the new processing line that was recently installed. However, the ORM material will only be suitable for the AD Facility, which is not projected to begin operations until 2026.

The LOI establishes an interim period under which the OFS will be addressed via composting at the Shakopee Mdewakanton Sioux Community (SMSC) composting facility pursuant to an arrangement between DC/HZI and SMSC. The fee to be paid by R&E for composting of the OFS is set out in the LOI for the interim period, beginning at Seventy Dollars (\$70.00) per ton in 2023 and escalating to Seventy-Four Dollars and Fifteen Cents (\$74.15) per ton in 2026.

A. Condition Precedent

It is extremely important to note that before any obligations are imposed on R&E, DC/HZI must first meet a condition precedent within twelve months from the effective date of the OM Agreement to certify to R&E an initial per-ton fee for OFS at the AD Facility of One Hundred and Seven Dollars (\$107.00) per ton, and an initial per ton fee for ORM of One Hundred and Fifteen Dollars (\$115.00) per ton at the AD Facility. The OFS and ORM fees blended are called the OM Fee. If DC/HZI cannot satisfy this condition within twelve (12) months of the effective date of the OM Agreement, R&E will have the option, but not the requirement, to terminate the OM Agreement without penalty. If DC/HZI satisfies the condition, R&E would be bound to proceed under the terms of the agreement.

B. Annual Minimum Deliveries

The second key period of the LOI is the AD Term, which begins when DC/HZI has commissioned its AD Facility and is ready to receive OFS and ORM from R&E. The ORM material will need to be landfilled until the time at which DC/HZI can accept it at the AD Facility.

Assuming the condition precedent on pricing can be met by DC/HZI within the 12-month time frame, R&E would then become obligated to meet delivery obligations for both OFS and ORM. The LOI provides a schedule for annual minimum amounts to be delivered upon commencement of the AD Facility, beginning in 2026 at 38,720 tons total combined OFS and ORM and ramping up to 50,000 tons in 2028, at which point the annual minimum amount would remain at 50,000 tons per year.

C. Delay in AD Facility Commencement

The OM Agreement will establish permitting, construction, and commissioning deadlines that are preliminarily outlined in the LOI. DC/HZI will provide semi-annual status reports to R&E on development of the AD Facility until the AD commencement date. If a status report indicates delays in the schedule attributable solely to DC/HZI, or that the AD commencement date cannot be met beyond a commercially reasonable extension period, R&E will receive compensation for the delays, including any increased costs incurred by R&E resulting from such delays, and a fee for unavailable processing capacity.

D. OM Specifications

The material to be delivered must meet certain characteristics, deemed OM Specifications. The LOI sets out the specifications for both OFS and ORM. OFS must not exceed five percent (5%) contamination, and the ORM must not exceed thirty percent (30%) contamination. There are more detailed standards for heavy metals, as well as other contamination limits.

E. Performance Standards

DC/HZI must meet certain performance standards, including producing pipeline quality renewable natural gas (RNG), compost material (CM), as well as biochar (BC) material. DC/HZI will utilize pyrolysis technology to produce BC material from the digestate material resulting from the AD process. Class I or II CM will also be allowed as an end product, so long as it can meet the recycling goals established under Minnesota law for Ramsey and Washington Counties. DC/HZI is planning to utilize pyrolysis to mitigate potential PFAS contamination and to enhance the marketability of the digestate material from the AD process. DC/HZI commits to not using any OM as landfill cover or landfilling of OM, so long as the R&E meets the OM specifications. Regarding the OFS bags, DC/HZI will manage and recover them via the AD and pyrolysis processes. DC/HZI commits that only a small amount of bag material would be included in the residual, primarily from the composting process. DC/HZI also commits to annual monitoring and reporting on greenhouse gas emissions reductions achieved through use of the OM from R&E.

F. Payments and Revenue/Cost Sharing

The LOI sets out a somewhat complex structure for R&E payments to DC/HZI. As noted previously, the initial payments will be for composting of the OFS material under a predetermined schedule. However, assuming the initial OM fees can be met under the condition precedent, such fees will begin to escalate at that time on an annual basis, based upon the annual Consumer Price Index percentage increase from the prior year.

In addition, the OM Fee will be adjusted monthly based upon a revenue/cost sharing formula established in the LOI, to be further developed as part of the OM Agreement. The revenue/cost sharing will occur for both RNG and BC. For RNG, there will be an initial RNG rate established

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upon DC/HZI meeting the condition precedent. Then, during the AD Term every One Dollar (\$1.00) increase in the initial RNG rate shall yield a One Dollar and Seventy Cents (\$1.70) reduction in the OM Fee. Similarly, every One Dollar (\$1.00) decrease in the RNG rate below the initial rate shall yield a One Dollar Seventy Cents (\$1.70) increase in the OM Fee.

For BC, any revenue obtained by DC/HZI through the sale of BC will be shared with R&E such that every Five Dollars (\$5.00) per ton in revenue above One Hundred and Thirty Dollars (\$130.00) per ton in BC revenue shall reduce the OM Fee by an estimated One Dollar (\$1.00) per ton. Similarly, every Five Dollars (\$5.00) per ton decrease in revenue below \$130 per ton, shall increase the OM Fee by an estimated One Dollar (\$1.00) per ton.

The revenue/cost sharing schedule also anticipates that if the AD Facility is adapted to produce hydrogen, or any other product resulting from new technological developments, the OM fee will be adapted to share revenue via a reduction in the OM fee to be negotiated by the parties at the time the Facility is adapted to produce such products.

G. Pricing Limit

With regard to the OM Fee, there is also a pricing limit (most favored nation) provision under which DC/HZI commits to not provide a lower priced OM Fee to any other public entity, as defined in the Minnesota Statutes, that is delivering similar organic material that has the same or higher average contamination as material supplied by R&E. However, if R&E is not meeting its low range annual minimum amounts, DC/HZI will not be bound by the pricing limit and may enter into contracts with any public entity supplier at OM fees less than R&E's while R&E is not meeting its lower range annual minimums.

H. Delivery Shortfall

If R&E fails to deliver the annual minimum over a 12-month period, R&E must still pay for the tons obligated under the annual OM minimum. Further, R&E must pay DC/HZI an additional Twenty-Five Percent (25%) of the OM Fee as liquidated damages for the lost sale of RNG, BC and CM for the delivery shortfall tonnage. DC/HZI may procure additional tonnages from third parties to make up some or all of the delivery shortfall. The tonnage amount for the liquidated damages shall be measured by the actual delivery shortfall after DC/HZI and R&E have made efforts to obtain additional OM from third parties.

I. Acceptance Shortfall

At the same time, if DC/HZI fails to accept in any week Eighty Percent (80%) of the weekly maximum, which is deemed an acceptance shortfall, DC/HZI shall pay R&E One Thousand Dollars (\$1,000.00) per week as liquidated damages towards R&E's cost to dispose of the OM that was not accepted.

In addition, DC/HZI, in its reasonable discretion and in particular during AD Facility shutdowns, may divert up to a maximum of Ten Percent (10%) of OFS each year such that it bypasses the

AD Facility and is processed into CM. However, R&E shall only pay the OFS Fee for such diverted OFS material.

J. Early Termination

The LOI provides for potential termination of the OM Agreement at any time by mutual written agreement of the parties or in the event of a bankruptcy of either of the parties. There is also an early termination option in the event of an uncured default after One Hundred and Twenty (120) days, or if there is a delivery shortfall of Twenty-Five Thousand (25,000) tons during any six-month period, or in the event there is an acceptance shortfall of at least Twenty-Five Thousand (25,000) within any six-month period.

K. Other Provisions

In addition, it is anticipated the OM Agreement will have further details and additional provisions relating to delivery and acceptance of OM, payments, quarterly and annual reporting, data practices, auditing, record retention, maintenance obligations, representations and warranties, performance bond and insurance, indemnification, force majeure, dispute resolution, venue, choice of law, and other miscellaneous provisions.

III. Risk Analysis

A. 12-Month Condition Precedent

The 12-month condition precedent related to assurance of the initial pricing is needed by DC/HZI to determine if grant funds and other benefits from recent federal and state legislation can be brought to bear to keep the initial fees at the levels set forth in the LOI. The risk of this approach is that DC/HZI cannot meet the condition precedent within the 12-month period and thus one year will have been lost in the effort to secure an AD project. There is also the potential that DC/HZI is not able to meet the initial pricing but can come close and requests that R&E accept somewhat higher initial pricing. While R&E would not be obligated to accept this, it could be viewed as necessary to proceed with the higher initial pricing so as not to have lost the prior 12-month period.

B. OFS Composting

DC/HZI will subcontract composting of OFS material, including food scrap bags, to SMSC in Shakopee for the initial pre-AD term, and for periods when the AD Facility cannot accept OFS material. Although DC/HZI has committed to having only a de-minimus amount of food scrap bag material (primarily knots and seams) ending up in compost residual, it is possible that greater amounts of bag material could end up in compost residual and be landfilled. In this event, contractual remedies will need to be pursued to minimize and resolve the problem.

C. OM Specifications

As previously noted, R&E will initially be delivering OFS material for composting while the AD Facility is being developed. That material must meet a specification of five percent (5%) contamination or less. Because R&E is just about to begin collecting food scrap bags and of the program will be through voluntary participation and reliance upon residents to provide relatively clean food scrap material, there will be initial uncertainty regarding ability of R&E to meet the 5% contamination limit. As such, R&E and Ramsey and Washington Counties must be prepared to diligently work through communications and other methods to ensure that the contamination limit can be met on the food scrap material. The ORM is also not currently being produced, but production will begin later this year after completion of the processing line at the R&E Center. Efforts will need to be made to test the material to make sure that it can meet the ORM specifications that are discussed in the LOI and will be established in the OM Agreement. It is possible that ORM material will not initially be able to meet the specifications and further expenditures for additional processing enhancements may be required by R&E to ensure that the ORM material can meet specifications once it is eligible for delivery to the AD Facility.

D. Pyrolysis Technology

As previously noted, DC/HZI plans to utilize pyrolysis technology to process digestate material produced from the AD process into BC material. It is expected that the BC material will have substantially greater value than the digestate material, and DC/HZI has provided initial evidence of a market for the material at approximately One Hundred Thirty Dollars (\$130.00) per ton. However, there can be no assurances that the pyrolysis technology will be able to produce BC material of high enough quality to obtain the anticipated market value. In such event, DC/HZI will not be meeting its performance standards and remedies will need to be exercised under the OM Agreement either in the form of changes to the OM Fee structure or requirements imposed upon DC/HZI to improve the pyrolysis technology to the point that it can meet prior expectations. At the same time, if the pyrolysis technology performs as hoped, it could have the impact over time of mitigating potential regulatory risks related to utilization of digestate material due to increasing regulations on contaminants of concern, in particular PFAS chemicals. The U.S. Environmental Protection Agency (EPA) and Minnesota Pollution Control Agency (MPCA), as well as federal and state legislative bodies, are increasingly focused on tighter regulation of PFAS contamination in the waste management system. If the pyrolysis technology through conversion of digestate into BC can substantially mitigate the regulatory risks presented by PFAS and other contaminants, it could prove to be a significant long-term solution to a growing problem.

E. Put or Pay Annual Minimums

DC/HZI has expressed strong concerns about the ramp-up nature of R&E's annual minimum delivery obligations. Because R&E is not currently producing either OFS or ORM, there are risks as to whether R&E can meet the annual minimums and, if it cannot, will be required to pay for processing of material that it is not supplying, as well as the Twenty-Five (25%) additional fee as liquidated damages. To mitigate this risk, significant efforts to accomplish needed participation in the FSB program will be essential.

F. Revenue/Cost Sharing

There is also potential risk to R&E related to the revenue/cost sharing model. As outlined in the memo from Ehlers, there is a large potential upside if the RNG market is strong throughout the contract period. However, there is also significant downside risk if the market declines. In particular, the most significant risk appears to be any potential loss of current federal or state regulatory or financial subsidies for production of RNG. If such programs are curtailed or eliminated, the potential for the RNG market to decline is strong and, therefore, the potential for the price paid by R&E to increase, potentially significantly, would result. As such, R&E must be prepared to take the risk associated with the revenue/cost sharing arrangement and establish one or more mechanisms to have the financial resources to be brought to bear in the event of a decline in the RNG market. Such options could include establishment of a larger operational reserve, funded either through tipping fee revenue, contribution of county environmental charge revenues, or other sources such as federal or state grant funds or appropriations.

MEMORANDUM

TO: Ramsey/Washington Recycling & Energy
FROM: Bruce Kimmel, Senior Municipal Advisor
DATE: September 1, 2023
SUBJECT: Revenue / Cost Sharing Mechanism in Dem-Con HZI Feedstock Supply Agreement

Ramsey/Washington Recycling & Energy (R&E) has asked Ehlers, in our role as R&E's fiscal consultant, to update our February 6, 2023 discussion of financial considerations in the Dem-Con HZI (DCHZI) proposal to fund, construct, and operate an anaerobic digestion (AD) facility – namely to reflect the Revenue / Cost Sharing terms in the currently proposed Feedstock Supply Agreement.

Back in February, the proposed revenue / cost sharing mechanism relied solely on whether future market prices for renewable natural gas (RNG) and/or biochar exceeded baseline levels set in the contract. If yes, DCHZI would share a portion of the resulting benefit with R&E via reduced AD facility processing fees. (And conversely, if market prices trended lower over time, DCHZI would pass on a portion of the resulting burden via increased AD processing fees.) As such, the concept described in February did not hinge on actual DCHZI production or resulting revenue generation, but rather the movement of RNG and biochar prices in the larger renewables marketplace.

In more recent months, however, the parties moved toward a revenue / cost sharing model based on actual DCHZI production and sale contracts. Schedule C of the Feedstock Supply Agreement states:

During the Term of this Agreement, Operator will use Commercially Reasonable efforts to obtain the highest rates for the sale of RNG, Biochar, and/or Environmental Attributes based on the available markets, with a risk profile acceptable to both Parties. The Parties agree that Operator will initially use Commercially Reasonable efforts to sell Fifty percent (50%) of the Plant's RNG through contracts less than Five (5) years, and Fifty Percent (50%) through longer term contracts of Ten (10) years or less, with the condition that such contracts and contract profile will support the Operator's financing of the Plant and its operations.

It is likely that the prices as set forth in these future sale contracts of varying lengths will vary from the "Initial RNG Rate" and "Initial Biochar Rate" that will be set earlier on in the AD facility development process. Schedule C addresses what will occur with "actual" sales contracts and prices as follows:

There will be no revenue or risk share at the Initial RNG and Biochar Rates. Thereafter, Eighty Percent (80%) of any Revenue obtained by Operator through the actual sale of RNG above the Initial RNG Rate on a dollars and cents per MMBtu basis, and through the sale of Biochar above the Initial Biochar Rate on a dollars and cents per ton basis, shall be credited to Supplier on a monthly basis according to the pro rata share of RNG sales (measured as MMBtu's sold) and Biochar sales (measured as tons sold) that are attributable to Supplier's pro rata share of the overall amount of Feedstock supplied to the Plant (the "***RNG and Biochar Revenue Share***").

Similarly, eighty percent (80%) of any Revenue reduction incurred by Operator through sale of RNG below the Initial RNG Rate on a per MMBtu basis, and the sale of Biochar below the Initial Biochar Rate on a per ton basis, shall be charged to Supplier on a monthly basis according to the pro rata share of RNG sales (measured as MMBtu's sold) and Biochar sales (measured as tons) that are attributable to Supplier's pro rata share of the overall amount of Feedstock supplied to the Plant (the "**RNG and Biochar Cost Share**").

It is important to note that we do not know how future RNG and Biochar prices will change over future years, or how such price changes will be reflected in future DCHZI contracts for the sale of RNG and Biochar. While historical RNG prices firmly suggest future price increases, it is also possible that this upward trend line will be interrupted with indeterminate periods of no movement and/or downward movement, and the same is true of Biochar.

Ehlers prepared three scenarios to gauge how a range of hypothetical future RNG price changes would generate either a revenue credit or cost charge for R&E. This monthly credit or charge, as described in the Schedule C excerpts above, will effectively have two results:

First, the revenue / cost sharing will effectively reduce or increase the net "OFS Fees" and "ORM Fees" that R&E will pay to DCHZI under the Feedstock Supply Agreement. For example, if the OFS Fee is \$107 per ton, future revenue sharing might drop R&E's effective fee per ton to \$105.

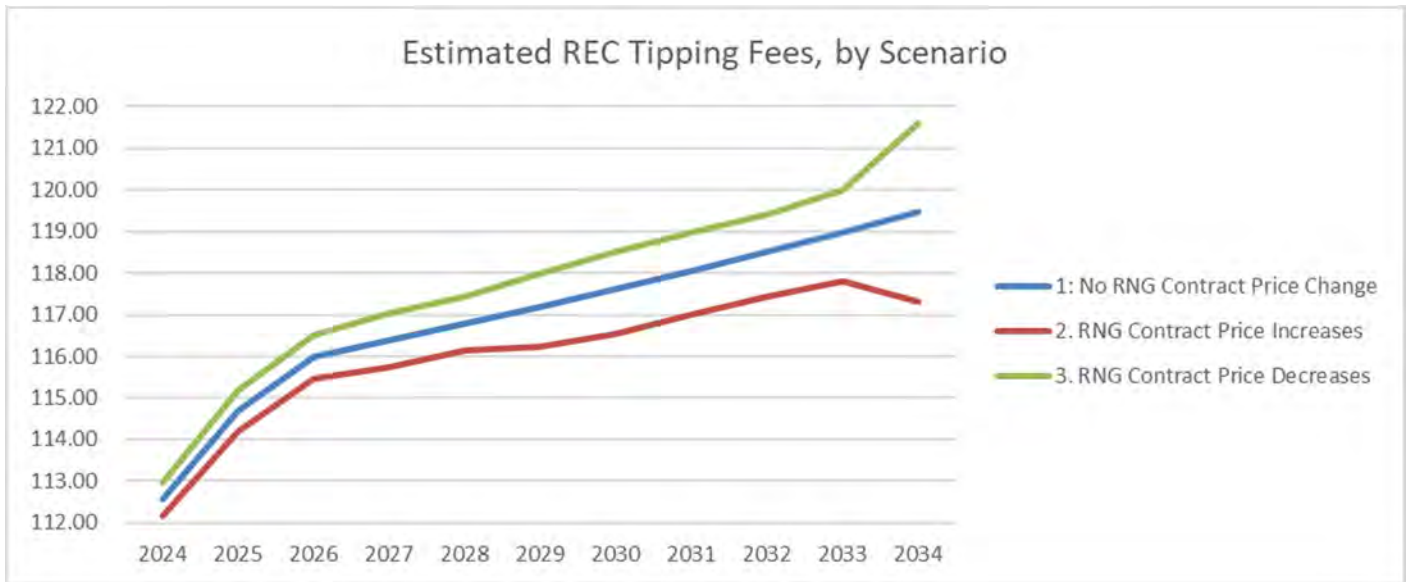
And second, this change in R&E's net AD facility processing fees would translate to future Recycling & Energy Center (REC) tipping fees that R&E will need to collect from solid waste collectors / haulers. All scenarios assume unchanged biochar prices, focusing only on the effects of RNG price changes, and are detailed in the attached cashflow projections.

Scenario 1 assumes no future changes in RNG sales contract pricing and therefore no revenue or cost sharing effect on OFS and ORM Fees or on future REC tipping fees.

Scenario 2 assumes gradual increases in RNG sales contact prices over 10 years, moving from an assumed Initial Rate of \$24 per MMBtu to an eventual contract price of \$32 per MMBtu.

Scenario 3 assumes gradual decreases in RNG sales contact prices over 10 years, moving from an assumed Initial Rate of \$24 per MMBtu to an eventual contract price of \$16 per MMBtu.

The estimated REC tipping fees for these three scenarios are shown in the chart below. The fees reflect just the impact of the hypothetical revenue and cost sharing, and not other factors that could cause changes in future REC tipping fees.



Looking at 2034, the lowest projected REC tipping fee is \$117.32 (Scenario 2) and the highest is \$121.59 (Scenario 3), for a difference of just over \$4 per ton. It is impossible to know precisely what the average effective net price for RNG will be in 2024, much less 2034. That said, looking over a decade of future AD facility operations, we believe it is reasonable to expect that RNG price inflation will help to offset inflationary increases in OFS and ORM Fees – and in turn achieve relative stability in the REC tipping fee.

Thank you for the opportunity to assist R&E with this financial review, and please contact me at bkimmel@ehlers-inc.com or (651) 697-8572 with any questions and/or to request further analysis.

AD Facility - Comparative REC Tipping Fee Impact Analysis

DC HZI Scenario 1: \$115 Starting ORM Charge, \$107 Starting OFS Charge, No Revenue Share

	Estimated Inflation: 3.00%										
Estimated Inputs	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11
ORM to AD Facility (Tons)	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000
ORM Processing Charge / Ton	115.00	118.45	122.00	125.66	129.43	133.32	137.32	141.44	145.68	150.05	154.55
OFS to AD Facility (Tons)	18,720	26,292	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000
OFS Processing Charge / Ton	107.00	110.21	113.52	116.92	120.43	124.04	127.76	131.60	135.54	139.61	143.80
Estimated R&E Expenses											
ORM Processing Charges	2,300,000	2,369,000	2,440,070	2,513,272	2,588,670	2,666,330	2,746,320	2,828,710	2,913,571	3,000,978	3,091,008
OFS Processing Charges	2,003,040	2,897,641	3,405,489	3,507,654	3,612,883	3,721,270	3,832,908	3,947,895	4,066,332	4,188,322	4,313,972
Total Expenses	4,303,040	5,266,641	5,845,559	6,020,926	6,201,554	6,387,600	6,579,228	6,776,605	6,979,903	7,189,300	7,404,979
Annual Revenue Requirement	4,303,040	5,266,641	5,845,559	6,020,926	6,201,554	6,387,600	6,579,228	6,776,605	6,979,903	7,189,300	7,404,979
Required REC Tipping Fee Revenue	4,303,040	5,266,641	5,845,559	6,020,926	6,201,554	6,387,600	6,579,228	6,776,605	6,979,903	7,189,300	7,404,979
divided by: Tons Budget	450,000	450,000	450,000	450,000	450,000	450,000	450,000	450,000	450,000	450,000	450,000
equals: Required Tipping Fee per REC Ton:	9.56	11.70	12.99	13.38	13.78	14.19	14.62	15.06	15.51	15.98	16.46

DC HZI Scenario 2: Hypothetical Revenue Sharing with RNG Sale Contracts

	Estimated Inflation: 3.00%											
Estimated Inputs	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	
ORM to AD Facility (Tons)	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	
ORM Processing Charge / Ton	115.00	118.45	122.00	125.66	129.43	133.32	137.32	141.44	145.68	150.05	154.55	
OFS to AD Facility (Tons)	18,720	26,292	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	
OFS Processing Charge / Ton	107.00	110.21	113.52	116.92	120.43	124.04	127.76	131.60	135.54	139.61	143.80	
Estimated R&E Expenses												
ORM Processing Charges	2,300,000	2,369,000	2,440,070	2,513,272	2,588,670	2,666,330	2,746,320	2,828,710	2,913,571	3,000,978	3,091,008	
OFS Processing Charges	2,003,040	2,897,641	3,405,489	3,507,654	3,612,883	3,721,270	3,832,908	3,947,895	4,066,332	4,188,322	4,313,972	
Total Expenses	4,303,040	5,266,641	5,845,559	6,020,926	6,201,554	6,387,600	6,579,228	6,776,605	6,979,903	7,189,300	7,404,979	
Estimated Revenue Sharing (Expense Offset)	Initial Price	Actual Contract Prices										
50% at 10-Year Contract Price	24.00	26.00	26.00	26.00	26.00	26.00	26.00	26.00	26.00	26.00	26.00	32.00
30% at 5-Year Contract Price	24.00	26.00	26.00	26.00	26.00	26.00	30.00	30.00	30.00	30.00	30.00	32.00
20% at 3-Year Contract Price	24.00	26.00	26.00	26.00	28.00	28.00	28.00	30.00	30.00	30.00	30.00	32.00
	Volume (MMBtu)	77%	93%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Revenue Share on 50%	60,000	92,928	111,101	120,000	120,000	120,000	120,000	120,000	120,000	120,000	120,000	480,000
Revenue Share on 30%	36,000	55,757	66,660	72,000	72,000	72,000	216,000	216,000	216,000	216,000	216,000	288,000
Revenue Share on 20%	24,000	37,171	44,440	48,000	96,000	96,000	96,000	144,000	144,000	144,000	192,000	192,000
Total Revenue Share	185,856	222,202	240,000	288,000	288,000	432,000	480,000	480,000	480,000	480,000	528,000	960,000
Net Revenue Requirement After RNG Revenue Share	4,117,184	5,044,440	5,605,559	5,732,926	5,913,554	5,955,600	6,099,228	6,296,605	6,499,903	6,661,300	6,444,979	
Required REC Tipping Fee Revenue	4,117,184	5,044,440	5,605,559	5,732,926	5,913,554	5,955,600	6,099,228	6,296,605	6,499,903	6,661,300	6,444,979	
divided by: Tons Budget	450,000	450,000	450,000	450,000	450,000	450,000	450,000	450,000	450,000	450,000	450,000	
equals: Required Tipping Fee per REC Ton:	9.15	11.21	12.46	12.74	13.14	13.23	13.55	13.99	14.44	14.80	14.32	

AD Facility - Comparative REC Tipping Fee Impact Analysis

DC HZI Scenario 1: \$115 Starting ORM Charge, \$107 Starting OFS Charge, No Revenue Share

	Estimated Inflation: 3.00%										
Estimated Inputs	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11
ORM to AD Facility (Tons)	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000
ORM Processing Charge / Ton	115.00	118.45	122.00	125.66	129.43	133.32	137.32	141.44	145.68	150.05	154.55
OFS to AD Facility (Tons)	18,720	26,292	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000
OFS Processing Charge / Ton	107.00	110.21	113.52	116.92	120.43	124.04	127.76	131.60	135.54	139.61	143.80
Estimated R&E Expenses											
ORM Processing Charges	2,300,000	2,369,000	2,440,070	2,513,272	2,588,670	2,666,330	2,746,320	2,828,710	2,913,571	3,000,978	3,091,008
OFS Processing Charges	2,003,040	2,897,641	3,405,489	3,507,654	3,612,883	3,721,270	3,832,908	3,947,895	4,066,332	4,188,322	4,313,972
Total Expenses	4,303,040	5,266,641	5,845,559	6,020,926	6,201,554	6,387,600	6,579,228	6,776,605	6,979,903	7,189,300	7,404,979
Annual Revenue Requirement	4,303,040	5,266,641	5,845,559	6,020,926	6,201,554	6,387,600	6,579,228	6,776,605	6,979,903	7,189,300	7,404,979
Required REC Tipping Fee Revenue	4,303,040	5,266,641	5,845,559	6,020,926	6,201,554	6,387,600	6,579,228	6,776,605	6,979,903	7,189,300	7,404,979
divided by: Tons Budget	450,000	450,000	450,000	450,000	450,000	450,000	450,000	450,000	450,000	450,000	450,000
equals: Required Tipping Fee per REC Ton:	9.56	11.70	12.99	13.38	13.78	14.19	14.62	15.06	15.51	15.98	16.46

DC HZI Scenario 3: Hypothetical Cost Sharing with RNG Sale Contracts

	Estimated Inflation: 3.00%											
Estimated Inputs	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	
ORM to AD Facility (Tons)	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	
ORM Processing Charge / Ton	115.00	118.45	122.00	125.66	129.43	133.32	137.32	141.44	145.68	150.05	154.55	
OFS to AD Facility (Tons)	18,720	26,292	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	
OFS Processing Charge / Ton	107.00	110.21	113.52	116.92	120.43	124.04	127.76	131.60	135.54	139.61	143.80	
Estimated R&E Expenses												
ORM Processing Charges	2,300,000	2,369,000	2,440,070	2,513,272	2,588,670	2,666,330	2,746,320	2,828,710	2,913,571	3,000,978	3,091,008	
OFS Processing Charges	2,003,040	2,897,641	3,405,489	3,507,654	3,612,883	3,721,270	3,832,908	3,947,895	4,066,332	4,188,322	4,313,972	
Total Expenses	4,303,040	5,266,641	5,845,559	6,020,926	6,201,554	6,387,600	6,579,228	6,776,605	6,979,903	7,189,300	7,404,979	
Estimated Revenue Sharing (Expense Offset)	Initial Price	Actual Contract Prices										
50% at 10-Year Contract Price	24.00	22.00	22.00	22.00	22.00	22.00	22.00	22.00	22.00	22.00	22.00	16.00
30% at 5-Year Contract Price	24.00	22.00	22.00	22.00	22.00	20.00	20.00	20.00	20.00	20.00	20.00	16.00
20% at 3-Year Contract Price	24.00	22.00	22.00	22.00	20.00	20.00	20.00	18.00	18.00	18.00	16.00	16.00
	Volume (MMBtu)	77%	93%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Revenue Share on 50%	60,000	(92,928)	(111,101)	(120,000)	(120,000)	(120,000)	(120,000)	(120,000)	(120,000)	(120,000)	(120,000)	(480,000)
Revenue Share on 30%	36,000	(55,757)	(66,660)	(72,000)	(72,000)	(72,000)	(144,000)	(144,000)	(144,000)	(144,000)	(144,000)	(288,000)
Revenue Share on 20%	24,000	(37,171)	(44,440)	(48,000)	(96,000)	(96,000)	(96,000)	(144,000)	(144,000)	(144,000)	(192,000)	(192,000)
Total Revenue Share		(185,856)	(222,202)	(240,000)	(288,000)	(288,000)	(360,000)	(408,000)	(408,000)	(408,000)	(456,000)	(960,000)
Net Revenue Requirement After RNG Revenue Share	4,488,896	5,488,843	6,085,559	6,308,926	6,489,554	6,747,600	6,987,228	7,184,605	7,387,903	7,645,300	8,364,979	
Required REC Tipping Fee Revenue	4,488,896	5,488,843	6,085,559	6,308,926	6,489,554	6,747,600	6,987,228	7,184,605	7,387,903	7,645,300	8,364,979	
divided by: Tons Budget	450,000	450,000	450,000	450,000	450,000	450,000	450,000	450,000	450,000	450,000	450,000	
equals: Required Tipping Fee per REC Ton:	9.98	12.20	13.52	14.02	14.42	14.99	15.53	15.97	16.42	16.99	18.59	



**RAMSEY/WASHINGTON
RECYCLING & ENERGY**
CONNECTING VALUE TO WASTE

R&E BOARD MEETING DATE:	September 7, 2023			AGENDA ITEM:	VI.b			
SUBJECT:	Refuse-Derived Fuel Management & Site Visit Update							
TYPE OF ITEM:	<input checked="" type="checkbox"/>	INFORMATION	<input type="checkbox"/>	POLICY DISCUSSION	<input type="checkbox"/>	ACTION	<input type="checkbox"/>	CONSENT
SUBMITTED BY:	Joint Leadership Team (JLT)							

R&E BOARD ACTION REQUESTED:

For information only.

EXECUTIVE SUMMARY:

Ramsey and Washington counties have been evaluating alternative waste management technologies for nearly two decades. Through the Ramsey/Washington Recycling & Energy (R&E) Board, the counties have prioritized efforts to move high-value materials in waste up the solid waste management hierarchy. In 2019, the R&E Board reaffirmed the direction initially set in 2014, prior to the purchase of the Recycling & Energy Center (R&E Center), which envisioned a higher use for waste materials in the East Metro. The aim of this work is to achieve environmental, economic and community benefits for the East Metro for the next 20- to 30- years and beyond.

The R&E Center manages over 450,000 tons per year of municipal solid waste (MSW) generated by residents and businesses in Ramsey and Washington counties. The primary product manufactured from MSW at the R&E Center is refuse-derived fuel (RDF). While R&E and the counties work to move waste up the hierarchy through waste reduction and reuse programs, food scraps recycling and recyclables recovery, RDF processing creates a “value-add” for the rest of trash. Currently, about 330,000 tons of RDF are manufactured at the R&E Center annually, diverting this material from landfills. R&E holds an agreement with Xcel Energy for the management of RDF via combustion at two facilities in southern Minnesota. The electricity generated from RDF powers about 12,500 homes for a year. R&E’s current agreement with Xcel Energy expires on December 31, 2027.

The R&E’s revised scope for resource management, a strategic road map for R&E’s solid waste management system, establishes a “phased approach to change conversion technology for RDF and similar products and diversify markets” in the coming decade. This direction has driven the exploration and evaluation of new processing technologies for RDF and new end uses.

In November 2022, following robust vendor outreach and engagement efforts, R&E released a Request for Information to solicit proposals from providers capable of meeting the R&E Board’s need for processing technologies and end markets for RDF from the R&E Center. Responses were received in the spring, and additional engagement has been ongoing to explore opportunities for managing RDF in the future.

A crucial tactic for this evaluation process is participating in site visits to observe technologies operating in real-world conditions. This allows staff and decision-makers across our organization to understand capabilities and fitness to R&E’s needs first-hand. On August 9, R&E’s Facility & Finance Committee Chair Martinson, R&E and county staff, engineering and legal consultants and the assistant to R&E Board Vice

SUBJECT: *Refuse-Derived Fuel Management & Site Visit Update*

Chair Reinhardt conducted a site visit in Toledo, Oregon, to view a Juno demonstration facility using proprietary technology to manage MSW and recover paper fibers, recyclable containers and organic material from the containers and waste. The attendees gathered information on the technology and its potential application to materials produced at the R&E Center.



R&E staff and Facility & Finance Committee Chair Martinson will present to the R&E Board at the September 7, 2023, meeting to share their experiences and findings.

ATTACHMENTS:

None.

FINANCIAL IMPLICATIONS:

None.

AUTHORIZED SIGNATURES		DATE
JOINT LEADERSHIP TEAM		8/24/23
		8/23/23



**RAMSEY/WASHINGTON
RECYCLING & ENERGY**
CONNECTING VALUE TO WASTE

R&E BOARD MEETING DATE:	September 7, 2023			AGENDA ITEM:	VI.c			
SUBJECT:	State of Minnesota Waste Delivery Agreement							
TYPE OF ITEM:	<input type="checkbox"/>	INFORMATION	<input type="checkbox"/>	POLICY DISCUSSION	<input checked="" type="checkbox"/>	ACTION	<input type="checkbox"/>	CONSENT
SUBMITTED BY:	Joint Leadership Team (JLT)							

R&E BOARD ACTION REQUESTED:

1. Approve the Waste Delivery Agreement with the State of Minnesota.
2. Authorize the Joint Leadership Team to execute the Waste Delivery Agreement with the State of Minnesota.

EXECUTIVE SUMMARY:

At the October 27, 2022, Ramsey/Washington Recycling & Energy Board meeting, the template for the 2023-2027 Waste Delivery Agreements was approved (Resolution 2022-18). The Waste Delivery Agreements outline the voluntary terms and conditions for hauling waste in Ramsey and Washington counties that address hauler needs and concerns while ensuring the needs of delivering waste to the facility are met. While the Waste Delivery Agreement template has been applicable to agreements entered into with private haulers, governmental entities often have statutory or policy restrictions related to indemnification or insurance that prevent them from entering into the template agreement. To accommodate this, R&E staff and attorneys have reviewed changes requested by governmental entities and recommended approval when appropriate.

The City of Saint Paul requested changes to the Waste Delivery Agreement that were approved by the Board on March 1, 2023 (Resolution 2023-02). Now, the State of Minnesota has requested changes to the template so that they can enter into a Waste Delivery Agreement. Changes include:

- References to statutes specific to how the State of Minnesota is allowed to conduct business and enter into contracts.
- Modifications to indemnification/liability language to conform with statutes applicable to the State of Minnesota.
- Modifications to the insurance requirements to conform to statutory requirements applicable to the State of Minnesota.
- Changes to reflect mutual indemnification and termination clauses.
- Other minor formatting changes primarily to reflect that this is an agreement between two governmental entities.

The changes requested by the State of Minnesota have been reviewed by R&E staff and attorneys and are recommended for approval by the Board. In addition, though not anticipated at this time, similar modifications from other municipalities may be requested in the future; and as such, staff further recommends that the Board delegate authority to the Joint Leadership Team or executive director to approve future agreements with municipalities with similar modifications based on the need for them to

SUBJECT: *State of Minnesota Waste Delivery Agreement*

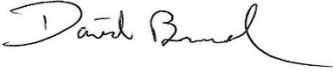
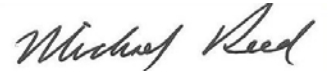


meet statutory requirements of governmental entities or other policy needs deemed reasonable as determined by R&E attorneys.

ATTACHMENTS:

1. Draft Resolution
2. Draft Waste Delivery Agreement with the State of Minnesota

FINANCIAL IMPLICATIONS:

None.

AUTHORIZED SIGNATURES	DATE
JOINT LEADERSHIP TEAM	8/28/23
	8/28/23
	8/25/23
RAMSEY COUNTY ATTORNEY	8/28/23
	8/28/23
WASHINGTON COUNTY ATTORNEY	8/28/23
	8/28/23



RESOLUTION R&EB-2023-14

WHEREAS, The Ramsey/Washington Recycling & Energy Board (“R&E Board”) is governed by the Amended and Restated Joint Powers Agreement by and between Ramsey County and Washington County dated July 18, 2023 (“Joint Powers Agreement”); and

WHEREAS, Haulers perform the vital role in getting waste to the Recycling & Energy (R&E) Center through picking up waste at locations throughout the counties and delivering it either to transfer stations or directly to the R&E Center; and

WHEREAS, R&E prefers to work with our waste delivery partners to prepare delivery agreements that address hauler needs and concerns while ensuring the needs of delivering waste to the facility are met; and

WHEREAS, The R&E Board approved a template for waste delivery agreements for haulers for the period covering 2023 through 2027 (Resolution 2022-18); and

WHEREAS, The template has been applied to all agreements with private haulers delivering waste to R&E; and

WHEREAS, Governmental entities often have statutory or policy needs that vary substantially from the template agreements; and

WHEREAS, The State of Minnesota would like to enter into a Waste Delivery Agreement, and has submitted a draft agreement that primarily includes changes to the indemnification, insurance, termination and other sections to reflect an agreement between governmental entities; and

WHEREAS, R&E staff and attorneys have reviewed the changes and recommend approval; and

WHEREAS, Because the modifications represent a substantial change from the template, they are not authorized by the authority delegated to the Joint Leadership Team (JLT) when the template agreement was approved. NOW, THEREFORE, BE IT

RESOLVED, The R&E Board hereby authorizes the JLT or the executive director to approve the modified Waste Delivery Agreement with the State of Minnesota, and future agreements with governmental entities with modifications to reasonably accommodate statutory and policy requirements as determined by R&E attorneys.

Fran Miron, Board Chair
September 7, 2023

Attest
September 7, 2023



**RAMSEY/WASHINGTON
RECYCLING & ENERGY**
CONNECTING VALUE TO WASTE

**Waste Delivery Agreement
Between Ramsey/Washington Recycling & Energy Board
and State of Minnesota, Department of Administration,
Facilities Management Division**

THIS WASTE DELIVERY AGREEMENT (“Agreement”) is made and entered into by and between the Ramsey/Washington Recycling & Energy Board, hereinafter referred to as “R&E,” and State of Minnesota, Department of Administration, Facilities Management Division, with its principal place of business at 50 Sherburne Avenue, Room G10, St. Paul, MN 55155, hereinafter referred to as the “Hauler,” each a “Party” and together the “Parties.”

RECITALS:

WHEREAS, the State of Minnesota, by the enactment of the Minnesota Waste Management Act, Minn. Stat. Chapter 115A and Minn. Stat. Chapter 473, has declared that it is the State’s policy to improve mixed municipal solid waste (“MSW”) management through the separation and recovery of energy and materials from MSW and through the reduction of disposal of such waste;

WHEREAS, R&E desires to promote the State’s MSW policy, in part, through recovery of resources from MSW at the Ramsey/Washington Recycling & Energy Center (the “R&E Center”), located at 100 Red Rock Road, Newport, Minnesota;

WHEREAS, Ramsey and Washington Counties have implemented Waste Designation Ordinances as provided for in Minnesota law (Minn. Stat. 115A.80);

WHEREAS, Acceptable Waste under contract for delivery to the R&E Center is exempt from the Waste Designation Ordinances;

WHEREAS, R&E prefers to negotiate voluntary waste delivery agreements with waste haulers (“Contract Haulers”) that allow waste haulers under contract with R&E to use transfer stations under contract with R&E at no additional charge, and to utilize R&E’s Credit Policy, which provides credit to Contracted Haulers to minimize cash transactions;

WHEREAS, Ramsey and Washington Counties are implementing organic food scrap collection programs under which heavy-duty compostable plastic bags are used by residents to source separate organic food scraps and are then placed in the same collection cart as MSW for collection by waste haulers and delivery to the R&E Center or transfer stations under contract with R&E.

NOW THEREFORE, in consideration of the mutual promises and conditions contained herein, the Parties hereby agree as follows:

1. Term

The term of the Agreement shall be effective from January 1, 2023 through December 31, 2027.

2. Definitions

- a. "Acceptable Waste" means Solid Waste generated in the Counties that is acceptable at the R&E Center, which is not otherwise Unacceptable Waste, as more specifically defined in the Solid Waste Ordinance of the Counties. It includes any type of Solid Waste that has been designated by County ordinance and which is not otherwise Unacceptable Waste.
- b. "Back-up Facility" means the landfill(s) or other facility(ies) that R&E has contracted for disposal of waste from the R&E Center and may be used by the Hauler in the event that Acceptable Waste is being diverted from the R&E Center.
- c. "Food Scrap Bag" or "FSB" means the heavy-duty compostable bag distributed to Program participants by R&E or the Counties and used by Program participants for source separation of organic food scraps that are then secured by the participant and placed in the same collection cart as bags containing MSW.
- d. "Food Scrap Bag Programs" means the FSB collection programs undertaken by the Counties.
- e. "Hauler Handbook" means the document prepared by R&E that describes the policies and procedures of the R&E Center. The Hauler Handbook can be found at www.recyclingandenergy.org.
- f. "Hazardous Waste" has the meaning given to it in Minnesota Statutes, Section 115B.02, Subdivision 9, as it may be amended from time to time.
- g. "Mixed Municipal Solid Waste" or "MSW" means garbage, refuse, and other Solid Waste from residential, commercial, industrial, and community activities that the generator of the waste aggregates for collection. It does not include auto hulks, street sweepings, ash, construction debris, mining waste, sludges, tree and agricultural wastes, tires, lead acid batteries, used oil, and other materials collected, processed, and disposed of as separate waste streams. For the purpose of defining items excluded as agricultural waste under this definition, please see "APPENDIX A – UNACCEPTABLE WASTE AT THE R&E CENTER" as included in the Solid Waste Hauler Handbook.
- h. "R&E Center" means the Ramsey/Washington Recycling & Energy Center, a waste processing facility owned and operated by the Ramsey/Washington Recycling & Energy Board, located at 100 Red Rock Road, Newport Minnesota.
- i. "Recyclable Materials" means materials that are separated from MSW for the purpose of recycling or composting, including paper, glass, plastics, metals, automobile oil, batteries, source-separated compostable materials, and sole source food waste streams that are managed through biodegradative processes. Refuse-derived fuel or other material that is destroyed by incineration is not a recyclable material.

- j. "Solid Waste" has the meaning provided in the Solid Waste Ordinances of the Counties.
- k. "Solid Waste Ordinances" means the Ordinances adopted by the Ramsey and Washington County Boards that regulate solid waste management, respectively, and that contain designation requirements for the delivery of Acceptable Waste to the R&E Center.
- l. "Specified Transfer Station" means a facility contracted to receive Acceptable Waste on behalf of the R&E Center. The Specified Transfer Station is a facility that has entered into an agreement with the R&E Board to accept delivery of Acceptable Waste from any Contract Hauler, and prepares that waste for transfer to the R&E Center.
- m. "Unacceptable Waste" means waste that is not acceptable at the R&E Center as further defined in the Solid Waste Ordinances of the Counties. The R&E Center shall have available a current list of Unacceptable Waste.

3. Scope of Services

- a. **Delivery of Acceptable Waste.** The Hauler shall deliver all Acceptable Waste generated in Ramsey and Washington Counties (the "Counties") that it collects directly to the R&E Center, or to a Specified Transfer Station under contract with R&E to receive Acceptable Waste. When delivering Acceptable Waste to the R&E Center, the Hauler agrees to comply with R&E Center policies and practices with respect to safe vehicle operation as detailed in the R&E Center Hauler Handbook. When delivering Acceptable Waste to a Specified Transfer Station, the Hauler agrees to comply with that facility's site safety and operations procedures. Acceptable Waste delivered pursuant to this Agreement shall be exempt from the Waste Designation Ordinances adopted by the Counties.
- b. **Food Scrap Bags.** When the Hauler delivers Acceptable Waste to the R&E Center or a Specified Transfer Station, Hauler shall disclose, when asked, what municipalities the Hauler collected the Acceptable Waste from in order for the R&E Center or Specified Transfer Station to determine if there are potentially FSBs in the load so that the R&E Center or Specified Transfer Station (if capable) can segregate the FSBs from the MSW for separate management. In response to the disclosure request, the Hauler shall accurately disclose what municipalities it collected the Acceptable Waste from. Hauler, if asked, shall also disclose if the Acceptable Waste was collected from a commercial route with one or more multi-family housing units as part of the collection route. If the Acceptable Waste was collected within the City of St. Paul, Hauler, if asked, shall disclose the specific area of St. Paul from which the Acceptable Waste was collected. Hauler agrees to use best management practices to avoid damage (broken open or otherwise opened such that some or all of the food scrap contents of the bag are no longer contained in the bag) to the integrity of any FSBs within Hauler's collection loads, including avoiding use of "auger" trucks. Under no circumstances shall FSBs be delivered by Hauler to a facility other than the R&E Center or Specified Transfer Station, unless so directed by R&E.
- c. **Waste Origin.** The Parties agree that the purpose of this Agreement is to assure the delivery to the R&E Center all Acceptable Waste, including FSBs, generated in the Counties and collected by the Hauler. The Parties acknowledge that Hauler may have some collection

- routes that deviate across a County border that collect small amounts of MSW from outside the Counties that would otherwise be Acceptable Waste. Such waste shall be referred to as "Incidental Waste." Hauler may deliver Incidental Waste to the R&E Center or a Specified Transfer Station if such Incidental Waste is no more than Ten Percent (10%) of a truckload, and Hauler has provided information to R&E documenting the routes collecting Incidental Waste, and has received prior written approval from R&E to deliver such Incidental Waste to the R&E Center or Specified Transfer Station. The information provided by Hauler shall describe the municipalities and days involved in the affected routes and estimated amounts of MSW involved. Hauler agrees to update such information on an annual basis. R&E will review such annual updates and either approve or deny the proposed updated Incidental Waste.
- d. **Back-up Facility.** If the R&E Center and Specified Transfer Stations cannot receive Acceptable Waste, R&E will provide access to a Back-up Facility within Forty (40) miles from the R&E Center or any Specified Transfer Station and communicate with Hauler regarding the Back-up Facility to be used. Fees to use a Back-up Facility shall be the same as charged by R&E, and R&E will invoice the Hauler for those fees.
 - e. **Acquisition or Merger.** In addition to the Acceptable Waste the Hauler has agreed to deliver as described in part 5.a., above, the Hauler further agrees to deliver to the R&E Center all Acceptable Waste currently required by contract or Solid Waste Ordinances to be delivered to the R&E Center by any and all entities which the Hauler acquires or with which the Hauler merges or otherwise becomes affiliated during the term of this Agreement.
 - f. **Unacceptable Waste.** The Hauler agrees to use its best efforts to avoid delivering any Unacceptable Waste to the R&E Center and Specified Transfer Stations and shall not knowingly mix any Unacceptable Waste with Acceptable Waste.
 - g. **Rejection of Deliveries.** The Hauler may be denied entrance to the R&E Center, or to a Specified Transfer Station, if R&E has a reasonable basis to believe that a vehicle contains Hazardous Waste or a significant amount of Unacceptable Waste.
 - h. **Regulatory Compliance.** The Hauler shall at all times operate its business in compliance with all applicable federal, state, and local laws, rules, regulations, ordinances and licenses. This includes but is not limited to collecting, transporting, delivering and disposing of waste; and billing, collecting, reporting and remitting the County Environmental Charge.

4. Responsibility for Unacceptable Waste

- a. The R&E Center and the Specified Transfer Stations have the right to reject entire or partial loads of Unacceptable Waste. The Hauler shall be provided with documentation specifying the rejection and reasons therefore.
- b. If the R&E Center or a Specified Transfer Station has reason to believe that Unacceptable Waste was delivered by the Hauler, and the Hauler has left the tipping floor, the Hauler agrees to either return and remove such Unacceptable Waste and dispose of it in accordance with all applicable federal, state and local laws or pay R&E the costs associated with removal and disposal of Unacceptable Waste as described in Section 4.c, below.

- c. In the alternative, the R&E Center or Specified Transfer Station may manage the Unacceptable Waste by transferring it to an approved management facility. In such event, all costs of reloading, removal and disposal of Unacceptable Waste shall be borne by the Hauler.

5. Hauler Requirements

- a. Hauler is licensed, and shall remain licensed, to operate in Ramsey and/or Washington County as a solid waste hauler.

6. Payment

- a. **Payment of Fees:** The Hauler agrees to pay all fees established under this Agreement. R&E shall invoice the Hauler on a monthly basis, and the Hauler shall pay the charges owed on that invoice pursuant to the credit policy established by R&E. The Hauler agrees to abide by R&E's credit policy at all times. The credit policy may be revised from time to time and can be found at www.recyclingandenergy.org. Hauler will be provided advance notice of any revisions to the credit policy. The credit policy is not available to haulers without a Waste Delivery Agreement.
- b. **Tipping Fee:** The Hauler shall pay the per ton tipping fee adopted by the R&E Board for each ton of Acceptable Waste and Incidental Waste delivered to the R&E Center and/or Specified Transfer Stations. Hauler also agrees to pay the tipping fee for each ton of Acceptable Waste that Hauler collects in the Counties that is not delivered to the R&E Center or a Specified Transfer Station, as determined by R&E.
- c. **Special Waste Fees.** R&E, in its sole discretion, may apply charges for certain special wastes or services as listed in the Hauler Handbook and delivered by the Hauler. R&E will provide at least 90-days advance written notice to the Hauler of any changes to the special waste fees.
- d. **Adjustment of Tipping Fee:** R&E, in its sole discretion, shall establish the tipping fee for Acceptable Waste delivered to the R&E Center and Specified Transfer Stations. The tipping fee for the R&E Center and Specified Transfer Stations shall be the same, and there shall be no additional charge to the Hauler for use of Specified Transfer Stations. The R&E Board shall establish the tipping fee on an annual basis. In the event of a sudden or unplanned increase in R&E Center operational costs, R&E may make additional adjustments to the tipping fee. R&E will provide at least 90-days ' advance written notice to the Hauler of any changes in the tipping fee.

7. Audits, Reports, Records and Monitoring Procedures

- a. The Hauler shall maintain records which reflect all revenues, costs incurred, and services provided in the performance of the Agreement.
- b. The Parties agree that either Party, the State Auditor or legislative authority, or any of their duly authorized representatives at any time during normal business hours, and as often as

they may deem reasonable and necessary for a minimum of six years from the end of this contract pursuant to Minn. Stat. § 16C.05, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, and accounting procedures and practices of the Parties which are relevant to the Parties' performance and determination of the agreed upon discounted payment rate under this Agreement.

8. Data Privacy

All data collected, created, received, maintained or disseminated by the Parties in performing this Agreement shall be governed by the Minnesota Government Data Practices Act (Act), Minn. Stat. Ch. 13, as amended and Rules implementing the Act. When performing under this Agreement, the Hauler is subject to the requirements of the Act and Rules and must comply as if it is a governmental entity subject to the Act and Rules. The civil remedies of Minn. Stat. sec. 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minn. Stat. Ch. 13, by either Party.

9. Nondiscrimination

Pursuant to Minn. Stat. Ch. 364 and Minn. Stat. § 181.59 and general R&E policy, every contract shall contain provisions by which the Hauler agrees to freedom from discrimination in employment.

10. Liability

- a. Each party shall be responsible for claims, losses, damages and expenses which are proximately caused by the wrongful or negligent acts or omissions of that party or its agents, employees or representatives acting within the scope of their duties. The liability of each party is as set out in chapter 3.736 of the Minnesota Statutes and subject to the limitations therein. The liability of R&E is as set out in Chapter 466 of Minnesota Statutes and subject to the limitations therein. Nothing herein shall be construed to limit either party from asserting against third parties any defenses or immunities (including common law, statutory and constitutional) it may have or be construed to create a basis for a claim or suit when none would otherwise exist. This provision shall survive the termination of this Agreement.
- b. **No Waiver of Immunities.** Nothing in this Agreement shall constitute a waiver or diminution by either Party of any immunities or statutory limitation on liability as set forth in Minn. Stat. Chapter 466 or as otherwise provided by law.

11. Insurance Requirements

The Hauler agrees that in order to protect itself as well as the R&E Board, under the indemnity provisions set forth above, it will at all times during the term of this Agreement keep in force policies of insurance covering the following liabilities; General Liability, Auto Liability, and Workers Compensation:

General Liability

Minnesota Statute 3.732 prescribes the settlement of claims against the State and Minnesota Statute 3.736 Tort Claims prescribes the limits, exclusions, and procedures, with the limits being \$500,000 per person and \$1,500,000 per occurrence for such claims, as prescribed by Minn. Stat. Sec. 3.736. Minnesota Statutes, chapter 466, prescribes the settlement of claims against the state and establishes limits and procedures for such claims.

Auto Liability

As applies to the State of Minnesota, Minnesota Statute 65B. Self-Insured Number is A-1046 as assigned by the MN department of Commerce. The limits are \$500,000 person and \$1,500,000 per occurrence, as prescribed by Minnesota Statute 3.736.

Workers's Compensation

Minn. Stat. Sec. 176.541, prescribes the settlement of worker's compensation claims against the state. Payment of any such claims would be made from the State Compensation Revolving Fund pursuant to Minn. Stat. Sec. 176.591.

If, at any time during the course of this Agreement, limits at MN Statute 466.04 exceed the amount of insurance limits shown above; Hauler agrees as a condition subsequent to the statutory increase to increase the Hauler's insurance limits accordingly. Nothing in this Agreement shall constitute a waiver by the R&E Board of any statutory limits upon liability.

If, at any time during the insurance policy period applicable to each line of coverage above, the Hauler's insurance limits have been exhausted, the Hauler agrees to procure new coverage limits at specified limits of this Agreement.

All insurance carriers indicated on the Certificate of Insurance shall have a Best Rating of no less than A-.

Prior to the effective date of this Agreement, the Hauler will furnish R&E with a current and valid insurance certificate evidencing insurance coverage in the amounts required by this Agreement. As a condition subsequent to this Agreement, Hauler shall ensure that the certificate of insurance provided to R&E will at all times be current. The Parties agree that failure by Hauler to maintain a current certificate of insurance with R&E shall be a material breach of the Agreement and payments on the Agreement shall be withheld by R&E until a certificate of insurance showing current insurance coverage in amounts required by the Agreement is provided to R&E. Any policy obtained and maintained under this clause (other than workers' compensation) shall provide that it shall not be cancelled, or not renewed, without thirty (30) days written notice thereof to R&E; ten (10) days written notice shall be provided to R&E for non-payment of premium.

12. Independent Contractor

It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the parties hereto or as constituting the Hauler as the agent, representative, or employee of R&E for any purpose or in any manner whatsoever. The Hauler is to be and shall remain an independent Hauler with respect to all services performed under this Agreement.

The Hauler represents that it has, or will secure at its own expense, all personnel required in performing services under this Agreement. Any and all personnel of the Hauler or other persons, while engaged in the performance of any work or services required by the Hauler under this Agreement, shall have no contractual relationship with R&E and shall not be considered employees of R&E.

Neither the Hauler nor its employees will at any time be construed to be employees of R&E. The Hauler is responsible for its employees' compensation, fringe benefits and all insurance coverage.

13. Subcontracting and Assignment

The Hauler shall not enter into any subcontract for performance of any services contemplated under this Agreement; nor novate or assign any interest in the Agreement without the prior written approval of R&E, which shall not be unreasonably withheld. Any assignment or novation may be made subject to such conditions and provisions as R&E may impose. If the Hauler subcontracts the obligations under this Agreement, the Hauler shall be responsible for the performance of all obligations by the subcontractors.

14. Modifications

Any material alteration, modification or variation of this Agreement shall be reduced to writing as an amendment and signed by the Parties. Any alteration, modification, or variation deemed not to be material by agreement of R&E and the Hauler shall not require written approval.

15. Merger

It is understood and agreed that the entire agreement of the Parties is contained herein, and this Agreement supersedes all oral agreements and negotiations between the Parties relating to this subject matter. All items referred to in this Agreement are incorporated or attached and deemed to be a part of the Agreement.

16. Repeated Failure to Deliver Acceptable Waste

Repeated failure by Hauler to deliver all Acceptable Waste collected by Hauler in the Counties to the R&E Center or a Specified Transfer Station in accordance with the terms and conditions of this Agreement shall be considered a material breach and shall be cause for early termination at the discretion of R&E, or revocation of Hauler's ability to use the R&E Board's credit policy. R&E shall provide Hauler with written notice describing the material breach and Twenty-One (21) days to correct the material breach. Hauler shall work with the R&E Board to correct the material breach to R&E's satisfaction within 21 days of said notice. If not corrected to the satisfaction of R&E, it shall be cause for immediate termination by R&E or revocation of Hauler's ability to use the R&E credit policy, at the sole discretion of R&E.

17. Termination

- a. R&E may immediately terminate this Agreement if any proceeding or other action is filed by or against the Hauler seeking reorganization, liquidation, dissolution, or insolvency of the Hauler under any law relating to bankruptcy, insolvency or relief of debtors. The Hauler shall immediately notify R&E in writing upon the commencement of such proceedings or other action.
- b. If either party violates any material terms or conditions of this Agreement the other party may, without prejudice to any right or remedy, give the offending party, and its surety, if any, twenty-one (21) calendar days written notice of its intent to terminate this Agreement, specifying the asserted breach. If the offending party fails to cure the deficiency within the 21-day cure period, this Agreement shall terminate upon expiration of the cure.
- c. Either Party may terminate this Agreement without cause upon giving at least sixty (60) calendar days written notice thereof to the other Party. In such event, R&E shall be entitled to receive compensation for services provided in compliance with the provisions of this Agreement, up to and including the effective date of termination.

18. Compliance with Law

The Hauler shall abide by all federal, state, or local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted insofar as they relate to the Hauler's performance of the provisions of this Agreement. Failure to meet the requirements of this section may be cause for cancellation of the Agreement effective the date of receipt of the notice of cancellation. The Hauler, at its own expense, shall secure and pay for all permits, fees, charges, duties, licenses, certifications, inspections, and other requirements and approvals as necessary for Hauler's execution and completion of this Agreement.

19. Firearms prohibited

Unless specifically required by the terms of this Agreement, no provider of services pursuant to this Agreement, including but not limited to employees, agents, or subcontractors of the Hauler shall carry or possess a firearm on R&E premises or while acting on behalf of R&E pursuant to the terms of this Agreement. Violation of this provision shall be considered a substantial breach of the Agreement; and, in addition to any other remedy available to R&E under law or equity. Violation of this provision is ground for immediate suspension or termination of this Agreement.

20. Successors

The Hauler binds itself, its partners, successors, assigns and legal representatives to R&E in respect to all covenants, contracts and obligations contained in this Agreement.

21. Non-Conforming Services

The acceptance by a Party of any non-conforming goods/services under the terms of this Agreement, or the foregoing by the accepting Party of any of the rights or remedies arising under the terms of this Agreement, shall not constitute a waiver of the accepting Party's right to conforming services or any rights and/or remedies in respect to any subsequent breach or default of the terms of this Agreement. The rights and remedies of R&E provided or referred to under the terms of this Agreement are cumulative and not mutually exclusive.

22. Force Majeure

Neither party shall be liable for any loss or damage incurred by the other party as a result of events outside the control of the party ("Force Majeure Events") including, but not limited to: war, storms, flooding, fires, strikes, legal acts of public authorities, or emergency acts of government that prevent performance of this Agreement. The COVID-19 pandemic shall not be considered a Force Majeure Event unless government emergency orders related to the COVID-19 pandemic prevent performance under this Agreement.

23. Interpretation of Agreement; Venue

- a. The Agreement shall be interpreted and construed according to the laws of the State of Minnesota. All litigation regarding this Agreement shall be venued in the appropriate State or Federal District Court in Ramsey County, Minnesota.
- b. The provisions of this Agreement are severable. If any part of this Agreement is rendered void, invalid or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the dates below.

**State of Minnesota
Department of Administration
Facilities Management Division**

**RAMSEY/WASHINGTON RECYCLING
& ENERGY BOARD:**

By: _____

By: _____

Michael Reed, Joint Leadership Team

Title: _____

Date: _____

Date: _____

By: _____

David Brummel, Joint Leadership Team

Date: _____

Approved As To Form:

By: _____

Assistant County Attorney

Date: _____

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**RAMSEY/WASHINGTON
RECYCLING & ENERGY**
CONNECTING VALUE TO WASTE

R&E BOARD MEETING DATE:	September 7, 2023			AGENDA ITEM:	VI.d			
SUBJECT:	2024 Tip Fee Communications							
TYPE OF ITEM:	<input checked="" type="checkbox"/>	INFORMATION	<input type="checkbox"/>	POLICY DISCUSSION	<input type="checkbox"/>	ACTION	<input type="checkbox"/>	CONSENT
SUBMITTED BY:	Joint Leadership Team (JLT)							

R&E BOARD ACTION REQUESTED:

For information only.

EXECUTIVE SUMMARY:

With the adoption of the 2024-25 Facility Budget at the R&E Board meeting on July 27, 2023 (Resolution R&EB-2023-11), the 2024 tip fee was established at \$121/ton (up from \$103/ton in 2023) and the 2025 tip fee was established at \$130/ton in 2025. Per the R&E Waste Delivery Agreement entered into by all the residential, commercial and government entity haulers providing services in Ramsey and Washington County, R&E is required to provide at least 90-days advance written notice to the Hauler of any changes in the tipping fee. Accordingly, R&E will be mailing out the written notice to haulers by September 15, 2023. Further, there has been interest expressed by at least one waste hauler to co-brand with R&E a communication to their customers explaining the impact of the tip fee increase.



JLT will present draft language to the R&E Board at the September 7, 2023, meeting as a reference for your input.

ATTACHMENTS:

None.

FINANCIAL IMPLICATIONS:

None.

AUTHORIZED SIGNATURES	DATE
JOINT LEADERSHIP TEAM 	8/24/23
	8/23/23



**RAMSEY/WASHINGTON
RECYCLING & ENERGY**
CONNECTING VALUE TO WASTE

R&E BOARD MEETING DATE:	September 7, 2023			AGENDA ITEM:	VIII			
SUBJECT:	Updates and Reports							
TYPE OF ITEM:	<input checked="" type="checkbox"/>	INFORMATION	<input type="checkbox"/>	POLICY DISCUSSION	<input type="checkbox"/>	ACTION	<input type="checkbox"/>	CONSENT
SUBMITTED BY:	Joint Leadership Team (JLT)							

R&E BOARD ACTION REQUESTED:

For information only.

EXECUTIVE SUMMARY:

a. Joint Activities Updates

Staff will provide updates on joint activities work.

b. Facility Updates

Staff will provide updates on R&E Center projects and operations.

c. Procurement Report



Staff will provide a written report of new contracts and amendments executed under the authority of R&E's procurement guidelines during the period of July 1, 2023, through July 31, 2023. Funding for the contracts is available in the approved Joint Activities, Facility and EM&R Budgets, following approval as to form by the Ramsey County or Washington County attorney's office.

ATTACHMENTS:

1. Procurement Report

FINANCIAL IMPLICATIONS:

None.

AUTHORIZED SIGNATURES	DATE
JOINT LEADERSHIP TEAM  	8/25/2023



**RAMSEY/WASHINGTON
RECYCLING & ENERGY**
CONNECTING VALUE TO WASTE

Report of all professional service and supplies, equipment, material and labor (SEML) contracts, amendments and solicitations issued and executed under authority of Ramsey/Washington Recycling & Energy’s procurement guidelines (Resolution R&EB 2022-06), July 1, 2023, through July 31, 2023.

Vendor	Effective Date	Description	NTE/Budgeted Amount	Procurement Type
DDA Human Resources, Inc.	7/1/23	Joint Activities – Executive recruitment services.	\$23,000	Professional Services
J.R.’s Advanced Recyclers	6/1/23	Facility – Appliance and electronics pick up and recycling services.	Rate Setting – Budgeted at under \$20,000 per year	SEML
The Good Acre	1/1/23	Joint Activities – Amendment to contract that assists BIPOC farmers by purchasing surplus produce and distributing it to food relief organizations.	\$40,000 for 2023	Professional Services
North American Trailer Sales	7/6/23	Facility – Purchase of six aluminum trailers for resource recovery services.	\$812,131.24	SEML
Emerge Enterprises, Inc dba Second Chance Coalition	5/1/23	Joint Activities – Used mattress collection and recycling.	Rate Setting up to \$150,000	SEML
Clean Cut Outdoor Services LLC	4/1/23	Facility – Snow plowing services.	Base rate of \$32,175 per year.	SEML
Second Harvest Heartland	1/1/23	Joint Activities – Food recovery services.	\$40,000 for 2023	Professional Services