

**ALL WASTE DELIVERY AGREEMENT  
(For Ramsey and Washington Counties)**

This **ALL WASTE DELIVERY AGREEMENT** (“**Agreement**”), made this \_\_\_ day of \_\_\_\_\_, 2012, by and between **RESOURCE RECOVERY TECHNOLOGIES, LLC**, a Delaware limited liability company (the “**Company**”), and **City of St. Paul-Parks & Rec Dept**, a Government Agency corporation/limited liability company, with principal offices located at 1100 North Hamline, # 03132, St. Paul, MN 55108 (the “**Customer**”).

**WHEREAS**, the Company and the Customer have entered into that certain All Waste Delivery Agreement dated January 1, 2007 (the “**Existing Agreement**”) requiring the Customer to deliver all municipal solid waste it collects from sites located in Washington or Ramsey counties (collectively, the “**Counties**”) to the Company’s municipal solid waste processing facility located on Maxwell Avenue in Newport, Minnesota (the “**Facility**”);

**WHEREAS**, the Counties are committed to the continuation of municipal solid waste processing and the Boards of Commissioners of each of the Counties have voted to contract with the Company for waste processing services at the Facility for a term of three years pursuant to a new waste processing agreement (the “**R/W Processing Agreement**”) to become effective as of January 1, 2013;

**WHEREAS**, under the R/W Processing Agreement, the Company has obtained the authority from the Counties to contract directly with refuse haulers for delivery of waste to the Facility and pay such refuse haulers a per ton rebate (the “**Hauler Rebate**”) as described in Exhibit A to this Agreement, for all “**Acceptable Waste**” (as defined herein) collected in the Counties and delivered to the Facility or to any transfer station that the Company uses to receive and transfer Acceptable Waste to the Facility;

**WHEREAS**, the Customer desires to dispose or arrange for the disposal of Acceptable Waste at the Facility, and the Company desires to accept Acceptable Waste from the Customer at the Facility, all upon the terms and conditions of this Agreement; and

**WHEREAS**, this Agreement will only become effective upon the satisfaction of certain requirements relating to hauler participation, minimum tonnages and uniformity of pricing.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises hereinafter set forth, the receipt and sufficiency of which is hereby mutually acknowledged, the parties agree as follows:

**I. DEFINITIONS**

The following definitions apply to this Agreement:

- A. Acceptable Waste:** Acceptable Waste shall include garbage, refuse, and other municipal solid waste from residential, commercial, industrial, and community activities which is generated and collected within the boundaries of the Counties,

and which is not otherwise defined herein as Unacceptable Waste. No amount of Hazardous Waste or infectious waste that is regulated by law shall be Acceptable Waste. Acceptable Waste shall also include Acceptable Household Waste and Acceptable Non-Household Waste, as defined herein.

- B. Acceptable Household Waste:** Waste which is otherwise Unacceptable Waste, but which is contained in garbage, refuse, and municipal solid waste generated from normal household activities. For the purposes of this definition, "household" includes any permanent or temporary residential dwelling unit. Provided, however, that no amount of Hazardous Waste or any other Waste that is regulated or restricted by law is Acceptable Household Waste.
- C. Acceptable Non-Household Waste:** Waste which is otherwise Unacceptable Waste, but which is contained in garbage, refuse, and municipal solid waste generated from commercial, industrial, or community activities, where the quantity of such Acceptable Non-Household Waste contained in a load delivered to the Facility constitutes an insignificant portion of such load. Provided, however, that no amount of Hazardous Waste or any other waste that is regulated or restricted by law is Acceptable Non-Household Waste.
- E. Company:** Means Resource Recovery Technologies, LLC, the owner and operator of the Facility.
- F. Counties:** Has the meaning set forth in the recitals to this Agreement.
- G. Customer:** Has the meaning set forth in the introductory clause to this Agreement.
- H. Facility:** Has the meaning set forth in the recitals to this Agreement.
- I. Force Majeure:** Means any act, event or condition relied upon by a party as justification for delay in or excuse from performing an obligation or complying with any condition required of such party under this Agreement, which act, event or condition is beyond the reasonable control of the party, its affiliates or agents relying thereon, including, without limitation, (i) an act of God, epidemic, landslide, lightning, earthquake, fire or explosion, storm, flood or similar occurrence, an act of public enemy, war, blockage, insurrection, riot, general arrest or restraint of government and people, civil disturbance or disobedience, sabotage or similar occurrence; (ii) the order or judgment or other act of any federal or state court, administrative agency or governmental office or body; (iii) the denial, loss, suspension, expiration, termination or failure of renewal of any permit, license or other governmental approval required to operate (including, without limitation, those permits required to operate the Facility); (iv) the adoption or change (including a change in interpretation) of any federal, state, county or local law, rule, permit, regulation or ordinance after the date hereof applicable to the Facility, or the Company, materially adversely affecting its

obligations hereunder; or (v) the Company or Facility is for any reason delayed or barred by governmental or judicial action from collecting all or any part of the fees and charges owed to it pursuant to this Agreement. In no event will the federal enactment of any flow control legislation be an excuse from performing on this Agreement.

- J. Hauler Rebate:** Has the meaning set forth in the recitals to this Agreement.
- K. Hazardous Waste:** Waste defined as hazardous waste by state, federal, and county laws, rules, and regulations, as any of the foregoing may be amended from time to time.
- L. Holidays:** New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.
- M. R/W Processing Agreement:** Has the meaning set forth in the recitals to this Agreement.
- N. Unacceptable Waste:** Waste which is not acceptable at the Facility. Unacceptable Waste shall include waste which would likely pose a threat to health or safety or which may cause damage to or materially adversely affect the operation of the Facility, including but not limited to: explosives; hospital, pathological and biological waste; commercial, industrial, and community Hazardous Waste, as regulated by federal, state and local law; chemicals and radioactive materials; oil sludges; asbestos in identifiable quantities; cesspool, domestic sewage or other sewage sludge; human or animal remains; street sweepings; ash; mining waste; sludges; non-combustible demolition and construction debris, including loads that are predominantly (i.e., over 50 percent) sheet rock, metal studs/framing, metal siding, garage doors, lights, bricks, block, or concrete; waste in liquid state; hazardous refuse of any kind, such as cleaning fluids, used crank case oils, cutting oils, paints, acids, caustics, poisons, and drugs; loads of predominantly windshields, mirrors or other autobody glass; loads of predominantly asphalt shingles; and any other materials that may be agreed to from time to time by the parties. If any governmental agency or unit having appropriate jurisdiction shall determine that certain chemicals or other substances which are not currently considered harmful or of a toxic nature or dangerous, are harmful, toxic or dangerous, the Company and the Customer shall agree that such chemicals or other substances shall be Unacceptable Waste.

## II. CUSTOMER RESPONSIBILITIES

### A. Delivery of Acceptable Waste.

1. The Customer agrees to deliver all Acceptable Waste it collects to the Facility. The Customer further agrees that it will not deliver Acceptable Waste collected by the Customer to any landfill, transfer station (other

than a transfer station used by the Company), or other solid waste disposal facility except in instances where it first obtains prior written consent from the Company to do so.

2. The Customer may deliver Acceptable Waste directly to the Facility or if available, to a transfer station that is used by the Company to receive and transfer waste to the Facility. The Customer agrees to use its best efforts to avoid delivering any Unacceptable Waste to the Facility and shall not knowingly mix any Unacceptable Waste with Acceptable Waste.

**B. Rejection of Deliveries.** The Customer may be denied entrance to the Facility (or to a transfer station serving the Facility) by the Company if waste is delivered at any time other than the Facility's (or transfer station's) standard receiving hours or if the Customer has not paid the Tipping Fee, or if the Company has a reasonable basis to believe that a vehicle contains Hazardous Waste or Unacceptable Waste.

**C. Tipping Fee.** The Customer shall pay to the Facility the following tipping fee (the "Tipping Fee") for each ton of Acceptable Waste delivered by the Customer to the Facility or a transfer station used by the Company, provided that the Company may charge an additional fee for the use of the transfer station:

<u>Period</u>	<u>Tipping Fee</u>
January 1, 2013 – December 31, 2013	\$84 (a)
January 1, 2014 – December 31, 2014	\$84 (a) (b)
January 1, 2015 – December 31, 2015	\$84 (a) (b)

*(a) For every \$.10 cents increase in fuel over the price of diesel fuel at January 1, 2013 measured on a quarterly basis beginning March 31, 2013, there will be a corresponding \$.13 cents per ton increase in the Tipping Fee. The price of diesel fuel shall be based on the Department of Energy (D.O.E.) Midwest standard diesel rate per gallon. For example: If the D.O.E Midwest standard diesel rate is \$4.00 on January 1st 2013 and \$4.12 on March 31st 2013, then an additional \$.16 cents per ton fuel surcharge will be applied to the Tipping Fee for the 2013 second quarter invoices determined as follows:  
 $(\$4.12 - \$4.00) / \$0.10 * \$0.13 = \$0.16$*

*(b) A consumer price index adjustment will occur on January 1, 2014 and January 1, 2015. This adjustment will be based on the percentage change in the CPI-U, U.S. All Cities Consumer Price Index for All Urban Consumers, for the 12 months of the preceding year ending on October 31st. For example: If the CPI-U is 224.00 ending on October 31st 2013 and is 217.50 ending on October 31st 2012 then the Tipping Fee for 2014 will be increased by 2.99%  $((224.00 - 217.50) / 217.5 = 2.99\%)$ .*

**D. Hauler Rebate.** The Customer will receive the Hauler Rebate from the Counties for every ton of Acceptable Waste delivered to the Facility or a transfer station

used by the Company. Failure of the Counties to pay the Hauler Rebate shall in no way obligate the Company to provide for its payment.

- E. **Mattresses; Tires, etc.** In addition to all other charges, the Customer agrees to pay to the Company those charges established by the Company from time to time for its receipt from the Customer of mattresses, tires, appliances and electronics.

### III. COMPANY RESPONSIBILITIES

- A. **Rebates.** The Company will provide reasonable assistance to the Customer in order for the Customer to receive the Hauler Rebate from the Counties. In no event, however, will the Company be obligated to pay the Customer the Hauler Rebate.
- B. **Compliance with Law.** The Company agrees to comply with all federal, state or local laws, rules, regulations or ordinances.

IV. **TERM.** This Agreement shall be in effect from January 1, 2013 through December 31, 2015.

V. **RENEWALS.** It is the intent of the Company and the Customer to continue deliveries to the Facility to optimize its capacity beyond the term of this Agreement. Therefore, this Agreement may be renewed upon mutually agreeable terms or be replaced by another mutually acceptable mechanism for specifying waste delivery to the Facility.

VI. **REMEDIES.** The Company may enforce this Agreement through specific performance. In addition, the Company is entitled to liquidated damages for Acceptable Waste that the Customer fails to deliver to the Facility as follows: In the event the Customer breaches this Agreement by delivering Acceptable Waste to a facility not authorized hereunder, and if, after five (5) days after receiving written notice from the Company, the Customer continues to deliver Acceptable Waste in violation of this Agreement, the Customer shall pay to the Company liquidated damages and reasonable legal fees and costs incurred in obtaining liquidated damages. The liquidated damages shall be the applicable Tipping Fee per ton of Acceptable Waste collected in the Counties but not delivered to the Facility. For the purpose of determining tonnage amounts for remedies pursuant to this Section, the tonnage calculations shall be the total tons of Acceptable Waste collected by the Customer during the time period in question minus the total tons actually delivered to the Facility during such time.

VII. **FORCE MAJEURE.** In the event any party is rendered unable, wholly or in part, by an event of Force Majeure to carry out any of its obligations under this Agreement, then the obligations of such party, to the extent affected by such an event of Force Majeure and to the extent that reasonable business efforts are being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused by the event of Force Majeure. Should a party intend to rely upon an event of Force Majeure to excuse or suspend its obligations hereunder as provided in this section,

such party shall notify the other party as soon as is reasonably practicable, describing in reasonable detail the circumstances of the event of Force Majeure. Notice shall again be given when the effect of the event of Force Majeure has ceased.

## VIII. TERMINATION

**A. Termination.** The parties may terminate this Agreement as follows:

1. The parties may terminate this Agreement at any time upon mutual written agreement.
2. Either party may terminate this Agreement by providing notice to the other party if the other party commits a material breach of this Agreement, and the breach is not cured within 30 days after receipt of notice from the party not in breach, stating the nature of the breach.
3. Either party may terminate this Agreement by providing notice to the other party in the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against the other party, or the appointment with or without such other party's consent of an assignee for the benefit of creditors or of a receiver for such other party, or the going into liquidation voluntarily or otherwise for the making of a composition with creditors of such other party.
4. The Company may terminate this Agreement by providing notice to the Customer in the event of a termination or expiration of the R/W Processing Agreement, as may be amended (or any replacement agreement with the Counties) or in the event of a termination or expiration of the fuel supply agreement between the Company and Xcel Energy, as may be amended (or any replacement agreement).
5. Either party may terminate this Agreement by providing thirty (30) days' advance written notice to the other party in the event the Company does not have in place an executed waste delivery agreement with each of Waste Management and Republic requiring delivery of certain tons of Acceptable Waste to the Facility pursuant to terms and conditions substantially similar to this Agreement.

**B. Effect of Termination.** Termination under this Section VIII will cause all rights and obligations of the parties under this Agreement to terminate without any further liability of any party to any other party, except that termination will have no effect on performance obligations or amounts to be paid that have accrued up to the date of such termination. In addition, the indemnification obligations contained in Section IX of this Agreement will survive the termination of this Agreement.

## IX. INDEMNIFICATION

- A. Indemnification of Company.** The Customer agrees to defend, indemnify, and hold harmless the Company, its officers, agents, and employees from any liability, claims, causes of action, judgments, damages, losses, costs, or expenses, including reasonable attorney's fees, resulting directly or indirectly from any act, or omission, of the Customer, its officers, agents, employees or contractors, or anyone whose act, or omission, any of them may be liable for in the performance of the services required by this Agreement, and against all loss by reason of the failure of said Customer to perform fully, in any respect, all obligations under this Agreement.
- B. Indemnification of Customer.** The Company agrees to defend, indemnify, and hold harmless the Customer against liability for removal or remedial actions under the Comprehensive Environmental Response, Compensation and Liability Act and the Minnesota Environmental Response and Liability Act for a release or threatened release of hazardous substance from Acceptable Waste delivered by the Customer pursuant to this Agreement to the Facility and not rejected by the Facility. It is understood and agreed that the Company's duty to indemnify the Customer shall be null and void if:
1. The Customer, without the express written consent of the Company, assumes any obligation, makes any payment, incurs any expense, or compromises in any way a claim covered by this indemnification;
  2. The Customer fails to give timely notice of claim and provide copies of documents as required; or
  3. The Customer fails to cooperate with the Company in the investigation, settlement, or defense of the claim or suit.
- C. Defense of Claim(s).** The Company shall provide legal representation through legal counsel of its choice for a defense of claims asserted against the Customer if those claims are indemnified by the Company under this section. In its sole discretion, the Company may choose to provide legal representation through common counsel or separate counsel to represent the Customer for said claims. The Customer shall be solely responsible for defending claims or portions of claims not indemnified by the Company under this section. The Customer agrees that: (1) it will not claim or assert, that based solely on common counsel's past or present representation of the Customer, said counsel has a conflict of interest in performing legal services under this section; (2) it will not claim or assert, that based solely on common counsel's representation under the terms of this Agreement, said counsel has a conflict of interest in connection with any representation of any other person or entity in a matter pending; and (3) in the event that any legal conflict develops in the continued representation of the Company and other waste haulers, the Customer may consent to have the

common counsel continue to represent it under this section. Nothing in this Agreement shall prevent the Customer from retaining, at the Customer's sole expense, its own counsel for the defense of claims indemnified by the Company under this section in the event a conflict of interest exists. The Customer agrees to assign to the Company all claims the Customer may have that arise in connection with claims indemnified by the Company.

**X. RESERVED.**

**XI. BINDING EFFECT.** This Agreement shall be binding upon and inure to the benefit of the respective parties, their heirs, representatives, successors and assigns.

**XII. ENTIRE CONTRACT, MODIFICATION AND WAIVER.** This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties. There are no warranties, representations or other agreements between the parties in connection with the subject matter hereof, except as specifically set forth herein. No supplement, modification or waiver of this Agreement shall be binding unless it is executed in writing by the party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof, whether or not similar, nor shall such waiver constitute a continuing waiver.

**XIII. INDEPENDENT CONTRACTOR.** For the purposes of this Agreement, the Customer shall be deemed to be an independent contractor, and not an employee or agent of the Company. Any and all agents, servants, or employees of the Customer or other persons, while engaged in the performance of any work or services required to be performed by the Company under this Agreement, shall not be considered employees or agents of the Company and any and all claims that may or might arise on behalf of the Company, its agents, servants or employees as a consequence of any act or omission on the part of the Customer, its agents, servants, employees or other persons shall in no way be the obligation or responsibility of the Company. The Customer, its agents, servants, or employees shall be entitled to none of the rights, privileges, or benefits of Company employees except as otherwise may be stated herein.

**XIV. GOVERNING LAW.** This Agreement shall be interpreted and construed according to the laws of the State of Minnesota, excluding the State of Minnesota's choice of law provisions. The Customer agrees to accept service of process in the State of Minnesota, and the parties agree that all litigation shall be venued in the Minnesota District Court, Second Judicial District.

**XV. SEVERABILITY.** In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not effect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.



**XVI. ASSIGNMENT.** The Customer shall not delegate, assign, subcontract, or transfer any of its duties or interests in this Agreement, whether by subcontract, assignment, delegation or novation without the written consent of the Company, which consent shall not be unreasonably withheld.

**XVII. MERGERS AND ACQUISITIONS**

- A. Maintenance of Obligations.** the Customer shall maintain its existence and shall not dissolve or otherwise dispose of all or substantially all of its assets, and shall not allow itself or its routes to be acquired, and shall not consolidate with or merge into another corporation, association, or entity or permit any other corporation, association, or entity to consolidate with or merge into it unless the acquiring, surviving, resulting or transferee corporation, association, or other entity, as the case may be, if other than the Customer, assumes all of the obligations of the Customer under this Agreement.
- B. Customer Acquisitions.** If the Customer acquires a hauler or its routes when such hauler has contracted with the Company for delivery of Acceptable Waste to the Facility, the Customer shall assume the acquired hauler's contract with the Company and, in addition to continuing to meet its own obligations, the Customer shall deliver the acquired hauler's Acceptable Waste to the Facility.

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IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth above.

**COMPANY:**

**CUSTOMER:**

**RESOURCE RECOVERY  
TECHNOLOGIES, LLC**, a Delaware  
limited liability company

**City of St. Paul-Parks & Rec Dept**

By *Christy A. Jurek*  
*Chris Gantsek* (printed name)  
Its: *CFO/COO* (printed title)

By \_\_\_\_\_ (printed name)  
Its: \_\_\_\_\_ (printed title)

Approved as to Form:

\_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
Mayor or Designee

\_\_\_\_\_  
Director, Office of Financial Services

\_\_\_\_\_  
Director, Department of Human Rights

\_\_\_\_\_  
Funding Activity No. \_\_\_\_\_  
Activity Manager

EXHIBIT A

Hauler Rebates

<u>Period</u>	<u>Hauler Rebate</u>
January 1, 2013 – December 31, 2013	\$28
January 1, 2014 – December 31, 2014	\$28
January 1, 2015 – December 31, 2015	\$28