

SOLID WASTE MANAGEMENT AGREEMENT
between
DODGE COUNTY, MINNESOTA
and
OLMSTED COUNTY, MINNESOTA

This AGREEMENT is entered into this 22nd day of September, 2009 by and between Dodge County, Minnesota and Olmsted County, Minnesota.

WHEREAS, the Waste Management Act of 1980, Minnesota Statutes, Chapter 115A, as amended, and the County Solid Waste Management Act of 1971, Minnesota Statutes Chapter 400, as amended requires counties to abate the need for land disposal of unprocessed solid waste; and

WHEREAS, it is the desire of Dodge and Olmsted Counties to reduce the volume of unprocessed solid waste disposed in landfills within their jurisdictions; and

WHEREAS, Dodge and Olmsted Counties have prepared Solid Waste Management Plans providing for cooperation and participation in implementing a landfill abatement program which includes, since 1987, the construction and operation by Olmsted County of a 200-ton per day resource recovery facility which converts solid waste to steam and electricity (the Olmsted County Waste-To-Energy Facility or OWEF) and the facility is scheduled to increase capacity to 400 tons per day in late 2009; and

WHEREAS, said Plans and Ordinances have been adopted by action of each County Board of Commissioners, and said Plans and Ordinances have been approved by the appropriate state agencies as required by state statute; and

WHEREAS, cooperation between these two Counties furthers the opportunities for efficient solid waste management and the reduction of the amount of solid waste which must be landfilled; and

WHEREAS, the original Agreement, dated October 28, 1986, was amended on June 30, 1989, and expired on October 28, 2006 which was subsequently amended and renewed and now needs to be revised again in light of the imminent opening of the Unit 3 expansion at the OWEF; and

WHEREAS, the present Agreement states that Olmsted County will offer Dodge County continued waste processing and disposal services under similar and mutually agreeable conditions; and

WHEREAS, both counties recognize the need to cooperatively manage solid waste under a new agreement, which extends the Term of the Agreement to June 30, 2028 to

coincide with the management and operational needs of the new, expanded OWEF facility capacity of 400 tons per day.

NOW THEREFORE, in consideration of the benefits that each county will derive from this cooperation and the mutual promises and covenants set forth herein, the Counties hereby enter into this Agreement.

Dated this 22nd day of September, 2009

OLMSTED COUNTY

DODGE COUNTY

By: _____

By: _____

Attest: _____

DODGE/OLMSTED SOLID WASTE MANAGEMENT AGREEMENT

	<u>CONTENTS</u>	<u>PAGE</u>
SECTION 1	DEFINITIONS	1
SECTION 2	OLMSTED WASTE-TO- ENERGY FACILITY	5
	2.1 Capacity	
	A) OWEF Waste Processing	
	2.2 Waste Handling and Accounting	
	A) Weighing at the OWEF	
	B) Non-Processible Waste at the OWEF	
	C) Interrupted Service	
SECTION 3	DODGE COUNTY TRANSFER STATION	6
	3.1 Waste Designation and Transport	
	A) Dodge County Designation	
	3.2 Waste Handling and Accounting	
	A) Operation of Transfer Station	
	B) Waste Separation	
SECTION 4	OWEF ASH MONOFILL	7
	4.1 State Permits	
	A) Permit Holder	
	B) Certificate of Need	
	4.2 Operations	
	A) Responsibility	
	B) Financial Assurance	
SECTION 5	BYPASS LANDFILL	8
	5.1 State Permits	
	A) Permit Holder	
	B) Certificate of Need	
	C) Permit Renewal	
	5.2 Operations	
	A) Responsibility	
	B) Hours of Operation	

5.3	Capacity Commitment and Dodge Tipping Fee Structure	
	A) Capacity	
5.4	Waste Handling and Accounting	
	A) Acceptable Waste	
	B) Unacceptable Waste	
	C) Industrial Waste	
SECTION 6	DODGE TIPPING FEE STRUCTURE	10
	A) Establishment of Dodge Tipping Fee	
	B) Dodge Tipping Fee formula	
SECTION 7	RESPONSIBILITY, INDEMNIFICATION, AND INSURANCE	10
	7.1 Responsibility	
	7.2 Indemnification	
	7.3 Insurance	
SECTION 8	FINANCIAL AND ACCOUNTING	12
	8.1 Accounting System	
	8.2 Annual Reports	
	8.3 Correction of Invoices	
	8.4 Penalty for Late Payment	
	8.5 Process to Establish Dodge Tipping Fees	
SECTION 9	DISPUTE RESOLUTION; ARBITRATION	14
	9.1 Dispute Resolution	
SECTION 10	TERM AND TERMINATION	15
	10.1 Term of the Agreement	
	10.2 Remedies	
SECTION 11	GENERAL PROVISIONS	15
	11.1 Notice	
	11.2 Contract Administrator	
	11.3 Joint Powers Board	

- 11.4 Entire Agreement
- 11.5 Situs
- 11.6 Severability
- 11.7 Amendments
- 11.8 Assignment
- 11.9 Waiver
- 11.10 Employees

EXHIBITS

- EXHIBIT A UNACCEPTABLE WASTE AT OLMSTED COUNTY BYPASS LANDFILL
- EXHIBIT B NONPROCESSIBLE WASTE AT OWEF
- EXHIBIT C DODGE TIPPING FEE FORMULA
- EXHIBIT D ADMINISTRATIVE OVERHEAD FORMULA
- EXHIBIT E GRANT CREDIT FORMULA

SECTION 1 DEFINITIONS

- 1.1 "Acceptable Waste" means municipal solid waste, which is not defined as Unacceptable Waste.
- 1.2 "Ash" means material resulting as an end product from waste incineration at the OWEF.
- 1.3 "Ash Landfill" means that physical area in Olmsted County permitted by the Minnesota Pollution Control Agency for landfilling of ash identified by PCA permit number SW-355.
- 1.4 "Blended Rate": means Bypass Landfill net cost plus OWEF net cost divided by the total tons of Processible, Non-Processible, and Bypass Waste budgeted to come to Olmsted County facilities. These three budgeted waste types are intended to include all the waste budgeted to enter OWEF and the Bypass Landfill. (See Exhibit C for the example calculation)
- 1.5 "Bypass Waste" means Acceptable Waste, which is intended to but cannot be processed at the OWEF and must be disposed in the bypass landfill. Bypass Waste includes wastes resulting from scheduled and unscheduled maintenance activities at the OWEF or waste in excess of plant capacity.
- 1.6 "Bypass Landfill" means that physical area in Olmsted County permitted by the Minnesota Pollution Control Agency for landfilling of bypass waste and non-processible identified by PCA permit number SW-355.
- 1.7 "Capital Cost" means costs resulting from and necessary as part of the development and construction of the ash and bypass landfills in Olmsted County and at the Waste-to-Energy Facility not identified as Operations and Maintenance Costs.
- 1.8 "Capital Recovery Account" means an account comprised of funds resulting from Tipping Fee, established to pay for capital costs incurred in the development and construction of the landfill and/or the Waste-to-Energy Facility.
- 1.9 "Post-Closure Care Fund" means that fund created to pay for actions taken for the care, maintenance, and monitoring of a facility after closure that will prevent, mitigate, or minimize the threat to public health and environment posed by the closed facility.
- 1.10 "Closure Fund" means funds to be used for actions to prevent or minimize the threat to public health and the environment posed by a closed facility including removing contaminated equipment, removing liners, applying final cover, grading

and seeding final cover, installing monitoring devices, constructing ground water and surface water diversion structures, and installing gas control systems, as necessary.

- 1.11 “Daily Landfill Operations” means those activities carried out at the landfill on a regular basis which are necessary to dispose of Bypass Wastes in compliance with all applicable laws, regulations, and permits.
- 1.12 “Dodge Tipping Fee”: The Blended Rate less grant credits shown in Exhibit E.
- 1.12 “Financial Assurance” has the meaning attributed by Minnesota Rules 7035.2665, as amended from time to time. This is an MPCA requirement.
- 1.13 “Household Hazardous Waste” means waste generated from household activity that exhibits the characteristics of or that is listed as hazardous waste under agency rules, but does not include waste from commercial activities that is generated, stored or present in a household. (MS 115A.96, Subd. 1 (b))
- 1.14 “Industrial Waste” means all solid waste generated from an industrial or manufacturing process and solid waste generated from non-manufacturing activities such as service and commercial establishments. Industrial solid waste does not include office materials, restaurant and food preparation waste, discarded machinery, demolition debris, or households refuse.
- 1.15 “Joint Powers Board” means that body or successor body consisting of representatives appointed from Dodge and Olmsted Counties for the purposes of planning and coordinating solid waste management activities created August 27, 1985.
- 1.16 “Landfill Tipping Fee” means the net cost per ton established by Olmsted County, for waste disposed of in the Bypass Landfill .
- 1.17 “MPCA” or “PCA” means Minnesota Pollution Control Agency, which is responsible for regulating solid waste management in Minnesota.
- 1.18 “Municipal Solid Waste” or “MSW” or “Solid Waste” means garbage, refuse, and other solid waste from residential, commercial, industrial and community activities which is generated and collected in aggregate, but does not include auto bulks, street sweepings, ash, construction debris, mining waste, sludges, tree and agricultural wastes, tires and other materials collected, processed and disposed of as a separate waste stream.
- 1.19 “Non-Processible Waste” means Acceptable Waste, which cannot be incinerated.

- 1.20 "Olmsted County Kalmar Landfill" means a landfill, which is sited and permitted for disposal of Bypass Waste, Combustor Ash, and Demolition Materials located on a 160-acre site in Kalmar Township.
- 1.21 "Olmsted Waste-To-Energy Facility" or "Facility" or "OWEF" means the Waste-To-Energy Facility, structures, machinery, equipment, improvements, and ancillary facilities located in Olmsted County, for receiving and processing solid waste.
- 1.22 "Operations and Maintenance Costs" means cost resulting from daily and routine activities necessary for the disposal, compaction, and covering, etc., of bypass waste consistent with all permits issued governing such activities.
- 1.23 "Original Agreements" means the Solid Waste Management Agreement between Dodge and Olmsted Counties, dated October 28, 1986 and June 30, 1989.
- 1.24 "OWEF Tipping Fee" means the net cost per ton established by Olmsted County for waste intended to be processed at the OWEF less the grant credits (shown in Exhibit E).
- 1.25 "Process Waste" means using waste for Resource Recovery, such as incineration, recycling or composting.
- 1.26 "Processible Waste" means Acceptable Waste, which can be incinerated.
- 1.27 "Remedial Action Fund" means the fund resulting from Landfill Tipping Fees established to pay for investigations, administrative costs, and corrective actions necessary to mitigate or prevent known or suspected environmental degradation resulting from the landfills.
- 1.28 "Separated Non-Processibles" means non-processibles that are separated prior to delivery to the bypass landfill.
- 1.29 "Standby Conditions" means time when earth work at the landfills is not required but the operator must be on-site and ready for additional waste.
- 1.30 "Term of Agreement" means the 20-year period commencing October 29,2006.
- 1.31 "Transfer Station" means the structure, machinery, equipment, improvements, and ancillary facilities located in Dodge County intended for the receiving, temporary holding and processing Dodge County waste from haulers and residents of Dodge County, and transferring solid waste to the OWEF.
- 1.32 "Unacceptable Waste" means those wastes which Olmsted County determines will not be accepted at the bypass landfill owned and operated by Olmsted County. Unacceptable Wastes are identified in Exhibit A and made a part thereof. Exhibit A may be amended from time to time.

SECTION 2 OLMSTED WASTE-TO-ENERGY FACILITY

2.1 Capacity

- A) OWEF Waste Processing – Olmsted County agrees to construct and provide waste processing capacity at the OWEF for Processible Waste generated within Dodge County. Olmsted County will accept and process at least 82 percent, on an annual basis, of all available Dodge County Processible Waste through the term of the Agreement.

2.2 WASTE HANDLING AND ACCOUNTING

- A) Weighing at the OWEF – Olmsted County agrees to maintain at the OWEF a certified truck weighing scale for the purpose of weighing Processible and Non-Processible Waste delivered from Dodge County to the OWEF. The tonnage of Processible Waste delivered from Dodge County shall be determined by the deduction of the tare weight of the vehicle from the total loaded weight of the vehicle. Olmsted County shall maintain a record of each delivery of Processible Waste, which includes the gross weight, tare weight, date, time, truck identification number, and total tonnage of Processible Waste determined to have been delivered to the OWEF by such vehicle. A sum equal to the Dodge Tipping Fee times the tonnage of Processible Waste delivered shall be invoiced to Dodge County as follows:
 - a) On or before the 10th day of each month, Olmsted County shall submit to Dodge County an invoice identifying the total tonnage and volume of Processible Waste delivered to the OWEF and Dodge Tipping Fee due for the previous month.
 - b) Dodge Tipping Fee payments are due within twenty-five (25) days following receipt of an invoice.
 - c) The Dodge Tipping Fee provided for in this section shall be subject to any exemptions or modifications provided for elsewhere in this Agreement.
- B) Non-Processible Waste at the OWEF – Waste delivered to the OWEF may be rejected by Olmsted County if it is Non-Processible Waste. Full or partial loads may be rejected. Full loads rejected shall be charged a sum equal to the OWEF Tipping Fee and the Landfill Tipping Fee for each ton of waste rejected for being Non-Processible Waste. Partial loads rejected shall be charged a sum equal to the OWEF Tipping Fee, the Landfill Tipping Fee and the cost to Olmsted County for the removal from the container those wastes identified as Non-Processible Wastes.

- C) Interrupted Service – Olmsted County may suspend the processing of waste at the OWEF in response to necessary operating and safety requirements. In the event waste processing is interrupted at the OWEF, Olmsted County shall not be required to process Dodge County waste. Olmsted County agrees to use its best efforts to promptly remedy the situation.

SECTION 3 DODGE COUNTY TRANSFER STATION

3.1 WASTE DESIGNATION AND TRANSPORT

- A) Dodge County Designation – Dodge County agrees to maintain, implement, and enforce its Solid Waste Management Plan, and Solid Waste Management Ordinance so as to effect the delivery of Acceptable Waste generated within its jurisdiction to its Transfer Station. Processible Waste tipped at the Transfer Station will be designated to the OWEF. Both counties recognize the benefits of sorting waste at the Transfer Station to optimize recycling and composting. Both counties also recognize the benefits of removing Non-Processible and Processible Waste which is better managed in a landfill and/or is non-combustible or of low BTU content, i.e., metals, dirt, grit, etc.

3.2 WASTE HANDLING AND ACCOUNTING

- A) Operation of the Transfer Station – Dodge County will be responsible for operating the Transfer Station in compliance with all applicable laws, regulations and permits governing their operation.
- B) Waste Separation – All waste tipped at the Dodge County Transfer Station will be subject to a Transfer Station Fee established by County Board resolution after public hearing. Dodge County agrees to use its best efforts to cause only Processible Waste to be delivered to the OWEF. Dodge County agrees to advise, notify, and educate persons hauling waste within its jurisdiction of the distinctions between Processible and Non-Processible Waste. Dodge County shall inspect waste received at the Transfer Station to ensure that only Processible Waste is tipped into the transfer containers. To the extent that minimal amounts of Non-Processible Waste normally occur in the solid waste stream such minimal amounts shall not be viewed as Non-Processible Waste within the parameters of such definitions as set forth in this Agreement. Minimal amounts of Non-Processible Waste shall not necessitate the rejection of an entire loaded container at the Transfer Station. If, in the judgment of the transfer vehicle driver or transfer station operator, the waste container contains quantities of Non-Processible Waste, which would negatively affect the operation of the OWEF, the container shall be delivered to the bypass landfill for disposal. Olmsted County shall have the right but not the obligation to inspect all containers of waste before delivery to

the OWEF. Inspection by Olmsted County shall not limit the obligation of Dodge County to cause only Processible Waste to be delivered to the OWEF. Dodge County shall also be responsible for removing Non-Processible Waste from loaded containers at the Transfer Station.

SECTION 4 OWEF ASH MONOFILL

4.1 STATE PERMITS

- A) Permit Holder –Olmsted County agrees that it shall be the permittee on the requisite permits for the operation of the ash landfill.
- B) Certificate of Need – Olmsted County agrees to maintain, as required by state statute and state agency rules, a Certificate of Need for disposal capacity at the Ash Landfill site.

4.2 OPERATIONS

- A) Responsibility – Olmsted County agrees to be responsible for the performance of all Ash Landfill permitting, construction, and operations. All capital, operation, maintenance, closure, post-closure, remedial action, and administrative costs shall be the sole responsibility of Olmsted County. These costs may be included in the OWEF Tipping Fee. All activity shall be done in compliance with permits from MCPA . Olmsted County will fund engineering and construction costs of Phase III expansion activities.
- B) Financial Assurance – Olmsted County will comply with all federal, state and county financial assurance requirements. If cash reserves are accumulated for the defined purposes, those reserves may earn interest. All interest accumulated shall remain in the appropriate closure, post-closure, and remedial action funds.

SECTION 5 BY-PASS LANDFILL

5.1 STATE PERMITS

- A) Permit Holder – Olmsted County agrees to procure and maintain all necessary approvals and permits for the bypass landfill.
- B) Certificate of Need –Olmsted County agrees to maintain, as required by state statute, and state agency rules, a Certificate of Need for disposal capacity at the Olmsted County Bypass Landfill site.

- C) Permit Renewal – Olmsted County will apply for landfill permit renewals as required by MPCA.

5.2 OPERATIONS

- A) Responsibility –Olmsted County shall be solely responsible for land acquisition, professional services, construction operations, maintenance and financial assurances related to the bypass and ash landfills, and shall further conduct all closure, post-closure and remedial action at its sole expense, except as specified to the contrary by this Agreement. Olmsted County will be responsible for all groundwater monitoring for the bypass landfill site. Olmsted County shall be responsible for all closure and post-closure activities. Olmsted County shall be responsible for operating the landfill in compliance with all applicable laws, regulations and permits governing its operation.
- B) Hours of Operation – Dodge and Olmsted Counties shall establish mutually acceptable hours of operation of the ash and bypass landfills.

5.3 CAPACITY COMMITMENT

- A) Capacity Commitment – Olmsted County will provide landfill disposal capacity for Bypass Waste, Separated Processible Waste, and approved Nonprocessible Waste generated in Dodge County. This disposal commitment is limited to the term of this agreement.

5.4 WASTE HANDLING AND ACCOUNTING

- A) Acceptable Waste – All Solid Waste disposed at the By-Pass Landfill will be subject to a Dodge Tipping Fee established by methods described in Section 7.5. All incoming waste will be weighed at the Landfill. Within ten (10) days of the last day of each month, Olmsted County will submit to Dodge County a statement identifying the tonnage of all waste landfilled and its origin. The statement will identify payment due to Olmsted for Dodge waste. This statement will be paid within twenty-five (25) days following its receipt. The statement will identify the waste types as being Processible, Non-Processible or Separated Non-Processible. Statements will also include waste origin, hauler identification, truck number, gross weight, tare weight, date and time. Scale tickets will be provided on a weekly basis for verification of data.
- B) Unacceptable Waste – Unacceptable waste, as defined by this Agreement, may be landfilled if approved by the Minnesota Pollution Control Agency and Olmsted County.

C) Industrial Waste – As required by MPCA Solid Waste Rules, Olmsted County is responsible for evaluating industrial waste for acceptance and management at the bypass landfill

SECTION 6 DODGE TIPPING FEE STRUCTURE

- A) Establishment of the Dodge Tipping Fee – Olmsted County shall establish a Dodge Tipping Fee for processing all waste at the OWEF or accepting at the Bypass Landfill. The Dodge Tipping Fee will be itemized and subject to Dodge County review. The Dodge Tipping Fee charged to Dodge County will reflect only the costs associated with the construction, operation and maintenance of the OWEF (including all costs associated with the Ash Landfill, excluding costs of the bypass landfill) and costs associated with the construction, operation and closure of the Bypass Landfill site. Olmsted County will review actual and projected costs during its normal budget cycle. Increases in the Tipping Fee will be reviewed by Dodge County and approved by the Olmsted County Board. Olmsted County will provide Dodge County a 120-day notice of fee adjustments prior to implementation of the new fee. See also Section 7.5. Dodge County will be exempt from the following components of the Olmsted County budgeted operation:
- a) Waste abatement Programs-Such as Public Education, Recycling, Composting, Solid Waste Management Plan Update, Electronics Management, Special Waste Management, and Household Hazardous Waste.
 - b) Permitting, Construction, Operation, Administration, Closure, Post-Closure, and Remedial Actions for the Demolition Landfill in Kalmar Township.
- B) Dodge Tipping Fee formula-The Dodge Tipping Fee formula is shown in Exhibit C,

SECTION 7 RESPONSIBILITY, INDEMNIFICATION, AND INSURANCE

- 7.1 Responsibility – The parties hereto agree that because of their ownership, control, and use of the various facilities to be utilized in connection with this Agreement, they shall have the following responsibilities with respect to potential risk and liability:

7.2 Olmsted County shall have the responsibility to avoid, minimize, protect, defend, indemnify, and insure against potential losses, claims, liabilities, damages, costs, and expenses associated with or arising out of the construction, operation, or improvement of the OWEF and Bypass Landfill.

| 7.3 Dodge County shall be responsible for avoiding, minimizing, protecting, defending, indemnifying, and insuring against potential losses, claims, liabilities, damages, costs, and expenses associated with or arising out of the construction, operation, use, or improvement of the Transfer Station.

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7.4 Indemnification – Olmsted County agrees to indemnify and save harmless and defend Dodge County against all claims, demands, costs or expenses for loss, damage, or injury to persons or property in any manner directly or indirectly associated with or arising out of the construction, operation, or improvement of the OWEF, Olmsted Bypass Landfill and Ash Landfill unless such claim or demand arises out of or results from the negligence or willful misconduct of Dodge County, its agents or employees, provided also that Olmsted County does not hereby assume responsibility for damage or injury to Dodge County employees occurring in the course and scope of their employment and when they are on Olmsted County's premises.

(01) Dodge County agrees to indemnify and save harmless and defend Olmsted County against all claims, demands, costs, or expenses for loss, damage, or injury to persons or property in any manner directly or indirectly associated with or arising out of the construction, operation, or improvement of the Transfer Station unless such claims or demand arises out of or results from the negligence or willful misconduct of Olmsted County, its agents or employees, and provided also that Dodge County does not assume responsibility for damage or injury to Olmsted County employees occurring in the course or the scope of Olmsted County's employment on Dodge County's premises.

7.5 Insurance – Each party shall procure and maintain insurance coverage in amounts adequate to protect their interest and to responsibly cover the indemnification set forth in above with respect to the facilities to be utilized in connection with this Agreement. Both parties on obtaining the insurance coverages specified below shall furnish to the other parties Certificate of Insurance in a form reasonably satisfactory to that party. Specifically, the parties shall provide and maintain during the term of this Agreement the following insurance coverages:

(01) Worker's compensation insurance in an amount equal to the limits of liability and in the form prescribed by the laws of the State of Minnesota for all employees employed by each part at any of the facilities described in this Agreement.

- (02) Comprehensive general liability insurance/public liability insurance coverage for bodily injury (including protective and contractual liability coverage) in the amount of not less than Five Hundred Thousand Dollars (\$500,000) for injury to or for the death of any person and subject to the same limitation for each person in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000) on the account of any one occurrence.
- (03) Public liability insurance governing property damage, including protective and contractual liability coverage to protect against claims resulting from damage including loss of use to existing property or property being installed by others in the amount of Five Hundred Thousand Dollars (\$500,000) for each claimant and One Million Five Hundred Thousand Dollars (\$1,500,000) for multiple claims arising out of a single occurrence.
- (04) Comprehensive automobile liability insurance covering all loaned, hired, and rented automotive equipment used in the performance of work under this Agreement. It shall include bodily injury coverage in an amount of not less than Five Hundred Thousand Dollars (\$500,000) for injury to or from the death of any one person and subject to the same limitation for each person in an amount not less than One Million Five Hundred Thousand Dollars (\$1,500,000) for multiple claims which arise out of each occurrence. Property damage coverage shall be in an amount not less than Five Hundred Thousand Dollars (\$500,000) for each occurrence.
- (05) Fire and extended coverage insurance (physical damage insurance) coverage on a ninety percent (90%) coinsurance replacement cost endorsement basis insuring against physical loss or damage to the OWEF, Transfer Station, and ash landfill or any part thereof and to the equipment and other items incorporated therein in an amount at all times equal to the full replacement value of such facilities.
- (06) In lieu of the provisions in Section 6.5 either party may at its sole option determine to participate in a pool arrangement with other government or public bodies to provide coverages similar to those required in Section 6.5. Further, either party may determine to self-insure the risks set forth in Section 6.5.
- (07) The provisions of this Agreement are not intended to provide any rights or benefits to any person or individual not a party to this Agreement, nor do the parties intend to waive any rights existing or that may be extended by the laws of the State of Minnesota or the United States.

SECTION 8 FINANCIAL AND ACCOUNTING

8.1 Accounting System – Both Counties shall maintain appropriate financial and

accounting records as may be necessary to accurately determine and review all costs, expenses, and charges associated with or necessary to implement this Agreement. Each County may request that the other County modify its accounting and record keeping in such a manner as may better effectuate the purposes of this provision.

- 8.2 Annual reports – each county shall annually prepare and submit a report to the other County and to the Joint Powers Board not later than June 1 which contains at least the following: a description of the activity of the Dodge Transfer Station, Olmsted Bypass Landfill, and OWEF during the prior year, an itemized statement of the various revenues and expenses from all sources related to each facility, and an estimate of the cost of operation and maintenance for the same for the upcoming year. Such estimate of costs shall include an estimate and source of the amount of anticipated funds. Such annual reports can be the same as the reports required from the counties for other purposes provided the elements as stated in this Section are included.
- 8.3 Correction of Invoices – Either County may request the other to review and reaffirm or correct an Invoice. In the event that either County determines that a mistake has been made on an Invoice, it shall advise the other County of the situation and transmit a supplemental Invoice for the amount over billed or not previously billed or add or subtract the amount on the next monthly Invoice as a separate items with an accompanying explanation.
- 8.4 Penalty for Late Payment – In the event that Dodge County fails to make timely payment of the Tipping Fee for the preceding month, the Invoiced amount or that portion which remains unpaid shall earn interest until paid calculated at the maximum annual rate provided by law. Dodge County shall be obliged to pay the monthly Invoiced amount when due regardless of any disagreement over the amount of the statement. In the event that an invoiced amount is subsequently revised, Dodge shall not pay interest on the amount by which the Invoice statement is reduced.
- 8.5 Process for Establishing Dodge Tipping Fees - Olmsted County will review actual and projected costs during its normal budget cycle. The Dodge Tipping Fee will be based on annual budgets. The schedule for establishing the Dodge Tip Fee is as follows:
 - A) By January 15 of each year, Olmsted will send Dodge County a written notice indicating if adjustments are needed in the OWEF Tip Fee or Bypass Landfill Tip Fee (or “Blended Rate” if approved). If Dodge Tipping Fee adjustments are needed, Olmsted will include the projected Fees along with information used to estimate the Fees.
 - B) Dodge County will review the projected Dodge Tipping Fee and submit comments to Olmsted County within 30 days of receiving the written notice.

- C) Taking into account Dodge County's comments, Olmsted County will revise the Dodge Tipping Fees if warranted and send Dodge County written notice of Recommended Tip Fees by March 1st of each year.
- D) Olmsted County Board must approve the recommended Dodge Tipping Fees prior to the effective date of the Fees. This is usually done during Olmsted County's normal budget cycle.
- E) The Dodge Tipping Fee will be effective on July 1 of each year or 120 days after Dodge County receives Olmsted's written notice of recommended fees.

SECTION 9 DISPUTE RESOLUTION: ARBITRATION

9.1 Dispute Resolution – Each County may request the review and resolution of any dispute or disagreement arising under or related to the performance of this Agreement or its terms, conditions, or other provisions including the establishment of future tip fees. The review and resolution of disputes and disagreements shall be conducted as follows:

- Step 1: The County raising the question shall initially attempt to resolve the issue directly at staff. If resolution is not made in one (1) month, then the issue may be taken to
- Step 2: Either party may request resolution of the issue by the Joint Powers Board at a regular meeting or a meeting called by either County for the purpose of dealing with the dispute. If resolution cannot be made in one (1) month of the time that the Joint Powers Board's help is requested, then the issue may be taken to
- Step 3: Either party may request the assistance of a mediator pursuant to the Minnesota Civil Mediation Act or other mutually acceptable substitute. Each County shall pay ½ of the cost of meditative proceedings. If a satisfactory mediated settlement cannot be reached within three (3) months, an impasse shall be declared and either County may proceed to
- Step 4: Either County may submit a request for resolution of the dispute to arbitration pursuant to the rules of the American Arbitrative Society. The arbitrator shall be determined by the Society's rules with each County paying one-half (1/2) the cost of the proceeding. The arbitrator shall have the authority to fashion a remedy to the dispute, including termination of the Agreement. Any remedy shall at all times be subject to the principles and intent of this Agreement and statutory and common law regarding remedies for contract breaches.

By mutual agreement any or all of the above steps may be combined or deleted in order to expedite the dispute resolution process.

SECTION 10 TERM AND TERMINATION

- 10.1 Term of the Agreement – This Agreement shall supersede the Agreements between the parties, dated October 28, 1986 and June 30, 1989, and shall become effective July 1, 2009. It shall remain in full force and effect from October 29, 2006, through the date of termination. The date of termination shall be June 30, 2028, unless terminated sooner by provision herein or by agreement of the parties. If this agreement is terminated, any property which may have been acquired by the Joint Powers Board as the result of joint or cooperative exercise of powers pursuant to this agreement shall be sold and the proceeds divided between the parties in proportion to their respective contributions if the parties cannot otherwise agree as to how this property shall be allocated. In addition, if this agreement is terminated and any surplus moneys remain, those monies shall be divided in proportion to contributions of the parties after the purpose of this agreement has been completed.

Recognizing that Dodge County is making a substantial investment in the OWEF through the term of this Agreement and that the operating life of the OWEF may extend beyond June 30, 2028, Olmsted County will offer Dodge County continued waste processing and disposal services beyond the term of this Agreement under similar and mutually agreeable conditions described herein.

- 10.2 Remedies – It is intended that this Agreement not be terminated during the Term of Agreement due to the nature of the underlying financial commitments relating to the facilities involved herein. In the event of a breach of any of the obligations established hereunder, damages will ordinarily constitute an adequate remedy. The parties agree that the Dispute Resolution process of Section of this Agreement shall be invoked, including the authority granted to an arbitrator to fashion an appropriate remedy pursuant to the law of contracts.

SECTION 11 GENERAL PROVISIONS

- 11.1 Notice – Formal notices given under this Agreement shall with respect to Dodge County be addressed to:

Dodge County Administrator/Auditor
Dodge County Courthouse
Mantorville, Minnesota

And with respect of Olmsted County shall be addressed to:

Olmsted County Clerk/Administrator
Olmsted County Courthouse
Rochester, Minnesota

- 11.2 Contract Administrator – The Dodge County Environmental Quality Director and the Olmsted County Public Works Director shall be the individuals responsible for the day-to-day administration of this Agreement and the facilities operated hereunder. All questions, requests, and concerns relating to this Agreement shall be addressed to these administrators or their designees.
- 11.3 Joint Powers Board – Dodge and Olmsted Counties agree to continue to maintain and to participate in a Joint Powers Board which will deal with Waste Management activities of interest to the two Counties. The duties and responsibilities of the Joint Powers Board shall be established by separate agreement between the two Counties.
- 11.4 Entire Agreement – This Agreement shall constitute the entire Agreement between the parties hereto, supersede all previous agreements and understandings, whether oral or written, relating to the subject matter hereof and shall not be changed or modified except in writing signed by both parties hereto.
- 11.5 Situs – This Agreement was entered into in Rochester, Minnesota and Mantorville, Minnesota and will be controlled by the laws of the State of Minnesota.
- 11.6 Severability – The invalidity or unenforceability of any provision or provisions of this Agreement as to any persons or circumstances shall not render that provision or those provisions unenforceable or invalid as to any other persons or circumstances, and all provisions hereof, in all other respects, shall remain valid and enforceable.
- 11.7 Amendments – This Agreement may be amended only by a written instrument signed by both of the parties hereto following authorization by their respective County Boards.
- 11.8 Assignment – This Agreement shall not be assignable or transferable without the prior written consent of both parties. All covenants and provisions of this Agreement have been made by and for the benefit of the parties hereto, and shall bind and inure to the benefit of their respective successors and assigns to the extent permitted by the provisions of this Section.
- 11.9 Waiver – Any waiver by any party of a breach of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach thereof.
- 11.10 Employees – Any and all employees of Olmsted County or any other persons engaged in the performance of any of the work or services under this Agreement shall not be considered Dodge county employees and vice versa. Olmsted County and Dodge County shall represent and cause their respective employees and agents to represent to third persons, to the public generally and to federal,

state, and local governmental bodies or authorities that the services rendered pursuant to this Agreement and their relationship is exclusively as an employee of their respective counties. It is understood that employees of one county shall not act as legal representatives of another county for any purpose whatsoever.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

OLMSTED COUNTY

DODGE COUNTY

By: _____

By: _____

Attest: _____

Attest: _____

EXHIBIT A

UNACCEPTABLE WASTE AT THE OLMSTED COUNTY BYPASS LANDFILL

Following is a list of Unacceptable Waste. The list may be revised at the discretion of Olmsted County without notice to the Supplier:

- Hazardous waste, as defined in Minnesota Statutes, Section 116.06, and/or rules now or hereafter promulgated by the Minnesota Pollution Control Agency or a successor to its functions, as the same may be amended or supplemented from time to time
- Industrial waste consisting of the waste products of manufacturing processes, unless first approved by Olmsted County
- Liquid waste of any type in large quantities
- Radioactive waste
- Animal remains in large quantities
- Paint solvents, gasoline and inflammable liquids
- Used engine oil
- Unvented propane tanks
- Aerosol cans
- Hospital waste, which is infectious, hazardous, inflammable or toxic, including human remains
- Sludges
- Agricultural wastes
- Mining wastes
- Mixed municipal solid waste incinerator ash
- Street sweepings
- Large wood items, (greater than 3' x 3' x 3' or 5' in length)
- Construction and demolition rubble
- Pesticides, insecticides, chemicals or other toxic materials (when not normally in residential or commercial waste)
- PWC plastics in large quantities, such as waste from a plastic plant unless first approved by Olmsted County
- Tires
- Appliances
- Automobile batteries
- Trees, branches, stumps
- Large metal items
- Steel fence materials

EXHIBIT B

NONPROCESSIBLE WASTE AT OWEF

Following is a list of Non-processible Waste at the Olmsted Waste-to-Energy Facility. The list may be revised at the discretion of Olmsted County without notice to the Supplier;

- Hazardous waste, as defined in Minnesota Statutes, Section 116.06, and/or rules now or hereafter promulgated by the Minnesota Pollution Control Agency or a successor to its functions, as the same may be amended or supplemented from time to time
- Industrial waste consisting of the waste products of manufacturing processes, unless first approved by Olmsted County
- Liquid waste of any type in large quantities
- Radioactive waste
- Animal remains in large quantities
- Paint, solvents, gasoline and inflammable liquids
- Used engine oil
- Unvented propane tanks
- Aerosol cans
- Hospital waste which is infectious, hazardous, inflammable or toxic, including human remains, unless approved by Olmsted County
- Sludges
- Agriculture wastes
- Mining wastes
- Ash
- Street sweepings
- Large wood items, (greater than 3' x 3' x 3' or 5' in length)
- Construction and demolition rubble
- Pesticides, insecticides, chemicals or other toxic materials (when not normally in residential or commercial waste)
- PVC plastics in large quantities, such as waste from a plastic plant unless first approved by Olmsted County
- Medical waste incinerator ash
- Waste water grit
- Processed food waste
- Bulky waste such as auto hulks, trees, branches, stumps and other oversized wastes whose large size precludes or complicates their handling by normal collection, processing or disposal methods

Following is a list of waste, which may be delivered to the facility only if deposited in appropriately marked containers at the public drop area:

- Steel banding
- Tires
- Auto parts including gasoline tanks, engine blocks, hardened steel shafts, and steel wheels
- Large metal items
- Steel fence material
- Appliances
- Furniture