
**WEST COOK COUNTY SOLID WASTE AGENCY
PROJECT USE AGREEMENT**

BY, BETWEEN AND AMONG

**THE WEST COOK COUNTY
SOLID WASTE AGENCY**

AND

THE VILLAGE OF OAK PARK

DATED THIS 5 DAY OF SEPTEMBER, 1995

Prepared by:

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**WEST COOK COUNTY SOLID WASTE AGENCY
PROJECT USE AGREEMENT**

THIS AGREEMENT ("Agreement"), made and entered into this 5th day of September, 1995, by and among the WEST COOK COUNTY SOLID WASTE AGENCY, a municipal corporation and body politic (hereinafter referred to as the "Agency") and the Village of Oak Park, (hereinafter referred to as a "Participating Member"); the Agency and this Participating Member are sometimes hereinafter collectively referred to as the "Parties".

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00), in hand paid, the mutual covenants and conditions as hereinafter set forth and other good and valuable consideration, the receipt and sufficiency is hereby acknowledged, the parties hereto do hereby agree as follows:

**ARTICLE I
RECITALS**

1.1. Article VII, Section 10 of the 1970 Constitution of the State of Illinois and the Intergovernmental Cooperation Act (hereinafter referred to as the "Act") authorize "units of local government" to contract and associate among themselves to obtain or share services and to exercise, combine or transfer any power or function in any manner not prohibited by law or ordinance.

1.2 Section 3.2 of the Act authorizes any two or more municipalities and counties, as units of local government, to establish, by intergovernmental agreement, a municipal joint action agency as a municipal corporation and public body politic and corporate in order to provide for the efficient and environmentally sound collection, transportation, processing, storage and disposal of municipal solid waste.

1.3 Pursuant to this Authority, the Agency was established to assist its members in cooperatively dealing with the increasing costs and potential environmental liabilities associated with their municipal solid waste in full accord with state law and sound environmental practice.

1.4 The members of the Agency are units of local government located primarily in western Cook County, Illinois which members sought to cooperate with one another in order to develop and implement a Solid Waste Management Plan which emphasizes waste reduction and aggressive recycling of municipal solid waste coupled with the environmentally sound and cost-effective management of the

remaining non-recycled portion of the municipal solid waste stream generated by the Agency's member communities.

1.5 The Agency, together with its Citizens Advisory Committee, has successfully developed a comprehensive Solid Waste Management Plan which addresses the significant solid waste management issues facing west Cook County.

1.6 The Agency, in the preparation of the Solid Waste Management Plan and subsequent thereto, has studied environmental, technical, health and cost issues related to various methods of managing the waste generated by its member municipalities. The Agency will continue to study alternative methods of providing for the environmentally sound and cost efficient collection and management of such waste as technology changes. If any alternative method is deemed feasible, it is the Agency's intent to work with the private sector to encourage its development into a workable solution.

1.7 The Agency's Solid Waste Management Plan was subjected to a series of public hearings and was thereafter adopted by the Agency's Board of Directors.

1.8 The Agency's Solid Waste Management Plan provides its municipal members with a framework for cooperation and a plan for the efficient and environmentally sound collection, transportation, transfer, processing, treatment, storage, disposal, reduction, recycling and reuse of municipal waste while at the same time minimizing the rising cost of disposal of their waste.

1.9 The Agency's Solid Waste Management Plan includes, as its primary focus, the implementation of an aggressive waste reduction and recycling program designed to achieve a municipal waste reduction goal of 40%. The Agency remains committed to this goal and is aggressively pursuing a program to help its members achieve this goal.

1.10 This agreement enables the Agency's members to continue to implement and improve their recycling programs while achieving the other goals of the Solid Waste Management Plan.

1.11 The Agency's plan recognizes the goal of providing guaranteed disposal capacity for the non-recycled portion of its members' municipal waste stream and sets forth a strategy to achieve that goal by procuring long term contracts with transfer stations and disposal facilities.

1.12 Significantly, this agreement provides a means of minimizing the potential future environmental liability of its members inherent in the disposal of their municipal solid waste.

1.13 The Project established by this agreement provides a cost effective mechanism which permits the Participating Members to protect the public health, safety and welfare of their citizens and, at the same time, minimize the attendant expense.

1.14 It is necessary and in the best interest of the Agency and each of its Participating Members to enter into this agreement in order for the Participating Members to take part in and make use of the Project as a means of processing, storing, transporting and disposing of their Waste in a cost effective manner while at the same time reducing their potential future environmental liability.

ARTICLE II DEFINITIONS

The following definitions shall apply to the entirety of this Agreement unless it is clear from the context that another definition applies:

2.1 "Act" means the Intergovernmental Cooperation Act, as amended (5 ILCS 220/3.2 (1993)).

2.2 "Administrative Fee" means the per ton fee set to reimburse the Agency for its cost of administering its duties under this Agreement.

2.3 "Agency" means the West Cook County Solid Waste Agency as established by the Agency Agreement and consisting of 36 units of local government.

2.4 "Agency Agreement" means "An Agreement Establishing the West Cook County Solid Waste Agency as a Municipal Joint Action Agency", filed on or about September 6, 1989, as it may be amended from time to time.

2.5 "Agency Board" means the Board of Directors of the Agency as appointed by vote of the corporate authorities of each member.

2.6 "Agency Waste" means the sum of all the Delivered Participating Member Waste provided by the Participating Members in each Fiscal Year.

2.7 "Agreement" means this Agreement between the Agency and the Participating Member signing this document. The use of the term "agreement" means this Agreement or any similar agreement entered into between the Agency and another Participating Member.

2.8 "Board" means the Board of Directors elected by the Participating Members.

2.9 "Committed Agency Waste" means 85% of the total Participating Member Waste committed to this Project by all of the Participating Members.

2.10 "Deficiency" means the amount for a Fiscal Year by which the Delivered Participating Member Waste of a single member is less than 85% of Expected Participating Member Waste.

2.11 "Deficiency Charge" means the charge pursuant to Article IX on each Participating Member's Deficiency.

2.12 "Delivered Participating Member Waste" means that Participating Member Waste delivered by a Participating Member which is accepted by or on behalf of the Agency in each Fiscal Year.

2.13 "Expected Participating Member Waste" means Participating Member Waste estimated to be generated by the Participating Member in a Fiscal Year.

2.14 "Facility" means a location under contract to the Agency possessing all necessary permits and licenses and which is otherwise in compliance with law to receive Waste for storage, transfer, processing, treatment, composting, land application, recycling, reuse, disposal or final disposition.

2.15 "Fiscal Year" means the fiscal year of the Agency commencing on May first and concluding April thirtieth.

2.16 "Hazardous Waste" means and refers to a waste or combination of wastes which, because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious, irreversible or incapacitating reversible illness; or post a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed or which has been identified, by characteristics or listing, as hazardous pursuant to Section 3001 of the Resource Conservation and Recovery Act of 1976 (P.L. 94-580) or applicable local, State or Federal laws and/or regulations.

2.17 "Initial Delivery Date" means the first date on which the Participating Member's Waste is collected following the expiration, avoidance or cancellation of its current contract governing the disposal of Waste or the first date on which a Facility is available for the acceptance of Waste pursuant to this Agreement, whichever is later. For purposes of this definition, current contract shall mean the contract in effect on the date of this Agreement. No Participating Member shall extend or allow the extension of any such contract by any means including, but not

limited to, renewal, automatic renewal or option so as to delay the Initial Delivery Date unless said extension is required by a binding contract.

2.18 "Initial User" means Participating Members which sign this agreement by December 31, 1995.

2.19 "Material" means individual components of some waste streams including, but not limited to, Hazardous Waste, white goods, source separated recyclables and landscape waste which the Facility is not permitted by law to either receive, handle, process, treat, transfer or dispose.

2.20 "Participating Member" means a member of the Agency which is a party to an agreement.

2.21 "Participating Member Delivery Date" means the scheduled Initial Delivery Date which is the earliest date on which the Participating Member is expected to commence delivering Participating Member Waste to the Agency as detailed in Exhibit A to this Agreement.

2.22 "Participating Member Waste" means the Waste generated within the corporate limits of a single Participating Member and which has been historically collected by or on behalf of the Participating Member.

2.23 "Project" means a "Waste Project" as the term is defined in the Agency Agreement and in Section 3.2(j)(ii) of the Act undertaken by or on behalf of the Agency consisting of providing capacity for the transfer and/or disposal of Waste pursuant to this Agreement.

2.24 "Third Party Waste" means all Waste accepted by or on behalf of the Agency at its contracting Facility(ies) which is not Participating Member Waste.

2.25 "Waste" means all materials defined by any applicable law, regulation or ordinance which are not Hazardous, and other discarded or abandoned material including, without limitation, garbage, rubbish, bulk items and small amounts of building materials and construction or demolition debris which the Facility to which it is sent is permitted to receive. For purposes of this Agreement, Waste does not include Material (See Section 2.19).

2.26 "Waste Project Fund" means the fund established pursuant to this Agreement used for the purpose of administering the Project.

ARTICLE III
MAXIMIZATION OF RECYCLING INCENTIVE

3.1 Recycling Maximization. It is the intent of the Parties to continue to use every reasonable effort to maximize reuse and recycling. To this end, the Parties commit to use every reasonable effort to:

(a) reduce the quantity of waste generated through the use of public education and consumer awareness campaigns, by promoting minimal packaging, by developing economic incentives and through legislative initiatives;

(b) expand single-family recycling programs to include as many of the targeted material types listed in the Agency's Solid Waste Management Plan as are reasonably practical and aggressively implement programs for on-site recycling collection programs for all multi-family properties;

(c) educate businesses about responsible waste management, encourage businesses to establish multi-material recycling programs and promote the procurement of recycled-content products by businesses;

(d) investigate and develop a strategy for implementing a construction and demolition debris recycling program, including encouraging the use of recycled-content building material wherever practical; and

(e) adopt procurement policies that favor recycled-content products, develop and maintain a reference list of suppliers of recycled-content products, encourage joint purchasing of recycled-content products and encourage residents to purchase recyclable and recycled-content products.

ARTICLE IV
AGENCY UNDERTAKING REGARDING THE PROJECT

4.1 Undertaking Regarding the Project. The Agency, acting on behalf of its members, shall use its best efforts to:

(a) enter into cost efficient contracts with one or more environmentally safe and secure Facilities for the acceptance of Participating Member Waste;

(b) provide for sufficient capacity for the environmentally safe and secure disposal of Waste by entering into one or more contracts for the transfer, transportation and disposal of Participating Member Waste;

(c) investigate the feasibility of contracting with one or more Facilities for the environmentally safe and secure transfer, processing, treatment, storage, recovery, recycling and final disposition of some or all Materials;

(d) continue to investigate and work to improve the cost effectiveness of methods for the environmentally sound disposal of the Participating Member Waste; and

(e) investigate the environmental safeguards and environmental compliance history of the Facility(ies) to assist in minimizing the potential environmental liability associated with the disposal of Participating Member Waste.

4.2 Contingency of Agency Undertaking. The Agency's obligation to initiate or complete the undertakings described in Section 1 of this Article is limited to that set forth in this Paragraph. Should the completion of the operation of the Project, or any portion thereof, be suspended, interrupted, interfered with, reduced or curtailed, the Agency shall use reasonable efforts to find alternate means of disposal of Participating Member Waste.

4.3 Administration of this Agreement. The Agency shall administer this Agreement on behalf of its members and the Participating Member.

4.4 Participating Members Control Fees and Charges. The Participating Members shall elect the Board which shall set the fees and charges paid by the Participating Members for the services rendered by the Agency under this Agreement.

4.5 Formation of the Board. The Board shall be comprised of an odd number of individuals pursuant to 6 of this Article, elected by a vote of the Participating Members in the same manner as the members of the Agency's Executive Committee are elected. No Participating Member shall have more than one representative on the Board. The Board's term shall be coextensive with that of the members of the Agency's Executive Committee. The Board and its members shall be fiduciaries of the Agency.

4.6 Number of Board Members. The Board shall be comprised of seven members unless there is an insufficient number of Participating Members. If there are an insufficient number of Participating Members the Board shall be comprised of the largest odd number of members possible.

ARTICLE V
COLLECTION AND DELIVERY OF WASTE TO FACILITY(IES)

5.1 Determinations of Expected Participating Member Waste.

(a) In order to secure beneficial pricing for the disposal of Participating Member Waste, the Agency and the Participating Member agree that it is in the best interest of the Parties to estimate, to the best of their abilities, the amount of Expected Participating Member Waste for each Participating Member. The Agency and the Participating Member have determined the amount of Expected Participating Member Waste, as detailed in Exhibit A, is reasonable and necessary in order to determine needed Facility(ies) capacity.

(b) In order to take into account changes in the Waste stream from waste reduction, recycling, changes in law, disasters and changes in Agency requirements as approved by the Agency Board, the Agency shall make annual adjustments in the Expected Participating Member Waste by adjusting Exhibit A. Such annual adjustments shall be made in consultation with the Participating Member. These adjustments shall be effective on May 1 of the then current Fiscal Year. The first annual adjustment shall be made on May first following at least twelve months of waste deliveries by the Participating Member. The first annual revision of Expected Participating Member Waste shall be based on the Delivered Participating Member Waste for the previous Fiscal Year. The second annual revision of the Expected Participating Member Waste shall be based on the average of the Delivered Participating Member Waste for the two previous Fiscal Years. The third and all subsequent annual revisions of Expected Participating Member Waste shall be based on the average of the Delivered Participating Member Waste of the Participating Member for the prior three Fiscal Years. An example of such a calculation is contained in Exhibit B.

(c) No adjustment shall be made under this Section if the Participating Member is in default under this Agreement or withholding Participating Member Waste.

5.2 Participating Member Waste. The Participating Member, beginning on its Initial Delivery Date, shall cause the delivery of its Participating Member Waste to the Facility(ies) designated by the Agency. Any Hazardous Waste or other waste which a relevant Facility(ies) is not permitted to receive shall not be delivered by the Participating Member.

5.3 Title to Waste. The Participating Member agrees to enact an ordinance in a form provided by the Agency stating that title to Waste shall pass to the Participating Member at the time of

collection by or on behalf of the Participating Member. Title to Participating Member Waste shall pass to the Agency when it has been accepted by or on behalf of the Agency at a Facility pursuant to Section 2 of this Article above.

5.4 Weighing of Waste. The Agency shall arrange for a calibrated measurement device to be made available and kept in reasonable and accurate working order for weighing Delivered Participating Member Waste delivered to each Facility.

5.5 Alternate Measurement of Waste. In the event that the Agency designated weighing device is inoperable, Delivered Participating Member Waste shall be measured by volume.

5.6 Record of Waste. The Agency shall keep or arrange for the keeping of daily records of deliveries of Participating Member Waste to each Facility as well as any Participating Member Waste or any waste which is rejected. Records shall be available for inspection by any Participating Member during the normal business hours of the Agency.

ARTICLE VI **REPORTS AND GENERAL CONTRACTUAL TERMS**

6.1 Cooperation. The Parties shall reasonably cooperate with each other on all issues relating to this Agreement. The Participating Member and the Agency will comply with all reasonable requests of each other and will, upon request, do as follows:

(a) make available general and financial information about itself;

(b) consent to publication and distribution of its financial information;

(c) certify that, to the best of each Parties actual knowledge, general and financial information about it is accurate, does not contain any untrue statements of a material fact and does not omit to state a material fact necessary in order to make the statements in that information true, in light of the circumstances under which they were made and is not misleading;

(d) make available certified copies of official proceedings; and

(e) provide for reasonably requested opinions of counsel as to the validity of its actions taken with respect to this agreement, the binding effect of this Agreement, pending or

threatened litigation (which could materially affect its performance hereunder) and other reasonably related opinions.

6.2 Distribution of Reports. Copies of all reports and studies required by this Agreement shall be provided to the Agency and the Participating Member.

6.3 Effective Date. This Agreement shall become effective only when such agreements have been executed by the Agency with a number of members of the Agency sufficient to enable the Agency to obtain beneficial pricing and environmental safeguards which the Agency, in its sole discretion, deems to be of sufficient benefit to begin the Project. The Agency shall notify the Participating Member of the effective date in accordance with the terms of this Agreement. If notification to the Participating Member, as provided herein, has not occurred on or before December 31, 1998, this Agreement shall not become effective and thereafter shall be null and void and of no force or effect.

6.4 Duration. This Agreement shall remain in full force and effect until December 31, 2008. In the event the Agency renews or otherwise extends the contract(s) with the vendor(s) for services provided for hereunder, the duration of this Agreement shall automatically be extended to such renewal or extension date unless, on or before one hundred and twenty (120) days prior to the date the Agency executes a renewal or extension of any contract with any vendor for services provided hereunder, the Participating Member provides written notice to the Agency of its intent not to remain a part of the Project and that it does not wish this Agreement extended. The Agency shall give each Participating Member written notice on or before one hundred and fifty (150) days prior to the date of execution of the renewal or extension of any contract with any vendor for services provided hereunder.

6.5 Agency Reports and Contracts. The Agency shall provide the Participating Member with:

(a) a copy of the Project Budget within thirty (30) days after its adoption;

(b) a report on the amount of Delivered Participating Member Waste within thirty (30) days after the end of each month;

(c) immediate notification of any emergency, failure or malfunction of the Project or of any other condition or event which affects or may significantly affect, directly or indirectly, the Agency's performance of its obligations under this Agreement;

(d) the name(s) of the person(s) in charge of the Project;

(e) reasonable access to all records of the Agency regarding the Project upon written request;

(f) a copy of any Agency Project audits within thirty (30) days of said audit(s) acceptance by the Agency; and

(g) copies of all contracts for services provided hereunder.

6.6 Participating Member Reports. The Participating Member shall supply the following information in a form reasonably acceptable to the Agency:

(a) all contracts and arrangements in any manner related to or connected with Waste and Materials;

(b) the Participating Member's rates and costs related to Waste and Materials, including any formulas utilized in billing;

(c) the name(s) of the person(s) in charge of Waste and Materials;

(d) quarterly reports on the quantity of Participating Member Waste, landscape waste and recyclables collected;

(e) immediate notification of the Agency of any emergency, disruption or other event or condition which affects or may affect, directly or indirectly, the ability of the Participating Member to perform its obligations under this Agreement; and

(f) all Participating Member information related to performance of this Agreement including, without limitation, to audits, capital improvements and prospective expansions in any manner related to Waste.

6.7 Assignment. Except to the extent hereinafter provided, neither Party shall assign or transfer this Agreement or any rights or interest herein without the prior written consent of the other Party. Notwithstanding anything contained herein to the contrary, the right to receive payments which are required to be made by the Participating Member to the Agency in accordance with the provisions of this Agreement may be assigned, without the Participating Member's consent, by the Agency upon approval of the Agency Board. The Participating Member agrees that upon written notice of said assignment, it will make all payments directly to the named assignee.

6.8 Amendment. This Agreement may be amended only in writing when such amendment is adopted by an Agency ordinance and by the Participating Member utilizing the same vehicle as that used in authorizing signature hereon.

6.9 Severability. Should any part, term or provision of this Agreement be determined by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining portions or provisions shall not be affected thereby.

6.10 Waiver. No action by either Party to this Agreement other than a written statement signed by the Party against whom a waiver is claimed, shall be deemed a waiver of any rights granted by this Agreement. A waiver of rights with respect to any matter arising under this Agreement shall not be deemed a waiver of any other rights under this Agreement, nor a waiver of similar or identical rights with respect to any other matter.

6.11 Governing Law. This Agreement shall be construed under the applicable laws of the State of Illinois.

6.12 Local Government Financial Planning and Supervision Act. Pursuant to Section 14 of the Local Government Financial Planning and Supervision Act (50 ILCS 320/14 (1993)), the Parties hereby declare that the provisions of such Act do not apply to any indebtedness, obligation or liability incurred under this Agreement.

ARTICLE VII AGENCY COVENANTS

7.1 Covenants Regarding the Project. The Agency, on behalf of its members and in the interest of the Participating Members, covenants and agrees that it will:

(a) perform its duties in conformance with this Agreement and all applicable laws, ordinances and regulations;

(b) make and keep separate and proper books and accounts with respect to accounts due and fees required hereunder and cause those books and accounts to be audited annually in accordance with generally accepted accounting principles;

(c) operate and maintain the Project in order to be able to perform the obligation to accept Participating Member Waste; and

(d) enter into contracts to accept Third Party Waste only if the performance of the Agency obligations thereunder

do not significantly impair the Agency's ability to perform its obligations under this Agreement.

ARTICLE VIII
PARTICIPATING MEMBER COVENANTS

The Participating Member covenants and agrees as follows:

8.1 Commitment to Deliver Participating Member Waste. The Parties agree that since estimated Participating Member Waste shall be the basis for securing beneficial pricing for the disposal of Participating Member Waste, it is reasonable and necessary that from and after the Participating Member's Initial Delivery Date through the term of this Agreement, the Participating Member shall deliver, or cause to be delivered to the Agency, all Participating Member Waste.

8.2 Participating Member Waste. The Participating Member shall cause each contractor which collects, removes or transports any Participating Member Waste to (a) operate efficiently and faithfully, (b) conform to the delivery requirements of the relevant Facility(ies), and (c) conform with all laws, regulations and ordinances including, but not limited to, the rules and regulations of the Agency as adopted by the Agency Board.

8.3 Use of Agency Services.

(a) In order to assure adequate capacity for Participating Member Waste, the Agency shall have the exclusive right to contract with Third Parties for the delivery of Third Party Waste. No Participating Member shall subcontract services offered hereunder by offering them to others or in any way obtain the Waste generated by others and provide services hereunder with respect to that Waste.

(b) In order to protect the interests and rights of the Participating Member to responsibly manage and dispose of its Participating Member Waste and with respect to contracts, arrangements or understandings which the Participating Member may enter into on and after the date hereof for the collection, removal or transportation of Participating Member Waste, title to the Participating Member Waste shall at all times remain with the Participating Member until transferred to the Agency pursuant to the terms of this Agreement. All contracts, arrangements or understandings that the Participating Member may enter into with haulers shall state that the obligations of such haulers shall relate only to the collection and transportation of Participating Member Waste. Hereafter, the Participating Member shall enter into a contract for the disposal of its Participating Member Waste

which is separate from the contract for its collection, removal and transportation. Such interim disposal contract shall expire on or permit its cancellation on the Participating Member Delivery Date.

8.4 Indemnification. Each Participating Member shall indemnify and hold harmless the Agency and non-participating members of the Agency and each of their Directors, Trustees, Agents, Servants, Officers, Officials and Employees against, without limitation, any and all expenses, losses, claims, demands, actions, costs, judgments, subrogation, attorney's fees, consultant fees, expert's fees or other damages without limitation resulting from, or in any manner connected with environmental liability, injury to any person (including injury resulting in death) or damage (including loss and destruction) to property of whatsoever nature arising out of or in any manner connected or associated with this agreement or the handling or disposal of waste hereunder.

ARTICLE IX PAYMENT OBLIGATION

In addition to the fees charged by the Facility(ies) and the other vendor(s) performing the services provided under this Agreement, each Participating Member shall pay its pro rata share of the Agency's cost of administering this Project. This Article establishes that obligation and provides a fair and equitable means of calculating the pro rata share of each Participating Member.

9.1 Contractor Fees. Each Participating Member shall pay all fees and charges of the various contractors which provide the services rendered pursuant to this Agreement.

9.2 Third Party Fees. The Agency, upon approval of the Agency Board, shall set all fees paid by third parties for the handling of Third Party Waste, taking market forces into account.

9.3 Administrative Fee. The purpose of the Administrative Fee is to provide sufficient funds to cover the Agency's costs of administering the Project. Participating Members shall pay an Administrative Fee to the Agency for Delivered Participating Member Waste to offset the Agency's cost of administering the Project. The Administrative Fee shall be set by the Board as follows:

(a) for Initial Users, not less than 1% and no more than 15% of the Agency's then current per ton cost for Agency Waste;

(b) for Participating Members other than Initial Users that sign this agreement prior to the execution of the first

contract between the Agency and a Facility, 135% of the Administrative Fee charged Initial Users; and

(c) for Participating Members other than Initial Users that sign this agreement after the execution of the first contract between the Agency and a Facility, 160% of the Administrative Fee charged Initial Users.

9.4 Additional Fee. Should, in any Fiscal Year, the total Administrative Fee collected be insufficient to cover the Agency's actual cost of administering the Project, the Board may:

- (a) elect to not assess an Additional Fee; or
- (b) assess an Additional Fee.

In no case shall the Additional Fee, on a per ton basis, exceed 40% of the Agency's per ton cost in the relevant Fiscal Year for Agency Waste.

9.5 Calculation of Additional Fee. Each Participating Member shall be liable for its pro rata share of the Agency's total cost of administering the Project in each Fiscal Year. The Additional Fee shall be calculated by multiplying the shortfall in the cost of administration per Fiscal Year by a fraction whose numerator is the Delivered Participating Member's Waste and whose denominator is the amount of Agency Waste.

9.6 Audit. The Board, at its cost, may conduct an independent audit of the Agency's costs of administration of the Project.

9.7 Deficiency Charge. A Deficiency Charge shall be charged to a Participating Member with a Deficiency when, in the relevant Fiscal Year, the amount of Agency Waste is less than the Committed Agency Waste.

9.8 Reasonableness of Expected Participating Member Waste and Deficiency Charge. The Participating Member acknowledges that the determination of its Expected Participating Member Waste and any Deficiency Charge is reasonable. The Participating Member further acknowledges that the allocation of risk established in this Agreement is an equitable method for the sharing of risk of the Project.

9.9 Calculation of Deficiency Charge. The Agency and the Participating Member have determined the method of calculation of the Deficiency Charge, if any, in order to allocate the risk. This determination is based on waste estimates. The Deficiency Charge for each Fiscal Year shall be calculated by multiplying the Agency's cost (plus fees) of handling one ton of Participating

Member Waste by the Participating Member's pro rata share of any net Agency deficiency in waste. The net Agency deficiency shall be computed by subtracting Agency Waste from Committed Agency Waste. The Participating Member's pro rata share shall be computed by multiplying the net Agency deficiency by a factor whose numerator is the Participating Member's Deficiency (if greater than zero) and whose denominator is the total Deficiency of all Participating Members with Deficiencies in the relevant Fiscal Year. An Example of such calculation is attached in Exhibit C.

9.10 Waste Project Fund. All fees and charges collected from Participating Members pursuant to this Article and interest thereon shall be placed by the Agency in a separate fund which shall be entitled the "Waste Project Fund". The Waste Project Fund shall be used to administer this Project. Subject to the approval of the Agency Board, the Board shall adopt an annual budget to manage anticipated necessary expenditures of the Project.

9.11 Obligations Upon Withdrawal. The Participating Member may withdraw from the Agency as provided in the Agency Agreement. However, the Participating Member shall remain fully obligated under this Agreement including, but not limited to, all payment obligations, all obligations to deliver Participating Member Waste and all other obligations and covenants hereunder. Further, if the Participating Member withdraws, the Participating Member shall also be obligated to pay any and all Agency costs associated with the withdrawal, without limitation, set-off or counterclaim.

ARTICLE X PAYMENT AND BILLING

10.1 Billing. The Agency or the contractor(s) shall bill the Participating Member for services performed under this Agreement. The Agency, upon approval of the Agency Board, may elect to directly bill any fee, interest or other charge not included in any contractor billing. Any amounts billed by the Agency under this Agreement shall be paid within forty-five (45) days of the billing date.

10.2 Interest on Overdue Amounts. In the event that the Participating Member has not paid all amounts due the Agency, by the end of the month in which they are due, the Participating Member agrees to pay interest on all unpaid amounts at a rate to be determined by the Agency Board and not to exceed 2% per month or portion thereof.

10.3 Reservation of Remedies. In addition to the right to receive payment of interest as provided in this Article, the Agency reserves all other rights and remedies it may have at law or in equity under this Agreement and the Agency Agreement, as a result

of any failure of the Participating Member to pay when due all amounts payable under this Agreement. Election of any remedy shall not be a waiver of any other remedy.

10.4 Partial Payments. Acceptance of any partial payment shall not be deemed a waiver by the Agency with respect to any amounts not paid by the Participating Member.

10.5 Nature of Obligation. The obligation of the Participating Member to make all payments required by this Agreement is unconditional, irrevocable and all payments shall be made without set-off or counterclaim.

10.6 Disputes With Contractors.

(a) If a Participating Member desires to dispute all or any part of payments made to a contractor, representatives of the Agency shall meet with representatives of the Participating Member and contractor in an attempt to resolve such dispute. No attempt will be made by the Agency to resolve disputed charges unless disputed charges are the subject of written notice to the Agency and the relevant contractor within sixty (60) days of the billing date, or within a reasonable period from the time the Participating Member knew or should have known of the facts giving rise to the dispute.

(b) Participation in the dispute resolution process pursuant hereto shall not limit the claims, causes of actions, rights, or remedies that the Participating Member may have at law or in equity against the contractor, nor shall such participation be deemed an election of remedies as against the contractor.

10.7 Alternative Dispute Resolution. Should a dispute arise, the parties to that dispute may agree to its resolution by such alternative methods, with or without the right of appeal or the reservation of legal remedies, as the parties thereto may agree. The parties to a dispute may agree to utilize the West Central Municipal Conference Alternative Dispute Resolution Program.

ARTICLE XI
DEFAULTS AND REMEDIES

This Article sets forth the rights of the Parties in the event that one of them fails to perform its obligations under this Agreement.

11.1 Agency Defaults. Failure by the Agency to perform any obligation under this Agreement and the continuation of that

failure to perform for thirty (30) days after written notice from the Participating Member to the Agency of such failure shall be a default of the Agency under this Agreement, unless any such failure is excused pursuant to the Force Majeure provision contained in Section 5 of this Article.

11.2 Participating Member Remedies in Event of Agency Default.

(a) In the event of a default by the Agency under this Agreement, the Participating Member may bring any action against the Agency, including an action in equity and actions for mandamus, injunction and specific performance of the Agency's obligations to the extent allowed by law.

(b) Failure on the part of the Parties to observe or fully perform any obligation assumed by or imposed upon them by this Agreement shall not relieve the Participating Member from making any payment due the Agency and fully performing the other obligations required of it under this Agreement. However, the Participating Member may have and pursue any and all remedies provided by law or provided pursuant to this Agreement compelling performance by the Agency of any obligation assumed by or imposed upon the Agency by this Agreement.

(c) Election of a remedy shall not be a waiver of any other remedy.

11.3 Participating Member Defaults. In order to protect the other Participating Members and the Agency, the following events or conditions shall be considered defaults of the Participating Member under this Agreement:

(a) failure to pay when due any and all amounts payable under this Agreement or the Agency Agreement;

(b) failure to deliver all of its Participating Member Waste;

(c) delivering unauthorized waste or waste which the Facility(ies) is not permitted to receive; and

(d) failure to perform any other obligation under this Agreement and the continuation of that failure for thirty (30) days after written notice from the Agency of such failure.

11.4 Agency Remedies in Event of Participating Member Default. In addition to any other remedy which may be available to the Agency at law or in equity, at common law, under this Agreement or the Agency Agreement the Agency shall have, without limitation,

the following individual remedies in the event of a default by the Participating Member:

(a) the right to compel the payment of any fee, charge or interest due the Agency under this Agreement;

(b) the right to refuse and to order the Facility(ies) to refuse to accept delivery of Participating Member Waste;

(c) the rights to *mandamus*, injunction and specific performance of the Participating Member's obligations to the extent allowed by law;

(d) the right to obtain Waste from other sources; and

(e) election of any remedy whatsoever shall not be a waiver of any other remedy.

11.5 Force Majeure.

(a) The Agency shall not be in default under this Agreement to the extent that it is prevented from or delayed in performance of its obligations under this Agreement by any event or condition beyond its reasonable control including, but not limited to, strikes or other work stoppages, war, court rulings, acts of civil or military authorities (other than the Agency), earthquakes, floods, tornadoes and acts of the Participating Member.

(b) The Participating Member shall not be in default under Section 3(b) of this Article to the extent it is prevented from or delayed in performance of its obligations under this Agreement due to any event or condition beyond its reasonable control including, but not limited to, strikes or other work stoppages, war, acts of civil or military authorities other than the Participating Member, earthquakes, floods or tornadoes.

ARTICLE XII
NOTICES

12.1 Notices. All notices under this Agreement shall be in writing except in case of emergency and shall be delivered by telefax and by First Class U.S. Mail addressed as follows:

(1) If to the Agency at:

West Cook County Solid Waste Agency
1127 S. Manheim Road
Suite 102
Westchester, Illinois 60154
Attention: Allen Bonini, Solid Waste Director
Telefax: 708-450-0655

With a copy to:

Glenn C. Sechen
General Counsel
West Cook County Solid Waste Agency
222 N. LaSalle Street
Suite 1910
Chicago, Illinois 60601
Telefax: 312-332-4514

(2) If to the Participating Member at:

Village of Oak Park
One Village Hall Plaza
Oak Park, Illinois 60302-4272
Attention: Village Manager
Telefax: (708)383-6692

or such other address as either the Agency or the Participating Member may from time to time designate in a written notice pursuant to this hereto.

12.2 Exhibits. The Exhibits to this Agreement are incorporated by reference as if fully set forth herein.

12.3 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one Agreement.

IN WITNESS WHEREOF, the Agency and the Participating Member have caused this Agreement to be executed in their respective corporate names and attested by their duly authorized officers and sealed with their corporate seals, all as of the date first above written.

WEST COOK COUNTY SOLID WASTE AGENCY

Jack B. Williams
Chairman

[SEAL]
Attest: [Signature]
Secretary

Date of Execution by Participating Member: September 5,
1995.

[Village/Town/City of Oak Park]
Laurence B. Christner

Its: Village President

[SEAL]
Attest: [Signature]
Its: Village Clerk

EXHIBIT A

**PARTICIPATING MEMBER DELIVERY DATE AND
EXPECTED PARTICIPATING MEMBER WASTE¹**

Participating Member	Participating Member Delivery Date	Expected Participating Member Waste for the first Fiscal Year
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Village of Oak Park	January 1, 1998 or such other date as the Parties mutually agree	13,000 tons
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Total

¹ The Parties agree that the Participating Member Delivery Date and the amount of Expected Participating Member Waste are the best estimates which can reasonably be made as of the date hereof.

EXHIBIT B

SAMPLE CALCULATION OF ANNUAL REVISIONS OF EXPECTED PARTICIPATING MEMBER WASTE

Purpose:

The purpose of this exhibit is to show sample calculations of how Expected Participating Member Waste will be adjusted pursuant to the terms of Section 5.1 (b) of this Agreement. The purpose of this adjustment procedure is to enable Participating Members (municipalities) to modify their waste commitments based on such factors as increased diversion of waste by municipal recycling programs.

Assumptions:

The following assumptions underlie the sample calculations:

1. Agency program commences operations on January 1, 1997.
2. Municipality A has an Initial Delivery Date of February 1, 1997.
3. Municipality B has an Initial Delivery Date of June 1, 1997.
4. Both municipalities have determined prior to delivering any Waste that their Expected Participating Member Waste is 10,000 tons per year.
5. The trend in Participating Member Waste deliveries by both municipalities during the period 1997-2007 is generally downward as the result of increased source reduction and recycling efforts. As is demonstrated in the example below, the revision procedure enables Participating Member to decrease its committed Waste deliveries as additional Waste is diverted by recycling programs.

Procedure:

According to Section 5.1 (b) of this Agreement, the first annual revision of Expected Participating Member Waste shall be made on the first May 1 which follows at least twelve months of waste deliveries by the Participating Member. Therefore:

- The first annual revision for Municipality A will be May 1, 1998.
- The first annual revision for Municipality B will be May 1, 1999.

- The revised Expected Participating Member Waste for Municipality A for Fiscal Year 1998 will be equal to the amount of Delivered Participating Member Waste during the period May 1, 1997 through April 30, 1998 (Fiscal Year 1997).
- The revised Expected Participating Member Waste for Municipality B for Fiscal Year 1999 will be equal to the amount of Delivered Participating Member Waste during the period May 1, 1998 through April 30, 1999 (Fiscal Year 1998). There will be no adjustment for Municipality B in Fiscal Year 1998.

Table B1 shows sample calculations of the revisions to Expected Participating Member Waste for Municipality A during a hypothetical contract period. As noted above, Municipality A projects that initially its Expected Participating Member Waste will be 10,000 tons per year -- this is shown in Column 1 for Fiscal Year 1997 of the contract. Assume that during Fiscal Year 1997, the Delivered Participating Member Waste for Municipality A is 10,000 tons -- since this is greater than 85 percent of Expected Participating Member Waste, there is no Deficiency in Fiscal Year 1997.

For Fiscal Year 1998. The revised Expected Participating Member Waste for Fiscal Year 1998 is equal to the Delivered Participating Member Waste for Fiscal Year 1997, or 10,000 tons as shown in Column 1 for Fiscal Year 1998. Assume that during Fiscal Year 1998, the Delivered Participating Member Waste for Municipality A is 9,700 tons -- since this is greater than 85 percent of Expected Participating Member Waste, there is no Deficiency in Fiscal Year 1998.

For Fiscal Year 1999. The revised Expected Participating Member Waste for Fiscal Year 1999 is equal to the average of Delivered Participating Member Waste for Fiscal Year 1997 and Fiscal Year 1998, or 9,850 tons ($= [10,000 + 9,700]/2$) as shown in Column 1 for Fiscal Year 1999. Assume that during Fiscal Year 1999, the Delivered Participating Member Waste for Municipality A is 9,500 tons -- since this is more than 85 percent of Expected Participating Member Waste, there is no Deficiency in Fiscal Year 1999.

For Fiscal Year 2000. The revised Expected Participating Member Waste for Fiscal Year 2000 is equal to the average of Delivered Participating Member Waste for Fiscal Year 1997, Fiscal Year 1998, and Fiscal Year 1999, or 9,733 tons ($= [10,000 + 9,700 + 9,500]/3$) as shown in Column 1 for Fiscal Year 2000. Assume that during Fiscal Year 2000, the Delivered Participating Member Waste for Municipality A is 9,200 tons -- since this is more than 85 percent of Expected Participating Member Waste, there is no Deficiency in Fiscal Year 2000.

For Fiscal Year 2001. The revised Expected Participating Member Waste for Fiscal Year 2001 is equal to the average of Delivered Participating Member Waste for Fiscal Year 1998, Fiscal Year 1999, and Fiscal Year 2000, or 9,467 tons (= [9,700 + 9,500 + 9,200]/3) as shown in Column 1 for Fiscal Year 2001. Assume that during Fiscal Year 2000, the Delivered Participating Member Waste for Municipality A is 9,000 tons -- since this is more than 85 percent of Expected Participating Member Waste, there is no Deficiency in Fiscal Year 2001.

For Subsequent Years. The Revised Expected Participating Member Waste for subsequent Fiscal Years is calculated in the same manner as for Fiscal Year 2001, except that the average of Delivered Participating Member Waste is computed for the three Fiscal Years preceding the Fiscal Year in which each calculation is performed.

TABLE 81. SAMPLE CALCULATION OF REVISIONS TO EXPECTED PARTICIPATING MEMBER WASTE

Fiscal Year	Expected Participating Member Waste (tons) Column 1	85% of Exp. Particip. Member Waste (tons) Column 2	Delivered Participating Member Waste (tons) Column 3	Deficiency (tons) Column 4
1997	10,000	8,500	10,000	0
1998	10,000 (Note 2)	8,500	9,700	0
1999	9,850 (Note 3)	8,373	9,500	0
2000	9,733 (Note 4)	8,273	9,200	0
2001	9,467 (Note 5)	8,047	9,000	0
2002	9,233 (Note 5)	7,848	8,800	0
2003	9,000 (Note 5)	7,650	9,400	0
2004	9,067 (Note 5)	7,707	9,000	0
2005	9,067 (Note 5)	7,707	8,800	0
2006	9,067 (Note 5)	7,707	8,600	0

Notes:

- Column 2 = Column 1 x 0.85.
- Expected Participating Member Waste (1998) = Delivered Participating Member Waste (1997).
- Expected Participating Member Waste (1999) = Average of Delivered Participating Member Waste (1997, 1998).
- Expected Participating Member Waste (2000) = Average of Delivered Participating Member Waste (1997, 1998, 1999).
- Expected Participating Member Waste (2001) = Average of Delivered Participating Member Waste (1998, 1999, 2000), and so on.
- Column 4 = 0 unless Column 3 is less than Column 2, in which case Column 4 = Column 2 - Column 3.

EXHIBIT C

SAMPLE CALCULATION OF DEFICIENCY CHARGE

This exhibit provides a sample calculation of how Deficiency Charges will be computed under Section 9.9 of this Agreement.

Example. Consider the simplified example in which there are three Participating Members: Municipality A, Municipality B, and Municipality C. Table C1 shows Expected Participating Member Waste, Delivered Participating Member Waste, and the calculated Deficiency for each community for a hypothetical year during this Agreement.

TABLE C1. SAMPLE DEFICIENCY CALCULATION				
Participating Member (Column 1)	Expected Participating Member Waste, tons (Column 2)	0.85 x (Expected Participating Member Waste), tons (Column 3)	Delivered Participating Member Waste, tons (Column 4)	Deficiency, tons (Column 5)
A	100	85	80	5
B	100	85	75	10
C	100	85	90	0
Agency Total		255	245	

Notes:

- Column 5 = Column 3 - Column 4.
- Committed Agency Waste = 255 tons.
- Agency Waste = 245 tons.
- Net Agency deficiency = 255 tons - 245 tons = 10 tons.

In this example, two of the Participating Members have a Deficiency, while the third municipality has a surplus or excess of delivered Participating Member Waste. The net Agency deficiency is 10 tons. This net Agency deficiency would be allocated to the first two municipalities on a prorated basis as follows:

Deficiency of Municipality A	=	5 tons
Deficiency of Municipality B	=	10 tons
Total Deficiency of Municipalities with Deficiencies	=	15 tons (= 5 tons + 10 tons)
Pro Rata Share of Net Agency Deficiency to be Allocated to Municipality A	=	33 % (= 5 tons/15 tons)
Pro Rata Share of Net Agency deficiency to be Allocated To Municipality B	=	67 % (= 10 tons/15 tons)

Assume that the Agency's cost (plus fees) for Agency Waste is \$40.00 per ton. The Deficiency Charge for the two municipalities with Deficiencies would be computed using the formula:

$$\begin{aligned} \text{Deficiency Charge}_{\text{Mun. A}} &= \\ & \frac{(\text{Agency Cost Per Ton}) \times (\text{Net Agency Deficiency}) \times \text{Deficiency}_{\text{Mun. A}}}{\text{Deficiency}_{\text{Mun. A}} + \text{Deficiency}_{\text{Mun. B}}} \\ &= \$40.00/\text{ton} \times 10 \text{ tons} \times 0.33 \\ &= \$132 \end{aligned}$$

$$\begin{aligned} \text{Deficiency Charge}_{\text{Mun. B}} &= \\ & \frac{(\text{Agency Cost Per Ton}) \times (\text{Net Agency Deficiency}) \times \text{Deficiency}_{\text{Mun. B}}}{\text{Deficiency}_{\text{Mun. A}} + \text{Deficiency}_{\text{Mun. B}}} \\ &= \$40.00/\text{ton} \times 10 \text{ tons} \times 0.67 \\ &= \$268 \end{aligned}$$

Municipality C would not be assessed a Deficiency Charge because it delivered more Participating Member Waste than 85 percent of its Expected Participating Member Waste. The excess Participating Member Waste deliveries (5 tons) by Municipality C would be used to reduce the net Agency deficiency in this year.

EXHIBIT D

The Participating Member warrants that, as of the date hereof, there are no written contracts or arrangements between the Participating Member and any person relating to Participating Member Waste, except those listed on this Exhibit as follows:

"Memorandum of Agreement" dated April 4, 1994 between the Village of Oak Park and Browning Ferris Industries with respect to solid waste collection and disposal by Browning Ferris Industries for the Village of Oak Park