

RECYCLABLES AGREEMENT

THIS AGREEMENT is made and entered into by and between the Monroe County Solid Waste Management District by and through the Monroe County Solid Waste Management District Board (hereafter "District") and Republic Services of Indiana, Limited Partnership, d/b/a Hoosier Disposal & Recycling ("Hoosier"). The Effective Date of this Agreement is the later date that appears below the signatures at the end of this document.

Background and Recitals

The District performs various solid waste management functions in Monroe County, Indiana, including the collection, management, and processing of municipal solid waste ("MSW") and recyclable materials ("Recyclable Materials"). The District presently operates six facilities that receive MSW and Recyclable Materials which are later processed at the District's material recovery facility. The locations and addresses of these six facilities are set forth in Attachment 1. These six facilities are hereafter referred as the "Sites."

On April 14, 2004, the District issued a Request for Proposal ("RFP") seeking proposals from qualified applicants with respect to providing transportation and processing services relating to MSW and Recyclable Materials collected at the Sites. The District has selected Hoosier to perform the services described in this Agreement.

The purposes of this Agreement are, among other things, to set forth the services Hoosier will provide to the District, the payment terms for those services, payment terms for Recyclable Materials managed hereunder, and related matters.

Covenants

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and in consideration of the acts to be performed pursuant hereto, the Parties agree as follows:

1. Recyclables:

a. Fiber materials:

- i. "Fiber material" as used in this Agreement means cardboard, mixed office paper, magazines and newspapers.
- ii. Hoosier will process fiber material at its Transfer Facility and send it to an appropriate end user selected by Hoosier. Hoosier will use reasonable efforts to select an end user that will maximize the amount of money Hoosier is paid for the delivered fiber material. Hoosier will provide the District with any notice of the market value for fiber material that may be published by the end user each month.
- iii. The Parties agree that Hoosier's cost to manage and process fiber materials during the first year will be \$54 per ton. The per ton management and processing cost for subsequent years shall be negotiated in good faith between the Parties. If agreement cannot be reached regarding such per ton cost in any subsequent year, then this Agreement shall terminate as to Fiber Material. If Hoosier is paid more than \$54 (or any subsequent agreed-to dollar charge) per ton of material delivered to the selected end user, it will pay the District a rebate equal to fifty percent (50%) of the amount it receives above its cost. If Hoosier is paid only its cost (or less) by the end user, there will be no rebate to

the District. Hoosier's obligations regarding hauling Fiber Material are governed by its Transportation Agreement with the District.

b. Glass:

- i. The District will pay Hoosier \$41 per ton for all glass material that is delivered to the Transfer Facility by Hoosier.

c. Plastic:

- i. The District will pay Hoosier \$38 per ton for all properly sorted plastics that are delivered to the Transfer Facility by Hoosier.

d. Aluminum:

- i. Hoosier will pay the District for the aluminum picked up from the Sites an amount equal to the average price being paid per pound for aluminum by J. B. Salvage, Inc. ("JB"), 1803 W. Vernal Pike, Bloomington, Indiana, and Bloomington Iron & Metal Corp. ("BIM"), 503 N. Rogers, Bloomington, Indiana. The amount of these payments shall be determined on a monthly basis based upon the average of the payment rates being quoted by J. B. Salvage and Bloomington Iron & Metal on the first Thursday of each month.
- ii. If aluminum is in containers provided either by JB or BIM, the containers shall be directed to the dealer providing said containers. Otherwise, Hoosier shall have the option of hauling the aluminum to either dealer.

e. Metal:

- i. Hoosier will pick up scrap metal and tin collected at the Sites and transport that material directly to one or more local (Monroe County) metal and tin scrap dealers. The fee to be paid by the District to Hoosier for hauling such materials is governed by its Transportation Agreement with Hoosier.
 - ii. The District will open an account in its own name with the local scrap dealers in Monroe County to which this material is delivered, and will receive payment (*i.e.*, a rebate) for this material directly from the local scrap dealers.
 - iii. If scrap metal and tin is in containers provided by either JB or BIM, the containers shall be directed to the dealer providing said containers. Otherwise, Hoosier shall haul the material to either dealer.
- f. Reporting: Hoosier will provide a monthly report to the District showing the volume of each commodity type received and where it was sent.

2. Maintenance of Sites: The District will be solely responsible for all operations at the Sites, including without limitation, responsibility for maintaining all collection containers in good working condition so they are suitable for transport. Hoosier will have access to the Sites as necessary to perform its obligations hereunder. The District will provide Hoosier with keys to the Sites so Hoosier can access these Sites if no one from the District is present at the facilities.

3. Additional Recycling Options: The District and Hoosier will work together in good faith to explore options not described in this Agreement for collecting, processing and/or marketing Recyclable Materials. Any mutually agreed-upon changes to the services described herein

will be reduced to writing and executed as an amendment to this Agreement pursuant to ¶ 9 below.

4. Material Change of Market Conditions: If market conditions change during the initial or renewal term of this Agreement, and if that change or changes materially affect the economics of collecting, processing and/or marketing any of the Recyclable Materials subject to this Agreement, either Party may provide notice of that occurrence to the other Party, and the Parties shall work together in good faith to develop a mutually acceptable amendment to this Agreement. Failure to reach agreement on such an amendment may be grounds to terminate this Agreement for cause pursuant to ¶ 5 below.
5. Term of Agreement: The term of this Agreement shall commence as of the Effective Date and shall continue in full force and effect for a period of three (3) years (the “Initial Term”). This Agreement shall renew automatically for a maximum of two (2) successive one-year terms (each successive one-year period is referred to herein as a “Renewal Term”) without further action by the Parties unless either Party sends written notice to the other Party at least sixty (60) days prior to the expiration date of the Initial Term or any Renewal Term, stating that it does not want to renew this Agreement. The Parties may only terminate this Agreement prior to the expiration of the Initial Term or any Renewal Term for cause, which may include, without limitation, a material uncured breach of the Agreement or, the inability to reach a satisfactory amendment pursuant to ¶ 4 above. In the event of a termination for cause, both Parties shall pay the other Party all amounts due and owing as of the effective date of the termination. Notwithstanding the foregoing provisions, the District may terminate this Agreement in the event that Hoosier becomes insolvent, files for bankruptcy, or has a receiver appointed to run its operations.

6. Opportunity to Cure: If one Party believes the other Party has failed to perform its obligations under this Agreement, that Party must provide the other Party with written notice of such default within thirty (30) days of the date that Party or its agents first have knowledge of the alleged default. The Party receiving such a notice shall have thirty (30) days from receipt of such notice to cure the alleged default. If the alleged default is cured within said 30 day period, this Agreement shall not be terminated and shall instead remain in full force and effect for the remainder of its then-existing term. If a Party does not provide written notice of any matter which it believes constitutes a failure to perform obligations hereunder, any continuing alleged failure by the other Party to perform its obligations for such specific matter shall be waived and such matter shall not constitute a breach of this Agreement.
7. Billing, Payment and Enforcement of Agreement: Hoosier shall provide monthly invoices to the District for services rendered hereunder. The District shall pay Hoosier's invoices within forty-five (45) days of receipt. Hoosier shall pay the District all amounts due hereunder within forty-five (45) days following the transaction giving rise to such obligation. Invoices and other amounts not paid to either Hoosier or the District within 45 days of receipt shall bear interest at the rate of 1.5% per month. If one Party commences litigation against the other Party to compel performance of the other Party's obligations under this Agreement, the prevailing Party shall be entitled to recover its reasonable expenses incurred in such litigation, including without limitation attorneys' and expert witness fees in addition to any other appropriate relief.
8. Unacceptable Waste and District Warranties: For purposes of this Agreement, "Unacceptable Waste" means any flammable substance, hazardous waste regulated under the Resource Conservation and Recovery Act, liquid wastes, pathological and biological wastes,

explosives, radioactive materials, other materials deemed to be “hazardous” or “toxic” by any state, federal or local law or regulation, or materials otherwise deemed by Hoosier in its reasonable discretion to be dangerous or threatening. The District warrants that it will use its best efforts to ensure that the MSW and Recyclable Materials to be picked up from the Sites by Hoosier will not contain any Unacceptable Waste. Ownership of MSW and Recyclable Materials shall pass to Hoosier when those materials are loaded into Hoosier’s equipment and transported from the District’s premises. The District agrees that Hoosier may: remove any unacceptable waste that it encounters at the Sites or thereafter, and assure its proper disposal at District expense; and seek to recover from the District any damages Hoosier incurs from the breach of the District’s warranty under this ¶ 8.

9. Amendment: This Agreement may be amended only by written instrument executed by the Parties in the same form and manner as the execution of this Agreement.
10. Choice of Law: This Agreement shall be interpreted and enforced in accordance with the laws of the State of Indiana including Indiana’s choice of laws provisions.
11. Notice: If a notice is required to be provided under this Agreement, it shall be provided in writing and sent via certified mail, return receipt requested, or via a recognized national overnight delivery service, to the following:

As to the District:
Monroe County Solid Waste Management District
Attn: Director
3400 South Walnut Street
Bloomington, IN 47401

As to Hoosier:
Hoosier Disposal & Recycling
Attn: General Manager
6660 S. SR 37
Bloomington, IN 47403

Each Party shall provide the other Party with any change in the address set forth above.

12. Price Adjustments: All prices set forth herein for services rendered hereunder shall be adjusted on each anniversary date of the Effective Date of this Agreement by an amount equal to the percentage difference in the Consumer Price Index ("CPI") on each anniversary date compared to the CPI in effect one year earlier. The CPI to be used will be the CPI (Midwest) for All Urban Consumers (CPI-U(1982-84=100) Base) as Published by the U.S. Department of Labor, Bureau of Labor Statistics. Provided, however, that the amount of any increase based solely on CPI shall not exceed 12% (twelve percent) in any given three (3) year period. In addition, all prices set forth herein for services rendered hereunder shall also be increased by (i) any increase in Fees or Taxes (as defined below) after the Effective Date, and (ii) any increased operational costs or expenses incurred by Hoosier after the Effective Date resulting from increases caused by the adoption or change (including a change in interpretation or enforcement) of any Environmental Laws (as defined below), whether imposed retroactively or prospectively. Provided, however, if the amount of any annual increase solely for the reasons described in subparagraphs (i) and (ii) exceeds 10% (ten percent) in any given year, the District shall have the right to provide written notice to Hoosier of its objection to any such change, and the Parties shall negotiate in good faith in an effort to arrive at an agreement on an adjustment hereunder. If the Parties are unable to come to an agreement on an adjusted rate pursuant to subparagraphs (i) and (ii), the District may terminate this Agreement by providing a written 30-day (thirty day) termination notice to Hoosier.

13. Additional Definitions: In addition to terms defined elsewhere in this Agreement, the following terms used herein shall also have the following meanings:

- a) "Fees or Taxes" shall mean any federal, state, local or other taxes, assessments, fees, host charges, surcharges, or similar charges imposed by law, ordinance, rule, regulation, and/or agreement with a governmental authority, whether imposed retroactively or prospectively, upon the operation of the Transfer Facility or upon the operation of any other facility to which the MSW or Recyclable Materials are sent.
- b) "Environmental Laws" shall mean all applicable laws, directives, rules, ordinances, codes, guidelines, regulations, governmental, administrative, or judicial orders or decrees of other legal requirements of any kind, including, without limitation, common law, whether currently in existence or hereafter promulgated, enacted, adopted or amended, relating to safety, preservation or protection of human health or the environment (including ambient air, surface water, groundwater, land, or subsurface strata) and relating to the handling, treatment, transportation, or disposal of MSW or Recyclable Materials (whether hazardous or non-hazardous), including, without limitation, any matters relating to a release and/or threatened release of any MSW or Recyclable Materials.

- 14. Warranty: Hoosier warrants that it shall comply with all applicable laws and regulations in the performance of its obligations hereunder
- 15. Indemnity: Hoosier agrees to indemnify and hold harmless the District and their agents, employees, directors, attorneys, affiliates, successors and assigns from any and all losses, liabilities, damages, costs and expenses (including, without limitation, attorney's and expert fees) incurred by the District arising out of or related to (a) the breach of Hoosier's warranty in paragraph 14; or (b) Hoosier's operation of its Transfer Facility or transportation of MSW or Recyclable Material in connection with this Agreement.

16. Insurance: Hoosier shall provide insurance coverage in the types and amounts set forth in its response to the District's RFP.

17. Miscellaneous: This Agreement, including its attachments which are specifically incorporated by reference herein, sets forth the entire agreement and understanding of the Parties hereto with respect to the subject matter hereof and supersedes all representations or warranties, whether oral or written, by any representative of either Party hereto. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and any respective subsidiaries, successors and assigns. The District may not assign its rights or obligations under this Agreement without the prior written consent of Hoosier, which consent shall not be unreasonably denied. Hoosier may subcontract any obligations under this Agreement to another entity and may assign this Agreement to a corporate affiliates, successor or non-affiliated third Party with the District's consent, which consent shall not be unreasonably denied. No waiver shall be effective unless it is in writing and signed by the Party asserting to have granted the waiver. The provisions of this Agreement are independent and severable from each other and no provision may be affected or rendered invalid or unenforceable by virtue of the fact that any provision may be invalid or unenforceable in whole or in part.

Attachment 1

List of Monroe County Solid Waste Management District Collection Sites

1. Dillman Road
400 W. Dillman
Bloomington, IN 47403
2. Ellettsville
6200 N. Matthews Drive
Ellettsville, IN 47429
3. Bethel Lane
6015 E. State Road 45
Bloomington, IN 47408
4. Oard Road
341 N. Oard Road
Bloomington, IN 47404
5. Anderson Road
4455 E. Anderson Road
Bloomington, IN 47408
6. Main Recycling Center
3400 South Walnut Street
Bloomington, IN 47401

**Republic Services of Indiana, Limited
Partnership, d/b/a Hoosier Disposal &
Recycling**

Scott Bradshaw
Signature

Scott Bradshaw
Printed

General Manager.
Title

8/30/04
Date

**Monroe County Solid Waste Management
District**

By: Iris F. Kiesling,
Chairperson of the District's Board of
Directors

Iris F. Kiesling
Printed

30 Aug 2004
Date

ATTESTED:

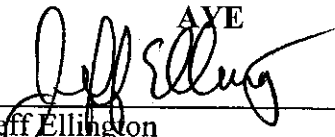
Sherry L. Memmery
Signature

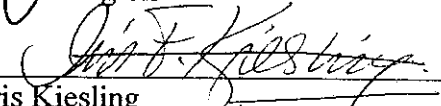
Controller
Printed

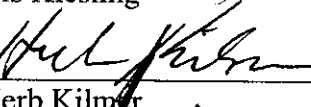
10-14-04
Date


Recyclables Agreement

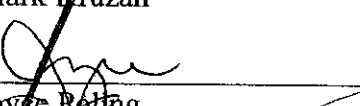
Dated this 30th day of AUGUST, 2004.


AYE


Jeff Ellington


Iris Kiesling


Herb Kilmer


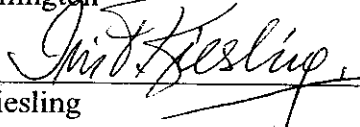
Mark Kruzan


Joyce Poling


Patrick Stoffers

Steve Volan

NAY

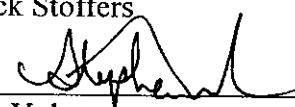
Jeff Ellington


Iris Kiesling

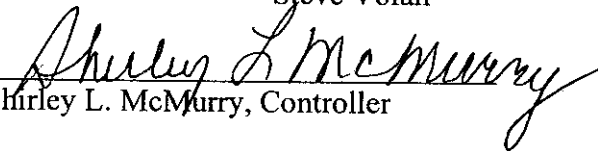
Herb Kilmer

Mark Kruzan

Joyce Poling

Patrick Stoffers


Steve Volan

Attest: 
Shirley L. McMurry, Controller

