INTERLOCAL AGREEMENT
DISPOSAL OF SOLID WASTE

THIS INTERLOCAL AGREEMENT (Agreement) is made by and between The City of Seattle, a municipal corporation of the State of Washington, acting by and through its Seattle Public Utilities ("SPU") and King County, a political subdivision of the State of Washington, hereinafter referred to as the "County." SPU and the County also may be collectively referred to as the "Parties" and individually as "Party." This agreement has been authorized by the legislative body of each jurisdiction pursuant to formal action as designated below:

King County: Ordinance No. _____
City of Seattle: Ordinance No. _____

Recitals

WHEREAS, this Agreement is entered into by SPU and the County pursuant to Chapter 39.34 RCW (the "Interlocal Cooperation Act"); and

WHEREAS, the County, has jurisdiction over the solid waste, including recyclable materials, collected within unincorporated King County and the 37 municipalities with which it has Interlocal Agreements for solid waste disposal; and

WHEREAS, some of the Recyclable Materials collected within King County's Solid Waste Jurisdiction, which does not include materials from the City of Seattle, are sent to Material Recovery Facilities located within the City of Seattle; and

WHEREAS, when the Material Recovery Facilities within the City of Seattle sort the collected material to separate recyclables, a residual volume of materials collected within the County's Solid Waste Jurisdiction cannot be recycled and need to be disposed of; and

WHEREAS, the Material Recovery Facilities pay a disposal fee for the residuals that are separated and disposed of; and

WHEREAS, the City of Seattle's position is that it has the authority under Seattle Municipal Code 21.36.040, and Seattle Municipal Code 21.36.112-116, and state law to direct the disposal of Residuals from Material Recovery Facilities within the City of Seattle; and

WHEREAS, the County's position is that it has the authority under King County Code King County Code 10.08.020(C) and state law to direct the disposal of Residuals sorted from Recyclable Materials collected within King County's Solid Waste Jurisdiction and

WHEREAS, the City of Seattle and the County disagree as to which entity has the authority to direct the disposal of Residuals processed in the City of Seattle from Recyclable Materials collected within King County's Solid Waste Jurisdiction; and

WHEREAS, in 2021, the City filed a declaratory judgement action, seeking a court's determination of which Party's interpretation of authority was correct; and

WHEREAS, the Parties continued to meet to discuss resolution of this disagreement; and

WHEREAS, this Agreement is the compromise reached by both Parties; and

WHEREAS, the City and County believe that a cooperative agreement regarding the disposal of residuals will benefit both parties and their ratepayers; and the resolution will also preserve space at the King County Cedar Hills Regional Landfill; and

WHEREAS, the Parties have negotiated this Agreement in good faith.

NOW THEREFORE, in consideration of the Recitals and mutual promises set forth herein, the Parties agree as follows:

1. Purpose of Agreement

The purpose of this Agreement is to foster cooperation between the Parties and allow for the legal, efficient, and equitable disposition of Residual materials sorted from source-separated Recyclable Materials from King County's Solid Waste Jurisdiction and processed at Material Recovery Facilities within the City of Seattle. This Agreement establishes the methodology and timing for payments to be made by SPU to the County for Residuals covered under this Agreement. This Agreement does not apply to Construction and Demolition Waste or Construction and Demolition materials.

2. Definitions

"King County Solid Waste Jurisdiction" means the geographic area for which King County government has comprehensive planning authority for solid waste management either by law, such as unincorporated areas, or by interlocal agreement, or both. It does not include the City of Seattle.

"Material Recovery Facilities" or "MRFs" means any facility that processes for transport source-separated solid waste, including source-separated recyclables, for the purpose of recycling. For purposes of this Agreement, MRFs are limited to those located within the City of Seattle.

"Program Support Payment" means the payment to be paid by the City to the County for each ton of Residuals sorted at MRFs located within the City that were collected from within the County's Solid Waste Jurisdiction. The initial Program Support Payment rate is thirty dollars ($30.00) per ton until adjusted as provided in Section 5.4.

"Recyclable Materials" means, for the purposes of this Agreement, solid waste that has been source-separated for the purpose of recycling, collected and delivered to MRFs for processing to remove Residuals. Recyclable Materials, after processing are those solid wastes that are separated for reuse, recycling or composting, including, but not limited to, papers, cardboard, metals, glass, plastic bottles and containers, plastic bags, mattresses, yard waste, food waste, wood waste, chemicals, oil, textiles, white goods and other materials that are identified as recyclable material under the King County comprehensive solid waste management plan.

"Residuals" means residual solid waste that is the nonrecyclable waste remaining after recycling processes at a MRF have removed Recyclable Materials.

"Solid waste" means all putrescible and nonputrescible solid and semisolid wastes, except wastes identified in WAC 173-350-020, including, but not limited to, garbage, rubbish, ashes, industrial wastes, commercial waste, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, contaminated soils and contaminated dredged material, discarded commodities and recyclable materials.

3. Duration of Agreement

This Agreement shall be effective no sooner than 30 days after it is approved by both the Seattle City Council and the King County Council and signed by both Parties, with the effective date being the date of the last signature ("Effective Date"). This Agreement shall remain in effect until terminated in accordance with the terms and conditions contained herein. Within a reasonable time of the Effective Date, the City shall dismiss, without prejudice, King County Superior Court Cause # 21-2-16144-4 SEA.

4. Default and Termination

4.1 Failure to keep or perform any term or condition of this Agreement shall be a default hereunder (a "Default"). Upon a Default, the aggrieved Party shall provide written notice to the defaulting Party specifying the nature of the Default and the aggrieved Party's intention to terminate this Agreement if the Default is not corrected within thirty (30) days of the date of the notice. If the defaulting Party fails to cure within the stated period, the aggrieved Party may thereafter terminate this Agreement by sending written notice and the terms of Section 4.3 shall still apply.

4.2 Other than termination for Default, either Party may terminate this Agreement upon notifying the other Party in writing according to the notice provisions in this agreement no less than 180 days in advance of the date that the termination will take effect.

4.3 SPU shall not be obligated to make any additional Program Support Payments to the County for Residual waste directed to the SPU solid waste system after the effective date of termination, except that SPU shall pay to the County all payments for Residuals from the County's Solid Waste Jurisdiction disposed of prior to the effective date of termination. For example: if the date of termination is July 1 then SPU shall make payments to the County for all Residuals originating from the King County Solid Waste Jurisdiction directed to the SPU solid waste system up to July 1 even if the payments are not sent until after July 1 for waste transported before July 1.

5. Obligations of the City

5.1 On a quarterly basis, the City will collect data on the total tons of Recyclable Materials delivered to MRFs (TTRM) and the total tons of Recyclable Materials collected from within the County's Solid Waste Jurisdiction (KCRM). The City will collect data on the total tons of Residuals sorted at MRFs and directed to the City's disposal system (TR) on a quarterly basis. The City shall report the collected data required by this section to the County in accordance with section 5.2. Because the MRFs accept materials to be sorted from entities other than the City and the County's Solid Waste Jurisdiction, the Parties acknowledge that the TTRM and TR collected data include tonnage from those other entities. The Parties may also work on a joint reporting and tracking form to gather this information from the respective MRFs and satisfy the City's and County's obligations to track the Residuals.

5.2 Beginning at the end of the quarter following the effective date of this Agreement, the City shall provide the data collected under section 5.1 to the County on a quarterly basis within thirty (30) days of the end of that quarter. For example, if this Agreement is signed on October 28, 2023, then the City shall provide the County this data for the fourth quarter, October 31 to December 31, 2023, by January 31, 2024.

5.3 The City shall keep and make available for the County's inspection and audit all records pertaining to the collecting of data under section 5.1 and all Program Support Payment records. The City shall furnish to the County copies of these records upon request and shall keep all records for no less than six (6) years.

5.4 For Residuals collected within the County's Solid Waste Jurisdiction, as calculated in compliance with Section 7, the City will pay the County a Program Support Payment of $30.00 per ton that the City directs to its disposal facilities. Beginning April 1, 2024, and annually thereafter, the City will calculate the Program Support Payment to be paid to the County for the following year, which shall be increased by the same percentage as the City's council-adopted increase in its railyard rate for disposal of Residuals. The City will notify the County of the rate changes for later years upon approval by the Seattle City Council. SPU has proposed railyard rate increases of 2.6% for April 2024 and April 2025. If these increases are adopted, then Program Support Payments will be $30.78 per ton beginning in April 2024, and $31.58 beginning in April 2025. Regardless of the Railroad rate, the Program Support Payment for any year will not be reduced below $30 per ton.

5.5 If the County does not agree with the Program Support Payment set forth in the notice, then the Parties agree to attempt to resolve the dispute using the Agreement's dispute resolutions procedures. Absent an agreement, the payment will not change, but either Party will be entitled to terminate the Agreement per Section 4 of this Agreement.

5.6 The City shall provide its Program Support Payment to the County on a quarterly basis within two months of the end of the quarter as follows:

- Quarter one (Q1) means January 1st through March 31st; Payment must be received by May 31st.
- Quarter two (Q2) means April 1st through June 30th. Payment must be received by August 30st.
- Quarter three (3) means July 1st through September 30th. Payment must be received by the County by November 3rd
- Quarter four (4) means October 1st through December 31st. Payment must be received by February 28 of the following year.

5.7 Payments shall be made to King County Solid Waste Division.

6. Obligations of the County

6.1 The County will also collect data on the tons of Recyclable Materials from the County's Solid Waste Jurisdiction delivered to MRFs for processing to separate out Residuals, and report that data to the City in accordance with the timeline in section 5.2. The Parties may also work on a joint reporting and tracking form to gather this information from the respective MRFs and satisfy the City's and County's obligations to track the Residuals. The County shall keep and make available for the City's inspection and audit all records pertaining to the tracking of Residuals and all Program Support

Payment records. The County shall furnish to the City copies of these records upon request and shall keep all records for no less than six (6) years.

6.2 The County agrees that for all Residuals from Recyclable Materials collected from the County's solid waste jurisdiction and sorted at MRFs, the City will be responsible for directing those Residuals to the City's disposal system and will receive all disposal payments as long as this Agreement remains in full force and effect.

6.3 The County will direct any entity that sorts Recyclable Materials collected from the County's solid waste jurisdiction within the City to follow the City's directions regarding the disposal of related Residuals. If requested by the City, the County agrees to provide a letter to any such entities with those directions.

7. Calculation of Program Support Payment

7.1 The portion of the actual tons of Residuals generated within the County's Solid Waste Jurisdiction and sorted at the MRFs cannot be specifically determined. Therefore, the Parties agree that the following formula provides an equitable approximation to derive that tonnage. Based on the quarterly tonnage data:

Number of tons of Recyclable Materials delivered to MRFs collected from within the County's Solid Waste Jurisdiction (KCRM) divided by total tons of Recyclable Materials delivered to MRFs (TTRM) multiplied by the number of tons of all MRF Residuals directed to the City's disposal system (TR), resulting in the number of tons of Residuals sorted from Recyclable Materials collected within the County's Solid Waste Jurisdiction (KCR), or

$$\left(\frac{KCRM}{TTRM}\right) \times \mathrm{TR} = \mathrm{KCR}$$

7.2 The Parties agree that Program Support Payment rate, as set forth in Section 5.6, shall be applied to the KCR to arrive at the dollar amount owed for the applicable quarter.

8. Compliance with Laws and Regulations

The Parties shall comply with all applicable rules and regulations pertaining to them in connection with the matters covered herein.

9. Notices

Any communication, notice or demand which either Party may be required or

desire to give to or serve on the other, shall be in writing and shall be deemed to have been duly given or sent if either delivered personally, sent by nationally recognized overnight delivery service or sent via United States Mail addressed to the following:

To the County:

	Solid Waste Division
Contact Name	Pat D. McLaughlin
Title	Solid Waste Division Director, DNRP
Address	King County Solid Waste Division 201 S. Jackson Street, Suite 5701 Seattle, WA 98104
Telephone	(206) 477-4501
E-Mail	pat.mclaughlin@kingcounty.gov

To SPU:

	Seattle Public Utilities
Contact Name	Sally Hulsman
Title	Director of Solid Waste Compliance & Inspections
Address	Seattle Municipal Tower, 59th Floor 700 5th AVE Seattle, WA 98014
Telephone	206-684-4682
E-Mail	Sally.hulsman@seattle.gov

or, to such other person or address as is hereafter designated in writing by either Party to the other. Each Party may change its notice address set forth in this section by giving notice of a new address to the other Party in accordance with this section. Any such communication, notice or demand shall be deemed to have been duly given or served one (1) business day after deposit with the courier service, if sent by overnight courier; on the date of personal delivery, if sent by hand delivery; or three (3) days after being placed in the U.S. mail, if sent by mail.

10. Indemnification and Hold Harmless; Release and Waiver

10.1. The City agrees for itself, its successors, and assigns, to defend, indemnify, and hold harmless the County, its appointed and elected officials, and employees from and against liability for all claims, demands, suits, and judgments, including costs of defense thereof for injury to persons, death, or property damage, which is caused by, arises out of, or is incidental to the City's performance under this Agreement, except to the extent of the County's negligence. The City's obligations under this subsection shall include:

a. The duty to promptly accept tender of defense and provide defense to the County at the City's own expense;

b. Indemnification of claims made by the City's own employees or agents; and,

c. The City expressly and specifically waives its immunity under the insurance provisions of Title 51 RCW but only to the extent necessary to fully indemnify the County, which waiver has been mutually negotiated by the Parties.

10.2 The County agrees for itself, its successors, and assigns, to defend, indemnify, and hold harmless the City, its appointed and elected officials, and employees from and against liability for all claims, demands, suits, and judgments, including costs of defense thereof for injury to persons, death, or property damage, which is caused by, arises out of, or is incidental to the County's performance under this Agreement, except to the extent of the City's negligence. The County's obligations under this subsection shall include:

a. The duty to promptly accept tender of defense and provide defense to the City at the County's own expense;

b. Indemnification of claims made by the County's own employees or agents; and,

c. The County expressly and specifically waives its immunity under the industrial insurance provisions of Title 51 RCW but only to the extent necessary to fully indemnify the County, which waiver has been mutually negotiated by the Parties.

10.3 The Parties agree that the provisions of this Section 10 shall survive the termination of this Agreement.

11. Dispute Resolution

In the event that a dispute arises under this Agreement, the Parties shall each designate a person with authority to resolve the dispute and those representatives shall use reasonable efforts to resolve any dispute. If the representatives cannot resolve the dispute within fourteen (14) calendar days then either Party may request that King County's Director of the Solid Waste Division and the Deputy Director SPU Solid Waste review the dispute and meet and confer in an effort to resolve the dispute. If the Directors cannot resolve the dispute to each Party's satisfaction, then each Party shall designate, in writing, not more than three (3) candidates it proposes to act as a non-binding mediator within twenty (20) days following notification of a dispute. If the Parties cannot agree on one of the mediators from the combined list within fifteen (15) days, then the Parties shall promptly meet and select a mediator by blind draw. Upon

selection of the mediator, the Parties shall within forty-five (45) days or as soon thereafter as possible, meet and engage in a mediation of the dispute with the assistance of the mediator. The cost for the mediation services shall be borne equally between the Parties, each Party paying one-half of the cost. The mediator shall determine reasonable procedures. Testimony and briefing, if any, provided to the mediator shall be inadmissible in any subsequent court proceedings. If mediation fails to resolve the dispute, the Parties may thereafter seek redress in a court of competent jurisdiction. Nothing in this section shall be construed to prohibit either Party from exercising its right to terminate this Agreement as otherwise provided in this Agreement or be construed as a pre-condition to the exercise of such right to terminate.

12. Assignment

The Parties shall not assign this Agreement or any interest, obligation, or duty herein without the express written consent of the other Party.

13. Approval

This Agreement is expressly conditioned upon and subject to approval by ordinance of the City Council and by ordinance of the King County Council and shall not be binding unless and until so approved.

14. General Provisions

14.1 All of the terms, covenants, and conditions in this Agreement shall extend to and bind any approved legal successors and assigns of the Parties hereto.

14.2 This Agreement shall be deemed to be made and construed in accordance with the laws of the State of Washington. Jurisdiction and venue for any action arising out of this Agreement shall be in King County Superior Court.

14.3 The headings and recitals in this Agreement are for convenience only and do not in any way limit or amplify the provisions of this Agreement.

14.4 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable by a final decision of any court having jurisdiction on the matter, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect unless such court determines that such invalidity or unenforceability materially interferes with or defeats the purposes hereof, at which time SPU shall have the right to terminate the

Agreement for cause.

14.5 This Agreement constitutes the entire agreement between the Parties for the purpose set forth in paragraph 1. There are no terms, obligations, covenants, or conditions other than those contained herein. No modifications or amendments of this Agreement shall be valid or effective unless evidenced by an agreement in writing signed by both Parties.

14.6 The Parties agree to comply with RCW 39.34.040.

14.7 This Agreement may be executed in counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall constitute but one and the same instrument.

14.8 Each individual signing this Agreement warrants that he or she has the authority to enter into this Agreement on behalf of the Party for which that individual signs.

14.9 The failure of either Party to insist upon strict performance of this Agreement shall not impact that Party's right to insist upon strict performance at a later time.

14.10 The Parties recognize and agree that the Parties hereto are independent governments. Except for the specific terms herein, nothing herein shall be construed to limit the discretion of the governing bodies of each Party. Nothing herein shall be construed as creating an association, joint venture, or partnership between the Parties, nor to impose any partnership obligations or liabilities on either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for or on behalf of, to act as or be an agent or representative of, or to otherwise bind the other Party. No new or separate legal or administrative agency is created by this Agreement. This Agreement shall be administered by the King County Solid Waste Division for the County and SPU Solid Waste.

15. Equal Opportunity to Draft

Each Party has had opportunity to consult with counsel in connection with the negotiation, execution and delivery of this Agreement. Each of the provisions of this Agreement has been reviewed and negotiated, and represents the combined work product of both parties hereto. No presumption or other rules of construction which would render the provisions of this Agreement in favor of or against the Party

preparing the same will apply in connection with the construction or interpretation of any of the provisions of this Agreement.

16. Third Party Beneficiary

This Agreement is not entered into with the intent that it shall benefit any other entity or person except those expressly described herein, and no such person or entity shall be entitled to be treated as a third-party beneficiary to this Agreement.

IN WITNESS WHEREOF, the County and SPU have executed this Agreement as of the latter date of signature below.

For the County:

_____
Dow Constantine
King County Executive
Dated: _____

For SPU:

_____
Jeff Fowler
Deputy Director of Solid Waste
Seattle Public Utilities

Dated: _____