



MUNICIPAL ORDER

17-032

June 26, 2017

AN ORDER APPROVING A MEMORANDUM OF AGREEMENT WITH LFUCG FOR PROCESSING OF RECYCLABLE MATERIALS AND AUTHORIZING THE MAYOR TO SIGN ALL DOCUMENTS.

WHEREAS, the City of Georgetown seeks to convert its Recycling Center from a multiple stream sorting facility to a single stream operation; and

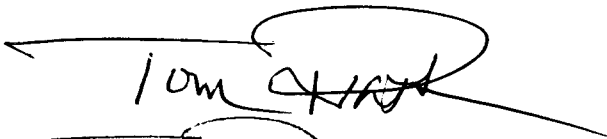

WHEREAS, the City has negotiated a Memorandum of Agreement with Lexington Fayette Urban County Government for receiving, processing, shipping and marketing recovered materials; and

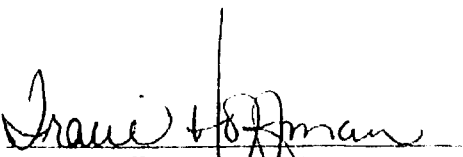
WHEREAS, the cost of the service is a formula based on total recovered materials from LFUCG and all other affiliates, minus certain costs and applicable penalties; and

WHEREAS, contracting with LFUCG and changing the Recycling Center operations will save the City of Georgetown an estimated \$46,600 annually;

NOW THEREFORE, IT IS HEREBY ORDERED by the Georgetown City Council that the attached MOA with LFUCG is hereby approved and the Mayor is authorized to sign all relevant documents.

PASSED AND APPROVED, this June 26, 2017.



Tom Prather, Mayor

ATTEST: 
Tracie Hoffman, City Clerk

I. CONSIGNMENT

Upon execution of this MOA, Affiliate agrees that to the extent it chooses to utilize LEX-MRF for the disposal of its recovered materials it shall abide by the terms of this MOA. This MOA is in no way exclusive, and Affiliate is under no obligation to dispose of a minimum monthly amount of materials with LEX-MRF. Affiliate agrees to "consign" its recovered materials to LEX-MRF upon delivery to and LEX-MRF's acceptance of the materials at the LEX-MRF scale. "Consign" or "consignment" is defined as the agreement by the Affiliate and LEX-MRF that upon delivery and acceptance of approved comingled recovered materials, LEX-MRF will process, market, and ship such materials, distribute proceeds and provide documentation using Generally Accepted Accounting Principles (GAAP) and as further provided by the terms of this agreement. LEX-MRF is only financially liable to Affiliate for the monthly payment of Affiliates' proportional share of net revenue from the further disposition of the recovered materials as further provided in this agreement. LEX-MRF makes no guarantee regarding perceived quality of materials shipped or values that are dependent upon market conditions.

II. SHARE/SHARE FACTOR METHOD

The total amount of recovered materials received from all affiliates and the additional recovered materials collected by LFUCG each month will be known as the Total Incoming Tonnage (100 %). The incoming tonnage from *each* affiliate will be known as that affiliate's "share" or "share factor" (expressed as a percentage, e.g., 5 % or .05) for the month. The Affiliate's respective share/share factor will be used to determine its monthly revenues, costs, penalties, material volumes, etc., as further provided in this agreement.

The share factor for each affiliate is subject to change each month based on the actual tonnage received each month as indicated above.

III. ACCEPTABLE MATERIAL LIST

LEX-MRF will accept only the following recovered materials without penalty:

NEWSPAPER - includes phonebooks and magazines

OFFICE PAPER - includes white and colored paper, junk mail, envelope with windows, school paper, calendars, shredded paper, cardstock, etc. (the LEX-MRF does not accept paper with plastic coating or lamination, plastic covers, or plastic wrappers.)

CARDBOARD - includes brown corrugated containers/boxes and brown craft paper. Boxes must be empty and flattened, with no plastic packing or Styrofoam

FIBERBOARD - includes cereal, cracker boxes and other dry food boxes. (The LEX-MRF does not accept frozen food boxes and beverage cartons.)

PLASTIC BOTTLES AND JUGS - clear or white milk jugs, laundry detergent, soft drink, water, juice and beverage bottles, and jugs or containers with small necks. The containers must be empty. The LEX-MRF does not accept plastic bags, plastic tubs, lids and clam shells, bottles or jugs that contain chemicals, fuels or oils.

STEEL/TIN CANS - includes food cans and empty spray cans. Absolutely no paint cans or cans containing any chemicals.

ALUMINUM CANS - Cans only. The LEX-MRF does not accept pie or cooking pans, foil wrapping or containers.

GLASS BOTTLES AND JARS - of any color. The LEX-MRF does not accept ceramics, dishes, mirrors, light bulbs or windows.

The **Affiliate** must sign the attached Non Compliance Penalty Policy (NCP), which is attached hereto as **Exhibit A** and incorporated herein by reference as well as agree to the Environmental Education component described in Section XII before the LEX-MRF will accept consignment of any of the **Affiliate's** recovered materials.

IV. SURCHARGE MATERIALS--GLASS AND TRASH

The following monthly surcharge fees will be subtracted from the **Affiliate's** share each month. The surcharge fees are based upon the current costs incurred by LEX-MRF related to the further disposition of the respective recovered materials and are subject to change. LEX-MRF will provide **Affiliate** with reasonable advanced written notice upon a change in LEX-MRF's disposition costs

Glass: The current freight cost to ship glass to the nearest sustainable market is \$15.00 per ton. The total amount of glass shipped by the LEX-MRF each month will be multiplied by the **Affiliate's** share factor to determine the **Affiliate's** glass liability (the glass surcharge fee) each month.

Trash: The current cost to transfer and dispose of material at the transfer station is \$25.00 per ton. The total amount of trash shipped by the LEX-MRF each month will be multiplied by the **Affiliate's** share factor to determine the **Affiliate's** trash liability (the trash surcharge fee) each month.

Affiliate hereby specifically acknowledges and agrees that freight costs, disposal, and surcharges may fluctuate with the vendors' agreements with LEX-MRF and that LEX-MRF is entitled to reduce the **Affiliate's** share each month to reflect the current costs incurred by LEX-MRF in the further disposition of the recovered materials.

V. LEX-MRF Shipments

When individual commodities/materials are shipped from LEX-MRF to mills/vendors, materials will be weighed and inspected by LEX-MRF and at the receiving mill/vendor. A numerical manifest describing the vendor, material, weight and quantity will be completed for each load shipped. The day of the actual shipment is the determining date of record for LEX-MRF shipments. The date of receipt is

typically the date the mill receives the material and usually this date determines the index prices. Notice: All materials are subject to downgrading by weight and/or quality. LEX-MRF is not responsible for any deduction, downgrades or rejection by the mill/vendor (any and all penalties will be subject to the share factor method). Final receipts issued by the mill/vendor and the terms of this agreement establish the basis of payment to the **Affiliate**. Under this agreement, LEX-MRF will have the authority to accept or decline any such penalty for all materials shipped from LEX-MRF.

VI. MILL /VENDOR PAYMENT AND AFFILIATE DISTRIBUTION

LEX-MRF is normally paid by its vendors net 30 days from date of shipment. All payments from the mill/vendor will be made directly to LEX-MRF. The share factor payment to the **Affiliate** will be issued normally within 30 days of actual payment to LEX-MRF by the mill/vendor.

VII. PROCESSING/PROCESSING FEE:

The fee to process approved comingled materials is \$50.00 per ton (1 ton = 2000 lbs.) and is based upon the incoming tonnage according to the adjusted net weight of the scale ticket. The fee is deducted from the sale of materials after the material is shipped and payment has been received by LEX-MRF from the vendor/mill. The above fee is based upon the current costs incurred by LEX-MRF related to the further disposition of the respective recovered materials and is subject to change. LEX-MRF will provide **Affiliate** with reasonable advanced written notice upon a change in LEX-MRF's disposition costs. The **Affiliate** acknowledges and understands the Scale Procedure Notice which is attached hereto as Exhibit B, and incorporated herein by reference.

VIII. MARKETING FEE

Recovered materials are commodities and are sold based upon the values established by local, regional domestic and global markets and are subject to change without notice. LEX-MRF will make every reasonable effort to sell recovered materials primarily to established mills and reputable vendors using various indexes and parameters including, but not limited to, price, proximity, specifications, ability to pay, and environmental initiatives.

LEX-MRF shall charge a fee to market the materials in the amount of \$7.00 per ton based upon the outbound tons shipped multiplied by the **Affiliates** share factor each month. This fee is deducted from the sale amount of materials after the material is shipped and payment has been received from the vendor/mill. There will be no marketing fee collected for Glass or Trash materials until the material is sold for a value. At that time the same fee as the above shall apply and it shall be calculated in the same manner. The above fee is based upon the current costs incurred by LEX-MRF related to the further disposition of the respective recovered materials and is subject to change. LEX-MRF will provide **Affiliate** with reasonable advanced written notice upon a change in LEX-MRF's disposition costs.

IX. NON COMPLIANT PENALTIES

In addition to the trash surcharge fee assessed pursuant to paragraph IV., above, an additional charge for unacceptable materials may apply as further provided herein. The Non Compliant Penalties (NCP) is

an additional charge which is assessed only when a breach or disregard of the standard for acceptable materials list in paragraph III. above, has occurred.

The total cost for non compliant material is an increased processing fee charged to each noncompliant load, the forfeiture of any revenue associated with the noncompliant load and a disposal cost of \$25.00 per ton based on the LEX-MRF scale weight of the noncompliant load. The total cost of each noncompliant load received for a given month will be deducted from that month's net revenue due to the **Affiliate**. The above fee is based upon the current costs incurred by LEX-MRF related to the further disposition of the respective recovered materials and is subject to change. LEX-MRF will provide **Affiliate** with reasonable advanced written notice upon a change in LEX-MRF's disposition costs. The **Affiliate** acknowledges and understands the Non Compliant Penalty Policy, which is attached hereto as Exhibit A, and incorporated herein.

In the event of a major contamination requiring Plant Shut Down, evacuation or other emergency of materials, the contributing Affiliate will be held responsible for cost incurred including but not limited to clean up, processing fees, transportation and disposal.

X. ACCOUNTING DOCUMENTATION

LEX-MRF agrees to provide documentation that is reflective for all Affiliates detailing each Affiliate's incoming tonnage, share factor, surcharges, non-compliance penalties (if any), adjustments or other information required to comply with GAAP. This information will be provided with monthly payments and will otherwise be available to **Affiliate** upon request at any reasonable time.

LEX-MRF agrees to pay **Affiliate** within thirty calendar days of receipt of payments from mills/vendors.

XI. LEX-MRF OPERATIONAL REQUIREMENTS

Affiliate voluntarily agrees to follow all current LEX-MRF rules / regulations as amended when necessary. Said rules and regulations are designed to ensure the efficient processing of materials in a safe and compliant manner. LEX-MRF rules / regulations will apply to LFUCG and **Affiliates** equally and without prejudice. Failure to follow written or posted LEX-MRF rules/regulations may result in the immediate termination of this MOA.

LEX-MRF's normal scale hours of operation are Monday through Friday 8 AM until 4PM except posted Holidays (available on request). LEX-MRF follows Division of Waste Management's Collection's schedule. In the event of inclement weather, mechanical issues or other unforeseen circumstances requiring plant closure, LEX-MRF will make every effort to notify Affiliates in a timely basis but will not be responsible for losses incurred or materials diverted.

XII. ENVIRONMENTAL EDUCATION

Contamination increases the costs associated with operating the LEX-MRF which in turn increases the costs for LFUCG and affiliates. The best way to decrease contamination is to uniformly educate all participants of the recycling program about what is and is not acceptable. LFUCG invests significant time and resources in recycling education, and expects affiliates to do the same. In order to ensure an accurate and consistent message for all users of the LEX-MRF, affiliates are encouraged to use LFUCG outreach material and templates, which can be modified to include affiliate logos. When feasible, any affiliate-produced outreach materials should be submitted and reviewed by the Department for Environmental Quality and Public Works before distribution. Affiliates agree to distribute outreach materials listing acceptable items to all residential and business participants in the recycling program at least one time per year and whenever major changes are made to the acceptable materials list.

In order to best ensure that the delivery of unacceptable materials is minimized, the Affiliate agrees to submit all recycling education materials to LEX-MRF for advance approval.

XIII. TERM

The term of this Memorandum of Agreement shall be for an initial period of one year (1), and shall automatically renew for up to four additional terms of one year each unless otherwise terminated or cancelled as provided herein. LFUCG reserves the right to alter or amend any part of this MOA upon at least thirty (30) days advance written notice to Affiliate. LFUCG may cancel this MOA completely upon ninety (90) days written notice to Affiliate.

XIV. LIABILITY

.Each party agrees that it shall be responsible for any claims or damages that are based upon its respective performance of this MOA, or that are based upon the actions or inactions of its respective employees or agents.

XV. NON-EMPLOYEES

In no event shall the parties be construed, held or become in any way for any purpose the employee of the other party, or partners, associates or joint ventures in the conduct of their respective endeavors or otherwise.

XVI. THIRD PARTIES

This MOA does not create a contractual relationship with or right of action in favor of a third party against either LFUCG or Affiliate. It should be understood the Affiliate signing this agreement is responsible for the materials, actions, rewards and circumstances regardless of hauler agreement.

XVII. SEVERABILITY

If any term or provision of this MOA shall be found to be illegal or unenforceable, this MOA shall remain in full force and such term or provision shall be deemed stricken.

XVIII. APPLICABLE LAW

This MOA shall be governed in all respects by the laws of the Commonwealth of Kentucky and venue for all actions shall lie in Fayette County, Kentucky.


XIX. ENTIRE AGREEMENT.

This MOA shall constitute the entire agreement between the parties and no representations, inducements, promises or agreements, oral or otherwise, which are not embodied herein shall be effective for any purpose. This MOA shall replace any previous agreement between the parties on the same subject matter.

XX. WAIVER

The waiver by either party of any breach of any provision of this MOA shall not constitute a continuing waiver or waiver of any subsequent breach by either party of either the same or another provision of this MOA

IN WITNESS WHEREOF, the parties certify that they have been duly authorized to execute, deliver and perform this Memorandum of Agreement, and have executed it as of the date first herein written.


 (AFFILIATE NAME) City of Georgetown
 (AFFILIATE ADDRESS) 100 N. Court St. Geo. KY 40324
 BY: Tom Peatner
 (name)
 TITLE: Mayor

STATE OF KENTUCKY

COUNTY OF ~~FAYETTE~~ SCOTT

The foregoing instrument was acknowledged before me by (name) Tom Peatner as Mayor (title) of Affiliate City of Georgetown on this 6 day of July, 2017.

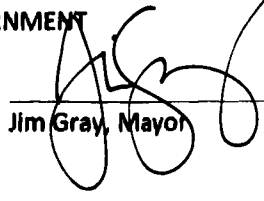
NOVEMBER

My Commission expires:

7/23/2018
7/23/2018

Wendene Dabson
Wendene Dabson
NOTARY PUBLIC #515791
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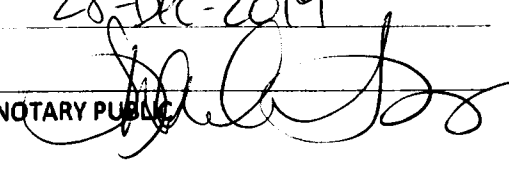
LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT

BY: 
Jim Gray, Mayor

STATE OF KENTUCKY
COUNTY OF FAYETTE

The foregoing instrument was acknowledged before me by Jim Gray, as Mayor of the City of
Lexington,
Urban County Govt. on this 29 day of November, 2017, on behalf of said _____

My Commission expires: 28-Dec-2019


NOTARY PUBLIC #547793