

**Amended Memorandum of Agreement  
for the  
Consignment, Processing and Marketing of Recovered Materials**

This **Amended Memorandum of Agreement** is made and entered into this 1st day of July, 2016, by and between:

and:

**Lexington Fayette Urban County Government (“LFUCG”)**, an urban county government pursuant to KRS 67A, located at 200 East Main Street, Lexington, KY 40507.

WITNESSETH

That for and in consideration of the mutual promises and covenants herein expressed, the parties hereby agree as follows:

In this agreement, the party receiving, processing, shipping and marketing recovered materials will be known as the Lexington-Fayette Urban County Materials Recovery Facility (LEX-MRF) **Lexington Recycling Center (LEX-MRF)**. The party(s) owning and consigning the recovered materials and thereby granting the right to LEX-MRF to receive, process, market and ship the materials will be known herein, jointly or severally, as “**Affiliates**”

**AFFILIATES SERVICE & BOUNDARY AREA**

Affiliate agrees to identify current municipalities and geographical boundaries served.

County\_\_\_\_\_

City\_\_\_\_\_

# of Residential Households \_\_\_\_\_

# of Multifamily Households \_\_\_\_\_

# of Commercial Businesses \_\_\_\_\_

Total Monthly Approximate tonnage \_\_\_\_\_

Due to facility capacity limitations and material composition requirements, expansion of services affecting Affiliates incoming tonnage must be approved by LFUCG Commissioner of Environmental Quality, LFUCG Director of Waste Management and LFUCG Plant Operations Manager and must meet material characterization requirements set forth the “Approved Materials” and Environmental Education below.

## **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)  
(AFFILIATE ADDRESS)

BY: \_\_\_\_\_  
(name)

TITLE: \_\_\_\_\_

STATE OF KENTUCKY

COUNTY OF FAYETTE

The foregoing instrument was acknowledged before me by (name) \_\_\_\_\_, as \_\_\_\_\_ (title) of Affiliate \_\_\_\_\_ on its behalf \_\_\_\_\_, on this \_\_\_\_ day of \_\_\_\_\_, 2016.

My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

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, a \_\_\_\_\_, on behalf of said \_\_\_\_\_, on this \_\_\_\_ day of \_\_\_\_\_, 2016.

My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC