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By Email Only

March 22, 2012

Karl Manthe
Streets Superintendent
City of Stoughton
381 East Main Street
Stoughton, WI 53589

Re: Agreement with the Town of Dunkirk

Dear Karl:

Enclosed is a draft agreement between the City and the Town of Dunkirk for the shared use and maintenance of the Town's brush and yard waste disposal site. One issue we were concerned with is whether the City's insurance policy provides sufficient coverage for the obligations and potential liabilities that the City would assume under this Agreement. I talked to Tom Mann from CVMIC, who said that an indemnification obligation such as that assumed under this Agreement would be covered by the City's insurance policy. It appears that this is true, as the policy states in section 1 that coverage includes amounts the City "becomes legally obligated to pay by reason of liability imposed by law or liability assumed by contract..." The City may wish to confirm this by providing a copy of the Agreement to its carrier, with a letter informing the carrier of the contractual obligations.

There are a few items we would like to call to your attention in the Agreement. We provided for the City and Town each to delegate authority under the Agreement to an official. This will enable the designated official to act on behalf of the City or the Town to facilitate ongoing cooperative obligations, such as establishing rules for the Facility. We also left a blank for a description of the Facility's location.

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March 22, 2012

Page 2

We have drafted the Agreement with the understanding that many of the City's obligations are limited to actions relating to City residents who use the Facility. For example, with respect to permits, the City is responsible for providing permits only to City residents. In addition, the City's responsibility to recycle or remove material from the Facility is limited to material deposited by City residents. If our understanding is not correct, changes may be needed

You indicated that the term of the agreement should be 3 years, that users of the Facility would need to obtain a permit on an annual basis, and that permittees would be given a window sticker for their car. We have assumed that each permit would be good for the calendar year. Therefore, we provided that the Agreement should expire on December 31, 2015. This would allow for the expiration of all permits given to City residents in the third year of the Agreement (2015).

You stated that the parties wish to indemnify each other for any claims asserted by each party's respective residents. However, the parties may also face a claim from someone who is not a City or Town resident, for example, someone without a permit who enters the Facility and is injured. Therefore, we added a sentence providing that the parties would share responsibility for such claims equally.

Finally, the City will be exposed to potential claims by Town employees who are injured at the Facility. Town employees who are hurt on the job are limited to workers' compensation claims against their employer (the Town). However, such employees may have a bodily injury claim against the City, and these claims are not similarly limited. As noted above, such a claim appears to be covered by the City's insurance policy.

Please let me know if you have any questions or if you would like additional assistance.

Very truly yours,



Matthew P. Dregne

MPD:lab

Enclosure

cc: Mayor Donna Olson

INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF STOUGHTON AND THE TOWN OF DUNKIRK

This Intergovernmental Agreement ("Agreement") is made and entered into pursuant to section 66.0301, Wis. Stats., this _____ day of _____, 2012, by and between the Town of Dunkirk, a Wisconsin town located in Dane County, Wisconsin, ("Town") and the City of Stoughton, a municipality located in Dane County, Wisconsin, ("City").

WHEREAS, the Town owns and operates a brush and yard waste disposal site in the Town ("Facility"), located _____; and

WHEREAS, the Town and the City wish to share use and maintenance of the Facility for the disposal of brush and yard waste.

NOW, THEREFORE, the parties agree as follows:

1. "Brush" means tree trimmings and other woody plant materials.
2. "Yard waste" means grass clippings, leaves, garden waste, sod, shrubbery clippings, and other plant material that will deteriorate over time.
3. **Representatives.** The City hereby appoints its Street Superintendent, and the Town hereby appoints _____ to implement and administer, and to establish Facility Rules pursuant to Section 8.b. of this Agreement.
4. **Facility.** The Facility is owned by the Town and this Agreement does not change the ownership of the Facility or the lands on which it is located.
5. **Permit.** A permit is required to dispose of brush and yard waste at the Facility. The City shall issue permits to City residents and the Town shall issue permits to Town residents. To obtain a permit a Town or City resident must first pay \$20 and sign a form in which he or she agrees to follow Facility rules. A permit will be good for the calendar year in which it was purchased. The City will give each permittee a window sticker that must be attached to the vehicle used to drop off brush or yard waste at the Facility. The City will keep all revenues from permit sales to City residents, and the Town will keep all revenues from permit sales to Town residents.

6. **Town Responsibilities.**

- a. The Town will allow the City and its employees or agents and City residents who are permittees to access and use the Facility in accordance with the terms of this Agreement.
- b. **Hours of Operation.** The Facility will be open to the City and City residents who are permittees for the disposal of brush and yard waste from April 1 through November 30 between the hours of 1:00 pm and 7:00 pm on Tuesdays and Thursdays, and between the hours of 9:00 am and 5:00 pm on Saturdays.

7. **City Responsibilities.**

- a. The City will periodically recycle all brush deposited by City residents at the Facility.
- b. The City will haul all yard waste deposited by City residents away from the Facility each day it is open to City residents, weather permitting.

8. **Joint Town and City Responsibilities.**

- a. **Maintenance.** The City and Town shall jointly keep the Facility clear of materials other than brush or yard waste, and jointly maintain a safe Facility and road way for Facility users and City and Town employees.
- b. **Facility Rules.** The Town and the City will cooperate to establish mutually-acceptable rules for use of the Facility that are consistent with the terms of this Agreement, including the following:
 - i. Permittees may dispose of any amount of brush or yard waste at the Facility.
 - ii. No large wood logs, Japanese knotweed, or other materials mutually designated by the Town and the City may be disposed of at the Facility.

9. **Employees.** This Agreement does not alter or create any employment relationships. All Town employees shall remain solely Town employees, and all City employees shall remain solely City employees.

10. **Term.** This Agreement shall expire at midnight on December 31, 2015. The City has the option to renew the Agreement for an additional 3-year term by providing at least 60 days' notice to the Town prior to expiration.

11. **Indemnification.** The City agrees to indemnify and hold the Town, its officers, agents and employees harmless from and against any and all claims, losses, liabilities, or expenses (including defense costs and reasonable attorney's fees) asserted by a City official, City employee, City agent or City resident for injury, death, or damage to or destruction of property arising out of such claimant's use of the Facility. The Town agrees to indemnify and hold the City, its officers, agents and employees harmless from and against any and all claims, losses, liabilities, or expenses (including defense costs and reasonable attorney's fees) asserted by a Town official, Town employee, Town agent or Town resident for injury, death, or damage to or destruction of property arising out of such claimant's use of the Facility. The Town and the City each agree to bear 50% of the cost of any and all claims, losses, liabilities, or expenses (including defense costs and reasonable attorney's fees) asserted by someone other than a Town or City official, employee, agent or resident for injury, death, or damage to or destruction of property arising out of such claimant's use of the Facility.
12. **Insurance.** Each party shall provide to the other a copy of its insurance policy demonstrating that the party has insurance coverage for its potential liabilities assumed pursuant to this Agreement, including insurance covering contractual indemnification obligations under this Agreement.
13. **No third party beneficiary.** This Agreement is intended to be solely between the Town and the City. Nothing in this Agreement accords any third party any legal or equitable rights whatsoever. A non-party shall not have standing to enforce this Agreement.
14. **Remedies.** This Agreement provides each party with the right and standing to seek any available legal or equitable remedy to enforce or seek damages for the breach of this Agreement. In any action concerning an alleged violation of this Agreement, the prevailing party shall be entitled to recover from the other party its reasonable costs and expenses of litigation, including reasonable attorneys' fees.
15. **Amendment.** This Agreement may be amended or terminated at any time by written agreement approved by the governing bodies of both parties.
16. **Complete agreement.** This Agreement represents the entire integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, either written or oral.
17. **Enforceability.** The parties have entered into this Agreement under the authority granted by section 66.0301 of the Wisconsin Statutes. Its enforceability will not be affected by changes in the forms of Town or City government, or changes in elected officials. The parties agree that this Agreement shall be construed so as to be binding on their respective successors, agents and employees.

18. **No waiver.** The failure of any party to require strict performance of any provision of this Agreement will not constitute a waiver of the provision or of any of the parties' rights under this Agreement. Rights and obligations under this Agreement may only be waived or modified in writing. A writing waiving a right must be approved by the governing body of the party waiving the right.

CITY OF STOUGHTON

TOWN OF DUNKIRK

Donna Olson
Mayor

Norman Monsen
Town Chair

Nick Probst
City Clerk

Melanie Huchthausen
Town Clerk