

**AMENDMENT #2 AND RESTATED
RAMSEY/WASHINGTON RECYCLING AND ENERGY BOARD
JOINT POWERS AGREEMENT**

Adopted September 22, 2015

Amended November 19, 2019

Amended August 02, 2022

This Amended and Restated Joint Powers Agreement (the “Agreement”), amends and restates in its entirety the Joint Powers Agreement for the Resource Recovery Project dated December 2006. This Agreement is entered into by and between Ramsey County and Washington County (each a “County” or collectively, the “Counties”) pursuant to Minnesota Statutes § 471.59, and is effective upon the date of approval by both Counties.

WHEREAS, the Counties have committed to continue to protect and ensure the public health, safety, welfare and environment of each County’s residents and businesses through sound management of solid and hazardous waste generated in each County;

WHEREAS, Ramsey and Washington Counties have in place County Solid Waste Management Master Plans (“Master Plans”) consistent with the Metropolitan Solid Waste Management Policy Plan (“Policy Plan”) and approved by the Commissioner of the Minnesota Pollution Control Agency;

WHEREAS, the Master Plans have a goal of maintaining and improving an integrated system of solid waste management that supports Minnesota’s hierarchy of solid waste management, with an emphasis on waste reduction, reuse, recycling and composting before the remaining solid waste is managed through resource recovery;

WHEREAS, the Master Plans also include policies that affirm the processing of waste, for the purpose of recovering energy and recyclables, and other beneficially usable materials, as the preferred method to manage solid waste that is not reduced, reused or recycled;

WHEREAS, the Counties have agreed to jointly acquire, own, and operate the Ramsey/Washington County Resource Recovery Facility located in Newport, Minnesota (the “Facility”);

WHEREAS, the Counties recognize clear environmental, financial and policy benefits to public ownership and operation of the Facility and desire to amend and restate their Joint Powers Agreement for the purpose of owning, operating and improving the Facility; advancing recycling and other waste management goals of the Counties; and overseeing other joint waste management activities.

NOW, THEREFORE, pursuant to the authority contained in Minnesota Statutes Section 471.59, and the county solid and hazardous waste management authority provided in Minnesota Statutes Chapters 115A, 116, 473, and other Minnesota Statutes, Ramsey and Washington Counties hereby enter into this Amended and Restated Joint Powers Agreement under the terms and conditions set forth below.

Introduction

A. Definitions

1. Board means the Ramsey/Washington Recycling and Energy Joint Powers Board established by this Agreement.
2. Bylaws shall mean the bylaws adopted by the Board as provided in Section IV.C.
3. County or Counties shall mean Ramsey and/or Washington County as the context may require.
4. Facility shall mean the Recycling & Energy Center located at 100 Red Rock Road, Newport, MN.
5. Facility Budget shall mean the annual operating budget for the Facility.
6. Fiscal Agent shall mean the Fiscal Agent provided for in Section VI.C of this Agreement.
7. Hauler shall mean any person who owns, operates, or leases vehicles for the purpose of collection and transportation of any type of solid waste.
8. Hauler Rebate shall mean a payment to a hauler for delivery of solid waste by a hauler to the Facility.
9. Joint Activities shall mean joint waste management activities, including the activities listed in Section V.B.9.
10. Joint Activities Budget shall mean the annual budget to be approved by the respective County Boards for the Board to administer and carry out joint waste management activities.
11. Mixed Municipal Solid Waste shall have the meaning given in Minnesota Statutes Section 115A.02.
12. Project means the Ramsey/Washington Resource Recovery Project.
13. Solid Waste shall have the meaning given in Minnesota Statutes Section 115A.02.
14. Waste shall have the meaning given in Minnesota Statutes Section 115A.02.

- B. Name. The entity created by this Joint Powers Agreement shall be called the Ramsey/Washington Recycling and Energy Board (the "Board").

- II. Purpose of this Agreement.** A key purpose of this Agreement is to create a structure for joint ownership and operation of the Facility by the Board and to define the rights, obligations, and responsibilities of each County with respect to the Board and Facility. In addition, the purpose of this Agreement is to accomplish the Vision Statement adopted by the Project in 2013, which calls for significant advancements in waste reduction, recycling, organics management, and recovery of resources from Waste, promoting economic development through enhanced resource recovery, and accomplishing the goals and requirements of Minnesota Statutes Section 473.803, all as amended from time to time, along with other joint waste management activities, as agreed to by the Board.
- III. Term.** This Agreement shall take effect on the date of approval by both Counties and will continue until terminated or dissolved in accordance with section IX.B.3 of this Agreement. However, in no event shall this Agreement be terminated prior to the payment in full of all bonds and other indebtedness of the Board incurred to acquire or improve the Facility. The Counties agree not to terminate or dissolve the Board if termination or dissolution would conflict with or violate the terms or conditions of any debt instruments by or on behalf of the Board.
- IV. Governing Body.** For the purpose of managing this Agreement, the joint powers board created pursuant to Minn. Stat. § 471.59, which was called the Ramsey/Washington Resource Recovery Project Board and referred to herein as the “Project,” is continued as the Ramsey/Washington Recycling and Energy Board pursuant to the terms of this amended and restated Agreement. It is the intention of the Counties that the Board has all powers necessary to fulfill the purpose of this Agreement and all the powers granted to it by law now or hereafter.

A. Joint Powers Board

1. Composition. The governing body of the Board shall consist of four commissioners from Washington County and five commissioners from Ramsey County. The commissioners will be appointed by the respective County Boards. Each County may appoint an alternate commissioner.
2. Ex Officio Members of the Board. The Board may appoint a representative from the City of Newport, Minnesota to serve as a non-voting, ex officio member of the governing body of the Board. The Bylaws may provide for appointing one or more additional ex-officio members.
3. Officers. The Board shall provide for the election of officers in the Bylaws.
4. Board Meetings and Voting. The governing body of the Board shall meet on an as needed basis and provide adequate public notice. The presence of five (5) Board members at a meeting shall constitute a quorum. Board actions shall be determined by a majority of the Board. A County-designated alternate Board member may vote in place of an absent Board

member from that County. Additional requirements or procedures for Board meetings may be provided for in the Bylaws.

- B. Board Committees. The Board shall provide for the establishment of an Executive Committee and other standing or ad hoc committees as it deems appropriate through the Bylaws.
- C. Bylaws. The Board shall adopt Bylaws by a two-thirds (2/3) majority of the Board to govern its operations. The Bylaws shall be consistent with this Agreement and all applicable laws. The Bylaws may be amended from time to time by a two-thirds (2/3) majority of the Board after notice in accordance with the Bylaws.
- D. Records. The books and records, including minutes of the Board, shall be subject to Chapter 13 of the Minnesota Statutes. The records shall be maintained at a location determined by the Board.
- E. Principal Place of Business. The initial principal place of business of the Board shall be located at 100 Red Rock Road, Newport, MN 55055.

V. Scope and Authority.

- A. General Powers. The Board is hereby authorized to exercise the authority and powers as is necessary and convenient to carry out the mandates and purposes set forth in this Agreement without individual County Board approval unless otherwise specified in this Agreement. The Board has all powers granted to joint exercise of powers agencies under Minnesota law as well as all powers necessary to the exercise of the powers, duties and obligations of this Agreement.
- B. Specific Powers. The Board shall administer operation of the Facility and other joint waste management activities. Specific powers delegated to the Board include, but shall not be limited to:
 - 1. Property. Authority to acquire, improve, own, lease and hold real and personal property, as may be required to accomplish the purposes of this Agreement and, upon termination of this Agreement, make distribution of the property as provided under this Agreement.
 - 2. Facility Management. Authority to manage and oversee the operation, maintenance, and improvement of the Facility and take actions necessary to ensure efficient operation of the Facility. The Board, in its sole discretion, may determine to accept Waste at the Facility generated from outside the Counties.
 - 3. Contracts and Procurement. Authority to negotiate, enter, and enforce contracts relating to the Facility and its operations, Joint Activities, and as otherwise necessary and convenient to carry out the purposes of this

Agreement, provided however that contracts let and purchases made under this Agreement must conform to the requirements applicable to contracts and purchases of either County, as the Board determines appropriate.

4. Employees. Authority to employ agents or employees and authority to engage in labor negotiations or collective bargaining, in accordance with applicable law. Such employees shall be employees of the Board, regardless of whether the Board provides its own human resources services or contracts with one of the Counties to provide such services.
5. Grants. Authority to apply for, accept, receive, and disburse grants, loans, donations and other assistance from the federal government, state of Minnesota, or any other agency or organization.
6. Debt. Authority to incur and discharge debts, liabilities and obligations, including the authority to issue bonds pursuant to Minnesota and federal law. Any issuance of debt must be approved by a two-thirds (2/3) majority of the Board. In addition to the foregoing powers of the Board:
 - a. Each County upon approval by both County boards (by majority vote or as required by law), is hereby authorized to issue bonds or obligations on behalf of itself and the other County, under any law by which such County may independently issue bonds or obligations, and may use the proceeds of the bonds or obligations to carry out the purposes of the law under which the bonds or obligations are issued, including but not limited to loaning the proceeds thereof to the Board to finance a portion of the cost of the acquisition of the Facility; provided that such loans, bonds or obligations shall be issued only in connection with the Facility and only with the express consent of each County board as to any issue or series of bonds or obligations; and
 - b. To further secure any bonds or obligations issued by a County (the "Issuer County") on behalf of the other County (the "Non-Issuer County"), each such Non-Issuer County shall agree with the Issuer County, subject to applicable law, to pay its proportionate share of the principal and interest on such bonds under this Agreement.
7. Power to Sue and be Sued. Authority to sue and be sued in the Board's name.
8. Annual Budgets. Authority to establish rates and fees associated with the Facility, and to hold and receive revenue, in accordance with the Board-approved budget and the joint activities budget approved by the County Boards.

9. Joint Activities. In addition to the responsibilities associated with ownership and operation of the Facility, the Board shall administer joint solid waste management activities, which shall include but not be limited to:
 - a. Administering a Hauler Rebate program as determined necessary by the Board.
 - b. Conducting waste education and outreach related to reduction, recycling, waste processing and other waste management messages.
 - c. Engaging in educational activities with schools, including Facility tours and other efforts.
 - d. Administering non-residential recycling programs, including BizRecycling and related programs.
 - e. Making plans and conducting research in furtherance of the goals of this Agreement.
 - f. Initiating or administering other joint solid waste management projects on behalf of the Counties, as determined by the Board.

VI. Board Staff, Consultants and Support

- A. Joint Leadership Team. For the purpose of facilitating this Agreement and carrying out the various functions of the Board, the Joint Leadership Team is created, which shall be comprised of one staff member from each of the following: the Washington County Department of Public Health, and Environment, Saint Paul - Ramsey County Public Health. The Joint Leadership Team shall perform its duties under the general direction and supervision of the Board. The Joint Leadership Team shall have such powers and duties as further set out in this Agreement below, and the Bylaws.
- B. Ramsey/Washington Financial Advisory Work Group. The Ramsey/Washington Financial Advisory Work Group is hereby designated to advise the Joint Leadership Team and consult on Ramsey/Washington Recycling & Energy financial matters. The Ramsey/Washington Financial Advisory Work Group shall be comprised of one staff member from each of the following: Ramsey County Finance Department and Washington County Accounting & Finance Department and additional representation designated by the Joint Leadership Team.
- C. Staff. The Board may be supported by a combination of Board staff, County staff, and consultants. As directed by the Board, the Joint Leadership Team will hire and supervise Board employees and consultants. Additional direction on staffing, project

administration and reimbursement for staffing and other services provided by the Counties may be provided for in the Bylaws.

- D. Fiscal Agent. The Ramsey County Finance Department shall act as the Fiscal Agent on behalf of the Board, performing functions determined appropriate by the Board and subject to the terms of a Fiscal Agent Agreement to be entered by and between Ramsey County and the Board.
- E. Legal Representation. The Ramsey County Attorney's Office and the Washington County Attorney's Office are hereby designated as the attorneys for the Board. Any special legal counsel shall be designated and chosen with the advice of the Ramsey and Washington County Attorney's Offices. County attorneys will be reimbursed for the services provided at the rate established from time to time by each county attorney's office.
- F. Reimbursement for Services. Staffing and other services provided by the Counties to the Board shall be reimbursed at as provided in the Board's Facility Budget and/or Joint Activities Budget.
- G. Changes to Administrative Structure. The Counties hereby recognize that changes or additions to the administrative structure created by this Agreement may be necessary during the term of the Agreement.

VII. Obligations and Rights of the Counties

- A. Ordinances. Each County agrees to use its best efforts to enforce its respective solid and hazardous waste ordinances.
- B. Waste Haulers. Each County shall properly license waste haulers as required by their respective solid waste ordinances.
- C. Waste Management Service Charges. Each County shall maintain and implement its ordinance requirements that impose on all waste generators a waste management service charge, currently called the County Environmental Charge.
- D. Waste Supply.
 - 1. Delivery Agreements. The Board is authorized to enter into waste delivery agreements for the Facility and may seek to use such agreements to secure waste deliveries.
 - 2. Waste Designation. The Counties agree to coordinate with each other and the Board to amend county Solid Waste Master Plans as necessary to accomplish the goals of this Agreement and prepare a joint Waste Designation Plan pursuant to Minnesota Statutes §§ 115A.80 to 115A.893. Each County agrees to adopt, implement, maintain and enforce waste designation ordinances. From time to time, each County may seek

to amend its waste designation ordinances to respond to changing conditions, capture opportunities to manage waste higher on the State of Minnesota's hierarchy of waste management (as established by Minnesota Statutes § 115A.02), and/or seek to designate additional waste that is allowable but was not initially designated. Such amendments will be coordinated by the Counties.

E. Joint Activities. The Board is authorized to administer the joint solid waste activities set forth in Section V.B.9 and approve an annual joint activities budget that includes funding for such activities during the term of this Agreement.

F. Budgets

1. Facility Budget. A Facility Budget shall be established for the operation and administration of the Facility by the Board. Other than initial contributions from the Counties set forth in Article VIII, it is anticipated that funds for the Facility operations and maintenance will be derived from revenue collected in the normal course of operation of the Facility, including collection of tipping fees. The Board shall establish procedures and policies for managing the Facility Budget in the Bylaws. Costs that shall be included in the Facility Budget include, but are not limited to, operating funds, any operating reserve fund, capital improvements and repairs, administrative costs, and debt service payments.

2. Joint Activities Budget. Project funds existing at the time of the execution of this Agreement, shall be retained by the Board and accounted for in a Joint Activities Budget. The Joint Activities Budget will be drawn upon for Board activities, including the Joint Activities set forth in Section V.B.9. The Counties' fiscal responsibility will be in proportion to the following percentages: 73% from Ramsey County and 27% from Washington County. It is the intention of the Counties to continue their respective County Environmental Charges for purposes of making their respective contributions to the Joint Activities Budget.

3. Accounting and Audits. All Board funds shall be accounted for according to generally accepted accounting principles and any other applicable laws. The Board shall further develop accounting and auditing procedures and requirements in the Bylaws.

VIII. Facility Acquisition. As of the effective date of this Agreement, the Counties are in the process of purchasing the Facility. The Counties agree to undertake certain actions and authorize the Board to take certain actions to facilitate acquisition of the Facility, and transitioning the Facility to public ownership and operation, including, but not limited to, the following:

- A. Facility Purchase. The Board is authorized to take necessary actions to close on purchasing the Facility. The Counties agree to cooperate, execute documents, and perform other acts as reasonably necessary to complete the acquisition.
- B. Facility Financing. To finance acquisition of the Facility by the Board, the Counties agree to the following financing plan:
1. Each County will make a loan to the Board sufficient to cover its share of the Facility acquisition as determined by the final Asset Purchase Agreement. Ramsey County will contribute 73% (“Ramsey Facility Loan”) and Washington County will contribute 27% (“Washington Facility Loan”) of the funds necessary to complete the purchase of the Facility in sufficient time to effect the transaction.
 2. The Board is hereby authorized to use the proceeds of the Ramsey Facility Loan and the Washington Facility Loan to acquire the Facility.
 3. Each County shall decide the manner by that it will fund its respective Facility Loan, which may include, but not be limited to, the use of existing cash reserves, the issuance of bonds and use of the bond sale proceeds, or a combination thereof. For the avoidance of doubt, a combination may include a cash payment that is replaced with the proceeds from a bond sale taking place after the acquisition of the Facility.
 4. The Board shall be obligated to repay the County Facility Loans on terms and conditions that match, or are otherwise consistent with, any terms and conditions of any bonding Ramsey County may elect to use to fund its Facility Loan. Repayment by the Board will be made on a pro-rata basis to each County based on its respective Facility Loan percentages described above. Payments will be made from and included in the Facility Budget.
- C. Capital Contributions. The Counties agree to make contributions to the Board for initial Facility capital expenditures in an amount to be determined by the Board. The total capital contribution will be 73% by Ramsey County and 27% by Washington County for this purpose. The Counties agree to make their respective capital contributions within thirty (30) days of receiving notice from the Board of its determination of the amount of the capital contribution.
- D. Operating Reserve Fund. As part of the Facility Budget, the Board shall create an operating reserve fund to at least maintain essential Facility operations, second to make any required debt or obligations payments to third parties, and third to make any debt or obligations payments required to Ramsey or Washington Counties. The Bylaws shall outline the scope and size of the operating reserve fund. Upon recommendation by the Board to the Counties, each County agrees to commit or hold sufficient funding for the operating reserve fund. The Counties’ respective contributions to establish the operating reserve fund shall be 73% from Ramsey County and 27% from Washington County. The Bylaws shall also

provide a process to release the Counties from the obligation to hold funding for the operating reserve fund, and to pay back any operating reserve funds transferred to the Board, as an enterprise reserve fund is created and funded.

- E. Enterprise Reserve Fund. As part of the Facility Budget, the Board shall create an Enterprise Reserve Fund that will replace the Operating Reserve Fund over a time period specified in the Bylaws. The purpose of the Enterprise Reserve Fund is, first, to at least maintain essential Facility operations; second, to make any required debt or obligations payments to third parties; and, third, to make any debt or obligations payments required to Ramsey or Washington Counties. The Bylaws shall outline the scope and size of the Enterprise Reserve Fund.

IX. Other Provisions

A. Liability and Insurance

1. Separate Public Entity. The Board shall be considered a separate and distinct public entity to which the Counties have transferred all responsibility and control for actions taken pursuant to this Agreement. The Board shall comply with all laws and rules that govern a public entity in the State of Minnesota and shall be entitled to the protections of Minnesota Statutes Chapter 466.
2. Insurance. The Board shall obtain and maintain such insurance as will protect the Board against risk of loss or damage to the Facility and against claims that may arise or result from the maintenance and use of the Facility, and which will support indemnification of the Counties as provided in this Agreement and as determined by the Board. Such insurance may include as applicable workers' compensation insurance, general liability insurance, environmental liability insurance, automobile insurance for vehicles and general liability insurance for bodily injury, personal injury and property damage to the Board and County officials, employees and agents in the performance of duties arising from the Agreement, errors and omissions insurance, and such other insurance as the Board deems appropriate.
3. Indemnification and Liability of Board.
 - a. The Board will indemnify, defend and hold harmless the Counties, their agents, commissioners and employees from all claims, damages, losses, demands, actions or causes of action, lawsuits, liabilities, costs and expenses, including reasonable attorney's fees and expenses, whatsoever arising out of any act or omission on the part of the Board or its contractors, subcontractors, partners, agents, or employees in relation to operation and management of the Facility.

- b. Any claims settled or judgments rendered against the Board subsequent to termination of this Agreement, and not otherwise covered by insurance, shall be apportioned between the Counties according to the percentages outlined in Section VII.F.2 of this Agreement, including but not limited to worker's compensation claims, unemployment insurance claims, tort claims, contract claims or civil rights actions.

B. Counties' Relationship

1. Other Agreements. Upon the Effective Date, this Agreement shall supersede all former joint powers agreements related to the Project between the Counties and all prior joint powers agreements shall be terminated.
2. Amendment. This Agreement may be amended upon agreement in writing of the two County Boards.
3. Termination. This Agreement may be terminated by mutual agreement of both Counties. Upon termination of this Agreement:
 - a. any remaining financial obligations shall continue until discharged by law, this Agreement, or any other agreement;
 - b. the Board shall immediately commence winding up its affairs;
 - c. the Board shall arrange to sell, transfer, or otherwise dispose of the Facility and related assets held by the Board for fair market value;
 - d. any proceeds from the sale of the Facility and related assets shall be distributed in the following order:
 - (1) first to repay any outstanding debt due by the Board to third parties;
 - (2) second as pro-rata payments to each County until each county's Facility Loan is repaid in full; and
 - (3) third to each County in the proportions set forth in VII.F.2.
 - e. all remaining property of the Board shall be returned to the County providing the property or distributed to the Counties in the proportions set forth in VII.F.2. of this Agreement; and
 - f. following disposal of the Facility, any remaining liabilities shall be distributed in the proportions set forth in set forth in VII.F.2. of this Agreement.

C. Dispute Resolution. In the event of a dispute arising under this Agreement, the Counties agree to attempt to resolve their dispute by following the process described below:

1. A County shall provide written notice to the other County describing the perceived conflict, positions, and underlying reasons.

2. The other County shall provide written response to the notice within seven (7) days of receipt of the notice.
 3. The Counties shall meet within 14 days of receipt of response with a neutral facilitator. The neutral facilitator will be a representative from the Minnesota Office of Collaboration and Dispute Resolution. Costs of such facilitator shall be shared equally by all parties to the dispute.
 4. At the first meeting, the neutral facilitator will assist the Counties in identifying the appropriate parties and participants in the dispute resolution process, their concerns, a meeting agenda and design for any subsequent meetings. The Counties shall agree on a process for resolving the problem that would involve additional negotiations, mediation, or arbitration.
 5. In developing the process, the Counties will be guided by the following principles:
 - a. The parties will attempt in good faith to reach a negotiated settlement.
 - b. The parties agree that there must be fair representation of the parties directly involved in the dispute.
 - c. The parties will use legal proceedings as a last resort.
 - d. In the event the parties are unable to resolve the dispute, each party retains all rights, remedies or defenses it had prior to entering the process.
- D. Notices. All notices or other communication required or permitted herein shall be in writing and shall be delivered personally or sent by express, registered or certified mail, return receipt requested. Notices delivered personally or by express mail shall be considered given when received. Notices sent by registered or certified mail shall be considered given two (2) business days after deposit in the United States mail, postage prepaid, addressed to the person to receive such notice. Notices shall be addressed to:

Ramsey County:

Ramsey County Board Chair
220 Court House
15 West Kellogg Blvd.
St. Paul, MN 55102

with a copy to the Ramsey County
Attorney

Washington County:

Washington County Board Chair

with a copy to the Washington County

Washington County Government
Center
14949 62nd Street North
Stillwater, MN 55082

Attorney

Board:

Ramsey/Washington Recycling and
Energy Board Chair
White Bear Avenue, Suite 350,
Maplewood, MN 55109

with a copy to the Ramsey County
Attorney and the Washington County
Attorney

- E. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.
- F. Counterparts. This Agreement may be executed in counterparts, each of which shall have the effect of and be considered as an original of this Agreement.

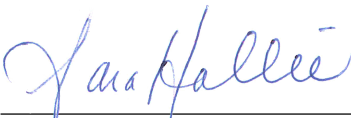
[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have caused this agreement to be executed as of the dates below.

Ramsey County

Chair
Ramsey County Board Commissioners
Date

Chief Clerk
Ramsey County Board of Commissioners
Date



Public Health Director
Date 7/21/2022

Approved to form:



Assistant County Attorney
Date 7/21/2022

December 2006. Joint Powers Agreement (JPA) for Resource Recovery Project adopted.

September 22, 2015. Amended and Restated Ramsey/Washington Recycling and Energy Board JPA adopted.

November 19, 2019. Amendment #1 to JPA approved by Washington County Board of Commissioners and by Ramsey County Board of Commissioners (Resolution B2019-266). Amendment changed Section VIII, part D – Release obligation to hold Operating Reserve Fund and added Section VIII, part E – Create Enterprise Reserve Fund.

August 02, 2022. Amendment #2 to JPA approved by Washington County Board of Commissioners and by Ramsey County Board of Commissioners.