

2020

Guide to Community Material Recovery Facility Contracts

DEVELOPING STRONG, SUSTAINABLE “WIN-WIN” AGREEMENTS
BETWEEN LOCAL GOVERNMENTS AND MRFS

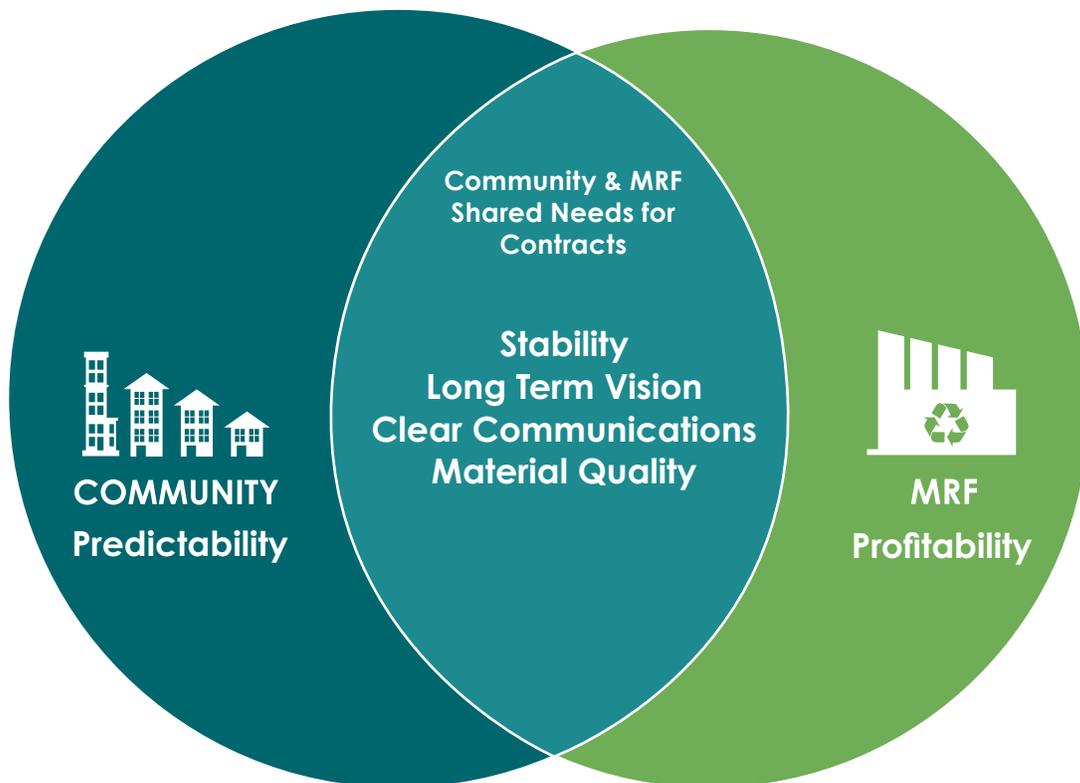


Table of Contents

Introduction

Section 1: Overview of the MRF Contracting Process 7

Getting Started	7
Types of MRF Contracts	7
Starting the Contract Process	11
RFPs and Other Approaches	11
Procurement Process Schedule	12
Information to Communicate in the RFP	13
Addressing the Essential Issue of Contract Length	14
FAQs	15

Section 2: Essential MRF Contract Elements 16

Processing Fees and Revenue Sharing	16
Material Value Determination	17
Acceptable Materials Mix Determination	17
Material Audits	18
FAQs	19
Material Quality / Contamination	20
MRF Performance	20
Rejected Loads and Residue Disposal	21
Education and Outreach Support	23
Contingencies	24
Reporting and Communications	25

Appendix A: Helpful Resources	26
Appendix B: Sample Contract Language	27
Processing Fees	27
Revenue Sharing	27
Material Value Determination	28
Acceptable Materials Mix Determination	28
Material Audits	29
Material Quality/Contamination	30
MRF Performance	30
Rejected Loads and Residue Disposal	31
Education and Outreach Support	32
Contingencies	32
Reporting and Communications	33

Lead Authors:

Liz Bedard and Scott Mouw, The Recycling Partnership,
Scott Pasternak, Burns & McDonnell

The Recycling Partnership contributors:

Anthony Brickner, Allison Francis, Samantha
Kappalman, Jill Martin, and Rob Taylor

Burns & McDonnell contributors:

Robert Craggs and Seth Cunningham

Release date: June 2020

© The Recycling Partnership 2020

Legal Disclaimer:

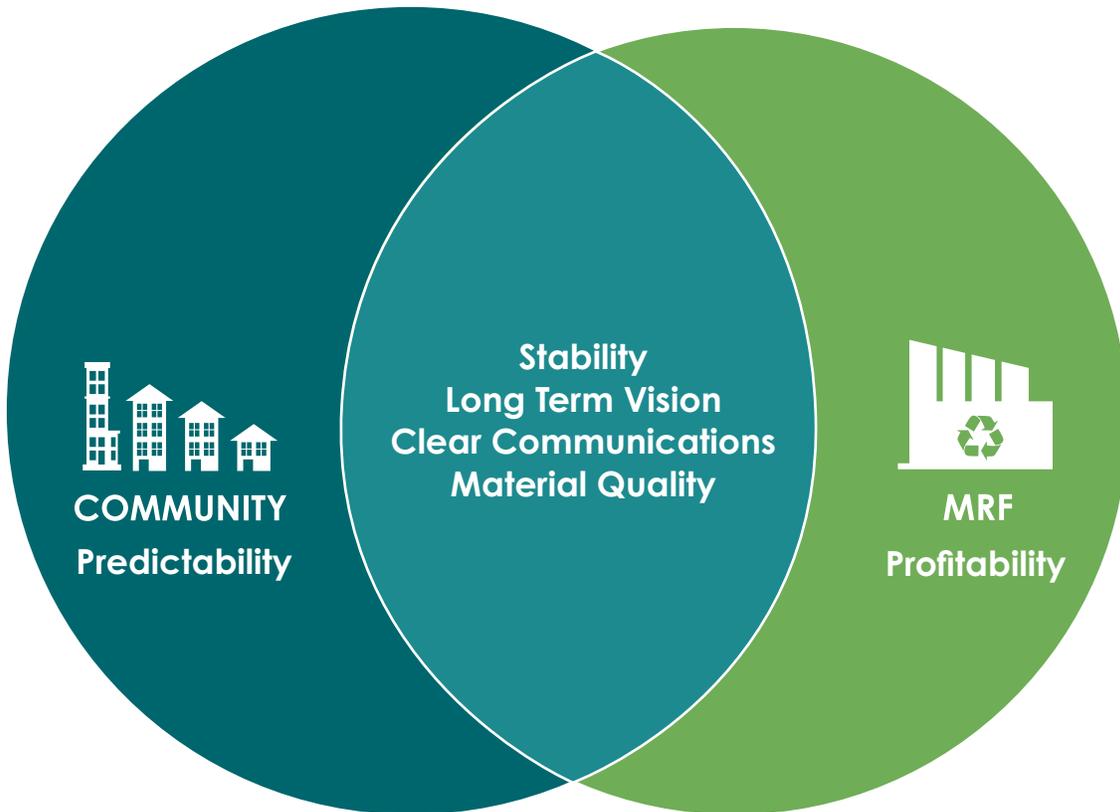
This Guide to Community Material Recovery Facility Contracts ("Guide") is intended to provide general information to local communities and other stakeholders and does not address every aspect of material recovery facility ("MRF") contracts and related issues. While The Recycling Partnership considers the elements set out in the Guide as essential to each MRF contract, the Guide should not be construed as legal advice and readers should not act on the information in the Guide without considering, among other things, federal, state and local requirements. Such federal, state and local requirements can include, among other things, laws, ordinances, regulations, rules, and procedures related to service procurement, bidding, and contracting requiring participation and/or approval by, among others, a community's budget, finance, purchasing, and legal departments in the MRF contract process.

Introduction

The contract between a local recycling program and a Material Recovery Facility (MRF) to secure the processing of recyclable materials is one of the most impactful legal documents in the U.S. public recycling system. Like all contracts, the best MRF processing contract is one that clearly recognizes and protects the interests of both sides and that results in an agreement that both sides would consider fair.

This guidance document is designed to help public recycling programs and MRFs develop transparent, balanced recycling processing contracts that allow each party to navigate volatile market conditions and an ever-changing landscape of consumer packaging. Community recycling programs and MRFs have distinct needs, but also share common ground. To achieve long-term success, local programs and MRFs should approach contracting as a partnership that achieves a true win-win outcome.

Figure 1: Individual and Shared Needs in MRF Contracts



The purpose of this document is to present a high-level overview of the 11 most important MRF contract elements covering the following critical issues:

- 1 Processing Fees** – establishing the necessity of processing charges to support MRF operations
- 2 Revenue Sharing** – addressing the allocation of money received from material sales
- 3 Material Value Determination** – identifying the published or otherwise available source of material market pricing
- 4 Acceptable Materials Mix Determination** – establishing the materials the MRF is obliged to process while also detailing procedures and conditions under which the material mix might change
- 5 Material Audits** – determining the frequency, focus, and protocols for assessing inbound and outbound material
- 6 Material Quality / Contamination** – establishing specific contract conditions related to levels and kinds of contamination in incoming loads

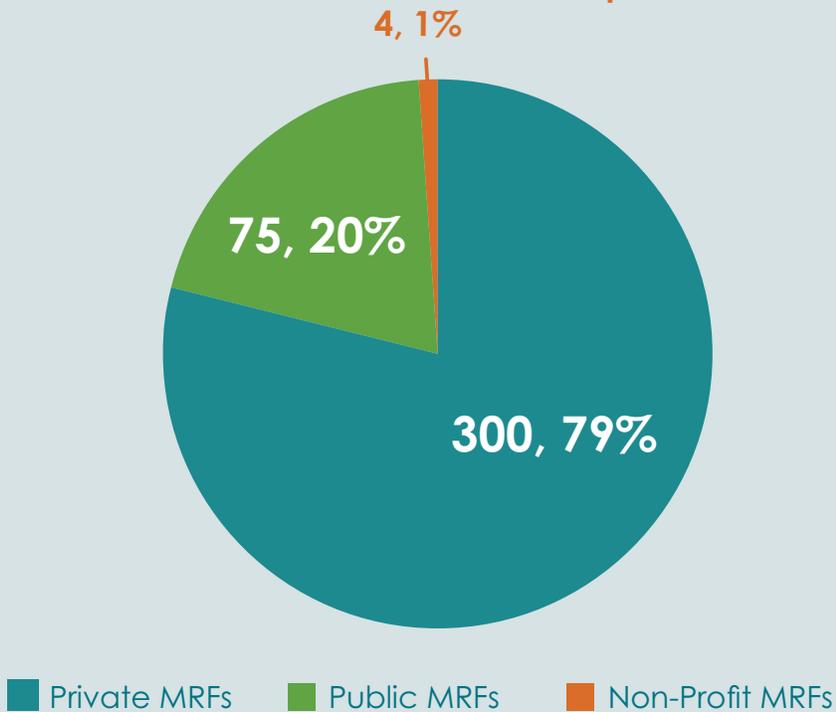
- 7 MRF Performance** – determining minimum expectations regarding MRF operations and the successful processing and marketing of delivered commodities
- 8 Rejected Loads and Residue Disposal** – providing clear parameters on what constitutes unacceptable loads, how they are handled, and how MRF residues are managed
- 9 Education and Outreach Support** – spelling out the level and nature of outreach resources available to the community through the contract
- 10 Contingencies** – establishing clear guidance on what happens if MRF services are disrupted by weather or other conditions
- 11 Reporting and Communications** – ensuring there is regular and productive sharing of information between the contracting parties

Relationships between Cities and MRFs Drive Need for Guidance:

The U.S. MRF infrastructure is highly privatized (four out of five are private) with no trends to the contrary, hence many community recycling programs will continue to need strong relationships with these private companies.

Residential MRF Landscape

Residential Material MRF Ownership in the U.S.



Section 1:

Overview of the MRF Contracting Process

This section provides an overview of key decisions that need to be made during the Request For Proposals (RFP) process, starting with an examination of different types of contractual agreements, then providing tips on RFP scheduling, and concluding with a discussion of the key data that should be included in an RFP. This section also addresses the critical issue of contract length.

Two Important Issues Before Getting Started

- 1. Goals and Objectives:** Before starting a MRF procurement and contracting process, a local program should take time to consider and decide what it wants to accomplish with the contract and what it needs for the contract to deliver. A local program should ensure that all angles from a community are taken into consideration, including political, operational, financial, and legal perspectives. Community stakeholders may have different views of what is important in a MRF contract that ultimately needs to be in alignment. Issues such as inviting competition, choosing the optimal contract length, allowing for possible renewals, deciding whether and how much material revenue is important, and determining acceptable MRF performance standards are important details that ultimately allow a community to be comfortable with its MRF contract.
- 2. Synergy between Bids and Contracts:** Bid procedures eventually lead to finished contracts. The design of RFP or request for bids (RFB) documents should anticipate the development of mirrored contract clauses that reflect the accepted proposal or bid. In other words, procurement and contracting are two sides of the same coin and there should be tight alignment between the two in terms of structure, language, and expectations.

Types of MRF Contracts

Prior to initiating the RFP process, communities need to research and decide what type of recyclable processing contract agreement best meets their needs.

One option is the Processing Services Agreement (PSA). In this agreement, a local government contracts with a recycling company that owns and operates a facility at a location owned or leased by the company. Currently this is the most common approach used by U.S. local governments for the processing of their recyclables. Local governments may also procure MRF processing services through their contracted hauler, where the processing agreement is embedded in the hauling agreement.

Types of MRF Contracts - PSA FORT WORTH CASE STUDY

In the Fall of 2017, Fort Worth released a RFP to procure MRF processing services. Although allowed in the RFP, no vendor of the three who responded to the RFP submitted a P3 proposal. Fort Worth proceeded to establish a PSA, selecting a private vendor based on best value to the City that balanced stated costs, recycling revenue, and commodity market factors. The contract was executed to begin in April 2018 with an initial five-year term plus two optional five-year extensions (for a possible total of 15 years). The contract is transparent and comprehensive, requiring little adjustment in its first two years of operation, and it includes robust educational support and a strong schedule of quarterly inbound material audits, although the audit methodology may be adjusted over time. Fort Worth made beneficial use of a private consulting firm throughout the RFP and final contract negotiation, which was completed in a very quick seven-month period. The work of Solid Waste Services staff to engage the city Purchasing Department was also critical to the success of the process.



Types of MRF Contracts

Another option is Public-Private Partnership (P3). A local government and private recycling company collaborate to co-invest and share resources (e.g. land, capital investment in equipment). With some P3 agreements, the public entity owns the facility and contracts with a private entity to operate it. As explored in Figures 2, 4, and 5 on the following pages, there are wide variations on the configuration of P3 relationships, including situations where the public entity owns the land, the building, and/or the equipment, but no matter the ownership arrangements, a private recycling company is typically responsible for operating the MRF. These agreements have various contractual arrangements regarding the processing and marketing of recyclables and can be an effective model in sharing the capital cost and financial risks between the two parties.

In deciding which type of contractual agreement is suitable, a local program should consider the advantages and disadvantages of each. While the processing services agreement is the most common option in the U.S., public-private partnerships are gaining more appeal to share risk in the face of market volatility. When considering a public-private partnership, a local government should reflect on its role in recycling processing and decide how much it wants to be involved in the operations and capital investment of a facility.

If the MRF is developed as a P3, a host fee may be included to compensate the local government for the processing of third-party recyclable materials at the MRF. While a host fee is more often associated with landfill agreements, they have been used for MRF contracts.

Types of MRF Contracts - P3 DALLAS CASE STUDY

The City of Dallas, recognizing the recycling industry's broader financial challenges, pursued an innovative public-private partnership approach to increase financial returns and recycling quantities for residents and businesses in Dallas and surrounding communities. In 2013, the City released an RFP intended to provide companies with the option to propose an existing facility or to build a new MRF located at the City's landfill. The City planned for a three-year procurement schedule in case the City decided to contract with a company for a new MRF. Ultimately, the City partnered with a private company in November 2015 to design, build, and operate a new MRF to process recyclable materials from the city and other surrounding communities. The facility began accepting recyclables on January 1, 2017. While the private company funded the building and equipment, ownership of the building will transfer to the City at the end of the agreement.

Figure 2 shows three main ways MRF processing services can be secured, including the possibility of local government ownership and operation. While not the focus of this guidance document, directly owning and operating a MRF is an important option for communities to consider.

Figure 2: Overview of Different Types of MRF Processing Arrangements

Responsibilities & Examples	Local Government Owned & Operated	Public-Private Partnerships		Processing Services Agreement
		Local Government Owned with Private Operations	Privately Owned & Operated on Public Land	
Land Ownership	Local Government	Local Government	Public	Private
Building Investment	Local Government	Local Government	Private	Private
Equipment Investment	Local Government	Local Government	Private	Private
Operations	Local Government	Private	Private	Private
Examples	Rhode Island Resource Recovery Corporation Waste Commission of Scott County, Iowa	Phoenix, AZ Mecklenburg County, NC Milwaukee, WI	Dallas, TX New York, NY	Many cities in the United States

Figure 3 details the possible advantages and disadvantages of local governments acting as direct material processors compared to private companies acting as such.

Figure 3: Advantages/Disadvantages of Local Government Versus Private Recycling Operations

	Advantages	Disadvantages
Local Government as Processor	<ul style="list-style-type: none"> Local government receives 100% of revenue. Local control over operations. 	<ul style="list-style-type: none"> Local government may have limited recycling processing experience. Community would have sole responsibility for sourcing material. Local government may have limited in materials marketing capabilities & experience. Hiring and other aspects of facility staffing may be constrained by public hiring and Human Resources processes.
Private Company as Processor	<ul style="list-style-type: none"> Private company experience with recycling processing. Local government and private company work together to source material. Potential to market a large volume of material from multiple facilities to achieve economies of scale. Sophisticated materials marketing (e.g. hedging, derivatives). 	<ul style="list-style-type: none"> Local government must manage contractor and provide oversight. Local government likely to incur processing fee and must share revenue. Limited local control over operations.

Figures 4 and 5 explore the advantages and disadvantages of different scenarios of public-private partnerships in regard to capital investment in equipment or land.

Figure 4: Advantages/Disadvantages of Local Government Versus Private Recycling Capital Investment in Buildings and/or Equipment in Public-Private Partnerships

	Advantages	Disadvantages
Local Government MRF Investment	<ul style="list-style-type: none"> • Municipal cost of capital is lower. • Local government may not have to earn a return on capital investment. • Potentially longer depreciation period. • High local control of facility and overall site. 	<ul style="list-style-type: none"> • Large capital outlay for local government. • Potentially longer project schedule. • Higher risk to community. • Potential for limited control over equipment maintenance and upkeep depending on P3 arrangements.
Private MRF Investment	<ul style="list-style-type: none"> • No capital outlay required by local government. • Potential for some cost and/or schedule savings due to private-led procurement processes. • Lower risk to local government. • Possible quicker adoption of new technology. 	<ul style="list-style-type: none"> • Higher cost of capital. • Compressed depreciation period to match contract term. • Private company must earn a return on capital investment. • Lower local control over facility and site.

Figure 5: Advantages/Disadvantages of Local Government Versus Private Recycling Land Ownership in Public-Private Partnerships

	Advantages	Disadvantages
Local Government as Landowner	<ul style="list-style-type: none"> • Flexibility with public-private partnership structures. • Local government may already own land. • Potential to co-locate with existing permitted facility with infrastructure (e.g. scale house). • Can retain facility for long-term period. • High control of facility and overall site (e.g. potential future expansion). 	<ul style="list-style-type: none"> • Increased level of effort. • Higher risk to the local government.
Private as Landowner	<ul style="list-style-type: none"> • Lower level of effort for local government. • Lower risk to the local government. 	<ul style="list-style-type: none"> • No local government involvement. • Local government will not retain facility in the long term. • Low control of facility and site.

Starting the Contract Process

Local governments usually require a competitive procurement process to enter into a contract with a private recycling company. Considering that a MRF processing contract can be for multiple years and involve millions of dollars, completing a procurement process requires careful planning and multiple steps.

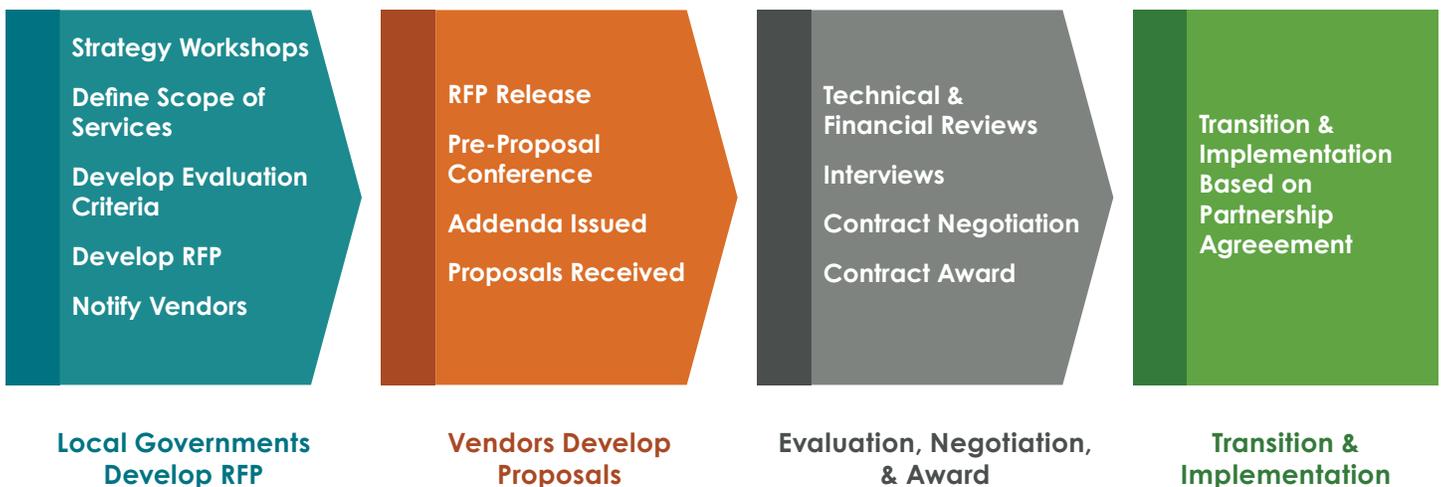
RFPs vs. Other Approaches

Local programs have multiple possible options for procuring MRF processing services, including Request for Information (RFI), Request for Qualifications (RFQ), Requests for Bids (RFB) and Requests for Proposals (RFP). Each has its own advantages and disadvantages. For example, an RFQ can help establish minimum qualifications and can be used as a step in the RFB and RFP process. An RFB is a straightforward method of receiving price proposals when all essential parameters are known. An RFP method is generally recommended as it allows local governments to consider a combination of factors in the decision-making process. Also known as a “best value” approach, an RFP is a more versatile in allowing a wider exploration of varying service parameters from different companies and is not just based on price alone.

Key steps in an RFP-based procurement include:

- **Local Government develops RFP:** Local government considers its goals and objectives and reflects them in its RFP, looking ahead to how the RFP elements will translate into the final contract.
- **MRF companies develop and submit proposals:** Proposers develop their submittals, with opportunities to have questions answered by submittal in writing or during a pre-proposal meeting.
- **Local Government evaluates, negotiates and awards contract:** A technical and financial review of proposals is conducted, often involving interviews of prospective companies. Contract negotiations commence and a formal award is made. This step may include an evaluation of hauling expense to the various MRFs to see the full picture of the costs associated with each option.
- **Transition and implementation of contract:** Timelines and steps are followed to implement the agreement. The level of effort and time needed for this step can vary widely. When a MRF is in place and has available capacity, the transition may just be a matter of directing collection vehicles to a different MRF. In cases where a new MRF must be constructed, transition and implementation efforts are much more involved, which impacts the schedule.

Figure 6: Key Steps in the RFP Process



Many communities benefit from using a consulting services firm in developing their bid processes and documents. Consultants can bring broad experience in addressing this critical issue and are able to use ready language, document structures, and procedures from their work with other communities in guiding what can be a complex procurement process. Consultants may also have industry relationships that can attract potential bidders to an opportunity, increasing options for the local government.

Procurement Process Schedule

A key factor in determining how much time is needed for the procurement process depends on the competitiveness of the local recycling processing market and processing capacity in that region. For example, if there are multiple MRFs in a region with extra processing capacity, the procurement process will require less time since a range of possible suitable MRFs are already in place. On the other hand, if there is a need to build a new MRF based on the outcome of the procurement process, much more time would be required to allow the recycler to design, build, and start operating a new facility, or potentially build a transfer station to transport the material to a MRF. Longer MRF contracts may also be appropriate when a community is trying to attract a new facility. Aligning with the key steps for an RFP process in Figure 6 and Figure 7 provides perspective on recommended schedules based on whether a local government would expect to enter into a contract with an existing and/or new MRF and based on what type of contractual agreement a community chooses.

Figure 7: Recommended Schedule for Recycling Processing Procurements



¹ Under this scenario, an RFP would be structured to allow for sufficient timing to contract with a new MRF. While the local government may still contract with an existing facility, developing a schedule that accommodates the option to design, permit and build a new MRF provides flexibility.

Information to Communicate in the RFP

Better results can be expected from a MRF contract procurement process when a local program proactively communicates critical information in its RFP, including:

- Annual recycling tonnage for multiple years (typically three to five years).
- Average number of tons/routes delivered by day of the week and vehicle type (collection truck vs. transfer trailer).
- Recycling stream composition (e.g. percentages) by material type (summary results from multiple audits is helpful).
- Current recyclable materials accepted in program.
- Planned changes to recycling programs/initiatives. Examples would be the local government plans to convert to cart-based collection or mandate multi-family or commercial recycling within a stated time period or add materials collected as part of program.
- If not included in the composition information, specific data on historical material contamination levels (including the source of the data – e.g. cart audits).
- An overview of public outreach and education and/or enforcement programs and ordinances focused on increasing recycling and decreasing contamination.
- If assets are being made available as part of a P3 process, details regarding the assets being offered so the proposers' responses will develop proposals using accurate information assumptions. For example, if the local government is offering land for developing the MRF, available surveys, geotechnical information, utility information, and restrictions should be included in the RFP by the local government.
- The potential for other local governments to commit tons to the facility, information that is especially important when trying to attract a new MRF to a region with multiple curbside programs.

Addressing the Critical Issue of Contract Length

It is extremely important for the community to make strong and thoughtful decisions on the length of its MRF processing services contract. Decisions on contract length can have a significant effect on how many proposals or bids may be submitted and how competitive they are.

Several factors determine the optimal recycling processing contract length, but perhaps the most important factors are the type of contractual arrangement (PSA or P3) and whether a private company is building a new facility. New, state-of-the-art MRFs built to serve large geographic areas can cost \$20 million or more, depending on local development costs and the level of processing automation. If a private company is building a new MRF for either a P3 or PSA, the company will ideally seek to recover its capital costs over the life of the contract. Consequently, aligning contract length to the useful life of capital assets can help local governments and the private recycling processor achieve a lower cost.

Aligning contract length to the useful life of capital assets can help local governments and the private recycling processor achieve a lower cost.

Ideally, contract length allows MRFs adequate time for a return-on-investment but doesn't preclude market choice over time. Short-term contracts could be self-limiting to municipalities if they result in a disincentive for MRFs to make capital investments that improve processing effectiveness and efficiency. The substantial effort required to conduct a procurement process is another argument to establish generally longer contracts. The ideal length of a contract can vary depending on whether it is for a PSA or P3 project and whether an existing or new MRF is involved. Figure 8 provides recommended length of time for contract terms.

Figure 8: Recommended Schedule for Recycling Processing Procurements

Contract Type	New or Existing MRF	Recommended Contract Length	
		Initial Term	Renewal
PSA	Existing	Five to Seven years	One or more renewals for a total of up to three to five more years
PSA	New	10 – 15 years	One or more renewals for a total of up to 10 more years
P3	Existing	Depends upon level of investment from private company. If there is a need for substantial investment, a longer term of 10 – 20 years may be needed. Without high investment levels, 10 years may be sufficient.	
P3	New	15 – 20 years	One or more renewals for a total of up to 10 more years

FAQs

- **What about Contract Renewals?**

If a contractual relationship is working effectively for both parties, it may be useful for the contract to be extended via one or more renewal terms. While possible renewal terms need to be identified in the procurement process and final arrangements defined in the contract, they can be an effective approach to extending an agreement without having to complete another procurement process. It is recommended that a contract include a defined number of years for a renewal as well as specifying a limit on the number of renewal terms that may be allowed.

- **When is it a good idea to re-open a contract or conduct a new procurement process?**

Local programs may find that a number of conditions and circumstances require them to conduct a new MRF services procurement process, including changing material values, concerns about contract fairness or MRF performance, merger and acquisition activities affecting their vendor, or just a general need or desire to test the competitiveness of the market. Local programs should consider this issue as they create bid or proposal documents and subsequent contracts, making sure to spell out the conditions that would allow or lead to a new procurement process. Transparency is critical so that private MRF companies know exactly what to expect as they develop proposals and enter into contracts.

As local programs plan their procurement process, they also need to think about the content of their RFP documents and the eventual contract. This is where paying close attention to the essential elements of a good RFP and contract come into play, allowing communities and MRFs to establish comprehensive fairness in their contractual relationship.

Section 2:

11 Essential MRF Contract Elements

A recycling processing contract can be complex and include a wide range of elements. Local programs have many choices to make in terms of what is covered and addressed in a contract. This section provides detailed discussion and recommendations on critical, broad components local governments should consider. As stated earlier, this document is not intended to provide legal advice nor address detailed parameters that any given community deploys in its general and routine procurement of goods and services (as guided by the community's budget, finance, purchasing, and legal offices).²

In addition to the general guidance offered in this section, [Appendix B](#) provides examples of language that could be adopted in constructing RFPs and contracts.

Essential Contract Elements #1 & #2: Processing Fees and Revenue Sharing

In general, recent market dynamics mean that processing fees can be expected to be a standard element of MRF contracts and be key to MRF business viability. At the same time, it is also predictable that market prices will experience positive gains at some point in the future, and so while processing fees are necessary to help make MRFs whole and protect their ability to provide essential services, sharing the revenue benefits from better markets is also an essential aspect of a fair MRF contract.

Every MRF contract should therefore have specific and separate elements clearly addressing both processing fees and revenue-sharing. The per ton processing fee is based on the operating costs of the MRF and it can often include a base level of profit-making for the MRF. The revenue share is based on the composition and value of the incoming material and should be determined in a transparent way that provides the right incentives for each party.

It is critical that local governments closely consider and decide whether revenue share calculations should be based on actual commodity sales or composition audits of the incoming material (determined by material audits described **on page 18**). Structuring the net revenue share calculation based on the composition of the material being processed can make an agreement more equitable in strong and weak recycling commodity markets. As the composition of the material changes, the revenue share will reflect these changes, incentivizing actions to reduce inbound contamination or to increase the capture of higher value materials. The material composition should ideally be on a community's particular material and not the MRF average of all inbound materials.

Revenue Sharing - Reflecting on Community Goals

Recycling material markets have experienced significant volatility since the 2009 recession, when commodity values plummeted from all-time highs to historic lows in a matter of weeks, only to rebound sharply a few years later just as many MRF contracts around the country were being renewed. The 2009 market crash drove MRFs to allocate more risk to local governments in the form of increased per ton processing fees, which was then reversed as markets allowed revenue-sharing to become an established practice. Now in 2020, renewed challenges with market pricing, export restrictions, and ever-changing consumer packaging may signal a permanent change in recycling processing economics. These challenges have put many community-MRF relationships under significant pressure, raising the importance of healthy MRF contracts.

² Additional contract language that is not addressed in this document or the appendix may include, but not be limited to a combination of recycling-focused terms and general/local government requirements. Examples of recycling-focused terms include, but are not limited to: administrative charges (e.g. liquidated damages); cooperative purchasing; facility location and alternative facilities; hours of operation; invoicing and payment; litter, odor, and other nuisances; ownership of recyclable materials and risk of loss; performance bond; processing capacity; rate adjustments; scalehouse requirements; security; storage of materials; termination clauses; transition plan; vehicle access; personnel requirements; priority and turnaround times at facility; and visitation and inspection rights.

Revenue Sharing - Reflecting on Community Goals

Revenue sharing is an excellent example of an issue that requires communities to discuss and understand their goals and objectives, especially when it comes to deciding the relative share for the MRF and for the local program. A greater share of revenue to the MRF can facilitate equipment upgrades and can be specified as such in the contract. A greater share of revenue to the community could also help address critical capital needs, such as new trucks or recycling containers. In all instances, because of the volatility in market prices and revenues, The Recycling Partnership cautions local programs against excessively relying on revenue-sharing to cover program operational costs and recommends strong conversations between the recycling program and its budget and management departments on how to best manage revenues relative to market volatility.

Should revenue share be based on the actual sales price, a published index price or the higher of the two? A good general rule is that revenue share be based on the higher of an actual sales price or a published index price since this will incentivize the private MRF operator to seek the highest reasonable pricing for the material. This can be important when a private MRF operator is sharing a high percentage of the revenue with a local government. While not a certainty, private MRF operators are often able to sell high-quality material for 10 to 20% higher than the index pricing.

But there are disadvantages to this approach. A MRF operator may want to accept a price less than index to protect market relationships that allow materials to be sold in a challenged market. In addition, actual versus index pricing can be tricky for depending on regional markets for specific materials. Communities should explore options carefully and in close consultation with the MRF, leaving room for negotiations that are fair and benefit both parties.

Essential Contract Element #3: Material Value Determination

If revenue sharing is included in the MRF contract, it is important for the contract to be explicit on how material values are determined. A typical approach is to use published sources, such as on-line subscription services like [recyclingmarkets.net](https://www.recyclingmarkets.net). An alternative is for MRFs to regularly share their records on actual material sales. If the latter is used, periodic third-party verification can ensure transparency for both sides and instill a base level of trust. Regardless of how prices are determined, a good MRF contract should explicitly spell out how often MRF values are reported and used in revenue share determinations, with monthly as the ideal choice, but quarterly also acceptable.

Essential Contract Element #4: Acceptable Materials Mix Determination

In conducting a procurement process, a local government should carefully address the issue of acceptable materials, taking into consideration its disposal diversion goals, markets (including emerging markets), and the general and adjustable capability of MRFs to process and sell recycled material.

With the prevalence of single-stream MRFs and generally healthy markets, the general trend since 2009 has been for recycling processing contracts to include an expansive range of materials. In multiple cases and with recent market issues, this has created challenges for MRFs to effectively operate their facilities and sell materials that meet quality standards. By agreeing up front on the acceptable material mix, but by also including contract parameters that smartly allow adjustments without requiring contract amendments, communities can proactively communicate to their residents which materials should and should not be included with their recycling setouts. A MRF can then set up its processing system equipment and staffing plan to match the material diversion goals of the community while also planning for the dynamic nature of material markets.

It is also important to note that building strong channels of communication in a MRF contract can also help avoid unilateral or premature decisions on changing material types.

Resources for Determining Acceptable Materials: The Recycling Partnership has developed the “MRF Survey: Acceptable Materials Worksheet” to help local governments and private MRF operators work together to determine what materials should be accepted in the MRF’s incoming stream. Refer to Helpful Resources in [Appendix A](#) to access the worksheet.

Essential Contract Element #5: Material Audits

Understanding of both the composition of the incoming recyclable material stream and outgoing residue is important for fair and balanced MRF contracts for several reasons. First, initiatives to decrease contamination and capture recyclables can be more focused when there is an understanding of the material entering and leaving the MRF. Second, as discussed previously, revenue sharing is often based on the composition of the material. All good MRF contracts explicitly establish the frequency, protocols, and intended uses of material audits. Such audits can be particularly useful when trying to measure the effect of specific actions in the collection program, such as the initiation of a cart-tagging program to reduce contamination.

Two main methods can be used to conduct a material audit: Inbound Material Sampling or Full MRF Operational/System Audit. The intended use of either or both types of audits and their detailed methodology (such as sort categories, sample sizes, timing, etc.) should be defined in the contract between the local government and private MRF operator and the contract specify which methodology is to be used to determine revenue share. Overviews of the audit options are described in Figure 9. Inbound Audits are less intensive and can be done at lower costs and more frequently. Operational audits provide a strong assessment of a MRF’s core processing abilities and show real-time data on how effectively the system is operating. This audit is also affected by age and maintenance of the MRF equipment, speed of running the system, and staffing levels.

Figure 9: Material Audit Options

	Inbound Material Sampling Audit	Full MRF Operational (System) Audit
Overview	A limited amount of sampled incoming material is randomly selected for a tabletop sort.	The MRF is cleared and set up to process material only and specifically from a local program, ideally covering multiple routes and collection days.
Works Best When	The local government needs a “snapshot” understanding of material composition to help inform educational efforts or other needs.	More detailed and specific information is needed to assess performance requirements such as percent recovered, revenue share, and/or determining disposal costs from contamination.
Sorting Approach	Table-top, manual sort of a few hundred pounds of material taken from random sampling of in-bound loads.	Multiple truck loads are processed via the MRF sorting equipment, which requires a complete cleanout of the MRF before the audit. Residual material is manually sorted to determine what percentage of inbound commodities the MRF is successfully recovering.
Day of Audit Time Requirement	Can be completed in a few hours, but should be done across multiple routes and collection days.	Typically requires a full day (8 – 12 hours).
Material Selection	Random selection – may sample a defined quantity of material from multiple collection vehicles.	Random selection – may process a defined quantity of material from multiple collection vehicles.
Residual Audit	Conducted to determine how much commodity material is ending up in residue as a measure of MRF efficiency. Because this is such a critical metric, some industry stakeholders believe residual audits should be mandatory.	Conducted to determine how much commodity material is ending up in residue as a measure of MRF efficiency.
Frequency	A quarterly schedule is ideal, but at least twice a year. Should be as frequent as needed to address specific issues or to measure effects of proactive initiatives (e.g. cart tagging project). Audits done more frequently than quarterly and done by collection route result in more useful and consistent data.	Needs to be at least annually, but should be more frequent (e.g. semi-annual or quarterly) depending on seasonality, changes in contamination levels based on prior MRF audits and capture rate studies.



Whatever method a contract specifies (and it can include both), material audits benefit from a few key considerations:

- Planning well in advance to decide on the timing, staffing, and other logistics can help an audit provide useful results;
- Careful segregation of the material to be included in the audit, which may include placing physical barriers at the facility to keep material separated from non-audit materials;
- Timing of audits to reflect typical conditions. Audits after major holidays or rain events should be avoided;
- And possibly retaining an independent third party to provide oversight of the process and improve the reliability of the data for all parties.

FAQs

- **Is it viable for a detailed audit to be completed using a table-top, manual sorting approach?**
Yes, but for this approach to be used successfully, there are a couple of key considerations. First, there is a need to determine whether enough material can be realistically sorted manually to provide a statistically viable quantity. Second, there should be a strong plan to get representative samples of a local program's "typical" inbound material.
- **What if the calculated quantity of material from the audit varies significantly from the MRF's records on sorted material and residues?**
It is common to have some variance along these lines, and the extent of that variance should be examined closely. Many contracts will state that if the variance exceeds a mutually agreed, pre-determined threshold, the local government has the right to reject the audit results. Making sure to allow the local government to be present during the audit can help prevent concerns about discrepancies.
- **What if there is a lot of rain the audit day or when the collection vehicles bring loads to the MRF for the audit?**
The local government and private MRF operator should monitor weather forecasts to try to avoid scheduling an audit if inclement weather is expected. In some parts of the country, weather such as rain or snow can have a tremendous impact on MRF operations, so audits should be planned accordingly.

Essential Contract Element #6: Material Quality/Contamination

MRF processing costs have been steadily increasing over the past 10 years. While there are multiple reasons for these increases, higher inbound contamination rates have been a key contributor – it can cost twice as much to process contaminated materials as good quality clean recyclables. Contamination is expensive; when non-recyclables are delivered to a MRF, a local government is effectively paying a per ton processing fee for trash that generates zero revenue and must be transported to a landfill for disposal at additional cost.

A good MRF contract includes specifics for the acceptable inbound contamination levels expressed as a percentage of the incoming material. The acceptable amount of contamination should be based on a combination of historical contamination amounts and reflect efforts or practices in place to decrease contamination. By establishing an acceptable inbound contamination level, private MRF operators can account for the anticipated cost of contamination. During the term of the contract, contamination levels should be assessed through the regular material audits as discussed previously.

MRF contracts may include provisions that require the local government to pay for contamination quantities that exceeds a specific threshold and/or incentivize the local program to decrease contamination. An innovative approach to this is to vary the per ton processing fee relative to the contamination level. For example, the base processing fee may be \$80 per ton based on a 20% contamination level. The processing fee would increase to \$85 per ton with a 25% contamination level and decrease to \$75 per ton with a 15% contamination level (based on audit results). An alternative approach is to establish in the contract a disposal fee for high contamination levels, applying a per ton disposal fee for transporting and disposing of residues above certain levels. If contracts use this approach, clear analysis must be available to gauge how much of MRF residue has been caused by contaminants in inbound loads specifically from the local government.

Connecting contamination levels to revenue sharing

One possible approach to determining revenue share is to tie the revenue level to inbound contamination. In this scenario, revenue share percentage increase as inbound contamination declines, using tiers as in the example below:

- Over 20% inbound contamination – local government gets 60% of revenue
- Between 10 and 20% inbound contamination – local government gets 70% of revenue
- Under 10% inbound contamination – local government gets 80% of revenue

Essential Contract Element #7: MRF Performance

Since the MRF is being paid a fee for processing delivered recyclables, it needs to be held accountable for recovering a high percentage of the recyclable materials delivered. To clarify, this would apply to *acceptable recyclable materials* (e.g. paper, metal cans, plastic containers), not all of the incoming material, which would include inbound contaminants. For example, of all of the PET bottles and aluminum cans delivered in a local program's curbside loads, the MRF should be able to recover a standard rate of those target materials in normal operations, minimizing loss of commodities to residue.

Based on discussions with multiple MRF processing equipment manufacturers, recycling processing systems are typically designed to recover 95% or more of the intended recyclable materials. An audit of outgoing MRF residue in comparison with the quantities of sold commodities would allow this kind of mass balance equation to be calculated on the MRF's capture rates for various recyclables.

The advantage of including this kind of standard in a contract is that it incentivizes MRFs to invest in the maintenance of existing equipment, new equipment, and to conduct operations to achieve the standard rate of capture for the target materials. If, then, there are costs of doing so, it would be reflected in the processing charge and/or be covered at least in part by the MRF's share of material revenues. Local programs should make their desired standards for MRF performance transparent in bid processes so that MRFs can then submit proposals or bids that accommodate the community's expectation.

Similarly, since revenue sharing may be an important component of the final contract, local programs want MRFs to be delivering the highest quality materials to market to gain the highest possible price. One method to establish accountability and transparency on this issue is for the contract to also specify periodic bale audits that demonstrate the level of quality in marketed materials. Again, if this is made transparent in the procurement process and final contract, MRFs can adjust their proposed processing charges accordingly. Basing revenue share on the higher of actual sales pricing versus index pricing may reinforce the incentive for better commodity quality.

Essential Contract Element #8: Rejected Loads and Residue Disposal

Occasionally, a local program may deliver a load that contains excessive or problematic inbound contamination (including the possibility of hazardous, infectious, or otherwise dangerous materials). MRF contracts should have specific clauses addressing these situations and assigning costs and responsibilities to each party. For example, when an incoming load is rejected due to excessive contamination, there may be a per ton disposal fee for transporting and disposing of the rejected load. In all cases, it is important to the transparency and fairness of the contractual relationship for there to be timely reporting and documentation associated with load rejection, including ideally the taking of photos.

FAQs

- **Under what circumstances should a MRF operator be allowed to reject an incoming collection load due to high contamination levels?** If a MRF operator receives a load that has a high level of contamination, it is reasonable for that load to be rejected. With national averages for overall inbound contamination at 17%, the threshold percentage for load rejection should be substantially higher than that, typically more than 30%. As included in Appendix B on **page 27**, detailed provisions need to be included in a contract for load rejections requiring the MRF operator to clearly document the rejection process. Refer to the [Helpful Resources Section in the Appendix](#) for proven approaches that reduce contamination from The Recycling Partnership.

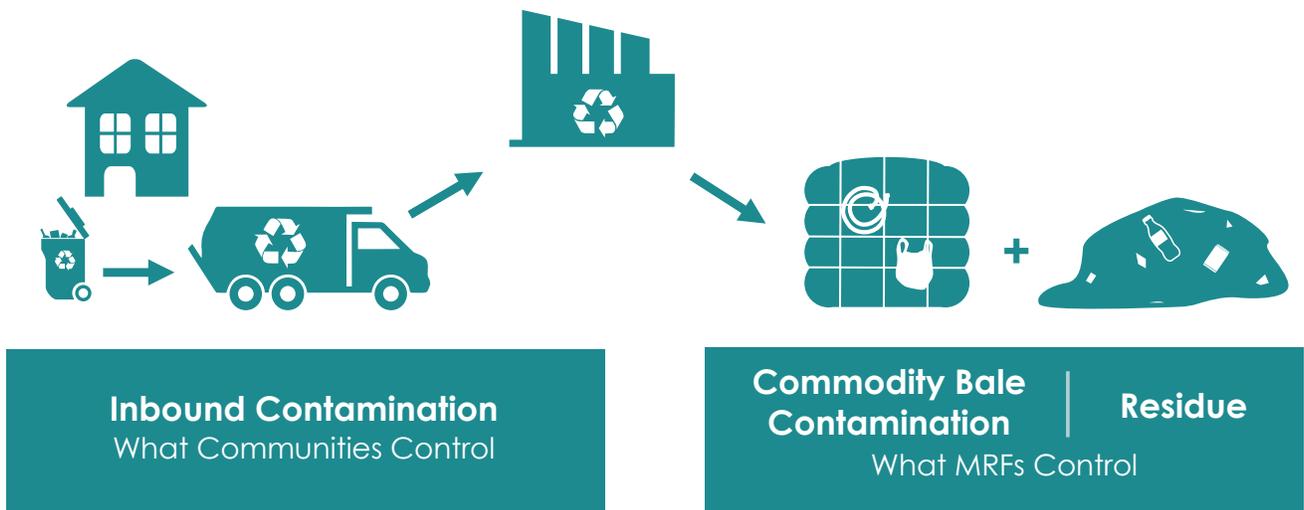
All MRFs will generate residue in the normal course of operations. Just like the issue of rejected loads, roles and responsibilities, as well as strong reporting and documentation, should be a key element of MRF contracts. Both parties benefit from the minimization of residue and only through the sharing of key information can both parties take strong steps to address the issue.

As part of the contract and business relationship, local programs and MRFs should work out possible ways that the imposition of fees for rejected loads and the general cost of residue could be mitigated through in-kind waste hauling or disposal services provided by the local program. This can save both parties money, although the impacts of those measures on the local program side should be carefully budgeted.

In-bound Contamination v. MRF Residue

What is the difference between in-bound contamination and MRF residue? Figure 10 below explores this distinction and demonstrates the need to be explicit about definitions in MRF contracts. Communities are most in control of what is brought to the front of the MRF from their collection programs, which is defined as in-bound contamination. The quality of inbound material certainly affects the ability of the MRF to process materials and reduces MRF residue, but MRF operations also affect residue and likewise affect the quality of outbound baled commodities.

Figure 10: Different Types of Contamination



Although communities mostly have control of in-bound contamination, MRFs can play a critical role on that issue. Through providing good audit, educational support, and possible incentives, MRFs can help motivate their local government customers to improve in-bound quality.

Essential Contract Element #9: Education and Outreach Support

Regular, consistent public outreach and education is necessary for residents to know what can and cannot be included in their recycling. Agreements between local governments and MRF operators should define the education-focused contractual responsibilities for both parties and identify ways in which the MRF contract can include resources specifically for conducting effective outreach. Since local governments have more direct contact with residents, it is recommended that the local government have the lead responsibility for education and outreach, while the MRF operator financially supports the educational efforts with dedicated payments to the local government under the contract. Local governments and MRF operators should review results from material audits to better understand what residents are setting out for collection, and how the educational information may need to be updated. Figure 11 shows the kind of balance in outreach and education obligations that MRF contracts can establish to the clear benefit of both parties.

Figure 11: MRF Contract Provisions for Education and Outreach

Local Program Obligations	MRF Obligations
<ul style="list-style-type: none"> • Develop and consistently implement a public education and outreach campaign focused on increasing recycling and decreasing contamination; educational materials may include household mailers, website information, social media posts, videos, etc. • Annually specify how and when the public education and outreach budget will be spent • Conduct proactive inspection and tagging of improper recycling set outs • Develop ordinances regarding setout requirements • Provide annual, dedicated funding for education and outreach 	<ul style="list-style-type: none"> • Make financial contributions to the local government's educational program; this can be in the form of a minimum annual amount and/or based on the number of annual tons or households • Provide regular, consistent communication to the local government regarding potential message content • Provide safety-focused access to the MRF for public tours

Establishing a Dedicated Amount for Public Education and Outreach: Including financial commitments for education and outreach in a MRF contract can result in stable budgets — shielding this line item from the municipal budget process and establishing a mutual commitment between the local government and MRF operator for quality of the incoming stream. There are several examples of existing MRF contracts in place around the country that include financial commitments based on the incoming tonnages or number of households. Agreements can include financial commitments for both the local government and MRF operator for education and outreach.

Need Help on Public Education and Outreach? Local governments and MRF operators can use The Recycling Partnership's [Campaign Builder](#) and other resources to jump start their outreach campaigns. Refer to the [Helpful Resources Section](#) in Appendix A on page 26 to access the information.

The contract for the construction of the City of Dallas' MRF included building an observation room located on the second floor of the MRF building. It provides a "bird's-eye" view of the tip floor, processing equipment, and baling area in an enclosed, air-conditioned location. Having an observation room is a great way to show the public what is happening on the tip floor without having them in the danger zone on the tip floor.



FAQs

How much funding should be dedicated to a recycling public education and outreach program?

Figure 12 shows research from [The Recycling Partnership's 2020 State of Curbside Recycling Report](#) that shows an average of \$1.16 per household spent in communities that have recycling education and outreach budgets. In many cases, however, communities do not have this level of resources because of the difficulty in justifying recycling outreach in normal budget processes. Even at \$1 per household, a local curbside program may lack adequate resources to successfully address participation, contamination, and capture behavior. A good rule of thumb is to embed \$2 to \$3 annually per household in payment to the local program for outreach activities, but as much as \$5 per household may be needed if contamination levels are high. In all instances, a local program should recognize that the outreach funds may increase overall MRF processing charges.

Figure 12: Average Funding Level for Local Recycling Programs with Outreach Budgets



Essential Contract Element #10: Contingencies

MRF operations have the potential to be seriously impacted by a range of negative conditions, including accidents, inclement weather, natural disasters, equipment failure, and even business failure. Every good MRF contract should contain provisions that address these issues, as unlikely as they may seem when the RFP is released and final agreement is signed. Like many things in a good contract, contingency provisions ideally protect both parties from the unexpected by providing direction, guidance, and assignment of responsibilities in emergencies and other negative situations. Examples of contingency provisions are provided in [Appendix B](#).

Essential Contract Element #11: Reporting and Communications

Frequent and consistent communication is an integral part of a successful relationship. Communications between a local government and its MRF should include a combination of written reports, with the specific type and frequency of reporting outlined in the contract as recommended in Figure 13. Regularly scheduled meetings also allow the local government and the MRF operator the opportunity to discuss issues a range of issues: report results; audit planning and data; educational efforts; contamination issues/improvements; and operational issues such as wait times and holiday hours and schedules.

Figure 13: Recommended Types and Schedules of MRF Written Reports

Report	Description	Frequency
Incoming Tonnage	Sum of incoming loads; should include additional details such as weight of each incoming load, time in/out, vehicle number, gross weight, tare weight, and ticket number. For some P3 contracts, third party transactions may also be required to document total facility throughput or host fees.	Monthly
Operational Reports, including Staffing	Verifies that the MRF is meeting is operational requirements such as maintaining minimum hours of operations and staffing levels.	Monthly
Financial	Based on the incoming tonnages, calculate and clearly identify the processing fees, revenue share, and quantities of residuals disposed. MRF should also provide details on actual sales price and index pricing.	Monthly
Audit	Communicates audit results, which will include material composition an contamination rate.	Quarterly
MRF Performance	Analyzes the successful recovery rate for inbound commodities (excluding inbound contamination).	Quarterly
Unaccepted Loads	Documents unaccepted loads. Includes information such as delivery date, time delivered, reason for not accepting load, actions taken, photos, and associated penalties if applicable.	Monthly

Conclusion

Local curbside recycling programs and the MRFs that process the materials these programs collect sit together at the center of U.S. residential recycling system symbiotically providing the collection and processing services that return household materials to the circular economy. It is essential that the relationship between these two critical parties be on the best possible footing as established in clear, fair contracts that comprehensively address the most important core elements of the MRF community relationship, while allowing each side to successfully navigate a range of market conditions and an evolving picture of material generation.

The purpose of this guide is to help raise the level of standards of MRF contracts in the U.S., based on thoughtful procurement practices supported by the transparent sharing of information. The Recycling Partnership invites local programs and MRFs to join in this endeavor, to freely share examples of excellent processing agreements, and to use the instrument of good MRF contracts to improve the economic sustainability of the U.S. recycling system.

Appendix A: Helpful Resources

Multiple organizations have developed resources that may provide further guidance on contracting for recycling services. Key resources include:

- **Key Resources from The Recycling Partnership:** The Recycling Partnership provides proven how-to guides, campaigns and resources to help communities improve recycling. <https://recyclingpartnership.org/info-hub/>
- **Joint Advisory on Designing Contracts for Processing of Municipal Recyclables:** A collaborative effort between the National Waste and Recycling Association (NWRA) and Solid Waste Association of North America (SWANA), to offer guidance, protocols and standards regarding contracting for processing of municipal recyclables. The document lists fundamental contract provisions and also includes attachments focused on understanding material composition (i.e., audits) and methods to determine the value of recyclables. https://cdn.ymaws.com/wasterecycling.org/resource/resmgr/docs/resource_library/SWANA-NWRA_Best_Contracting_.pdf
- **ISRI Scrap Specifications Circular:** Developed to provide guidelines for buying and selling a variety of processed scrap commodities, including ferrous, nonferrous, paper, plastics, electronics, rubber, and glass. <https://www.isri.org/recycling-commodities/scrap-specifications-circular>
- **Solid Waste and Recycling Procurement Workshop Documents:** Created by the Houston-Galveston Area Council to advise local governments and private services providers on best practices for solid waste and recycling procurements, including recycling processing. <http://www.h-gac.com/solid-waste-management/recycling/workshops/documents/2015-08-19-SWandRecyclingProcurementPresentation.pdf>
- **Municipal Measurement Program (MMP):** Free tool for measuring recycling program performance with customized recommendations, solutions and year over year data. <https://recyclesearch.com/profile/mmp>

The Recycling Partnership's Online Tools

The Recycling Partnership's website offers free online resources to communities that outline the best management practices for tackling contamination both at the curb and at community drop-off recycling centers. Find our [Anti-Contamination Toolkit](#) and [Campaign Builder](#) online which has been designed to provide steps, tools, and resources to help improve the quality of your recycling program.



Anti-Contamination Recycling Kit

Improving Quality in Your Recycling Program

Appendix B: Sample Contract Language for Select Elements of MRF Contracts

Legal Disclaimer: This Appendix includes samples of “real world” material recovery facility (“MRF”) contract language, drawn from existing MRF contracts in communities around the U.S. The inclusion of the samples does not constitute the provision of legal advice and each is included solely for illustrative purposes to show how many of the key issues discussed in this Guide to Community Material Recovery Facility Contracts have been addressed in MRF contracts. As such, no reader may rely on the application of any sample to a specific situation or the accuracy or completeness of any sample. The Recycling Partnership neither recommends nor endorses specific language in any sample.

Note that since the samples are drawn from actual MRF contracts, document placement, section numbering, defined terms, and cross references need to be updated as necessary, and any use of the language from the samples should take into account applicable legal requirements, local circumstances and document organization. In drafting bid, proposal, or contract provisions, each community should consult with its procurement, budget, and legal departments to develop locally appropriate and legally sufficient language.

Processing Fees

Example 1 (for RFP)

“For each incoming ton of materials delivered by or on behalf of the City, the Contractor may charge the City a Processing Fee. The Processing Fee will be comprised of two components, a Capital Cost component and an Operating Cost component. The Capital Cost component is intended to recover costs of capital, such as site development, building construction, processing equipment, and rolling stock. The Operating Cost component is intended to recover ongoing costs of operations such as personnel costs, utilities, maintenance, fuel, marketing, and other similar costs.”

Example 2 (for RFP)

“The City will pay a gross processing fee per ton processed based on Contractor's bid. The processing fee will be adjusted annually by the Consumer Price Index (CPI) as defined.”

Revenue Sharing

Example 1

“For incoming ton of materials delivered by or on behalf of the City to the Processing Facility and accepted by the Contractor, the Contractor shall pay the City a Recyclable Revenue Share.”

Example 2

“The Contractor will market all materials and receive all revenue from commodity sales. Contractor will provide a monthly market value credit to the City based on:

1. Tons processed. Separated into the;
2. Prevailing Recycling Stream Composition. Multiplied by the;
3. Corresponding Market Price Indicator. Then distributed;

4. 60% to the City and the Contractor retaining 40%”

Example 3 (calculation of revenue share)

“The Recyclable Revenue Share for Single-stream Program Recyclable Material shall be based on the following:

1. Composition of Single-stream Program Recyclable Materials according to the most recent characterization audit conducted pursuant to the Contract; and
2. The Recyclable Revenue Share Index calculated each month in accordance with [named publication or source of material value]. If a publication identified in Table 6 ceases to be published, the parties shall mutually agree to an industry accepted market pricing publication to be used for purposes of the revenue share basis. Mill tickets shall be required as back- up for all actual sales price information.”

Material Value Determination

Example 1:

“For purposes of this Agreement, “single stream commodity weighted average price” will be calculated monthly based on the PPI / Pulp & Paper Week index for fiber prices, recyclingmarkets.net for non-fiber prices or any other reference agreed to by both parties, and will also be updated annually based on the materials composition of Contractor’s actual outbound shipments from Receiving Facility for the preceding calendar year.”

Acceptable Materials Mix Determination

Example 1:

“Contractor shall accept, at a minimum, the materials identified in the Section XXX as Program Recyclable Materials [Referenced section contains adjustable list of accepted program materials].”

Example 2 (related to changes in the accepted materials)

“Both Parties agree that any material changes to the Single Stream recycling process or Recyclable Materials during the term of the Agreement will be jointly evaluated to determine what impact, if any, there is to the processing and/or marketing of Recyclable Materials. As such, both Parties agree in good faith to amend the Agreement accordingly.”

Example 3 (related to changes in the accepted materials)

“The County reserves the right to add or remove residential program recyclables. Exhibit B specifies the materials that are currently acceptable under the curbside recyclables collection services program.

The Contractor reserves the right upon written notice to the County’s Administrative Agent to discontinue acceptance of any category of materials set forth above as a result of market conditions related to materials

and makes no representations as to the recyclability of the materials. Contract shall provide 18 months advanced written notice to the County of its decision to discontinue acceptance of any such material.”

Material Audits

Example 1:

“The Contractor, at the Contractor’s sole expense, shall conduct quarterly characterization audits in accordance with the characterization audit procedures set forth in the Contract in Attachment XXX. The Contractor and City will utilize the composition information derived from the characterization audits for determination of the following:

1. Disposal Allowance for Residue and Contamination to be granted by City;
2. Disposal & Transportation Fees for Residue and Contamination to be paid by City;
3. Recyclable Revenue Share; and
4. Compliance with minimum processing requirement per Section XXX.”

Example 2:

“The City and Contractor will negotiate the means and methods for conducting a recycling composition study. The results of that negotiation will be administratively recorded in a Change Order between the City and the Contractor no later than 90 days following the approval and signing of the contract. Any costs incurred from conducting the study will be borne by the contractor. At a minimum the composition study must:

- Establish a base line of composition using carts for recycling collection.
- Cover both weeks of every other week collection, and all five days of collection.
- Separately cover all full-service drop-off sites

A City representative may be present during the composition study”

Example 3 (regarding rights for city to conduct third party audits):

“The City reserves the right to conduct additional Recycling Composition Studies by third parties. These studies will not be a cost borne by the Contractor. The Contractor will be reasonable in accommodating these third-party Recycling Composition Studies.”

Example 4 (specific to bale audits, focused on sorted commodities and MRF performance):

“Quality of Processing – Bale Audit Commodity bale audits are intended to collect primary data on the composition of processed, ready to be baled, or baled (if bunkers cannot be accessed) material collected from the Entity’s curbside recycling collection programs. The audits will occur at least once per year at the Contractor’s expense to be conducted at the MRF at a time of mutual convenience. Additional sampling events may occur at the request of the Entity. The audit is performed when the Facility is operating at normal capacity under normal operating conditions (i.e. with the usual number of staff on the lines and the equipment operating properly); Audit results will be compared to commodity specifications for the marketed materials, such as those listed below. If any variances from commodity specifications are shown to be affecting marketability of the material, the Contractor is obligated to prepare and implement an action plan to address the issue.”

Example 5 (audits of residuals):

“Residual Materials shall be sampled (minimum 200 lb. sample) and sorted for Recovered Materials at least once per month at the Contractor’s expense to ascertain the percentage of each Recyclable Material within the Residual Materials. Each sort shall be documented, and results reported to Entity within one week of

sort. At least one week in advance of the sort, the Entity shall be invited to send a representative to observe sampling and sorting."

Material Quality/Contamination

Example 1 (setting contamination standard):

"Material delivered by or on behalf of the County may not contain more than 20% non-recyclables ("excess contamination") and may contain no Excluded Materials as defined below. In the event a load does not meet Specifications, the load may be rejected and/or the County may be charged additional processing, return, or disposal costs; provided, however, that if the delivered material contains more than 10% non-recyclables (but does not contain Excluded Materials) the material will be accepted and the excess contamination shall be subject to the charges set forth in the Fee Schedule on a load by load basis and above AMV. [Excluded materials in this case is focused on materials that are hazardous, radioactive, infectious, explosive, etc.]"

Example 2 (addressing rejected loads and associated costs):

"In the event that the Recyclables do not meet Specifications, the load may be rejected, and /or the County shall have the sole responsibility for any resulting settlements or adjustments, including, but not limited to: price reductions, transportation and disposal costs, and contamination fees, all of which may include an amount for Contractor's operating and gross profit margin."

Example 3 (addressing inspection, standards rejected loads and sharing of information):

"The CONTRACTOR shall inspect each delivery of Program Recyclables at the Facility. The CONTRACTOR shall have the right to reject deliveries of materials which fail to meet the Acceptance Standards as provided herein (Attachment 4). Notwithstanding the Acceptance Standards set forth in Attachment 5, the CONTRACTOR may deem unacceptable any load which contains non-Program Recyclables comprising more than twenty-five percent (25%) of the load by weight or volume, whichever is more restrictive. The CONTRACTOR shall inform the City, Contract Hauler or entity delivering the Recyclable Material, as well as the Contract Administrator and the appropriate Contract Community by providing electronic pictures of the load clearly showing the level of contamination. Electronic mail addresses for the City contact, each Contract hauler and entity delivering Recyclable Material, appropriate Contract Community and for the Contract Administrator shall be provided to CONTRACTOR for notification purposes. The CONTRACTOR shall bill the City or Contract Hauler for the cost of handling, managing and disposing the contaminated load."

MRF Performance

Example 1 (timely processing of materials):

"Loose, unsorted materials shall be processed within 48 hours from receipt during normal business days, and with 72 hours following delivery on a Saturday or after a holiday."

Example 2 (general capacity):

"The MRF at all times shall have the material processing systems capable of receiving and processing recyclables to achieve the maximum product recovery rates."

Example 3 (minimum standards for MRF processing of recyclable):

“The contractor shall demonstrate to the City's satisfaction that it is recycling at least 95% of all Recyclable Materials collected under the contract. Disposal in landfill, incineration, and all other non-recycling uses of more than 5% of the Recyclable Material delivered under this contract is expressly prohibited and will constitute a substantial violation of the contract. Disposal of materials not identified as Recyclable Material under this contract will not count against the 5% limitations.

Example 4 (general performance and items of responsibility):

- “a) The Contractor shall use all reasonable effort to market and sell all Recovered Materials produced by the MRF. The disposal of materials at a resource recovery facility or landfill shall not be treated as marketing of such material.
- (b) The Contractor shall be responsible for all transport of Recovered Materials to markets and shall provide or cause to be provided sufficient rolling stock and storage containers to accomplish same.”

Example 5 (standards of performance):

“Residual Material - The Contractor shall achieve a high level of recovery from the stream of Recyclable Materials delivered. The MRF must operate with a minimum recovery of the materials that can be included in the above products identified in Section I-E. of 98.5%. That means that Residual Materials from the Facility cannot contain more than 1.5% of the designated Recoverable Materials in the delivered stream.”

Rejected Loads and Residue Disposal

Example 1 (costs/responsibilities around residue disposal):

“Residue Handling: City is responsible for hauling and disposing of its own residue. If it becomes no longer operationally or logistically feasible for the City to directly haul this residue due to changes at Contractor's site or the City's transfer station, City will be invoiced for charges associated with Contractor transporting and disposing of City's proportion of residue. “

Example 2 (costs/responsibilities around residue disposal):

“Contractor shall provide for the transportation and disposal, at its cost and expense, of all Residue generated by the MRF. The County shall reimburse the Contractor for demonstrated disposal costs of Residue up to 50% an amount equal to the disposal cost for ten percent (10 %) of incoming Program Material tonnage for the month. The Contractor shall submit the reimbursement request on its monthly invoice to the County. The reimbursement request shall be accompanied by appropriate weight receipts from the disposal facility. All such transportation and disposal shall be in accordance with all applicable permits and laws, ordinances, rules and regulations.”

Example 3 (costs/responsibilities around residue disposal):

“The Contractor shall provide for the transportation and disposal, at its cost and expense, of all residue generated by the MRF. The Entity shall reimburse the Contractor for these costs up to the technical standards described in Attachment XXX.”

Education and Outreach Support

Example 1 (Education fee and financial support):

“The Contractor shall pay the City a Public Education Fee of \$1.30 per incoming ton for each incoming ton of materials delivered by or on behalf of the City to the Delivery Facility and accepted by the Contractor. Incoming ton in the contract means the net tonnage reported at the scale house. No adjustments shall be made to incoming tons for shrinkage of materials during processing.”

Example 2 (Education fee and financial support):

“In support of the City’s public education efforts, payment will be made to the City by the Contractor in the amount of \$1.50 per ton of Recyclable Materials delivered to the processing facility, adjusted for contaminants according to the prevailing Recycling Stream Composition. The Contractor will be invoiced by the City following each calendar quarter for this payment in support of Public Education and Information.”

Example 3 (additional public education support):

“In addition to the Public Education Fee, Contractor shall provide the following public education support:

- (i) Develop a public education video specific to the City program and approved by the Contract Administrator;
- (ii) Participate in up to four (4) public education events/presentations per request of Contract Administrator per Contract Year; and
- (iii) Provide Processing Facility tours per request of Contract Administrator.”

Example 4 (MRF providing coordinator):

“Contractor will provide a full-time Education Coordinator at the MRF who will have the responsibility for scheduling and giving tours of the MRF to school children and other persons during the hours of operation of the MRF, and who may also be assigned other unrelated duties by the Contractor.”

Contingencies

Example 1:

“Within 60 days after the Term Contract commencement date, the Contractor shall submit to the County Administrative Agent a contingency plan that describes the standard operating procedures that will be implemented by the Contractor at the designated facilities in the event any of the facilities are suddenly and unexpectedly not able to perform the obligations of the Term Contract, such as being affected by a natural or man-made disaster or extreme weather event. The plan is subject to review and approval by the County's Administrative Agent.”

Example 2:

“Should the Contractor not be able to Process delivered Recyclable Waste at the daily rate to the MRF up to the Processing Guarantee, the Contractor is obligated to the following terms:

At the Contractor's sole cost and expense, the Contractor shall transfer Recyclable Waste to an alternative processing facility. Contractor agrees that all Recyclable Waste will be marketed for the purpose to turn Recyclable Waste into new products. Landfill, composting are not acceptable markets or destinations for the Recyclable Waste. The Contractor shall provide to the County a written copy of the Diversion Plan as part this RFP that will identify the alternative processing facility(ies) that may be used and the means of transferring Recyclable Waste to the facility(ies).”

Example 3:

“Force Majeure A. If the performance of any part of this Contract by CONTRACTOR is delayed or rendered impossible by reason of natural disaster, flood, fire, riot, explosion, war or actions or decrees of governmental bodies (a “Force Majeure Event”), CONTRACTOR shall immediately give notice to the ENTITY of the nature of such conditions and the extent of delay and shall do everything possible to resume performance. If the period of nonperformance exceeds twenty-one (21) days from the receipt of notice of the Force Majeure Event, the ENTITY may, by giving written notice, terminate this Contract. If the ability of the ENTITY to compensate the CONTRACTOR is delayed by reason of a Force Majeure Event, the ENTITY shall immediately give notice to the CONTRACTOR of the nature of such conditions and the expected date that compensation will be made.”

Reporting and Communications

Example 1:

“The contractor shall provide reports that document residential program recyclables received and processed, separate from non-County recyclables including location received, delivery date and time, vehicle number, material type, and quantity.”

Example 2:

“The Contractor shall provide documentation regarding:

- Deliveries by time delivered to Facility, tonnage of material delivered, unaccepted loads by weight and date collected, and other information as requested by City. A monthly and annual summary shall also be submitted to City.
- Characterization audit and other information as requested by City, including tonnages by commodity that align with invoice requirements. A monthly summary shall also be submitted to the City.
- Unaccepted loads by date, time delivered, and other information as requested by the City. A monthly and annual summary shall also be submitted to the City.
- Such other documents and reports as the City may reasonably require to verify compliance with the Contract or to meet City's reporting requirements and/or the planning needs. Detailed weekly and monthly reports shall also be submitted to City.

The report format shall be approved by the City. The Contractor shall submit all monthly reports to the City within five (5) calendar days following the end of each calendar month and all reports to the Contract Administrator within thirty (30) calendar days following the Contract year end. The Contractor shall submit all reports in electronic (e.g., Excel, delimited text files) or other format approved by the Contract Administrator. The Contractor must retain all records related to the Contract until the expiration of three (3) years after final payment under the Contract."

Example 3:

"The Contractor shall, on or before the fifteenth (15th) Day following the end of each month submit the following operating data to the County:

- (i) The weight of Program Recyclable Waste received at the MRF: accepted loads containing Recyclable Waste and rejected loads containing Recyclable Waste;
- (ii) The weight of Non-Program Recyclable Waste received at the MRF: accepted loads containing Recyclable Waste and rejected loads containing Recyclable Waste.
- (iii) The amount of Residue shipped from the MRF;
- (iv) A summary of Recovered Materials shipped from the MRF (the Commodity Revenue Schedule): such summary to include tons shipped, price per ton and total revenue for each product recovered;
- (v) Adjustments to the commodity revenue including revenue associated with Non-Program Recyclable Waste; and
- (vi) Adjustments to the invoice/report including reimbursable expenses, including Capital Repairs and Replacements.
- (vii) The Contractor shall include with the monthly submission a listing of published values for Recovered Materials as mutually agreed."

Example 4 (right of city to visit facility):

"The City shall have the right to have its representative present at any and all facilities to observe and monitor the Contractor's compliance with the Contract."