

**INTERLOCAL AGREEMENT BETWEEN BERRIEN COUNTY, CASS COUNTY, AND VAN BUREN COUNTY TO ESTABLISH A MULTICOUNTY MATERIALS MANAGEMENT PLAN, MATERIALS MANAGEMENT PLANNING COMMITTEE, AND DESIGNATE THE SOUTHWEST MICHIGAN REGIONAL PLANNING COMMISSION AS THE DESIGNATED PLANNING AGENCY FOR PLAN ADMINISTRATION**

Part 115 of Public Act 451 of 1994 (MCL 324.115 et seq) requires counties to form an interlocal agreement for the administration of multicounty materials management plans as of March 29, 2023. Accordingly, the following interlocal agreement (hereinafter “AGREEMENT”) has been executed by the Board of Commissioners of Berrien, Cass, and Van Buren Counties (hereinafter collectively as “COUNTIES”), and the Southwest Michigan Regional Planning Commission (hereinafter “SWMPC”). The COUNTIES and SWMPC are collectively referred to throughout this AGREEMENT as the “PARTIES.”

**RECITALS**

**WHEREAS**, The Michigan Constitution of 1963, Article 7, Section 28 permits a political subdivision to exercise jointly with any other political subdivision any power, privilege, or authority which such political subdivisions share in common with each other and which each might exercise separately;

**WHEREAS**, The Urban Cooperation Act of 1967, being MCL 124.505 et seq, and the Intergovernmental Transfer of Functions and Responsibilities Act, give effect to the Constitutional provision by providing that public agencies may enter into interlocal agreements to carry out their respective functions, powers and authority;

**WHEREAS**, Part 115 of P.A. 451 of 1994, being MCL 324.115 et seq, requires each County to have an approved Materials Management Plan regulate the disposition of solid wastes and waste diversion activities;

**WHEREAS**, Subpart 11 of Part 115 of P.A. 451 of 1994 requires each County Board of Commissioners, acting as County Approval Agency, to submit to the Department of Environment, Great Lakes, and Energy a Notice of Intent to prepare a Materials Management Plan;

**WHEREAS**, Subpart 11 of Part 115 of P.A. 451 of 1994 requires each County Approval Agency to enter into an AGREEMENT to develop a Multicounty Materials Management Plan, and designate the agency who will serve as the counties’ Designated Planning Agency; and

**WHEREAS**, Subpart 11 of Part 115 of P.A. 451 of 1994 allows for the establishment of a Multicounty Materials Management Planning Committee, consisting of representatives from within the planning area established by the Notice of Intent.

**NOW, THEREFORE**, in consideration of the terms of this AGREEMENT, the PARTIES agree as follows:

**1. PURPOSE**

The purpose of this AGREEMENT is to provide for the development, administration, and implementation of a Multicounty Materials Management Plan meeting the requirements of Subpart 11 of Part 115 of Public Act 451 of 1994 (MCL 324.11571 et seq) and approved by the Department of Environment, Great Lakes, and Energy. The COUNTIES propose that SWMPC serve as the Designated Planning Agency for the development, administration, and implementation of a Multicounty Materials Management Plan. This Multicounty Materials Management Plan will encompass a planning area containing all the municipalities of Berrien, Cass, and Van Buren Counties in the state of Michigan. The COUNTIES agree to file a joint Notice of Intent to the Department of Environment, Great Lakes, and Energy as the County Approval Agencies for each county, with the coordination of SWMPC.

**2. ADMINISTRATION OF AGREEMENT**

This AGREEMENT shall be administered by SWMPC on behalf of the COUNTIES.

**3. DESIGNATED PLANNING AGENCY RESPONSIBILITIES**

SWMPC, acting as the Designated Planning Agency for the COUNTIES, shall have all the responsibilities as outlined in MCL 324.11574 et seq, including, but not limited to:

- a. The preparation of a Multicounty Materials Management Plan for the planning area outlined in the AGREEMENT.
- b. The administration of a Materials Management Planning Committee composed of representatives serving the planning area. Such committee will develop a workplan for SWMPC for the approval of the Department of Environment, Great Lakes and Energy (EGLE), and direct SWMPC in the preparation of the Multicounty Materials Management Plan.
- c. The communication of vacancies on the Planning Committee to each county for the solicitation of nominations.
- d. The notification to the COUNTIES of required public notices, the retention of documents, the coordination of the Materials Management Planning Committee including per diem and mileage administration and distribution, communications to municipalities, and the requirements of a Materials Management Plan.
- e. Notifications to each County Approval Agency regarding Plan development, the meetings of the Planning Committee, and Planning Committee vacancies.
- f. Any additional items upon amendment of this Agreement.

**4. RESPONSIBILITIES OF BERRIEN, CASS, AND VAN BUREN COUNTY BOARDS OF COMMISSIONERS**

The COUNTIES of this AGREEMENT understand and agree that the planning area identified in this AGREEMENT will be required to meet the provisions outlined in MCL 324.115 et seq regarding the development and implementation of a Materials Management Plan coordinating the disposal, disposition, and diversion of solid wastes, recyclables, and compostable materials. The Materials Management Plan will outline the current capacity of existing facilities, develop goals to increase the utilization of potentially divertible materials, create a siting process for new facilities where local regulations are not applicable, and document an implementation strategy to meet the requirements of the law.

The COUNTIES in this AGREEMENT understand to utilize SWMPC as the Designated Planning Agency throughout the term of this AGREEMENT to provide the following:

- a. A current contact within each county for communication and submittals regarding the Materials Management Plan.
- b. Provide, within a reasonable time frame, all approvals, communications, and documentation required by the Materials Management Plan process.
- c. Copies of any applicable policies, procedures, or ordinances that the Designated Planning Agency may be subject to, and that may assist with the preparation and implementation of the Materials Management Plan.
- d. Facilitate the Designated Planning Agency’s solicitation of approvals of the legislative bodies of the municipalities within the planning area.

**5. MATERIALS MANAGEMENT PLANNING COMMITTEE**

There is hereby established a separate legal entity to be known as the “Southwest Michigan Materials Management Planning Committee” (hereinafter “Planning Committee”) for the purpose of creating and administering the Materials Management Plan for the planning area. The Materials Management Planning

Committee is a permanent public body subject to Public Act 267 of 1976, the “Open Meetings Act” (MCL 15.261 et seq).

The COUNTIES in this AGREEMENT understand and agree each county may make appointments of residents or representatives of agencies serving the planning area to the Planning Committee. To assist the COUNTIES in making such appointments, the SWMPC will accept applications from residents and representatives of agencies serving the planning area and make appointment recommendations to the individual COUNTIES.

The SWMPC will ensure that appointment recommendations reflect a geographic representation and equal share between counties when possible. The membership of the Planning Committee shall consist of the following nominated members:

- a.** A representative of a solid waste disposal facility operator that provides service in the planning area.
- b.** A representative of a hauler that provides service in the planning area.
- c.** A representative of a materials recovery facility operator that provides service in the planning area.
- d.** A representative of a composting facility or anaerobic digester operator that provides service in the planning area.
- e.** A representative of a waste diversion, reuse, or reduction facility operator that provides service in the planning area.
- f.** A representative of an environmental interest group that has members residing in the planning area.
- g.** An elected official of a township in the planning area.
- h.** An elected official of a city or village in the planning area.
- i.** A representative of a business that generates managed material in the planning area.
- j.** A representative of the regional planning agency whose territory includes the planning area.

Where an individual or representative of an agency recommended for appointment by the SWMPC resides within the respective county, that county shall make the appointment to the Planning Committee. That appointment may follow the procedures and requirements of the respective county. Initial appointments to the Planning Committee will consist of five-year terms.

When a vacancy on the Planning Committee occurs, SWMPC will notify the COUNTIES of the vacancy, and recommend the appointment of a representative that meets the requirements of the vacancy.

In addition, each county in the AGREEMENT shall appoint two members without SWMPC’s recommendation:

- 1.** An elected official of the county.
- 2.** A representative from a business that generates managed materials within the planning area.

These appointments will be required to complete the same application for the Planning Committee as all other applicants. Their applications will be passed through SWMPC to the county that the applicant serves or resides in. These applicants are subject to additional processes as determined by each County before being appointed.

The Planning Committee shall make and adopt bylaws and procedures for the conduct of its business, including the election of officers and the length of subsequent appointments meeting the provisions of MCL 324.11572. Per diems and mileage reimbursements for the Planning Committee Members will be distributed by SWMPC at the following rates: the highest per diem fee of the three Counties and mileage at the IRS standard mileage rate.

The Planning Committee will develop a Materials Management Plan meeting the provisions of MCL 324.11578 et seq and the requirements of the Department of Environment, Great Lakes, and Energy. Upon

the completion of the plan, the Planning Committee will submit the document to each County Board of Commissioners for approval.

**6. MATERIALS MANAGEMENT PLAN APPROVALS**

The COUNTIES in this AGREEMENT, acting in their capacity as County Approval Agencies, may approve or deny the Materials Management Plan. If approved, each county will submit its written approval or minutes of the meeting where a motion was passed to the Planning Committee, the Designated Planning Agency, and the other counties. If rejected, a county will communicate in writing its objection and any suggestions for changes to the Planning Committee, the Designated Planning Agency, and the other counties.

The COUNTIES in this AGREEMENT may initiate one or more amendments to the Materials Management Plan upon the approval of the Materials Management Planning Committee and the submission of a Notice of Intent to the Department of Environment, Great Lakes, and Energy by SWMPC. SWMPC will facilitate the amendment process and approvals.

**7. DESIGNATED PLANNING AGENCY COMPENSATION**

The COUNTIES in this AGREEMENT will pay for the reasonable costs incurred by the SWMPC in serving as the Designated Planning Agency, including, but not limited to, the costs of developing and administering the Materials Management Plan process, the administration and meetings of the Materials Management Planning Committee, and the ongoing implementation and reporting required by the Department of Environment, Great Lakes, and Energy. Compensation, including payment terms and fee structure, payment responsibility, cost reimbursement, as well as any other appropriate terms as provided in the attached contract. SWMPC has the right to request additional funding for work not outlined in the compensation structure (i.e. funding to facilitate plan amendment activities in a non-planning year).

**8. TERM**

Unless earlier terminated as provided herein, the term of this AGREEMENT will be three (3) years commencing from the date of its execution. The rights and privileges, together with all the other provisions of this AGREEMENT, will automatically continue in full force for five (5) additional periods of one year each from the date of expiration, unless either party gives notice to the others in writing at least sixty (60) days prior to the annual date of expiration that it does not desire the AGREEMENT to extend for an additional period.

**9. AMENDMENT**

The PARTIES may amend this AGREEMENT only by a written document signed by all parties.

**10. TERMINATION**

Any party may terminate this AGREEMENT, with or without cause, at any time upon sixty (60) days prior written notice to each other party. The COUNTIES of this AGREEMENT agree and understand that the termination of this AGREEMENT by one or more counties may disqualify the whole from meeting the requirements of MCL 324.115 et seq.

In the case of termination by one or more counties representing the minority of the whole, the terminating county(ies) understand(s) that they will assume all the responsibilities outlined in the AGREEMENT required by MCL 324.155 et seq. SWMPC reserves the right amend the compensation agreement to close any funding gap. SWMPC also reserves the right to not act as the Designated Planning Agency for a county no longer subject to this AGREEMENT.

**11. INDEMNIFICATION**

To the extent allowed by law, each County and the Southwest Michigan Planning Commission agree to indemnify, defend, and hold harmless the others from any and all claims, liabilities, judgements, costs, damages, expenses, and attorney fees that may arise from the performance under this AGREEMENT. This indemnification will survive the termination or expiration of this AGREEMENT. By entering into this AGREEMENT, the PARTIES do not waive any immunities provided by law.

**12. SEVERABILITY**

Each provision of this AGREEMENT must be interpreted in a way that is valid under applicable law. If any provision is held invalid, the rest of the AGREEMENT will remain in full effect.

**13. ENTIRE AGREEMENT**

This AGREEMENT and any addendums contain the entire understanding between the PARTIES.

**14. HEADINGS**

The headings preceding the paragraphs are inserted in this AGREEMENT for reference purposes only and must not be used to interpret this AGREEMENT.

IN WITNESS WHEREOF, the PARTIES have executed this AGREEMENT this 13th day of June, 2024.

\_\_\_\_\_  
Executive Director  
Southwest Michigan Planning Commission

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chair, Board of Commissioners  
Berrien County

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chair, Board of Commissioners  
Cass County

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chair, Board of Commissioners  
Van Buren County

\_\_\_\_\_  
Date