

# **INTERGOVERNMENTAL AGREEMENT BETWEEN THE VILLAGE OF AND WAUKESHA COUNTY**

## **Regarding the Municipal Recycling Dividend Program**

**THIS INTERGOVERNMENTAL AGREEMENT** (“Agreement”) is between the Village of Elm Grove (“Municipality”) and Waukesha County – Department of Parks and Land Use (“County”) a body corporate and politic. The Village of Elm Grove a [municipal corporation (Village”) and County may be referred to individually or collectively in the Agreement as the “Party” or “Parties” respectively.

### **RECITALS**

**WHEREAS**, since 1990, the County has served as a “Responsible Unit” (“RU”) for recycling under Chapter 287 Wisconsin Statutes for twenty-five (25) participating communities through a Resolution, including the Municipality;

**WHEREAS**, the public/private partnership at the County-owned Material Recovery Facility (“MRF”) in Waukesha has allowed the County to provide participating communities over \$12 million in tax relief (“dividend payments”) and numerous services at no cost, such as recyclable processing, public education programs, household recyclable containers, special event containers and regional recyclable drop-off boxes;

**WHEREAS**, between 2007 and 2012, a series of independent and joint studies were completed by both the County and the City of Milwaukee (“City”) to determine the best future path for recyclable processing to adapt to the industry trend of single sort collection and processing systems;

**WHEREAS**, in 2014, after completing a competitive joint request for proposal (RFP) process, the County and City executed an intergovernmental agreement and concurrent contracts with a private company to design, build and operate a Joint City/County MRF in Milwaukee (“Joint MRF”), which began processing single sort recyclables for both communities in March 2015;

**WHEREAS**, in 2021, the County and participating communities convened a Recycling Dividend Workgroup to discuss financial support for municipal recycling costs; and

**WHEREAS**, in accordance with the final recommendations of the Recycling Dividend Workgroup, a formulaic approach will be utilized in determining when dividend payments may be made to participating communities as financial support for municipal recycling costs, and when tipping fees may be charged to participating communities in order to maintain an appropriate MRF Fund Working Capital balance.

**NOW THEREFORE**, in consideration of these premises, the County, serving as the RU, and the Municipality, as a participating community, hereby agree as follows:

## **SECTION 1**

### **SERVICES BY THE MUNICIPALITY**

- a. Delivery of Recyclables to Joint MRF. The Municipality shall, through its solid waste collection contract, require: 1) all recyclables to be hauled directly to the Joint MRF located at 1401 W. Mount Vernon Ave, Milwaukee in accordance with Waukesha County Code of Ordinances; and 2) the Municipality's solid waste collector ("SWC") to coordinate with the City and the Joint MRF operator the delivery of recyclables to the Joint MRF at times that maximize efficiencies at the scale and tip floor and minimize traffic back-ups. In the event the Joint MRF is unable to accept recyclables, the Municipality will direct the SWC to deliver recyclable materials to an alternate location for a designated time, as directed by the County, at no additional cost to the Municipality through a contract between the County and the Municipality's SWC.
- b. Record Keeping and Reporting. The Municipality shall keep records and, through an Internet-based County reporting system, provide annual data required to complete DNR Recycling Grant application and annual reports in accordance with the Waukesha County Code of Ordinances. Additionally, the Municipality shall, through their solid waste collection contract, require their SWC to keep records, provide the necessary data and reports to the County, maintain compliance with applicable state or local codes, program rules, and to comply with the requirement for delivery of recyclables to the Joint MRF. This includes, but is not limited to, providing up-to-date information on haul routes, collection days, and contamination.
- c. Collection Contracts. The Municipality shall provide the County a current copy of their solid waste collection contract including any future amendments or contracts.
- d. Solid Waste Collection Contract Compliance Requirements. The Municipality shall attach and incorporate the attached Exhibit B into the terms of their solid waste collection contract, which describes the Municipality's solid waste and recycling hauler requirements contained in this Agreement.
- e. Responsible Contact. Municipality will designate an individual to serve as the Responsible Contact to receive recycling updates from the County and participate in the Recycling Dividend Workgroup as further defined in this Agreement.

## **SECTION 2**

### **SERVICES BY THE COUNTY**

- a. Educational Program Services. The County will provide educational program services in accordance with the requirements of an "effective recycling program" under Chapter NR 544 Wisconsin Administrative Code.

- b. Effective Recycling Program. The County will provide compliance assurance as required of an “effective recycling program” under Chapter NR 544 Wisconsin Administrative Code.
- c. Recycling Updates. The County will provide recycling updates, including but not limited to current contamination rates and current material sale rates. These updates shall be provided to the Municipality’s Responsible Contact every two months.
- d. Annual Planning and Implementation Meeting. The County will host an annual program planning and implementation meeting to provide a comprehensive program update to the Municipality.
- e. Components and Calculations. The County will annually provide a list of included components and a calculation for the additional recycling services and education partnership portions of the dividend.
- f. Recycling Dividend Workgroup. The Recycling Dividend Workgroup is composed of volunteer Responsible Contacts from participating communities. The County shall meet with the Recycling Dividend Workgroup as needed and will take into consideration any recommendations of the Recycling Dividend Workgroup on program elements.

### SECTION 3

#### PAYMENTS AND FEES

- a. Dividend Payments. Commencing in 2022, County will calculate dividend payments to Municipality for inclusion in the following budget if as of December 31<sup>st</sup> of the preceding year in which the dividend payment is to be calculated, (1) the MRF Fund’s Working Capital is above the cap set by the County and as further defined in Exhibit A, Section 1 and (2) the recycling program’s audited financial statements show a positive cash flow at the close of the Waukesha County fiscal year as verified in the County’s Annual Comprehensive Financial Report.
  - i. Working Capital is defined as the current assets minus the current liabilities, exclusive of the following: 1) Funds specifically reserved for equipment repairs or upgrades; 2) Grant funds received in excess of the state’s basic recycling grant; and 3) The recycling consolidation grant to Responsible Units.
  - ii. Positive cash flow is defined as the positive net change in Working Capital from the previous year.
- b. Tipping Fees. Tipping fees shall be charged to the Municipality if as of December 31<sup>st</sup> of the preceding year in which the tipping fee is calculated, the MRF Fund Working Capital is below the floor set by the County and as further defined in Exhibit A, Section 1. Municipality shall pay any tipping fees in accordance with the terms of this Agreement.

- c. Calculation of Dividend Payments and Tipping Fees. Any dividend payments or tipping fees shall be determined by County in accordance with Exhibit A, which is hereby incorporated into the terms of this Agreement.
  
- d. Timing of Payments and Fees. County will provide status updates regarding estimated dividend payments or tipping fees throughout the auditing and budgeting process. A final invoice if applicable will be issued by March 1 and final payments shall be made by April 1 in the year following the year in which the fee or payment was calculated. Illustration: Audited financials of 2021 are released May 1, 2022. These results are used to determine if there is a dividend payment or tipping fee and the total amount. Staff will calculate each participating community's dividend payment or tipping fee, communicate that to the Municipality, and incorporate it into the budget for the following year. By March 30, 2023 an invoice will be provided (if necessary) and payment will be made by April 1, 2023.

#### **SECTION 4**

#### **MISCELLANEOUS**

- a. Authority and Responsibilities. Nothing in this Agreement forfeits any RU rights and responsibilities of the County, or any other Municipality or County's rights or responsibilities under state or local laws. The County remains responsible for implementing a recycling education program for residents of the Municipality and for complying with other requirements of an "effective recycling program" under Chapter NR 544 Wisconsin Administrative Code.
  
- b. Responsible Contacts. Upon execution of this Agreement, the County, and the Municipality each shall designate in writing a primary person as a Responsible Contact to be responsible for carrying out the activities described in this Agreement.
  
- c. Review and Amendments. All changes to the main body of this Agreement shall be mutually agreed upon between the Parties and shall be in writing and designated as written amendments to this Agreement. The County has the authority to change the MRF Fund Working Capital cap and floor balances identified in Exhibit A upon providing twelve months' advance written notice of any changes to the Municipality.
  
- d. Effective Date and Term. Upon execution by both parties, this Agreement shall become effective on January 1, 2023, and shall remain in effect until January 1, 2030, unless otherwise terminated in writing by either party upon a one (1) year written notice to the other party. Termination of this Agreement does not alter the County's status as the Responsible Unit or the Municipality's responsibilities as a participating community in the Responsible Unit.

- e. Severability. If any clause, provision or section of this Agreement be declared invalid by any Court of competent jurisdiction, the invalidity of such clause, provision, or section shall not affect any of the remaining provisions of this Agreement.
- f. Notices. Any and all notices regarding termination of this Agreement shall be in writing and deemed served upon depositing same with the United States postal Services as “Certified Mail, Return Receipt Requested”,

Addressed to the Municipality at:

Village of Elm Grove  
Attn: Village Clerk  
13600 Juneau Boulevard  
Elm Grove, WI 53122

and to the County at:

Waukesha County  
Attn: Solid Waste Supervisor  
515 W Moreland Boulevard AC 260  
Waukesha, WI 53188

- g. Binding Agreement. This Agreement is binding upon the parties hereto and their respective successors and assigns.

WAUKESHA COUNTY:

By: \_\_\_\_\_ Date: \_\_\_\_\_

Dale R. Shaver, Director - Department of Parks and Land Use

VILLAGE OF ELM GROVE

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: Neil H. Palmer, Village President

Attest: \_\_\_\_\_

Sandee Policello, Clerk/Deputy Treasurer

## **EXHIBIT A**

### **Dividend Payment and Tipping Fee Formula**

#### **SECTION 1**

##### **MRF FUND WORKING CAPITAL**

The County will set the MRF Fund Working Capital cap and floor balances to be utilized in determining when a dividend payment or tipping fee will be issued. The County has identified the following minimum balances, excluding grant issued funds and segregated funds for equipment repair and maintenance and efficiency improvement, to be utilized in determining when a dividend payment or tipping fee will be issued:

Cap \$3,500,000.00

Floor \$3,100,000.00

The County has the authority to change the MRF Fund Working Capital cap and floor balances upon providing twelve months' advance written notice of any changes to the Municipality. Any changes to these balances will be based upon several factors including but not limited to market conditions, net commodity revenue, the analysis and recommendations of a third-party vendor and input from local subject matter experts.

#### **SECTION 2**

##### **DIVIDEND CALCULATION**

Dividend payments will be determined when (1) the MRF Fund Working Capital is above the cap identified in Section 1, and (2) the recycling program's audited financial statements of the preceding year show a positive cash flow as defined in Section 3(a) of the Agreement. The Dividend payment calculation will be determined by the County based on County's audited financial statements. This amount shall be divided between the participating communities in the Responsible Unit. The formula utilized by County to determine a Municipality's dividend payment will be based on the following considerations:

- 50% of the dividend will be based upon the proportion of the 5-year average of total eligible costs the Municipality paid for eligible recycling expenses.
- 35% of the dividend will be based upon the number of eligible households in a participating community as a proportion of the total number of eligible households in the program. Eligible households, as defined under Wisconsin Administrative Code NR Chapter 544.04(4), will be identified by the Municipality's January hauling invoice from the SWC or, if not available, according to the County's GIS system. A multiplier of 1, 1.2, 1.4, 1.6, 1.8, or 2 will also be incorporated based on the distance the Municipality is located from the Joint MRF with 1 being the nearest and 2 being the furthest in proximity to the Joint MRF.

- 7.5% of the dividend will be based upon additional recycling services Municipality provides for its residents or all County residents for a minimum of 12 months. In order to qualify, Municipality must provide evidence of said services that is satisfactory to the County. A list of qualifying services and the corresponding scores will be provided on an annual basis to the participating communities. The number of services provided and whether the services are provided to all County residents or the participating community's residents will earn the Municipality a score of 0, 0.5, 2, or 3. A numerical assignment of 3 represents the highest number of services provided.
- 7.5% of the dividend will be allocated based on education and outreach partnership opportunities in which a Municipality collaborates with the County. A list of qualifying opportunities and the corresponding scores will be provided on an annual basis to the participating communities. The number of services provided and whether the services are provided to all County residents or the municipalities' residents will earn Municipality a score of 0, 1, 2, or 3, with 3 being the highest number of qualifying opportunities.

Illustration: Municipality "Y" has a 5-year average of total eligible recycling costs of \$500,000 and the 5-year average of the total eligible recycling costs for all participating communities is \$7,000,000. Municipality "Y" has 4,760 eligible households and the total number of eligible households for all participating communities is 200,000. Municipality "Y" is located 38 miles away from the Joint MRF, earning a multiplier of 2 for its eligible household points. Municipality "Y" also provided additional services for all County residents earning an additional recycling services score of '2' and partnered on education and outreach with the County, earning an education and partnership score of '3'. The total number of additional service points for all participating communities is 14.5 and the total number for education and outreach partnership points is 20. In this illustration, the total dividend available to be divided is \$100,000. Accordingly, Municipality "Y" will receive the following: 1) 7.14% or \$3,570 for its 5-year average of total eligible recycling costs in proportion to the total eligible recycling costs for all participating communities; 2) 4.76% or \$1,666 for its eligible households in proportion to the total number of eligible households in all participating communities after factoring in the multiplier for proximity to the Joint MRF; 3) 13.79% or \$1,034 for additional recycling services; and 4) 15% or \$1,125 for education and outreach partnership opportunities. Therefore, Municipality "Y"'s total dividend payment, after taking into account all of the aforementioned considerations, would amount to \$7,395.

### **SECTION 3**

#### **TIPPING FEE CALCULATION**

Tipping Fees will be charged to the Municipality and Municipality agrees to pay same when (1) the MRF Fund Working Capital is below the floor identified in Section 1. The tipping fee calculation will be determined by the County based on the County's audited financial statements. This amount shall be divided between the participating communities in the Responsible Unit according to the following formula:

$$\text{Fee} = \text{EH} * [(\text{F}-\text{B}) / \text{TH}]$$

Whereas:

- EH = Number of eligible households in a municipality, as defined under Wisconsin Administrative Code NR Chapter 544.04(4), which will be identified by the Municipality's January hauling invoice from the SWC or, if not available, according to the County's GIS system
- F=MRF Fund Working Capital floor
- B=Balance of the MRF Fund Working Capital as defined by Section 3(a) of the Agreement and Exhibit A, Sec. 1
- TH = Total eligible households from all participating communities in the County's RU, as defined under Wisconsin Administrative Code NR Chapter 544.04(4), which will be identified by the municipalities' January invoices from the SWCs or, if not available, according to the County's GIS system.

## **EXHIBIT B**

### **Collection Contract Compliance Items Related to Waukesha County's Municipal Recycling Dividend Program**

The Contractor shall comply with the provisions below, which are required to maintain eligibility for payments from Waukesha County ("County") through an intergovernmental agreement (IGA) with [insert Municipality name] or Local Unit of Government ("LUG"). In case of conflict with other provisions of this Contract, this Exhibit shall prevail.

#### **A. Recycling Container Provisions**

1. Recycling Container Standards. All recycling containers shall be for single sort recycling and shall meet County standards for in-mold educational labeling, identifying recyclable and non-recyclable/hazardous materials. All containers shall have a 10-year warranty.
2. Distribution and Use of Recycling Containers. Contractor shall, by the dates specified in this Contract, distribute recycling containers to each household/unit served under this Contract. Contractor shall ensure these containers are only used for recycling. Contractor shall notify any non-complying household/unit at the time non-compliance is observed, and shall track and report a summary of non-compliance to the LUG monthly.
3. Distribution of Educational Materials. Contractor shall attach educational materials to the top of each recycling container upon delivery of the containers, as noted above. The educational materials will be provided to the Contractor by the County at no cost to the Contractor.
4. Contractor Report on Containers. Contractor shall provide the County an annual (calendar year) report by March 1 each year on the number and size(s) of recycling containers used within the LUG, including the number of households/units.

#### **B. Direct Haul Provisions**

1. Direct Haul. Contractor shall deliver all recyclable materials collected under this Contract to the Joint MRF at 1401 W. Mount Vernon Ave., Milwaukee, WI.
2. Delivery Protocol. Contractor shall coordinate delivery times with the City of Milwaukee and the Joint MRF operator (i.e., Republic Services) to maximize efficiencies at the truck scale and tip floor and minimize traffic back-ups. For all recyclable deliveries to the Joint MRF, Contractor shall comply with the County Protocol, which is subject to periodic updates to meet the stated intent.
3. Record Keeping and Reports. Contractor shall keep records and provide all requested data and reports to the County as needed to administer the IGA and maintain compliance with applicable state or local codes, program rules, and the protocol for delivery of recyclables to the Joint MRF. This includes, but is not limited to, providing up-to-date information on haul routes, collection days and times, and vehicles used to collect recyclables.
4. Alternate Processing. In the event the Joint MRF is unable to accept recyclables the Contractor shall deliver recyclable materials to an alternate location for a designated time, as directed by the County. [Note: Any additional transportation and processing costs will be covered by separate contract with the County or the Joint MRF operator.]