

VILLAGE OF ELM GROVE

Municipal Solid Waste and Recycling Contract

JOHNS DISPOSAL SERVICE INC.
and
VILLAGE OF ELM GROVE

2 **VILLAGE OF ELM GROVE/JOHNS DISPOSAL SERVICE INC.**
3 **SOLID WASTE, RECYCLABLES AND BULKY WASTE**
4 **COLLECTION & DISPOSAL CONTRACT**
5

6 **THIS CONTRACT (“Contract”)** is made and entered into this 19th day of December 2022, and
7 shall be effective on January 1st, 2023 by and between the Village of Elm Grove, a Wisconsin
8 municipality (hereinafter called “Village”) and Johns Disposal Service, Inc. (hereinafter called
9 “Contractor”).

10
11 **W I T N E S S E T H:**

12 **WHEREAS**, the Village recognizes that it is desirable that provisions be made for the
13 regular and efficient collection, disposal and processing of Solid Waste, Recyclables, Yard Waste
14 and Bulky Waste within the legal boundary limits of the Village; and,
15

16 **WHEREAS**, the Village desires that an independent contractor be utilized to perform
17 Solid Waste, Recyclables and Bulky Waste collection services within the legal boundary limits of
18 the Village and further desires to enter into a contract granting the Contractor the right to collect
19 Solid Waste, Recyclables and Bulky Waste from each Household Unit entitled to it within the
20 Village limits.
21

22 **NOW, THEREFORE**, in consideration of the premises set forth herein, and for other
23 good and valuable consideration, the receipt whereof is hereby acknowledged, the Village hereby
24 grants to Contractor and Contractor hereby accepts from Village, the right and obligation to
25 collect and dispose of residential Solid Waste, Recyclables and Bulky Waste accumulating in the
26 normal course within the legal boundary limits of the Village during the term hereof, subject to
27 the following limitations and conditions set forth herein.
28

29 1. **Definitions:** The following terms and definitions shall apply in the interpretation/
30 administration of this Contract:

31 **A. “Approved Container”** shall mean a thirty-two (32) gallon container to
32 be provided by the Customer at its sole expense for the deposit of Solid Waste to be used for
33 collection of Solid Waste by Contractor pursuant to this Contract.

34 **B. “Approved Recyclables Container”** shall mean a thirty-two (32)
35 gallon container to be provided by the Contractor to each Household Unit for the deposit of
36 Recyclables to be used for collection of Recyclables by Contractor pursuant to this Contract.

37 **C. “Bulky Waste”** means waste items that are larger than three (3) feet in
38 any dimension, and/or heavier than fifty (50) pounds in weight, and/or otherwise will not fit
39

40 within an Approved Container, thus too large or too bulky to be collected by Contractor as
41 part of its normal collection. Such items include, but are not necessarily limited to mattresses,
42 box springs, furniture (couches, chairs, tables, cabinets, dressers, etc.), appliances, bedding,
43 dismantled swing sets, plastic swimming pools, large toys, bicycles, fish aquariums, sofas,
44 chairs, tables, carpets (no longer than four feet in length and 12 inches in diameter), sinks,
45 laundry tubs, windows, doors, lawn mowers and snow throwers with no gas and oil in them,
46 lumber (if free of nails, bundled and tied with bundle no larger than 4 feet long by 18-inches
47 in diameter; loose construction materials are excluded), waste oil, automotive antifreeze, lead
48 acid batteries, tires [limited to 8 small vehicle tires (sedan, SUV, pickup trucks, etc.) per
49 home per year], extra garbage in cans or bags and extra recycling in bins or clear plastic bags
50 and other similar items provided all Bulky Waste items are placed at the road for collection
51 since Bulky Waste will not be collected up the driveway or at a Customer's garage.
52 Customers must call and schedule each Bulky Waste collection. Up to one time per year, a
53 Customer may dispose of one household electronic in place of multiple Bulky Waste items.

54 **D. "Village"** shall mean the Village of Elm Grove, a Wisconsin
55 municipality.

56 **E. "Contractor"** shall mean JOHNS DISPOSAL SERVICE, INC., a
57 Wisconsin corporation.

58 **F. "Customer"** shall mean an owner or occupant of a Household Unit.

59 **G. "Household Unit"** shall mean all single-family residences and multi-
60 family residential dwelling units up to four (4) units (including apartments and
61 condominiums). For purposes of this Contract, a single-family dwelling shall be counted as
62 one Household Unit, a two-family dwelling shall be counted as two Household Units, and so
63 on. Multi-family dwelling units of five (5) or more units, and businesses and other industrial
64 structures shall not be included within the scope of this Contract, unless by written approval
65 of Village.

66 **H. "Joint MRF or MRF"** shall mean the Waukesha County/ City of
67 Milwaukee Joint Material Recovery Facility (MRF) located at 1313 W. Mt. Vernon Avenue,
68 Milwaukee, Wisconsin 53233.

69 **I. "Multi-Family Dwelling"** shall mean a residential dwelling unit
70 consisting of five or more residential dwelling units. Multi-Family Dwelling Units shall not
71 be within the scope of this Contract, except as indicated in writing unless by approval of
72 Village.

73 **J. "Recyclables"** shall mean single stream recyclable materials including
74 plastics, glass containers, cardboard, newspaper, mixed paper, tin, steel and aluminum cans,
75 or other recyclable items as may be identified by Waukesha County from time to time.

76 **K. “Set-out Site”** means a safe and efficient site accessible to the
77 Contractor for the Customer’s placement of Approved Containers and Bulky Waste for
78 collection, with Approved Containers generally located anywhere on the driveway, typically
79 near the front of the garage or other easily identifiable area, but for all Bulky Waste solely
80 adjacent to the road edge.

81 **L. “Solid Waste”** shall mean nonhazardous municipal solid waste
82 materials generated in the normal and ordinary course by Household Units within the Village,
83 including garbage, refuse, trash, rubbish, and other discarded materials. The term “Solid
84 Waste” specifically excludes Unacceptable Waste or other types of materials which require
85 special handling and disposal. Household Units shall dispose of all Solid Waste in Approved
86 Containers.

87 **M. “Up-the-Drive Service”** means Collection of Solid Waste and
88 Recyclables using a vehicle that can be driven up a driveway without damaging pavement to
89 the Set-out Site location and whereby Contractor may empty Approved Containers by manual
90 means.

91 **N. “Unacceptable Waste”** means waste, other than Bulky Waste,
92 including (a) hazardous waste as defined per Wis. Stat. Sec. 289.01(12), biomedical waste,
93 paints, paint solvents, unemptied aerosol cans, compressed gas cylinders, chemicals, large
94 glass panes, ammunition of any type, dead animals, and firearms; (b) yard waste such as tree
95 debris, stumps, plants, cut grass, except bagged leaf collection where the Customer purchases
96 stickers directly from the Village;¹ (c) large engine parts, small engines containing oils or
97 fuels, (d) waste of which the acceptance and handling by Contractor would cause a violation
98 of any permit condition, legal or regulatory requirement, or would likely cause substantial
99 damage to Contractor's vehicles, equipment or facilities, or present a substantial danger to the
100 health or safety of the public or Contractor’s employees; and (e) waste which is or may be
101 prohibited from disposal at the applicable disposal site by local, federal or state law,
102 regulation, rule, code, ordinance, order, permit or permit condition.

103
104 2. **Term:** The term of this Contract shall commence January 1, 2023, (the “Commencement
105 Date”) and expire December 31, 2027 (the “Initial Term”). This Contract may be renewed
106 upon mutual agreement of the parties for an additional successive renewal term of five (5)
107 years (“Renewal Term”). Either party shall provide the other party with written notice via
108 Certified Mail, of its intent not to renew at least ninety (90) days, but no sooner than one

¹ Leaf Collection--Contractor shall provide leaf collection during the months of October, November and December at a price of \$1.00 per bag collected. The Contractor shall provide stickers sufficient for collection of leaves to the Village upon request. All bags shall be provided by the resident and placed curbside by Customer for collection. Each bag or stick bundle must be stickered.

109 hundred fifty (150) days, prior to the expiration of the Initial Term. (The “Initial Term” and
110 any “Renewal Term” are each referred to herein as the “Term”).

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112 3. **Scope of Work:** The work under this Contract shall consist of weekly collection by
113 Contractor of Solid Waste, Bulky Waste, and Recyclables generated in the normal and
114 ordinary course by Household Units within the Village (collectively, the “Collection
115 Services”). In the performance of the Services, Contractor shall also provide the supervision,
116 materials, vehicles and equipment necessary to complete the Collection Services in
117 accordance with the terms of this Contract and will not subcontract any work within the scope
118 of this Contract. Village agrees that it will not contract with any party for Collection Services
119 during the Term of this Contract, unless the Contractor consents in writing, a Force Majeure
120 Event occurs, or the Contract is within ten (10) months of termination. The scope of the
121 Collection Services to be provided by Contractor hereunder shall not be amended or modified
122 without the mutual written consent of the parties hereto. The Village hereby grants to
123 Contractor a license, and Contractor hereby accepts the obligation, to collect, transport and
124 dispose of all Solid Waste, Recyclables and Bulky Waste generated by Household Units
125 within the legal boundary limits of the Village as its legal limits may be modified from time
126 to time by annexation during the term of this Contract (collectively the “Collection
127 Services”).

128

129 4. **Solid Waste and Bulky Waste Collection:** Contractor shall collect Solid Waste that is
130 timely placed at the Set-out Site no later than 7:00 a.m. by Customers on the day of collection
131 which shall be Monday, Wednesday, and Thursday of each week unless a legal holiday falls
132 on that date in which case all collection shall occur on the next day except a Saturday or
133 Sunday. Contractor shall not begin actual collection before 7:00 a.m. and not continue past
134 6:00 p.m. unless authorized by the Village. All Solid Waste subject to collection by
135 Contractor pursuant to this Contract shall be placed in Customer-provided containers and
136 plastic bags which shall not exceed thirty-two (32) gallons in volume or have a gross weight
137 of greater than fifty (50) pounds. There shall not be any limit on the number of containers or
138 bags complying with these limitations. Bulky Waste shall be placed curbside or roadside for
139 collection and Customer shall contact Contractor in advance to arrange for all Bulky Waste
140 Collection. Bulky Waste Collection shall be limited to one collection per week per Household
141 Unit for a single or multiple items. Contractor shall not comingle Solid Waste from the
142 Village with Solid Waste from other municipalities, nor shall Contractor comingle Solid
143 Waste with Recyclables.

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145 5. **Equipment and Time of Pickup:** Solid Waste and Recyclables collection shall occur
146 between 7:00 a.m. and 6:00 p.m., on a weekly basis on the same day. Contractor's
147 vehicles/equipment shall be clearly marked with Contractor's name and shall be utilized in a
148 manner specified by the manufacturer of such equipment to minimize or to prevent the
149 blowing or scattering of any materials onto the public streets or properties adjacent thereto.
150 Any collections that must be cancelled due to inclement weather shall be collected on the
151 following business day. Any collections that were missed and were set out by 7 a.m. on day
152 of collection shall be collected at no additional cost within one business day following
153 notification of missed pick-up. When Contractor does not make a collection because of a
154 violation of this Contract by the Customer, Contractor shall promptly inform Customer by
155 means of a notice of non-collection posted at the Customer's property when and explaining
156 why a collection was not made. Contractor shall handle all containers with care and replace
157 them within 5 feet of the Set-out Site, upright and with lid on top.

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159 6. **Disposal of Solid Waste:** Contractor shall deliver all Solid Waste collected hereunder to
160 Contractor's designated disposal site, namely Orchard Ridge Landfill located at W124
161 N9355 Boundary Road, Menomonee Falls, WI 53051. Fees for disposal are included in the
162 rates set forth in Exhibit A which is incorporated and made a part of this Contract.

163

164 7. **Recyclables Collection:** Contractor shall collect Recyclables that are timely placed at the
165 Set-out Site no later than 7:00 a.m. by Customers on the day of collection. All Recyclables
166 subject to collection by Contractor pursuant to this Contract shall be placed in Approved
167 Recyclable Containers and any excess material may be placed in additional
168 containers/plastic bags that shall not exceed a size of thirty-two (32) gallons in volume or
169 have a gross weight of greater than fifty (50) pounds. The Contractor shall comply with the
170 provisions below, which are required to maintain eligibility for access to the Joint MRF,
171 pursuant to an intergovernmental agreement (IGA) between the Village and Waukesha
172 County. The purpose of the IGA is to provide County financial support to the Village, for
173 recycling containers and the direct haul of Recyclables to the Joint Village/County MRF in
174 Milwaukee ("Joint MRF").

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A. Approved Recyclables Container Provisions

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- i. **Container Standards.** All Approved Recyclables Containers shall be for single sort recyclables and shall meet County standards for in-mold labeling, identifying recyclable and non-recyclable/hazardous materials. All containers

- 182 shall have a ten (10) year warranty and shall remain the property of the
183 Contractor.
- 184 ii. Replacement Containers. In the event a Household Unit requires a
185 replacement Approved Recyclables Container due to theft, negligence or
186 damage beyond normal wear and tear, a fee of \$45 shall be charged directly
187 to the Customer by Contractor.
- 188 iii. Distribution and Use of Approved Recyclables Containers. If Contractor
189 observes any misuse of an Approved Recyclables Container by a Customer
190 then Contractor shall notify any such Customer at the time such misuse is
191 observed by posting a notice at the property, and shall track and report a
192 summary of non-compliance to the Village monthly.
- 193 iv. Distribution of Educational Materials. Contractor shall attach educational
194 materials to the top of each Approved Recyclables Container upon delivery
195 as noted above. The educational materials will be prepared with input from
196 the Village and provided by Contractor at no cost to the Village.
- 197 v. Contractor Report on Containers. Contractor shall provide Waukesha
198 County and the Village an annual (calendar year) report by February 1 each
199 year during the Term consisting of the number and size(s) of Approved
200 Recyclables Containers used within the Village, including the number of
201 Household Units that were provided two (2) 32-gallon Approved Recyclables
202 Containers.

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B. Direct Haul Provisions

- 205 i. Direct Haul. Contractor shall deliver all Recyclables collected by Contractor
206 pursuant to this Contract to the Joint MRF.
- 207 ii. Delivery Protocol. Contractor shall coordinate delivery times with the Joint
208 MRF operator (i.e., Republic Services) to maximize efficiencies at the truck
209 scale and tip floor and minimize traffic back-ups. For all Recyclable
210 deliveries to the Joint MRF pursuant to this Contract, Contractor shall
211 comply with County protocol, which is subject to periodic updates to meet
212 the stated intent.
- 213 iii. Record Keeping and Reports. Contractor shall keep records of its Recyclables
214 collection pursuant to this Contract and provide all requested data and reports
215 to the County, and a copy of same simultaneously to the Village as needed to
216 administer the IGA and maintain compliance with applicable state or local
217 codes, program rules, and the protocol for delivery of Recyclables to the

218 Joint MRF. This includes, but is not limited to, providing up-to-date
219 information on haul routes, collection days and times, and vehicles used to
220 collect Recyclables.

221 iv. Alternate Processing. Only in the event the Joint MRF is unable to accept
222 Recyclables, the Contractor shall deliver Recyclable materials to an alternate
223 location as directed by the County. Any additional transportation and
224 processing costs will be documented in detail, then submitted by Contractor
225 to the County; and paid to Contractor by the County.

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227 8. **Rates:** The monthly rates shall be set forth in Exhibit A.

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229 9. **Rate Adjustments:** The rates shall be increased annually on each anniversary of the
230 Commencement Date, beginning January 1, 2024. The rates in Exhibit A shall be increased
231 on an annual basis by the greater of either (a) three and one-half percent or (b) the Consumer
232 Price Index (Midwest, All Items – All Urban Wage Earners and Clerical Workers) as
233 described below

234 a. The CPI data compiled from the first half of the year and released in July/August
235 each year of the contract shall be used for calculation purposes.

236 b. Contractor's service rates will be adjusted annually based on changes in the
237 Consumer Price Index (CPI) and/or published fuel price indices over the prior
238 year, using weighted percentages of the following:

239 i. For the Collection, the breakdown shall be 90% CPI and 10% Fuel

240 ii. For Disposal, the breakdown shall be 100% CPI

241 The annual service fee adjustment will apply only to that portion of the total
242 fee associated with collection, transportation, and disposal of materials. The
243 annual service fee adjustment will not apply to the County/local mandated
244 landfill disposal fees or the State mandated landfill disposal surcharge.

245 c. The actual annual rate adjustment will be calculated as described below but
246 shall not exceed the maximum annual rate adjustment of 5%.

247 i. The method used to calculate the annual rate adjustment will depend
248 on whether the Contractor is utilizing a diesel-fueled fleet of trucks, or
249 a compressed natural gas fueled (CNG) fleet. If during the term of the
250 Contract, the Contractor converts its fleet fuel, the method of
251 calculating the annual rate adjustment will be changed on January 1st
252 of the year following the conversion

253 1. Diesel Fueled Fleets: The annual rate adjustment will be a
254 blended calculation comprised of the changes in the CPI and
255 fuel cost indices over the prior year, and computed as follows:
256 $\text{New Rate} = \text{Current Rate (CR)} + ((\text{CPI Adjustment} * X) + (\text{FC}$
257 $\text{adjustment} * Y))$

258 Where, X = 75% as provided in the Contractor's Proposal, Y =
259 25% as provided in the Contractor's Proposal and, X + Y must
260 equal 100% $CPI\ Adjustment = (((CPI2 - CPI1)/CPI1) * X) * CR$
261 CR)

262 Where, CPI = Consumer Price Index for Midwest Area, All
263 Items
264 =All Urban Wage Earners and Clerical Workers, published by
265 the US Department of Labor, Department of Labor Statistics.
266 CPI1 = published CPI average for the first half of the prior year
267 CPI2 = published CPI average for the first half of the current
268 year

269 FIPd = Fuel Price Index for Diesel Fuel

270 $FIP = (((FIPx2 - FIPx1)/FIPx1)$

271 Where, FIPd1= average published monthly diesel price from
272 July through June of the year prior

273 FIPd2= average published monthly diesel price from July
274 through June of the most current 12 months.

275 The FIPd shall be based on the Diesel Fuel Price Index for
276 Midwest (PADD 2) No. 2 Diesel Ultra Low Sulfur (0-15ppm)
277 Retail Prices (Cents per Gallon published indices, from the
278 U.S. Department of Energy, Energy Information
279 Administration

280 2. Compressed Natural Gas (CNG) Fueled Fleet

281 The annual rate adjustment will be solely a function of the
282 change in the CPI over the prior year, and shall be calculated as
283 follows:

284 $New\ Rate = Current\ Rate\ (CR) + (CPI\ Adjustment)$

285 $CPI\ Adjustment = (((CPI2 - CPI1)/CPI1) * CR)$

286 Where, CPI = Consumer Price Index for the Midwest Area, All
287 Items

288 =All Urban Wage Earners and Clerical Workers, published by
289 the US Department of Labor, Department of Labor Statistics.

290 CPI1 = published CPI average for the first half of the current
291 year

292 CPI2 = published CPI average for the first half of the prior year

293 The rates charged by Contractor shall further be changed on a pro-rata basis to reflect any
294 changes in costs actually incurred by Contractor due to any change or interpretation in law,
295 rule, or regulation, which increases shall be evidenced by documentation provided by
296 Contractor to the Village in support of any request made. However no generator taxes/fees,
297 administration fees, fuel surcharges or environmental fee will be added to the rates detailed
298 in Exhibit A. In the event that there are any governmental imposed or increased landfill
299 taxes or fee instituted after September 20, 2022, they will be the responsibility of the

300 Village. The rates set forth may be decreased on a pro-rata basis to reflect any decreased
301 costs due to any change or interpretation in law, rule or regulation, which decreases costs
302 must be evidenced by documentation provided by Contractor to the Village or vice versa.

303 IT IS RECOMMENDED THAT THE AN EXAMPLE OF THE APPLICATION OF THE
304 ABOVE FORMULAS BE INSERTED TO AVOID CONFUSION IN THE
305 INTERPRETATION OF HOW THE FORMULAS ARE TO BE APPLIED.

306

307 10. **Contractor Provided Approved Recyclables Containers:** Contractor initially provided
308 one (1) 32-gallon Approved Recyclables Container to each Household Unit within the
309 Village. A second Approved Recycling Container will be provided to a Household Unit
310 upon request by the Village at the cost of forty-five dollars (\$45) per Approved Recyclable
311 Container to be paid for by resident. Contractor will replace, without cost, any Approved
312 Recyclables Container damaged by Contractor in conjunction with the collection process.
313 Any Approved Recyclable Container damaged by a Customer beyond normal wear and tear,
314 or lost, stolen, or otherwise rendered unusable, will be replaced by Contractor and the
315 replacement cost will be charged directly by Contractor and paid by the resident at a cost of
316 forty-five dollars (\$45) per Approved Recyclable Container. All Approved Recyclable
317 Containers furnished by Contractor for use by Customers shall, while in the possession and
318 control of the Customer, remain the property of Contractor, and neither the Customer nor the
319 Village shall have any ownership rights to such Approved Recyclables Containers.
320 Customers shall use the Approved Recyclables Containers only for the purpose for which
321 they are intended and shall not make any alterations or improvements thereto.

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323

324 12. **Collection at Municipal Sites:** Contractor shall provide Collection Services for municipal
325 buildings and facilities at designated sites as scheduled without charge to the Village as
326 listed in Exhibit B. Contractor shall provide Approved Recyclables Containers and
327 dumpsters as appropriate in sufficient number and capacity to contain Solid Waste and
328 Recyclables until collected. (1) 20-yard Dumpster (\$172.50 per pull); (1) 40-yard Dumpster
329 (yard waste); (\$172.50 per pull); (1) 40-yard Dumpster (40 weeks-Fall) (\$172.50 per pull);
330 (1) 8-yard Refuse Dumpster, weekly (included -no charge); (1) 8-yard Recycle Dumpster,
331 weekly (included at no charge).

Container Size	Qty	Material	Frequency	Cost (per pull)
20-yard open top roll-off	1	Municipal Solid Waste	On-call	\$172.50
40-yard open top roll-off	1	Yard Waste	On-call	\$172.50

40-yard open top roll-off (seasonal)	1	Yard Waste	On-call	\$172.50
8-yard dumpster	1	Municipal Solid Waste	Weekly	No charge
8-yard dumpster	1	Single Stream Recycling	Weekly	No charge

332

333 **13. Payment to Contractor:** Contractor shall submit invoices directly to the Village monthly
334 for services rendered hereunder for the prior month based on the number of Household
335 Units, Approved Recyclables Containers and tonnage of Solid Waste collected and disposed
336 of within the Village. On a monthly basis, the Village shall notify Contractor of any new or
337 removed Household Units within the Village. At any time during the Term, either party may
338 request a physical Household Unit Count (but no more frequent than once each calendar
339 year) whereby representatives from both the Village and the Contractor shall jointly conduct
340 a physical count of the number of Household Units and the number of Approved
341 Recyclables Containers in the Village. In the event of any dispute concerning the number of
342 Household Units, a joint physical count of the number of Household Units shall prevail. All
343 Household Unit Counts shall be effective prospectively and shall not be effective
344 retrospectively. The Village shall pay Contractor the amount invoiced less any disputed
345 amount within forty-five (45) days after the date of Contractor's invoice. Additional services
346 requested by a Customer (such as a chargeable call back collection, collection of materials
347 not included in this contract, or rental of a dumpster) shall be arranged and billed directly to
348 the Customer and not to the Village.

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350 **14. Service Issues:** The Contractor will answer complaints or questions from the public
351 concerning service issues. As such, Contractor shall provide a live operator and telephone
352 answering service from 8:00 a.m. until 4:30 p.m. Monday through Friday, excluding
353 holidays, for the purpose of receiving complaints and other calls regarding Collection
354 Services provided by Contractor. The Contractor shall act upon all reasonable and valid
355 complaints as soon as feasible but no later than forty-eight (48) hours of receipt of the
356 complaint by Contractor. Contractor will collect missed material the same day if the
357 complaint is received by noon, otherwise missed material will be collected the next Business
358 Day. Saturdays and Sundays shall ordinarily not be considered Business Days in this
359 Contract.

360 Contractor shall log all problems and track same within its GPS tracking system. Contractor
361 shall provide problem related data within its GPS tracking system on a quarterly basis to the
362 Village Manager or as may be otherwise requested in an effort by the Village to assess a
363 problem or investigate a complaint. Contractor shall clean up litter when caused by debris

364 not being placed appropriately and securely within the Contractor's equipment. Contractor
365 will prevent oil, hydraulic fluid, paint or other liquid from leaking out of vehicles.
366 Contractor will clean up leaked fluids with absorbent materials, remove same from the
367 ground and apply cleaning agents to soiled surface.

368

369 15. **Licenses and Permits:** The Contractor shall obtain and keep current all licenses and permits
370 required by applicable law prior to the Commencement Date for the performance of the
371 services contemplated herein. Any increases in the costs of such licenses and permits, or the
372 cost of any newly required license or permit during the course of this Contract will be the
373 pro-rata financial responsibility of the Village as compared to other municipalities where
374 such license(s) or permit(s) are needed by Contractor to perform services and will be billed
375 by Contractor as incurred.

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377 16. **Indemnification and Insurance:** The Contractor shall at all times during the Contract
378 maintain in full force and effect Worker's Compensation, Automobile/Vehicle Liability, and
379 Commercial General Liability and Pollution insurance. The Contractor shall furnish to the
380 Village declarations of insurance and all required endorsements evidencing that coverage for
381 the Village and its officers and agents is on a primary, non-recourse basis and that such
382 insurance has been procured and is in force.

383 For the purpose of this Contract, the Contractor shall carry the following types of insurance
384 in at least the limits specified below:

385

386 a) Commercial general liability and pollution insurance with a limit of not less than
387 the greater of (i) \$1,000,000 per occurrence and \$2,000,000 general aggregate.

388 b) Vehicle liability insurance, including coverage for owned, non-owned and hired
389 vehicles, with a combined single limit of not less than the greater of \$1,000,000
390 and containing the broad form pollution endorsement.

391 c) Worker's compensation insurance in the amount of state and federal statutory
392 requirements; and

393 d) Excess Umbrella Liability coverage with a limit of not less than \$5,000,000.

394 Contractor shall cause the Village, its elected and appointed officials, officers, employees,
395 and authorized representatives, to be named as an additional insured on the Commercial
396 General Liability Policy, excess liability policy, and the Automobile/Vehicle Policy. All

397 insurance contracts to be procured and maintained by Contractor pursuant to this Contract
398 shall be written with a carrier whose A.M. Best rating is not less than A+. Prior to
399 commencement of Contractor's Services, Contractor shall provide Village with proof of
400 insurance and endorsements evidencing the same. Coverage shall be written on a primary
401 and non-contributory basis. Waivers of subrogation in favor of the Village must be endorsed
402 on the Contractor's coverages for all insurance required and provided to the Village. All
403 insurance policies shall be endorsed to provide the Village with 30 days' notice of
404 cancellation of insurance and 10 days' notice of non-renewal.

405 A. To the fullest extent allowable by law, Contractor hereby indemnifies and shall
406 defend and hold harmless ("Indemnity Provision") the Village, its elected and appointed
407 officials, officers, employees, authorized representatives, and authorized volunteers and each
408 of them from and against any and all suits, actions, legal or administrative proceedings,
409 claims, demands, damages, liabilities, interest, attorneys' fees, costs, and expenses of
410 whatsoever kind or nature whether arising before, during, or after completion of the work
411 hereunder and in any manner directly or indirectly caused, occasioned, or contributed to in
412 whole or in part or claimed to be caused, occasioned, or contributed to in whole or in part,
413 by reason of any act, omission, fault, or negligence, whether active or passive, of Contractor
414 or of anyone acting under its direction or control or on its behalf in connection with or
415 incident to the performance of this Contract. Contractor's aforesaid indemnity and hold
416 harmless agreement shall not be applicable to any liability caused by the sole fault, sole
417 negligence, or willful misconduct of the Village, its elected and appointed officials, officers,
418 employees or authorized representatives, or authorized volunteers. This Indemnity provision
419 shall survive the termination or expiration of this Contract.

420 Contractor shall hold Village harmless from any and all claims and liability whatsoever due
421 to the collection and disposal of any materials under this Contract at any site used by the
422 Contractor, including, but not limited to, liability under the Comprehensive Environmental
423 Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. §9601 et seq.,
424 and any amendments thereto. In the event any claim is made against the Village by reason
425 of such collection or disposal, the Contractor shall promptly cause such claims to be resisted
426 or paid and shall indemnify the Village against any loss whatsoever.

427 In any and all claims against the Village, its elected and appointed officials, officers,
428 employees or authorized representatives, or authorized volunteers by an employee of
429 Contractor, any subcontractor, or anyone for whose acts any of them may be liable, the
430 indemnification obligation under this paragraph shall not be limited in any way by any

431 limitation on the amount or type of damages, compensation, or benefits payable by or for the
432 Contractor or any subcontractor under worker's compensation, disability benefit, or other
433 employee benefit laws.

434 No part of this Indemnity Provision shall give rise to any duties not otherwise provided for
435 by this Contract or by operation of law. No part of this Indemnity Provision shall be
436 construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity
437 that would otherwise exist as to the Village, its elected and appointed officials, officers,
438 employees, authorized representatives, or authorized volunteers under this Contract or any
439 other contract. This clause is to be read in conjunction with all other indemnity provisions
440 contained in this Contract. Any conflict or ambiguity arising between any indemnity
441 provisions in this Contract shall be construed in favor of indemnified parties except when
442 such interpretation would violate the laws of Wisconsin.

443 Contractor shall reimburse the Village, its elected and appointed officials, officers,
444 employees, authorized representatives, and authorized volunteers for any and all legal
445 expenses and costs incurred by each of them in connection therewith or in enforcing the
446 indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to
447 insurance proceeds, if any received by the Village, its elected and appointed officials,
448 officers, employees, authorized representatives, or authorized volunteers.

449 B. Village agrees to indemnify, defend, and hold harmless Contractor and its
450 subcontractors, consultants, agents, directors, and employees from and against all claims,
451 suits, damages, and losses, including, but not limited to, those claims, suits, damages, or
452 losses caused or arising out of, relating to, or based upon the sole fault, sole negligence, or
453 willful misconduct conduct of the Village in connection with or incident to the performance
454 of this Contract.

455 C. Nothing contained within this Contract is intended to be a waiver or estoppel of
456 the Village or its insurer to rely upon the limitations, defenses, and immunities contained
457 within Wisconsin Statutes Sections 893.80, 895.52, and 345.05. To the extent that
458 indemnification is available and enforceable, the Village or its insurer shall not be liable in
459 indemnity, contribution, or otherwise for an amount greater than the limits of liability for
460 municipal claims established by Wisconsin law.

461 17. **Independent Contractor:** Contractor is in all respects an independent contractor and is in
462 no respect an agent, servant, or employee of the Village.

463

- 464 18. **Legal Holidays:** The following legal holidays shall be observed by the Contractor
465 (“Holiday”): New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving
466 Day, and Christmas Day. If a Holiday falls on the normally scheduled collection day, the
467 Contractor shall provide Collection Services one day later for each of the normally
468 scheduled collection days remaining in that week, including Saturday.
469
- 470 19. **Force Majeure:** If, and to the extent Contractor is precluded from performing its duties and
471 obligations under this Contract as the result of an Act of God, authority of laws, riots, or
472 other causes beyond its control (a “Force Majeure Event”), Contractor shall be excused to
473 the extent that its performance continues to be precluded by such acts and shall not be
474 considered in default. Contractor shall work with the Village to work around a Force
475 Majeure Event and shall resume its duties and obligations as soon as possible following
476 cessation of the Force Majeure Event.
477
- 478 20. **Amendments:** This Contract constitutes the entire agreement of the parties regarding the
479 subject matter hereof and may be amended or modified only by written agreement signed by
480 both parties.
481
- 482 21. **Notices:** All notices or other communication to be given hereunder shall be in writing and
483 shall be deemed given when mailed by United States Certified Mail, addressed to:
- 484 If to the Village:
485 Village of Elm Grove
486 Village Clerk
487 13600 Juneau Boulevard
488 Elm Grove, WI 53122
489
- 490 If to the Contractor:
491 Johns Disposal Service, Inc.
492 Municipal Account Manager
493 107 County Road U
494 Whitewater, WI 53190
495
496
- 497 22. **Default:** The occurrence of any of the following shall constitute a default (“Default”) by
498 Contractor.
- 499 1. Contractor’s failure to adequately and timely perform or deliver the required
500 Collection Services;
501 2. Contractor becomes insolvent or does not or cannot pay or admits in writing
502 to its inability to pay its debts as they mature;

- 503 3. Contractor makes an assignment for the benefit of creditors or to an agent
504 authorized to liquidate any substantial amount of assets;
- 505 4. Contractor becomes the subject of an “order for relief” within the meaning of
506 the United States Bankruptcy Code or files a petition in bankruptcy, for
507 reorganization, or to affect a plan or other arrangement with creditors;
- 508 5. Contractor has a petition or application filed against it in bankruptcy or any
509 similar proceeding or has such a proceeding commenced against it, and such
510 petition, application, or proceeding shall remain undismissed for a period of
511 ninety (90) days or the Contractor files an answer to such petition or
512 application, admitting the material allegations thereof;
- 513 6. Contractor applies to a court for the appointment of a receiver or custodian
514 for any of its assets or properties or has a receiver or custodian appointed for
515 any of its assets or properties, with or without consent, and such receiver
516 shall not be discharged within ninety (90) days after his appointment;
- 517 7. Contractor adopts a plan of complete liquidation of its assets;
- 518 8. Contractor makes a material misrepresentation to Village;
- 519 9. Contractor fails to perform any material provision of this Contract.

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521 The occurrence of any of the following shall constitute a default by Village:

- 522 1. Village makes a material misrepresentation to Contractor;
- 523 2. Village fails to perform any material provision of this Contract.

524

525 If either party Defaults in this Contract for thirty (30) days after the other party has given the
526 party breaching or defaulting written notice of such breach or default, unless a longer period
527 of time is required to cure such breach or default and the party breaching or defaulting shall
528 have commenced to cure such breach or default within said period and pursues diligently to
529 the completion thereof, any non-breaching or defaulting party may: (i) terminate this
530 Contract; (ii) bring an action for specific performance; or (iii) bring an action for money
531 damages. No remedy is intended to be exclusive of any other remedy but each and every
532 such remedy shall be cumulative. Specifically excluded from both parties’ right to any
533 damages is incidental, consequential, indirect or punitive damages.

534

- 535 23. **Dispute Resolution**. The parties agree to participate in good faith to resolve any dispute,
536 claim or controversy (“Disputes”) arising out of or relating to this Contract. If the Dispute is
537 not resolved by negotiation it shall be resolved in Wisconsin Circuit Court, Waukesha

538 County. The laws of the State of Wisconsin shall apply to any dispute and the parties
539 stipulate that venue is appropriate in Waukesha County.

540

541 24. **Attorney's Fees:** In the event that either party find it necessary to commence an action
542 against the other party to enforce any provisions of this Contract or because of a breach by
543 the other party of any of the terms hereof, the prevailing party shall be entitled to recover
544 from the other party, its reasonable attorney's fees and other costs incurred in connection
545 therewith, at both trial and appellate levels and the right to such reasonable attorney's fees
546 and costs shall be deemed to have accrued from the commencement of such action and shall
547 be enforceable whether or not such action is prosecuted to judgment.

548

549 25. **Reports.** Contractor shall prepare and submit monthly reports consisting of a summation of
550 the amount of Solid Waste, Recyclables, and Bulky Wastes are collected pursuant to this
551 Contract. Reports shall also include a Summary of Customer issues / complaints reported
552 during the period along with the resolution of such issue.

553

554 26. **Miscellaneous:**

555 A. **Applicable Law.** This Contract is to be construed according to the statutes and
556 laws of the State of Wisconsin.

557 B. **Severability.** If any term, covenant, condition or provision of this Contract shall be
558 construed to be illegal, invalid or unenforceable, the remainder of this Contract
559 shall not be affected thereby, and the illegal, invalid or unenforceable term,
560 covenant, condition or provision shall be deemed stricken and deleted herefrom to
561 the same extent and effect as if never incorporated herein, but all other terms,
562 covenants, conditions or provisions of this Contract shall continue in full force and
563 effect.

564 C. **Assignment.** This contract is not assignable by the Contractor.

565

566 **IN WITNESS WHEREOF**, the parties hereto have caused this Contract to be executed
567 on the day and year first above written.

568
569 **The Village of Elm Grove**
570 **a Wisconsin municipality**

571
572 By: _____

573 Date: _____

574 Printed: Neil H. Palmer, Village President

575
576 ATTEST:
577

578 By: _____,

579 Date: _____

580 Printed: Sandee Policello, Village Clerk

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584 **Johns Disposal Service, Inc.**

585

586 By _____

587 Date: _____

588 Municipal Account Manager _____

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EXHIBIT A

	\$/Collection Rate/Household/Month
Trash (incl bulk)	\$9.75
Bulky Waste	\$1.00
Recycling	\$8.65
Total	\$19.40

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Municipal Solid Waste Disposal Pricing

Year	Amount Subject To CPI	County/Local Fees	State Tipping Fee	Total
2023	\$36.00	n/a	\$13.00	\$49.00
2024	TBD			
2025	TBD			
2026	TBD			
2027	TBD			

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* County / Local Fees and State Tipping Fee are subject to change. Village shall pay Contractor actual Fee if this should change.

Leaf Bag Collection \$1.00 per sticker one sticker per bag.

If Contractor fails to perform the services identified in this Contract, the following monetary penalties can be applied and deducted from the monthly invoice.

Performance Standard	Monetary Penalty
Failure to respond to Customers' complaint(s) within the specified time frame.	\$25 per occurrence per day
Chronic service failures - three (3) or more instances of the same or similar problem at the same service address within any ninety (90) day period.	\$150 upon the 3rd occurrence; \$50 per occurrence thereafter
Failure to clean spillage or leakage (oil, hydraulic fluid, Solid Waste, Recyclables, etc.) within one business day of Village notification.	\$100 per occurrence.
Failure to provide, repair or replace an Approved Recyclables Container within five (5) business days of notification.	\$100 per occurrence

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EXHIBIT B

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MUNICIPAL SITES COLLECTION & DISPOSAL (DUMPSTER) SERVICES

Item	Location	Refuse Size & Quantity	Refuse Collection Frequency	Recycle Size & Quantity	Recycle Collection Frequency
1	900 Wall Street	20 yd	As needed		
2	13600 Juneau Boulevard	8yd	Weekly	8 yd	weekly
3	900 Wall Street			40 yd	Yard waste as needed
4	900 Wall Street			40 yd	As needed
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EXHIBIT C

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Emergency Services (as needed)

Contractor shall provide 40-yard containers for either Solid Waste or Recyclables at the Village’s Public Works Building or other areas in the Village based on mutual agreement for usage. Fees for such service are as identified below and subject to rate adjustments identified in this contract:

- \$172.50 per haul (tonnage not included); disposal fee shall be the same as charged for the collection services.

Extra personnel can be provided for collection and beyond in an Emergency for additional roadside collections (downed trees, floods, etc.) at the following rates and subject to rate adjustments identified in this contract:

- One-man Crew \$ 150.00 / hr.
- Two-man crew \$ 250.00 / hr.

In the event the Village would need to or elect to haul material directly to a landfill identified in this contract, disposal rate would be the rate identified per ton subject to rate adjustments identified in this contract.