

COUNTY/MUNICIPAL RECYCLING AGREEMENT

AN AGREEMENT, made and entered into by and between Waupaca County, a Wisconsin municipal corporation, hereinafter designated as "County" and the Town of Farmington, a Wisconsin municipal corporation, hereinafter designated as "Municipality".

RECITALS

WHEREAS, 1989 Wisconsin Act 335, effective May 11, 1990, has as a stated goal to reduce the amount of solid waste as presently being landfilled by the development of programs that reduce, reuse and recycle waste; and,

WHEREAS, 1989 Wisconsin Act 335 requires that each municipality be under an effective recycling program as outlined by the Act; and,

WHEREAS, a County may become the "Responsible Unit" for the development and implementation of an effective recycling program by adoption of a County enabling resolution or by designation under an agreement with a municipality; and,

WHEREAS, the County adopted an enabling resolution effective June 18, 1991, designating the County as the "Responsible Unit" as defined within 1989 Wisconsin Act 335; and,

WHEREAS, governmental bodies are authorized to enter into mutual agreements under the provisions of Section 66.30 of Wisconsin Statutes; and,

WHEREAS, the parties to this agreement seek to act for their commercial benefit and for the health, safety and welfare of their citizens, deem it to be in their mutual interests to join together to form an intergovernmental County Recycling Program for the collection, transportation, and processing of recyclable materials.

NOW, THEREFORE, for and in consideration of the benefits, covenants, and agreements set forth in this agreement, the parties hereby agree as follows:

ARTICLE I Parties

1. County. Waupaca County is a Wisconsin municipal corporation, which has created a Solid Waste Management Board pursuant to Section 59.07(135) of Wisconsin Statutes. The Waupaca County Solid Waste Management Board shall be the responsible agency of the County to carry out the terms and responsibilities of the County under this agreement. The mailing address of the Board is 811 Harding Street, Waupaca, WI 54981-2075.
2. Municipality. The Town of Farmington is a Wisconsin municipal corporation, with mailing address of Town of Farmington, c/o Town Clerk, Waupaca, Wisconsin, 54981.

ARTICLE II

Purpose

1. Purpose. The purpose of this agreement is to designate by agreement pursuant to Section 66.30 of Wisconsin Statutes, Waupaca County as the Responsible Unit under Section 159.09(1)(d) of Wisconsin Statutes for the Municipality. Further to establish by this agreement the responsibilities of each party to fulfill the requirements of 1989 Wisconsin Act 335 in planning, developing, implementing and operating an effective recycling program within the Municipality.

ARTICLE III

Term/Amendment

1. The term of this agreement shall be for ten years. At the expiration of 10 years the parties may terminate or continue the agreement for a mutually agreed upon length of time. In the event the agreement is not continued the Municipalities will become the responsible unit.
2. This initial agreement shall be further amended and/or supplemented, as agreed upon in writing by both parties, so as to implement the County's effective recycling program to and for the benefit of the parties, and so as to comply with Chapter 159 in force and effect or as hereafter amended.
3. The terms of this agreement and amendments and/or supplements, shall be in compliance under Chapter 159 of Wisconsin Statutes.

ARTICLE IV

Duties of the County

1. The County as the designated "Responsible Unit" for the Municipality agrees to do the following:
 - (a) Develop, implement and operate a program to manage recyclable materials generated within the Municipality in cooperation with the Municipality in compliance with the terms, conditions, obligations, requirements and priorities as set forth under Chapter 159 of Wisconsin Statutes.
 - (b) Submit to the Wisconsin Department of Natural Resources on or before January 1, 1993, a Report setting forth how the County intends to implement the effective recycling program. The Report shall specify, at a minimum, the following:
 - (1) Whether the County or any other person, firm or entity, as designated by the County, will implement a component of the effective recycling program.
 - (2) The procedures, processes or policies that the County intends to use to separate, collect, store, process and market recyclable materials and to educate the public on the effective recycling program.
 - (3) The procedures or processes that the County intends to use to manage the recyclable materials that are not separated for recovering or recycling.

- (4) A schedule for the implementation of the effective recycling program.
- (5) Development of an effective recycling program as follows:
- (A) a public education component to inform residents, persons and business entities within the region of the reasons to recycle, local opportunities to recycle, and all prohibitions on land disposal and incineration as set forth under 159.07 Wisconsin Statutes.
 - (B) a requirement by creation of appropriate County and/or Municipality ordinance(s), that the occupants of single family residences, buildings containing two or more dwelling units and commercial, retail, industrial and governmental facilities in the region either separate the materials identified in 159.07(3) to (5) Wisconsin Statutes from post-consumer wastes generated in the region or treat that post-consumer waste at a facility that will recover these materials from solid waste in as pure of form as is technically feasible.
 - (C) a requirement by creation of appropriate County and/or Municipality ordinances(s), that owners of building that contain five or more dwelling units in the region do all of the following if post-consumer waste generated in those buildings is not treated at a facility that will separate the materials identified in 159.07 Wisconsin Statutes from that post-consumer waste:
 - (i) Provide adequate, separate containers for the effective recycling program.
 - (ii) Notifying tenants at the time of renting or leasing the dwelling and semi-annually thereafter of the effective recycling program.
 - (iii) Provide for the collection of recyclable materials separated from solid waste by the owners/tenants and the delivery of the recyclable materials to a recycling facility.
 - (D) A requirement by creation of appropriate County and/or Municipality ordinance(s), that owners of commercial, retail, industrial and governmental facilities in the region do all of the following if post-consumer wastes generated in those buildings is not treated at a facility that will separate the materials identified in 159.07 Wisconsin Statutes from that post-consumer waste:

- (i) Provide adequate, separate containers for the effective recycling program.
 - (ii) Regularly notify all users and occupants of the facilities of the effective recycling program.
 - (iii) provide for the implementation of recyclable materials separated from solid wastes by the users and occupants and the delivery of their recyclable materials to a recycling facility.
- (6) Implementation of a system for collecting from single family residences in the region any materials separated pursuant to the effective recycling program.
 - (7) Implementation of a system for the processing and marketing of recyclable materials collected by the Responsible Unit or by municipalities located within the Responsible Unit's area/region.
 - (8) Implementation of prohibition(s) on disposing of, in a solid waste disposal facility, or burning in a solid waste disposal facility, any material identified in 159.07 Wisconsin Statutes that is separated for recycling as part of the effective recycling program.
 - (9) Provisions to be implemented for the management of post-consumer wastes that is not separated for recycling or recovery under the effective recycling program, consistent with the highest feasible priority under Section 159.07(12) Wisconsin Statutes.
 - (10) Procurement of equipment (if necessary) or means necessary to implement the effective recycling program, including contracts for service, staff, supplies and equipment from vendors.
 - (11) A reasonable effort through the implementation of the effective recycling program to reduce to the maximum extent feasible the amount, by weight, of each material specified in 159.07(3) to (5) Wisconsin Statutes that is generated as solid waste within the region and disposed of in a solid waste disposal facility or converted into fuel or burned without energy recovery in a solid waste treatment facility.
 - (12) Provide information as requested regarding the status and planning of the effective recycling program to the "Municipality."
 - (13) Other provisions to be implemented as established and mandated by the Department of Natural Resources.
 - (14) Provide adequate enforcement of the program established above.

2. The following materials shall constitute the recyclable material for which the County shall have responsibility for :

- (a) Waste Tires
- (b) Clean, corrugated paper (non-waxed) and other container board
- (c) Glass bottles and jars (not including light bulb glass or window glass)
- (d) Plastic bottles and jars (not to include any chemical containers)
- (e) Tin/steel containers
- (f) Aluminum containers
- (g) Lead/acid batteries
- (h) Waste oil
- (i) Major appliances
- (j) Magazines
- (k) Newspapers
- (l) Office paper
- (m) Bimetal containers

Additional recyclable materials may be added to the above materials if the County determines that economical markets are available. The County shall also accept and pickup other materials required to be recycled by state legislation or state administrative rules.

3. The County will be responsible for the transportation, processing and marketing of the recyclable materials. The County shall be responsible for all administrative costs and services related to the transportation, processing and marketing of recyclable materials.

ARTICLE V

Duties of the Municipality

- 1. The Municipality hereinafter, agrees to pass any and all rules, regulations and/or ordinances, requiring that all recyclable materials be cleaned, sorted and separated as per County specifications.
- 2. The Municipality agrees to enforce all rules, regulations and/or ordinances required to carry out an effective recycling program.
- 3. The Municipality agrees to provide a collection site and/or program to county specifications.
- 4. The Municipality agrees to open the collection site and/or program to all citizens of Waupaca County whose Municipality is actively involved in the County-wide recycling program. Any citizen using another municipalities site and/or program will follow their rules and regulations.
- 5. The Municipality agrees to operate the site and/or program in a safe and clean manner and be totally responsible for their own collection site and/or program and its operations.
- 6. The Municipality shall procure equipment (if necessary) or provide equipment necessary to implement the effective loading of recyclables for transportations.

7. The Municipality shall keep records on a regular basis of all operating cost of the collection site. On an annual basis prior to March 1, the Municipality shall report to the County the complete financial report for the past calendar year. Records will also be kept open for inspection by the County upon request periodically throughout the year.
8. In cooperation with the County the Municipality will carry out a public education/informational program, to inform residents, persons and business entities within its region of the reasons to recycle, local opportunities to recycle, and all prohibitions on land disposal and incineration as set forth under 159.07 Wisconsin Statutes.
9. The Municipality or 66.30 unit of Government shall appoint one individual to serve on the "Recycling Implementation Council".

ARTICLE VI Funding

1. The County as the designated Responsible Unit for the Municipality shall be entitled to receive the grants and monies or other assets distributed by the State of Wisconsin, directly or indirectly, to or for the benefit of the Municipality as a result of 1989 Wisconsin Act 335 as the same relates to recycling of solid waste. This paragraph shall apply to all future grants or funds distributed after the execution of this agreement.
2. The Municipality agrees to provide for its individual accounting to the State of Wisconsin, reference the July 1, 1990, expedited grant payment received by the Municipality.
3. The County shall have the right to receive any and all revenues from the sale of recycled materials processed by the County under this agreement. Said revenues shall be applied to the cost of construction purchase and operation of all structures and equipment required by the County to perform the requirements under this agreement.
4. The County shall keep records on a regular basis of all transactions under this agreement, including agreements with third parties. On an annual basis prior to April 1, the County shall report to the Municipality the complete financial report for the past calendar year. Records will also be kept open for inspection by the Municipality upon request periodically throughout the year.
5. In the event that total revenues (including proceeds from sale of recycled material, user fees, and state grants) exceed the cost of operation of the County recycling program, the net profit shall be divided by the Municipalities based upon the Municipalities population as it bears to the total County population under the County recycling program, or as agreed upon by the Recycling Implementation Council.
6. In the event the costs of operation of this recycling program exceeds the total revenues (including proceeds from the sale of recycled material, user fees, and state grants) the costs shall be charged to each Municipality based upon the Municipality's population as it bears to the total County population under the County recycling program. Said costs shall be billed as of April 1 and payable to the County by June 1 of the same year. The County agrees to notify the Municipality of estimated charges by October 1 of the previous year.

ARTICLE VII
Indemnification

1. The County does hereby agree to indemnify and hold the Municipality harmless against and from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses which may be imposed upon or incurred by or asserted against the Municipality as a result of or arising out of any action by the County, its employees, or agents resulting from or arising out of the County's pickup, transportation, or subsequent processing of recyclable materials in connection with the terms and conditions of this agreement.
2. The Municipality is and shall be in exclusive control of its collection site and/or program for recyclable materials. The County shall not in any event be liable for any injury or damage to any property or to any person which would occur at the Municipality's collection site and/or program unless such damage or injury directly arose out of actions by the County, its employees or agents in connection with the County's pickup of recyclable materials at said collection site and/or program. The Municipality shall indemnify and hold the County harmless against and from all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses which may be imposed upon or incurred by or asserted against the County as a result of any personal injury or property damage occurring at the Municipality's recyclable collection site and/or program unless such injury or damage directly arose from action taken by the County, its employees or agents in connection with the pickup by the County of recyclable materials at said collection site and/or program.

ARTICLE VIII
Insurance

Each party shall maintain its own liability insurance in such form and amount as is sufficient to address the risks arising out of the implementation of this agreement.

ARTICLE IX
Default & Remedies

1. Default. Default shall occur in the event either party shall fail to observe or perform any material covenant, condition, obligation, or agreement required by the terms of this agreement.
2. Arbitration. The parties agree in good faith to attempt to resolve between themselves any dispute which may arise between them regarding the interpretation, performance, or any other matter regarding this Agreement. If such dispute cannot be resolved within a period of 60 days, any party hereto may submit the same for arbitration in Waupaca County, State of Wisconsin, by three arbitrators, one of whom shall be selected by each party and the third within a period of 30 days after appointment, the judge of a court having jurisdiction will appoint the third arbitrator. Each party shall be responsible for its own expenses, attorneys' and arbitrators' fees, except that each party shall pay one-half of the third arbitrator's fee. The rules and regulating of the American Arbitration Association shall govern the arbitration. The award will be made by the decision of two of the three arbitrators and judgement upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

3. Termination. Either party shall have the right to terminate this Agreement upon default of the other, but neither party shall have the right to terminate unless and until the defaulting party has received at least 30 days written notice specifying the nature of the default and specifying a reasonable period of time to cure and the defaulting party has failed to cure the default within such reasonable period of time. In the event that circumstances beyond the control of either party result in an inability of either party to perform its obligations under this Agreement for a period of time exceeding 6 months, either party may terminate this Agreement after 30 days written notice. Termination shall not limit or otherwise affect the respective rights and obligations of the parties accrued prior to the date of termination. As of the date of termination, this Agreement is null and void.
4. Damages. In the event of default, the defaulting party shall be liable to the other party for any and all damages reasonably sustained by the nondefaulting party as a result of the default specifically including, but not limited to, any charges, costs, expenses, penalties or damages required to be paid by the nondefaulting party.
5. Specific Performance. It is the intent of the parties that each of the provisions of this Agreement be carried out to the fullest extent possible. In addition to damages, either party may be entitled to specific performance of any obligation owed by the other party which is necessary to ensure that the terms and provision of this Agreement are carried out as contemplated.
6. Duties to Mitigate. Both parties agree to use their best efforts to mitigate any damages which they might suffer by reason of an event of default.
7. Survival of Rights and Obligations. The termination of this Agreement shall not relieve either party of any obligations to the other party, which arose prior to the termination.
8. Remedies Cumulative. All remedies as listed above, provided be herein, or otherwise available at law or equity shall be cumulative. The election of any remedy shall not bar other remedies available to the party.
9. Excuse. If performance of any action by any party is prevented or delayed by an act of God, war, a labor dispute involving persons with whom the party has no employment relationship, or other cause beyond the reasonable control of such party, the time for the performance of such action will be extended during the period that such action is delayed or prevented by such cause, provided, however, that this Agreement shall not be extended beyond its terms.
10. Waivers. No waiver of any default by either party will be implied from the failure by either party to take any action in respect of the default. No express waiver of any default will affect any default or extend any period of time for performance other than as specified in the express waiver. One or more waivers of any default in the performance of any provision of this Agreement will not be deemed a waiver of any subsequent default in the performance of the same provision or any other provision. The consent to or approval of any act or request by any party will not be deemed to waive or render unnecessary the consent to or approval of any subsequent similar act or request.

Dated this 18th day of June, 1991.

WAUPACA COUNTY

By: Ken Van Dyke
Title: Chairman
Solid Waste Management Board

By: Roger H. Holm
Title: Director
Solid Waste/Park & Rec. Dept.

MUNICIPALITY

By: Don Feliciano
Title: Chairman
Town of Farmington

By: Ruth Ann Olinger
Title: Clerk
Town of Farmington

COUNTY/MUNICIPAL RECYCLING AGREEMENT

ADDENDUM 2001

The COUNTY/MUNICIPAL RECYCLING AGREEMENT, drafted and approved in June of 1991, is amended as follows:

ARTICLE III, Section 1 shall read:

The term of this agreement shall be for ~~ten years~~ a five (5) year period, beginning July 1, 2001, and terminating June 30, 2006. At the expiration of ~~40~~ 5 years, ~~the parties may terminate or continue the agreement for a mutually agreed upon length of time~~ this agreement will renew itself for additional one year terms thereafter. In the event the agreement is not continued, the Municipality will become the Responsible Unit.

ARTICLE III, Section 4 shall be created to read:

The Municipality may terminate this agreement due to economic hardship. The Municipality shall notify the County in writing of its intent and reason to terminate at least twelve (12) months prior to the beginning of a fiscal year. The Municipality will be responsible for its per capita assessment for the twelve (12) months prior to the date of its termination. By terminating this agreement, the Municipality forfeits all rights it then has, or thereafter may claim, to any assets or benefits known or unknown at the time of such termination. Effective the date of termination, the Municipality assumes all responsibilities of a 'responsible unit' as defined under the State's Recycling Law.

ARTICLE IV, Section 1(D)(iii) shall read:

Provide for the implementation of ~~recyclable~~ recycling of materials separated from solid wastes by the users and occupants and the delivery of their recyclable materials to a recycling facility.

ARTICLE IV, Section 2 shall read:

The following materials shall constitute the recyclable material for which the County shall have responsibility ~~for~~:

ARTICLE VI, Section 4 shall read:

The County shall ~~keep records~~ record, on a regular basis, all transactions under this agreement, including agreements with third parties. On an annual basis prior to ~~April 1~~ June 1, the County shall ~~report to the Municipality~~ present the complete financial report to the Municipality for the past calendar year. Upon request, records will be kept open periodically throughout the year for inspection by the Municipality.

**COUNTY/MUNICIPAL RECYCLING AGREEMENT
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ARTICLE VI, Section 5 shall read:

In the event that total revenues (including proceeds from sale of recycled material, user fees, and state grants) exceed the cost of operation of the County recycling program, the net profit shall be divided by among the Municipalities. The amount received will be based upon the Municipality's population as it bears to the total County population under the County recycling program, or as agreed upon by the Recycling Implementation Council.

ARTICLE VI, Section 6 shall read:

In the event the costs of operation of this recycling program exceeds the total revenues (including proceeds from the sale of recycled material, user fees, and state grants), the net cost shall be divided among the Municipalities. The amount charged to each Municipality will be based upon the Municipality's population as it bears to the total County population under the County recycling program. Said costs shall be billed as of ~~April 1~~ February 1 and payable to the County by ~~June 1~~ March 1 of the same year. The County agrees to notify the Municipality of estimated charges by October 1 of the previous year.

ARTICLE VII, Section 2 shall read:

The Municipality is and shall be in exclusive control of its collection site and/or program for recyclable materials. The County shall not in any event be liable for any injury or damage to any property or to any person ~~which would~~ that occurs at the Municipality's collection site and/or program unless such damage or injury directly ~~arose~~ arises out of actions by the County, its employees or agents in connection with the County's pickup of recyclable materials at said collection site and/or program. The Municipality shall indemnify and hold the County harmless against and from all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses which may be imposed upon or incurred by or asserted against the County as a result of any personal injury or property damage occurring at the Municipality's recyclable collection site and/or program unless such injury or damage ~~directly arose~~ arises directly from action taken by the County, its employees or agents in connection with the pickup by the County of recyclable materials at said collection site and/or program.

The Town of Farmington and Waupaca County agree to extend the **County/Municipal Recycling Agreement**, as amended in **Addendum 2001**. With this Agreement, the Town of Farmington and Waupaca County are committed to the continued success of the county-wide recycling program under the auspices of the State of Wisconsin Recycling Law.

WAUPACA COUNTY

By: Duane R. Brown

Title: Chair

Waupaca County Board of Supervisors

Date: 6-27-01

By: Carl Kietzmann

Title: Chair

Solid Waste Management Board

Date: 6-27-01

MUNICIPALITY *Sent 7-23-2001*

By: Town of Farmington

Title: Chair - Farmington

Don Galicich

Date: 7-16-2001

By: _____

Title: _____

Date: _____