

ORDINANCE NO. 122-18

PASSED: December 17, 2018

ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE SOLID WASTE AUTHORITY OF CENTRAL OHIO (SWACO) TO ACCEPT A COMMUNITY RECYCLING CART GRANT; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF REYNOLDSBURG, OHIO:

SECTION 1. That the Council of the City of Reynoldsburg does hereby approve the application for and acceptance of the Community Recycling Cart Grant through the Solid Waste Authority of Central Ohio (SWACO).

The agreement and all associated exhibits are attached as Exhibit "A" and shall be incorporated by reference herein.

SECTION 2. That this ordinance is deemed to be an emergency measure necessary for the financial needs of the city, and further that the application can be made before the deadline; wherefore upon adoption by Council this ordinance shall be in effect immediately upon signature by the Mayor.

Doug Joseph  
Doug Joseph, President of Council

ATTEST: April L. Beggerow  
April L. Beggerow, Clerk of Council

APPROVED: Bradley L. McCloud DATE 12/18/18  
Bradley L. McCloud, Mayor

CERTIFICATE

I, April L. Beggerow, Clerk of Council, City of Reynoldsburg, Ohio do hereby certify the foregoing to be a true and correct copy of Ordinance No. 122-18 as passed by Council of said City on the 17<sup>th</sup> day of December, 2018 and as recorded in the Record of Proceedings of said Council.

April L. Beggerow  
April L. Beggerow, Clerk of Council

Filed with Mayor: 12/18/18

Solid Waste Authority of Central Ohio

**Community Recycling Cart Grant Agreement**

This Community Recycling Cart Grant Agreement ("Agreement") is made and entered into by and between the Solid Waste Authority of Central Ohio ("SWACO"), a regional solid waste authority established pursuant to Ohio Rev. Code §343.011 ("SWACO"), and the City of Reynoldsburg ("Grantee"), a municipal corporation and political subdivision created and existing under the Constitution and the laws of the state of Ohio with a business address of 7232 E. Main Street, Reynoldsburg, Ohio 43068.

**WITNESSETH THAT:**

**WHEREAS**, pursuant to its amended Solid Waste Management Plan ("Plan"), SWACO implements programs to increase solid waste reduction, reuse, and recycling necessary to achieve a fifty percent (50%) diversion rate by 2020 and a seventy-five percent (75%) diversion rate by 2032;

**WHEREAS**, wheeled recycling carts have proven to be a "best practice" in residential curbside recyclable collection, resulting in higher per household diversion, higher participation rates, greater collection efficiency and lower collection costs;

**WHEREAS**, pursuant to SWACO Resolution No. 042-18, SWACO is providing a grant of Twenty-Two and 50/100 Dollars (\$22.50) per household to communities in SWACO's District who are purchasing sixty-five (65) gallon or ninety-five (95) gallon recycling carts ("Recycling Cart") for their residential homes as replacement to their current bin-based recyclable collections;

**WHEREAS**, Grantee is a community in SWACO's District that will be distributing a Recycling Cart to each of its approximately ten thousand seven hundred five (10,705) eligible households;

**WHEREAS**, in furtherance of the Grantee switching to cart-based recycling and pursuant to SWACO Resolution No. 047-18, SWACO will make the initial purchase of the Recycling Carts and allow the Grantee to reimburse SWACO for its portion of the purchase, which amounts to approximately Twenty-Two and 52/100 Dollars (\$22.52) per cart, over a three (3) year period;

**WHEREAS**, SWACO applied for and was awarded a grant from The Recycling Partnership for Seven Dollars (\$7.00) per Recycling Cart, which will serve to pay a portion of the Grantee's share for the purchase of the Recycling Carts and will be paid to SWACO as reimbursement for the advance funds;

**WHEREAS**, as part of the grant from The Recycling Partnership, SWACO was awarded One Dollar (\$1.00) per household for educational campaign materials totaling approximately Ten Thousand Seven Hundred Five Dollars (\$10,705.00), plus access to educational campaign materials, which will be used by SWACO and the Grantee to rollout this switch to cart-based recycling;

**WHEREAS**, SWACO and Grantee agree to perform in compliance with the terms, promises, conditions, and assurances as outlined in this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants by and between the parties hereto, the parties agree as follows:

**Section I – Grant Funds:**

- A. SWACO hereby awards to Grantee funding in an amount not to exceed Twenty-Two and 50/100 Dollars

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(\$22.50) per sixty-five (65) gallon Recycling Cart for each of the approximate ten thousand seven hundred five (10,705) eligible households ("Eligible Households") totaling approximately Two Hundred Forty Thousand Eight Hundred Sixty-Two and 50/100 Dollars (\$240,862.50) ("Grant Funds") for the purpose of purchasing and distributing a Recycling Cart to each household switching to cart-based recycling. The Parties recognize that the total number of Eligible Households may be reasonably adjusted, as determined solely by SWACO, for unanticipated households discovered during distribution of the Recycling Carts and, therefore, the total number of Recycling Carts purchased may vary, impacting each Parties' total Purchase Price, as described below in Section II, in proportion to the variance.

- B. SWACO will apply The Recycling Partnership grant award of One Dollar (\$1.00) per Eligible Household, totaling approximately Ten Thousand Seven Hundred Five Dollars (\$10,705.00), towards educational campaign materials which SWACO and the Grantee will develop and implement pursuant to Section IV.E. of this Agreement. Some portion of this One Dollar (\$1.00) per Eligible Household grant award may be used by SWACO to reimburse Grantee for allowable expenditures made towards the educational campaign, at SWACO's sole and complete discretion.

**Section II – Purchase of Recycling Carts:** SWACO will make the initial purchase of the Recycling Carts on behalf of the Grantee. It is estimated that it will cost approximately Forty-Five and 02/100 Dollars (\$45.02) for each 65-gallon Toter brand Recycling Cart for each Eligible Household for a total purchase price of approximately Four Hundred Eighty-One Thousand Nine Hundred Thirty-Nine and 10/100 Dollars (\$481,939.10) ("Purchase Price").

- A. SWACO will apply the Grants Funds towards the Purchase Price of the Recycling Carts.
- B. SWACO shall provide advance funding for the Grantee's share of the Purchase Price in the amount of approximately Twenty-Two and 52/100 Dollars (\$22.52) per Recycling Cart totaling approximately Two Hundred Forty-One Thousand Seventy-Six and 60/100 (\$241,076.60).
- C. SWACO will apply the Seven Dollars (\$7.00) per Recycling Cart for each Eligible Household from The Recycling Partnership grant towards the Grantee's share of the Purchase Price in the amount of approximately Seventy-Four Thousand Nine Hundred Thirty-Five and 00/100 Dollars (\$74,935.00) pursuant to the terms below in Section III.
- D. SWACO will allow Grantee to reimburse SWACO its remaining share of the Purchase Price of approximately Fifteen and 52/100 (\$15.52) per Recycling Cart totaling approximately One Hundred Sixty-Six Thousand One Hundred Forty-One and 60/100 Dollars (\$166,141.60) over a three-year period pursuant to the terms below in Section III.

**Section III – Payment Terms:** SWACO shall provide advance funding for Grantee's share of the Purchase Price, as provided above in Section II, pursuant to the following terms:

- A. If the Seven Dollars (\$7.00) per Recycling Cart grant from The Recycling Partnership is terminated or funds are not received by SWACO, for whatever reason, Grantee shall be solely responsible for repaying SWACO for the advance funding in the amount of approximately Seventy-Four Thousand Nine Hundred Thirty-Five and 00/100 (\$74,935.00) pursuant to the terms below in Section B.
- B. Grantee shall be responsible for reimbursing SWACO for its share of Purchase Price over a three-year term as follows:
  - 1. Grantee shall have a semiannual payment due on or before June 1 and December 1 of each

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year ("Semi-Annual Payment"), a copy of the payment schedule is attached hereto and incorporated herein as Exhibit A.

2. SWACO shall not charge Grantee interest over the three-year repayment period.
3. Grantee shall be charged an administrative fee of Two Hundred Fifty Dollars (\$250.00) for each Semi-Annual Payment for SWACO's management and accounting of the advanced funds.
4. The Semi-Annual Payment and administrative fee shall be due and paid, without notice or demand, as such place as SWACO may have designated, and in the absence of such designation, at SWACO's principle place of business located at 4239 London-Groveport Road, Grove City, Ohio 43123.
5. The obligation of Grantee to pay the Semi-Annual Payment and administrative fee shall be absolute and unconditional, and such payment shall be payable without any rights of termination, set-off, recoupment, deduction, defense or counterclaim that Grantee might have against SWACO or any other person, and without abatement, suspension, deferment, diminution or reduction for any reason or as the result of any occurrence whatsoever.
6. If the Semi-Annual Payment and administrative fee are not received by the due date, a finance charge of 1.5% per month shall be assessed.
7. Grantee may payoff the remaining portion of its share of the Purchase Price at any time within the three-year period without penalty and with no additional fees except for the applicable administrative fee for that payment.
8. If Grantee fails to make two (2) consecutive Semi-Annual Payments, SWACO reserves the right, in its sole and complete discretion, to demand that the unpaid balance of Grantee's share of the Purchase Price become immediately due and payable.
  - (i) If SWACO determines, in its sole and complete discretion, that there is a reasonable justification for the default, SWACO will work with Grantee to determine an equitable process for curing the default without requiring the full unpaid balance immediately due and payable.
9. No delay or omission of SWACO in exercising any right hereunder shall operate as a waiver of such right or of any other right hereunder. A waiver on any one occasion shall not be construed as to bar to or a waiver of such right on any future occasion.

### **Section IV – Grantee's Obligations:** Grantee's obligations hereunder shall be as follows:

- A. Grantee agrees that the Recycling Carts shall remain the property of the Grantee throughout the term of this Agreement and will be utilized to collect residential curbside recycling for at least the duration of the curbside recycling collection contract in place on January 1, 2019.
- B. Grantee agrees to work with SWACO, The Recycling Partnership, and the Recycling Cart vendor to brand the carts with the community name and other information deemed to be appropriate by the Grantee, SWACO and the Recycling Partnership.

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- C. Grantee shall include recognition of SWACO's support and acknowledgment that the project was partially funded by a grant from The Recycling Partnership. Grantee agrees to use whatever logo or language as requested by SWACO and The Recycling Partnership. Grantee shall provide SWACO with an opportunity to review and comment on any communication recognizing SWACO and The Recycling Partnership's contributions to the project and must obtain SWACO's prior written approval.
- D. Grantee must participate in development and implementation of an educational campaign designed by SWACO and The Recycling Partnership for preparing the Eligible Households to receive and use their new Recycling Carts. Grantee agrees to participate in developing the education materials, which will be co-branded with the Grantee's logo.
- E. For any allowable expenditures associated with the implementation of the education campaign for which the Grantee seeks reimbursement from SWACO pursuant to Section I.B. of this Agreement, Grantee must submit copies of all invoices, accompanied by proof that Grantee has made payment for the invoices in question. Acceptable proof of payment can include copies of canceled checks or Grantee finance system reports showing that the payment has been made.
- F. Grantee agrees to participate in local press events related to The Recycling Partnership, which may include, but is not limited to, press release, interviews, ribbon cutting ceremonies, etc.
- G. Grantee shall provide its residents with a recycling program under which recyclables are collected on a weekly basis.
- H. Grantee shall not assess any additional charges to its residents that receive a Recycling Cart in addition to its standard monthly utility rate for waste and recycling services.
- I. Grantee agrees to provide monthly tonnage data for up to three (3) years after the Recycling Carts are delivered to its Eligible Households.
- J. Grantee agrees to work with Grantee's recycling hauler and collection processor to provide SWACO with pre-cart based curbside recycling set out rate and monthly tonnage data for municipal solid waste, recyclables, and yard trimmings/organics, if applicable.
- K. Grantee shall assist with other data collection, as requested by SWACO, relating to the Recycling Carts, cart set-out rates and other information pertaining to this Grant.
- L. Grantee shall assist SWACO in working with Grantee's recycling hauler and collection processor to evaluate the current mix of recyclable materials collected residentially.
- M. Grantee shall, if cost effective, print all publications resulting from this Grant double-sided on recycled-content paper with minimal thirty percent (30%) post-consumer recycled content.
- N. Grantee shall update its website to communicate the basics of the roll-out of the Recycling Carts to its residents and other pertinent information.

### Section V – Miscellaneous:

- A. Grantee shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex, sexual orientation, military status, or any disability as defined

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in the Americans with Disabilities Act (ADA).

- B. Grantee agrees to comply with all applicable federal, State, and local laws regarding smoke-free and drug-free workplaces and shall make a good faith effort to ensure that none of its employees or permitted subcontractors engaged in the work being performed hereunder purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs in any way.
- C. Grantee shall, in all solicitations or advertisements for employees placed by or on behalf of Grantee, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex, sexual orientation, military status, or any disability, as defined in the ADA.
- D. Upon Grantee's noncompliance with the nondiscrimination clauses of this Agreement, this Agreement may be canceled, terminated, or suspended in whole or in part, and Grantee may be ineligible for further SWACO contracts. SWACO reserves the right to impose or pursue such other sanctions and remedies instituted as otherwise provided by law.
- E. It is fully understood and agreed that neither Grantee nor any of its employees or other personnel shall at any time or for any purpose be considered as agents or employees of SWACO. This Agreement shall not be construed so as to create an agency, representative, or employment relationship between the Grantee or its employees and SWACO. Neither Grantee nor its employees shall be considered an employee of SWACO and any and all claims that may or might arise under the Workers' Compensation Act of the State of Ohio or otherwise on behalf of the Grantee or its employees while engaged in performing the Services shall in no way be the responsibility of SWACO. Neither Grantee nor its employees shall acquire or be entitled to any compensation, rights, benefits, and participation of any kind whatsoever offered by SWACO, including, without limitation, tenure rights, participation in the Ohio Public Employees Retirement System, medical and hospital care, sick and vacation leave, workers' compensation, unemployment compensation, disability, and severance pay.
- F. The laws of the State of Ohio, without regard to its own "choice of law" provisions, shall govern to the exclusion of the laws of any other jurisdiction in the interpretation and application of the terms, conditions, and provisions of this Agreement. Any action or proceeding pertaining to this Agreement shall be heard in a court of law having appropriate jurisdiction located in Franklin County, Ohio.
- G. Grantee affirms that, as applicable, no party listed in Division (I) or (J) of Section 3517.13 of the Ohio Revised Code or spouse of such party has made, as an individual, within the two previous calendar years, one or more contributions in excess of the amounts specified in O.R.C. §3517.13 to the Governor or to his campaign committees.
- H. This Agreement shall remain in effect until Grantee has fully repaid SWACO for its share of the Purchase Price, including all applicable fees and finance charges. SWACO reserves the right, at any time after execution of this Agreement, and with or without cause, to terminate, revise, or extend the Grant in whole or in part, upon written notification to Grantee. Grantee, upon receipt of notice of termination, shall take all necessary and appropriate steps to minimize costs and obligations, including cancelling as many outstanding obligations as possible. If requested by SWACO, Grantee shall promptly furnish a report that describes the status of all work under this Agreement as of the date of receipt of the termination notice. Grantee agrees to waive any right to, and shall not claim for, additional compensation against SWACO by reason of such termination.

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- I. SWACO shall be entitled to recover all accounting, administrative, legal, and other expenses reasonably necessary for the preparation of the termination of the Agreement.
- J. Neither this Agreement, nor any rights, duties, nor obligations hereunder, may be assigned, delegated, or transferred in whole or in part by Grantee without prior written consent of SWACO. Any assignment or delegation not consented to may be deemed void by SWACO.
- K. All notices to SWACO and Grantee shall be deemed to have been given and received when personally delivered or upon receipt as evidenced by a U.S. Postal Service Receipt for Certified Mail or by facsimile upon confirmation of receipt by recipient or by evidence of delivery by a private express mail service to the addresses specified above.
- L. Each Party shall be responsible for its own acts and omissions and will be responsible for any and all damages, costs, and expenses that arise out of the performance of this Agreement and that are due to that party's own negligence, tortious acts, or other conduct or that are due to the negligence, tortious acts, or other conduct of the party's respective agents, officers, or employees.
- M. This Agreement and the attached exhibit represent the entire and integrated contract between SWACO and Grantee and supersede all prior negotiations, representations, agreements or contracts, either written or oral, between the parties hereto.
- N. Neither SWACO's Board of Trustees, either individually or collectively, nor any SWACO official executing this Agreement or any modification hereto shall be subject to any personal liability by reason of such execution.
- O. No person or corporation other than the Grantee and SWACO have any interest hereunder and no claim shall be made or be valid, nor shall any term, condition, provision or covenant herein be construed, so as to give any person other than the parties hereto any legal or equitable right, remedy or claim under or in respect to this Agreement.
- P. If any paragraph, term, condition or provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other paragraph, term, condition or provision of this Agreement, each of which shall be construed and enforced to the fullest extent of the law as if such invalid or unenforceable paragraph, term, condition or provision were not contained herein.
- Q. The Parties acknowledge and recognize that each of them participated materially in the negotiation and drafting of this Agreement and had access to legal counsel during its negotiation and drafting.
- R. The Parties agree that facsimile, electronic, or scanned signatures shall be acceptable and shall have the same effect as original signatures.
- S. The effective date of this Agreement is the date when the Executive Director of the Solid Waste Authority of Central Ohio signs this Agreement.

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers.

(I, we) have the authority to sign this Agreement and do so in (my/our) respective capacities:

**GRANTEE:**  
**The City of Reynoldsburg**

**By:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
*Print Name:*  
*Title:*

**SWACO:**  
**SOLID WASTE AUTHORITY OF CENTRAL OHIO**

**By:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
**Ty D. Marsh, Executive Director**  
**Solid Waste Authority of Central Ohio**

Approved as to Form:

\_\_\_\_\_  
Law Director, The City of Reynoldsburg

Approved as to Form:

\_\_\_\_\_  
Rebecca L. Egelhoff, Esq., Managing Counsel  
Solid Waste Authority of Central Ohio