

CITY OF TROTWOOD, OHIO

Bid Response Form Residential Solid Waste Collection Service

To: Finance Director

Date: June 17, 2020

The undersigned, having full knowledge of the terms of the agreement entitled "Residential Solid Waste Collection Service Agreement" ("Service Agreement"), which forms an integral part of the bid solicitation to which the undersigned is responding, and the instructions to bidders, and having become familiar with all conditions affecting these matters, hereby proposes to furnish all materials, labor, equipment, bonds and insurance necessary to collect and dispose of all residential trash, rubbish and similar wastes within the City of Trotwood, said service to be performed for a period of three (3) years beginning October 1, 2020 and ending September 30, 2023, in accordance with the following:

COLLECTION SCHEDULE DESCRIPTION

Days: Monday through Friday
(Current schedule is Monday through Friday)

Alternate (describe schedule and notification process):

CHARGES

Yardwaste Bags

\$ ** per unlimited curb pick up unit per month

Toters

\$2.00 ea per month (current number in use is approximately 6,931)

** Yardwaste will be treated as solid waste and collected along with the regular trash with no separation or special bags required.

COLLECTION SERVICE CATEGORIES

(a) Monthly charge per single-family residential customer (including monthly Bulk waste pick-up) for **unlimited curb pick-up service**:

1st year \$ 12.18 per unit

2nd year \$ 12.54 per unit

3rd year \$ 12.92 per unit

(b) Monthly charge per single-family residential customer (including monthly Bulk waste pick-up) for **carry out service**:

1st year \$ 18.77 per unit

2nd year \$ 19.34 per unit

3rd year \$ 19.92 per unit

(c) CFC/HCFC disposal:

1st year \$ 50.00

2nd year \$ 50.00

3rd year \$ 50.00

OTHER MATTERS

a. Provide any additional information pertinent to the bid and not addressed. Attach additional pages if necessary.

b. If the undersigned bidder's proposal is accepted, the undersigned agrees that: within fourteen (14) days after " Notice of Award " the bidder will execute the accompanying Service Agreement, which is an integral part of this bid solicitation; simultaneously bidder will post a surety bond in the amount of \$250,000.00 to secure faithful performance hereunder, said bond to be issued by a responsible surety company acceptable to the City and furnished for the three (3) year period of the subject contract and any subsequent extensions; and in the event of a determination of breach of the Service Agreement, said bond shall be forfeited as liquidated damages.



CITY OF TROTWOOD, OHIO

Residential Solid Waste Collection Service Agreement

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[Sample Form of Contract for Bid Packet]

RESIDENTIAL REFUSE COLLECTION SERVICE AGREEMENT

EFFECTIVE DATE: July 6, 2020

COMMENCEMENT DATE: October 1, 2020

This agreement is made effective on the date specified above between the City of Trotwood, 3035 Olive Road, Trotwood, Ohio 45426, a municipal corporation duly organized and existing under the laws of the State of Ohio (referred to herein as "City"), and:

Name of Contractor:

Address:

Telephone:

Fax:

(referred to herein as "Contractor"). Contractor is a corporation duly organized and existing under the laws of the State of Ohio.

The City and the Contractor agree as follows:

1 DEFINITIONS

The following definitions are used in this Agreement:

- (a) ***Agreement*** means this Residential Refuse Collection Service Agreement.
- (b) ***Approved Disposal Or Processing Facility*** means the Solid Waste Disposal Facilities or any other processing facility expressly approved by both the City and by Montgomery County (Ohio) Garbage and Refuse Disposal District.
- (c) ***Bulk Waste*** includes but is not limited to such Disposable Solid Waste as furniture, springs, mattresses, stoves, ranges, refrigerators, dishwashers, carpet,

other discarded household articles, minor amounts of homeowner-generated construction debris (no more than six containers full), and other similar items. Bulk waste does not include toxic waste materials that are defined by federal law, automobile fluids, tires, items containing ozone depleting substances, items placed on vacant lots, items generated from a source outside the City, or items generated by a source other than the household from which they are being collected.

- (d) **Commencement Date** means the date Contractor shall commence collection service hereunder, which date is specified on the first page hereof. In its sole discretion, the City may delay the Commencement Date until resolution of any pending judicial or administrative proceeding that seeks to enjoin or otherwise contests: (1) the validity of the contract award or the procedures relating thereto pursuant to the law of Ohio; (2) the requirements of any applicable law regulating the environment or health and safety; or (3) compliance of this Agreement with any other applicable law.
- (e) **Container** means the receptacle in which Disposable Solid Waste is placed for collection. All Containers shall be of a type approved by the City. Containers for Disposable Solid Waste (other than Bulk Waste) for single family dwelling units must be standard plastic bags with a capacity not to exceed thirty-five (35) gallons and thickness of not less than 1.5 mils, or portable containers constructed of plastic, galvanized, or other non-rusting metal of substantial construction holding not more than thirty-five (35) gallons nor less than ten (10) gallons, and having handles and a water-tight lid or cover which shall be kept in place at all times. The combined weight of a Container for disposable Solid Waste and contents shall not exceed seventy-five (75) pounds. Eligible Customers shall be responsible for supplying containers, or lease an approved toter through the contracted through the Contractor.
- (f) **Contract Representative** means the person identified to Contractor by the City as authorized to handle administration of this Agreement on behalf of the City. In the City's sole discretion, and immediately upon written notice to Contractor, the City may change the Contract Representative.
- (g) **County** means Montgomery County, Ohio.
- (h) **Disposable Solid Waste** means all trash or rubbish ordinarily produced by a family at their private residence. This includes such items as wood not over 36 inches in length, small toys, carpeting (bundled and tied not to exceed three (3) square feet per bundle), leather, cardboard, rubber products (excluding tires), tree trimmings (bundled and tied not to exceed three (3) square feet per bundle), wood chips, flowers, shrubs, whole Christmas trees and excessive fruit from trees from residential property. Disposable Solid Waste includes other wastes if deemed acceptable by the County under the Waste Delivery and Disposal Agreement.

Disposable Solid Waste includes Yard Waste and Bulk Waste as defined herein, but excludes Recyclables.

- (i) ***District*** means the Montgomery County (Ohio) Garbage and Refuse Disposal District.
- (j) ***District Members*** are all political subdivisions, other than the county, which are parties to the Waste Delivery and Disposal Agreement, and pursuant to Ohio Revised Code Chapter 343, and are members of the Montgomery County Garbage and Refuse Disposal District.
- (k) ***Eligible Customer*** means each residential unit (without limitation any single-family dwelling, or each individual unit of a duplex, triplex or quadplex).
- (l) ***Incinerators*** means the North and South County Reduction Plants as they exist and will exist after modifications or rehabilitation's.
- (m) ***Recyclables*** means all aluminum, bi-metal or tin cans or containers (including aerosol containers), glass (clear, green or brown), newsprint, cardboard or corrugated cardboard, or other materials as mutually agreed on which have been separated from Disposable Solid Waste placed in an approved receptacle for separate collection hereunder, and which have economic value in the secondary materials market may be processed or refabricated for reuse.
- (n) ***Solid Waste Disposal Facilities*** means the Incinerators, Incinerator buildings, property, and supporting appurtenances, and such equipment as may be installed to recover and/or recycle any materials or energy or such valuables from the Disposable Solid Waste delivered to the Incinerators, and such equipment as may be required to transport Disposable Solid Waste and residues to landfills and other disposal sites.
- (o) ***Service Area*** means the geographic area within the political boundaries of the City, as such boundaries exist at the outset of this Agreement, upon any renewals thereof, or, in the City's sole discretion, as such boundaries may expand due to the annexation or incorporation within the City's political boundaries of other portions of the County.
- (p) ***Tipping Fees*** means any per unit (per ton) charges to Contractor upon each delivery of Disposable Solid Waste to the Solid Waste Disposal Facilities.
- (q) ***Waste Delivery and Disposal Agreement*** means the Waste Delivery and Disposal Agreement entered into between the County and the City, dated November 26, 1985 and as amended.
- (r) ***Yard Waste*** means grass clippings, leaves, and other organic materials discarded by an eligible customer.

2 RECITALS

- 2.1 The City is a member of the Montgomery County Garbage and Refuse Disposal District for the purpose of receiving and disposing of Disposable Solid Waste.
- 2.2 The City has previously entered into the Waste Delivery and Disposal Agreement with the District.
- 2.3 The disposal of solid waste, garbage, and refuse vitally affects the public health, safety, and welfare of the inhabitants of the City.
- 2.4 It is essential for the health, safety and welfare of the inhabitants of the City and all other District Members that the City permit the County to maintain control of Disposable Solid Waste in coordination and cooperation with District Members, and that the City otherwise comply with the Waste Delivery and Disposal Agreement.
- 2.5 Cooperation and coordination between the County and District Members, including the City, is intended to aid in preserving and protecting the environment and protecting the health, safety and welfare of the inhabitants of the City and all other District Members.
- 2.6 The City and Contractor are desirous of entering into this Agreement to set forth their respective rights and obligations.
- 2.7 This Agreement supersedes all other agreements between the City and Contractor, if any, relating to the management of Disposable Solid Waste, Recyclables, and other waste, and any such agreements are hereby terminated as of the effective date of this Agreement.

3 REPRESENTATIONS AND WARRANTIES

- 3.1 The City represents and warrants to Contractor that the execution and delivery of this Agreement has been duly authorized by all appropriate actions of its governing body, the Council of the City of Trotwood, and that this Agreement constitutes a legal, valid and binding obligation of the City in accordance with its terms.
- 3.2 Contractor represents and warrants to the City that is a corporation in good standing in its state of incorporation and either is incorporated in Ohio or legally qualified to do business in Ohio.

- 3.3 Contractor represents and warrants to the City that the execution and delivery of this Agreement has been duly authorized by all appropriate actions of its board of directors and/or officers and that this Agreement constitutes a legal, valid and binding obligation of the Contractor in accordance with its terms.
- 3.4 Contractor represents and warrants to the City, and the City represents and warrants to the Contractor, that to the best of each of their knowledge there is no pending or threatened litigation or government proceeding which would adversely affect the performance of their respective obligations under this agreement.

4 SCOPE OF SERVICES

- 4.1 ***Exclusive Contract and License.*** For the term of this Agreement or any extensions thereof, the City hereby grants to Contractor the exclusive license and right to collect Disposable Solid Waste and Recyclables within the corporate limits of the City. The City will issue no more than one license to collect and dispose of Disposable Solid Waste from Eligible Customers. For the period this Agreement remains in effect, Contractor shall hold this license.
- 4.2 ***Services-Generally.*** Beginning on the Commencement Date, Contractor will diligently and faithfully perform the public service and work of collecting Disposable Solid Waste and Recyclables and delivering same to processing or disposal facilities specified by the City, under the terms and conditions stated in this Agreement. The services provided by Contractor shall include the furnishing of all labor, tools, containers, equipment, rolling stock, motor fuel, materials, insurance, performance bonds, supervision, office space, and bearing the expense of all other costs, including tipping fees, necessary to the performance of such services. All work and services to be performed under this Agreement shall be carried out in the manner, at the time, in the locations and at the prices specified herein. Services shall be subject to the inspection, without notice, and approval of the accordance with the highest standards of public or private entities engaged in providing such collection service.
- 4.3 ***Collection Requirements.***
- 4.3.1 ***Services.*** Contractor shall collect all Disposable Solid Waste and Recyclables set out by all Eligible Customers in the Service Area for collection in Containers or otherwise set out for collection in a manner authorized under this Agreement. Contractor shall exercise all reasonable care and diligence in entering upon premises of Eligible Customers. Contractor shall replace all lids on Containers after they have been emptied or leave lids flat on the ground, and return Containers, standing upright, to the point of original pick-up. Contractor shall immediately notify the City of any collections which

cannot be made on schedule and/or collections not made at specific collection points because of Containers that do not conform to the requirements of this Agreement. Transportation and collection hereunder shall be conducted in such a manner as not to create a nuisance. The transporting vehicle must be of such construction and so operated that contents shall not spill or fly out upon the public streets and right-of-ways. Any litter or other nuisance such as oil spills or other liquids caused by Contractor, whether through emptying a Container or otherwise, shall be promptly retrieved or cleaned by Contractor. Contractor must take care not to damage Containers, and in the event of willful or unnecessary damage to Containers, Contractors shall be liable for the same. Contractor shall promptly notify the City of any claim of damage to Containers other than reasonable wear and tear.

4.3.2 Categories of Service.

4.3.2.1 Unlimited Curb Pick-up. This is the basic service provided for single family Eligible Customers. Specifications are as follows. All Disposable Solid Waste (except for Yard Waste and Bulk Waste as described below) shall be placed for collection in Containers. Containers must be placed at the street for collection, and no farther than ten (10) feet from the curb (or edge of the street), and said location shall not be within a fenced area or other enclosure.

4.3.2.2 Carry Out Service. When occupants, because of age or handicap, are physically unable to carry or cannot reasonably arrange to have Containers carried to the curb, Contractor will provide carry out service at the accepted bid price.

4.3.3 Toters. At the Commencement Date, Contractor shall offer and continuously make Toters available as an optional elective service to Eligible Customers with unlimited curb pick-up service. Toters shall have approximately ninety (90) gallons of capacity. Contractor shall maintain and replace Toters as necessary. All Toters shall be new when delivered initially to the customer and in "like new" condition when delivered to replace worn or damaged units. Eligible Customers shall be responsible for any rental charges assessed for use of Toters.

4.3.4 Safety; Sanitation. Contractor must report to the proper appropriate City official any violation of trash storage regulations or any unsanitary conditions. The Contractor shall follow traffic laws and regulations as well as prudent safety practices and regulations. No backing-up of collection vehicles on City streets is permitted except when necessary due to a narrow turning area. Collection vehicles shall stop as near as

practical to the right hand curb or edge of pavement for loading. Drivers shall be instructed on how to avoid creating potential traffic hazards or cause inconvenience to the traveling public or to themselves.

4.3.5 Recycling. Contractor shall provide curbside collection of Recyclables in accordance with the following specifications.

4.3.5.1 Contractor's Recycling Responsibility. Contractor shall be responsible for separation and ultimate recycling of all recyclables collected (except for certifiable small amounts of refuse and/or non-recyclable materials which may be included in the mix). Diversion by Contractor of Recyclables to a disposal site (i.e. landfill, incinerator, etc.) rather than to a market for reuse is a material breach of this agreement.

4.3.5.2 Service Requirements. Contractor will provide the following minimum level of service for Recyclables collection:

- (a) At its own expense, Contractor shall provide all Eligible Customers with at least one (1) rigid receptacle (minimum 18 gallon capacity) for Recyclables clearly marked with a recycling logo and in a color approved by the City. Recycling receptacles remain Contractor's property.
- (b) Recyclables will be collected weekly from all eligible customers on the normal trash collection day.
- (c) Contractor will provide a semi-annual public awareness program to inform and encourage Eligible Customers to participate in the City's recycling program. Please specify how you will accomplish this requirement.

4.3.6 Bulk Waste. Contractor shall collect Bulk Waste once per week on the same day as regular collection with no limit on the number of items per residence, except as otherwise provided in this agreement. Residents shall contact the Contractor one day prior to their regular collection day to arrange for bulk item pick up. There will be no additional cost or charge to the City or its residents for Bulk Waste collection, except that a charge for disposal of items containing CFC's or HCFC's may be levied.

4.3.6.1 Tagging; Missed Pick-Ups. Any Bulk Waste items placed out for collection but not collected shall be tagged by Contractor to indicate the reason why the item was omitted from collection. Any address that Contractor omitted from

Bulk Waste collection will be picked up within 48 hours of notification to Contractor by the affected Eligible Customer.

4.3.7 Yard Waste.

4.3.7.1 Yard Waste Collection. Contractor shall provide collection of Yard Waste on the same day as regular trash collection.

4.3.8 Reports. On a quarterly basis, and no later than thirty (30) days after the end of each quarter, Contractor shall furnish to the City accurate reports identifying the total number of Eligible Customers participating in recycling, and the number of tons of material by type (e.g., Disposal Solid Waste, Recyclables, Yard Waste, Bulk Waste, etc.) hauled and disposed of or processed during the quarter.

4.3.9 Christmas Trees. Contractor shall collect Christmas trees as a part of regular collection service.

4.3.10 Municipal Service. Contractor shall at no charge provide and empty the dumpsters and/or other refuse containers at the following City locations.

a.	Government Center	3035 Olive Road
b.	Government Center Annex	4 Strader Drive
c.	Public Works Facility	2400 Olive Road
d.	Community Center	4000 Lake Center Drive
e.	Fire House #71	5345 Olive Road
f.	City's Record Storage Fac.	909 Miller Avenue
g.	Fire House #73	4385 Salem Avenue
h.	Fire House #74	14 West Trotwood Blvd.
i.	Madison Park	300 Park Place
j.	Fire Station #72	5469 Little Richmond Road
k.	John Wolfe Park	4030 Denlinger Road
l.	N. Broadway Park	460 N. Broadway St.
m.	Police office	10 Maple St.
n.	Training Center	69 Olive Rd.

Furthermore, a recyclable container for approved materials shall be provided at the Government Center and Government Center Annex.

4.4 ***Hours and Days of Collection.***

4.4.1 Scheduling. Except where otherwise specifically provided in this Agreement, all collection of Disposable Solid Waste and Recyclables will be performed only during the following hours:

Day: Monday through Friday

Hours: Between 7:00 a.m. and 6:00 p.m.

Each Eligible Customer shall receive collection service no less frequently than once per week on the pre-specified day that remains constant from week to week ("Pre-specified Schedule"). Contractor shall provide written notice of Pre-specified Schedule to all Eligible Customers. In the event a collection day falls on a legal holiday, collection shall be made the following day (including Saturday) that is not a legal holiday. Prior to the Commencement Date and immediately prior to each annual anniversary thereof, Contractor shall provide the City with the holiday schedule.

4.4.2 Missed Collection. If a missed scheduled collection is reported, Contractor shall promptly investigate and, if verified, shall arrange for collection within twenty-four (24) hours after the report was received. In addition, before Contractor's last collection vehicle leaves the City following completion of its route on collection day, the operator of that collection vehicle shall make contact with the Contractor's local office **and** the City to obtain any report of missed collection stops; if any missed collection stop was the fault of the Contractor, such stops will be collected immediately following such notification. If the Contractor fails to respond within 24 hours, a fine of \$50.00 per day per missed Eligible Customer may be imposed by the City, and if imposed, shall be deducted from the next monthly invoice.

4.4.3 Scheduling Changes. Contractor shall not change the Pre-specified Schedule without first obtaining, in writing, the approval by the City of the proposed schedule and the means by which the Contractor shall inform all Eligible Customers of the change.

4.5 ***Disposal and Processing Facilities.***

4.5.1 Contractor shall dispose of all Disposable Solid Waste (including Bulk Waste), Recyclables and Yard Waste (including leaves) collected under this Agreement at any Approved Disposal or Processing Facility as indicated on a list of facilities that will be provided to the Contractor by the City. That list of approved facilities will be prepared by the County and the County may from time-to-time modify the list. In its complete discretion, the City may instruct Contractor to discontinue use of any Approved Disposal and Processing Facility and Contractor shall immediately comply, provided that the City's instructions to the Contractor are consistent with the County's requirements. Such discontinuance will be accompanied by re-negotiation of the contract

price to reflect the increased or decreased costs of using an alternative disposal facility.

4.5.2 Contractor shall comply with all rules and regulations of the County Solid Waste Department applicable to an Approved Disposal or Processing Facility, and shall comply with all State of Ohio and Montgomery County Garbage and Refuse Disposal District regulations. Violation of these regulations by Contractor is a material breach of this Agreement.

4.6 *Equipment.*

4.6.1 For collection of Disposable Solid Waste under this Agreement, Contractor shall use only all steel, watertight, enclosed packer-type vehicles which meet the standards of the County Combined Health District and all local, State and Federal laws and regulations including Ohio Revised Code Chapter 5577 relative to legal load limits established for such vehicles. Contractor must obtain and maintain all necessary permits from the County Combined Health District.

4.6.2 When making collection from residential units, Contractor shall not use any trucks exceeding 25 cubic yard tandem axle capacity, and such trucks shall also conform to the exact type specified in the Contractor's accepted bid, unless Contractor obtains written authorization otherwise from the City.

4.6.3 All collection vehicles shall be maintained in good mechanical condition and working order and in a clean, sanitary, and safe condition that insures operation pursuant to all applicable health and safety standards. Contractor shall maintain a sufficient number of trucks and other equipment as necessary to provide for the efficient and timely completion of the collection routes in the City, including sufficient backup vehicles in the event of mechanical breakdown or other unavailability. Contractor shall regularly provide thorough cleaning of collection vehicles.

4.6.4 All collection vehicles must display, on both sides of each vehicle, Contractor's name, a unique vehicle number, and the telephone number of Contractor's local office. In addition, each vehicles must be labeled as to the type of collection it is conducting, i.e. TRASH, RECYCLING or YARD WASTE.

4.6.5 The City has the right to inspect all equipment used in the performance of this Agreement. Such inspections shall be permitted immediately upon the City's request and without any requirement of advance notice.

4.7 ***Employees.***

4.7.1 Contractor's employees are subject solely to the control of Contractor and are not subject to the control of the City.

4.7.2 In the course of performance under this Agreement, Contractor will prohibit its employees from using improper or abusive language, engaging in unacceptable or improper conduct, being discourteous or performing actions violate of any laws or regulations affecting work hereunder. Contractor will, in addition, instruct its employees concerning these prohibitions. If the City reports to Contractor that one of Contractor's employees is performing work under this Agreement in a manner that is discourteous or damaging to the image of Contractor or the City, Contractor shall investigate the report within a reasonable time and, if the report is found to be substantiated, immediately remove the employee from further duty on any routes within the City.

4.7.3 Contractor shall require that its employees wear uniforms identifying them as employees of the Contractor.

4.7.4 Contractor shall establish and enforce among all employees and agents performing services hereunder such operational standards and practices as will prevent or minimize the inception and spread of infection or contagious diseases and effectively prevent the creation of a nuisance on any public or private property.

4.7.5 Contractor will maintain sufficient personnel and make assignments to collection routes by employees experienced with each route.

4.7.6 Contractor is responsible for picking up and/or cleaning any escaping or spilled contents from collection vehicles. In the event of a failure to adequately remediate such littering and spills for which the City has compiled and presented to the Contractor clearly documented evidence, the City may impose a fine of \$50.00 for each incident, plus the costs the City incurs for the cleanup and will deducted from the next monthly invoice.

5 **ELIGIBLE CUSTOMERS**

5.1 ***Initial Number of Eligible Customers.*** The following are the number of Eligible Customers in each service category as of the Commencement Date:

Unlimited Curb Pick-up	7,915
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This amount will be used for the first three (3) months of the contract or until an exact count can be made. An adjustment of payment will be made based on the exact count.

5.1.1 *Quarterly Adjustments of Eligible Customers.* The number of Eligible Customers to receive service under this Agreement shall be jointly determined by the City and the Contractor with a new accounting of the number every three months. Each new accounting will reflect notices given to the Contractor by the City during the intervening period to add service to new addresses and to discontinue services to existing addresses due to vacancy and/or payment default.

5.2 *Non-Eligible Customers.* The City agrees that the contractor shall have the right and privilege to negotiate its own contract for removal of trash and garbage from trailer parks, apartment complexes, businesses and churches in the City which are **not** included under the provisions of this agreement.

5.3 *Annexation.* The City may, from time to time, annex or incorporate within its political boundaries other portions of the County. The City may, in its sole discretion, enlarge the Service Area by providing written notice to Contractor at least sixty (60) days prior to requiring Contractor to commence collection service for Eligible Customers within such annexed or incorporated areas.

6 COMPENSATION AND PAYMENTS

6.1 *Billing and Collection.* City shall maintain the accounts of all Eligible Customers. The City will send quarterly billing statements to all Eligible Customers, which shall specify all amounts due. Rates for collection services will be determined by the City, and generally shall be greater than the prices stated in Contractor's bid response form due to adjustment for administrative and other costs of operating the refuse collection service.

6.2 *Contractor Compensation.* On a monthly basis, the Contractor shall bill and the City shall pay for services rendered in accord with this agreement. The billing shall reflect the number of Eligible Customers jointly agreed upon, less any deductions for missed collection or littering fines. The City shall bear responsibility for collection of unpaid accounts. The monthly payments to Contractor made hereunder shall satisfy in full the City's payment obligations to Contractor under this Agreement.

6.3 *Tipping Fees.* Contractor is responsible for payment of all Tipping Fees and any other disposal or processing fees or charges of any nature or description required to be paid for disposal or processing of any Disposable Solid Waste,

including Yard Waste and Bulk Waste, Recyclables or other material collected under or otherwise subject to the terms of this Agreement. Upon request of City or its agent, Contractor will produce weigh tickets as proof of payment to any Approved Disposal or Processing Facility being utilized. No adjustment in compensation to the Contractor is contemplated for the duration of this agreement in the event of any change in disposal costs at the County's Solid Waste Disposal Facilities.

7 TERM OF AGREEMENT; TERMINATION

7.1 ***Term.*** The initial term of this Agreement is three (3) years, which term shall commence October 1, 2020, and end September 30, 2023. Upon mutual agreement of the City and Contractor, this Agreement may be extended for three (3) additional one (1) year periods, each subject to price renegotiation to be completed no later than 120 days prior to the commencement of the applicable extension period.

7.2 Termination for Default; Remedies.

7.2.1 Events of Default. Without prejudice to the City's right to terminate this Agreement for material breaches not enumerated herein, the following shall constitute events of default, entitling the City to terminate for cause:

- (a) Contractor's bankruptcy, receivership, or trusteeship.
- (b) Except when authorized by written consent, Contractor's assignment of this Agreement or employment of a subcontractor or independent contractors in performance thereof, except, if applicable, for account billing and collection.
- (c) During performance hereunder, Contractor without the express written approval of buyer, combines waste collected from Eligible Customers with waste collected from any other source.
- (d) Contractor's failure to carry the insurance and bond required hereunder.
- (e) Contractor's failure to dispose of all Disposable Solid Waste collected under this Agreement at an Approved Disposal or Processing Facility.

7.2.2 Non-Exclusive Remedies. If Contractor defaults or neglects to perform collections in an orderly manner as specified herein, or at the scheduled time for collections, or fails to perform any other obligations hereunder, and provided such failure is not due to an event of Force Majeure as defined herein, then five (5) days after written notice to

Contractor the City may call all bonds posted by Contractor and may, at its option, arrange for substitute performance and charge same to Contractor. This provision is without prejudice to the availability of other remedies to the City in law or equity.

7.2.3 Substitute Service. In the event Contractor fails to perform the collection services required by this Agreement for reasons other than an event of Force Majeure, the City shall have the right to obtain substitute service which is not an exclusive remedy, and to hold Contractor responsible for any costs incurred by the City in obtaining and utilizing such substitute services. In the event any interruption of service exceeds two (2) successive days for which collection is scheduled, the City may terminate this Agreement forthwith and obtain remedies for non-performance.

7.3 Force Majeure. If Contractor is prevented or hindered in the performance of any of the terms, covenants or conditions of this Agreement by reasons beyond its control, including, without limitation, fire, flood, riot, military or usurped power, sabotage, any action taken by any governmental authority which, without fault on the part of Contractor, prevents or hinders the performance by Contractor of its obligations hereunder, or act of God, whether similar or dissimilar to those reasons enumerated in this section, then Contractor, by written notice to the City, may declare an event of Force Majeure hereunder, and, to the extent and for the period that such performance is prevented or hindered by such condition or event, Contractor shall be excused from the performance of such term, covenant or condition. In the event of such excused non-performance, Contractor will promptly notify the City of the services it cannot perform, but nonetheless will use its best efforts to perform as closely as reasonably possible to the specifications hereunder. Should an event of Force Majeure occur, the City shall have the right, following written notice to Contractor, to obtain substitute performance and other measures to remedy Contractor's delays in performance or any other departure from the terms of this Agreement. Labor strike, job action, and/or lockout, or failures of equipment or by suppliers of equipment or materials, are **not** events of Force Majeure.

7.4 Liquidated Damages. Both parties agree that in the event Contractor breaches the requirements herein regarding disposal of all Disposable Solid Waste subject to this Agreement at an Approved Disposal Facility, the amount of the City's actual damages will be difficult to determine. For each month in which such a breach occurs Contractor will pay the following stipulated amount of damages in lieu of calculating actual damages and not as a penalty:

Ten Thousand Dollars (\$10,000.00).

8 CONTRACTOR INDEMNIFICATION OF THE CITY

8.1 Contractor shall protect, indemnify, and hold harmless the City and its officers, officials, members, employees, agents, and invitees ("City Indemnified Parties") from and against all civil liabilities, fines, penalties, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions and reasonable attorney's fees, in law or equity, and shall defend City Indemnified Parties in any suit, including appeals, for personal injury to and death of any person or persons or for the loss or damage to property, in each case to the extent arising out of (i) the performance (or non-performance) of Contractor's obligations under this Agreement; (ii) Contractors' failure to conduct its operations in accordance with applicable law or this Agreement; or (iii) any other action or conduct by Contractor, whether negligent or otherwise, arising in any manner by reason of performance of this Agreement. Contractor is not required to reimburse or indemnify any City Indemnified Party for loss or claim due to the negligence or willful misconduct of such City Indemnified Party except to the extent that such loss or claim also results from negligence or willful acts or omissions of Contractor. In the event of litigation arising by reason of this Agreement as to actions of Contractor, the City reserves the right to select its own counsel for its defense in any negotiations or trial of lawsuits or settlement thereof and the cost of the same shall be paid by Contractor.

9 INSURANCE AND PERFORMANCE BOND

9.1 *Insurance to be Carried by Contractor.* During the term of this Agreement and any renewals or extensions thereof, Contractor shall maintain or cause to be maintained in full force and effect, at Contractor's expense, worker's compensation insurance, public liability and property damage insurance, and other insurance with at least the minimum amounts of coverage described below, to cover performance of this Agreement. Deductibles are not to exceed Ten Thousand Dollars (\$10,000.00). Such policies are to be in the broadest form available on usual commercial terms and shall be written by insurers of recognized financial standing authorized to do business in the State of Ohio. Property and Casualty insurance shall be rated at a level acceptable to the City. Contractor shall procure and maintain, at its own cost and expense, any additional kinds and amounts of insurance that, in its own judgment, may be necessary for proper protection in the performance of its obligations under this Agreement.

9.2 *Coverage.* The types and minimum limits of coverage to be provided are as follows:

- (a) Worker's Compensation: Statutory amounts; before commencing work under this Agreement, Contractor must provide City with

satisfactory documentation of such insurance. Contractor shall make all premium payments timely so as to maintain such protection in full force and effect during the term of this Agreement.

- (b) Commercial General Liability-Bodily and Property Damage: Bodily injury including wrongful death in an amount not less than One Million Dollars (\$1,000,000) for each person and Three Million Dollars (\$3,000,000) for each occurrence.
- (c) Comprehensive Commercial Automobile Liability-Bodily and Property Damage: Bodily injury including wrongful death in an amount not less than One Million Dollars (\$1,000,000) for each person and Three Million Dollars (\$3,000,000) for each occurrence, and property damage in an amount not less than Five Hundred Thousand Dollars (\$500,000) for each occurrence.
- (d) Contractual Liability Insurance: Three Million Dollars (\$3,000,000).

9.3 ***Additional Insureds.*** Each insurance Policy, except the worker's compensation policy, shall include the City as an additional insured with the understanding that any obligations imposed upon the insured (including, without limitation, the liability to pay premiums) shall be the sole obligations of Contractor and not of the City.

9.4 ***Cancellation or Modification.*** Each insurance policy shall provide that: (1) it may not be canceled, suspended or modified (including, without limitation, elimination of the City as a named insured) until at least twenty (20) days after receipt by the Contract Representative of advance written notice of cancellation; and (2) that the insurance shall be primary without right of contribution of any other insurance carried by or on behalf of the City.

9.5 ***Certificates.*** Certificates of insurance in forms satisfactory to the City evidencing compliance with the above requirements shall be furnished to the City prior to the Commencement Date and on each annual anniversary date of the Commencement Date.

9.6 ***Waiver.*** Contractor hereby irrevocably waives all claims against the City for all losses of and damages to property or injuries or death to persons resulting from risks insurable under the insurance described above.

9.7 ***Performance Bond.*** As further security for the rights of the City under this Agreement, and without limiting the indemnification provisions hereof, Contractor shall post a performance bond in favor of the City as follows:

- (a) In the amount of Two Hundred Thousand Dollars (\$250,000).

- (b) Indemnifying the City against any and all losses or expenses incurred by the City by reason of Contractor's failure to perform fully and completely all of its obligations under this Agreement. Such bond shall provide coverage for the term of this Agreement or any renewals or extensions thereof, the City shall be provided notice not less than ninety (90) days prior to expiration of bond. Alternatively, if the bond has an initial term less than the term of this Agreement, it will be renewed annually, as necessary and at least ninety (90) days prior to expiration of the then-current term of the bond, to afford coverage to the City for the entire term of this Agreement or any renewals or extensions thereof. Such bond shall be issued by underwriters of recognized financial standing authorized to do business in the State of Ohio.

10 COMPLIANCE WITH LAW

10.1 *Duty to be Informed.* Contractor shall keep itself and its employees, and cause its agents to be adequately informed of all laws, ordinances, regulations and judicial rulings affecting in any manner performance of Contractor's obligations under this Agreement. Contractor shall cause its agents and employees to observe with same.

10.2 *Compliance With Employment Law.*

10.2.1 Contractor shall comply with all federal, state, and local laws concerning employment, including but not limited to laws concerning pay standards, health and safety.

10.2.2 Contractor will comply with all laws prohibiting discrimination in employment due to race, color, religion, sex, national origin, age, disability, or status as a Vietnam-era or special disabled veteran, or any other basis prohibited by law.

11 CUSTOMER RELATIONS

11.1 *Local Office.* Contractor shall maintain an office for the transaction of business including receipt of service calls or complaints, and shall be available for such calls on all days of collection between the hours of 8:00 a.m. and 5:00 p.m. Contractor must provide adequate telephone capacity and personnel to insure that calls are answered promptly. Telephone calls to the Contractor's office must be toll free from any location within the City.

11.2 *Written Notification.* Within fifteen (15) days of Commencement Date and upon each annual anniversary thereof, Contractor will deliver to the City a written statement containing the following:

- (a) The Contractor's name, address, local telephone number, schedule when Contractor's office is staffed, and notice that messages can be left when the office is closed.
- (b) A description of the Disposable Solid Waste and other materials collected under this Agreement, including examples of acceptable waste.
- (c) The Pre-specified Schedule for the customer, including a list of holidays.
- (d) All standards applicable to collection, e.g., acceptable containers, container location, and the like.
- (e) Procedures for submission of complaints.

11.3 ***Response to Complaints.*** Contractor shall respond to complaints submitted by Eligible Customers or the City within twenty-four (24) hours of receipt. The Contract Representative shall notify Contractor of each complaint communicated to the City. On a monthly basis, Contractor shall inform the Contract Representative of all complaints received by Contractor (including copies of written complaints) and the disposition thereof. Failure of the City to submit any complaint shall not constitute a waiver of rights under this Agreement.

12 NOTICES

12.1 Any notices regarding performance of the parties' obligations under this Agreement must be delivered by hand, overnight courier, or first class mail, at the following addresses:

The City's Contact Representative:

Finance Director
City of Trotwood
3035 Olive Road
Trotwood, Ohio 45426

Contractor's Representative:

13 INDEPENDENT CONTRACTOR

13.1 Except as otherwise expressly stated herein, Contractor and its employees or agents shall perform all work and service described herein as an independent contractor and not as an officer, agent, servant, or employee of the City. Contractor shall have exclusive right to control the details of the services performed hereunder and all persons performing same. Contractor shall be solely responsible for acts and omissions of its officers, agents, employees, and subcontractors (if any). Nothing herein shall be construed as creating a partnership or joint enterprise between the City and Contractor.

14 RESOLUTION OF DISPUTES

14.1 In the event a dispute arises between the City and Contractor with respect to the performance of obligations under this Agreement, representatives of the City and Contractor authorized to settle the dispute shall meet face to face and make a good faith effort to resolve such dispute.

15 LICENSES, PERMITS AND FEES

15.1 Contractor will obtain and pay for all licenses, permits, certificates, inspections and all other fees required by applicable law or otherwise necessary to perform the services as described hereunder.

16 NON-ASSIGNMENT; NON-SUBCONTRACT

16.1 Contractor shall not assign, transfer, subcontract, sublet, convey, or otherwise alienate any of its obligations, rights, title, or interest in or to this Agreement without the prior written consent of the City, which the City may grant or withhold in its absolute discretion. Any approved subcontracting will not release Contractor of its obligations under this Agreement.

17 CHOICE OF LAW; VENUE

17.1 This Agreement shall be governed, construed and interpreted in accordance with the laws of the State of Ohio, excluding any such law relating to choice of law. Should any action, whether real or asserted, at law or in equity, arise out of the terms and conditions of this Agreement, such action shall be filed exclusively in a court of the State of Ohio.

18 AMENDMENT OF AGREEMENT

18.1 No amendment of this Agreement may occur without the written consent of the parties hereto.

19 INTEGRATED AGREEMENT

19.1 This Agreement contains the entire agreement of the parties pertaining to the subject matter.

THE CITY OF TROTWOOD

By: _____

Title: City Manager

Date: _____

CONTRACTOR

Firm: _____

By: _____

Title: _____

Date: _____