

**AGREEMENT FOR THE COLLECTION, TRANSPORTATION AND DELIVERY FOR
DISPOSAL OR PROCESSING OF RESIDENTIAL SOLID WASTE AND
RECYCLABLE MATERIALS GENERATED WITHIN THE
CITY/TOWNSHIP/VILLAGE OF _____, OHIO**

THIS AGREEMENT for the collection, transportation and delivery for disposal or processing of Solid Waste and Recyclable Materials ("Collection Services") generated within the City/Township/Village of _____, Ohio (the "Collection Agreement") entered into this ____ day of _____, 2018, is by and between the City/Township/Village of _____, Ohio (the "City/Township/Village"), with its offices located at _____ (address), and _____ ("Collection Contractor"), a _____ [insert corporation, limited liability company, partnership, sole proprietorship or joint venture] with an office located at _____ (address), Ohio _____.

RECITALS

WHEREAS, pursuant to Sections 505.27, or 715.43 and 3707.43 of the Ohio Revised Code, the City/Township/Village may enter into written contracts with independent contractors to establish such collection systems and designate solid waste facilities as may be necessary or appropriate to provide for the safe and sanitary management of Solid Waste, including Recyclable Materials and Yard Waste, generated within the City/Township/Village; and

WHEREAS, the City/Township/Village has determined that it is in the best interests of the City/Township/Village and its Residents that the City/Township/Village arrange for the collection, transportation and delivery for disposal or processing of Solid Waste, Recyclable Materials and Yard Waste generated at Residential Units, City/Township/Village Municipal Facilities and during Special Events located within the City/Township/Village from a single contractor on an exclusive basis (the "Collection Services"); and

WHEREAS, on November 5, 2018, and on November 12, 2018, the City/Township/Village, as part of a Joint Bid Process with several communities located within Lorain County, Ohio ("2018 Lorain County Consortium"), invited through public advertisement qualified providers of the Collection Services to submit bids to provide such Collection Services on the terms and conditions contained herein; and

WHEREAS, the Collection Contractor submitted a bid to become the sole provider of Collection Services for the benefit of the City/Township/Village and its Residents; and

WHEREAS, following the official opening of the bids on December 14, 2018 by the 2018 Lorain County Consortium and consideration of bids for Collection Services, the City/Township/Village determined that the Collection Contractor is qualified to provide the Collection Services to the City/Township/Village and approved the award of the Collection Agreement to the Collection Contractor; and

WHEREAS, the City/Township/Village and the Collection Contractor have agreed on terms and conditions for the Collection Services in conformance with the Bid Documents for the per Residential Unit quarterly price as stated on the Bid Forms, as well as for other Optional Services which are attached as Exhibit A, all of which are incorporated by reference; and

WHEREAS, the City/Township/Village and the Collection Contractor each represents that it has the authority to execute this Collection Agreement for the Collection Services identified herein.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements below, the parties incorporate the foregoing recitals and agree as follows:

ARTICLE I – DEFINED TERMS

The capitalized terms used in this Collection Agreement are defined in Exhibit B, Defined Terms, which is attached and incorporated by reference.

ARTICLE II — AGREEMENT, TERM & RENEWAL TERMS

- 21 **Agreement and Independent Contractor Status.** The City/Township/Village hereby authorizes the Collection Contractor and the Collection Contractor hereby accepts such authorization, on an exclusive basis and as an independent contractor, to collect, transport, and deliver for disposal or processing, Solid Waste and Recyclable Materials and Yard Waste generated at Residential Units, Municipal Facilities and during certain Special Events within the City/Township/Village. No other independent contractor or other person or entity shall provide the services agreed to in this Collection Agreement during the term of this Collection Agreement. The City/Township/Village shall not be obligated to require that all Residential Units obtain Collection Services.

[The following paragraph will be added on behalf of any City/Township/Village that requires that *all* Residential Units obtain Solid Waste Collection Services by ordinance or resolution.

Residents shall be required to receive Collection Services from the Collection Contractor pursuant to this Agreement unless an exemption is obtained from the City/Township/Village. Such exemption is at the sole discretion of the City/Township/Village. Upon notice to the Collection Contractor by the City/Township/Village, the Collection Contractor shall discontinue service to any exempted Residential Unit.]

- 22 **Effective Date and Term.** This Collection Agreement shall be effective on the date of last execution. The term of this Collection Agreement shall be for five (5) years, beginning on April 1, 2019, and terminating on March 31, 2024.

- 23 **Implementation Plan.** From and after the commencement of the term of this Agreement, the Collection Contractor shall submit proof that the benchmarks identified in the implementation plan, have been met. The Collection Contractor shall certify: (a) compliance with the benchmarks which include, but are not limited to, the purchase of sufficient vehicles, collection containers and equipment to perform; (b) that Collection Contractor's employees have completed training and driven the City/Township/Village-approved Collection Routes; (c) that City/Township/Village-approved written notices to Residents were sent to each Resident by U.S. mail explaining the procedures and obligations of each owner or occupant of a Residential Unit to receive Collection Services, and detailing the requirements for placement of collection containers; (d) that the delivery of any Contractor-provided collection containers is complete; and (e) that the Collection Contractor has delivered to the City/Township/Village proof of insurance, proof of workers' compensation coverage and the required Performance Bond, which is attached as Exhibit D and incorporated by reference. Finally, the Collection Contractor shall certify that all conditions precedent to the commencement of performance of the Collection Services have been satisfied by the dates stated on the implementation plan submitted by the Collection Contractor.

ARTICLE III — GENERAL REQUIREMENTS OF THE COLLECTION CONTRACTOR

- 31 **Delivery to Disposal or Processing Facilities.** The Collection Contractor shall provide regular weekly collection of Solid Waste and Recyclable Materials and Yard Waste from each Residential Unit, Municipal Facilities and during Special Events located within the City/Township/Village. All Solid Waste and Recyclable Materials and Yard Waste generated at each Residential Unit shall be collected by the Collection Contractor, provided the Resident places such items in the manner specified in the City/Township/Village-approved written notice specified in Section 2.3 and Section 4.4. The Collection Contractor shall collect, transport and deliver all Solid Waste and Recyclable Materials and Yard Waste to the licensed facility or facilities identified by Collection Contractor in Collection Contractor's bid proposal. The Collection Contractor shall pay to the owner or operator of the facility or facilities all charges, costs, fees and expenses incurred for the disposal or processing of the Solid Waste or Recyclable Materials or Yard Waste collected by the Collection Contractor. Source Separated Recyclable Materials and Source Separated Yard Waste shall not be delivered to any landfill or comingled with Solid Waste. All Collection Services performed by the Collection Contractor pursuant to this Collection Agreement shall be performed in a competent and workmanlike manner.
- 32 **Vehicles and Equipment.** The Collection Contractor shall furnish all vehicles and equipment necessary to provide the Collection Services required under this Collection Agreement, as well as the necessary facilities for the thorough cleaning and maintenance of the vehicles and equipment. The Collection Contractor shall keep all vehicles and equipment in a clean, sanitary and safe operating condition at all times. All vehicles used by the Collection Contractor for the collection of Solid Waste or Recyclable Materials shall be enclosed, washed and cleaned, leak proof (including but not limited to free from leaks of fuel or hydraulic fluid), rust- free and equipped with a broom, shovel and rake.

Other types of vehicles may be used only as approved by the City/Township/Village. All vehicles shall be painted uniformly, and shall bear the Collection Contractor's name, vehicle number and Collection Contractor's telephone number. All vehicles and equipment may be inspected from time to time by the City/Township/Village to determine that same are clean, sanitary and in safe operating condition; however, such an inspection shall not constitute a representation by the City/Township/Village that the vehicles and equipment are safe. Any vehicles or equipment that, in the opinion of the City/Township/Village, are not clean, sanitary or in a safe operating condition shall be removed from service by the Collection Contractor until such vehicles have been cleaned and/or repaired to the satisfaction of the City/Township/Village. Failure to comply with these standards constitutes grounds for termination of this Collection Agreement by the City/Township/Village.

- 33 **Collection Contractor's Office and Telephone.** The Collection Contractor shall maintain an office in Lorain County Ohio, or a contiguous County, and telephone service with a non-toll telephone number from the City/Township/Village, which shall be manned by a live operator and a supervisor on working days from 7:00 a.m. to 7:00 p.m. to receive any complaints or calls regarding the Collection Services from a Resident or the City/Township/Village. The Collection Contractor shall also maintain an emergency contact number which is available 24 hours per day, seven (7) days per week.
- 34 **Collection Contractor Ability to Communicate with Vehicles in the Field.** The Collection Contractor shall maintain two-way radio or cellular telephone service or other means of communication service with the drivers of all vehicles used to provide Collection Services within the City/Township/Village, so that the Collection Contractor may communicate with the drivers in order to expedite the Collection Contractor's response to complaints regarding the Collection Services.
- 35 **Employee Training.** The Collection Contractor shall provide training in operations, approved collection routes, safety practices, use of employee uniforms and conduct for all employees involved in providing the Collection Services.
- 36 **Collection Containers.** The Collection Contractor shall provide each Residential Unit with one (1) ninety-six (96) gallon wheeled collection container for Solid Waste as part of the Base Bid Price. The Collection Contractor shall collect Solid Waste from each Residential Unit from the Contractor-provided collection container for Solid Waste. The Collection Contractor shall replace lost or damaged collection containers at the request of a Resident. The Collection Contractor may offer to rent additional wheeled collection container(s) for Solid Waste to Residents at the price stated on Exhibit A. In the event a Resident chooses to rent additional Solid Waste collection container(s) from the Collection Contractor, the Collection Contractor shall bill the Resident directly for the use of such Contractor-provided collection container(s) at the price stated on Exhibit A. In no event will the City/Township/Village be responsible for such additional charge.

If a Residential Unit requests a smaller Solid Waste collection container prior to or at any time after the initial delivery of a ninety-six (96) gallon collection container, the Collection Contractor shall provide such smaller collection container to the Residential Unit at the Discounted Base Bid Price stated on Exhibit A.

The Collection Contractor shall provide each Residential Unit with one (1) sixty-four (64) gallon wheeled collection container for Recyclable Materials as part of the Base Bid Price. The Collection Contractor shall collect Recyclable Materials from each Residential Unit from the Collection Contractor-provided collection container for Recyclable Materials. The Collection Contractor shall replace lost or damaged collection containers at the request of a Resident. The Collection Contractor may offer to rent additional wheeled collection container(s) for Recyclable Materials to Residents at the price stated on Exhibit A. In the event a Resident chooses to rent additional Recyclable Materials collection container(s) from the Collection Contractor, the Collection Contractor shall bill the Resident directly for the use of such Contractor-provided collection container(s) at the price stated on Exhibit A. In no event will the City/Township/Village be responsible for such additional charge. If a Residential Unit requests a smaller Recyclable Materials collection container after the delivery of a sixty-four (64) gallon collection container, the Collection Contractor shall provide such smaller collection container upon request at no additional charge to the Residential Unit.

Solid Waste collection containers and Recyclable Materials collection containers must be differentiated in a manner which renders the collection containers easily distinguishable.

[Yard Waste shall be placed for collection in yard waste bags approved by the Collection Contractor, or in containers clearly identified as containing Yard Waste.]

- 37 **Collection Requirements.** The Collection Contractor shall only be obligated to collect Solid Waste and Recyclable Materials that is contained in a Residential Unit's Collection Container(s), with the exception of Section 3.8. If the Residential Unit selects the Optional Service of Unlimited Solid Waste Collection Services, the Collection Contractor shall collect all Solid Waste that is Curbside, including Solid Waste contained in a Collection Contractor-provided collection container, or in any other collection container used by a Resident for Solid Waste.
- 38 **Collection of Bulk Items Included.** Solid Waste shall include, and the Collection Contractor shall collect Bulk Items (defined in Exhibit B) including but not limited to larger household objects including but not limited to furniture, appliances, televisions, carpet and padding, mattresses and box springs, child play equipment, fencing and Christmas trees in one piece on the agreed to Bulk Item collection day from the usual point of pickup at a Residential Unit. The Collection Contractor shall collect such items without additional charge. Bulk Item collection is to be provided no less than once per month (for example, every first collection of the month). All appliances containing chlorofluorocarbon gas (CFC or freon) shall be subject to the requirements of Section 3.9.
- 39 **Collection of Chlorofluorocarbon (CFC) Appliances.** Appliances containing chlorofluorocarbon (CFC) shall be collected by the Collection Contractor on the same day as the collection of Bulky Items. In the event a CFC-containing appliance is placed for collection without proper certification of CFC removal attached, the Collection Contractor shall arrange for the proper removal of all CFCs from such appliances in compliance with all applicable laws and regulations. Annually, or more frequently upon request of the City/Township/Village, the Collection Contractor shall provide a written

report to the City/Township/Village of the number of CFC-containing appliances collected by the Collection Contractor, including the Collection Contractor's certification that the removal of CFC was performed in compliance with all applicable laws and regulations. The Collection Contractor may either require pre-payment or invoice each Resident who places an appliance containing CFC for the cost and proper removal of CFC. The City/Township/Village shall not be responsible for the cost of CFC removal. In no event shall the Collection Contractor's invoice to a Resident for the removal of CFC exceed the per appliance price as stated on Exhibit A.

- 3.10 **Collection of Home Remodeling Construction and Demolition Debris.** The Collection Contractor may limit the collection to minor home remodeling projects only. If such a limit is to be imposed, the Collection Contractor shall include such limitation in the Resident obligation notice mailed to the Residents City/Township/Village.
- 3.11 **Services at City/Township/Village Municipal Facilities.** The Collection Contractor shall provide collection containers to the City/Township/Village at the location, number, container type, container size and day of collection as stated on Exhibit E, which is attached and incorporated by reference. The Collection Contractor shall collect all Solid Waste and Recyclable Materials deposited in the collection containers on the collection day stated in Exhibit E. In the event that additional collections of the collection containers shown on Exhibit E are necessary, the Collection Contractor shall collect such containers as requested by the City/Township/Village at no additional charge or as specified in Exhibit E, provided that City/Township/Village requests for additional collection are not greater than two in a calendar month. Within reason, the number, sizes and locations of the collection containers are subject to change in the discretion of the City/Township/Village upon written notice to the Collection Contractor.
- 3.12 **Collection at Special Events of City/Township/Village.** The Collection Contractor shall provide Collection Services upon request of the City/Township/Village for Special Events included on the attached Exhibit E. Unless otherwise agreed in writing, no additional fees shall be charged to the City/Township/Village for these services, notwithstanding the frequency or number of collections that may be required by the City/Township/Village, or the volume or nature of the Solid Waste or Recyclable Materials collected. Any containers and/or Special Events in addition to those included on Exhibit E may be requested by the City/Township/Village at the price indicated on Exhibit A.
- 3.13 **Commercial Establishments Excluded.** This Collection Agreement does not require the Collection Contractor to provide any services to commercial establishments within the City/Township/Village, unless such commercial establishments are specifically identified in Exhibit E and incorporated as a Residential Unit Equivalent. The Collection Contractor may, in its sole discretion, enter into private contracts to provide services to commercial establishments not defined as City/Township/Village Municipal Facilities or Residential Unit Equivalents.

**ARTICLE IV — CONTRACTOR'S CONDITIONS OF RESIDENTIAL UNIT
COLLECTION**

- 4.1 Collection Routes and Day of Collection.** On or before February 15, 2019, the Collection Contractor shall furnish to the City/Township/Village, for approval by the City/Township/Village: (a) collection routes consisting of a route map, showing the individual routes for the collection of Solid Waste and Recyclable Materials and Yard Waste and their beginning and ending points; (b) confirming the weekday(s) on which all Residential Solid Waste and Recyclable Materials and Yard Waste will be collected for each collection route within the City/Township/Village (collection of Residential Solid Waste and Recyclable Materials shall be on the same weekly schedule, as set forth in the collection day and route schedule provided by the Collection Contractor and approved by the City/Township/Village.) The Collection Contractor shall not change the day of collection without written approval by the City/Township/Village. In the event such a change is approved by the City/Township/Village, written notice of such approved change must be provided to each affected Residential Unit at least ten (10) days prior to the new collection day. The City/Township/Village retains the right to adjust the collection routes submitted by the contractor to provide for public convenience and safety, if deemed necessary by the City/Township/Village. The Collection Contractor shall perform the Collection Services using the final City/Township/Village-approved collection routes.
- 4.2 Holidays.** Holidays that may be observed by the Collection Contractor include New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day, or any other national holiday pre- approved by the City/Township/Village. In any week containing an observed holiday, the day of collection may be moved to the day immediately following the regular day of collection. The Collection Contractor shall resume the regular schedule the following week. The Collection Contractor shall advise Residential Units of the holiday schedule in the notice described in Section 4.4.
- 4.3 Starting and Ending Time.** Collection of Solid Waste and Recyclable Materials and Yard Waste occur between 7:00 a.m. and 7:00 p.m. on the day designated for collection. In the event the City/Township/Village notifies the Collection Contractor that the Collection Contractor has violated the permissible hours of collection three or more times in any ninety (90) day period, except for the purposes of picking up missed collections as set forth above, the City/Township/Village may, at the City/Township/Village's discretion, fine the Collection Contractor two hundred dollars (\$200.00) per occasion.
- 4.4 Notice to Residential Units.** No later than fifteen (15) days prior to the first date of the Collection Services and annually thereafter during the term, the Collection Contractor, at the Collection Contractor's expense, shall provide written notice to each Residential Unit by letter delivered by U.S. mail listing the procedures and obligations of the owner or tenant of each Residential Unit receiving Collection Services. Such notice shall include a contact telephone number for the City/Township/Village and the Collection Contractor, and each Residential Unit's collection schedule including holidays to be observed pursuant to Section 4.2. The initial notice, including the procedures and obligations, shall be submitted to the City/Township/Village for approval by _____. Subsequent notices shall be submitted to the City/Township/Village for approval not later than twenty

(20) days prior to mailing to the Residential Units. An electronic copy of the written notice shall be provided to the City/Township/Village so that the notice can be posted electronically or posted at various community buildings.

The Collection Contractor shall include information regarding Recycling Materials and Yard Waste acceptable for processing within the annual mailer. The bid price shall include all costs associated with the development and distribution of the mailer.

- 4.5 **Procedure for Curbside Collection Service.** Except as provided in Section 4.6, collection of Solid Waste and Recyclable Materials and Yard Waste shall be made for each Residential Unit at one point of pick-up at the curbside or street of the Residential Unit or other identified location for non-curbed Residential Units.
- 4.6 **Procedure for Carry-out Collection Service.** The Collection Contractor shall provide Carry-out Collection Service at the same rate as the Curbside Collection Service to any Resident with a physical disability which limits or impairs the ability to walk, in accordance with Ohio Revised Code Section 4503.44(A)(1). By agreement, either the City/Township/Village or the Collection Contractor may manage and maintain the list of Residents who are eligible to receive Carry-out Collection Service at no additional charge, and notify the other party of any changes to that list. The Collection Contractor may provide optional Carry-out Collection Service to any Residential Unit requesting such service. In the event a Resident chooses optional Carry-out Collection Service, the Collection Contractor shall bill the Resident directly for such service at the price stated on Exhibit A. The City/Township/Village shall not be responsible for such additional charge.
- 4.7 **Handling of Collection Containers.** All re-usable collection containers used by a Resident shall be returned to the location from which they were removed, erect and with lids in place. If a collection container has no lid, such collection container shall be placed upside down at the location from which it was removed. The Collection Contractor shall immediately pick up or sweep up any materials that the Collection Contractor spills during collection. The Collection Contractor is also responsible for cleanup of all hydraulic or other fluids which leak from collection vehicles. All such cleanups are required to be performed as soon as possible, but in no case longer than eight (8) hours after the spilled leak, or the end of the collection day. In the event the Collection Contractor fails to adequately perform a cleanup required pursuant to this section, the City/Township/Village shall have the right to perform such cleanup services using City/Township/Village employees or other contractors, and bill the Collection Contractor for the cost of such cleanup.
- 4.8 **Damage to Collection Containers.** The Collection Contractor shall exercise due care to avoid damaging collection containers. The Collection Contractor shall make a like kind replacement of collection containers that it has substantially damaged through the negligence of the Collection Contractor. The Collection Contractor shall warrant that any Collection Contractor-provided collection container shall be free from defects; and engineered to last for not less than ten (10) years. Any damaged or broken Collection Contractor-provided collection containers shall be replaced by the Collection Contractor, at the sole cost and expense of the Collection Contractor.

- 4.9 **Violation of Resident Obligations; Refusal to Collect.** Upon the first instance that a Resident places Solid Waste or Recyclable Materials or Yard Waste for collection in a manner that violates the Resident's obligations as contained in the original notice mailed by the Collection Contractor to each Residential Unit, the Collection Contractor shall collect such items and leave a tag advising the Resident the detailed reasons why such placement is unacceptable. Upon any subsequent instance that a Resident places Solid Waste or Recyclable Materials or Yard Waste for collection in a manner that violates the Resident's obligations, the Collection Contractor may refuse to pick up such materials provided that at the time of refusal, the Collection Contractor leaves a tag advising the Resident of the reasons for the Collection Contractor's refusal to collect the materials. The Collection Contractor shall provide the City/Township/Village with copies of all tags left at each Residential Unit pursuant to this section. The Collection Contractor shall not take undue measures to determine compliance with specified weight or size restrictions, but shall act, in good faith, in favor of the City/Township/Village and the Residents receiving the Collection Services.
- 4.10 **Conduct of Collection Contractor's Employees.** The Collection Contractor shall perform all Collection Services in compliance with federal, state and local laws and ordinances, including rules and regulations adopted by the solid waste district (District Rules) and local boards of health. The Collection Contractor's employees shall conduct themselves in a polite, courteous and helpful manner at all times and shall refrain from the use of loud or profane language. All employees shall wear a shirt or other appropriate clothing bearing the Collection Contractor's company name in large type. The City/Township/Village may request transfer of any employee who performs his or her duties in a manner that is unsatisfactory to the City/Township/Village.
- 4.11 **Daily Reports.** If requested by the City/Township/Village, the Collection Contractor shall report any Residential Units not placing collection containers on the collection day. This report shall be provided to the City/Township/Village at the end of each collection day to avoid disputes regarding whether collection containers were placed for collection by the Resident.
- 4.12 **Collection Contractor's Response to Complaints.** The City/Township/Village shall notify the Collection Contractor of any complaints received regarding the Collection Contractor's services or performance and suggest corrective measures. If requested by the City/Township/Village, the Collection Contractor shall, before 5:00 p.m. and before the last collection vehicle leaves the City/Township/Village at the end of the day of collection, contact the City/Township/Village to determine if any complaints have been received. The Collection Contractor shall give prompt and courteous attention to all complaints, and in the case of missed collections, shall arrange for collection on the same day.

ARTICLE V — PERFORMANCE ASSURANCE, BOND, INSURANCE AND INDEMNIFICATION

- 51 **Performance Assurance.** The Collection Contractor shall immediately report to the City/Township/Village any notice or order from any governmental agency or court or any

event, circumstance or condition which may adversely affect the ability of the Collection Contractor to fulfill any of its obligations hereunder. If, upon receipt of such report, or upon the City/Township/Village's own determination that any such notice, order, event, circumstance or condition adversely affects the ability of the Collection Contractor to fulfill its obligations, the City/Township/Village shall have the right to demand adequate assurances from the Collection Contractor that the Collection Contractor is able to fulfill its obligations. Upon receipt by the Collection Contractor of any such demand, the Collection Contractor, within fourteen (14) days of such demand, shall submit to the City/Township/Village its written response to any such demand. In the event that the City/Township/Village does not agree that the Collection Contractor's response will provide adequate assurance of future performance to the City/Township/Village and its Residents, the City/Township/Village may, in the exercise of its sole and reasonable discretion, seek substitute or additional sources for the delivery of all or a portion of the Collection Services, declare that the Collection Contractor is in default of its obligations under this Collection Agreement, or take such other action the City/Township/Village deems necessary to assure that the Collection Services will be provided including the right to terminate the Collection Agreement.

- 52 **Labor Disruptions.** If the Collection Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Collection Agreement, the Collection Contractor shall immediately give notice, including all relevant information, to the City/Township/Village in accordance with Section 5.1. In addition to and without waiving its rights to terminate the Collection Agreement in accordance with Section 5.1, above, the City/Township/Village may levy a fine of \$5.00 per Residential Unit per day delay in the performance of Collection Services due to a labor disruption.

- 53 **Performance Bond.** Within ten (10) days after receiving the Notice of Award, the Collection Contractor shall furnish and maintain for the duration of this Collection Agreement, a Performance Bond executed by a duly authorized surety, acceptable to the City/Township/Village in all respects, or such other security acceptable to the City/Township/Village, in the amount of 100% of the consideration for performance of year one of the Collection Agreement. The Performance Bond amount shall be calculated by multiplying the Base Bid Price including provision of a 96 gallon collection container by the number of Residential Units in the City/Township/Village as stated on Exhibit E by four quarters. The Performance Bond is attached as Exhibit D and may be renewed by a substitute surety acceptable to the City/Township/Village, provided that the terms and conditions of this Performance Bond obligate the surety to honor the Performance Bond until the City/Township/Village accepts, in writing, a substitute surety.

- 54 **Liability Insurance.** The Collection Contractor, at the Collection Contractor's sole cost and expense, agrees that it shall at all times during the term of this Collection Agreement carry and maintain in full force and effect, for the mutual benefit of the City/Township/Village and the Collection Contractor, commercial general public liability insurance against claims for personal injury, death or property damage, occurring as a result of the performance of the Collection Services. The insurance coverage to be purchased and maintained by Collection Contractor as required by this paragraph shall be primary to any insurance, self-insurance, or self-funding arrangement maintained by the

City/Township/Village. The coverage and limits of such insurance are listed on Exhibit F, which is attached hereto and incorporated herein by reference. The Collection Contractor shall be responsible for payment of any and all deductible(s) or retention(s) under the policies of insurance purchased and maintained by it pursuant to this Contract.

- 55 **Proof of Insurance.** All insurance required by this Collection Agreement shall be obtained from a responsible insurance company or companies reasonably satisfactory to the City/Township/Village and authorized to do business in the State of Ohio. The City/Township/Village shall be named as an additional insured in such insurance policies. Originals of the insurance policies or certificates shall be delivered to the City/Township/Village promptly upon commencement of the term of this Collection Agreement, and insurance policy renewals or certificates shall be delivered to the City/Township/Village not less than thirty (30) days prior to the expiration dates of any policy. Each policy shall provide that the insurance company shall give notice to the City/Township/Village at least thirty (30) days prior to the effective date of any cancellation or expiration of any such insurance policy.
- 56 **Workers' Compensation Coverage.** Prior to commencing work under this Collection Agreement, the Collection Contractor shall furnish to the City/Township/Village satisfactory proof that the Collection Contractor has paid current premiums for workers' compensation coverage for all persons employed in carrying out the work covered by this Collection Agreement. The Collection Contractor shall hold the City/Township/Village free and harmless for any and all personal injuries of all persons performing work for the Collection Contractor under this Collection Agreement.
- 57 **Indemnification.** The Collection Contractor shall save, indemnify and hold the City/Township/Village, its Board of Trustees, Council Members, employees, agents, officers and consultants (each an indemnitee) harmless from and against any and all liabilities, claims, demands, causes of action, penalties, judgments, forfeitures, liens, suits, costs and expenses whatsoever (including those arising out of death, injury to persons, or damage to or destruction of property), and the cost and expenses incident thereto (including reasonable attorneys' fees), which any indemnitee may hereafter incur, become responsible for, or pay out for or resulting from the performance of the Collection Services under this Collection Agreement, provided that any such claim, damage, loss, or expense:
- (a) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including any resulting loss of use; and
 - (b) is caused in whole or in part by any intentional, reckless or negligent act or omission of the Collection Contractor, anyone directly or indirectly employed by the Collection Contractor, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this section.
- 58 **Environmental Indemnification.** The Collection Contractor shall save, indemnify and

hold the City/Township/Village, its Board of Trustees, Council Members, employees, agents, officers and consultants (each an indemnitee) harmless from and against any and all liabilities, claims, demands, causes of action, penalties, judgments, forfeitures, liens, suits, costs and expenses whatsoever (including those arising out of death, injury to persons, or damage to or destruction of property), and the cost and expenses incident thereto (including reasonable attorneys' fees), which any indemnitee may hereafter incur, become responsible for, or pay out for or resulting from contamination of or adverse effects on the environment, or any violation of governmental laws, regulations, or orders, in each case, to the extent caused by the Collection Contractor's negligent, reckless, or willful misconduct relating to the Collection Services. Any indemnitee shall promptly notify the Collection Contractor of any assertion of any claim against it for which it is entitled to be indemnified, shall give the Collection Contractor the opportunity to defend such claim and shall not settle such claim without the approval of the Collection Contractor. This section shall survive expiration or earlier termination of this Agreement.

- 59 **Indemnity Not Limited.** In any and all claims against the City/Township/Village, its employees, agents, officers and consultants, by any employee of the Collection Contractor or anyone for whose acts any of them may be liable, the indemnification obligation under Sections 5.7 and 5.8 shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Collection Contractor under workers' compensation acts, disability benefit acts, or other employees' benefit acts.
- 510 **Personal Liability.** Nothing herein shall be construed as creating any personal liability on the part of any employee, agent, officer or consultant of the City/Township/Village.

ARTICLE VI — BILLING, PAYMENT, ADJUSTMENTS OR REDUCTIONS TO PAYMENT

- 61 **Collection Contractor to Bill and Obtain Payment of Service Charges From Residential Units as Agent of the Participating Community.** As authorized by Section 3707.43 of the Ohio Revised Code, the Collection Contractor shall be responsible for invoicing and collecting Service Charges from Residents for the Collection Services provided by the Collection Contractor under this Agreement on a quarterly basis on behalf of the City/Village. Such Service Charges shall include all related collection, disposal and processing fees and shall not exceed the applicable amount specified on the Bid Form attached as Exhibit A. In the event the Collection Contractor provides any Optional Services at the request of a Resident, the charge for such additional Service Charges shall be included as a separate item on the quarterly invoice not to exceed the amount specified on the Bid Form. Any fuel price adjustment charged in accordance with Section 6.5 shall also appear as a separate invoice item.

Alternate language for Townships:

Collection Contractor to Bill and Obtain Payment of Service Charges From Residential Units as Agent of the Township. As authorized by Section 505.29 of the Ohio Revised Code, the Board of Township Trustees shall establish, by resolution, equitable charges of rents, or Service Charges, to be paid to the Township for the use and

benefit of such Collection Services by the Owner of every Residential Unit whose premises are so served. Such Service Charges shall include all related collection, disposal and processing fees and shall not exceed the applicable amount specified on the Bid Form attached as Exhibit A. In the event the Collection Contractor provides any Optional Services at the request of a Resident, the charge for such additional Service Charges shall be included as a separate item on the quarterly invoice not to exceed the amount specified on the Bid Form. Any fuel price adjustment charged in accordance with Section 6.5 shall also appear as a separate invoice item.

By and on behalf of the Board of Township Trustees, the Collection Contractor, as the agent of the Board, shall directly invoice and collect all Service Charges from each Owner of a Residential Unit under this Collection Agreement on a quarterly basis, pursuant to the authority in Sections 505.27(A) and 505.31(B) of the Ohio Revised Code.

- 62 **Collection of Administrative Fee.** By and on behalf of the City/Township/Village as a Participating Community in the 2018 Lorain County Consortium, the Collection Contractor, as the agent of the City/Township/Village, shall collect and remit a per Residential Unit per quarter Administrative Fee to the Lorain County Solid Waste Management District in an amount which shall be determined by the City/Township/Village by ordinance or resolution. The Administrative Fee is subject to change no more than once annually during the term of the Agreement upon notice from the City/Township/Village, and shall appear as a separate invoice item.
- 63 **Charges for Non-performance.** If the Collection Contractor misses or fails to make a collection on the regularly scheduled day from any Residential Unit(s) on the same street three (3) or more times in any ninety (90) day period, even if corrected within twenty-four (24) hours, the City/Township/Village may charge the Collection Contractor as follows: the lesser of Twenty- Five Dollars (\$25.00) per Residential Unit or Two Hundred and Fifty Dollars (\$250.00) per street (no more than one mile in length). In the event the City/Township/Village performs cleanup services pursuant to Section 4.7, the City/Township/Village may charge the Collection Contractor one hundred dollars (\$100.00) per service call plus \$50.00 per hour for cleanup services performed by the City/Township/Village. The remedies available pursuant to this section are in addition to any other remedies available to the City/Township/Village pursuant to this Collection Agreement, and the City/Township/Village's determination not to use any remedy in response to a failure to perform shall not constitute a waiver by the City/Township/Village of the right to exercise any remedy in response to subsequent failures to perform.
- 64 **Non-payment of Invoices by Resident.** Collection Contractor may discontinue Collection Services at Residential Unit if Resident fails to remit payment for Collection Services for one quarter, including allowable payment period. If payment is not received within thirty days following payment due date Collection Contractor must notify the Resident in writing of its intent to discontinue service due to non-payment, and allow Resident the opportunity to become current on past invoices. If Resident fails to pay its balance due during this time, Collection Contractor may discontinue service until such time as Resident remits all necessary payments needed to continue Collection Services.

- 65 **Unoccupied or Vacant Residential Units.** Residents shall be permitted to discontinue Collection Services on a temporary basis while unoccupied because of extended vacations of three (3) months (one quarter) or more, or when the Residential Unit is vacant, upon notification provided to the Collection Contractor. Residential Units that are unoccupied or vacant shall not be charged Service Charges for Collection Services when the Collection Contractor has been duly notified.
- 66 **Review of Generation Volumes.** Annually at the request of the City/Township/Village or the Collection Contractor, the Collection Contractor and the City/Township/Village shall meet to review the volume of Solid Waste and Recyclable Materials collected from the City/Township/Village and its Residents, and delivered for disposal or processing. At the request of the City/Township/Village, quarterly or annual written reports may be provided instead.
- 67 **Adjustment for Changes in Cost of Fuel.** Either the Collection Contractor or the City/Township/Village may request a quarterly per Residential Unit fuel price adjustment for Collection Services. For purposes of this provision, a request for fuel price adjustment, upon verification by the City/Township/Village, will result in an adjustment to the Collection Contractor's invoice received by Residential Units. The form of invoice shall include a fuel price adjustment as an increase or decrease in the quarterly price per Residential Unit for the collection of Solid Waste or Solid Waste and Recyclable Materials.

The invoice shall include the base Service Charge per Residential Unit, and a separate fuel price adjustment amount to be added or subtracted for each Residential Unit. The price may be adjusted when the price of diesel fuel has changed during the preceding period in increments of at least twenty-five cents (\$.25) per gallon. (For example: an increase or decrease in the price per gallon of diesel fuel between \$.25 and \$.49 shall be equal to \$.25 per gallon for purposes of the fuel price adjustment formula provided; an increase or decrease in the price per gallon of diesel fuel between \$.50 and \$.74 shall be equal to \$.50 per gallon for purposes of the fuel price adjustment formula, etc.).

The base price for fuel to be utilized in determining whether a fuel price adjustment is appropriate shall be the average price per gallon of diesel fuel on the Monday preceding the Bid opening, as determined by the Weekly On-Highway Retail Diesel Fuel Price, All Types, for the Midwest Region, as maintained by the Energy Information Administration of the United States Department of Energy ("EIA").

The per Residential Unit fuel price adjustment may first be adjusted, if necessary, on the Collection Services commencement date. Thereafter, the per Residential Unit fuel price adjustment may be made at the end of each quarter (quarters being January through March, April through June, July through September, and October through December) of the contract period, when the price per gallon of diesel fuel, as published by the EIA each Monday, or Tuesday when Monday is a Federal Holiday, has changed by an average amount during the preceding quarter of at least twenty-five cents more or less (\$.25) per gallon from the base price. Each twenty-five cent incremental (\$.25) change in the average price per gallon of diesel fuel, when compared with the base price per gallon for diesel fuel, shall adjust the per Residential Unit fee as follows:

M = total number of miles traveled by the Collection Contractor in one quarter for the City/Township/Village, on the collection route, divided by three (3) (the average number of miles per gallon for collection vehicles) multiplied by P, where P = fuel price adjustment in \$.25 per gallon increments) divided by RU, where RU = the number of Residential Units.

$$\text{Per Residential Unit base-line charge} + \frac{M/3 \times P}{RU}$$

68 Permissible Pass-Through Charges.

a) Government Fees: Any and all governmental fee increases incurred for disposal or processing of Solid Waste or Recyclable Materials may be passed on by the Collection Contractor. Any and all governmental fee decreases shall be passed on by the Collection Contractor. A governmental fee is a fee applied to the disposal or processing of Solid Waste or Recyclable Materials levied by the United States Federal Government, State of Ohio, a county, township, or solid waste district. The Collection Contractor shall give the City/Township/Village and Residents as much notice as is practicable before adjusting for governmental or generation fee modifications. In the event an adjustment is necessary, the Collection Contractor charge per Residential Unit shall be adjusted by an amount to be determined as follows:

For Solid Waste Disposal: per ton price difference ÷ 4

b) Yard Waste Fees: Any fee increases incurred for the disposal of Yard Waste, whether due to increased costs of disposal or a change in facility as provided for in Section 7.5 of this Agreement, requires prior notification and approval of the City/Township/Village. The fees may be increased at a maximum rate of \$0.25 (twenty-five cents) per Residential Unit annually subject to City/Township/Village approval and may only be passed on by the Collection Contractor following the first full year of the Agreement. The total fee increase for the duration of the Agreement shall not exceed a total of \$1.00 per Residential Unit. The Collection Contractor shall give the City/Township/Village and Residents as much notice as is practicable before adjusting for the increase fee for disposal of Yard Waste Fee increases.

69 Data Collection and Quarterly Reporting. The Collection Contractor shall prepare and report the following data on the Collection Services provided by the Collection Contractor on forms provided or approved by the City/Township/Village: (a) a record of the number of Residential Units within the City/Township/Village for which Solid Waste was collected by the Collection Contractor on each regular collection day; (b) a record of the number of Residential Units within the City/Township/Village for which Recyclable Materials was collected by the Collection Contractor on each regular collection day; and (c) a record of the total amount of Solid Waste and/or Recyclable Materials collected within the City/Township/Village pursuant to this Collection Agreement specified in tons, for each day that such Solid Waste and/or Recyclable Materials are delivered for disposal or processing. Upon request of the City/Township/Village, the Collection Contractor shall

provide copies of weight receipts and invoices that the Collection Contractor obtains from the disposal or processing facilities. The Collection Contractor shall prepare such records and provide them to the City/Township/Village and the Lorain County Solid Waste Management District not less often than a quarterly basis.

- 610 **Data Collection for Commercial Purposes.** Unless otherwise authorized by Section 6.9 of this Collection Agreement or the applicable rules of the Lorain County Solid Waste Management District, Collection Contractor will not use any device, equipment, or other means to create, assemble, or compile information related to the particular Solid Waste or Recyclable Materials discarded by any Resident or at any Residential Unit, or by the City/Township/Village. The Collection Contractor will not aggregate information related to the particular Solid Waste or Recyclable Materials collected in the City/Township/Village, and will not use, disseminate, rent, lease, lend, sell, or otherwise obtain any revenue or payment from information related to or derived from the Solid Waste or Recyclable Materials disposal activities of any Resident, at any Residential Unit, or by the City/Township/Village. Collection Contractor shall certify its compliance with this Section in writing upon the request of the City/Township/Village. Collection Contractor will permit periodic audits, no more frequently than annually, of any data gathering activities in which the Collection Contractor engages. Collection Contractor agrees that each Resident is an intended third-party beneficiary who can specifically enforce the terms of this Section. Collection Contractor acknowledges and agrees that damages for breach of this Section are difficult to estimate and quantify. If a Resident or the City/Township/Village prevails in any action to enforce the terms of this Section, such Resident or City/Township/Village shall be entitled to liquidate damages of \$100.00 per violation and payment of reasonable attorneys' fees.

ARTICLE VII – BREACH, CURE, AND TERMINATION

- 71 **Breach of Contract; Termination.** Upon the material failure of the Collection Contractor to comply with the terms or conditions of this Collection Agreement, the City/Township/Village may terminate the Collection Agreement in the following manner: the City/Township/Village shall provide notice to the Collection Contractor, by certified mail, return receipt requested, of the alleged material failure of the Collection Contractor to comply with the Collection Agreement. The Collection Contractor shall have ten (10) days to provide the City/Township/Village with written assurance, which can be substantiated by reasonable proof, that the material failure(s) issues identified in the notice have been corrected. In the event that the Collection Contractor fails to provide such written assurance and substantiating proof within the ten (10) day period for corrective action, or there are ongoing or continuing failures to perform the Collection Services, the City/Township/Village may terminate this Collection Agreement. Any such termination shall not take effect until the City/Township/Village is able to secure alternate or substitute performance for the Collection Services. The City/Township/Village may commence the process to obtain an alternate or substitute service provider for the Collection Services following the failure of the Collection Contractor to cure the alleged material failure to the satisfaction of the City/Township/Village, in the exercise of the reasonable discretion of the City/Township/Village.
- 72 **Surety or City/Township/Village Cover in the Event of a Material Failure.** In the event of termination, the Collection Contractor's surety shall have the right to take over

and perform under the Collection Agreement. However, if the surety does not commence performance, the City/Township/Village shall take over performance by contract or otherwise at the expense of the surety. In the event there is no surety-provided cover, or the City/Township/Village is unable to provide or obtain cover, the effective termination date may be delayed by the City/Township/Village until the City/Township/Village completes the process of obtaining a substitute service provider of the Collection Services. In such event, the Collection Contractor shall continue to perform its responsibilities under this Collection Agreement until the effective date of termination. Material failure includes, but is not limited to, the City/Township/Village's receipt of more than twenty (20) bona fide complaints in any given month regarding the Collection Services. A bona fide complaint is a complaint that the City/Township/Village has investigated and determined that the complaints represent failures of the Collection Contractor to provide the required Collection Services. Material failure also includes the failure of the Collection Contractor to provide the Performance Bond and proof of insurance as required, or payment of the City/Township/Village income taxes.

- 73 **Termination for Change of Control of Collection Contractor.** The award of this Collection Agreement is based on the ownership and control of the Collection Contractor as of the time of the award. Such ownership and control is a material term in such award. If during the term of this Collection Agreement, the Collection Contractor shall be merged or sold, the City/Township/Village shall have the right, in its sole discretion, to terminate this Collection Agreement upon thirty (30) days written notice of termination to the Collection Contractor. In the event of such notice of termination, the Collection Contractor shall continue to perform under the terms of this Collection Agreement until such time as the City/Township/Village is able to obtain alternate or substitute service.
- 74 **Termination for Excessive Fuel Price Adjustment.** In the event that the fuel price adjustment provision results in a twenty percent (20%) increase in the price per Residential Unit per quarter for the Collection Services from the initial price per Residential Unit per quarter accepted by the City/Township/Village, the City/Township/Village may, in the exercise of its sole discretion and without liability to the Collection Contractor, terminate this Agreement and issue a replacement Invitation to Bid. In the event of termination by the City/Township/Village as provided herein, the effective date of any such termination shall be the date of the Notice to Proceed in the replacement Invitation to Bid.
- 75 **Termination of Facility Agreements.** The Collection Contractor is required to deliver Solid Waste and Recyclable Materials, and Yard Waste collected pursuant to the Collection Services Agreement to the facility or facilities identified in the Bid. In the event of the termination of any agreement between the Collection Contractor and the identified facility or facilities through no fault of the Collection Contractor, the Collection Contractor shall be excused from delivering materials to such identified facility or facilities. The Collection Contractor may deliver such materials to an alternate facility selected by the Collection Contractor, upon notice to the City/Township/Village. ~~Unless provided for elsewhere in this Agreement,~~ any increase in the cost of providing Collection Services as a result of the termination of Collection Contractor's facility agreement shall be borne by the Collection Contractor.

ARTICLE VIII – MISCELLANEOUS PROVISIONS.

- 81 **Entire Agreement.** This Collection Agreement, Bid Form and other attachments and exhibits incorporated herein represent the entire agreement of the parties, and supersede all other prior written or oral understandings. This Collection Agreement may be modified or amended only by a writing signed by both parties.
- 82 **Notices.** Written notice required to be given under this Collection Agreement shall be sufficient if delivered personally or mailed by certified mail, return receipt requested, to the Collection Contractor, attention _____ (name or title), and to the City/Township/Village, attention _____ (name or title), at their respective addresses set forth above. Any change in address must be given in like manner.
- 83 **Waiver.** No waiver, discharge, or renunciation of any claim or right of the City/Township/Village or the Collection Contractor arising out of a breach of this Collection Agreement by the City/Township/Village or the Collection Contractor shall be effective unless in writing signed by the City/Township/Village and the Collection Contractor.
- 84 **Applicable Law.** This Collection Agreement shall be governed by, and construed in accordance with, the laws of the State of Ohio. Venue is proper in any county in which all or a part of the Collection Services are being rendered.
- 85 **Unenforceable Provision.** If any provision of this Collection Agreement is in any way unenforceable, such provision shall be deemed stricken from this Collection Agreement and the parties agree to remain bound by all remaining provisions. The parties agree to negotiate in good faith a replacement provision for any provision so stricken.
- 86 **Binding Effect.** This Collection Agreement shall be binding upon and shall inure to the benefit of, and be enforceable by and against, each party's successors and assigns. Provided, however, that the Collection Contractor may not assign this Collection Agreement or any of the Collection Contractor's rights or obligations without the express written consent of the City/Township/Village, which consent may be withheld for any reason or for no reason.
- 87 **Rights or Benefits.** Nothing herein shall be construed to give any rights or benefits in this Collection Agreement to anyone other than the City/Township/Village and the Collection Contractor. All duties and responsibilities undertaken pursuant to this Collection Agreement will be for the sole and exclusive benefit of the City/Township/Village and the Collection Contractor and not for the benefit of any other party.
- 88 **Force Majeure.** If the Collection Contractor is unable to perform, or is delayed in its performance of, any of its obligations under this Agreement by reason of any event of force majeure, such inability or delay shall be excused at any time during which compliance is prevented by such event and during such period as may be reasonably necessary for the correction of the adverse effect of such event of force majeure. An

event of "Force Majeure" shall mean any event or circumstance beyond the reasonable control of the affected party to the extent that they delay performance of its obligations under this Agreement; including: Acts of God, tornadoes, floods, acts of war, terrorism, and riots. In order claim an event of force majeure, prompt written notice much be provided to City/Township/Village specifying in detail the event of force majeure. Collection Contractor shall further be required to use its best efforts in cure the event of force majeure expeditiously.

[SIGNATURE PAGES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties by their duly authorized officers, trustees or partners, have executed this Agreement on the date set forth above.

(SEAL)

ATTEST:

CITY/TOWNSHIP/VILLAGE OF

_____, **OHIO:**

(Notary Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

The Collection Contractor must indicate whether it is a Corporation, Limited Liability Company, Partnership, Company or Individual. THE INDIVIDUAL SIGNING SHALL, IN HIS OR HER OWN HANDWRITING, SIGN THE PRINCIPAL'S NAME, THE SIGNATORY'S OWN NAME, AND THE SIGNATORY'S TITLE. WHERE THE PERSON SIGNING FOR A CORPORATION IS OTHER THAN PRESIDENT OR VICE PRESIDENT, THE SIGNATORY MUST SHOW AUTHORITY TO BIND THE CORPORATION BY AFFIDAVIT.

(SEAL)

(Signature)

ATTEST:

(Printed Name)

(Notary Signature)

(Title)

(Printed Name)

(Street Address)

(City/State)

