

APPENDIX J

2016 Service Provider Agreements

**AGREEMENT FOR THE COLLECTION AND TRANSPORTATION FOR DISPOSAL OR
PROCESSING OF SOLID WASTE AND SOURCE SEPARATED RECYCLABLE
MATERIALS GENERATED WITHIN THE ERIE COUNTY, OHIO
SOLID WASTE MANAGEMENT DISTRICT**

This Agreement ("Agreement") entered into this ____ day of _____, 20____, is by and between the Erie County Solid Waste Management District ("District"), with its offices located at 554 River road, P.O. Box 469, Huron, OH 44839 and _____ ("Service Provider"), located at _____.

RECITALS

WHEREAS, pursuant to Section 3734.52 of the Ohio Revised Code, the District is required to provide for, or cause to be provided for, the safe and sanitary management of Solid Waste within all of the incorporated and unincorporated territory of the District; and

WHEREAS, pursuant to Section 343.02 of the Ohio Revised Code, the Board of Directors ("Board") of the District may contract with any Person located within or outside its District for the furnishing to the District of Solid Waste collection, storage, transfer, disposal, recycling, processing, or resource recovery services; and

WHEREAS, pursuant to Section 343.01(G)(2) of the Ohio Revised Code, the Board may adopt, publish, and enforce rules governing the maintenance, protection, and use of solid waste collection or other solid waste facilities located within its District; and

WHEREAS, the Board has determined that it is in the best interests of the political subdivisions and their Generators constituting the District that the District arrange for the collection, disposal, recycling, processing, or resource recovery of Solid Waste generated within the District; and

WHEREAS, the Solid Waste Management Plan of the District ("Plan"), most recently approved by the Director of the Ohio Environmental Protection Agency on _____ (insert date), provides that all Solid Waste generated within the District shall be disposed of at the Erie County Sanitary Landfill ("Landfill"), owned and operated by Erie County, Ohio, except that Source Separated Recyclable Materials may be taken to any Legitimate Recycling Facility; and

WHEREAS, the Plan permits the District to adopt rules, and the District has duly adopted rules: (1) requiring disposal of all Solid Waste generated in the District at the Landfill; (2) requiring the submission of any plans for the construction of solid waste disposal, transfer, recycling or resource recovery facilities within the District to the Board for approval; (3) establishing operation of a District-wide Solid Waste collection system utilizing Service Providers; and (4) providing the procedure for obtaining a waiver from the rule requiring delivery of all Solid Waste generated in the District to the Landfill; and

WHEREAS, the District and the Service Provider have agreed on the below terms and conditions for the collection and delivery for disposal or processing of Solid Waste and Source

Separated Recyclable Materials generated by Generators within the District to the Landfill or a Legitimate Recycling Facility, pursuant to the District-wide Solid Waste collection system utilizing Service Providers.

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

ARTICLE I -- DEFINITIONS AND AGREEMENT

- 1.1 **Definitions.** The capitalized terms used throughout this Agreement shall be defined as described in Exhibit A, attached hereto and incorporated herein.
- 1.2 **Independent Service Provider For Providing Collection, Transportation, and Delivery Services.** During the term of this Agreement, and on the terms and conditions contained herein, the District hereby authorizes the Service Provider, and the Service Provider hereby accepts such authorization, on a non-exclusive basis and as an independent contractor, to collect, transport and deliver: (1) Solid Waste generated by Generators within the District to the Landfill for disposal; and (2) Solid Waste that has been separated from other Solid Waste at the location where the materials were generated for the purpose of recycling such materials to a Legitimate Recycling Facility for recycling, processing, or resource recovery. The Service Provider may solicit customers anywhere within the District and may serve customers anywhere within the District. The Service Provider may, subject to the limitations contained herein, limit its operation to any areas of the District in order to provide more efficient operation.
- 1.3 **Compliance with District Rules.** The Service Provider shall comply with all rules of the District adopted by the Board, and all rules of the Landfill as provided by the Landfill from time to time to the Service Provider.
- 1.4 **Covenant Not To Sue.** During the term of this Agreement or any extension, the Service Provider shall not challenge the District's designation of the Erie County Sanitary Landfill, or any rule adopted by the District.

ARTICLE II – TERM

- 2.1 **Term.** The term of this Agreement shall begin on _____, 201__, (the "Effective Date") and thereafter continue for a term of five (5) years unless extended at the election and consent of the District and the Service Provider pursuant to Paragraph 2.2 hereof.
- 2.2 **Renewal Terms.** The District shall have the option, with the consent of the Service Provider, to extend the Agreement upon the same terms and conditions as provided herein for one (1) year, upon ninety (90) days advance written notice to the Service Provider.

ARTICLE III -- OBLIGATIONS OF SERVICE PROVIDER

3.1 **Contract Performance**

a. Collection and Payment at the Landfill. The Service Provider shall provide Collection Services within any area of the territorial jurisdiction of the District, and perform the Collection Services as contemplated herein. Unless excluded by rules of the Landfill or a waiver, the Service Provider shall deliver all Solid Waste, except for Source Separated Recyclable Materials, collected by the Service Provider to the Landfill, and pay the Landfill tipping fees as approved by the Board as Landfill rates and charges plus any Ohio Environmental Protection Agency ("Ohio EPA"), District and host community fees in addition thereto as existing or as hereafter amended. Presently, the Landfill tipping fee is \$_____ per ton; the Ohio EPA fee is \$_____ per ton; the District generation fee is \$_____ per ton; and the host fee is \$_____ per ton. In the event the Landfill is unable to accept Solid Waste generated within the District that is delivered by the Service Provider, the Service Provider shall deliver such Solid Waste to an alternate solid waste facility to be identified by the District as a contingent disposal facility. The delivery of Solid Waste from mixed District routes shall either be disposed of at the Landfill, or arrangements may be made with the District for substitution of similar amounts of out-of-District Solid Waste.

b. Service Provider to Provide Source Separated Recyclable Materials Collection to Residential Unit Customers. The Service Provider shall provide separate collection of Source Separated Recyclable Materials to each of its customers that qualify as Residential Unit Generators within the District for a single, all-inclusive price. In addition to any other marketing methods the Service Provider may use to communicate its separate collection of Source Separated Recyclable Materials for Residential Unit Generators, the Service Provider shall provide a copy of the terms and conditions of such service in writing at least once per year. In addition to any other terms and conditions the Service Provider may, in its discretion, set forth in its written explanation of separate collection of Source Separated Recyclable Materials, the Service Provider shall regularly collect Source Separated Recyclable Materials from its customers qualifying as Residential Unit Generators at least once per week for the following materials: office paper; newspapers; beverage and food containers made of glass; beverage and food containers made of steel; beverage and food containers made of aluminum; plastic containers; and yard waste.

The Service Provider is required to return any residual Solid Waste that results from the collection of Source Separated Recyclable Materials for disposal at the Landfill, or make arrangements with the District for substitution of similar amounts of out-of-District Solid Waste.

c. Equipment. The Service Provider shall furnish at its sole cost and expense the vehicles, equipment, labor, materials, supplies, and other materials necessary to permit the Service Provider to fulfill its obligations hereunder for the Collection Services, including but not limited to, the collection, transportation and disposal of Solid Waste to the Landfill and Source Separated Recyclable Materials to a Legitimate Recycling Facility. All vehicles used for the

residential collection of Solid Waste shall comply with applicable local, State and federal health and safety regulations, and be in safe operating condition.

d. Holidays. The following holidays are observed by the Landfill: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas Day. Solid Waste collected on holidays will be delivered to the Landfill, if the Landfill is open. If the Landfill is not open, the Solid Waste can be delivered to any licensed solid waste disposal facility.

e. Operating Procedures. The Service Provider warrants to the District that all drivers and other persons providing Collection Services have been properly trained in the operation of all vehicles, equipment and safety procedures necessary to assure the safe and sanitary delivery of the Collection Services. The Service Provider shall, at its sole cost and expense, hire, train, and furnish all personnel necessary to manage, supervise, operate and perform the Collection Services and to conduct any other activity necessary to fulfill its obligations under this Agreement. The Service Provider shall designate a facility supervisor/key employee who shall be responsible for day-to-day communication with the District and delivery of the Collection Services.

f. Maintenance and Supplies. The Service Provider shall furnish all supplies, parts, material, utilities, fuel, lubricants, paint and other items necessary to operate and maintain the equipment and vehicles used in providing the Collection Services in a safe, clean, reliable, presentable and operable condition.

g. Reporting. The Service Provider shall submit to the District on a quarterly basis (April 15, July 15, October 15, and January 15) the following information, in writing, either electronically, by regular mail, or by hand-delivery:

1. A copy of the Service Provider's written explanation of the terms of its provision of Source Separated Recyclable Materials Collection Services pursuant to Paragraph 3.1(b) above, provided to all new customers that qualify as Residential Unit Generators during the calendar quarter; and
2. A report of the quantity of Source Separated Recyclable Materials the Service Provider collected from its Residential Unit customers during the calendar quarter, specifying the quantity in tons collected for each category of Source Separated Recyclable Materials listed in Paragraph 3.1(b), above, and stating the name and address of the Legitimate Recycling Facility where such Source Separated Recyclable Materials were delivered for recycling.

3.2 Service Provider's Insurance. The Service Provider shall furnish, and keep in full force and effect throughout the term and any renewal term of this Agreement, such insurance as will protect the Service Provider and the District from any claims which may arise out of or as a result of the Service Provider's performance of its obligations hereunder. All such insurance shall include the District as an additional named insured and shall be carried with responsible companies reasonably acceptable to the District. All such policies shall provide for at least

thirty (30) days' notice of cancellation to the District. No later than ten (10) days after the Effective Date, the Service Provider shall furnish the District with a certificate showing all such insurance to be in full force and effect. Such insurance shall include:

- a. **Worker's Compensation.** Worker's compensation insurance under the laws of the State of Ohio.
- b. **Public Liability and Vehicle Liability.** Public liability and automobile liability insurance in an amount not less than \$500,000 on account of any one accident or occurrence.
- c. **Property Damage Liability.** Property damage liability insurance in an amount not less than \$500,000 for damages on account of any one accident or occurrence.

- 3.3 **Indemnification.** The Service Provider shall indemnify the District and any of its members, employees, agents, officers, and consultants (each an "Indemnatee") against, and hold each Indemnatee harmless from, any and all claims, demands, causes of action, judgments, liens, penalties, costs, and expenses whatsoever (including attorney fees and expenses) ("Claims") of any kind or nature whatsoever including, but not limited to, Claims for bodily injury, illness or death, property damage including loss of use which may at any time be imposed upon, incurred by or asserted against any Indemnatee as a result of any performance or lack of performance of the Collection Services by the Service Provider or any of its agents or employees of any of its or their obligations hereunder, or as a result of any negligence of the Service Provider or any of its agents or employees. This indemnification of the Indemnitees is not limited by the amount of any insurance coverage available to the Service Provider. Such indemnification shall not include claims or demands arising out of the negligence or misconduct of the Indemnitees.

ARTICLE IV -- COMPENSATION

- 4.1 **Compensation and Delinquent Payments.** Compensation payable to the Service Provider for provision of the Collection Services shall be derived solely from the collection of fees of the Service Provider invoiced and collected from its customers as such fees are set by the Service Provider. Nothing contained herein shall obligate the District to compensate the Service Provider for any customer of the Service Provider who fails or refuses to pay the fees of the Service Provider. The Service Provider has no obligation to continue to provide services to any customer of the Service Provider that has failed to pay the fees of the Service Provider when required.

ARTICLE V -- CHANGE IN CIRCUMSTANCES

- 5.1 **Change in Circumstances and Agreement Revision.** The parties agree that in the event of the adoption of new legislation or regulations in the State of Ohio, or in the event of any other legislation, ordinances, rules, regulations, or final action of a court or change in circumstances which materially affects the rights or obligations of either party hereunder, the parties shall consider appropriate amendments to this Agreement to accommodate any such change in law,

regulation or circumstances. In the event that no agreement is reached within ninety (90) days of the effective date of such change in legislation or regulation, either party may terminate this Agreement upon ninety (90) days advance written notice to the other party.

ARTICLE VI -- TERMINATION

6.1 **Termination.**

a. **District Default.** This Agreement may be terminated, in whole or in part, by the Service Provider upon written notice to the District if the District is in material default of its obligations hereunder and such default has not been cured within ninety (90) days after the District's receipt of written notice specifying such defaults.

b. **Service Provider Default.** This Agreement may be terminated by the District upon written notice to the Service Provider if the Service Provider is in default of any obligation hereunder, and such default has not been cured within thirty (30) days after the Service Provider's receipt of written notice specifying such default.

ARTICLE VII -- MISCELLANEOUS

- 7.1 **Entire Agreement.** This Agreement represents the entire agreement of the parties as to its subject matter, and supersedes all other prior written or oral understandings. This Agreement may be modified or amended only by a writing signed by both parties.
- 7.2 **Notices.** Written notice required to be given under this Agreement shall be sufficient if delivered personally or via certified mail, return receipt requested, to the Service Provider, attention _____ (insert name and title) and to the District, attention Solid Waste Coordinator, at their respective addresses set forth above. Any change in address must be given in like manner.
- 7.3 **Waiver.** No waiver, discharge, or renunciation of any claim or right of the District or the Service Provider arising out of a breach of this Agreement by the District or the Service Provider shall be effective unless in writing signed by the District and the Service Provider.
- 7.4 **Applicable Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Ohio, and venue shall be proper in Erie County, Ohio.
- 7.5 **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of, and be enforceable by and against, the respective successors and assigns of each party hereto. Provided, however, that the Service Provider may not assign its rights or obligations hereunder without the express written consent of the District.
- 7.6 **Personal Liability.** Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the District or Erie County which may be party hereto.

- 7.7 **Rights or Benefits.** Nothing herein shall be construed to give any rights or benefits in this Agreement to anyone other than the District and the Service Provider and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the District and the Service Provider and not for the benefit of any other party.
- 7.8 **Relationship of Parties.** In the performance of this Agreement, the Service Provider shall act solely as an independent contractor, and nothing herein contained, express or implied, shall be at any time so construed as to create the relationship of employer/employee, partnership, principal and agent, or joint ventures between the District and the Service Provider.
- 7.9 **Commerce Clause.** The intent of this Agreement is not to challenge the Interstate Commerce Law. However, the parties to this Agreement mutually agree that all Erie County generated Solid Waste collected by the Service Provider shall be disposed of at the Erie County Landfill for the term of this Agreement, as defined in Article II.

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

Board of Directors of the Erie County Solid Waste Management District:

Patrick J. Shenigo

Date: _____

William J. Monaghan

Date: _____

Thomas M. Ferrell, Jr.

Date: _____

Approved as to Form:

Gary Lickfelt
Assistant Prosecuting Attorney

The Service Provider must indicate whether it is a Corporation, Limited Liability Company, Partnership, Company or Individual (please circle). 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/Zip)

Personal Guaranty

If Service Provider is a Corporation, Limited Liability Company, Partnership, Company or other artificial entity, the undersigned person hereby personally and unconditionally guarantees punctual payment by Service Provider as required by this Agreement. The undersigned Guarantor waives diligence, demand for payment, extension of time for payment, notice of acceptance of this Guaranty, and indulgences and notice of every kind, and consents to any and all forbearances and extensions of the time for payment or performance under this Agreement and to any and all changes in the terms of this Agreement. The Board of Directors of the Erie County Solid Waste Management District may enforce this Guaranty without first resorting to or exhausting other remedies provided by the Agreement or the law. Guarantor agrees to pay all reasonable costs and attorneys' fees incurred by the Board in enforcing this Guaranty. Guarantor signs this Guaranty in consideration of the Board's willingness to enter into this Agreement with the Service Provider.

(SEAL)

(Signature of Guarantor)

ATTEST:

(Printed Name of Guarantor)

(Notary Signature)

(Title)

(Printed Name)

(Street Address)

(City/State/Zip)

EXHIBIT A – DEFINITIONS

Agreement: the “Agreement for the Collection and Transportation for Disposal or Processing of Solid Waste and Source Separated Recyclable Materials Generated Within the Erie County, Ohio Solid Waste Management District”

Board: the Board of County Commissioners of Erie County, Ohio acting in its capacity as the Board of Directors of the District

Collection Services: Solid Waste collection services

District: the Erie County Solid Waste Management District

Generator: each Person which generates Solid Waste within the District

Landfill: the Erie County Sanitary Landfill

Legitimate Recycling Facility: an engineered facility or site where recycling of material other than scrap tires is the primary objective of the facility, in accordance with the definition set forth in Ohio Administrative Code 3745-27-01(L)(2)

Person: an individual, public or private corporation, partnership and each other form of entity, including a political subdivision or agency thereof

Plan: any currently in effect Solid Waste Management Plan or amended Solid Waste Management Plan of the District

Residential Unit: all residential dwellings within the District occupied by a single family unit, including residences of three (3) units or less and single-family condominiums

Service Provider: any Person which is party to a contract with the District to provide Collection Services to Generators in the District, and is identified by the District as currently eligible to provide Collection Services

Solid Waste: such unwanted residual solid or semisolid material, including but not limited to garbage, scrap tires, combustible and noncombustible material, street dirt and debris, as results from industrial, commercial, agricultural, and community operations, excluding earth or material from construction, mining, or demolition operations, or other waste materials of the type that normally would be included in demolition debris, nontoxic fly ash and bottom ash, including at least ash that results from combustion of coal, biomass fuels, and ash that results from the combustion of coal in combination with scrap tires where scrap tires comprise not more than fifty per cent of heat input in any month, spent nontoxic foundry sand, and slag and other substances that are not harmful or inimical to public health, and includes but is not limited to garbage, scrap tires, combustible and noncombustible material, street dirt, and debris. Solid waste does not include any material that is an infectious waste or a hazardous waste

Source Separated Recyclable Materials: a subset of Solid Waste materials that have been separated from other Solid Waste materials at the location where the materials are generated, for the purpose of recycling such materials at a Legitimate Recycling Facility