

ORDINANCE NO. 2021 -140

AN ORDINANCE AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO ENTER INTO A NEW CONTRACT WITH PORTAGE COUNTY SOLID WASTE MANAGEMENT DISTRICT FOR THE COLLECTION OF RECYCLABLES IN THE CITY OF KENT, WITHOUT COMPETITIVE BIDDING; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Kent wishes to accept the letter dated October 27, 2021 from the Portage County Solid Waste Management District ending our current contract on December 31, 2021; and

WHEREAS, the City of Kent acknowledges the concerns and needs of the Portage County Solid Waste Management District to standardize their recycling program and service agreements; and

WHEREAS, City staff has done their due diligence to secure the best source of recycling as presented to Council on November 3, 2021; and

WHEREAS, City Council agreed to support the proposed contract with the Portage County Solid Waste Management District.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Kent, Portage County, Ohio, that:

SECTION 1. Council does hereby authorize the City Manager, or his designee to enter into a new contract with Portage County Solid Waste Management District for the collection of recyclables for the City of Kent residents, as outlined in Exhibit "A", attached hereto and made a part hereof.

SECTION 2. Pursuant to Revised Code Section 735.053, Council hereby waives competitive bidding.

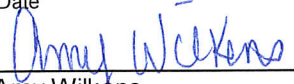
SECTION 3. It is found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council, and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements of Section 121.22 of the Ohio Revised Code.

SECTION 4. This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare of the residents of this City, for which reason and other reasons manifest to this Council this Ordinance is hereby declared to be an emergency measure and shall take effect and be in force immediately after passage.

PASSED: December 15, 2021
Date


Jerry T. Fiala
Mayor and President of Council

EFFECTIVE: December 15, 2021
Date

ATTEST: 
Amy Wilkens
Clerk of Council

I, AMY WILKENS, CLERK OF COUNCIL FOR THE CITY OF KENT, COUNTY OF PORTAGE, AND STATE OF OHIO, AND IN WHOSE CUSTODY THE ORIGINAL FILES AND RECORDS OF SAID COUNCIL ARE REQUIRED TO BE KEPT BY THE LAWS OF THE STATE OF OHIO, HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF ORDINANCE No. 2021-140, ADOPTED BY THE COUNCIL OF THE CITY OF KENT ON December 15, 2021.

(SEAL)


AMY WILKENS
CLERK OF COUNCIL

**AGREEMENT BETWEEN THE
BOARD OF COUNTY COMMISSIONERS OF THE PORTAGE COUNTY SOLID WASTE
MANAGEMENT DISTRICT AND THE CITY OF KENT FOR THE COLLECTION OF
RECYCLABLES IN THE CITY OF KENT**

THIS AGREEMENT is entered into this ___th day of _____ 2021 by and between the Board of County Commissioners of the Portage County Solid Waste Management District (hereinafter "Board") and the City of Kent (hereinafter "Political Subdivision"). Collectively referred to as the "Parties."

WHEREAS, the Board currently provides curbside recycling collection services to several Portage County Political Subdivisions; and

WHEREAS, the Board adopted Resolution No. 21-0___ on _____, 2021 to execute this Agreement with the City of Kent for the purpose of continuing to perform the collection of residential recyclables from all single, duplex and triplex residential dwelling units (and mobile home parks as agreed to by the parties within the community with the delivery of the collected recyclables to the District Recycling Center in Brimfield, Ohio or to another processing facility; and

WHEREAS, The City of Kent adopted Ordinance # _____ to execute this Agreement with the Board; and

WHEREAS, the Board is prepared to continue to provide curbside recycling collection services starting January 1st, 2022 using Portage County Solid Waste Management District personnel and for an **eighteen (18) month term**, subject to the provisions of this Agreement.

WHEREAS, upon signing of this Agreement by all parties, the Portage County Solid Waste Management District shall have the right to provide recycling collection services to all residential dwellings up to three (3) units per the following Detailed Specifications:

DETAILED SPECIFICATIONS

**FOR RESIDENTIAL CURBSIDE RECYCLING COLLECTION BY THE PORTAGE COUNTY SOLID
WASTE MANAGEMENT DISTRICT IN THE CITY OF KENT, OH**

SECTION 1 - Definitions

- 1.1 Billed Units - Listing of all Residential Dwelling Units to be billed for recycling collection services. The Master Billing Listing shall be created by the District, from property tax records, and other applicable sources.
- 1.2 Container - The official designated receptacles or recycling carts into which residents place recyclable materials. All such receptacles are and shall remain the property of the District including the contents.
- 1.3 Delivery Site - The Portage County Solid Waste Management District facility located at 3588 Mogadore Road, Kent, Ohio, Portage County, Ohio or to another processing facility.

- 1.4 District - The Portage County Solid Waste Management District, 3588 Mogadore Rd., Kent OH 44240.
- 1.5 Holidays - The following shall be holidays for purposes of this Agreement:
New Year's Day
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Christmas Day
- 1.6 Recyclable Material - This term shall refer to recyclable materials that are designated annually by the District and the District's contracted processor. The list will be published on the District website www.portagerecycles.com.
- 1.7 Residential Dwelling Unit - A residential unit shall be defined as an existing residential structure on a parcel of property consisting of three (3) units and less.
- 1.8 Premises - Land or buildings or both, occupied, by a householder.
- 1.9 Agreement - The actual Government to Government agreement, as provided for in 307.15 of the ORC, Agreement signed between the Commissioners and another Government agency for the authorized right to collect residential and mobile home recyclables.
- 1.10 Board- Refers to the Board of County Commissioners of the Portage County Solid Waste Management District.
- 1.11 Curbside - That portion of the right-of-way adjacent to paved or traveled roadways, including the end of a driveway, curb line or alley line. Carts shall be placed as close to the roadway as practicable without interfering with or endangering the movement of vehicles or pedestrians.

SECTION 2 - Mandatory Subscription; Exceptions

- 2.1 The District shall supply recycling collection services described in this Agreement to all residential dwelling units. The District shall bill the person(s) in charge of each such residential dwelling unit for said services provided under this Agreement. The Portage County Solid Waste Management District shall have the right to provide recycling collection services to all residential dwellings up to (3) three units. (Concerning any mobile home park service, any such service will be described in an attached exhibit for such service agreed to by the Parties.)

SECTION 3 - Carts

- 3.1 Container Types - The District will furnish a 95-gallon or a 65-gallon cart for each residential unit.
- 3.2 Container Delivery
The District shall be responsible for providing a cart to all existing and new construction homes that currently do not have a cart. District Carts intentionally damaged by the resident shall be reimbursed at the expense of the resident.

SECTION 4 - Collection Service

- 4.1 **Service Provided** - The District shall provide every other week curbside recycling collection service for each residential unit: Cardboard, Newspaper, Magazines, Office Paper, Aluminum & Steel Cans, Plastic Bottles and Jugs (1&2's), and Glass Bottles and Jars. The list of recyclable items will be emailed out as the District is notified by the current processor of any changes by the current processor. The District uses a cart tagging policy. If items that are not recyclable are placed in the cart, the driver will tag the cart, notify the District Dispatcher who will create an electronic record and not service the cart. The cart will not be serviced until the following service day. The District is not responsible for cleanup if the cart is knocked over by animals, vehicles, or inclement weather. The District is not responsible for emptying items that are non-recyclable.
- 4.2 **Carry Out Service** - The District shall provide, at no extra charge, carry out service to the address of the residents who are handicapped, disabled, impaired or otherwise precluded from, or physically incapable of, placing the 65-gallon recycling carts from that unit at curbside that have no additional residents at that home. The District will require a resident to provide a letter from a physician certifying the need for the service on a District supplied form which shall be kept confidential, unless deemed a public record under R.C. 149.43. The request must be renewed annually by February 1st. Carry Out service will not be advertised.

The location of recycling carts from residential units receiving carry out service shall be on the ground floor level and no farther than 50 feet from the roadway. Carts shall not be placed within an enclosed fence, garage, carport, etc. Walkways to the carts must be accessible and be safe including free of snow, ice, leaves, and without obstacle.

- 4.3 **Location of Carts for Collection** - Residents will be required to place each cart at the curbside for collection. Carts must be placed at curbside by 7:00 a.m. on the designated collection day. Curbside refers to that portion of the right-of-way adjacent to paved or traveled roadways, including alleys. Carts shall be placed as close to the roadway as practicable without interfering with or endangering the movement of vehicles or pedestrians. When construction work is being performed in the right-of-way or snow interferes with such placement, carts shall be placed as close as practicable to an access point for the collection vehicle.

Carts shall be placed no less than three (3) feet from another cart, mailbox, or utility pole. The District will notify a resident once about the improper placement of the cart but pick it up that day. If the cart is still improperly placed the next pickup date it will not be picked up.

It is the District's Policy to not service carts if there are impassable/unsafe road conditions.

SECTION 5 - Operation

- 5.1 **Days and Hours of Operation**
Collection of recyclables shall not start before 7:00 a.m. or continue after 7:00 p.m. on the same day. Carts shall be collected on a one (1) day delay for Holiday weeks where Saturday shall be worked as the make-up day for the Holiday, if required. Exceptions to collection hours shall be effective only when the District determines that an exception is necessary to complete collection.

- 5.2 Routes of Residential Curbside Collection - Changes in collection day are subject to mutual approval of the City of Kent and the District.
- 5.3 Holidays-The District shall observe the holidays included in Section 1.5 by delaying collection service on the holiday and adding Saturday as a workday as required. Collection shall never be postponed longer than one (1) working day following the regular day of collection including Saturday's, except in a case of emergency.
- 5.4 Complaints
All complaints will be made directly to the District. Upon notification, the District shall pay prompt and courteous attention to all such complaints.

SECTION 6 - Compliance with Laws

- 6.1 The District shall conduct operations under this Agreement in compliance with all applicable laws, rules, regulations, ordinances, and legal requirements.

SECTION 7 - Effective Date and Term of this Agreement

- 7.1 The District anticipates the continuation of residential recycling collection as per the terms and conditions of this new agreement effective **January 1st, 2022** and through **July 1, 2023**. This agreement will **automatically renew** for an **additional twelve (12) month term** (i.e. from July 1st through the following June 30th) subject to the terms and conditions of this agreement. Either party is free to determine not to renew this agreement for an additional twelve (12) month term simply by providing the other party **sixty (60) days advance written notice of its intent not to renew prior to the expiration date of an existing term.** The decision not to renew this agreement for an additional twelve (12) month term by either the District or the City of Kent may be with or without cause and for any or no reason.

SECTION 8 - Quantities

- 8.1 The District will provide service to residential units up to three (3) residential units and mobile home parks as defined in section 1.

SECTION 9 - Basis and Method of Payment

- 9.1 Unit Prices Bid
The unit prices for the annual term of the Agreement shall include labor, material, vehicle, equipment, fees, permits, disposal charges and other incidentals necessary to provide the required services. Payment shall be made for service performed and products or materials supplied. The price shall be \$5.50 per unit per month and shall be modified pursuant to the terms and conditions in sub-section 9.2.
- 9.2 Modification of Rates
The District and the City of Kent agree that if the District deems it necessary to increase the rates, the District will notify the City of Kent 90 days in advance of the annual renewal and either party may determine not to renew this agreement for an additional twelve (12) month term simply by providing the other party **sixty (60) days advance written notice of its intent not to renew prior to**

the expiration of any existing term (see Section 7.1 of this agreement).

9.3 District Billings to Residential Units

The District will invoice the recycling fees to the residential units described in section 8 . These invoices will include six months of service and be billed twice a year.

9.4 Termination and Set Up of Service for Residential Units

The residential unit subscriber shall directly notify the District of the need for service termination due to the sale of the residential unit. New residential unit subscribers shall directly notify the District of their move-in date, name, and address.

9.5 District's Responsibility for Bad Debt

The District shall provide continuous, non-stop service to all delinquent and/or past due residential unit accounts. The District shall be responsible for holding delinquent accounts as an uncollected account receivable until such time as the District collects the certified amounts through the process outlined in Para. 9.6. Specifications.

9.6 Billing: Failure to Remit Fees

Certify unpaid charges for recycling collection, together with any penalties and collection charges, to the County Auditor who shall place the certified amount on the real property tax list and duplicate against the property served by the service. The amount certified shall be a lien on the property served from the date placed on the list and duplicate and shall be collected in the same manner as other taxes, except, notwithstanding Ohio Revised Code 323.15, a County Treasurer shall accept a payment in such amount when separately tendered as payment for associated penalties. The lien shall be released immediately upon payment in full of the certified amount.

SECTION 10 - Transferability of Agreement

10.1 No assignment of the Agreement or any right occurring under this Agreement shall be made in whole or in part by the District or City of Kent without the express mutual written consent of both parties.

SECTION 11 – Agreement

The District shall be the City of Kent's authorized provider of recyclable material collection and delivery services to residential units as defined in Section 1. This agreement supersedes and cancels any previous agreements between the parties.

SECTION 12 - Ownership

12.1 Title to recyclable materials shall become the sole possession of the Portage County Solid Waste Management District as soon as the materials have been placed in the District's collection carts.

SECTIN 13 - Data Collection

13.1 The District shall gather and maintain records of collection, volumes, and other applicable data which shall be provided upon request.

SECTION 14 - Frequency of Service

- 14.1 All residential subscribers shall receive recycling collection service at a frequency of every other week service.
- 14.2 Collection shall not be postponed longer than one (1) working day following the regular day of collection, except in a case of emergency.

SECTION 15 - General Conditions

- 15.1 **TERMINATION OF AGREEMENT.** This eighteen (18) month agreement may only be terminated upon the mutual express signed written consent of both parties. Further, either party may determine not to renew agreement simply by providing the other party sixty (60) days advance written notice of its intent not to renew in accordance with Section 7.1 of this agreement.
- 15.2 **Assignment/Delegation.** Neither party shall delegate, assign or sub-Agreement any rights, duties or obligations under this Agreement without the express written consent of the other party, and each party hereby binds itself to the successors and assigns of the other party in respect of all covenants of this Agreement.
- 15.3 **Amendment.** This written Agreement embodies the entire agreement between the parties appertaining to the subject matter herein. Should any changes, mutually agreed upon, become necessary and/or appropriate, such changes shall be incorporated only by written amendment signed by both parties.
- 15.4 **Covenant of Cooperation.** Each party shall cooperate with and provide necessary information to the other to enable the parties to comply with the terms of this Agreement. The parties shall perform all acts and deeds as may be necessary or appropriate to effect, claim, reserve and maintain this Agreement including, without limitation, joining in the execution of all documentation and providing any necessary documentation required in connection with the Agreement.
- 15.5 **Governing Law and Jurisdiction.** This Agreement shall be construed, interpreted, and the rights of the parties determined in accordance with the laws of the State of Ohio and in the Courts of Portage County, Ohio or in the case of Federal Jurisdiction in the United States District Court of Ohio, Northern District, Eastern Division.
- 15.6 **Records.** The parties acknowledge that all records, books, documents, whether written or computer generated, pursuant to this Agreement, may be public records for purposes of Revised Code 149.43, unless otherwise exempted in accordance with State and Federal Law.
- 15.7 **Severability.** In the event that any term or clause of these general conditions is held to be invalid as contravening any law or governmental regulation or otherwise, then such term or clause shall remain in effect only to the extent permitted by such law or governmental regulation, but the remaining provisions shall continue in full force and effect.

- 15.8 Survival. Rights and obligations under this Agreement which by their nature should survive, including, but not limited to audit requirements, financial recovery for District services rendered and/or expenses incurred, reimbursement provisions, confidentiality, and transition procedures, will remain in effect after expiration or termination of the Agreement until such time as those requirements are fulfilled.
- 15.9 Waiver. The waiver of any term of this Agreement shall not be construed or interpreted as a waiver of any other term of the Agreement.

SECTION 16 - Force Majeure

- 16.1 In case District performance of any term(s) or provision(s) of this Agreement is delayed or prevented because of compliance with any law, decree or order of any governmental agency or authority of local, State or Federal governments or because of riots, war, terrorism, explosions, acts of civil or military authority, acts of public enemy, public disturbances, strikes by the processing facility employees, lockouts, differences with workers, earthquakes, fires, floods, Acts of God or any other reason whatsoever which is not reasonably within the control of the District and which, by the exercise of reasonable diligence, the District is unable to prevent; the District may, at its option, suspend or cancel, without liability, the performance of its obligations hereunder during the period such cause continues.

SECTION 17 - Insurance

- 17.1 The District shall at all times, from the inception of this Performance Agreement with the City of Kent until its final performance, have in effect insurance of the kinds and with the limits at least in the amount as indicated below.
- a. Motor Vehicle Bodily Injury and Property Damage Liability Insurance. The District shall carry insurance to cover liability and claims arising from the use and operation, in connection with the performance of the Performance Agreement, of motor vehicles (as customarily defined in liability insurance policies), whether they are owned, hired or non-owned by the Equipment Vendor.
 - b. Damage Liability and Property Damage Liability. The District shall carry coverage with respect to the operations performed, the District Liability Insurance shall provide for a limit not less than \$1,000,000.00 for all damages arising out of bodily injuries, including accidental death, to two or more persons in any one occurrence, and regular Property Damage Liability Insurance providing for a limit of not less than \$1,000,000.00 for all damages arising out of an injury to or destruction of property in any one accident, and, subject to that limit per accident a total (or aggregate) limit of \$1,000,000.00 for all damage arising out of injury to or destruction of property during the policy period.

NOW, THEREFORE, the Board and the City of Kent do hereby agree to these Agreement conditions;

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year first written above.

**BOARD OF COUNTY COMMISSIONERS OF THE PORTGE COUNTY SOLID WASTE
MANAGEMENT DISTRICT**

_____ Date: _____
Sabrina Christian-Bennett

_____ Date: _____
Anthony J. Badalamenti

_____ Date: _____
Vicki A. Kline

CITY OF KENT

_____ Date: _____
David Ruller

APPROVED AS TO CONTENT:

_____ Date: _____
Dawn M. Collins Acting Director Portage County Solid Waste Management District

APPROVED AS TO FORM:

_____ Date: _____
Assistant Prosecuting Attorney