

ORDINANCE NO. 2019 - 30

**AN ORDINANCE AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO AMEND THE CITY OF KENT'S TRASH SERVICE CONTRACT WITH REPUBLIC SERVICES OF OHIO, LLC IN ORDER TO ENTER INTO A NEW CONTRACT DIRECTLY WITH PORTAGE COUNTY SOLID WASTE MANAGEMENT DISTRICT; AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City of Kent wishes to amend the City's trash service contract with Republic Services of Ohio, LLC, to step down as the billing administrator for the City's recycling programs; and

**WHEREAS**, the City of Kent will enter into a new contract with Portage County Solid Waste Management District in order for the Kent residents to save \$1/month on their curbside recycling services.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Kent, Portage County, Ohio, at least three-fourths (3/4) of all members elected thereto:

**SECTION 1.** That Council does hereby authorize the City Manager, or his designee to amend the City of Kent's trash service contract with Republic Services of Ohio, LLC by executing an change order in order to enter into a new contract with Portage County Solid Waste Management District to save Kent residents \$1/month on their curbside recycling service, as outlined in Exhibit "A" and Exhibit "B", attached hereto and made a part hereof.

**SECTION 2.** That 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 3.** That 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: March 20, 2019  
Date

Jerry T. Fiala  
Jerry T. Fiala  
Mayor and President of Council

EFFECTIVE: March 20, 2019  
Date

ATTEST: Dawn Bishop  
Dawn Bishop  
Interim Clerk of Council

I, DAWN BISHOP, INTERIM 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. \_\_\_\_\_, ADOPTED BY THE COUNCIL OF THE CITY OF KENT ON \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
DAWN BISHOP  
INTERIM CLERK OF COUNCIL

(SEAL)

**CHANGE ORDER**

Order No.   #1  

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Date: \_\_\_\_\_, \_\_\_\_\_.

Agreement Date:   June 8  ,   2018  .

NAME OF PROJECT: 2018 CITY OF KENT - CITYWIDE RESIDENTIAL TRASH and RECYCLING COLLECTION

CONTRACTOR: Republic Service of Ohio, LLC

The following changes are hereby made to the CONTRACT DOCUMENTS:

The City of Kent removes Alternate #8A – Recycling Bid Only from the contract with Republic Services of Ohio, LLC. This would remove the requirement for Republic Service of Ohio, LLC to provide recycling to the City of Kent residents and City Buildings as per the bid specifications and bids of 2018 for the duration of the contract.

Justification:

The lack of contractual agreement between Republic Service of Ohio, LLC and Portage County Solid Waste District as proposed to the City of Kent Council, May 2, 2018.

Change to CONTRACT PRICE: Remove the \$6.50 per residential unit per month from Republic billing.

		<u>Per Month</u>	<u>Annually</u>
Original CONTRACT PRICE	Base Bid	\$ 91,897.25	\$1,102,767.00
	Alternate #8A	\$ 27,895.50	\$ 334,740.00

Current CONTRACT PRICE adjusted by previous CHANGE ORDER.

Base Bid	\$ N/A	\$ N/A
Alternate #8A	\$ N/A	\$ N/A

The CONTRACT PRICE due to this CHANGE ORDER will be (increased) (decreased) by

Alternate #8A	\$ 27,895.50	\$ 334,740.00
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The new CONTRACT PRICE including this CHANGE ORDER will be

Base Bid	\$ 91,897.25	\$1,102,767.00
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Order No.     #1    

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Change to CONTRACT TIME:

There is no expected Change in duration of contract with Republic Services of Ohio, LLC.

*Republic shall release all accounts on March 1, 2019.*

*Recouping of costs for the recycling to be reimbursed to Portage County Solid Waste District for services rendered since September 2018, till February 28, 2019 shall be at \$ 4.75 per residential unit times 4245 residential units for the month of September and \$ 4.75 per residential unit times 4433 for the months of October November December, January 2019 and February 2019. This is a total of \$125,447.50 payable to the City of Kent, on or before April 1st, 2019 so that payment can be made to Portage County for services rendered between September 2018 till March 1, 2019.*

*Republic will discontinue billing for recycling beginning March 1<sup>st</sup>, 2019.*

*Customers who were billed for March April May will receive a credit of \$19.50 on their next bill. Bagged customers will receive the equivalent dollar amount in trash bags. This would work out to be 7 bags per bagged customer.*

The CONTRACT TIME will be (increased) (decreased) by   N/A   calendar days.

The date for completion of all WORK will be   June 8, 2021 with 2 one year contract extensions as agreed by both parties.  

By execution of this Change Order, the Contractor acknowledges that this Change Order adequately compensates the Contractor for any and all claims including, but not limited to, those relating to extra work, differing site conditions and/or delays, whether known or unknown, which the Contractor has or may have on the date hereof.

It is mutually agreed that this change will in no way alter any other provisions of the Contract and will not serve as a basis for any additional claims for compensation except for the amount set forth in this Change Order.

Requested by: \_\_\_\_\_, \_\_\_\_\_  
Title

Ordered by: \_\_\_\_\_, Director of Public Service  
Title

Approved by: \_\_\_\_\_, \_\_\_\_\_  
(Owner / Contractor) Title

**AGREEMENT BETWEEN THE  
DISTRICT 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 \_\_\_\_\_ 2019 by and between the District Commissioners of the Portage County Solid Waste Management District (hereinafter "District Commissioners") and the City of Kent (hereinafter "City"),

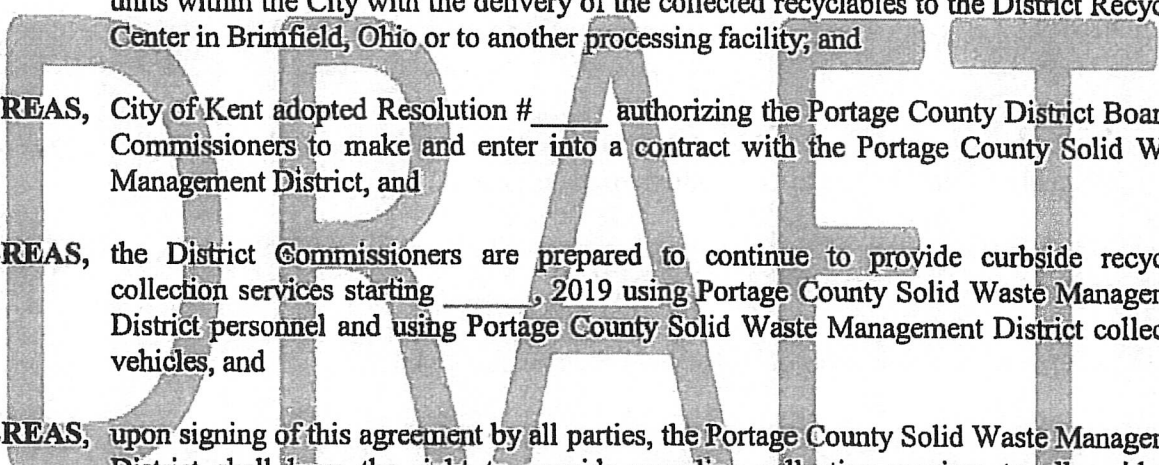
**WHEREAS**, the District Commissioners currently provides curbside recycling collection services to several Portage County Political Subdivisions including the City of Kent, and

**WHEREAS**, the District Commissioners did adopt Resolution No. 19-0\_\_ on \_\_\_\_\_, 2019 authorizing the District Commissioners to enter into an Agreement with the City of Kent to continue to perform the collection of residential recyclables from all residential dwelling units within the City with the delivery of the collected recyclables to the District Recycling Center in Brimfield, Ohio or to another processing facility; and

**WHEREAS**, City of Kent adopted Resolution # \_\_\_ authorizing the Portage County District Board of Commissioners to make and enter into a contract with the Portage County Solid Waste Management District, and

**WHEREAS**, the District Commissioners are prepared to continue to provide curbside recycling collection services starting \_\_\_\_\_, 2019 using Portage County Solid Waste Management District personnel and using Portage County Solid Waste Management District collection vehicles, and

**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 in the City of Kent through February 28, 2024 as 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 in cooperation with the City and compiled from a combination of existing customer lists, 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. Containers may be 65-gallon or 95-gallon in size.

Exhibit B

- 1.3 City - means the City of Kent and/or any member(s), officer(s), official(s), elected or otherwise, employee(s) and/or agent(s) of City of Kent government.
- 1.4 Delivery Site - The District Recycling Processing Facility located at 3588 Mogadore Road, Brimfield City, Portage County, Ohio or to another processing facility.
- 1.5 District - The Portage County Solid Waste Management District, 3588 Mogadore Rd., Kent OH 44240.
- 1.6 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
- 1.7 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](http://www.portagerecycles.com) by January 15<sup>th</sup> of each calendar year. Written explanation for any changes shall be given to the City thirty (30) days prior to the effective changes and the District is responsible for notification to the residents of the changes.
- 1.8 Residential Dwelling Unit - A residential unit shall be defined as an existing structure on a parcel of property consisting of three (3) units and less.
- 1.9 Premises - Land or buildings or both, occupied, by a householder.
- 1.10 Commercial Operator - All persons, firms or corporations who own or operate stores, restaurants, industries, institutions and other similar places including multi-family dwellings or multi-family residential structures containing four or more dwelling units.
- 1.11 Agreement - The actual Government to Government agreement, as provided for in 307.15 of the ORC, Agreement signed between the District Commissioners and the City for the authorized right to collect residential recyclables.
- 1.12 District Commissioners - The District Commissioners as the authorized Board of the Portage County Solid Waste Management District.
- 1.13 Curbside - That portion of the right-of-way adjacent to paved or traveled City 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 within the City's limits. The District shall bill the person(s) in charge of each such residential dwelling unit for said services provided under this Agreement. The District shall supply the recycling collection services in this Agreement at no charge to all City of Kent buildings for the duration of this Agreement. The Portage County Solid Waste Management District shall have the

Exhibit B

right to provide recycling collection services to all residential dwelling units in the City of Kent through February 28, 2024.

- 2.2 The initial term of this Agreement shall be five (5) years from 12:01 a.m. March 1, 2019 through 11:59 p.m. February 28, 2024. Should either the City or District object to extension of the Agreement for the additional one-year period, that party shall provide written notice to the other no less than one hundred eighty (180) days prior to the end of the current service year. The Agreement will automatically add a one (1) year extension if no objection is sent to either party. The extension will be in writing signed by the District Board of Commissioners and City Manager.

**SECTION 3 - Carts**

- 3.1 Container Types - The District will furnish a 95-gallon or a 65-gallon carts for each residential unit.

- 3.2 Container Delivery

The District shall be responsible for providing carts to all existing homes that currently do not have any or enough carts, all new homes after notification by the City that the residential unit has been added to the Agreement, and all future new homes built within the City. Extra carts, carts lost, stolen, or damaged shall be replaced at the expense of the District as directed by the City. The District shall pick up and deliver the replacement carts to the designated residential unit along with educational information that explains the curbside recycling and waste collection program in the City.

To ensure consistency and cooperation, no information shall be directly prepared and distributed to the residents by the City or the District without the review and approval by both the City and the District.

**SECTION 4 - Collection Service**

- 4.1 Service Provided - The District shall provide weekly curbside collection service from each residential dwelling unit for each of the following 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](http://www.portagerecycles.com) by January 15<sup>th</sup> of each calendar year. Written explanation for any changes shall be given to the City thirty (30) days prior to the effective changes and the District is responsible for notification to the residents of the changes.

- 4.2 Carry Out Service - The District shall provide at no extra charge Carry Out Service to address of the residents who are handicapped, disabled, impaired or otherwise precluded from, or physically incapable of, placing the recycling carts from that unit at curbside. The District will require a resident to provide a letter from a physician certifying the need for the service. The requested must be renewed annually. Carry Out service will not be advertised. If a resident wishes to have carryout service and does not qualify the charge for the service shall be an additional ten (\$10.00) dollars per month.

The location of recycling carts from residential units receiving carry out service shall be on the ground floor level and no farther from the street than ten (10) feet beyond the real line of the building. Carts shall not be placed within an enclosed fence, garage, carport, etc. The City will not be responsible when a resident does not comply with the District's requirements, provided that the City has not caused or contributed to the non-compliance. The City will participate with the District

to make the program successful.

- 4.3 Location of Carts for Collection - Residents will be required to place each container at 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 City 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. The City will not be responsible when a resident does not comply with the District's requirements, provided that the City has not caused or contributed to the non-compliance. The City will participate with the District to make the program successful.

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 or contain contamination the cart will not be picked up. The City will not be responsible when a resident does not comply with the District's requirements, provided that the City has not caused or contributed to the non-compliance. The City will participate with the District to make the program successful.

## 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 by 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 upon the mutual agreement of the District Commissioners and the City, or when the District reasonably determines that an exception is necessary in order to complete collection. The District shall notify the City of any delays in service.
- 5.2 Routes of Residential Curbside Collection -The District or the City may request changes in the collection day subject to mutual approval of the City and the District Commissioners. It shall be the District's and City's responsibility to notify residents of the days their recyclables will be collected. The route for recycling should match the same route for trash. These routes should be set by the City and the subsequent contractors. Any changes would have to be agreed to by all parties.
- 5.3 Holidays-The District shall observe the holidays included in Section 1.6 by suspension of collection service on the holiday and adding Saturday as a workday as required. The District shall provide the City with a schedule of holidays to be observed and the manner in which collections will be changed to accommodate them. 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 or weather conditions, or other unforeseen circumstances.
- 5.4 Call Backs  
The District shall provide call back collection service for all residential collection routes. The purpose of this service is to pick up recyclables from residential units that have been missed by the District collection vehicle in the regular pickup service. This service will be neither advertised nor published. Individuals who notify the District that they were missed by regular service within twenty-four (24) hours of their regular collection date will be offered this service. The District shall accomplish the call back by the close of the next full working day after being notified by the

## Exhibit B

residential unit. If the District utilizes equipment that allows the driver to automatically log if a resident's cart is not out at the time of service, the District will not be obligated to return to provide service until the next regularly scheduled day of service.

### 5.5 Complaints

All complaints will be made directly to the District. Upon notification, the District shall pay prompt and courteous attention to all such complaints.

### 5.6 Hauling - All material hauled by the District shall be so contained or enclosed that no material may escape the haul vehicle by leaking, spilling or blowing.

### 5.7 Delivery - All recyclable material collected by the District shall be delivered to the District Recycling Processing Facility at 3588 Mogadore Road, Brimfield City, Portage County, Ohio or to another processing facility. The City of Kent shall be notified of which processing facility their recyclables were taking as part of the data collection as authorized in Section 13.

### 5.8 Collection Equipment - The District shall provide an adequate number of vehicles and other equipment for regular collection services. All vehicles shall be kept in good repair, appearance and sanitary condition at all times. Each vehicle shall have clearly visible on each side the identity of the District. The District shall provide a system of communication between the collection vehicle drivers and the District's dispatch office, e.g. radios or phone communication for each, to assure adequate tracking and information exchange between the two. Each of the District's employees shall at all times have and carry a valid Ohio Driver's License for the type of vehicle. The District will follow the rules and regulations required by the City of Kent Health Department in reference to their vehicles and equipment.

## 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. This Agreement shall be construed, interpreted and otherwise understood pursuant to City of Kent Ordinances in effect at the time this Agreement becomes effective, unless the City and District otherwise agree in writing.

## SECTION 7 - Effective Date

### 7.1 The District shall anticipate the continuation of residential recycling collection as per the terms and conditions of this new agreement effective March 1, 2019.

## SECTION 8 - Quantities

### 8.1 The District will provide service to residential units in the City of Kent as defined in Section 1.

## SECTION 9 - Basis and Method of Payment

### 9.1 Unit Prices Bid

The unit prices for the five-year 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 acceptable service performed and products or materials supplied. The price shall be \$5.50 per unit per month for the first year and shall be modified pursuant to the terms and conditions in sub-section 9.2.



Service fee from March 1, 2019 to February 28, 2020	\$5.50 per month
Service fee from March 1, 2020 to February 28, 2021	\$5.67 per month
Service fee from March 1, 2021 to February 28, 2022	\$5.83 per month
Service fee from March 1, 2022 to February 28, 2023	\$6.05 per month
Service fee from March 1, 2023 to February 28, 2024	\$6.19 per month

9.2 Modification of Rates

The District and the City agree to an annual review of the rates, processing costs, terms and conditions of the Agreement and will agree to price adjustments upon mutual agreement of the City Council and the District during the Agreement period. The District and the City agree to renegotiate the rates or institute a fuel surcharge when diesel prices average over \$3.25 per gallon in a rolling twelve-month period, as per the state bid costs, or non-District charges rise to where the district averages a negative return over a rolling 12-month period.

9.3 District Billings to Residential Units

The District will invoice the recycling fees to the residential units described in Section 8 on a quarterly basis. The District and City agree to discuss the conversion from paper invoicing to property taxes. Both entities shall meet to discuss a plan for the conversion that is mutually agreed upon by both parties. The District agrees to forward the master billing list to the City. The District and City will work together on a notification program to the residents when/if the conversion to property taxes occurs.

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.

The District Commissioners will provide educational information to new home owners and residents, area realtors, developers, City employees and the local Board of Education. Educational material can include details on starting and properly using the City Recycling Program.

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 the City without the express mutual written consent of both parties.

**SECTION 11 – Agreement**

11.1 The District shall be the City’s authorized provider of recyclable material collection and delivery services to residential units as defined in Section 1 and City governmental units within the corporate limits of the city limits.

**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, or into the District’s collection vehicle.

**SECTION 13 - Data Collection**

13.1 The District shall gather and maintain records of collection, volumes, and participation statistics and other applicable data, which shall be provided to the City on a monthly basis and the District Commissioners for its use in statistical analyses.

**SECTION 14 - Frequency of Service**

14.1 All residential subscribers shall receive recycling collection service at a frequency of weekly service.

14.2 Collection shall never be postponed longer than one (1) working day following the regular day of collection, except in a case of emergency or weather conditions, or other unforeseen circumstances.

**SECTION 15 - General Conditions**

15.1 **TERMINATION OF AGREEMENT.** This Agreement may be terminated for any or no reason upon written mutual agreement between the District and Franklin City.

1. **TERMINATION BY THE CITY OF KENT.** Failure of the District to comply with any provision of this Agreement shall be considered grounds for termination of this Agreement by City of Kent upon One hundred eighty (180) days advance written notice to the District specifying the termination effective date and identifying the "basis for termination." The Residents shall pay for District services rendered up to the date of termination of the Agreement. Upon receipt of the written notice, the District shall have ten (10) days to provide a written response to the City of Kent. If the District provides a written response which provides an adequate explanation for the "basis for termination" and the District cures the "basis for termination" to the satisfaction of the City of Kent, the One hundred eighty (180) day notice shall become null and void and this Agreement will remain in full force and effect. Termination under these provisions shall be without penalty to the City.

The City may terminate this Agreement immediately upon written notice to the District in the event that any District employee or elected official reasonably act(s) or omission(s) frustrate, impede, obstruct, unreasonably delay or otherwise unreasonably increase the cost of the City's ability to perform its obligations under this Agreement. The City shall be entitled to full recompense for all services rendered to the time of this termination. Termination under this provision shall be without penalty to the City.

2. **TERMINATION BY DISTRICT.** Failure of the City to comply with any provision of this Agreement shall be considered grounds for termination of this Agreement by the District who shall provide) One hundred eighty (180) days advanced written notice specifying the termination effective date and identifying the "basis for termination." The Residents shall pay the District for services rendered up to the date of termination of the Agreement. Upon receipt of the written notice the City shall have ten (10) days to provide a written response to the District. If the City provides a written response to the District which provides an adequate explanation for the "basis of termination," or cures the "basis for termination" to the satisfaction of the District, the One hundred eighty (180) day notice shall become null and void and this contract will remain in full force and effect. Termination under this provision shall be without penalty to the District.

The District may terminate this Agreement immediately upon written notice to the City in the event that any City employee or elected official reasonably act(s) or omission(s) frustrate, impede, obstruct, unreasonably delay or otherwise unreasonably increase the cost of the District's ability to perform its obligations under this Agreement. The District shall be entitled to full recompense for all services rendered to the time of this termination. Termination under this provision shall be without penalty to the District.

- 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 Modification. This Agreement may be modified only with the express written consent of both parties.
- 15.7 Notice. Any notice required or permitted to be given under this Agreement will be effective if it is sent by certified or registered mail, return receipt requested, or insured courier to the appropriate party at the address set forth below. Either party may change its address for receipt of notice by providing the other party with the new address in accordance with this Section. Notices are deemed given five (5) business days following the date of mailing or one (1) business day following delivery to a courier; the date of notice is the date of mailing.

William G. Steiner, II, Director  
Portage County Solid Waste District  
3588 Mogadore Road  
Kent, OH 44240

David Ruller  
City Manager  
City of Kent  
310 S. Depeyster Street  
Kent, Ohio 44240

- 15.8 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.
- 15.9 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.
- 15.10 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.
- 15.11 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, 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 Equipment 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 Commissioners shall furnish evidence to the City that 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 District Commissioners and 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.

**PORTAGE COUNTY SOLID WASTE DISTRICT COMMISSIONERS:**

\_\_\_\_\_  
Date: \_\_\_\_\_  
Vicki A. Kline

\_\_\_\_\_  
Date: \_\_\_\_\_  
Kathleen Clyde

\_\_\_\_\_  
Date: \_\_\_\_\_  
Sabrina Christian-Bennett

**CITY OF KENT**

\_\_\_\_\_  
Date: \_\_\_\_\_  
David Ruller