

RESOLUTION R-2019-22

A RESOLUTION TO AUTHORIZE A CONTRACT WITH THE PORTAGE COUNTY SOLID WASTE MANAGEMENT DISTRICT FOR COLLECTION OF RECYCLABLES.

WHEREAS, the Council of the Village of Windham has previously obtained recycling services on behalf of its residents from Portage County Solid Waste Management District; and

WHEREAS, the Council of the Village of Windham has determined that it is appropriate to enter into agreement setting forth the terms and conditions whereby the Portage County Solid Waste Management District will be the recycling provider for Village of Windham residents over a period of time; and

WHEREAS, the total fee charged by the Portage County Solid Waste Management District to the Village is below the current threshold established in Ohio Revised Code section 731.14 and as a result competitive bidding is not required prior to the award of this contract.

NOW THEREFORE BE IT RESOLVED by the Council of the Village of Windham, County of Portage, State of Ohio, a majority or more of its members thereto concurring that:

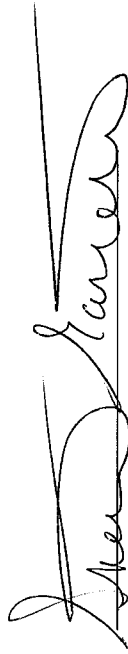
Section 1: The Mayor and the Fiscal Officer are hereby authorized to execute on behalf of the Village an agreement with the Portage County Solid Waste Management District to accept recycling materials within the Village of Windham in substantial conformity with the agreement set forth in the attached Exhibit A.

Section 2: It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this resolution 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, including Section 121.22 of the Revised Code of the State of Ohio.

First reading, November 26, 2019

Second reading and passage, December 17, 2019

Vote of Council: Ayes: 6
 Nays: 0


Mayor, Scott Garrett

ATTEST:


Fiscal Officer, Cherred Taylor

Approved as to form:


Thomas Reitz, Solicitor

**AGREEMENT BETWEEN THE
DISTRICT COMMISSIONERS OF THE PORTAGE COUNTY SOLID WASTE MANAGEMENT
DISTRICT AND VILLAGE OF WINDHAM AND WINDHAM TOWNSHIP FOR THE
COLLECTION OF RECYCLABLES FROM VILLAGE OF WINDHAM AND WINDHAM
TOWNSHIP**

THIS AGREEMENT is entered into this _____ day of _____, 2019 by and between the District Commissioners of the Portage County Solid Waste Management District (hereinafter "District Commissioners") and Village of Windham and Windham Township,

WHEREAS, the District Commissioners currently provide drop off recycling collection services to several Portage County Political Subdivisions including Village of Windham and Windham Township, and

WHEREAS, the District Commissioners did adopt Resolution No. 19-0__ on _____, 2019 authorizing the District Commissioners to enter into a agreement with Village of Windham and Windham Township to continue to perform the exclusive collection of recyclables from the drop off site location in the Village with the delivery of the collected recyclables to the District Recycling Center in Brimfield, Ohio or to another processing facility; and

WHEREAS, Village of Windham Resolution #_____ on_____ authorizing the Mayor and Fiscal Officer to make and enter into an agreement with the Portage County Solid Waste Management District, and

WHEREAS, Windham Township adopted Resolution #_____ on_____ authorizing the Trustees to make and enter into an agreement with the Portage County Solid Waste Management District, and

WHEREAS, the District Commissioners are prepared to continue to provide drop off recycling collection services starting January 1, 2020 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 be granted the exclusive right to provide drop off recycling collection services in Village of Windham and Windham Township through December 31, 2024 as per the following Detailed Specifications:

DETAILED SPECIFICATIONS
FOR DROP OFF RECYCLING COLLECTION BY THE PORTAGE COUNTY SOLID WASTE
DISTRICT IN VILLAGE OF WINDHAM AND WINDHAM TOWNSHIP, OH

SECTION 1 - Definitions

- 1.1 Container - The official designated receptacles or recycling bins into which residents place recyclable materials. All such receptacles are and shall remain the property of the District including the contents.
- 1.2 Township – Windham Township, OH.
- 1.3 Village – Village of Windham, OH.
- 1.4 Delivery Site - The District Recycling Processing Facility located at 3588 Mogadore Road, Brimfield Township, Portage County, Ohio or another facility contracted by the District to process recyclables.
- 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 in the form of glass, aluminum and steel containers, magazines, phone books, junk mail, mixed paper, newspaper, #1 and #2 plastics, aseptic cartons and cardboard designated for removal from a residential or apartment units. Additional materials may be designated by mutual agreement of the Village, the Township and the District Commissioners.
- 1.7 Agreement - The actual Performance Agreement signed between the District Commissioners, the Village, and the Township for the exclusive right to collect recyclables.
- 1.9 District Commissioners - The District Commissioners as the authorized Board of the Portage County Solid Waste Management District.
- 1.10 Drop off – The actual location within the Village and the Township where the containers are located for residents to deliver their recyclables to for recycling.

SECTION 2 - Containers

- 2.1 Container Types - There will be a total of four (4) eight (8) cubic yard, front load style, recycling containers placed at the drop off location. The exact number may be modified by the District, the

Village, and Township Trustees.

2.2 Container Delivery

The District shall be responsible for providing containers at the drop off locations.

2.3 Site Maintenance- The Village and Township shall be responsible for the maintenance of the grounds around the containers.

SECTION 3 - Collection Service

3.1 Service Provided - The District shall provide drop off collection service for each of the following recyclable materials: Glass, aluminum and steel containers, magazines, phone books, junk mail, mixed paper, newspaper, #1&2 plastics, aseptic cartons and cardboard. The recyclable materials are designated annually by the District and the District's processor. The list will be published on the District website <https://portagerecycles.com> by January 15th of each calendar year.

3.2 Location of Containers for Collection-The District, the Village, and the Township shall determine the most efficient and accessible location for the residents to deliver recyclables and for District trucks to collect the recyclables. The location for the drop off will be at 8950 Maple Grove Road.

SECTION 4 - Operation

4.1 Days and Hours of Operation

Collection of recyclables shall not start before 5:30 a.m. or continue after 7:00 p.m. on the same day. Containers shall be collected Monday through Friday at the District's discretion, except 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, the Village, and the Township, or when the District reasonably determines that an exception is necessary in order to complete collection.

4.2 Holidays

The District shall observe the holidays included in Section 1.5 by suspension of collection service on the holiday and adding Saturday as a workday as required. The District shall provide the Village and the Township with a schedule of holidays to be observed and the manner in which collections will be changed to accommodate them.

4.3 Complaints

All complaints will be made directly to the District. Upon notification, the District shall pay prompt and courteous attention to all such complaints. The District shall provide operating radios or radio telephone receivers and transmission equipment in all operating collection vehicle regularly used for collection in the Village and the Township.

4.4 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.

4.5 Delivery - All recyclable material collected by the District shall be delivered to the District Recycling Processing Facility at 3588 Mogadore Road, Brimfield Township, Portage County, Ohio or to another processing facility.

- 4.6 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.

SECTION 5 - Compliance with Laws

- 5.1 The District shall conduct operations under this Agreement in compliance with all applicable laws.

SECTION 6 - Effective Date

- 6.1 The District shall anticipate the continuation of recycling collection as per the terms and conditions of this new agreement effective January 1, 2020.

SECTION 7 - Basis and Method of Payment

7.1 Unit Prices

The unit prices are for the five (5) year term of the agreement for each item shall include all labor, material, vehicle, equipment, fees, permits, disposal charges and all other incidentals necessary to provide the required services in every and all respects. Payment shall be made for acceptable service performed and products or materials supplied. The price shall be \$600 per container per year for the first year of the agreement and shall be modified pursuant to the terms and conditions in paragraph 7.2. The annual invoices shall be for a total of \$2,400.00 for four (4) containers and shall be divided equally between the Village and the Township

7.2 Modification of Rates

The District, the Village, and the Township agree to an annual review of the rates, terms and conditions of the Agreement and will agree to price adjustments upon mutual agreement of the Village, the Township and the District during the Agreement period. The District, the Village and the Township agree to renegotiate the rates or institute a fuel surcharge when diesel prices average over \$4.00 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.

7.3 District Billings

The District will mail annual bills by February 28th of each year to the the Village and Township Fiscal Officers. The Village and the Township shall each be invoiced for 50% each of the total cost of the drop off. One bill will be sent to the Village for one-half (1/2) of the total cost, which will be one-thousand, two hundred dollars (\$1200.00) for the first year. One bill will be sent to the Township for one-half of the total cost, which will be one-thousand, two hundred dollars (\$1200.00) for the first year. The annual bill will be for the service period from January 1st to December 31st. Invoices shall be paid within 60 days upon receipt. The obligation of each the Village and the Township shall be limited to 50% of the total amounts due under this Agreement, which obligation shall be individual to each the Village and the Township, and shall not be joint and several.

SECTION 8 - Exclusive Agreement

- 8.1 The District shall be the Village's and Township's designated provider of recyclable material collection and delivery services to residential, commercial, industrial, and institutional units within the corporate limits of Village of Windham and Windham Township for the duration of this agreement.

SECTION 9 - Ownership

- 9.1 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 Village's the Township's collection bins, or into the District's collection vehicle.

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, the Village, or the Township without the express mutual written consent of both parties.

SECTION 11 - Data Collection

- 11.1 The District shall gather and maintain records of collection, volumes, and participation statistics and other applicable data, which shall be provided to the Village, the Township and the District Commissioners for their use in statistical analyses.

SECTION 12 - Frequency of Service

- 12.1 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 13 - General Conditions

- 13.1 **TERMINATION OF AGREEMENT.** This Agreement may be terminated for any or no reason upon written mutual agreement between the District and Village of Windham and Windham Township.

1. **TERMINATION BY VILLAGE OF WINDHAM AND WINDHAM TOWNSHIP.** Failure of the District to comply with any provision of this Agreement shall be considered grounds for termination of this Agreement by Village of Windham and Windham Township upon One hundred eighty (180) days advance written notice to the District specifying the termination effective date and identifying the "basis for termination." The Village and Township 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 Village of Windham and Windham Township Trustees. 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 Village of Windham and Windham Township Trustees, 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 Village or the Township.

2. **TERMINATION BY DISTRICT.** Failure of the the Village or Township 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 Village and Township shall pay the District for services rendered up to the date of termination of the Agreement. Upon receipt of the written notice the Village and Township shall have ten (10) days to provide a written response to the District. If the Village and Township 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 agreement 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 Village and Township in the event that any Village or Township employee unreasonably act(s) or fails to act in such a manner as to frustrate, impede, obstruct, unreasonably delay or otherwise unreasonably increase the cost of the District's performance 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.

- 13.2 **Assignment/Delegation.** Neither party shall delegate, assign or delegate 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.
- 13.3 **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.
- 13.4 **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.
- 13.5 **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 the District, the Village, and the Township..

- 13.7 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

Village of Windham
9083 North Main Street
Windham, Ohio 44288

AND

Windham Township Trustees
9011 North Main Street
Windham, Ohio 44288

- 13.8 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.
- 13.9 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.
- 13.10 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.
- 13.11 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 14 - Force Majeure

- 14.1 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 15 - Insurance

- 15.1 The District shall at all times, from the inception of this Performance Agreement with the Village and the Township, 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.
 - b. Damage Liability and Property Damage Liability. The District Commissioners shall furnish evidence to the Village and the Township 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 the Village of Windham and Windham Township Trustees 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

VILLAGE OF WINDHAM

Date: _____
Scott Garrett
Mayor

Date: _____
Cheree Taylor
Fiscal Officer

WINDHAM TOWNSHIP

Date: _____
Dan Burns

Date: _____
Brian Miller

Date: _____
Rich Gano

APPROVED AS TO CONTENT:

Date: _____
William G. Steiner, II Director Portage County Solid Waste Management District

APPROVED AS TO FORM:

Date: _____
Assistant Prosecuting Attorney

“I hereby certify that the amount of \$1,200.00 required to meet the obligation for the above agreement has lawfully been appropriated for such purposes and is in the treasury to the credit of fund # _____
Free from any obligation or certificate now outstanding.”

Jayne Neikirk
Fiscal Officer, Windham Township

Date

“I hereby certify that the amount of \$1,200.00 required to meet the obligation for the above agreement has lawfully been appropriated for such purposes and is in the treasury to the credit of fund # _____ Free from any obligation or certificate now outstanding.”

Cheree Taylor
Finance Clerk, Village of Windham

Date