

“EXHIBIT A”

MUNICIPAL SOLID WASTE SERVICE AGREEMENT

THIS MUNICIPAL SOLID WASTE SERVICE AGREEMENT ("Agreement") is made this 1st day of September, 2018 (the "effective date"), by and between OLD MILL SONS, a corporation organized and existing under the laws of the State of Ohio ("Old Mill Sons"), and the VILLAGE OF SUGAR GROVE, a municipal corporation created under the laws of the State of Ohio ("Village") (hereafter collectively the "Parties").

WHEREAS, the Village desires to provide its citizens with environmentally sound solid waste collection and disposal; and

WHEREAS, Old Mill Sons and its affiliates have extensive experience in providing solid waste collection and disposal; and

WHEREAS, the Village has determined that it would be in the best interests of its citizens to contract with Old Mill Sons for the collection of its residential solid waste materials according to the terms and conditions contained herein.

NOW THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Village and Old Mill Sons agree as follows:

1. DEFINITIONS

- a. Acceptable Waste - shall mean all non-hazardous solid waste generated by households in the ordinary course including food wastes and discarded papers, cardboard, plastics, cloth, glass and metal materials, but excluding Unacceptable Waste as defined herein. Waste shall be considered "Acceptable Waste" only if properly contained within waste containers placed at the curbside on the proper weekly collection day, but occasional overflow of waste is permitted if properly sealed in plastic garbage bags in proximity to the toter. As used herein, the term "waste" shall mean Acceptable Waste unless the context demonstrates otherwise. Title to Acceptable Waste shall transfer to Old Mill Sons upon collection in Old Mill Sons vehicles.
- b. Unacceptable Waste - shall mean, without limitation, any regulated quantity of a Hazardous Waste or Hazardous Substance as defined by federal, state or local laws or regulations; containerized wastes, the contents of which are not able to be identified; sludges; waste from a pollution control process or cleanup of a spill of a chemical substance or commercial product; waste tires; items

containing CFCs; biohazards or regulated medical waste; friable asbestos; construction and demolition waste; soil, sod, tree branches and stumps; paint; motor oil; excessive storm debris or debris resulting from weather events such as hurricanes or tropical storms; or any item too large or heavy to be contained within a lidded garbage container no greater than 96-gallons in size. Title to and liability for Unacceptable Waste shall remain with the resident that generated the Unacceptable Waste at all times.

- c. Bulky Items - shall mean large household items such as washers, dryers, furniture, bed frames and the like, placed at the curb for collection on the appropriate days as described hereafter. Bulky Items shall not include and residents shall not place at the curb for collection any items containing chlorofluorocarbons ("CFCs") such as refrigerators, freezers and air conditioning units and the like.
- d. Yard Waste - shall mean grass clippings, tree and bush trimmings, leaves, and bundled sticks no greater than one inch in diameter and three feet in length. Yard Waste does not include soil, rolls of sod, rocks or stones, large branches, or storm debris.
- e. Residential Unit - shall mean a dwelling within the corporate limits of the Village occupied by a person or persons as a domicile. A residential unit shall be deemed occupied when either domestic water or light and power services are being supplied thereto. Apartment or condominium buildings with four (4) or more individual dwellings shall be considered commercial establishments and shall not be considered Residential Units.

2. TERM

The Term of this Agreement shall be for three (3) years commencing on the effective date written above and expiring on August 31, 2018. The parties have the option to renew the contract up to two (2) times for a mutually agreed upon period of up to three (3) years per extension.

3. THE SERVICE AND OLD MILL SONS RESPONSIBILITIES

Old Mill Sons shall furnish, at its sole cost and expense, the labor, equipment, licenses, permits, and other requirements necessary to provide Acceptable Waste Materials collection to all Residents Units of the Village, which currently consists of approximately 183 Residential Units (the "Service").

- a. Toter Supply. Residential Units shall be responsible to contain all Acceptable Waste within approved solid waste containers (aluminum or plastic garbage cans, toters, or bags) not greater than 96-gallons in size. Residential Units may contact Old Mill Sons to purchase directly from Old Mill Sons an Acceptable Waste toter with wheels at a price to be established by Old Mill Sons.

- b. Acceptable Waste Collection Frequency, Days and Times. Acceptable Waste shall be collected from the curbside One times (1x) per week from each Residential Unit on a single weekday each week to be agreed upon by Old Mill Sons and Village. Collections shall occur during ordinary hours but in no instance earlier than 7:00 AM and no later than 7:00 PM.
- c. Public Pick-Up Locations. As part of the services being provided, Old Mill Sons shall remove Acceptable Waste from the following public offices and locations at no cost: the Municipal Office; the Public Park; and the Sewer Plant.
- d. Bulky Items Collection. As part of the services being provided, Old Mill Sons shall provide Bulky Item collection services. There shall be a limit of One (1) Bulky Item per ~~week~~
month, per Residential Unit.
- e. Yard Waste Collection and Christmas Tree Collection. As part of the services being provided, Old Mill Sons shall collect Yard Waste. The Yard Waste must be enclosed within containers or bags and placed at the curb with Acceptable Waste on the designated collection days. Old Mill Sons also shall collect discarded Christmas trees as part of its normal weekly collections between the period starting from December 25 until the third week of January.
- f. Disposal. Old Mill Sons shall dispose or arrange to dispose of the Acceptable Waste collected under this Agreement only at solid waste disposal facilities that are licensed and permitted to accept such solid waste.
- g. Holiday Schedule. The following shall be designated holidays on which the Service shall not be provided: New Year's Day, ~~Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the succeeding Friday,~~ Christmas Eve, Christmas Day. If a designated holiday falls on a regularly scheduled Service day, the Service will be performed on the next weekday.
- h. Compliance with Laws. The Service shall be performed in accordance with all applicable statutes, laws, rules, regulations and ordinances.
- i. Personnel and Equipment. The Service shall be performed by properly trained and licensed personnel in adequate numbers and with adequate vehicles and equipment to complete the Service in a safe and timely manner. Old Mill Sons' vehicles shall be covered, leak-proof, sanitary packer-type trucks with distinctive lettering identifying them as vehicles belonging to Old Mill Sons. Old Mill Sons shall maintain its vehicles in a safe and sanitary condition at all times during the term of this Agreement.

- j. Supervision. Old Mill Sons shall provide competent supervision in charge of working crews at all times while providing the Service.
- k. Missed Pick-Ups and Complaints. All Acceptable Waste and Recyclable Materials containers must be placed at the curb and ready for pick-up before 7:00 AM on the collection day; any containers not collected because they are not at the curb on time as required shall not be considered a missed pick-up. All complaints as to Old Mill Sons' provision of the Service, including alleged missed pick-ups, shall be given prompt and courteous attention. Old Mill Sons shall attempt to resolve all complaints promptly, and shall cure all missed pick-ups that are not the result of *force majeure* events within one (1) weekday, conditions permitting.
- l. Anti-Discrimination. In performing the Service, Old Mill Sons shall not discriminate against any person on the basis of race, religion, sex, national origin, political affiliation, sexual orientation, or physical and mental disability.

4. HOUSE COUNT AND ADJUSTMENTS

The estimated house count at the commencement of the term hereunder shall be 183 Residential Units; however, the Parties shall verify this house count prior to the initial billing under this Agreement and shall adjust the house count for billing purposes accordingly. Either Party may propose a prospective adjustment to the house count at any time during the term of this Agreement upon reasonable notice to the other Party, which adjustment shall be investigated jointly by the Parties to establish a new house count to apply thereafter. Old Mill Sons shall keep accurate route sheets and/or a Residential Unit database that shall be provided to Village promptly upon its request.

5. FEES AND PAYMENT

- a. Service Fee per Residential Unit. The fees to be paid to Old Mill Sons hereunder shall be as follows:
 - i. Year 1 (9-1-18 to 8-31-19): \$12.25 per Residential Unit per month; \$11.00 Senior Citizen rate per month; 1 rent-free 96-gallon wheeled cart for each resident (Each additional cart per resident is invoiced at \$2.00 per month).
 - ii. Year 2 (9-1-19 to 8-31-20): \$12.45 per Residential Unit per month; \$11.00 Senior Citizen rate per month; 96-gallon wheeled cart for each resident \$2.00 per month (Each additional cart per resident is invoiced at \$2.00 per month).
 - iii. Year 3 (9-1-20 to 8-31-21): \$12.75 per Residential Unit per month; \$11.00 Senior Citizen rate per month; 96-gallon wheeled cart for each resident \$2.00 per month (Each additional cart per resident is invoiced at \$2.00 per month).

- b. Invoice Calculation. The total monthly fee paid to Old Mill Sons shall be calculated based upon the wheeled cart rental charges, plus the current house count at the time each invoice is generated, times the fee per Residential Unit [e.g., Cart Rental Fees + (Current House Count x Fee per Residential Unit)=Monthly Invoice Amount].
- c. Disposal Cost. The cost of disposal is included within the Service Fee.
- d. Invoices and Payment. Invoices shall be submitted by Old Mill Sons on a monthly basis. The Village shall have thirty (30) days from the invoice date to remit payment in full. Payment by Village shall be made by check or wire transfer or ACH debit. The maximum interest permitted by law shall be applied to balances due and unpaid after more than fifteen (15) days beyond the due date.
- e. Changes in Law. Notwithstanding anything to the contrary in this Agreement, Old Mill Sons shall be entitled to pass through to, and collect from, the Village any additional collection or disposal costs, taxes, or surcharges incurred by Old Mill Sons as a result of any mandated changes in local, state or federal laws or regulations governing the generation, collection, transportation and disposal of solid waste and/or recyclable materials.

6. DEFAULT AND TERMINATION

Except as otherwise provided in the *Force Majeure* provision of this Agreement, the failure of either Party to perform a material obligation under this Agreement shall be considered a breach of this Agreement, and the breaching Party shall be in default. In the event of default, the non-defaulting Party shall give written notice of the default, and the defaulting Party shall have: (i) ten (10) days from the receipt of the notice to cure any failure to pay money under this Agreement, or (ii) thirty (30) days from the receipt of the notice to cure any other default under this Agreement. If the defaulting Party fails to cure the breach within the allotted time, the non-defaulting Party may, at its option, immediately terminate the Agreement. In the event of a default, the defaulting Party agrees to pay all damages caused by said default, to include, without limitation reasonable attorneys' fees and costs associated with enforcement of this Agreement. Under no circumstances shall the Parties be liable for any consequential, indirect, punitive or special damages for any alleged default under this Agreement.

7. INDEPENDENT CONTRACTOR

Old Mill Sons shall perform the Service as an independent contractor. Old Mill Sons, its officers, employees, agents, contractors or subcontractors, are not and shall not be considered employees, agents or servants of the Village for any purpose whatsoever under this Agreement or otherwise. Old Mill Sons at all times shall have exclusive control of the performance of the Service. Nothing in

this Agreement shall be construed to give the Village any right or duty to supervise or control Old Mill Sons, its officers, employees, agents, contractors, or subcontractors, nor to determine the manner in which Old Mill Sons shall perform its obligations under the Agreement.

8. **SUBCONTRACTORS**

Old Mill Sons shall not use subcontractors to perform the Service described hereunder unless Old Mill Sons has obtained prior written approval from the Village, which approval shall not be unreasonably delayed or withheld. In the event that written approval is obtained, Old Mill Sons shall remain liable to the Village for the subcontractor's performance of the Service as if the Service was being provided by Old Mill Sons itself.

9. **FORCE MAJEURE**

Old Mill Sons' performance of the Service may be suspended and its obligations hereunder excused during the pendency of a cause or causes beyond its reasonable control, such as by way of example and not limitation: acts of war, public enemy, civil disturbance, riot or disorder; epidemic or pandemic; acts of God such as landslide, lightning, earthquake, fire, storm, the impending approach of a storm, or flood; explosion; restraining orders, interference by civil or military authorities, strike, statute, ordinance, government order or ruling; or other similar causes. In the event of an occurrence of a *force majeure* event, Old Mill Sons shall notify the Village immediately, in writing, describing the particulars of the circumstances preventing performance of the Service and its expected duration. Notice shall be provided after the effect of such occurrence has ceased.

10. **INDEMNIFICATION**

- a. Old Mill Sons agrees to indemnify, defend, and hold the Village harmless from and against all claims and actions, suits, debts, damages, liabilities and costs whatsoever, including but not limited to attorneys' fees and costs of defense, based upon or arising out of the breach of this Agreement, and based upon or arising out of any injuries (including death) to persons, or damage to property, caused in whole or in part by the acts or omissions of Old Mill Sons, or any of its directors, officers, employees, agents, or subcontractors, in the performance of this Agreement.
- b. Notwithstanding any provisions to the contrary, Old Mill Sons shall not be responsible for any damage to pavement or curbing that is the result of ordinary wear and tear during the performance of the Service.
- c. The indemnification obligations of this section shall survive the termination or expiration of this Agreement for any reason.

11. INSURANCE AND PERFORMANCE BOND

- a. Old Mill Sons shall maintain at its own cost and expense the following minimum limits of occurrence-based insurance during the term of this Agreement

<u>Type</u>	<u>Amount</u>
A. Worker's Compensation	Statutory
B. Employer's Liability	\$500,000
C. Comprehensive General Liability	\$1,000,000 per occurrence \$1,000,000 aggregate
D. Automobile Liability (owned and non-owned)	
i. Bodily Injury	\$1,000,000 per occurrence
ii. Property Damage Liability	\$500,000 per occurrence
E. Excess / Umbrella	\$500,000 per occurrence

- b. The Village, its elected and appointed officials and employees, shall be included as additional insured parties under the CGL, Automobile and Excess/Umbrella coverages. Prior to commencement of the Service, Old Mill Sons shall deliver to Village a certificate of insurance evidencing the required coverages. This certificate shall provide that any change restricting or reducing coverage, or the cancellation of any policies under which certificates are issued, shall not be valid unless at least 30 days' written notice of change or cancellation is provided.
- c. Performance Bond. Old Mill Sons shall provide to the Village and maintain during the term of this Agreement a performance bond guaranteeing performance of the services of this Agreement in the amount of Five Thousand Dollars (\$5,000.00). The performance bond shall be provided by a surety company acceptable to the Village in its reasonable discretion and that is authorized to conduct business in the State of Ohio.

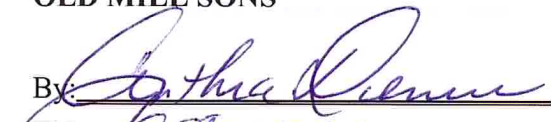
12. MISCELLANEOUS PROVISIONS

- a. Amendments. No amendment to this Agreement shall be made except upon the written consent of both Parties.
- b. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties hereto with respect to the subject matter and supersedes any prior and contemporaneous agreements and understandings, express or implied.
- c. Waiver. A waiver by either Party of any breach of any provision hereof shall not be taken or held to be a waiver of any subsequent breach, whether similar or dissimilar, or as a waiver of any provision itself. No payment or acceptance of compensation for any period subsequent to any breach shall be deemed a waiver of any right or acceptance of defective performance.

- d. Severance. In the event that any provision of this Agreement is found by a court of competent jurisdiction to be void, invalid, or unenforceable, the balance of this Agreement shall remain in effect and binding on the Parties.
- e. Choice of Law. This Agreement shall be governed by Ohio law, without regard to choice of law rules. The parties agree that any litigation regarding alleged breach of this contract will be venued in Fairfield County, Ohio.
- f. Assignment. Neither Party may assign its rights and obligations under this Agreement without the prior written consent of the other Party, which shall not be unreasonably delayed or withheld, except that Old Mill Sons may assign its rights and obligations under this Agreement to any Old Mill Sons affiliate without the Village's prior written consent. An assignment shall not relieve the assignee of any obligations under this Agreement.
- g. Notice. All notices required or permitted under this Agreement shall be in writing and shall be personally delivered, sent by certified mail, return receipt requested, or by overnight courier, with copies to counsel for the respective Parties.

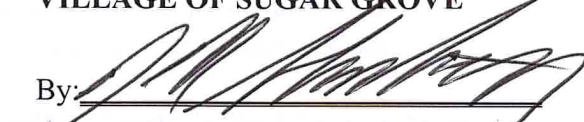
IN WITNESS WHEREOF, the parties have executed this Municipal Solid Waste Service Agreement as of the date above.

OLD MILL SONS

By: 
Title: owner

By: _____
Title: _____

VILLAGE OF SUGAR GROVE

By: 
Hon. J.R. Stoneburner, Mayor

By: 
Darren Meade, Solicitor

By: 
Jeremy VanMeter, Clerk of Council