

## **MUNICIPAL SOLID WASTE SERVICE AGREEMENT**

**THIS MUNICIPAL SOLID WASTE SERVICE AGREEMENT** ("Agreement") is made this 1st day of July, 2019 (the "effective date"), by and between WASTE AWAY SYSTEMS, LLC, a Limited Liability Corporation organized and existing under the laws of the State of Ohio ("Waste Away Systems"), 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**, Waste Away Systems 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 Waste Away Systems 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 Waste Away Systems 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 Waste Away Systems upon collection in Waste Away Systems 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 96-35-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, hot water tanks, furniture (no sleeper sofas), bedding ~~frames and the like~~, and children's play equipment 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 June 30, 2022. 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 WASTE AWAY SYSTEMS RESPONSIBILITIES**

Waste Away Systems 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 184 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 Waste Away Systems to purchase directly from Waste Away Systems an Acceptable Waste toter with wheels at a price to be established by Waste Away Systems.~~ All Residential Units, and the small businesses that qualify, will be issued a Waste Away Systems mobile waste cart, if they wish to use one. They may also use their own containers if they prefer or they may bag the refuse. If they use their own containers, they should not exceed 35 gallon holding capacity, be equipped with handles and not exceed 50 lbs. in gross loaded weight. If bagged, the bags need to be of suitable strength and not exceed 50 lbs. in weight.

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 Waste Away Systems 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, Waste Away Systems shall remove Acceptable Waste from the following public offices and locations at no cost: the Municipal Office; the Public Park; the Sewer ~~Water~~ Plant; ~~and the Firehouse~~.

d. Bulky Items Collection. As part of the services being provided, Waste Away Systems shall provide Bulky Item collection services. There shall be a limit of One (1) Bulky Item per week, per Residential Unit, which is included in the monthly unit price. Pick-up of additional bulk items will be at a charge of \$25 per item. Items that do not fit the descriptions in Section 1 (c) "Bulky Items" or which are excessively large or heavy need to be identified to the hauler in advance so separate arrangements can be made.

e. Yard Waste Collection and Christmas Tree Collection. As part of the services being provided, Waste Away Systems shall collect Yard Waste. Leaves and grass need to be bagged or containerized. Brush and branches need to not exceed four (4) feet in length and be bundled not to exceed 50 lbs. in weight. These can be placed with their regularly scheduled weekly pick-up. ~~The Yard Waste must be enclosed within containers or bags and placed at the curb with Acceptable Waste on the designated collection days. Waste Away Systems 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. Waste Away Systems 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, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. If any of these holidays would happen to fall on a weekday prior to the normal pick up day then the normal pick up would be delayed one day. If any of these holidays would happen to fall on a weekday after the normal pick up day then there is no change in the normal pick up for that week. If the holiday would happen to fall on a weekend (Saturday or Sunday) the normal pick up day is not affected for that coming week.

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. Waste Away Systems' vehicles shall be covered, leakproof, sanitary packer-type trucks with distinctive lettering identifying them as vehicles belonging to Waste Away Systems. Waste Away Systems shall maintain its vehicles in a safe and sanitary condition at all times during the term of this Agreement.

j. Supervision. Waste Away Systems 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 Waste Away Systems' provision of the Service, including alleged missed pick-ups, shall be given prompt and courteous attention. Waste Away Systems 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, Waste Away Systems 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 184 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. Waste

Away Systems 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 Waste Away Systems hereunder shall be as follows:

- (i) Year 1 (7-1-19 to 6-30-20): \$16.00 per Residential Unit per month;
- (ii) Year 2 (7-1-20 to 6-30-21): \$17.00 per Residential Unit per month;
- (iii) Year 3 (7-1-21 to 6-30-22): \$18.00 per Residential Unit per month.

Fees listed include one (1) Waste-Away Systems tote per residential unit. The total monthly fee paid to Waste Away Systems shall be calculated based upon the current house count at the time each invoice is generated, times the fee per Residential Unit [*e.g.*, Current House Count x Fee=Monthly Invoice Amount].

b. Disposal Cost. The cost of disposal is included within the Service Fee.

c. Invoices and Payment. Invoices shall be submitted by Waste Away Systems 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.

d. Changes in Law. Notwithstanding anything to the contrary in this Agreement, Waste Away Systems shall be entitled to pass through to, and collect from, the Village any additional collection or disposal costs, taxes, or surcharges incurred by Waste Away Systems 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**

Waste Away Systems shall perform the Service as an independent contractor. Waste Away Systems, 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. Waste Away Systems 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 Waste Away Systems, its officers, employees, agents, contractors, or subcontractors, nor to determine the manner in which Waste Away Systems shall perform its obligations under the Agreement.

**8. SUBCONTRACTORS**

Waste Away Systems shall not use subcontractors to perform the Service described hereunder unless Waste Away Systems 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, Waste Away Systems shall remain liable to the Village for the subcontractor's performance of the Service as if the Service was being provided by Waste Away Systems itself.

**9. FORCE MAJEURE**

Waste Away Systems' 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, Waste Away Systems 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. Waste Away Systems 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 Waste Away Systems, or any of its directors, officers, employees, agents, or subcontractors, in the performance of this Agreement.

b. Notwithstanding any provisions to the contrary, Waste Away Systems 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. Waste Away Systems 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<br>\$2,000,000 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                            |

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, Waste Away Systems 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.

b. Performance Bond. Waste Away Systems 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 Waste Away Systems may assign its rights and obligations under this Agreement to any Waste Away Systems 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.

**WASTE AWAY SYSTEMS**

**VILLAGE OF SUGAR GROVE**

By: \_\_\_\_\_

By: \_\_\_\_\_

J.R. Stoneburner

Title: \_\_\_\_\_

Title: Mayor

Attest: \_\_\_\_\_

Jeremy A. VanMeter

Title: Clerk/Fiscal Officer