

AGREEMENT FOR RECYCLING PROCESSING SERVICES

THIS AGREEMENT (the "Agreement") for the processing of Recyclable Materials generated within and collected by the City of Cleveland Heights is entered into by and between the City of Cleveland Heights, a municipal corporation in the County of Cuyahoga, State of Ohio (the "City") and Kimble Company, dba Kimble Transfer & Recycling (the "Contractor").

W I T N E S S E T H

WHEREAS, pursuant to Resolution 49-2015 the City is authorized to participate in a consortium to obtain Proposals for Recycling Processing Services and which authorized the Cuyahoga County Solid Waste District to issue a Request for Proposals for Recycling Processing Services on behalf of the Consortium; and,

WHEREAS, following publication of the notice of the Request for Proposals in the Plain Dealer on June 15, 2015 and the evaluation of the Proposals, the Consortium selected the Contractor as the Successful Contractor and recommends each Community enter into an Agreement for Recycling Processing Services with the Contractor; and,

WHEREAS, the City has considered the Proposal and recommendation of the Consortium; and the City, pursuant to Resolution No. 98-2015 approved the Contract and authorized the City Manager to execute the Contract by and on behalf of the City, and the City has received the required executed original and copies from the Contractor.

NOW THEREFORE, in consideration of the mutual promises and obligations contained herein, the City and the Contractor agree as follows:

ARTICLE 1 - DEFINITIONS

The capitalized terms used herein shall be defined as shown in **Exhibit A. Definitions**

ARTICLE II - TERM

This Agreement shall be effective on October 1, 2015, or upon the date last signed below, whichever is later, and shall terminate on September 30, 2018. Following the initial term of the Agreement, the City shall have the option to renew and extend the Agreement for two consecutive one-year terms ending on September 30, 2019 and September 30, 2020, respectively. The City shall provide written notice to the Contractor of the City's decision to renew and extend this Agreement on or before June 1, 2018 and June 1, 2019, respectively.

ARTICLE III - STATEMENT OF WORK

A. During the term of this Agreement, the Contractor shall perform the services set forth in this Article III of this Agreement and also set forth in the Contractor's Proposal dated July 15, 2015 which is hereby incorporated herein by reference. Such services shall be performed throughout the term of this Agreement.

- B.** The Contractor shall receive Recyclables delivered by the City to the Receiving Facility designated as 8500 Chamberlin Road, Twinsburg, Ohio 44087. This facility shall be open to receive deliveries from 7:00 a.m. to 5:00 p.m. Monday through Friday, and 7:00 a.m. to 11:00 a.m. on Saturdays, excluding holidays.
- C.** The Contractor shall accept unlimited quantities of Recyclables specified as acceptable materials in the Contractor's Proposal limited to aluminum cans; bimetal cans and food containers; clear, brown and green glass jars and bottles; #1 PETE plastic bottles; #2 HDPE plastic natural and colored bottles; rigid plastic containers coded #3 – #7; cartons; newspapers; magazines; corrugated cardboard; telephone books; catalogues; junk mail and printer and copier paper; and chip board boxes.
- D.** The Contractor shall weigh all Recyclables delivered by the City to the Receiving Facility upon entry, and the driver shall be given a scale ticket reflecting the net weight of the load.
- E.** The Contractor shall establish and maintain a record keeping and payment system to record the tonnage of Recyclables received from the City and to record, calculate and process monthly payments based upon the tonnage of Recyclables received each month.
- F.** The Contractor shall represent and warrant that the all facilities used in the performance of this Agreement are, and shall remain, properly permitted, licensed and available to accept all deliveries of Recyclables by the City. All facilities used in the performance of this contract must be available for inspection at any time by the City during normal business hours.
- G.** The Contractor shall provide the optional service of container rental and hauling services upon request by the City. The Contractor shall provide the containers and must pick up and replace the containers within 24 hours of receiving a pick-up request from the City.
- H.** The Contractor shall ensure that all Recyclable Materials received from the City are Recycled except for those materials that were identified as unacceptable in the Contractor's proposal or rejected due to contamination or grading requirements. Upon request, the Contractor must be able to provide verifiable information to the Cuyahoga County Solid Waste District, by material, demonstrating that the Recyclable Materials delivered to the Contractor by the Contracting Communities are being Recycled.
- I.** The Contractor agrees to perform all services hereunder in a safe and workmanlike manner, and in full compliance with all applicable laws, regulations, and ordinances of any federal, state or local governmental entity.
- J.** The Contractor shall assign one project manager to assure the satisfactory performance of the work hereunder and to serve as the primary contact for the City.
- K.** The City shall deliver to the Receiving Facility or the MRF 100% of all Recyclable Materials collected from the City's residents, unless:

1. The City has segregated collection of newspaper, mixed paper, and/or cardboard, whereby the City may deliver those materials to others as directed by an existing intergovernmental agreement, or
 2. After the execution of this agreement, the City privatizes the collection of the City's Recyclables. If the City enters into an agreement with a private hauler to collect the City's Recyclables at any time during the term of this Contract, the City shall give the Contractor at least 60 days' notice prior to the effective date of such agreement, upon which this Contract shall terminate.
 3. After the execution of this agreement, the City has insufficient funds to allocate to its Recyclables program and cancels said program
- L. Recyclable Materials hauled by the City shall be post-consumer residential and/or commercial recyclables as defined in **Exhibit A: Definitions** and shall not contain or be contaminated with hazardous wastes as defined by Ohio Revised Code or any other unacceptable materials. Contractor reserves the right to negotiate with the City for the proper management and costs for handling any contaminated loads which are identified at the time of delivery. Contractor is not required to accept loads containing materials other than Recyclable Materials or Recyclable Materials with extensive contamination (15% or greater) provided that the Contractor conduct a composition analysis to verify the level of contamination as outlined in **Article IV** below. The City reserves the right to be present during such time the analysis is conducted.
- M. City agrees to transport the Recyclable Materials to the tipping floor of the Receiving Facility, with the Recyclable Materials to be deposited at a location as directed by the employees of Contractor. Until such time the Recyclable Materials are properly deposited and accepted at Receiving Facility, the City shall remain fully responsible for such material and any liability arising from its handling. Contractor shall not take title to any hazardous waste, and said title shall remain with the City.

ARTICLE IV: ADDITIONAL TERMS AND CONDITIONS

A. Composition Analysis

The Contractor may periodically perform a composition analysis on loads of recyclables delivered by the City to determine any variance in the actual composition of commodity categories as compared to the estimated composition of commodity categories contained in the Contractor's pricing formula. The City reserves the right to be present during such time the analysis is conducted. In the event of any change in composition, the Contractor agrees to notify the City of any such changes. The City reserves the right to request documentation to verify these changes. Following notification to the City, the Contractor may apply the revised commodity composition to the pricing formula used to determine payment to the City in its next billing cycle.

ARTICLE V: STATEMENTS, PAYMENTS AND INVOICES

- A. Prior to the 10th of each month during the term of this Agreement, the Contractor shall send to the City, a statement documenting the amount of Recyclables received from the City during the previous month. This statement must include the calculation to determine payment to the City for the value of recyclables delivered as defined in **Exhibit B: Revenue Sharing Formula**.

- B.** The monthly statement must include payment due the City for the Recyclables delivered. The formula to be used to calculate the payment for the Recyclables will be in accordance with the pricing formula contained in the Contractor's Proposal and which is defined in **Exhibit B: Revenue Sharing Formula** and summarized as follows:
1. The Contractor shall pay the City the amount equal to fifty percent (50%) of the net profit earned from the sale of the City's Recyclables. The net profit is determined by subtracting the Contractor's processing cost of \$69.50 per ton from the total revenue per ton as calculated using the revenue sharing formula included defined in **Exhibit B**.
 2. When processing costs exceed revenue, the Contractor shall pay the City a minimum payment of \$0.50 per ton.
- C.** Any charges incurred by the City for optional container rental and hauling services shall first be deducted from the monthly payment due to the City. The amount to be charged for container services will be in accordance with the Contractor's Proposal. Any charges due the Contractor after the adjustment is made shall be invoiced to the City and included in the monthly statement. The City agrees to pay the invoiced amount within thirty (30) days of receipt of the invoice.

ARTICLE VI: INDEMNIFICATION

A. Environmental Indemnity

The Contractor shall indemnify, save, and hold the City, its members of council, employees, agents, officers and consultants (each a "City Indemnitee") harmless from and against any and all liabilities, claims, demands, causes of action, penalties, judgments, forfeitures, liens, suits, costs and expenses whatsoever (including those arising out of death, injury to persons, or damage to or destruction of property), and the costs and expenses incident thereto which any City Indemnitee may incur, become responsible for, or pay out for or resulting from contamination of or adverse effects on the environment, or any violation of governmental laws, regulations, or orders, in each case, relating to the use or operation of any facilities used in the performance of the work hereunder, except to the extent caused by the City Indemnitee. Any City Indemnitee shall promptly notify the Contractor of any assertion of any claim against it for which it is entitled to be indemnified hereunder, shall give the Contractor the opportunity to defend such claim and shall not settle such claim without the approval of the Contractor. This section shall survive expiration or earlier termination of this Agreement.

B. General Indemnity

The Contractor shall indemnify, save, and hold the City, its members of council, employees, agents, officers and consultants (each an City Indemnitee) harmless from and against any and all liabilities, claims, demands, causes of action, penalties, judgments, forfeitures, liens, suits, costs and expenses whatsoever (including those arising out of death, injury to persons, or damage to or destruction of property), and the cost and expenses incident thereto (including reasonable attorneys' fees), which any City Indemnitee may hereafter incur, become responsible for, or pay out for or resulting from the performance of the services under this Agreement, except to the extent caused by the City Indemnitee. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this section. Any City Indemnitee shall promptly notify the Contractor of any

assertion of any claim against it for which it is entitled to be indemnified hereunder, shall give the Contractor the opportunity to defend such claim and shall not settle such claim without the approval of the Contractor. This section shall survive expiration or earlier termination of this Agreement.

ARTICLE VII: INSURANCE & WORKERS COMPENSATION

- A. The Contractor shall, at its own expense, purchase and maintain, during the term and any renewal and extension of the Agreement, insurance with the following minimum levels of such coverage: Bodily Injury Liability: \$500,000 per person, \$1,000,000 per accident, Property Damage Liability: \$100,000 per accident, \$200,000 aggregate Comprehensive Automobile Liability: \$500,000 per person, \$1,000,000 per accident. The Contractor shall provide a certificate of insurance, which certificate shall include the City as an additional named insured and require that the insurer notify the City of any cancellation or change in insured limits. The certificate of insurance shall be submitted to the City prior to the commencement date of the Recycling Processing Services. Said insurance required hereunder shall be subject to the applicable terms, conditions, addendums and riders of each Policy.
- B. The Contractor shall provide proof to the City that the Contractor has Ohio Workers Compensation insurance in force for its employees.

ARTICLE VIII: BREACH AND TERMINATION

- A. Except in the case of delay or failure resulting from a Force Majeure event (as defined below), and without fault or negligence, either Party shall be entitled, upon sixty (60) days prior written notice, to cancel this Agreement in its entirety, for breach of any of the terms, and to have all other rights against the other Party by reason of such breach as provided by law. A Breach shall mean, but shall not be restricted to, any one or more of the following events:
1. failure by either party to comply with the terms and conditions set forth in Article V : Statements, Payments and Invoices.
 2. breach of any warranty, or failure to perform or comply with any term of this Agreement;
 3. insolvency or any other unsound financial condition so as to endanger performance hereunder;
 4. failure to provide services as described in Article III: Statement of Work.
- B. A Force Majeure shall mean such circumstances and events as are beyond the reasonable control of a Party, including, but not limited to: acts of God, acts of war, riot, fire, weather, explosion, accident, flood or sabotage; unpreventable lack of adequate fuel, power, raw materials, labor or transportation facilities; unforeseeable changes in governmental laws, regulations, requirements, orders or actions; unforeseeable or unpreventable breakage or failure of machinery or apparatus; national defense requirements; injunctions or restraining orders; or unforeseeable or unpreventable labor trouble, strike, lockout or injunction. During a Force Majeure event, the performance of any obligation or service due under this Agreement may be suspended, provided that notice is provided by the Party claiming Force Majeure to the other Party as soon as practicable. Such notice shall include a description of the circumstances justifying suspension of performance, the anticipated duration of suspension, and the steps being taken to resume performance under this Agreement as soon as practicable. All reasonable efforts shall be made to minimize the duration of any suspension of performance.

- C. The award of this Agreement is based on the ownership and control of the Contractor as of the time of the award. Such ownership and control is a material term in such award. If during the term of this Contract, the Contractor shall be merged or sold, the City shall have the right, in its sole discretion, to terminate this Contract upon thirty (30) days written notice of termination to the Contractor. In the event of such notice of termination, the Contractor shall continue to perform under the terms of this Contract until such time as the City is able to obtain alternate or substitute service.
- D. If the City enters into an agreement with a private hauler to collect the City's Solid Waste at any time during the term of this Contract, the City shall give the Contractor at least 60 days' notice prior to the effective date of such agreement, upon which this Contract shall terminate.

ARTICLE IX: CONTRACT CHANGES

- A. No change to any provision of this Agreement shall be effective unless stated in writing and signed by both parties to this Agreement.

ARTICLE X: COMMUNICATIONS AND NOTICES

- A. The City shall communicate directly with Mr. Don Johnson or his designee and at his direction, shall consult with the personnel of the Contractor or other appropriate persons, agencies, and instrumentalities as necessary to assure understanding of the work and satisfactory completion thereof.
- B. The Contractor shall communicate directly with the City's Service Director or his/her designee, and at his/her direction, with the personnel of the City and other appropriate persons, agencies, and instrumentalities as necessary to assure understanding of the work and satisfactory completion thereof.
- C. Any notices or reports required by this Contract shall be in writing and sent by the City and the Contractor in the United States mail to the address below:

As to the City:

Tony Torres
Supervisor, Refuse & Recycling
40 Severance Circle
Cleveland Heights, Ohio 44118
(216) 691-7319
pwd@clvhts.com

As to the Contractor:

Don Johnson
Kimble Transfer & Recycling
3596 State Route 39, NW
Dover, OH 44622
(330) 343- 1226
djohnson@kimblecompanies.com

With a copy to:
Kimble Recycling & Disposal, Inc.
Attn: Legal Department
3596 State Route 39, NW
Dover, OH 44622

ARTICLE XI. MISCELLANEOUS

A. Contractor's Bid

The Contractor's Bid is incorporated into the Agreement and by reference. In the event of any conflict between the Bid Form(s) and a provision of this Agreement, this Agreement shall control.

B. Entire Agreement

This Agreement and all exhibits hereto, the Invitation to Bid, and the Contractor's Bid represent the entire agreement of the parties as to its subject matter and supersedes all other prior written or oral understandings. This Agreement may be modified or amended only by a writing signed by both parties.

C. Waiver

No waiver, discharge, or renunciation of any claim or right of the City or the Contractor arising out of a breach or alleged breach of this Agreement by the City or the Contractor shall be effective unless in writing signed by the City and the Contractor.

D. Applicable Law

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Ohio. Venue is proper in a court of competent jurisdiction in Cuyahoga County, Ohio.

E. Unenforceable Provision

If any provision of this Agreement is in any way unenforceable, such provision shall be deemed stricken from this Agreement and the parties agree to remain bound by all remaining provisions. The parties agree to negotiate in good faith a replacement provision for any provision so stricken.

F. Binding Effect

This Agreement shall be binding upon and shall inure to the benefit of, and be enforceable by and against, the respective successors and assigns of each party hereto. Provided, however, that the Contractor may not assign this Agreement or any of the Contractor's rights or obligations hereunder without the express written consent of the City, which consent may be withheld for any reason or for no reason.

G. Rights or Benefits

Nothing herein shall be construed to give any rights or benefits in this Agreement to anyone other than the City and the Contractor and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the City and the Contractor and not for the benefit of any other party.

IN WITNESS WHEREOF, the City and the Contractor, acting herein by their duly authorized representatives, have hereunto set their hands this day and year first above written.

WITNESSES

Name, Title

[Signature]
Name, Title BD

CITY OF CLEVELAND HEIGHTS

TANISHA RAMEY
Name

9-16-15
Date

KIMBLE COMPANY

Kath. B. Kimble, President
Name, Title

9-30-15
Date

APPROVED AS TO LEGAL FORM
[Signature]
DIRECTOR OF LAW
CITY OF CLEVELAND HEIGHTS, OHIO

Authorized by Resolution/Ordinance No. 78-2015
passed by Cleveland Heights City Council
on Sept 8 2015

EXHIBIT A: DEFINITIONS

“Consortium” and **“Consortium Communities”** means the Cities and Villages participating in this Request for Proposals for Recycling Processing Services that have passed resolutions authorizing participation.

“Consortium Resolutions” means the resolutions of the legislative bodies of the Contracting Communities authorizing participation in the Consortium.

“Contracting Community” means the individual City or Village participating in the Consortium to obtain Recycling Processing Services and that accepts the recommendation of the Consortium as to the Successful Contractor and enters into an agreement with the Successful Contractor for Recycling Processing Services.

“Contractor” means the Recycling Company selected by the Consortium to provide Recycling Processing Services.

“District”, “District Offices” and “Solid Waste District” means the Cuyahoga County Solid Waste District with offices located at 4750 East 131 Street, Garfield Heights, OH 44015.

“Proposal” means a proposal submitted to the Consortium in response to the Request for Proposals for Recycling Processing Services as described herein.

“Receiving Facility” means the facility proposed by a Contractor to receive deliveries of Recyclables from the Consortium Communities. This may or may not be the facility where recyclable materials are processed.

“Recyclables” and “Recyclable Materials” means aluminum cans; bimetal cans and food containers; clear, brown and green glass jars and bottles; #1 PETE plastic bottles; #2 HDPE plastic natural and colored bottles; rigid plastic containers coded #3 – #7; cartons; newspapers; magazines; corrugated cardboard; telephone books; catalogues; junk mail and printer and copier paper; and chip board boxes, and excludes all other materials not listed herein (“Excluded Materials”) and further excludes approved materials when contaminated with Excluded Materials.

“Recycled” and “Recycling” as defined in Chapter 3745 of the Ohio Revised Code and/or the regulations promulgated thereunder.

“Recycling Facility” means the facility provided by the Contractor that has the adequate capacity, equipment, and labor needed to receive, sort, process, and prepare all Recyclable Materials delivered by the City for shipment to a recycled product manufacturer.

“Recycling Processing Services” means all services relating to the receiving, sorting, baling and other handling of household recyclables delivered by the City in order to prepare the recyclable materials for shipment and sale to recycling markets to be made into new products.

“Request for Proposals”, “RFP” and “Proposal Documents” means all documents issued by the Solid Waste District on behalf of the Consortium to obtain proposals for Recycling Processing Services.

“Term” means the duration of the Contract.

EXHIBIT B: REVENUE SHARING FORMULA

The Contractor will complete the following applicable table to calculate and document the percentage of net revenue owed the City for the value of the recyclable materials delivered. A copy of the completed table shall be included with each monthly statement.

Revenue Sharing Formula						
Commodity	% Recovered	Market Price/Ton *	Total Revenue/Ton	Processing Cost	Net Revenue	50% of Net Revenue to City
Aluminum Cans	1.0%					
Tin/Steel Cans	3.0%					
#1 PET plastic	4.0%					
#2 HDPE plastic	4.0%					
#3- #7 Mixed Plastic	1.0%					
Mixed Glass	16.0%					
Newspaper (ONP #8)	32.0%					
Corrugated Cardboard	25.0%					
Cartons	0.1%					
Residue	13.9%			\$69.50 per ton		

*** Basis for determining Market Price/Ton**

The market price for **ONP # 8** and **OCC** (Corrugated Cardboard) shall be the monthly price for each materials published on the Official Board Markets Yellow Sheet – Chicago Price.

The market price for **3-mix glass** and baled **UBC** (aluminum cans), **steel cans**, **PET plastic**, **HDPE plastic**, and **3-7 plastic** shall be the average monthly price for each material as published in secondary materials pricing (RecyclingMarkets.net-Chicago Region), as of the 15th of the month.

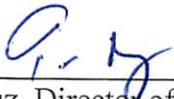
The market price **Cartons** shall be 70% of the monthly price for SOP published on the Official Board Markets Yellow Sheet – Chicago Price

Residual disposal cost assigned a fixed cost of \$42.00 per ton to be recalculated on option years based on CPI adjustment from previous year: change from September to September for CPI-All Urban Consumers.

Processing cost assigned a fixed cost of \$69.50 per ton to be recalculated on option years based on CPI adjustment from previous year: change from September to September for CPI-All Urban Consumers.

When processing costs exceed revenue, City receives minimum payment of \$.50 per ton.

It is hereby certified that the amount required to meet the contract, agreement, obligation, payment, or expenditure for the attached agreement between Kimble Company and the City of Cleveland Heights has been lawfully appropriated for such purpose and is in the Treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances.



Tom Raguz, Director of Finance

Date: 9-11-15