

**REQUEST FOR PROPOSALS
BY THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

August 14, 2013

The Ohio Environmental Protection Agency (Ohio EPA), Division of Materials and Waste Management (DMWM) invites qualified contractors to submit proposals to prepare a solid waste management plan update (Plan Update) for the Portage County Solid Waste Management District (District). This request for proposals (RFP) prescribes all of the following: the contents of, structure for, and timeline for submitting proposals; services the chosen contractor will provide; the process for submitting proposals; and how Ohio EPA will evaluate the proposals the Agency receives.

Pre-Proposal Meeting: August 21, 2013, 1:30 p.m., EST

Proposal Due Date and Time: September 5, 2013, 5:00 pm, Eastern Standard Time (EST)

All inquiries must be made in accordance with Section 3.2 of this RFP and be directed to Ernie Stall, the State Project Representative, at ernest.stall@epa.state.oh.us.

1.0 REQUEST FOR PROPOSALS OVERVIEW

1.1 Request for Proposals Organization

This RFP is organized into seven sections and two attachments totaling 38 consecutively numbered pages.

Sections:

Section 1.0: Request for Proposals Overview – this section addresses: organization of RFP; purpose of RFP; background information; and timeline.

Section 2.0: Project Scope of Work and/or Specifications of Services Required – this section addresses: general scope of work; input from and consultation with Ohio EPA; and other considerations.

Section 3.0: Proposal Process – this section addresses: pre-proposal meeting; contractor inquiries; Ohio EPA responses to inquiries; submitting proposals; and costs incurred in preparing the proposal.

Section 4.0 Proposal organization and contents – this section addresses: signed cover letter; contractor expertise; project understanding, approach, and work plan; itemized cost summary; and IRS Form W-9.

Section 5.0: Rejecting Proposals

Section 6.0: Contractor Selection and Contract Negotiations – this section addresses: selection team; selection team review of proposals; selecting contractor; contract negotiations; and failure to negotiate.

Section 7.0: Contract

Attachments:

Attachment 1: District Overview and Identification of Issues

Attachment 2: Draft Contract

1.2 Purpose of Request for Proposals:

With this RFP, Ohio EPA is soliciting proposals from qualified contractors to provide the services that are specified in Section 2.0 of this RFP, “Project Scope of Work and/or Specifications of Services Required,” and Exhibit 1 of the draft contract that is included as Attachment 2 to this RFP. If a suitable offer is made in response to this RFP, then the state of Ohio, Ohio EPA, may enter into a contract to have the selected contractor prepare a Plan Update for the District. The contractor will be required to enter into a binding agreement to perform the work and/or supply the services specified in Section 2.0 and Exhibit 1.

1.3 Background

A solid waste management district (SWMD), working through its policy committee, is required to prepare and obtain approval from Ohio EPA for periodic updates to the SWMD’s solid waste management plan. When a SWMD’s policy committee fails to obtain approval for its solid waste management plan update within the timeframe prescribed by the Ohio Revised Code, Ohio law requires Ohio EPA to prepare a solid waste management plan for the SWMD and order the SWMD to implement the solid waste management plan prepared by Ohio EPA.

Prior to submitting a solid waste management plan to Ohio EPA for review and approval, a SWMD must obtain approval of the plan from local communities through a ratification process. Despite its extensive efforts to obtain the necessary approvals from local communities, the District’s Policy Committee was not able to ratify its Plan Update. Consequently,

the District's Policy Committee was unable to obtain approval of its Plan Update by April 5, 2013, the required deadline. As is required by law, Ohio EPA has assumed responsibility for preparing the Plan Update.

The version of the Plan Update the District made available to its political jurisdictions during the ratification period is available for review on Ohio EPA's website at the following URL: <http://epa.ohio.gov/dmwm/Home.aspx>. Navigate to the "What's New" tab and select the item "Ohio EPA issues request for proposals to prepare a solid waste management plan for the Portage County Solid Waste Management District".

See Attachment 1 for a brief description of the District and an overview of issues Ohio EPA has identified and that contractors must consider when developing their proposals.

1.4 Timeline

The timeline presented below contains both firm and estimated dates. Ohio EPA reserves the right to reasonably adjust this timeline if adjustments are in the best interests of the state of Ohio. If Ohio EPA changes the schedule before proposals are due, the Agency will do so by posting changes on its website. Each prospective contractor is responsible for checking Ohio EPA, DMWM's website for current information regarding this RFP and its timetable. The URL for Ohio EPA, DMWM's website regarding this RFP and the timetable is <http://epa.ohio.gov/dmwm/Home.aspx>. Navigate to the "What's New" tab and select the item "Ohio EPA issues request for proposals to prepare a solid waste management plan for the Portage County Solid Waste Management District"..

Firm Dates:

RFP Issued:		August 14, 2013
Pre-Proposal Meeting:	1:30 p.m. EST	August 21, 2013
Inquiry Period Begins:	8 a.m. EST	August 22, 2013
Inquiry Period Ends	10 a.m. EST	August 29, 2013
Proposal Due Date:	5 p.m. EST	September 5, 2013
Deadline for Ohio EPA to receive Finished Plan Update:		June 30, 2014

Estimated Dates:

Contractor Selected:		September 17, 2013
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If Controlling Board Approval not needed:

Contract Executed and Project Work Begins:		October 8, 2013
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If Controlling Board Approval Needed:

State of Ohio Controlling Board Hearing:	October 21, 2013
Contract Executed and Project Work Begins:	November 18, 2013

The current general assembly cannot commit a future general assembly to an expenditure. Thus, any contract resulting from this RFP cannot extend beyond the biennium ending June 30, 2015, unless affirmatively renewed by the issuance of a state purchase order or affirmatively renewed by a legally acceptable method. At this time, however, Ohio EPA expects the contractor awarded the contract to complete all work described in Section 2.0 of the RFP and Exhibit 1 to the draft contract by June 30, 2014. The draft contract is included as Attachment 2 to this RFP.

2.0 PROJECT SCOPE OF WORK AND/OR SPECIFICATIONS OF SERVICES REQUIRED

This section of the RFP, Section 2.0, provides the scope of work for preparing the District's Plan Update. Attachment 1 to this RFP provides additional information about this project that an interested contractor should consider when preparing a bid.

2.1 General Scope of Work

The contractor selected to prepare the Plan Update for the District will prepare the Plan Update in accordance with the *District Solid Waste Management Plan Format, version 3.0* unless otherwise directed by Ohio EPA. Except as specified in Article 2.3 of this RFP, the selected contractor will collect data and prepare all of the appropriate text, tables, supporting documentation, and appendices as required by the *District Solid Waste Management Plan Format, version 3.0*. The selected contractor will prepare the Plan Update pursuant to and in compliance with all relevant Sections of Ohio Revised Code Chapter 3734 and Ohio Administrative Code Rule 3745-27-90.

The contractor will further prepare the Plan Update in accordance with the provisions of the *1995 State Solid Waste Management Plan*, except that the contractor may be required, under the direction of Ohio EPA to incorporate data, information, and/or programs to incorporate selected provisions and requirements from the *2009 State Solid Waste Management Plan* in the Plan Update.

The *District Solid Waste Management Plan Format, version 3.0*, the *1995 State Solid Waste Management Plan*, and the *2009 State Solid Waste Management Plan* can all be obtained from Ohio EPA, DMWM's website at the following URL:

<http://epa.ohio.gov/dmwm/Home/SWMgmtPlanning2.aspx>.

Ohio EPA will review all deliverables prior to accepting them, and the contractor will be responsible for making changes that Ohio EPA determines are necessary. Ohio EPA may require multiple rounds of reviews and revisions before deliverables are accepted as complete. Ohio EPA will not consider the final work product to be complete until the Agency gives final, written approval to the contractor.

The contractor will print all hard copies on recycled-content paper and on both sides of the paper to the extent possible. The contractor will deliver the final work product to Ohio EPA in both hard copy and in electronic formats. The contractor will deliver all electronic files as Microsoft Word files and Microsoft Excel files unless an alternate format is agreed to by Ohio EPA.

After Ohio EPA receives the final version of the Plan Update from the contractor and Ohio EPA gives final, written approval of the Plan Update to the contractor, Ohio EPA will assume responsibility for duplicating the Plan Update and distributing the duplicates to the necessary parties.

2.2 Input from and Consultation with Ohio EPA

The contractor will consult closely with Ohio EPA and solicit extensive input from Ohio EPA throughout the process of preparing the Plan Update. The contractor will consult with Ohio EPA prior to each significant step in preparing the Plan Update and keep Ohio EPA apprised of progress made by the contractor. The contractor will periodically submit draft sections of the Plan Update to Ohio EPA for review and comment.

2.3 Other Considerations

2.3.1 Using existing information

To the extent possible and permitted by law, the chosen contractor will use as much information from the version of the plan the District attempted to ratify. The contractor will work with Ohio EPA to determine what existing information will be used.

2.3.2 Collecting Data

Ohio EPA will collect data for: material recovered through the residential curbside and drop-off recycling programs that the District provides; registered composting operations; scrap tire transporters; commercial businesses and materials recovery facilities that respond to Ohio EPA's annual survey; and waste accepted at transfer facilities and landfill facilities.

Ohio EPA will also be responsible for providing a regional analysis of available landfill capacity and the demonstration of access to adequate landfill capacity (as required by Section VI of the Format).

The contractor will be responsible for collecting data for the District's industrial sector and data to supplement Ohio EPA's commercial data.

2.3.3 Meetings

A. *Ohio EPA*

Ohio EPA anticipates that the contractor will hold many meetings with the Agency to achieve the required level of input and consultation.

At this time, Ohio EPA expects to hold meetings with the contractor through a combination of in-person meetings at Ohio EPA's offices in downtown Columbus, Ohio and conference calls. In lieu of in-person meetings, Ohio EPA may conduct meetings via Webex. However, Ohio EPA reserves the right to require the contractor to attend meetings in person at Ohio EPA's offices in downtown Columbus, Ohio.

B. *Policy Committee*

The contractor will coordinate identifying, evaluating, and selecting the recycling and waste reduction programs that the District will provide during the planning period with the District's Policy Committee and Ohio EPA. Ohio EPA will make all final decisions regarding the programs that will be included in the Plan Update.

C. *Community Representatives*

Leaders representing the communities within the District that did not ratify the District's Plan Update have expressed interest in discussing potential resolutions to their concerns with Ohio EPA. Thus, a contractor's proposal must describe a strategy for gathering input from local communities, potentially including those that did ratify the District's Plan Update.

2.3.4 Budget

To the extent possible, the contractor will work within the District's existing budgetary constraints. If increases in revenue will be

needed to fund the completed Plan Update, then the contractor will attempt to minimize those increases. If revenue increases are necessary, the contractor will identify potential funding sources and make all necessary financial projections.

3.0 Proposal Process.

3.1 Pre-Proposal Meeting

Attending the pre-proposal meeting is a prerequisite for submitting a proposal.

Ohio EPA will hold a pre-proposal meeting on August 21, 2013 beginning at 1:30 p.m., EST, at Ohio EPA's offices located at the Lazarus Government Center, 122 South Front Street, Columbus, Ohio ([directions](#)).

Each contractor that intends to submit a proposal to prepare the District's Plan Update must attend the pre-proposal meeting. At this time, Ohio EPA expects all interested contractors to participate in the pre-proposal meeting in person at Ohio EPA's offices in Columbus, Ohio.

Ohio EPA may allow interested contractors to participate in this meeting via Webex. If participation via Webex is permitted, contractors who choose to participate via Webex will do so with the understanding that Ohio EPA will not be responsible for the quality of the connection or for the transfer of information from the meeting location to those contractors. Ohio EPA reserves the right to require contractors to attend the pre-proposal meeting in person at Ohio EPA's offices in Columbus, Ohio.

Interested contractors will have the opportunity during the pre-proposal meeting to ask questions relative to the RFP and the District's Plan Update.

3.2 Contractor Inquiries

A contractor may make inquiries regarding this RFP any time during the inquiry period established in Section 1.4. To make an inquiry, a contractor must observe the following guidelines:

- Inquiries will be accepted only through e-mail.
- Inquiry e-mails must be sent to ernest.stall@epa.state.oh.us.
- The subject line for an inquiry e-mail must read "RFP for Preparing the Portage SWMD Plan Update".
- Inquiries concerning a specific portion of this RFP must reference the relevant part of this RFP, the section heading or subheading for the

provision under question, and the page number of the RFP where the provision can be found.

- The inquiry must provide the name of contractor, the name of the contractor's representative who is responsible for the inquiry, and the representative's e-mail address.
- **Ohio EPA must receive all inquiries by 10 a.m. EST on August 29, 2013.**

3.3 Ohio EPA Responses to Contractor Inquiries

Ohio EPA is under no obligation to answer any inquiry. However, Ohio EPA will try to respond to all inquiries that are submitted in accordance with the guidelines presented in Section 3.2 of this RFP within 48 hours of receiving an inquiry, excluding weekends and State holidays.

Ohio EPA is not responsible for the accuracy of any information regarding this RFP that is gathered through a means other than the pre-proposal meeting or through the inquiry process described in this RFP.

3.4 Submitting Proposals

For Ohio EPA to consider a proposal, the contractor must deliver three complete copies of its proposal to Ohio EPA. Proposals must be double-sided and printed on recycled-content paper. The contractor must submit each copy of a proposal in two sealed envelopes as specified in Section 4.0 of this RFP.

In order for Ohio EPA to consider a proposal, the Agency must receive the proposal by September 5, 2013 at 5 p.m., EST. Ohio EPA will not consider proposals received after this date and time.

Contractors must deliver proposals as follows:

Via U. S. Mail: The Ohio Environmental Protection Agency
Attention: Ernie Stall, DMWM
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049

Via Hand Delivery: The Ohio Environmental Protection Agency
Attention: Ernie Stall, DMWM
Lazarus Government Center
50 West Town Street, Suite 700
Columbus, Ohio 43215

All proposals submitted will become the property of Ohio EPA. All information submitted by the contractor will be considered to be public information.

3.5 Costs Incurred in Preparing Proposal

All costs incurred in the preparation of the proposal shall be borne by the contractor, and Ohio EPA will not contribute to the payment of such costs.

4.0 **Proposal Organization and Contents**

The contractor must submit three copies of its proposal package. Each copy of the proposal must consist of two separately sealed envelopes. One envelope must be marked "Statement of Qualifications" and contain the items numbered from 1 to 5, below. The second envelope must be marked "Bid" and contain items numbered 6 to 9 below.

The items to be included in the Statement of Qualifications envelope must be organized, indexed, and ordered in the same manner as listed in items 1 to 5 below. The items in the Bid envelope must be ordered as listed in items 6 to 9 below. As further described in subsections 4.1 through 4.9, each proposal package must contain the following items:

Statement of Qualifications Envelope:

1. Signed Cover Letter;
2. Contractor Expertise;
3. Project Understanding, Approach, and Work Plan;
4. Signed, Original Ohio Revised Code Section 3517.13(I) or (J) Affirmative Statement; (required per Article XVII of the draft contract included as Attachment 2)
5. Signed Conflict of Interest Statement (required per Article X of the draft contract included as Attachment 2).

Bid Envelope:

6. Itemized Cost Summary;
7. Signed, Original IRS Form W-9;
8. OAKS vendor information; and
9. If applicable, a completed PERS Independent Contractor Acknowledgement form.

4.1 Signed Cover Letter

The cover letter must be in the form of a standard business letter and be signed by an individual authorized to legally bind the contractor. The letter

must list the name, address, and telephone number of the contractor's contact person with authority to answer questions regarding the proposal.

4.2 Contractor Expertise

In this section, the prospective contractor will include the information the contractor deems appropriate to convince Ohio EPA that the contractor: has the technical knowledge, necessary experience, and other qualifications to perform the required services; can deliver high-quality services; and can provide the required services in a timely manner.

The contractor will provide a profile that includes a description of the contractor's experience relevant to the project addressed by this RFP. This profile must provide at least the following information:

4.2.1. A brief statement as to the contractor's background and distinguishing characteristics that qualify the contractor to assist Ohio EPA with the process of preparing the Plan Update.

4.2.2. A profile of recent Ohio solid waste management plans that the contractor has been involved in preparing. The contractor must provide the following information for each solid waste management plan referenced:

- A. Name of the solid waste management district;
- B. Approximate date that the solid waste management plan was submitted to Ohio EPA or other information pertaining to when the solid waste management plan was prepared;
- C. Name(s) of the principal person (people) who worked on the referenced solid waste management plan; and
- D. Description of scope of services provided.

If the contractor has not prepared a solid waste management plan for an Ohio SWMD in the past five years, then the contractor must provide examples of or identify other relevant projects and/or comparable work history performed either in Ohio or in another state that qualify the contractor to prepare the Plan Update. For each of those projects, the contractor must provide the information detailed in items A through D above.

4.2.3. The prospective contractor must include a minimum of three references to which the contractor has provided services comparable to those that are required by this RFP. References must meet the following requirements:

- A. Each reference must be for a project completed within the last five years;
- B. Each reference provided must be for a different project;
- C. Each reference must provide the following information:
 - 1. Client organization's name and mailing address
 - 2. Contact person's name, title, and telephone number
 - 3. Dates during which the services were performed;
 - 4. Description of the services provided; and
 - 5. Name(s) of the contractor's personnel who was (were) involved in the project.
- D. References provided must agree to be interviewed by the state of Ohio concerning the contractor's product and project performance.

4.2.4. The contractor must identify its personnel who will be working on the project (i.e. the project team). The proposal must provide the names of all people who will be assigned to the project by the contractor and the role that each of these people will play in the project.

The proposal must clearly state who will function as the project lead and main contact for the project. The proposal must provide a brief written description of the past experience and qualifications of each person on the project team.

4.3. Project Understanding, Approach, and Work Plan

In this section, the contractor will describe its methodology for completing the project. This description should be as concise as possible yet provide adequate detail to convince Ohio EPA that the contractor has clearly thought about the best way to complete the project.

The prospective contractor must include a description of the manner in which it proposes approaching the project and providing the required services necessary to complete the work described in Section 2.0 and Exhibit 1 of the draft contract. In developing its approach, the contractor should consider the issues described in Attachment 1.

Suggested areas to address include: the contractor's methodology for obtaining data; the contractor's processes for evaluating existing programs and developing recommendations for new and changes to existing programs; the contractor's strategy for involving interested parties; and an explanation of the nature and extent of Ohio EPA support the contractor expects.

Finally, the contractor must provide a detailed work plan and a timetable for accomplishing tasks and for completing the Plan Update. The contractor must identify project milestones, provide an account of activities needed to achieve those milestones, provide a timeline for completing activities and milestones, and detail a schedule for submitting draft sections of the Plan Update to Ohio EPA for review and comment. The contractor must also address the number and timing of meetings with Ohio EPA and other specified parties. The contractor should include any other information regarded as necessary or appropriate to provide a compelling description.

The deadline for completing the Plan Update is June 30, 2014. If the contractor does not believe that all of the work described in Section 2.0, and Exhibit 1 of the draft contract can be completed by June 30, 2014, then the proposal should clearly delineate how much of the work the contractor believes it can complete by June 30, 2014.

4.4 Signed, Original Ohio Revised Code 3517.13(I) or (J) Affirmative Statement

The Affirmative Statement must be signed by an individual authorized to legally bind the Contractor.

4.4.1 Individual, Partnership, Association, Estate, or Trust

A vendor that is an individual, partnership, association (including, without limitation, a professional association organized under Chapter 1785. of the Revised Code), estate, or trust shall include in its bid an affirmative statement that, as applicable to the vendor, no such individual or spouse of such individual has made, and no partner, shareholder, administrator, executor, or trustee, or the spouses of any of them has made, as an individual, within the two previous calendar years, one or more contributions totaling in excess of \$1,000.00 to the Governor or to the Governor's campaign committees, consistent with the restrictions of Section 3517.13(I) of the Ohio Revised Code.

4.4.2 Corporation or Business Trust

A vendor that is a corporation or business trust, except a professional association organized under Chapter 1785. of the Revised Code, shall include in its bid an affirmative statement that no owner of more than twenty percent of the corporation or business trust or the spouse of such person, has made, as an individual, within the two previous calendar years, taking into consideration only owners for all of such period, one or more contributions totaling in excess of \$1,000.00 to the Governor or to the Governor's

campaign committees, consistent with the restrictions of Section 3517.13(J) of the Ohio Revised Code.

4.5 Signed Conflict of Interest Statement

The Conflict of Interest Statement must be signed by an individual authorized to legally bind the Contractor. The Contractor shall include a statement that neither Contractor nor any personnel of the Contractor have any personal interest, direct or indirect, which is incompatible or in conflict with the discharge and fulfillment of his or her functions and responsibilities with respect to this Agreement. This statement shall also include a commitment by the Contractor that if the Contractor or any personnel of Contractor acquire, whether voluntarily or involuntarily, an incompatible or conflicting personal interest, such person shall immediately disclose his or her interest to the Ohio EPA in writing, in conformance with Article IV, Sections 26 and 27 of the contract.

In addition, the Contractor shall also include in the statement that the Contractor and any personnel of Contractor shall at all relevant times comply with Ohio Revised Code 102.04, the Ohio Ethics Law, and that the Contractor shall immediately disclose any nonconformity to the Ohio EPA in writing, in accordance with Article IV, Sections 28 and 29 of the contract.

4.6 Itemized Cost Summary

The contractor must submit a cost summary for the entire scope of work described in Section 2.0 and Exhibit 1 to the draft contract. The contractor must submit the cost summary enclosed in a **separate, sealed envelope** marked "Bid."

Please note that Ohio EPA may seek cost recovery from the District in accordance with Ohio Revised Code Section 3734.551. As a result, the chosen contractor may be required to maintain certain records in accordance with provision 8.1 of the contract or as otherwise specified by Ohio EPA.

4.7 Signed IRS Form W-9 with Original Signatures

The primary contractor must submit a completed IRS Form W-9 with original signatures as part of the proposal package and should be included in the envelope marked "Bid."

4.8 OAKS Vendor Information

To do business with the state of Ohio, a contractor must be registered as a vendor through the Ohio Administrative Knowledge System (OAKS). If the

contractor submitting a bid is already registered as a vendor in OAKS, then the contractor must provide its OAKS vendor identification number. If the contractor is not a registered vendor, then the contractor's proposal must include a completed [Vendor Information Form](#). For assistance with completing that form, contractors should contact [Ohio Shared Services](#).

4.9 PERS Independent Contractor Acknowledgement

If the contractor submitting a proposal has less than five employees, then the contractor's proposal must include a completed [PERS Independent Contractor Acknowledgement](#) form.

5.0 REJECTING PROPOSALS

Ohio EPA will accept proposals from only those contractors that participated in the pre-proposal meeting and that Ohio EPA received by the due date and time specified in Section 1.4.

The State Project Representative will review all proposals for completeness. To be complete, a proposal must contain all of the items required in Section 4.0 of this RFP in the specified format. Any omissions or deviations may be grounds for Ohio EPA to disqualify a proposal before that contractor's bid is opened. The State Project Representative will return the envelope containing the Itemized Cost Summary and the signed original IRS Form W-9 unopened to any contractor that submitted a disqualified proposal.

Ohio EPA may reject an incomplete or incorrectly formatted proposal, may waive any defects, or may allow a contractor to submit a correction. Ohio EPA may reject any proposal that the Agency believes is not otherwise in its interests to consider or accept. In addition, Ohio EPA may cancel this RFP, reject all of the proposals, and seek to prepare the Plan Update through a new RFP or other means.

If a proposal is received after the due date and time specified in Section 1.4, the State Project Representative will not open that proposal or evaluate it for format or completeness.

6.0 CONTRACTOR SELECTION AND CONTRACT NEGOTIATIONS

6.1 Selection Team

Proposals will be evaluated by a team of representatives (hereafter referred to as the "Selection Team") from Ohio EPA.

6.2 Selection Team Review of Proposals

The review process will be conducted in two stages. In stage one of the process, each member of the Selection Team will review the contents of the envelope marked "Statement of Qualifications". In stage one, the Selection Team will evaluate the qualifications of the contractor and the contractor's ability to provide the requested services and work products.

Each member of the Selection Team will evaluate and numerically score the contents of the envelope marked "Statement of Qualifications" for each proposal that the State Project Representative has forwarded. Ohio EPA will sum the points awarded by each member of the Selection Team for a proposal to obtain a point total for the "Statement of Qualifications" for that proposal.

In stage two of the review, each member of the Selection Team will evaluate and numerically score the contents of the envelope marked "Bid" for each proposal. Ohio EPA will sum the points awarded by each member of the Selection Team for an individual proposal to obtain a point total for the Bid for that proposal.

Ohio EPA will add the total points awarded to a proposal in stages one and two to obtain a point total for the proposal.

To the extent permitted by law, all people working on behalf of the State evaluating proposals will keep information contained in proposals confidential. The Selection Team will not disclose the details of a contractor's proposal to another contractor in order to gain a negotiating advantage.

6.3 Selecting Contractor

Except where Ohio EPA has determined that award of the contract would not be in the best interests of Ohio EPA or the State, Ohio EPA will choose the contractor earning the highest total score as the most qualified contractor. Ohio EPA will negotiate a contract with the most qualified contractor (See Attachment 2 for a copy of the Draft Ohio EPA Contract).

The selected contractor will, among other things, be required to comply with the terms and conditions set forth in the Draft Ohio EPA Contract. If Ohio EPA is unable to enter into a contract with the contractor rated the highest by the Selection Team, Ohio EPA will negotiate with the contractor rated the next highest following the procedure described in Section 5.2 of this RFP.

Later discovery that a contractor did not fully or accurately supply any requested information requested may be grounds for termination of the contract with the contractor. This decision will be at the sole discretion of Ohio EPA.

6.4 Contract Negotiations

The final phase of the evaluation process may involve contract negotiations. If desired by Ohio EPA, contract negotiations will be held in a place and time to be announced. Negotiations will be scheduled at the convenience of Ohio EPA. The selected contractor must negotiate in good faith.

If the review process results in one or more proposals that have been evaluated during stage two of the review process, then Ohio EPA may conduct negotiations with the contractor that submitted the proposal that was ranked the highest. If negotiations are not successful with the contractor that submitted the highest ranked proposal, then Ohio EPA may negotiate with the contractor that submitted the proposal ranked the next highest, etc.

Ohio EPA reserves the right to seek additional information from any contractor submitting a proposal so long as such information does not materially affect the proposal. Contractors deemed to be unqualified by the Selection Team as the result of the review conducted for stage one of the evaluation process do not have a right to participate in negotiations conducted in such a manner.

During contract negotiations, Ohio EPA may limit discussions to specific aspects of the RFP, contract, or proposal. Any clarifications, corrections, or negotiated revisions that may occur during the negotiations phase will be reduced to writing and incorporated into the contract or incorporated into an amendment to the contractor's proposal, as appropriate.

Auction techniques that disclose details of another contractor's proposal are prohibited.

It is entirely within the discretion of Ohio EPA whether to conduct negotiations. A contractor must not submit a proposal assuming that there will be an opportunity to negotiate any aspect of the proposal. Ohio EPA is free to limit negotiations to particular aspects of any proposal, to limit the contractors with whom negotiations will be conducted, and to dispense with negotiations entirely.

6.5 Failure to Negotiate

If a contractor fails to provide the necessary information for negotiations in a timely manner or fails to negotiate in good faith, then Ohio EPA may terminate negotiations with that contractor.

7.0 **Contract**

A draft contract is included as Attachment 2 to this RFP. If this RFP results in a contract award, the selected contractor will, be required to comply with the terms and conditions set forth in the draft contract. While Ohio EPA anticipates that the final contract will be substantively the same as the attached version, the Agency reserves the right to make changes prior to submitting the contract to the selected contractor.

The final contract will consist of the draft contract included in this RFP as Attachment 2 with any modification deemed necessary by Ohio EPA; the contractor's proposal; and written, authorized amendments to the contractor's proposal (if any). The contract will also include any materials incorporated by reference in the above documents and any change orders issued under the contract.

Attachment 1

District Overview and Identification of Concerns

District Overview:

The District is comprised of Portage County which is located in northeastern Ohio and is a member of both the Akron Ohio Metropolitan Statistical Area and the Cleveland-Akron-Canton Combined Statistical Area. Portage County encompasses 492 square miles. According to data from the 2010 Census, Portage County had a population of 161,419 in 2010. The largest city in the District is the city of Kent which had a population of approximately 28,900 in 2010. Other cities are Streetsboro (population approximately 16,000), Aurora (population approximately 15,500), and Ravenna (population approximately 11,700).

The District operates a material recovery facility (which the District refers to as the Recycling Center) in Brimfield Township. The District acquired the center and equipment in 1993. The Center is equipped with a dual stream system, and the equipment the District is currently using is the same equipment that was purchased in 1993.

Currently, the District provides all of the curbside recycling programs that are available within the District. The District provides non-subscription curbside services to all four of the cities, to seven townships, and to six villages and smaller communities. The District collects all recyclables via a dual stream system and provides two 18 gallon containers to each household with curbside service. The District delivers all recyclables that it collects to the Recycling Center. The District further requires anyone else that provides residential recycling services to deliver collected materials to the Recycling Center.

In addition to the curbside programs, the District services 14 drop-off locations throughout the county. The District provides the containers, and the host communities are responsible for maintaining the sites. The District uses eight cubic yard, front-load style containers at all of the drop-off sites. As with the curbside programs, the drop-offs collect recyclables in two streams.

The combination of curbside recycling programs and drop-off recycling locations allows the District to demonstrate providing recycling infrastructure to more than 90 percent of the residential population.

In 2011, the District's residential/commercial waste reduction and recycling rate was slightly higher than 27 percent. The waste reduction and recycling rate for the industrial sector was around 36 percent.

The District is funded by a generation fee of \$9.60 per ton. In 2011, the District received approximately \$1.1 million in revenue from the generation fee. The District also earned approximately \$1.7 million in revenue from recyclable materials and a little

less than \$1.6 million in user fees (payments from communities for curbside recycling services). Including revenue from a number of other miscellaneous sources, the District took in a total of more than \$4.6 million in 2011.

The District spent a total of a little more than \$3.7 million in 2011. Of that, almost \$1.7 million was spent to provide curbside recycling services and \$1.3 million was spent to operate the Recycling Center.

Concerns:

The equipment at the Recycling Center is at the end of its useful life. The processing equipment breaks down frequently and is labor intensive. The building that houses the recycling center needs repairs and efficiency upgrades. Further, the District is collecting recyclables through a dual stream system – a fiber stream and a commingled stream. During the process of preparing its plan update, the District evaluated the costs that would be involved in upgrading the recycling center with single stream processing equipment. The District determined that doing so would be cost prohibitive.

Given the cost of replacing equipment and the availability of private processors, the District decided to begin converting the center from a processing facility to a transfer facility for collected material. All recyclable materials recovered through residential programs are still delivered to the recycling center. The District sorts the fiber stream using the old sorting line, bales the material, and markets the sorted materials. For the commingled material, the District issues monthly requests for companies to bid on processing services. The District then signs a month-long contract with the chosen processor. The processor collects the commingled material at the recycling center and transports it to the processing facility.

The trucks the District uses to service the curbside programs are old, inefficient, and in constant need of repair. The District also has high workers compensation expenses. For these reasons, the District wants to upgrade its collection system to single-stream, automated collection.

During the process of preparing its plan update, the District received significant resistance from a few communities that want the ability to contract with private service providers for curbside recycling and processing services. The currently effective plan and the plan the District attempted to ratify both allow communities the option of contracting for private curbside service. However, the current plan also requires communities opting for private service to meet performance standards, enter into a community collection agreement, and submit recycling records to the District on an annual basis. As a condition to a community collection agreement, the community must require its private service provider to deliver all recyclable materials to the District's Recycling Center or receive permission from the District before using a private company to process recyclables. Representatives from a number of communities oppose this provision and, as a result, did not ratify the Plan Update. Consequently, the District was unable to obtain approval from enough communities to ratify its Plan Update.

Because a few communities chose not to ratify the Plan Update and other communities are adamant that the District continue to provide their recycling services, there is dissent among the District's communities regarding how they want to receive recycling services. Also, as a result of a number of contentious meetings and media attention, there are strained relationships between the District's Policy Committee and the communities that chose not to ratify the Plan Update and between the Policy Committee and members of the board of county commissioners. Through the process of preparing this Plan Update, Ohio EPA hopes to develop consensus among all parties in a way that allows the District to move past the relationships that developed during the process of finalizing the Plan Update.

The District needs a long-term strategy for providing recycling services and obtaining processing services. Significant decisions need to be made about the Recycling Center and the way curbside recycling services are provided. Ohio EPA's Plan Update will have to ensure that communities have high quality, efficient, convenient, cost effective curbside recycling services. Ohio EPA's ultimate goal is to ensure that the District will not lose any curbside services or experience a decrease in the quality of curbside services.

Attachment 2

Draft Contract

AGREEMENT
Between Ohio EPA and [name of Contractor]
for Preparing the Portage County Solid Waste Management District
Solid Waste Management Plan Update

THIS AGREEMENT is entered into by and between the Director of Environmental Protection ("the Director") on behalf of the Ohio Environmental Protection Agency ("Ohio EPA" or "Agency"), and [insert Contractor's formal name, business address] ("Contractor" or " " [insert Contractor's common name]).

WHEREAS, Ohio Revised Code (ORC) 3745.01(B) authorizes the Director to procure by contract the temporary or intermittent services of experts or consultants, or organizations thereof, when those services are to be performed on a part-time or fee-for-service basis and do not involve the performance of administrative duties;

WHEREAS, ORC 3745.01(C) further authorizes the Director to enter into contracts or agreements with any other agencies of the state, the federal government, other states, and interstate agencies and with affected groups, political subdivisions and industries in furtherance of the purposes of that chapter and ORC Chapters 3704, 3714, 3734, 3751, 3752, 6109, and 6111;

WHEREAS, this Agreement provides for Contractor's performance of services related to completing the solid waste management plan update for the Portage County Solid Waste Management District ("District") during State Fiscal Year ("SFY") 2014;

WHEREAS, no obligations shall arise and no work shall be performed under this Agreement until Ohio EPA notifies Contractor of receipt of a purchase order, which may be approved following the effective date of this Agreement;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements set forth herein, the parties hereby agree as follows:

ARTICLE I: NATURE OF CONTRACT

- 1.1 Contractor shall be employed as an independent contractor, to fulfill the terms of this Agreement. It is specifically understood that the nature of the services to be rendered under this Agreement are of such a personal nature that Ohio EPA is the sole judge of the adequacy of such services.
- 1.2 Ohio EPA enters into this Agreement in reliance upon Contractor's representations that it has the necessary expertise and experience to perform its obligations hereunder, and Contractor warrants that it does possess the necessary expertise and experience. Further, Contractor agrees and represents that all persons involved in Contractor's performance of work under this Agreement are properly qualified, trained and competent, and possess the required licenses, permits, certifications and registrations necessary to lawfully provide the services. Ohio EPA shall not be required to provide

any training to Contractor to enable it to perform services required hereunder.

- 1.3 Agency may, from time to time, communicate specific instructions and requests to Contractor concerning the performance of the work described in this Agreement. Upon such notice and within ten days after receipt of instructions, Contractor shall comply with such instructions and fulfill such requests to Agency's satisfaction. It is expressly understood by the parties that these instructions and requests are for the sole purpose of performing the specific tasks requested to ensure satisfactory completion of the work described in this Agreement. The management of the work, including the exclusive right to control or direct the manner or means by which the work is performed, remains with Contractor. Agency retains the right to ensure that Contractor's work is in conformity with the terms and conditions of this Agreement.

ARTICLE II: SCOPE OF SERVICES

- 2.1 Contractor shall perform the services set forth in Exhibit 1-Scope of Work of this Agreement. Exhibit 1 incorporates by reference Contractor's proposal entitled "[redacted]", as Exhibit 3. In the event of inconsistencies or conflicts between Exhibit 3 and this Agreement or Exhibit 1, the terms of and conditions of this Agreement and Exhibit 1 shall govern.
- 2.2 Ohio EPA shall provide the services set forth in Exhibit 1-Scope of Work to the extent the document designates services for Ohio EPA.

ARTICLE III: TIME OF PERFORMANCE

- 3.1 The services as stated in the Scope of Services article shall be commenced on or after the date of an approved purchase order and concluded on or before May 30, 2014.
- 3.2 This Agreement shall remain in effect until the work described in the Scope of Services article is completed to the satisfaction of Ohio EPA, and until Contractor is paid in accordance with Compensation article or until terminated as provided in the Termination of Contractor's Services article, whichever is sooner.
- 3.3 If the contractor is unable to complete the services as stated in the Scope of Services by June 30, 2014, then, at Ohio EPA's discretion, this Agreement may be renewed by the parties for SFT 2015. Such renewal shall cover the balance of services to be completed by the contractor under the conditions of this Agreement and shall expire no later than June 30, 2015.
- 3.4 As the current General Assembly cannot commit a future General Assembly to expenditure, this Agreement shall expire no later than June 30, 2015. At Ohio EPA's

discretion, this Agreement may be renewed by the parties for the next biennium, by executing a new agreement based on the same or modified terms and conditions of this Agreement, or other legally acceptable method. Such renewal may consist of a short-form renewal agreement. In no event may any agreement involving an expenditure of funds extend beyond the expiration of the biennium in which the agreement commences.

- 3.4 It is expressly agreed by the parties that none of the rights, duties and obligations herein shall be binding on either party if award of this Agreement would be contrary to the terms of ORC 3517.13, ORC 127.16 or ORC Chapter 102.

ARTICLE IV: COMPENSATION

- 4.1 Ohio EPA shall pay Contractor for services rendered in accordance with this Agreement no more than \$ [value], as set forth in Exhibit 2 of this Agreement.
- 4.2 Contractor shall not be reimbursed for travel, lodging or any other expenses incurred in the performance of this Agreement. Compensation for expenses shall be limited to Contractor's fee for services set forth in this Agreement.
- 4.3 Contractor's invoices for services rendered shall be consistent with this article and Exhibit 2 of this Agreement. Each invoice shall be a proper invoice, as defined in Ohio Administrative Code ("OAC") 126-3-01(A) and contain: (a) the Contractor's name and federal employer ID number (or other identification as appropriate); (b) the address to which payment is to be sent; (c) the Purchase Order number, which authorizes the purchase of the services or supplies; and (d) a description of the services performed, dates of service and total hours worked. Upon receipt of a proper invoice by Agency, a voucher for payment shall be processed and payment made pursuant to OAC 126-3-01. Consistent with OAC 126-3-01, an invoice is not proper if it contains a defect or impropriety and Ohio EPA shall notify the Contractor of any defect or impropriety.

ARTICLE V: CERTIFICATION OF FUNDS

- 5.1 It is expressly understood and agreed by the parties that none of the rights, duties and obligations described in this Agreement shall be binding on either party until (a) all relevant statutory provisions of the Ohio Revised Code, including, but not limited to, ORC 126.07 have been complied with and all necessary funds are available or encumbered and, (b) when required, such expenditure of funds is approved by the Controlling Board of the State of Ohio, or in the event that grant funds are used, until such time that Ohio EPA gives Contractor written notice that such funds have been made available to Agency by Ohio EPA's funding source. If Ohio EPA should learn

that funds are unavailable to meet its obligations set forth herein, Ohio EPA shall use best efforts to promptly notify Contractor and this Agreement shall be deemed void *ab initio*.

ARTICLE VI: TERMINATION OF CONTRACTOR'S SERVICES

- 6.1 Ohio EPA may, at any time prior to the completion of services by Contractor under this Agreement, suspend or terminate this Agreement with or without cause by giving written notice to Contractor.
- 6.2 Contractor, upon receipt of notice of suspension or termination, shall cease work on the suspended or terminated activities under this Agreement, suspend or terminate all subcontracts relating to the suspended or terminated activities, and take all necessary or appropriate steps to limit disbursements and minimize costs. If requested by Ohio EPA, Contractor shall promptly furnish a report that describes the status of all work under this Agreement as of the date of receipt of notice of suspension or termination, including the data, analysis, conclusions resulting from the same and any other matters Ohio EPA requires.
- 6.3 Contractor shall be paid for services rendered up to the date Contractor received notice of suspension or termination, less any payments previously made, provided Contractor has supported such payments with detailed factual data containing services performed and hours worked. In the event of suspension or termination, any payments made by Ohio EPA for which Contractor has not rendered services shall be refunded.
- 6.4 In the event this Agreement is terminated prior to its completion, Contractor, upon payment as specified, shall deliver to Ohio EPA all work products and documents which have been prepared by Contractor in the course of providing services under this Agreement. All such materials shall become, and remain, the property of Agency, to be used in such manner and for such purpose as Agency may choose.
- 6.5 Contractor agrees to waive any right to, and shall make no claim for, additional compensation against Agency by reason of such suspension or termination.

ARTICLE VII: RELATIONSHIP OF PARTIES

- 7.1 Contractor shall be responsible for all of Contractor's business expenses related to this Agreement, including, but not limited to, computers, internet access, software, phone services and office space. Contractor shall also be responsible for the required licenses, permits, employees' wages and salaries, benefits, insurance of every type and description, and all business and personal taxes, including income and Social Security taxes and contributions for Workers' Compensation and Unemployment Compensation

coverage, if any.

- 7.2 It is fully understood and agreed that Contractor is an independent contractor and neither Contractor nor its personnel shall at any time, or for any purpose, be considered as agents, servants or employees of the State of Ohio.
- 7.3 While Contractor shall be required to render services described hereunder for Ohio EPA during the term of this Agreement, nothing herein shall be construed to imply, by reason of Contractor's engagement hereunder on an independent contractor basis, that Ohio EPA shall have or may exercise any right of control over Contractor with regard to the manner or method of Contractor's performance of services hereunder.
- 7.4 Except as expressly provided herein, neither party shall have the right to bind or obligate the other party in any manner without the other party's prior written consent.

ARTICLE VIII: RECORD KEEPING

- 8.1 During performance of this Agreement and for a period of three years after its completion, Contractor shall maintain, in a manner consistent with generally accepted accounting procedures, auditable records of all financial records pertaining to this Agreement and shall make such records available to Ohio EPA as Ohio EPA may reasonably require.

ARTICLE IX: RELATED AGREEMENTS

- 9.1 The work contemplated in this Agreement is to be performed by Contractor, who may subcontract without Ohio EPA's approval for the purchase of supplies, components, or special mechanical services that do not involve the type of work or services described in the Scope of Services herein, but which are required for its satisfactory completion. All work subcontracted shall be at Contractor's expense. Contractor shall not enter into other subcontracts without prior written approval by Agency. Contractor shall furnish to Agency a list of all subcontractors, their addresses, tax identification numbers, and the dollar amount of each subcontract.
- 9.2 Contractor shall bind its subcontractors to the terms of this Agreement, so far as applicable to the work of the subcontractor, and shall not agree to any provision which seeks to bind Ohio EPA to terms inconsistent with, or at variance from, this Agreement.

ARTICLE X: CONFLICTS OF INTEREST AND ETHICS COMPLIANCE

- 10.1 No personnel of Contractor or member of the governing body of any locality or other public official or employee of any such locality in which, or relating to which, the work

under this Agreement is being carried out, and who exercise any functions or responsibilities in connection with the review or approval of this Agreement or carrying out of any such work, shall, prior to the completion of said work, voluntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge and fulfillment of his or her functions and responsibilities with respect to the carrying out of said work.

- 10.2 Any such person who acquires an incompatible or conflicting personal interest, on or after the effective date of this Agreement, or who involuntarily acquires any such incompatible or conflicting personal interest, shall immediately disclose his or her interest to Ohio EPA in writing. Thereafter, he or she shall not participate in any action affecting the work under this Agreement, unless Ohio EPA determines in its sole discretion that, in the light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.
- 10.3 Contractor, by signature on this Agreement, certifies that Contractor is currently in compliance with, and will continue to adhere to, the requirements of Ohio ethics laws and conflict of interest laws and will take no action inconsistent with those laws.

ARTICLE XI: NONDISCRIMINATION OF EMPLOYMENT

- 11.1 Pursuant to ORC 125.111 and 4112.02, Contractor agrees that Contractor, any subcontractor, and any person acting on behalf of Contractor or a subcontractor, shall not discriminate, by reason of race, color, religion, sex, military status, national origin, disability, age, or ancestry against any citizen of this state in the employment of any person qualified and available to perform the work under this Agreement.
- 11.2 Contractor further agrees that Contractor, any subcontractor, and any person acting on behalf of Contractor or a subcontractor shall not, in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of work under this Agreement on account of race, color, religion, sex, military status, national origin, disability, age, or ancestry.
- 11.3 If required by ORC 125.111(B) Contractor represents that it has a written affirmative action program for the employment and effective utilization of economically disadvantaged persons and has filed an Affirmative Action Program Verification form with the Equal Employment Opportunity / Affirmative Action Unit of the Department of Administrative Services. (The form may be completed with an electronic filing through the Ohio Business Gateway, available at <http://business.ohio.gov/>.)

ARTICLE XII: PURCHASING

- 12.1 Pursuant to Executive Order No. 2008-12S, Contractor and subcontractors, if any, shall make a good faith effort to purchase from Ohio companies the goods and services acquired under this Agreement.
- 12.2 Pursuant to Executive Order No. 2008-13S, Contractor and subcontractors, if any, shall make a good faith effort to purchase from certified Minority Business Enterprise (MBE) and Encouraging Diversity, Growth and Equity (EDGE) program vendors the goods and services acquired under this Agreement. A listing of certified MBE businesses, EDGE program guidance and related services may be found by contacting the MBE / EDGE Unit of the Ohio Department of Administrative Services, at <http://das.ohio.gov/Divisions/EqualOpportunity/MBEEDGECertification/tabid/134/Default.aspx>.

ARTICLE XIII: RIGHTS IN DATA AND COPYRIGHTS/PUBLIC USE

- 13.1 Ohio EPA shall have unrestricted authority to reproduce, distribute and use any reports, data or materials prepared by Contractor pursuant to this Agreement unless otherwise expressly prohibited by law (e.g., ORC 3345.14 for state colleges and universities.) No such documents or other materials produced (in whole or in part) with funds provided to Contractor by Ohio EPA shall be subject to copyright by Contractor in the United States or any other country.
- 13.2 Contractor agrees that all deliverables under this Agreement shall be made available to the general public to the extent permitted or required by law. Any requests received by Contractor should be referred to Ohio EPA.

ARTICLE XIV: LIABILITY

- 14.1 Contractor agrees to indemnify and to hold Ohio EPA and the State of Ohio harmless and immune from any and all claims for injury or damages arising from this Agreement which are attributable to Contractor's own actions or omissions or those of its trustees, officers, agents, employees, subcontractors, suppliers, third parties utilized by Contractor, or joint venturers while acting under this Agreement. Such claims shall include any claims made under the Fair Labor Standards Act or under any other federal or state law involving wages, overtime, or employment matters and any claims involving patents, copyrights, and trademarks.
- 14.2 Contractor shall bear all costs associated with defending Ohio EPA and the State of Ohio against any claims.

- 14.3 In no event shall either party be liable to the other party for indirect, consequential, incidental, special, or punitive damages, or lost profits.
- 14.4 In conjunction with this Agreement, Contractor agrees, at its own cost, to procure and continue in force at all times that this Agreement is in effect, in its name, general liability insurance against any and all claims for injuries to persons or damage to property occurring or arising out of Contractor's obligations set forth herein. Such insurance shall at all times be in an amount not less than Five Hundred Thousand Dollars (\$500,000) on account of bodily injury to or death of one (1) person, and One Million Dollars (\$1,000,000) on account of bodily injuries or death of more than one person as a result of any one accident or disaster, and Two Hundred Fifty Thousand Dollars (\$250,000) for property damage in any one accident. Such insurance shall be written by a company or companies authorized to engage in the business of general liability insurance in the State of Ohio with an A.M. Best rating of at least "A-." Any insurance policy required hereunder shall be amended to include an endorsement naming Ohio EPA and the State of Ohio as additional insureds unless the policy reflects such coverage of Ohio EPA and the State of Ohio without the added endorsement. Prior to the effective date of this Agreement, Contractor shall provide Ohio EPA with (i) a copy of the required endorsement, if required, and (ii) a certificate reflecting the coverage of the policy, each in a form acceptable to Ohio EPA in its sole discretion. Contractor shall provide written notice to Ohio EPA no less than thirty (30) days prior to a cancellation, non-renewal, expiration or material alteration of the coverage contained in any policy required hereunder, and shall provide to Ohio EPA evidence of continuing coverage of any required policy no less than thirty (30) days prior to its expiration.

ARTICLE XV: COMPLIANCE WITH LAWS

- 15.1 Contractor, in the execution of duties and obligations under this Agreement, agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances.
- 15.2. Contractor affirms that it has all of the approvals, certifications, licenses or other qualifications to conduct business in Ohio and all are current. If for any reason Contractor becomes disqualified from conducting business in Ohio during the term of this Agreement, Contractor will both immediately notify Ohio EPA in writing and cease performance of work.

ARTICLE XVI: DRUG FREE WORKPLACE

- 16.1 Contractor agrees to comply with all applicable federal, state and local laws regarding smoke-free and drug-free work places and shall make a good faith effort to ensure that none of its employees or permitted subcontractors engaged in the work being

performed hereunder purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs in any way.

ARTICLE XVII: CAMPAIGN CONTRIBUTIONS

17.1 Contractor hereby certifies that neither Contractor nor any of Contractor's partners, officers, directors, shareholders nor the spouses of any such person, have made contributions in excess of the limitations specified in ORC 3517.13. (In general, this law prohibits contracts when such individuals have made contributions to the holder of the public office having ultimate responsibility for the award of the contract or to the public officer's campaign committee. The Ohio Governor's office is considered to have ultimate responsibility for the award of Ohio EPA contracts.)

ARTICLE XVIII: ENTIRE AGREEMENT/WAIVER

18.1 This Agreement contains the entire agreement between the parties hereto and shall not be modified, amended or supplemented, or any rights herein waived, unless specifically agreed upon in writing by the parties hereto.

18.2 This Agreement supersedes any and all previous agreements between the parties.

18.3 A waiver by any party of any breach or default by the other party under this Agreement shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.

ARTICLE XIX: NOTICES

19.1 All notices, consents, and communications hereunder shall be given in writing, shall be deemed to be given upon receipt thereof, and shall be sent to the applicable party's contact(s) as set forth in the Scope of Work - Exhibit 1 of this Agreement.

ARTICLE XX: HEADINGS

20.1 The headings in this Agreement have been inserted for convenient reference only and shall not be considered in any questions of interpretation or construction of this Agreement.

ARTICLE XXI: SEVERABILITY

21.1 The provisions of this Agreement are severable and independent, and if any such provision shall be determined to be unenforceable in whole or in part, the remaining provisions and any partially enforceable provision shall, to the extent enforceable in any

jurisdiction, nevertheless be binding and enforceable.

ARTICLE XXII: CONTROLLING LAW

22.1 This Agreement and the rights of the parties hereunder shall be governed, construed, and interpreted in accordance with the laws of the State of Ohio. Contractor consents to jurisdiction in a court of proper jurisdiction in Franklin County, Ohio.

ARTICLE XXIII: SUCCESSORS AND ASSIGNS

23.1 Neither this Agreement, nor any rights, duties, nor obligations hereunder, may be assigned or transferred in whole or in part by Contractor, without the prior written consent of Agency. Any assignment or delegation not consented to may be deemed void by the State.

**ARTICLE XXIV: PROHIBITION ON PERFORMANCE OF SERVICES OFFSHORE;
DISCLOSURE OF SERVICE LOCATIONS**

24.1 Contractor affirms to have read and understands Executive Order No. 2011-12K and shall abide by those requirements in the performance of this Agreement, and shall perform no services required under the Agreement outside of the United States. Notwithstanding any other terms of this Agreement, the State reserves the right to recover any funds paid for services the Contractor performs outside of the United States for which it did not receive a waiver. The State does not waive any other rights and remedies provided the State in this Agreement.

24.2 Contractor also affirms, understands, and agrees to immediately notify Ohio EPA of any change or shift in the location(s) of services performed by Contractor or its subcontractors under this Agreement and no services shall be changed or shifted to a location(s) that are outside of the United States.

24.3 If Contractor or any of its subcontractors perform services under this Agreement outside of the United States, the performance of such services shall be treated as a material breach of this Agreement. The State is not obligated to pay and shall not pay for such services.

A. If Contractor or any of its subcontractors perform any such services, Contractor shall immediately return to the State all funds paid for those services. The State may also recover from Contractor all costs associated with any corrective action the State may undertake, including but not limited to an audit or a risk analysis, as a result of Contractor performing services outside the United States. If the State determines that actual and direct damages are uncertain or difficult to

ascertain, the State in its sole discretion may recover a payment of liquidated damages in the amount of 90% of the value of the Agreement.

- B. The State, in its sole discretion, may provide written notice to Contractor of a breach and permit the Contractor to cure the breach. Such cure period shall be no longer than 21 calendar days. During the cure period, the State may buy substitute services from a third party and recover from Contractor any costs associated with acquiring those substitute services.
- C. Notwithstanding the State permitting a period of time to cure the breach or Contractor's cure of the breach, the State does not waive any of its rights and remedies provided the State in this Agreement, including but not limited to recovery of funds paid for services the Contractor performed outside of the United States

ARTICLE XXV: FINDINGS FOR RECOVERY

25.1 If the potential compensation to Contractor under this Agreement exceeds \$25,000, Contractor warrants that it is not subject to an "unresolved" finding for recovery under ORC 9.24. If this warranty is found to be false, this Agreement is void *ab initio* and Contractor shall immediately repay to Ohio EPA any funds paid under this Agreement.

ARTICLE XXVI: DEBARMENT

26.1 Contractor represents and warrants that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either ORC 153.02 or ORC 125.25. If this representation and warranty is found to be false, this Agreement is void *ab initio* and Contractor shall immediately repay to Ohio EPA any funds paid under this Agreement.

ARTICLE XXVII: DECLARATION REGARDING MATERIAL ASSISTANCE / NONASSISTANCE TO A TERRORIST ORGANIZATION

27.1 If the potential compensation to Contractor under this Agreement exceeds \$100,000, Contractor represents and warrants to Ohio EPA that it has (a) not provided any material assistance, as that term is defined in ORC 2909.33(C), to any organization identified by, and included on, the United States Department of State Terrorist Exclusion List and (b) truthfully answered "no" to every question on Contractor's "Declaration Regarding Material Assistance/Non-assistance to a Terrorist Organization." (The form is available at <http://homelandsecurity.ohio.gov/dma/dma.asp>.) Contractor further represents and warrants that it has provided or will provide such to Ohio EPA prior to execution of this Agreement. If these representations and warranties are found to be false, this Agreement is void *ab initio* and Contractor shall immediately repay to

Ohio EPA any funds paid under this Agreement.

ARTICLE XXVIII: CERTIFICATION OF SWEATSHOP-FREE PRODUCTION

28.1 If this Agreement involves the purchase of clothing, Contractor and subcontractors, if any, are prohibited from purchasing or arranging for the clothing from any supplier that is in noncompliance with applicable laws, including but not limited to laws establishing standards for wages, occupational safety and work hours. Further, Contractor hereby represents and warrants that it is not using any sweatshop, as described by Executive Order No. 2008-21S, in the production of the clothing.

ARTICLE XXIX: EXECUTION / EFFECTIVE DATE

29.1 This Agreement is not binding upon Agency unless executed in full.

29.2 This Agreement is be effective upon the date of the Director’s signature, consistent with *Time of Performance and Certification of Funds* articles of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers.

[NAME OF CONTRACTOR]
[Insert Contractor’s OAKs Vendor I.D.]

By: _____
(Signatory’s Name)

(Signatory’s Title)

(Date)

OHIO ENVIRONMENTAL PROTECTION AGENCY

By: _____
Scott J. Nally, Director

(Date)

EXHIBIT 1 - SCOPE OF WORK

Contract Managers

Contractor's Contract Manager is:

[Insert name, title, mailing address, phone, fax, email address]

Ohio EPA's Contract Manager is:

Ernest Stall
Environmental Specialist 3
Ohio EPA, Division of Materials and Waste Management
50 West Town St, Suite 700
P.O. Box 1049
Columbus, OH 43216-1049
Phone: (614) 728-5356
Fax: (614) 728-5315
ernest.stall@epa.state.oh.us

Contractor shall coordinate all work performed under this Scope of Work with Ohio EPA's Contract Manager. Ohio EPA shall in turn coordinate with Contractor's Contract Manager regarding work performed by Contractor under this Scope of Work. Either party may change the designated Contract Manager by so notifying the other party in writing.

Work & Work Schedule

Contractor shall complete the following tasks and supply all deliverables in accordance with this Scope of Work and described in "xxx" [name of contractor's proposal], dated, [date of contractor's most recent proposal] set forth in Exhibit 1-A of this Agreement. These tasks include:

[To be completed based on selected contractor's proposal]

Further, Contractor agrees to perform the following tasks under this Scope of Work as follows:

[To be completed based on selected contractor's proposal]

See also **Exhibit 2 - Compensation.**

End Exhibit 1

EXHIBIT 2 - COMPENSATION

In consideration of the satisfactory performance by Contractor of the work specified in Exhibit 1 - Scope of Work, Ohio EPA agrees to compensate Contractor as follows:

Total Compensation

The total compensation that may be provided Contractor under this Agreement shall not exceed _____ dollars (\$__) for State Fiscal Year 20__ [and _____ dollars (\$__) for State Fiscal Year 20__].

Submission of Invoices

In addition to the terms for invoicing set forth in the *Compensation* article of this Agreement, Contractor shall send each original invoice for payment to:

Kelly Crawford, Fiscal Officer
DMWM
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43216-1049

Contractor shall send an electronic copy of each invoice to Ohio EPA's Contract Manager, as specified in Exhibit 1.

End Exhibit 2

EXHIBIT 3

**CONTRACTOR'S PROPOSAL and
AMENDMENTS TO THE PROPOSAL**