

**Contract for Can Liners Between
Emerald Supply, Inc. and The County of Cuyahoga**

This CONTRACT (the "Contract") made this _____ day of _____, 2012, by and between the County of Cuyahoga, Ohio (the "County"), on behalf of the Cuyahoga County Department of Public Works ("Public Works"), and Emerald Supply, Inc. with its principal offices located at 4300 Superior Ave, Suite B, Cleveland, Ohio 44103 ("Emerald" or the "Company"), is effective upon execution by the County Executive.

WITNESSETH:

Whereas, the County is in need of Can Liners for various buildings;

Whereas, the County completed a Request for Bid (RFB) for the Can liners;

Whereas, Company was selected to provide these collection services pursuant to the Request for Bids ("RFB"); and

Whereas, the Company is desirous of providing the Can Liners to the County.

NOW, THEREFORE, for valuable consideration the validity and sufficiency of which is hereby acknowledged, the County and the Company agree as follows:

1. *Scope of Services.* The Scope of Services to be performed under this Contract shall be as outlined in RFB, Requisition No. 22927, and the Company's Bid Document Face Sheet ("Proposal"), which are all hereby incorporated into and made part of this Contract as though expressly rewritten herein.

Company shall deliver and provide Can Liners at prices as set forth in the Bid Document Face Sheet attached hereto as Exhibit A. The Company shall provide the Can Liners on behalf of the County while adhering to the highest ethical, legal and professional standards mandated for the performance of such services and in accordance with Federal, State, and Local laws, rules and regulations.

2. *Compensation.*

- A. Company shall deliver and provide Can Liners to the location the County desires (the "Services") at the prices and terms set forth in the Proposal in an amount not to exceed \$130,000.00;
- B. Company shall not charge any fees over any above what is listed on the Proposal;
- C. Company shall not charge any fee for fuel, delivery, or the like.

- D. Company shall invoice the County within 30 days of the product being delivered to the County. The County reserves the right to deny payment for any invoice not received within 30 days of delivery of the product or if the County determines any invoice is improperly submitted;
 - E. Company shall only deliver and invoice for Can Liners actually provided to the County at the County's request; and
 - F. The County reserves the right to deny payment if, in the County's sole discretion, it is not satisfied with the products or Services Company provided;
3. *Term.* Unless terminated earlier by the County, the term of this Contract ("Term") shall be two (2) years, from May 1, 2012 through April 30, 2014.
4. *General Conditions.*
- Company shall:
- A. Furnish all materials and labor and deliver all Can Liners in accordance with the specifications and to the satisfaction and acceptance of the County.
 - B. Comply with all Federal, State and Local laws, rules, regulations, ordinances, resolutions and policies applicable to the Services to be performed and products delivered under this Contract;
 - C. Cooperate with representatives of County, who may be involved in the completion of this Contract;
 - D. Not engage the services of any person or persons in the employment of County or any other public body in the State of Ohio for any of the work covered and Services provided by the terms of this Contract, without the specific written permission of County.
6. *Vendor Ethics Training.* Company agrees to complete the County's vendor registration requirements, including Vendor Ethics Training, and to remain in compliance with the County's vendor ethics requirements throughout the duration of this Contract. Information about Cuyahoga County's Vendor Ethics Training is available at the Cuyahoga County Inspector General's web site at <http://inspectorgeneral.cuyahogacounty.us>.
7. *Certifications, Representations, and Warranties.* Company certifies, represents, and warrants that:

- A.) _____, the signatory below on behalf of Company, is an owner of Emerald Supply, Inc. and has the authority to sign this Contract and to bind Emerald Supply, Inc. to its terms;
- B.) Company represents and warrants that it is not subject to an “unresolved” finding for recovery under Ohio Revised Code Section 9.24;
- C.) Company represents and warrants that it has not provided any material assistance, as that term is defined in Ohio Revised Code Section 2909.33(C), to any organization identified by and included on the United States Department of State Terrorist Exclusion list. Company further represents and warrants that either (1) it does not meet the monetary threshold under Ohio law to be required to complete and submit a Declaration of Material Assistance (“DMA”) form in connection with this Contract; (2) it is not required to submit a DMA form under Ohio law because it is certified with the State of Ohio's Office of Budget and Management and its certification is current and up-to-date; or (3) it has completed a current DMA form with an answer of “no” to all questions and submitted it to the County in connection with this Contract. It is COMPANY’S RESPONSIBILITY to ensure compliance with the DMA requirements, including monitoring the threshold of its business with the County and filing all required forms with the County as required by law. Information regarding these forms and requirements may be found on the Ohio Homeland Security website at: http://homelandsecurity.ohio.gov/dma/dma_forms.asp;
- D.) Neither Company nor any of its employees or agents have any interest in this Contract that would constitute a conflict of interest or other violation of Federal, State or Local laws and rules; and,
- E.) Neither Company nor any of its employees or agents has any criminal background or record that would bar the individual from performing the individual’s obligations under this Contract.

8. *Remaining in Compliance with Certifications, Representations, and Warranties as Continuing Commitments/Verification:* Company shall ensure that all of its certifications, representations, and warranties under this Contract shall remain true throughout the duration of the Contract as if they are continuing commitments.

9. *Liability, Releases, Defense, and Indemnification.* Company shall have sole liability for, and shall indemnify, defend, and hold harmless the County, and its officials, officers, employees, agents, representatives, departments, agencies, boards, commissions, and other authorities against all acts and omissions by it or any of its employees or agents in any way relating to this

Contract or arising from the Services rendered under this Contract, any workers' compensation claims relating to the practitioners assigned by it, as well as any and all breaches of any of the terms, certifications, representations, warranties, or other covenants under this Contract.

Company, on behalf of itself, and as applicable, its owners, shareholders, members, directors, officers, employees, agents, representatives, parents, subsidiaries, affiliates, successors, and assigns, including the practitioners assigned by it, hereby releases and shall continue to release and hold County and its officials, officers, employees, agents, representatives, departments, agencies, boards, commissions, and other authorities harmless from any and all claims, losses, or other liabilities in any way relating to this Contract or arising from the services rendered and products provided under this Contract, including, but not limited to, workers' compensation, medical negligence, or malpractice.

10. *Insurance.* Company shall provide for insurance of at least \$250,000.00 per each occurrence, and no less than \$500,000.00 in the aggregate, against all acts and omissions in any way relating to or arising under this Contract, and shall name the County as an additional named insured, upon execution of this Contract. Such insurance shall, at a minimum, include coverage for commercial general liability, automobile liability, workers' compensation and employer liability, and umbrella and excess liability.

11. *Prohibition on Assignment.* Company may not assign, directly or indirectly, all or part of its rights or obligations under this Contract without the prior written consent of the County.

12. *Termination For Convenience:* The County shall have the right to terminate this Contract at any time with 30 days advance written notice to Company. Company shall be compensated for Services performed through the last day of Service.

13. *Governing Law and Jurisdiction.* This Contract shall be governed by and construed under the laws of the State of Ohio without regard to conflicts of law provisions. The parties agree that the state and federal courts sitting in Ohio will have exclusive jurisdiction over any claim arising out of this Contract, and each party consents to the exclusive jurisdiction of such courts. Company hereby agrees not to challenge any provision in this Contract, including this Governing Law and Jurisdiction provision, and not to attempt to remove any legal action outside of Cuyahoga County for any reason.

14. *No Indemnification by County.* Company acknowledges that as an Ohio political subdivision, the County is prohibited by law from agreeing to indemnify any person or entity, and agrees that no provision of this Contract or any other contract or agreement between Company and the County may be interpreted to obligate the County to indemnify or defend Company or any other party.

15. *Notices.* Any notice to be given under this Contract by either party to the other may be effected either by personal delivery in writing or by certified mail, postage-prepaid, return

receipt requested. Notice delivered personally shall be deemed received upon actual receipt; notice sent by certified mail shall be deemed received on the date the return receipt is either signed or refused. Mailed notices shall be addressed to the parties at the addresses appearing below:

To the County:

Attn: Michael Chambers

Cleveland, Ohio _____

With a copy to:

Attn: Cuyahoga County Director of Law
Cuyahoga County Department of Law
1219 Ontario Street, 4th Floor
Cleveland, Ohio 44113

To Company:

Attn: *Tamara L. Chappell*
Emerald Supply, Inc.
4300 Superior Ave, Suite B
Cleveland, Ohio 44103

16. *Entire Agreement.* This Contract constitutes the entire agreement between the parties, either express or implied, with respect to the subject matter hereof. No modification of this Contract shall be binding upon the parties unless set forth in writing and signed by both parties, or their respective successors or assigns.

17. *No Apparent Authority/Proper Approvals.* Company recognizes and agrees that no public official or employee of the County may be deemed to have apparent authority to bind the County to any contractual obligations not properly authorized pursuant to the County's Contracting and Purchasing Procedures Ordinance.

18. *Parties Bound and Benefited.* This Contract shall bind and benefit the parties hereto and, as applicable, their respective owners, members, directors, officials, officers, representatives, successors, and assigns.

19. *Non-Waiver.* The County's failure to require performance of any provision of this Contract, or if it requires performance and does not follow through, shall not affect the County's right to require performance at any time thereafter. Additionally, the County's waiver of any breach or default of this Contract shall not constitute a waiver of any subsequent breach or default or a waiver of the provision itself or any other provision.

20. *Contract Interpretation and Construction.* In the event an ambiguity or question of intent or interpretation arises, this Contract shall be construed as though drafted by both parties, and no presumption or burden of proof shall arise favoring or disfavoring one party by virtue of the authorship of any of the provisions of this Contract.

21. *Counterparts and Facsimile/Electronic Execution.* This Contract may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which,

taken together, shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this County (and each amendment, modification and waiver in respect of it) by facsimile or other electronic transmission, including email, shall be as effective as delivery of a manually executed original counterpart of each such instrument.

22. *Severability.* If any provision of this Contract is invalid or unenforceable for any reason, this Contract shall be divisible as to such provision and the remainder of this Contract shall be and remain valid and binding as though such provision was not included herein.

23. *Applicable County Ordinances.* All County contracts, including this Contract, are subject to all applicable County ordinances, including, but not limited to, the Cuyahoga County Ethics Ordinance, Cuyahoga County Inspector General Ordinance, and Cuyahoga County Contracting and Purchasing Procedures Ordinance. Copies of all County ordinances are available on the County Council's web site at <http://council.cuyahogacounty.us/>.

24. *Public Records.* All parties hereto acknowledge that County is a political subdivision in the State of Ohio and as such is subject the Ohio Revised Code and other law related to the keeping and access to Public Records, including any and all applicable Sunshine Laws, open meeting requirements, and retention schedules effecting any and all manner of communication with the County and any and all documents in any format or media.

25. *Electronic Signature.* By entering into this Contract, Company agrees on behalf of the contracting or submitting entity, its officers, employees, subcontractors, subgrantees, agents or assigns, to conduct this transaction by electronic means by agreeing that all documents requiring county signatures may be executed by electronic means, and that the electronic signatures affixed by county to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the document. Company also agrees on behalf of the aforementioned entity and persons, to be bound by the provisions of chapters 304 and 1306 of the Ohio revised code as they pertain to electronic transactions, and to comply with the electronic transactions, and to comply with the electronic signature policy of the County.

IN WITNESS WHEREOF, the parties have hereunto set their hands by their duly authorized respective officer(s), and affixed the seals of said parties:

Edward FitzGerald, County Executive

COUNTY OF CUYAHOGA, OHIO
2012-09-17 16:31:47

By: _____

By: _____

Print Name: _____

Print Name: Edward FitzGerald

Title: _____

Title: County Executive

Date: _____

Date: _____