

NEW ASHVILLE AGREEMENT THAT  
NEEDS TO BE SIGNED AND  
EXECUTED.

**AGREEMENT FOR THE COLLECTION, TRANSPORTATION AND DELIVERY FOR  
DISPOSAL OR PROCESSING OF RESIDENTIAL SOLID WASTE, RECYCLABLE  
MATERIALS AND YARD WASTE GENERATED WITHIN THE CITY / TOWNSHIP /  
VILLAGE OF ASHVILLE, PICKAWAY COUNTY, OHIO**

**THIS AGREEMENT** for the collection, transportation and delivery for disposal or processing of Solid Waste, Recyclable Materials and Yard Waste ("Collection Services") generated within the City/Township/Village of Ashville, Ohio (the "Collection Agreement") entered into this \_\_\_\_ day of \_\_\_\_\_, 2014, is by and between the City/Township/Village of Asvhille, Ohio (the "City/Township/Village"), with its offices located at \_\_\_\_\_ (address), and Local Waste Services, Ltd. ("Contractor"), a limited liability company with an office located at 1300 S Columbus Airport Rd, Columbus, OH 43207, Ohio.

**RECITALS**

**WHEREAS**, pursuant to Section 715.43 or Section 505.27 of the Ohio Revised Code, the City/Township/Village may enter into written contracts with independent contractors to establish such collection systems and designate solid waste facilities as may be necessary or appropriate to provide for the safe and sanitary management of Solid Waste, including Recyclable Materials and Yard Waste, generated within the City/Township/Village; and

**WHEREAS**, the City/Township/Village has determined that it is in the best interests of the City/Township/Village and its Residents that the City/Township/Village arrange for the collection, transportation and delivery for disposal or processing of all Solid Waste, Recyclable Materials and Yard Waste generated at Residential Units, City/Township/Village Facilities and during Special Events located within the City/Township/Village from a single contractor on an exclusive basis; and

**WHEREAS**, on July 1, 2010, and on July 8, 2010, a consortium of political subdivisions, as part of a Joint Bid Process with several communities located within the jurisdiction of the Solid Waste Authority of Central Ohio ("2010 Solid Waste Consortium"), invited through advertisement in the Columbus Dispatch qualified providers of the Collection Services to submit bids to provide such Collection Services on the terms and conditions contained herein; and

**WHEREAS**, the Contractor submitted a bid to become the sole provider of Collection Services for the benefit of the City/Township/Village and its Residents; and

**WHEREAS**, on 9-19-2010, 2010, following the official opening of the bids by the 2010 Solid Waste Consortium and consideration of bids for Collection Services, the City/Township/Village determined that the Contractor is qualified to provide the Collection Services to the City/Township/Village and approved the award of the Collection Agreement to the Contractor; and

**WHEREAS**, the 2010 Solid Waste Consortium was designed to allow other political subdivisions to “opt in” at a later date without further necessity of competitive bidding, as permitted by Ohio Revised Code 9.48; and

**WHEREAS**, the City of Whitehall has invited the Village of Ashville to opt-in as part of the 2010 Solid Waste Consortium and the Village of Ashville has elected to opt-in to the 2010 Solid Waste Consortium; and

**WHEREAS**, the Village of Ashville is not within the Solid Waste Authority of Central Ohio, and appoints Contractor to dispose of Solid Waste and Recyclable Materials in a manner most cost effective to Contractor and the City/Township/Village under this Agreement;

**WHEREAS**, the City/Township/Village and the Contractor have agreed on terms and conditions for the Collection Services in conformance with the Bid Documents for the per Residential Unit monthly price as stated on the Bid Forms, which are attached as Exhibit A and incorporated by reference; and

**WHEREAS**, the City/Township/Village and the Contractor each represents that it has the authority to execute this Collection Agreement for the Collection Services identified herein.

**NOW, THEREFORE**, in consideration of the mutual promises, covenants and agreements below, the parties incorporate the foregoing recitals and agree as follows:

#### **ARTICLE I – DEFINED TERMS**

The capitalized terms used in this Collection Agreement are defined in Exhibit B, Defined Terms, which is attached and incorporated by reference.

#### **ARTICLE II — AGREEMENT, TERM & RENEWAL TERMS**

**2.1 Agreement and Independent Contractor Status.** The City/Township/Village hereby authorizes the Contractor and the Contractor hereby accepts such authorization, on an exclusive basis and as an independent contractor, to collect, transport, and deliver for disposal or processing, Solid Waste and Recyclable Materials generated at Residential Units, City/Township/Village Facilities and during certain Special Events within the City/Township/Village. The parties hereto acknowledge that Yard Waste collection is not contemplated or covered by this Agreement, even despite references to Yard Waste contained herein.

**2.2 Effective Date and Term.** This Collection Agreement shall be effective on the date of last execution. The initial term of this Collection Agreement shall be for one (1) years, beginning on January 1, 2015 (date), and terminating on DECEMBER 31, 2015 (date).

**2.3 Renewal Terms.** This Collection Agreement may be renewed for two (2) additional consecutive terms of up to one (1) year each upon such terms and conditions as the parties mutually agree, provided the cost for the Collection Services does not exceed the prices reflected on the Bid Form, attached as Exhibit A.

**2.4 Implementation Plan.** From and after the Effective Date, the Contractor shall submit proof that the benchmarks identified in the implementation plan, which is attached as Exhibit C and incorporated by reference, have been met. The Contractor shall certify: (a) compliance with the benchmarks which include, but are not limited to, the purchase of sufficient vehicles, collection containers and equipment to perform; (b) that Contractor's employees have completed training and driven the City/Township/Village-approved Collection Routes; (c) that City/Township/Village-approved written notices to Residents were sent to each Resident by U.S. mail explaining the procedures and obligations of each owner or occupant of a Residential Unit to receive Collection Services, and detailing the requirements for placement of collection containers; (d) that the delivery of any Contractor-provided collection containers is complete; and (e) that the Contractor has delivered to the City/Township/Village proof of insurance, proof of workers' compensation coverage and the required Performance Bond, which is attached as Exhibit D and incorporated by reference. Finally, the Contractor shall certify that all conditions precedent to the commencement of performance of the Collection Services have been satisfied by the dates stated on the implementation plan submitted by the Contractor.

### **ARTICLE III — GENERAL REQUIREMENTS OF THE CONTRACTOR**

**3.1 Delivery to City/Township/Village-Designated Facilities.** The Contractor shall provide regular weekly collection of Solid Waste, Recyclable Materials and Yard Waste from each Residential Unit, City/Township/Village Facilities and during Special Events located within the City/Township/Village, including such materials that exceed the capacity of a City/Township/Village or Contractor-provided collection container, if provided. All Solid Waste, Recyclable Materials and Yard Waste generated at each Residential Unit shall be collected by the Contractor, provided the Resident places such items in the manner specified in the City/Township/Village-approved written notice specified in Section 2.4 and Section 4.4. The Contractor shall collect, transport and deliver all Solid Waste and Recyclable Materials in a manner and to a facility deemed most cost effective and advantageous by Contractor in Contractor's exclusive determination. The Contractor shall pay to the owner or operator of the City/Township/Village-Designated Facilities all charges, costs, fees and expenses incurred for the disposal or processing of the Solid Waste, Recyclable Materials and Yard Waste collected by the Contractor and delivered to the City/Township/Village-Designated Facilities. Separated Recyclable Materials and Yard Waste shall not be delivered to any landfill. All Collection Services performed by the Contractor pursuant to this Collection Agreement shall be performed in a competent and workmanlike manner.

**3.2 Vehicles and Equipment.** The Contractor shall furnish all vehicles and equipment necessary to provide the Collection Services required under this Collection Agreement, as well as the necessary facilities for the thorough cleaning and maintenance of the vehicles and equipment. The Contractor shall keep all vehicles and equipment in a clean, sanitary and safe operating condition at all times. All vehicles used by the Contractor for the collection of Solid Waste, Recyclable Materials and Yard Waste shall be enclosed, washed and cleaned, leak proof, rust-free, packer-type trucks equipped with a broom, shovel and rake. Other types of vehicles may be used only as approved by the City/Township/Village. All vehicles shall be painted uniformly, and shall bear the Contractor's name, vehicle number and Contractor's telephone number. All vehicles and equipment may be inspected from time to time by the City/Township/Village to determine that same are clean, sanitary and in safe operating condition; however, such an inspection shall not constitute a representation by the City/Township/Village that the vehicles and equipment are safe. Any vehicles or equipment that, in the opinion of the City/Township/Village, are not clean, sanitary or in a safe operating condition shall be removed from service by the Contractor until such vehicles have been cleaned and/or repaired to the satisfaction of the City/Township/Village. Failure to comply with these standards constitutes grounds for termination of this Collection Agreement by the City/Township/Village.

**3.3 Contractor's Office and Telephone.** The Contractor shall maintain an office in Franklin County, Ohio, or in an adjacent county, and telephone service with a non-toll telephone number from the City/Township/Village, which shall be manned by a live operator and a supervisor on working days from 7:00 a.m. to 7:00 p.m. to receive any complaints or calls regarding the Collection Services from a Resident or the City/Township/Village. The Contractor shall also maintain an emergency contact number which is available 24 hours per day, seven (7) days per week.

**3.4 Contractor Ability to Communicate with Vehicles in the Field.** The Contractor shall maintain two-way radio or cellular telephone service with the drivers of all vehicles used to provide Collection Services within the City/Township/Village, so that the Contractor may communicate with the drivers in order to expedite the Contractor's response to complaints regarding the Collection Services.

**3.5 Employee Training.** The Contractor shall provide training in operations, approved collection routes, safety practices, use of employee uniforms and conduct for all employees involved in providing the Collection Services.

**3.6 Recyclable Materials Collection Containers.** The Contractor shall collect all Recyclable Materials from each Residential Unit from a City/Township/Village or Contractor-provided collection container for Recyclable Materials, or from any other collection container used by a Resident for Recyclable Materials, provided that a collection container for Recyclable Materials can be readily identified by the driver of the collection vehicle or the collection container is clearly marked as containing Recyclable Materials. The Contractor shall provide each Residential Unit receiving either subscription or non-subscription Recycling Services with one (1) eighteen (18) gallon recycling container at no additional charge. The Contractor shall provide a second, like recycling container to each Residential Unit at no additional

charge upon the request of a Resident. The Collection Contractor shall replace lost or damaged collection containers at the request of a Resident. The Contractor may offer to sell or rent a 32, 64, or 96 gallon wheeled collection container for Recyclable Materials to Residents at the price stated on Exhibit A. **3.7 Solid Waste Collection Containers.** Unless otherwise agreed, Residents shall provide collection containers for Solid Waste. In the event that the City/Township/Village does not supply collection containers to its Residents, the Contractor may offer to sell or rent a Recyclable Material collection container to the Residents at the price stated on Exhibit A. In the event a Resident chooses to purchase or rent a collection container from the Contractor, the Contractor shall bill the Resident directly for the use of such Contractor-provided collection containers at the price and in the manner stated on the Exhibit A. Cardboard containers shall be acceptable for bulky or loose materials. The Contractor may refuse to collect collection containers that are in excess of 50 pounds or cardboard containers that become wet, with the exception of City/Township/Village or Contractor provided collection containers. Contractor is under no obligation to collect Yard Waste.

**3.8 Collection of Bulky Items Included.** Solid Waste shall include, and the Contractor shall collect, larger household objects including but not limited to furniture, appliances, carpet and padding, mattresses and box springs, child play equipment, fencing and Christmas trees, in one piece, on the regularly scheduled collection day from the usual point of pickup at a Residential Unit. The Contractor shall collect such items without additional charge. All appliances containing chlorofluorocarbon gas (CFC or freon) shall be subject to the requirements of Section 3.9.

**3.9 Collection of Chlorofluorocarbon (CFC) Appliances.** Appliances containing chlorofluorocarbon (CFC) shall be collected by the Contractor on the same day as the City/Township/Village-approved day for the collection of Solid Waste. In the event a CFC-containing appliance is placed for collection without proper certification of CFC removal attached, the Contractor shall arrange for the proper removal of all CFCs from such appliances in compliance with all applicable laws and regulations. Annually, or more frequently upon request of the City/Township/Village, the Contractor shall provide a written report to the City/Township/Village of the number of CFC-containing appliances collected by the Contractor, including the Contractor's certification that the removal of CFC was performed in compliance with all applicable laws and regulations. The Contractor shall invoice each Resident who places an appliance containing CFC for the cost and proper removal of CFC. The City/Township/Village shall not be responsible for the cost of CFC removal. In no event shall the Contractor's invoice to a Resident for the removal of CFC exceed the per appliance price as stated on Exhibit A.

**3.10 Collection of Home Remodeling Construction and Demolition Debris.** The Contractor may limit the collection to minor home remodeling projects only. If such a limit is to be imposed, the Contractor shall include such limitation in the Resident obligation notice mailed to the Residents City/Township/Village.

**3.11 Services at City/Township/Village Facilities.** The Contractor shall provide collection containers to the City/Township/Village at the location, number, container type, container size and day of collection as stated on Exhibit E, which is attached and incorporated by reference. The Contractor shall collect all Solid Waste and Recyclable Materials deposited in the collection containers on the collection day stated in Exhibit E. In the event that additional collections of the collection containers shown on Exhibit E are necessary, the Contractor shall collect such containers as requested by the City/Township/Village at no additional charge, provided that City/Township/Village requests for additional collection are not greater than \_\_\_ in a calendar month. Within reason, the number, sizes and locations of the collection containers are subject to change in the discretion of the City/Township/Village upon written notice to the Contractor.

**3.12 Collection at Special Events and Minor Remodeling Projects of City/Township/Village Buildings.** The Contractor shall provide open top roll-off containers of up to forty (40) yards capacity for Solid Waste and Recyclable Materials upon request of the City/Township/Village for Special Events, included on attached Exhibit E. The Contractor will provide open top roll-off containers of up to thirty (30) yards capacity for two (2) additional special events per year, up to 2 pulls at the Special Events as requested by the City/Township/Village and collect the Solid Waste in such additional containers without additional charge. The Contractor shall provide open top roll-off containers and of up to thirty (30) yards capacity for the minor remodeling of any City/Township/Village Facility, up to five (5) pulls per year without additional charge. Additional pulls may be requested at the price indicated on Exhibit A. Unless otherwise agreed in writing, no additional fee shall be charged to the City/Township/Village for these services notwithstanding the frequency of collections that may be required at City/Township/Village Facilities or the volume or nature of the Solid Waste or Recyclable Materials collected.

**3.13 Commercial Establishments - Exclusivity.** The Contractor shall be the exclusive provider for all commercial establishments in the City/Township/Village. Contractor shall bill to the City/Township/Village in accordance with rates set forth on the attached Commercial Price Sheet.

#### **ARTICLE IV — CONTRACTOR'S CONDITIONS OF RESIDENTIAL UNIT COLLECTION**

**4.1 Collection Routes and Day of Collection.** On or before \_\_\_\_\_ (date), the Contractor shall furnish the City/Township/Village, for approval by the City/Township/Village: (a) collection routes consisting of a route map, showing the individual routes for the collection of Solid Waste, Recyclable Materials and Yard Waste and their beginning and ending points; (b) confirming the weekday on which all Residential Solid Waste, Recyclable Materials and Yard Waste will be collected within the City/Township/Village (collection of Residential

Solid Waste and Recyclable Materials shall be on the same weekly schedule, as set forth in the collection day and route schedule provided by the Contractor and approved by the City/Township/Village.) The Contractor shall not change the day of collection without written approval by the City/Township/Village. In the event such a change is approved by the City/Township/Village, written notice of such approved change must be provided to each affected Residential Unit at least ten (10) days prior to the new collection day. The City/Township/Village retains the right to adjust the collection routes submitted by the contractor to provide for public convenience and safety. The Contractor shall perform the Collection Services using the final City/Township/Village-approved Collection Routes. **4.2 Holidays.** Holidays that may be observed by the Contractor include New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas Day. In any week containing an observed holiday, the day of collection may be moved to the day immediately following the regular day of collection. The Contractor shall resume the regular schedule the following week.

**4.3 Starting and Ending Time.** Collection of Solid Waste, Recyclable Materials and Yard Waste shall occur between 7:00 a.m. and 7:00 p.m. on the day designated for collection. In the event the City/Township/Village notifies the Contractor that the Contractor has violated the permissible hours of collection three or more times in any ninety (90) day period, except for the purposes of picking up missed collections as set forth above, the City/Township/Village may, at the City/Township/Village's discretion, withhold two hundred dollars (\$200.00) per occasion from the quarterly payment due to Contractor, including the first three occasions, from the quarterly release of funds held by the Contractor as provided in 6.1.

**4.4 Notice to Residential Units.** No later than ten (10) days prior to the first date of the Collection Services and semi-annually thereafter during the term, the Contractor, at the Contractor's expense, shall provide written notice to each Residential Unit by letter delivered by U.S. mail listing the procedures and obligations of the owner or tenant of each Residential Unit receiving Collection Services. Such notice shall include a contact telephone number for the City/Township/Village and the Contractor, and each Residential Unit's collection schedule including holidays to be observed pursuant to Section 4.2. The initial notice, including the procedures and obligations, shall be submitted to the City/Township/Village for approval by \_\_\_\_\_ (date). Subsequent notices shall be submitted to the City/Township/Village for approval not later than twenty (20) days prior to mailing to the Residential Units.

**4.5 Procedure for Curbside Collection Service.** Except as provided in Section 4.6, collection of Solid Waste, Recyclable Materials and Yard Waste shall be made for each Residential Unit at one point of pick-up at the curbside of the Residential Unit or other identified location for non-curbed Residential Units.

**4.6 Procedure for Carry-out Collection Service.** The Contractor shall provide Carry-out Collection Service at the same rate as the Curbside Collection Service to any Resident with a physical disability which limits or impairs the ability to walk, in accordance with Ohio Revised Code Section 4503.44(A)(1). By agreement, either the City/Township/Village or the Contractor may maintain the list of Residents who are eligible to receive Carry-out Collection Service at no additional charge, and notify the other party of any changes to that list. The Contractor may provide optional Carry-out Collection Service to any Residential Unit requesting such service, in accordance with the Bid Price as stated on Exhibit A. The City/Township/Village shall not be responsible for the cost of optional Carry-out Collection Service.

**4.7 Handling of Collection Containers.** All re-usable collection containers used by a Resident shall be returned to the location from which they were removed, erect and with lids in place. If a collection container has no lid, such collection container shall be placed upside down at the location from which it was removed. The Contractor shall immediately pick up or sweep up any materials that the Contractor spills during collection. The Contractor is also responsible for cleanup of all hydraulic or other fluids which leak from collection vehicles. All such cleanups are required to be performed as soon as possible, but in no case longer than eight (8) hours after the spilled leak, or the end of the collection day. In the event the Contractor fails to adequately perform a cleanup required pursuant to this section, the City/Township/Village shall have the right to perform such cleanup services using City/Township/Village employees or other contractors and withhold release of quarterly payment in accordance with Section 6.2.

**4.8 Damage to Collection Containers.** The Contractor shall exercise due care to avoid damaging collection containers. The Contractor shall make a like kind replacement of collection containers that it has substantially damaged through the negligence of the Contractor. The Contractor shall warrant that any Contractor-provided collection container shall be free from defects; and engineered to last for not less than ten (10) years. Any damaged or broken Contractor-provided collection containers shall be replaced by the Contractor, at the sole cost and expense of the Contractor.

**4.9 Violation of Resident Obligations; Refusal to Collect.** Upon the first instance that a Resident places Solid Waste, Recyclable Materials or Yard Waste for collection in a manner that violates the Resident's obligations as contained in the original notice mailed by the Contractor to each Residential Unit, the Contractor shall collect such items and leave a tag advising the Resident of the reasons why such placement is unacceptable. Upon any subsequent instance that a Resident places Solid Waste, Recyclable Materials or Yard Waste for collection in a manner that violates the Resident's obligations, the Contractor may refuse to pick up such materials provided that at the time of refusal, the Contractor leaves a tag advising the Resident of the reasons for the Contractor's refusal to collect the materials. The Contractor shall provide the City/Township/Village with copies of all tags left at each Residential Unit pursuant to this section. The Contractor shall not take undue measures to determine compliance with specified weight or size restrictions, but shall act, in good faith, in favor of the City/Township/Village and the Residents receiving the Collection Services.

**4.10 Conduct of Contractor's Employees.** The Contractor shall perform all Collection Services in compliance with federal, state and local laws and ordinances, including rules and regulations adopted County District Board of Health. The Contractor's employees shall conduct themselves in a polite, courteous and helpful manner at all times and shall refrain from the use of loud or profane language. All employees shall wear a shirt or other appropriate clothing bearing the Contractor's company name in large type. The City/Township/Village may request transfer of any employee who performs his or her duties in a manner that is unsatisfactory to the City/Township/Village.

**4.11 Daily Reports.** The Contractor shall report any Residential Units not placing collection containers on the collection day. This report shall be provided to the City/Township/Village at the end of each collection day to avoid disputes regarding whether collection containers were placed for collection by the Resident.

**4.12 Contractor's Response to Complaints.** The City/Township/Village shall notify the Contractor of any complaints received regarding the Contractor's services or performance and suggest corrective measures. The Contractor shall, before 5:00 p.m. and before the last collection vehicle leaves the City/Township/Village at the end of the day of collection, contact the City/Township/Village to determine if any complaints have been received. The Contractor shall give prompt and courteous attention to all complaints, and in the case of missed collections, shall arrange for collection on the same day.

## **ARTICLE V — PERFORMANCE ASSURANCE, BOND, INSURANCE AND INDEMNIFICATION**

**5.1 Performance Assurance.** The Contractor shall immediately report to the City/Township/Village any notice or order from any governmental agency or court or any event, circumstance or condition which may adversely affect the ability of the Contractor to fulfill any of its obligations hereunder. If, upon receipt of such report, or upon the City/Township/Village's own determination that any such notice, order, event, circumstance or condition adversely affects the ability of the Contractor to fulfill its obligations, the City/Township/Village shall have the right to demand adequate assurances from the Contractor that the Contractor is able to fulfill its obligations. Upon receipt by the Contractor of any such demand, the Contractor, within fourteen (14) days of such demand, shall submit to the City/Township/Village its written response to any such demand. In the event that the City/Township/Village does not agree that the Contractor's response will provide adequate assurance of future performance to the City/Township/Village and its Residents, the City/Township/Village may, in the exercise of its sole and reasonable discretion, seek substitute or additional sources for the delivery of all or a portion of the Collection Services, declare that the Contractor is in default of its obligations under this Collection Agreement, or take such other action the City/Township/Village deems necessary to assure that the Collection Services will be provided including the right to terminate the Collection Agreement.

**5.2 Performance Bond.** Within ten (10) days after receiving the Notice of Award, the Contractor shall furnish and maintain for the duration of this Collection Agreement, including any renewal terms, a Performance Bond executed by a duly authorized surety, acceptable to the City/Township/Village in all respects, or such other security acceptable to the City/Township/Village, in the amount of \_\_\_\_\_ dollars (\$\_\_\_\_\_). The Performance Bond is attached as Exhibit D and may be renewed by a substitute surety acceptable to the City/Township/Village, provided that the terms and conditions of this Performance Bond obligate the surety to honor the Performance Bond until the City/Township/Village accepts, in writing, a substitute surety.

**5.3 Liability Insurance.** The Contractor, at the Contractor's sole cost and expense, agrees that it shall at all times during the term and any renewal term of this Collection Agreement carry and maintain in full force and effect, for the mutual benefit of the City/Township/Village and the Contractor, commercial general public liability insurance against claims for personal injury, death or property damage, occurring as a result of the performance of the Collection Services. The insurance coverage to be purchased and maintained by Contractor as required by this paragraph shall be primary to any insurance, self-insurance, or self-funding arrangement maintained by the City/Township/Village. The coverage and limits of such insurance are listed on Exhibit F, which is attached hereto and incorporated herein by reference. The Contractor shall be responsible for payment of any and all deductible(s) or retention(s) under the policies of insurance purchased and maintained by it pursuant to this Contract.

**5.4 Proof of Insurance.** All insurance required by this Collection Agreement shall be obtained from a responsible insurance company or companies reasonably satisfactory to the City/Township/Village and authorized to do business in the State of Ohio. The City/Township/Village shall be named as an additional insured in such insurance policies. Originals of the insurance policies or certificates shall be delivered to the City/Township/Village promptly upon commencement of the term of this Collection Agreement, and insurance policy renewals or certificates shall be delivered to the City/Township/Village not less than thirty (30) days prior to the expiration dates of any policy. Each policy shall provide that the insurance company shall give notice to the City/Township/Village at least thirty (30) days prior to the effective date of any cancellation or expiration of any such insurance policy.

**5.5 Workers' Compensation Coverage.** Prior to commencing work under this Collection Agreement, the Contractor shall furnish to the City/Township/Village satisfactory proof that the Contractor has paid current premiums for workers' compensation coverage for all persons employed in carrying out the work covered by this Collection Agreement. The Contractor shall hold the City/Township/Village free and harmless for any and all personal injuries of all persons performing work for the Contractor under this Collection Agreement.

**5.6 Indemnification.** The Contractor shall save, indemnify and hold the City/Township/Village, its Board of Trustees, employees, agents, officers and consultants (each an 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 indemnitee may hereafter incur, become responsible for, or pay out for or resulting from the performance of the Collection Services under this Collection Agreement, provided that any such claim, damage, loss, or expense:

(a) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including any resulting loss of use; and

(b) is caused in whole or in part by any intentional, reckless or negligent act or omission of the Contractor, anyone directly or indirectly employed by the Contractor, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. 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.

**5.7 Environmental Indemnification.** The Contractor shall save, indemnify and hold the City/Township/Village, its Board of Trustees, employees, agents, officers and consultants (each an 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 indemnitee may hereafter 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, to the extent caused by the Contractor's negligent, reckless, or willful misconduct relating to the Collection Services. Any indemnitee shall promptly notify the Contractor of any assertion of any claim against it for which it is entitled to be indemnified, 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.

**5.8 Indemnity Not Limited.** In any and all claims against the City/Township/Village, its employees, agents, officers and consultants, by any employee of the Contractor or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor under workers' compensation acts, disability benefit acts, or other employees' benefit acts.

**5.9 Personal Liability.** Nothing herein shall be construed as creating any personal liability on the part of any employee, agent, officer or consultant of the City/Township/Village.

**5.10 Covenant Not to Sue.** During the term or any renewal term of the Collection Agreement, the Contractor shall not challenge, directly or indirectly, the City/Township/Village of one or more facilities to provide processing and/or Disposal Services for Solid Waste, Recyclable Materials or Yard Waste generated within the City/Township/Village.

**ARTICLE VI — BILLING, PAYMENT, ADJUSTMENTS OR REDUCTIONS TO  
PAYMENT**

**6.1 Contractor to Charge and Obtain Payment of Collection Fees From Residential Units as Agent of the City/Township/Village.** The Contractor shall be responsible for invoicing and collecting fees from the Residents for the Collection Services provided by the Contractor under this Agreement on a quarterly basis on behalf of the City/Township/Village. Such fees include all related disposal and processing fees and shall not exceed the applicable amount specified on the Bid Form attached as Exhibit A. In the event the Contractor provides a collection container at the request of a Resident, the charge for such service shall be included as a separate item on the quarterly invoice not to exceed the amount specified on the Bid Form. Additionally, if an appliance containing chlorofluorocarbons is placed for collection by a Resident, the Contractor shall include the charge for removal of all chlorofluorocarbons pursuant to Section 3.9.

All fees collected by the Contractor shall be placed into and held in a separate and distinct account to the credit of the City/Township/Village. The funds shall not be released to the Contractor until approval from the City/Township/Village is obtained. Within five (5) to (7) days after the close of each calendar quarter, the Contractor must meet or speak with \_\_\_\_\_ (name or title) to determine whether it has performed its contractual obligations properly. Subject to any deductions for nonperformance, as provided in Sections 4.3, 4.7 and 6.2, the funds may be released to the Contractor upon the approval of \_\_\_\_\_ (name or title). Any funds withheld pursuant to Sections 4.3, 4.7 and 6.2 shall be forwarded to the City/Township/Village within three (3) business days.

**ALTERNATIVE BILLING / PAYMENT PROVISION (City/Township/Village to select)**

**6.1 Contractor Billings to City/Township/Village and City/Township/Village Payment.**

The Contractor shall bill the City/Township/Village for the Collection Services within ten (10) days following the end of the month, and the City/Township/Village shall pay the Contractor on or before the thirtieth (30<sup>th</sup>) day following the end of such month. Such billing and payment shall be based on the prices and charges stated in the Exhibit A, increased for additional services requested and approved by the City/Township/Village or reduced by the City/Township/Village as provided in this Collection Agreement. In the event the City/Township/Village reduces payment to the Contractor, in good faith and at its sole discretion, the City/Township/Village will provide a written explanation and reference to the authorizing provision of the Collection Agreement, including paragraphs 4.3, 4.7, and 6.2. In the event that the Contractor disputes the basis for the reduction in payment, the City/Township/Village shall consider the basis for the dispute and may refund any such deduction to the Contractor. However, the City/Township/Village is under no obligation to

accept the validity of any such dispute. The Contractor shall be paid for the number of Residential Units within the City based on the records maintained by the Franklin County Auditor as those parcels are listed on the real property tax duplicate for Franklin County, subject to Section 6.3. As the number of Residential Units being serviced in the City/Township/Village increases or decreases, the Contractor and the City/Township/Village may adjust the number of Residential Units accordingly.

**6.2 Deductions from Contractor's Invoice for Non-performance.** If the Contractor misses or fails to make a collection on the regularly scheduled day from any Residential Unit(s) on the same street three (3) or more times in any ninety (90) day period, even if corrected within twenty-four (24) hours, the City/Township/Village may withhold from payment or the quarterly release of funds held by the Contractor as provided in 6.1, calculated as follows: the lesser of Twenty-Five Dollars (\$25.00) per Residential Unit or Two Hundred and Fifty Dollars (\$250.00) per street (no more than one mile in length). In the event the City/Township/Village performs cleanup services pursuant to Section 4.7, the City/Township/Village may withhold from payment or the quarterly release of funds held by the Contractor one hundred dollars (\$100.00) per service call plus \$50.00 per hour for cleanup services performed by the City/Township/Village. The remedies available pursuant to this section are in addition to any other remedies available to the City/Township/Village pursuant to this Collection Agreement, and the City/Township/Village's determination not to use any remedy in response to a failure to perform shall not constitute a waiver by the City/Township/Village of the right to exercise any remedy in response to subsequent failures to perform.

**6.3 Unoccupied or Vacant Residential Units.** Residents shall be permitted to discontinue Collection Services on a temporary basis while unoccupied because of extended vacations of three (3) months or more, or when the Residential Unit is vacant, upon notification provided to the City/Township/Village. Residential Units that are unoccupied or vacant shall not be charged for Collection Service. The owner of the unoccupied or vacant Residential Unit shall notify the City/Township/Village that Collection Service is not required at the unoccupied or vacant Residential Unit. The City/Township/Village shall notify the Contractor of the addresses of unoccupied or vacant Residential Units. The Contractor shall not invoice the Residential Unit for Collection Service during the period of time when a Residential Unit is unoccupied or vacant, and the Contractor has been duly notified.

**6.4 Annual Review of Generation.** Annually at the request of the City/Township/Village or the Contractor, the Contractor and the City/Township/Village shall meet to review the volumes of Solid Waste, Recyclable Materials and Yard Waste collected from the City/Township/Village and its Residents and delivered to the City/Township/Village-Designated Facilities. If based on a review of the volumes collected, and based on the average per household generation figures available from the prior year, a decrease in the average per household generation of Solid Waste is attributable to an increase in the per household generation of separated Recyclable Materials or Yard Waste, the Contractor and the City/Township/Village, in a manner to be determined by the parties, may discuss and implement changes that will decrease the cost to the City/Township/Village and its Residents and may provide for additional benefits for the City/Township/Village. **6.5 Adjustment for**

**Changes in Cost of Fuel.** Either the Contractor or the City/Township/Village may request a quarterly per Residential Unit fuel price adjustment for Collection Services. For purposes of this provision, a request for fuel price adjustment, upon verification by the City/Township/Village, will result in an adjustment to the Contractor's invoice received by Residential Units. The form of invoice shall include a fuel price adjustment as an increase or decrease in the quarterly price per Residential Unit for the collection of Solid Waste, Recyclable Materials or Yard Waste.

The invoice shall include the base per Residential Unit, and a separate fuel price adjustment amount to be added or subtracted for each Residential Unit. The price may be adjusted when the price of diesel fuel has changed during the preceding period in increments of at least twenty-five cents (\$.25) per gallon. (For example: an increase or decrease in the price per gallon of diesel fuel between \$.25 and \$.49 shall be equal to \$.25 per gallon for purposes of the fuel price adjustment formula provided; an increase or decrease in the price per gallon of diesel fuel between \$.50 and \$.74 shall be equal to \$.50 per gallon for purposes of the fuel price adjustment formula, etc.).

The base price for fuel to be utilized in determining whether a fuel price adjustment is appropriate shall be the average price per gallon of diesel fuel on May 18, 2009 (the Monday preceding the Bid opening), as determined by the Weekly On-Highway Retail Diesel Fuel Price, All Types, for the Midwest Region, as maintained by the Energy Information Administration of the United States Department of Energy ("EIA").

The per Residential Unit fuel price adjustment may first be adjusted, if necessary, on the Collection Services commencement date contained in the Notice to Proceed. Thereafter, the per Residential Unit fuel price adjustment may be made at the end of each quarter (quarters being January through March, April through June, July through September, and October through December) of the contract period, when the price per gallon of diesel fuel, as published by the EIA each Monday, or Tuesday when Monday is a Federal Holiday, has changed by an average amount during the preceding quarter of at least twenty-five cents more or less (\$.25) per gallon from the base price. Each twenty-five cent incremental (\$.25) change in the average price per gallon of diesel fuel, when compared with the base price per gallon for diesel fuel, shall adjust the per Residential Unit fee as follows:

M = total number of miles traveled by the Collection Contractor in one month for the City/Township/Village, (including miles traveled on the collection route, and average number of round trips to: the Landfill, City/Township/Village-Designated Recyclable Materials Facility, and City/Township/Village-Designated Yard Waste Facility), divided by three (3) (the average number of miles per gallon for collection vehicles) multiplied by P, where P = fuel price adjustment in \$.25 per gallon increments) divided by RU, where RU = the number of Residential Units.

$$\text{Per Residential Unit base-line charge} + (M/3 \times P)/RU$$

**6.6 Permissible Pass-Through Charges.** Any and all governmental fee increases incurred for disposal or processing of Solid Waste at any Landfill utilized by Contractor or at the City/Township/Village-Designated Recycling Services may be passed on by the Collection Contractor. Any and all governmental fee decreases shall be passed on by the Collection Contractor. A governmental fee is a fee applied to the disposal or processing of Solid Waste levied by the United States Federal Government, State of Ohio, any County, or SWACO. Additionally, any increase or decrease in a rate or charge for the disposal of Solid Waste at any Landfill utilized by Contractor may be passed on by the Collection Contractor. The Collection Contractor shall give the City/Township/Village and Residents as much notice as is practicable before adjusting for governmental fee, rate or charge modifications. In the event an adjustment is necessary, the Collection Contractor charge per Residential Unit shall be adjusted by an amount to be determined as follows:

For Solid Waste Disposal: per ton price difference ÷ 12 For Recyclable Materials  
Processing: (1/3) (per ton price difference) ÷ 12 For Yard Waste Composting: (1/5)  
(per ton price difference) ÷ 12

**6.7 Data Collection and Quarterly Reporting.** The Contractor shall prepare and report the following data on the Collection Services provided by the Contractor on forms provided or approved by the City/Township/Village: (a) a record of the number of Residential Units within the City/Township/Village collected by the Contractor on each regular collection day; (b) a record of the total amount of Solid Waste, Recyclable Materials and Yard Waste collected within the City/Township/Village pursuant to this Collection Agreement that the Contractor delivers to the City/Township/Village-Designated Facilities specified in tons, for each day that such Solid Waste, Recyclable Material or Yard Waste is delivered to the City/Township/Village-Designated Facilities. Upon request of the City/Township/Village, the Contractor shall provide copies of weight receipts and invoices that the Contractor obtains from the City/Township/Village-Designated Facilities. The Contractor shall prepare such records and provide them to the City/Township/Village on not less often than a quarterly basis.

The Contractor shall also utilize the Re-TRACT™ data management system and report volumes collected of Solid Waste, Yard Waste and Recyclable Materials for the City for as long as the Solid Waste Authority of Central Ohio pays any required dues or annual subscription fees for use of the system. The Contractor shall make such data available to the City or to SWACO in the manner and frequency as requested by either party.

**6.8 Senior Citizen Discount.** The Contractor shall provide Residents who are sixty-two (62) years of age or older and the head of household a discount of ten percent (10%) or one dollar and fifty cents (\$1.50), whichever is greater, off the per Residential Unit charge contained in attached Exhibit A. By agreement, either the City/Township/Village or the Contractor will maintain a list of Residents entitled to this discount, which list shall be provided upon request to the other party.

## **ARTICLE VII – BREACH, CURE, AND TERMINATION**

**7.1 Breach of Contract; Termination.** Upon the material failure of the Contractor to comply with the terms or conditions of this Collection Agreement, the City/Township/Village may terminate the Collection Agreement in the following manner: the City/Township/Village shall provide notice to the Contractor, by certified mail, return receipt requested, of the alleged material failure of the Contractor to comply with the Collection Agreement. The Contractor shall have ten (10) days to provide the City/Township/Village with written assurance, which can be substantiated by reasonable proof, that the material failure(s) issues identified in the notice have been corrected. In the event that the Contractor fails to provide such written assurance and substantiating proof within the ten (10) day period for corrective action, or there are ongoing or continuing failures to perform the Collection Services, the City/Township/Village may terminate this Collection Agreement. Any such termination shall not take effect until the City/Township/Village is able to secure alternate or substitute performance for the Collection Services. The City/Township/Village may commence the process to obtain an alternate or substitute service provider for the Collection Services following the failure of the Contractor to cure the alleged material failure to the satisfaction of the City/Township/Village, in the exercise of the reasonable discretion of the City/Township/Village.

**7.2 Surety or City/Township/Village Cover in the Event of a Material Failure.** In the event of termination, the Contractor's surety shall have the right to take over and perform under the Collection Agreement. However, if the surety does not commence performance, the City/Township/Village shall take over performance by contract or otherwise at the expense of the surety. In the event there is no surety-provided cover, or the City/Township/Village is unable to provide or obtain cover, the effective termination date may be delayed by the City/Township/Village until the City/Township/Village completes the process of obtaining a substitute service provider of the Collection Services. In such event, the Contractor shall continue to perform its responsibilities under this Collection Agreement until the effective date of termination. Material failure includes, but is not limited to, the City/Township/Village's receipt of more than twenty (20) bona fide complaints in any given month regarding the Collection Services. A bona fide complaint is a complaint that the City/Township/Village has investigated and determined that the complaints represent failures of the Contractor to provide the required Collection Services. Material failure also includes the failure of the Contractor to provide the Performance Bond and proof of insurance as required, or payment of the City/Township/Village income taxes.

**7.3 Termination for Change of Control of Contractor.** The award of this Collection 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 Collection Agreement, the Contractor shall be merged or sold, the City/Township/Village shall have the right, in its sole discretion, to terminate this Collection Agreement 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 Collection Agreement until such time as the City/Township/Village is able to obtain alternate or substitute service. **7.4 Termination for Excessive Fuel Price Adjustment.** In the event that the fuel price adjustment provision results in a twenty percent (20%) increase in the price per Residential Unit per month for the Collection Services from the initial price per Residential Unit per month accepted by the City/Township/Village, the City/Township/Village may, in the exercise of its sole discretion and without liability to the Contractor, terminate this Agreement and issue a replacement Invitation to Bid. In the event of termination by the City/Township/Village as provided herein, the effective date of any such termination shall be the date of the Notice to Proceed in the replacement Invitation to Bid.

**7.5 Termination of City/Township/Village-Designated Facility Agreements.** The Contractor is required to deliver materials collected pursuant to the Collection Services to certain City/Township/Village-Designated Facilities. In the event of termination of an agreement with a City/Township/Village-Designated Facility, and until notification by the City/Township/Village of an alternative facility selected by the City/Township/Village, the Contractor shall be excused from delivering materials to the City/Township/Village-Designated Facility, and may deliver such materials to an alternate facility selected by the Contractor. Upon the City/Township/Village's designation of an alternate facility, the Contractor shall deliver all applicable materials to the alternate City/Township/Village-Designated Facility. Any increase or decrease in the cost of providing Collection Services as a result of the termination of a City/Township/Village-Designated Facility agreement shall be documented and provided to the City/Township/Village. Any additional reasonable costs as determined by the City/Township/Village incurred by the Contractor may be invoiced as an authorized increase in the price for that service on a per Residential Unit basis. In the event that any such increase in price requires that the City/Township/Village obtain competitive bids for the Collection Services, the Contractor shall continue to provide the Collection Services at the increased price as authorized until the City/Township/Village is able to issue a replacement Invitation to Bid. In the event of termination by the City/Township/Village as provided herein, the effective date of any such termination shall be the date of the Notice to Proceed in the replacement Invitation to Bid.

## **ARTICLE VIII – MISCELLANEOUS PROVISIONS.**

**8.1 Entire Agreement.** This Collection Agreement, Bid Form and other attachments and exhibits incorporated herein represent the entire agreement of the parties, and supersede all other prior written or oral understandings. This Collection Agreement may be modified or amended only by a writing signed by both parties.

- 8.2 Notices.** Written notice required to be given under this Collection Agreement shall be sufficient if delivered personally or mailed by certified mail, return receipt requested, to the Contractor, attention Richard E Cattran (name or title), and to the City/Township/Village, attention **Franklin Christman, Village Administrator** (name or title), at their respective addresses set forth above. Any change in address must be given in like manner.
- 8.3 Waiver.** No waiver, discharge, or renunciation of any claim or right of the City/Township/Village or the Contractor arising out of a breach of this Collection Agreement by the City/Township/Village or the Contractor shall be effective unless in writing signed by the City/Township/Village and the Contractor.
- 8.4 Applicable Law.** This Collection Agreement shall be governed by, and construed in accordance with, the laws of the State of Ohio. Venue is proper in Pickaway County, Ohio.
- 8.5 Unenforceable Provision.** If any provision of this Collection Agreement is in any way unenforceable, such provision shall be deemed stricken from this Collection 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.
- 8.6 Binding Effect.** This Collection Agreement shall be binding upon and shall inure to the benefit of, and be enforceable by and against, each party's successors and assigns. Provided, however, that the Contractor may not assign this Collection Agreement or any of the Contractor's rights or obligations without the express written consent of the City/Township/Village, which consent may be withheld for any reason or for no reason.
- 8.7 Rights or Benefits.** Nothing herein shall be construed to give any rights or benefits in this Collection Agreement to anyone other than the City/Township/Village and the Contractor. All duties and responsibilities undertaken pursuant to this Collection Agreement will be for the sole and exclusive benefit of the City/Township/Village and the Contractor and not for the benefit of any other party.

IN WITNESS WHEREOF, the parties by their duly authorized officers, trustees or partners, have executed this Agreement on the date set forth above.

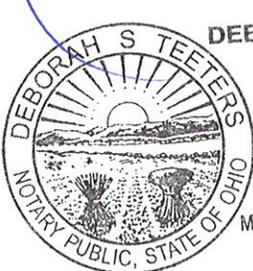
(SEAL)

ATTEST:

Deborah S Teeters  
 (Notary Signature)

CITY/TOWNSHIP/VILLAGE OF  
Ashville, OHIO

Franklin Christman  
 (Signature) **Franklin Christman**  
 (Title) **Village Administrator**



DEBORAH S TEETERS  
 NOTARY PUBLIC

STATE OF OHIO

My Comm. Expires May 27, 2018

The Contractor must indicate whether it is a Corporation, Limited Liability Company, Partnership, Company or Individual. THE INDIVIDUAL SIGNING SHALL, IN HIS OR HER OWN HANDWRITING, SIGN THE PRINCIPAL'S NAME, THE SIGNATORY'S OWN NAME, AND THE SIGNATORY'S TITLE. WHERE THE PERSON SIGNING FOR A CORPORATION IS OTHER THAN PRESIDENT OR VICE PRESIDENT, THE SIGNATORY MUST SHOW AUTHORITY TO BIND THE CORPORATION BY AFFIDAVIT.

(City/State/Zip)

\_\_\_\_\_  
(SEAL) *Commission Expires 7/31/18*

ATTEST:  
*Jessel Cunningham*  
\_\_\_\_\_  
(Notary Signature)  
*Jessel Cunningham*  
\_\_\_\_\_  
(Printed Name)

(Signature) *[Handwritten Signature]*  
\_\_\_\_\_  
*Richard E Cattran*  
(Printed Name)  
\_\_\_\_\_  
*Managing Member*  
(Title)  
\_\_\_\_\_  
*1300 S. Columbus Airport Rd*  
(Street Address) *Colo. OH 43207*