

AGREEMENT FOR THE COLLECTION, TRANSPORTATION, AND DELIVERY FOR
DISPOSAL OR PROCESSING OF RESIDENTIAL/COMMERCIAL SOLID WASTE,
RECYCLABLE MATERIALS AND YARD WASTE GENERATED WITHIN
THE 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 and collected from within the Village of Ashville, Ohio (the “Collection Agreement”) entered into this ____ day of _____ 2017, is by and between the Village of Ashville, Ohio (“Village”), with its offices located at 200 Station Street East, Ashville, Ohio 43103, and Local Waste Services (“Collection Contractor”), a Limited Liability Company with offices located at 1300 South Columbus Airport Road, Columbus, Ohio 43207.

RECITALS

WHEREAS, pursuant to Sections 715.43 and 3707.43 or Section 505.27 of the Ohio Revised Code, the 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 Village; and

WHEREAS, the Village has determined that it is in the best interests of the Village and its Resident/Business and Commercial Customers that the Village arrange for the guaranteed acceptance and processing of all Recyclable Materials generated at Residential/Commercial Units, Municipal Facilities and during Special Events located within the Village from a single Contractor on an exclusive basis (“Collection Services”); and

WHEREAS, on May 24, 2016 and on May 31, 2016, a group or City (s), Township (s), and Village (s), as part of a Joint Bidding Process with several communities located within the jurisdiction of the Solid Waste Authority of Central Ohio (“2016 Solid Waste Consortium”), invited through public advertisement qualified bidders to submit bids to provide Collection Services on the terms and conditions contained herein; and

WHEREAS, the Collection Contractor submitted a bid to become the exclusive provider of Collection Services for the benefit of the Village and its Resident/Business Locations; and

WHEREAS, following the July 26, 2016 official opening of the bids by the 2016 Solid Waste Consortium and consideration of bids for Collection Services, the Village determined that the Collection Contractor is qualified to provide the Collection Services to the Village and approved the award of the Collection Agreement to the Collection Contractor; and

WHEREAS, Solid Waste shall be delivered to the Franklin County Sanitary Landfill or an in-district transfer station owned and operated by the Solid Waste Authority of Central Ohio (“SWACO”); the Village has selected Rumpke of Ohio, Inc. (“Recycling Services Provider”) to provide Recycling Services, so Recyclable Materials shall be delivered to 1191 Fields Avenue, Columbus, Ohio; and Yard Waste may be delivered to any Yard Waste Services provider that has a contract with SWACO; and

WHEREAS, the above-enumerated facilities are the only Designated Facilities that the Collection Contractor may use for the delivery of Solid Waste, Recyclable Materials and Yard Waste collected by the Collection Contractor pursuant to this Collection Agreement; and

WHEREAS, the Village and the Collection Contractor have agreed on terms and conditions for the Collection Services in conformance with the Bid Documents, incorporated herein by reference, at the bid prices as stated on the Bid Forms, which are attached hereto as Exhibit A and incorporated by reference; and

WHEREAS, the Village and the Collection 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 Collection Contractor Status. The Village hereby authorizes the Collection Contractor, and the Collection Contractor hereby accepts such authorization, on an exclusive basis and as an independent Collection Contractor, to collect, transport, and deliver for disposal or processing, Solid Waste, Recyclable Materials and Yard Waste generated at Residential/Commercial Units, Municipal Facilities and during certain Special Events within the Village to the Designated Facilities. No other independent Collection Contractor or other person or entity shall provide the services agreed to in this Collection Agreement during the term of this Collection Agreement.
- 2.2 Effective Date and Term. This Collection Agreement shall be effective on the date of last execution. The term of this Agreement shall be for four (4) years, beginning on January 1, 2018 and terminating on December 31, 2021.
- 2.3 Implementation Man. From and after the Effective Date, the Collection 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 Collection 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 Collection Contractor's employees have completed training and driven the Village obligations of each owner or occupant of a Residential/Commercial Unit to receive Collection Services, and detailing the requirements for placement of collection containers is complete; and (d) that the delivery of any Collection Contractor-provided collection containers is complete; and (c) that the Collection Contractor has delivered to the Village proof of insurance, proof of workers' compensation coverage and the required Performance Bond, which are attached as Exhibits D, F, and G, and incorporated by reference. Finally, the Collection 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 Collection Contractor.

ARTICLE III — GENERAL REQUIREMENTS OF THE COLLECTION

CONTRACTOR

- 3.1 Delivery to Village Designated Facilities. The Collection Contractor shall provide regular weekly collection of Solid Waste, Recyclable Materials and Yard Waste from each Residential/Commercial Unit, Municipal Facilities and during Special Events located within the Village. All Solid Waste, Recyclable Materials and Yard Waste generated at each Residential/Commercial Unit shall be collected by the Collection Contractor, provided the Resident/Business places such items in the manner specified in the Village approved written notice specified in Section 2.3 and Section 4.4. The Collection Contractor shall collect, transport and deliver all: (a) Solid Waste to the Franklin County Sanitary Landfill or to an in-district Transfer Station operated by SWACO; (b) Recyclable Materials to the Village Designated Facility for Recyclable Materials; and (c) Yard Waste to any facility that has a contract to process Yard Waste with SWACO. The Collection Contractor shall pay to the owner or operator of the 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 Collection Contractor and delivered to the Village Designated Facilities. The charge by the Municipal Facilities shall be limited to the not-to-exceed prices guaranteed pursuant to the Village's Recycling Agreement (\$20.00 per ton), rates and charges approved by SWACO for the receipt of Solid Waste at the Franklin County Sanitary Landfill, and rates and charges approved by SWACO at any SWACO-contracted Yard Waste Facility. Source-Separated Recyclable Materials and Source-Separated Yard Waste shall not be delivered to any landfill. Source-Separated Recyclable Materials and Source-Separated Yard Waste shall not be commingled with Solid Waste by the Collection Contractor and delivered to any landfill. All Collection Services performed by the Collection Contractor pursuant to this Collection Agreement shall be performed in a competent and workmanlike manner.
- 3.2 Vehicles and Equipment. The Collection 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 Collection Contractor shall keep all vehicles and equipment in a clean, sanitary and safe operating condition at all times. All vehicles used by the Collection 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 Village. All vehicles shall be painted uniformly, and shall bear the Collection Contractor's name, vehicle number and Collection Contractor's telephone number. All vehicles and equipment may be inspected from time to time by the Village to determine that same are clean, sanitary and in safe operating condition; however, such an inspection shall not constitute a representation by the Village that the vehicles and equipment are safe. Any vehicles or equipment that, in the opinion of the Village are not clean, sanitary or in a safe operating condition shall be removed from service by the Collection Contractor until such vehicles have been cleaned and/or repaired to the satisfaction of the Village. Failure to comply with these standards constitutes grounds for termination of this Collection Agreement by the Village.
- 3.3 Collection Contractor's Office and Telephone. The Collection 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 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/Business or the Village. Provided that the Village approves, email may also be utilized to address complaints. The Collection Contractor shall also maintain an emergency contact number which is available 24 hours per day, seven (7) days per week.

- 3.4 Collection Contractor Ability to Communicate with Vehicles in the Field. The Collection Contractor shall maintain two-way radio or cellular telephone or texting service with the drivers of all vehicles used to provide Collection Services within the Village so that the Collection Contractor may communicate with the drivers in order to expedite the Collection Contractor's response to complaints regarding the Collection Services.
- 3.5 Employee The Collection 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 Collection Contractor shall provide each Resident and some Business Units with one (1) sixty-five (65) gallon wheeled collection container for Recyclable Materials at no additional charge. The Collection Contractor shall replace lost or damaged collection containers at the request of a Resident/Business. If a Resident/Business Unit requests a smaller or larger Recyclable Materials collection container at any time after the initial delivery of a sixty-five (65) gallon collection container, the Contractor shall provide such smaller or larger collection container upon request at no additional charge to the Resident/Business Unit. The Collection Contractor is only obligated to exchange a Resident/Business Unit's collection container for a smaller or larger collection container one time per calendar year.

The Collection Contractor shall collect all Recyclable Materials from each Resident/Business Unit from the Collection Contractor—provided collection container for Recyclable Materials, or from any other collection container used by a Resident/Business 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 may offer to rent additional wheeled collection container(s) for Recyclable Materials to Resident/Business at the price stated on Exhibit A. In the event a Resident/Business chooses to rent additional Recyclable Materials collection container(s) from the Contractor, the Contractor shall bill the Resident/Business directly for the use of such Contractor-provided collection container(s) at the price stated on Exhibit A. In no event will the Village be responsible for such additional charge.

- 3.7 Solid Waste and Yard Waste Collection Containers. Unless otherwise agreed, Resident/Business shall be provided a collection containers for Solid Waste and Yard Waste by the Collection Contractor. In the event that the Village does not supply collection containers to its Resident/Business, the Collection Contractor may offer to sell or rent collection containers to Resident/Business at the price stated on Exhibit A. In the event a Resident/Business chooses to purchase or rent additional collection containers from the Collection Contractor, the Collection Contractor shall bill the Resident/Business directly for the use of such Contractor-provided collection container(s) at the price and in the manner stated on Exhibit A.

Cardboard containers shall be acceptable for bulk or loose materials. The Collection Contractor may refuse to collect collection containers that are in excess of 50 pounds or cardboard containers that become wet, with the exception of Village or Collection Contractor provided collection containers.

Yard Waste shall be placed for collection in Yard Waste bags approved by the Village and SWACO, or in containers clearly identified as containing Yard Waste.

- 3.8 Collection of Bulk Items Included. Solid Waste shall include, and the Collection 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 Resident/Business Unit. The Collection 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 Collection Contractor on the same day as the 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 Collection 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 Village the Collection Contractor shall provide a written report to the Village of the number of CFC-containing appliances collected by the Collection Contractor, including the Collection Contractor's certification that the removal of CFC was performed in compliance with all applicable laws and regulations. The Collection Contractor shall invoice each Resident/Business who places an appliance containing CFC for the cost and proper removal of CFC. The Village shall not be responsible for the cost of CFC removal. In no event shall the Collection Contractor's invoice to a Resident/Business 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 Collection Contractor may limit the collection of construction and demolition debris to minor home remodeling projects only. If such a limit is to be imposed, the Collection Contractor must include such limitation in the Resident/Business obligation notice mailed to Resident/Business of the Village.
- 3.11 Services at Village Facilities. The Collection Contractor shall provide collection containers to the 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 Collection Contractor shall collect all Solid Waste and Recyclable Materials deposited in the collection containers on the collection day or days stated in Exhibit R. In the event that additional collections of the collection containers shown on Exhibit E are necessary, the Collection Contractor shall collect such containers as requested by the Village at no additional charge, provided that Village requests for additional collection are not greater than four (4) in a calendar month. Within reason, the number, sizes and locations of the collection containers are subject to change in the discretion of the Village upon written notice to the Collection Contractor.
- 3.12 Collection at Municipal Facilities and Special Events. The Collection Contractor shall provide Collection Services at Municipal Facilities and during Special Events in accordance with the terms and conditions as included on the attached Exhibit E. Additional Collection Services may be requested by the Village at the price indicated on Exhibit A. Unless otherwise agreed to in writing, no additional fees shall be charged to the Village for the Collection Services included on Exhibit E, notwithstanding the volume or nature of the Solid. Waste, Recyclable Materials or Yard Waste collected.
- 3.13 Commercial Establishments are not Excluded. This Collection Agreement does require the Collection Contractor to provide services to commercial establishments within the Village. Some Commercial Units the Village has made the determination that the commercial establishment is a Residential Unit Equivalent, or except as provided for under Exhibit E hereto.

ARTICLE IV — COLLECTION CONTRACTOR'S CONDITIONS OF RESIDENT/BUSINESS
UNIT COLLECTION

- 4.1 Collection Routes and Day of Collection. On or before November 15, 2017, the Collection Contractor shall furnish the Village for approval by the Village: (a) collection routes consisting of a route map, showing the individual routes for the collection of Solid Waste, Recyclable Materials and Yard Waste, their beginning and ending points, and number of Resident/Business Units per route; (b) confirm the weekday on which all Resident/Business Solid Waste, Recyclable Materials and Yard Waste will be collected within the Village (collection of Resident/Business Solid Waste, Recyclable Materials and Yard Waste shall be on the same weekly schedule, as set forth in the collection day and route schedule provided by the Collection Contractor and approved by the Village.) The Collection Contractor shall not change the day or days of collection without written approval by the Village. In the event such a change is approved by the Village written notice of such approved change must be provided to each affected Resident/Business Unit at least ten (10) days prior to the new collection day. The Village retains the right to adjust the collection routes submitted by the Collection Contractor to provide for public convenience and safety. The Collection Contractor shall perform the Collection Services using the final Village approved collection routes.
- 4.2 Holidays. Holidays that may be observed by the Collection 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 Collection 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 Village notifies the Collection Contractor that the Collection 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 Village may, at the Village's discretion, withhold or invoice two hundred dollars (\$200.00) per occasion from the quarterly payment due to Collection Contractor, including the first three occasions, from the quarterly release of funds held by the Collection Contractor as provided in 6.1.
- 4.4 Notice to Resident/Business Units. No later than ten (10) days prior to the first date of the Collection Services and two times per year thereafter during the term, the Collection Contractor, at the Collection Contractor's expense, shall provide written notice to each Resident/Business Unit by letter delivered by U.S. mail listing the procedures and obligations of the owner or tenant of each Resident/Business Unit receiving Collection Services. Such notice shall include a contact telephone number for the Village and the Collection Contractor, and each Resident/Business 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 Village for approval by NOVEMBER 15, 2017. Subsequent notices shall be submitted to the Village for approval not later than twenty (20) days prior to mailing to the Resident/Business 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 Resident/Business Unit at one point of pick-up at the curbside of the Resident/Business Unit or other identified location for non-curbed Resident/Business Units.

- 4.6 Procedure for Carry-out Collection Service. The Collection 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 Village or the Collection Contractor may maintain the list of Resident/Business 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 Collection Contractor shall 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 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/Business 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 Collection Contractor shall immediately pick up or sweep up any materials that the Collection Contractor spills during collection. The Collection 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 Collection Contractor fails to adequately perform a cleanup required pursuant to this section, the Village shall have the right to perform such cleanup services using Village employees or other Collection Contractors and withhold release of quarterly payment in accordance with Section 6.2.
- 4.8 Damage to Collection Containers. The Collection Contractor shall exercise due care to avoid damaging collection containers. The Collection Contractor shall make a like kind replacement of collection containers that it has substantially damaged through the negligence of the Collection Contractor. The Collection Contractor shall warrant that any Collection Contractor—provided collection container shall be free from defects and engineered to last (Or not less than ten (10) years. Any damaged or broken Collection Contractor—provided collection containers shall be replaced by the Collection Contractor, at the sole cost and expense of the Collection Contractor.
- 4.9 Violation of Residential/Commercial Obligations; Refusal to Collect. Upon the first instance that a Resident/Business places Solid Waste, Recyclable Materials or Yard Waste for collection in a manner that violates the Resident/Business's obligations as contained in the original notice mailed by the Collection Contractor to each Resident/Business Unit, the Collection Contractor shall collect such items and leave a tag advising the Resident/Business of the reasons why such placement is unacceptable. Upon any subsequent instance that a Resident/Business places Solid Waste, Recyclable Materials or Yard Waste for collection in a manner that violates the Resident/Business's obligations, the Collection Contractor may refuse to pick up such materials provided that at the time of refusal, the Collection Contractor leaves a tag advising the Resident/Business of the reasons for the Collection Contractor's refusal to collect the materials. The Collection Contractor shall provide the Village with copies of all tags left at each Resident/Business Unit pursuant to this section, or other such notification as agreed to between the Village and the Collection Contractor. The Collection 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 Village and the Resident/Business receiving the Collection Services.
- 4.10 Conduct of Collection Contractor and Its Employees. The Collection Contractor shall perform all Collection Services in compliance with federal, state and local laws and ordinances, including rules and regulations adopted by SWACO and the Franklin County District Board of Health. This includes, but is not limited to, SWACO's rules prohibiting Source Separated Recyclable Materials or Source Separated Yard Waste from being comingled with Solid Waste for delivery to the Franklin County Sanitary Landfill. Notwithstanding any deduction pursuant to Section 6.2, any and all violations may be enforced in accordance with Ohio Revised Code section 343.99.

The Collection 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 Collection Contractor's company name in large type. The Village may request transfer of any employee who performs his or her duties in a manner that is unsatisfactory to the Village.

- 4.11 Daily Reports. Upon request, the Collection Contractor shall report any Resident/Business Units not placing collection containers on the collection day to the Village. This report shall be provided to the Village at the end of each collection day to avoid disputes regarding whether collection containers were placed for collection by the Resident/Business. The Collection Contractor and the Village may agree to utilize a different procedure, provided such agreement is in writing.
- 4.12 Collection Contractor's Response to Complaints. The Village shall notify the Collection Contractor of any complaints received regarding the Collection Contractor's services or performance and suggest corrective measures. The Collection Contractor shall contact the Village to determine if any complaints have been received at least once before 5:00 p.m., and once again before the last collection vehicle leaves the Village at the end of the day of collection. The Collection 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 Collection Contractor shall immediately report to the 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 Collection Contractor to fulfill any of its obligations hereunder. If, upon receipt of such report, or upon the Village's own determination that any such notice, order, event, circumstance or condition adversely affects the ability of the Collection Contractor to fulfill its obligations, the Village shall have the right to demand adequate assurances from the Collection Contractor that the Collection Contractor is able to fulfill its obligations. Upon receipt by the Collection Contractor of any such demand, the Collection Contractor, within fourteen (14) days of such demand, shall submit to the Village its written response to any such demand. In the event that the Village does not agree that the Collection Contractor's response will provide adequate assurance of future performance to the Village and its Resident/Business, the 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 Collection Contractor is in default of its obligations under this Collection Agreement, or take such other action the 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 Collection 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 Village in all respects, or such other security acceptable to the Village in the amount of **twenty-five thousand dollars (\$25,000.00)**. The Performance Bond is attached as Exhibit D and may be renewed by a substitute surety acceptable to the Village provided that the terms and conditions of this Performance Bond obligate the surety to honor the Performance Bond until the Village accepts, in writing, a substitute surety.

- 5.3 Liability Insurance.** The Collection Contractor, at the Collection 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 Village and the Collection 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 Collection Contractor as required by this paragraph shall be primary to any insurance, self-insurance, or self-funding arrangement maintained by the Village. The coverage and limits of such insurance are listed on Exhibit. F, which is attached and incorporated by reference. The Collection 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 Village and authorized to do business in the State of Ohio. The Village shall be named as an additional insured in such insurance policies. Originals of the insurance policies or certificates shall be delivered to the Village promptly upon commencement of the term of this Collection Agreement, and insurance policy renewals or certificates shall be delivered to the 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 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 Collection Contractor shall furnish to the Village satisfactory proof that the Collection Contractor has paid current premiums for workers' compensation coverage for all persons employed in carrying out the work covered by this Collection Agreement. Such proof must be included as Exhibit G, which is attached and incorporated by reference. The Collection Contractor is responsible for forwarding updated proof of payment for workers' compensation coverage on an on-going basis, as such proofs expire. The Collection Contractor shall hold the Village free and harmless for any and all personal injuries of all persons performing work for the Collection Contractor under this Collection Agreement.
- 5.6 Indemnification.** The Collection Contractor shall save, indemnify and hold the Village, its Council, 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 Collection Contractor, anyone directly or indirectly employed by the Collection 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 Collection Contractor shall save, indemnify and hold the Village, its Council, 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 Collection Contractor's negligent, reckless, or willful misconduct relating to the Collection Services. Any indemnitee shall promptly notify the Collection Contractor of any assertion of any claim against it for which it is entitled to be indemnified, shall give the Collection Contractor the opportunity to defend such claim and shall not settle such claim without the approval of the Collection Contractor. This section shall survive expiration or earlier termination of this Agreement.
- 5.8 Indemnity Not Limited. In any and all claims against the Village, its employees, agents, officers and consultants, by any employee of the Collection 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 Collection 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 Village.
- 5.10 Covenant Not to Sue. During the term or any renewal term of the Collection Agreement, the Collection Contractor shall not challenge, directly or indirectly, the Village's designation of one or more facilities to provide processing and/or Disposal Services for Solid Waste, Recyclable Materials or Yard Waste generated within the Village or SWACO's designation of one or more facilities to provide processing and/or Disposal Services for Solid Waste or Yard Waste.

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

- 6.1 Contractor to Bill and Obtain Payment of Service Charges From for Residential/Commercial Units from the Village. Such Service Charges shall include all related collection, 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 any Optional Services at the request of an Owner, the charge for such additional Service Charges shall be included as a separate item on the invoice not to exceed the amount specified on the Bid Form. Any fuel price adjustment charged in accordance with Section 6.5 shall also appear as a separate invoice item.
- 6.2 Unoccupied or Vacant Residential/Commercial. Resident/Business 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/Commercial Unit is vacant, upon notification provided to the Collection Contractor. Residential/Commercial Units that are unoccupied or vacant shall not be charged for Collection Service. The Owner of the unoccupied or vacant Residential/Commercial Unit shall notify the Collection

Contractor that Collection Services are not required at the unoccupied or vacant Residential/Commercial Unit. The Collection Contractor shall not invoice the Village for Collection Services during the period of time when a Residential/Commercial Unit is unoccupied or vacant, and the Collection Contractor has been duly notified.

6.3 Annual Review of Generation. Annually at the request of the Village or the Collection Contractor, the Collection Contractor and the Village shall meet to review the volumes of Solid Waste, Recyclable Materials and Yard Waste collected from the Village and its Resident/Business and delivered to the 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 Collection Contractor and the Village in a manner to be determined by the parties, may discuss and implement changes that will decrease the cost to the Village and its Resident/Business and may provide for additional benefits for the Village.

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

The invoice shall include the base per Residential/Commercial Unit, and a separate fuel price adjustment amount to be added or subtracted for each Residential/Commercial 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 July 25, 2016 (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 base price is \$2.41 per gallon.

The per Residential/Commercial 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/Commercial 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/Commercial Unit fee as follows:

M = total number of miles traveled by the Collection Contractor in one month for the Village (including miles traveled on the collection route, and average number of round trips to: the Franklin County Sanitary Landfill, Village Designated Recyclable Materials Facility, and 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/Commercial Units.

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

If the Collection Contractor utilizes vehicles powered by compressed natural gas (CNG), the Collection Contractor shall not automatically be eligible for the fuel price adjustment, but may apply for an adjustment upon providing proof of the percentage of the Collection Contractor's fleet that is diesel versus CNG.

- 6.5 Permissible Pass-Through Charges. Any and all governmental fee increases incurred for disposal or processing of Solid Waste at the Franklin County Sanitary Landfill or at the Village Designated Recycling Services and Yard Waste Services Facilities 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, Franklin County, or SWACO. Additionally, any increase or decrease in a rate or charge for the disposal of Solid Waste at the Franklin County Sanitary Landfill may be passed on by the Collection Contractor. The Collection Contractor shall give the Village and Resident/Business 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 Resident/Business 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

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

The Collection Contractor shall also utilize the Re-TRAC[™] data management system and report volumes collected of Solid Waste, Yard Waste and Recyclable Materials for the Village 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 Collection Contractor shall make such data available to the Village or to SWACO in the manner and frequency as requested by either party.

- 6.8 Senior Citizen Discount. The Collection Contractor shall provide Resident 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 Village or the Collection Contractor will maintain a list of Resident 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 Collection Contractor to comply with the terms or conditions of this Collection Agreement, the Village may terminate the Collection Agreement in the following manner: the Village shall provide notice to the Collection Contractor, by certified mail, return receipt requested, of the alleged material failure of the Collection Contractor to comply with the Collection Agreement. The Collection Contractor shall have ten (10) days to provide the 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 Collection 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 Village may terminate this Collection Agreement. Any such termination shall not take effect until the Village is able to secure alternate or substitute performance for the Collection Services. The Village may commence the process to obtain an alternate or substitute service provider for the Collection Services following the failure of the Collection Contractor to cure the alleged material failure to the satisfaction of the Village in the exercise of the reasonable discretion of the Village.
- 7.2 Surety or Village Cover in the Event of a Material Failure. In the event of termination, the Collection 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 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 Village is unable to provide or obtain cover, the effective termination date may be delayed by the Village until the Village completes the process of obtaining a substitute service provider of the Collection Services. In such event, the Collection 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 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 Village has investigated and determined that the complaints represent failures of the Collection Contractor to provide the required Collection Services. Material failure also includes the failure of the Collection Contractor to provide the Performance Bond and proof of insurance as required, or payment of the Village income taxes.
- 7.3 Termination for Change of Control of Collection Contractor. The award of this Collection Agreement is based on the ownership and control of the Collection 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 Collection Contractor shall be merged or sold, the Village shall have the right, in its sole discretion, to terminate this Collection Agreement upon thirty (30) days written notice of termination to the Collection Contractor. In the event of such notice of termination, the Collection Contractor shall continue to perform under the terms of this

Collection Agreement until such time as the 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/Commercial Unit per month for the Collection Services from the initial price per Residential/Commercial Unit per month accepted by the Village, the Village may, in the exercise of its sole discretion and without liability to the Collection Contractor, terminate this Agreement and issue a replacement invitation to Bid. In the event of termination by the 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 Village Designated Facility Agreements.** The Collection Contractor is required to deliver materials collected pursuant to the Collection Services to certain Village Designated Facilities. In the event of termination of an agreement with a Village Designated Facility, and until notification by the Village of an alternative facility selected by the Village, the Collection Contractor shall be excused from delivering materials to the Village Designated Facility, and may deliver such materials to an alternate facility selected by the Collection Contractor. Upon the Village's designation of an alternate facility, the Collection Contractor shall deliver all applicable materials to the alternate Village Designated Facility. Any increase or decrease in the cost of providing Collection Services as a result of the termination of a Village Designated Facility agreement shall be documented and provided to the Village. Any additional reasonable costs as determined by the Village incurred by the Collection Contractor may be invoiced as an authorized increase in the price for that service on a per Residential/Commercial Unit basis. In the event that any such increase in price requires that the Village obtain competitive bids for the Collection Services, the Collection Contractor shall continue to provide the Collection Services at the increased price as authorized until the Village is able to issue a replacement Invitation to Bid. In the event of termination by the 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 Forms 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 Collection Contractor, attention Rick Cattran, Managing Partner, and to the Village, attention Mayor 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 Village or the Collection Contractor arising out of a breach of this Collection Agreement by the Village or the Collection Contractor shall be effective unless in writing signed by the Village and the Collection 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 Collection Contractor may not assign this Collection Agreement or any of the Collection Contractor's rights or obligations without the express written consent of the 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 Village and the Collection Contractor. All duties and responsibilities undertaken pursuant to this Collection Agreement will be for the sole and exclusive benefit of the Village and the Collection Contractor and not for the benefit of any other party.
- 8.8 **Unresolved Findings for Recovery.** The Contractor warrants that as of the date of Contractor's execution of this Agreement, the Contractor has no unresolved findings for recovery as issued by the Auditor of State pursuant to Section 9.24 of the Ohio Revised Code.

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

CITY/TOWNSHIP/VILLAGE OF
ASHVILLE, OHIO:

(Signature)

FRANKLIN CHRISTMAN
(Printed Name)

VILLAGE ADMINISTRATOR
(Title)

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

(SEAL)

(Signature)

ATTEST:

(Printed Name)

(Notary Signature)

(Title)

(Printed Name)

(Street Address)

(City/State/Zip)