

RESOLUTION NO. 2017-06-_____

CITY OF TONTITOWN, WASHINGTON COUNTY, ARKANSAS

A RESOLUTION AUTHORIZING THE MAYOR OF TONTITOWN, ARKANSAS TO APPROVE AND EXECUTE A SOLID WASTE AND RECYCLABLES COLLECTION AGREEMENT BY AND BETWEEN THE CITY OF TONTITOWN AND WASTE MANAGEMENT OF ARKANSAS, INC.

WHEREAS, Arkansas Code Annotated § 8-6-201 *et seq.* requires every municipality to have a system in place to provide for the collection and disposal of solid waste;

WHEREAS, the City of Tontitown issued notice of a Solid Waste Request for Proposal and after receiving proposals submitted by interested solid waste haulers, considered the proposals at the April 4, 2017 regular City Council meeting; and

WHEREAS, on April 4, 2017 following the consideration of the proposals by the solid waste haulers, the City Council of the City of Tontitown, Arkansas voted to accept the proposal submitted by Waste Management of Arkansas, Inc., "Contractor"; and

WHEREAS, the City of Tontitown, Arkansas now desires to enter into Solid Waste and Recyclables Agreement with Waste Management of Arkansas, Inc., under the terms and the same, or substantially the same, terms and conditions of the Solid Waste and Recyclables Agreement attached hereto as Exhibit "A".

NOW, THEREFORE, BE IT HEREBY RESOLVED by the City Council of the City of Tontitown as follows:

Section 1. The terms and conditions of the Solid Waste and Recyclables Agreement by and between the City of Tontitown, Arkansas and Waste Management, of Arkansas, Inc., are hereby approved.

Section 2. The Mayor of the City of Tontitown, Arkansas, is hereby authorized to finalize and execute said Solid Waste and Recyclables Agreement with Waste Management of Arkansas, Inc.

Section 3. The Solid Waste and Recyclables Agreement shall be effective as of _____, 2017

PASSED and **APPROVED** this _____ day of _____, 2017.

APPROVED:

Paul Colvin, Jr., Mayor

ATTEST:

Rhonda Ardemagni, City Recorder-Treasurer

SOLID WASTE AND RECYCLABLES COLLECTION AGREEMENT

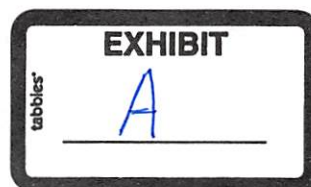
This Solid Waste and Recyclables Collection Agreement (the "Agreement") is dated this ____ day of _____, 2017, by the City of Tontitown, Arkansas (the "City") and Waste Management of Arkansas, Inc., (the "Contractor").

1. BACKGROUND

In _____ 2017, the City solicited proposals for solid waste collection and recycling services for certain geographic areas within the City. Proposals were received on April 4, 2017 and the Contractor's proposal for Solid Waste and Recyclables Collection Service was accepted by the City Council.

2. DEFINITIONS

- 2.01 Bags: Plastic sacks, designed to store refuse, not to exceed 33 gallons in size, with sufficient wall strength to maintain physical integrity when lifted by the top. Total weight of a bag and its contents shall not exceed thirty-five (35) pounds.
- 2.02 Bin (Multi-Family Residential): Metal receptacle designed to be lifted and emptied mechanically.
- 2.03 Bin (Residential Recycling): See Recycling Container.
- 2.04 Brush: Plants or grass clippings, leaves or tree trimmings.
- 2.05 Bulky Wastes: Household items, other than white goods and construction and demolition material, which are customary to ordinary housekeeping operations and whose large size precludes or complicates its handling by normal solid waste collection methods.
- 2.06 City: The Tontitown City Council.
- 2.07 Commercial and Industrial Refuse: All Bulky Waste, Construction Debris, Garbage, Rubbish and Stable Matter generated by a Customer at a Commercial and Industrial Unit.
- 2.08 Commercial and Industrial Unit: All premises, locations or entities, public or private, requiring Refuse collection within the corporate limits of the City, not a Residential Unit.
- 2.09 Commodity: Material that can be sold in a spot or future market for processing and use or reuse.



- 2.10 Commodity Buyer: A buyer or processor selected by Contractor pursuant to the Contract Documents, of Recyclable Materials delivered by Contractor.
- 2.11 Construction Debris: Waste building materials resulting from construction, remodeling, repair, or demolition operations.
- 2.12 Contract Documents: The Request for Proposals, Instruction to Contractors, Contractors Proposal, General Specifications, the Contract Performance Bond, and any addenda or changes to the foregoing document agreed to by the City and Contractor, and Agreement signed by Contractor and City.
- 2.13 Contractor: Such private firm designated by the City for the collection, transportation, and/or disposal of the solid waste and recyclable materials collection and processing.
- 2.14 Customer: An occupant of a Residential Unit who generates Refuse.
- 2.15 Dead animals: Animals or portions that have expired from any cause except those slaughtered or killed for human use. Dead animals are classified as unacceptable waste by the Arkansas Department of Environmental Quality and shall not be disposed of in a landfill.
- 2.16 Disposal site: See Landfill (Sanitary).
- 2.17 Garbage: All accumulation of waste (animal, vegetable and/or other matter/ that results from the preparation, processing, consumption, dealing in, handling, packing, canning, storage, transportation, decay or decomposition of meats, fish, fowl, birds, fruits, grains or other animal or vegetable matter) (including, but not by way of limitation, used tin cans and other food containers; and all putrescible or easily decomposable waste animal or vegetable matter which is likely to attract flies or rodents); except (in all cases) any matter included in the definition of Bulky Waste, Construction Debris, Dead Animals, Hazardous Waste, Rubbish or Stable Matter.
- 2.18 Hazardous Waste: Solid wastes regulated as hazardous under the Resource Conservation and Recovery Act, 42 U.S.C. Section 1002, et seq., or regulated as toxic under the Toxic Substances Control Act, 15 U.S.C.A. Section 2601 et seq., regulations promulgated there under or applicable state law concerning the regulation of hazardous or toxic wastes.
- 2.19 Landfill (Sanitary): Eco-Vista Landfill an Arkansas Class I landfill, or any other alternate, duly permitted sanitary landfill approved for use by the Tontitown City Council.

- 2.20 Non-Recyclables means any materials in the Single Stream Materials that are not Recyclables.
- 2.21 Premises: All public and private establishments, including individual residences, all multi-family dwellings, residential care facilities, hospitals, schools, businesses, other buildings, and all vacant lots.
- 2.22 Recyclable Materials or Recyclables: A material that has been recovered or diverted from the non-hazardous waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products that may otherwise be produced using raw or virgin materials. Recyclable Material is not solid waste.
- 2.23 Recycling Container: A plastic receptacle, designed for the purpose of curbside collection of Recyclables, with minimum capacity of 18 gallons.
- 2.24 Refuse: Residential Refuse and Bulky Waste, Construction Debris and Stable Matter generated at a Residential Unit, unless the context otherwise requires, and Commercial and Industrial Refuse.
- 2.25 Residential Garbage: All Garbage and Rubbish generated by a Customer at a Residential Unit.
- 2.26 Residential Unit: A dwelling, or multi-family structure within the corporate limits of the City occupied by a person or group of persons. A Residential Unit shall be deemed occupied when either water or domestic light and power services are being supplied thereto. A condominium dwelling, whether of single or multi-level construction, shall be treated as a Residential Unit. Each single-family dwelling within any such Residential Unit shall be billed separately. Each apartment complex consisting of 5 or more units shall utilize bins and be serviced once a week.
- 2.27 Rubbish: Nonputrescible solid waste (excluding ashes), consisting of both combustible and noncombustible waste materials; combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, used or scrap tires, and similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture, and the like materials which will not burn at ordinary incinerator temperatures (1600 degrees Fahrenheit to 1800 degrees Fahrenheit).
- 2.28 Special Waste: Waste, from a non-residential source, meeting any of the following descriptions: (a) containerized waste (e.g. a drum, barrel, portable tank, box, pail, etc.), (b) waste transported in bulk tanker, (c) liquid waste, (d) sludge waste, (e) waste from an industrial process, (f) waste from a pollution control process, and (g) residue and debris from the cleanup of a spill or release of chemical, or (h) any other waste defined by Arkansas law, rule or regulation as "Special Waste".

- 2.29 **Solid Waste:** All non-hazardous (as defined by CERCLA and other applicable laws) and non-special (See Special Waste definition) solid waste material produced by Residential Units including unwanted or discarded waste material in a solid or semi solid waste, including but not limited to, garbage, ashes, refuse, rubbish, yard waste (including brush, tree trimmings and Christmas trees), discarded appliances, home furniture and furnishings, provided that such material must be of the type and consistency to be lawfully accepted at the Sanitary Landfill under the applicable federal, state and local laws, regulations and permits governing each.
- 2.30 **Single Stream Materials:** All materials deposited by a Residential Unit Customer in the Customer's Recycling Container, including Recyclables and Non-Recyclables.
- 2.31 **Stable Matter:** All manure and other waste matter normally accumulated in or about a stable, or any animal, livestock or poultry enclosure, and resulting from the keeping of animals, poultry, or livestock.
- 2.32 **Unusual Accumulation:** (a) For residences, each regular collection more-than four (4) Bags of garbage, or the equivalent; (b) large, heavy, or bulky objects such as furniture or appliances; and (c) materials judged to be hazardous such as oil, acid, or caustic materials.
- 2.33 **Unacceptable Waste:** Any waste, the acceptance and handling of which by Contractor would cause a violation of any permit, condition, legal or regulatory requirement, substantial damage to Contractor's equipment or facilities, or present a danger to the health or safety of the public or Contractor's employees, including, but not limited to, hazardous waste, special waste (except as otherwise provided herein), untreated medical waste, dead animals weighing ten pounds (10 lbs.) or greater, solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit, soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements.
- 2.34 **Yellow Bag Program:** A program offered to senior citizens, age 65 or greater, where instead of a base rate a senior citizen would purchase yellow bags for trash disposal. These bags may be purchased in quantities of not less than five (5) at the Tontitown Water and Sewer Office.

3. TERM

- 3.01 The term of this Agreement shall be five (5) years, commencing _____, 2017, with one (1) five-year option pending agreement of both parties. Should either the City or Contractor elect not to renew and extend the contract for an

additional five-year period, notice must be given to the other party in writing no less than 180 days prior to the expiration of the Agreement.

4. TYPES OF COLLECTION:

4.01 Contractor is herein granted the exclusive right to provide Residential Garbage and Recyclables curbside collection service in the City according to the provisions and rates set forth herein. All Residential Garbage must be placed by residents in Bags, which are properly tied to prevent spilling. Contractor shall not be obligated to collect any Residential Waste placed outside of properly tied plastic Bags.

4.02 Residential Garbage Collection: Contractor shall provide Residential Garbage curbside collection at Residential Units once a week. Contractor has no obligation to collect Garbage that is not properly placed curbside in Bags.

Further, Contractor shall provide City a copy of maps indicating the routes used in the collection of waste from all residential customers. The City has the right to request modification and/or updates on routes of Contractor.

4.03 Recycling Collection Service: Contractor shall provide Residential Units with curbside single stream materials collection once per week in Recycling Containers. Contractor has no obligation to collect Single Stream Materials that are not properly placed curbside in a Recycling Container. The types of Recyclables that are acceptable and included within the recycling collection services may change due to market conditions, and Contractor will advise the City of any such changes thirty (30) days in advance of implementing such change.

The following are the specifications and materials that Contractor will accept in the recycling program:

RECYCLABLES must be dry, loose (not bagged) and include ONLY the following:

Aluminum cans - empty	Newspaper
PET bottles with the symbol #1 – with screw tops only - empty	Mail
HDPE plastic bottles with the symbol #2 (milk, water bottles detergent, and shampoo bottles, etc.) – empty	Magazines, glossy inserts and pamphlets
Plastic containers with symbols #3-#7 – empty (no expanded polystyrene)	Uncoated paperboard (ex. cereal boxes; food and snack boxes)
Steel and tin cans – empty	Uncoated printing, writing and office paper
Phone Books	Old corrugated containers/cardboard (uncoated)

NON-RECYCLABLES include, but are not limited to the following:

Plastic bags and bagged materials (even if containing Recyclables)	Microwavable trays
Mirrors, Windows, Auto Glass	Glass food and beverage containers
Light bulbs	Coated cardboard
Porcelain and ceramics	Plastics unnumbered
Expanded polystyrene; foam products	Coat hangers
Glass and metal cookware/bakeware	Household appliances and electronics,
Hoses, cords, wires	Yard waste, construction debris, and wood
Flexible plastic or film packaging and multi-laminated materials (e.g., plastic grocery bags)	Needles, syringes, IV bags or other medical supplies
Food waste and liquids, containers containing such items	Textiles, cloth, or any fabric (bedding, pillows, sheets, etc.)
Unacceptable Materials or containers which contained Unacceptable Materials	Napkins, paper towels, tissue, paper plates, paper cups, and plastic utensils
Any Recyclable materials or pieces of Recyclables less than 4" in size in any dimension	Propane tanks, batteries

Recycling Delivery Specifications:

Residential Unit Single Stream Materials shall not contain more than twenty percent (20%) Non-Recyclables and may contain no Unacceptable Waste. If a load of material does not meet these specifications, the load may be rejected and the Contractor shall have the right to dispose of all contamination in a load of material and residue resulting from or remaining after processing of the materials. The Contractor has the right to dispose of all residue and contamination resulting from or remaining after processing of the Single Stream Materials. The Contractor reserves the right upon notice to discontinue acceptance of any category of materials set forth above as a result of market conditions related to such materials and makes no representations as to the recyclability of the materials.

4.04 **Bulky Wastes Collection:** In addition, the Contractor shall provide a special Bulky Waste collection service once each month to all Residential Unit customers free of charge. Residential Units may place one (1) Bulky Waste item curbside for collection each month. Contractor has no obligation to collect more than one Bulky Waste item per Residential Unit per month.

4.05 **Unusual Accumulations Collection:** The Contractor may charge for the collection of Unusual Accumulations, as may be negotiated between the Residential Unit and the Contractor.

5. COLLECTION OPERATION:

5.01 **Hours of Operation:** Collection of residential solid waste shall begin no earlier than 7:00 o'clock A.M. and shall generally not extend beyond 6:00 o'clock P.M. No residential collection shall occur on Sunday.

- 5.02 Hours of Disposal: Contractor shall dispose of waste within the operating hours of disposal site.
- 5.03 Routes of Collection: The Contractor, as approved by the City, shall establish Collection routes. The City shall be provided route collection maps by the Contractor.
- 5.04 Holidays: The following shall be holidays for purposes of this Agreement:

New Year's Day
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Christmas Day

Contractor may decide to observe any or all the above-mentioned holidays by suspension or collection service on the holiday, but the Contractor must meet its obligation as required. NOTE: Contractor shall be responsible for providing make-up collection for residential routes that occur on specified holidays. Make-up days shall be the next business day following the holiday.

- 5.05 Complaints: At a minimum, Contractor's customer complaint procedure shall provide that the customer complaint shall be addressed within 24 hours of receipt of such complaint and that the complaint shall be promptly resolved. Any missed pickups of Residential Garbage will be collected the same business day if notification to the Contractor is provided by 2:00 p.m. but not later than 12:00 p.m. the next business day if notification is provided after 2:00 p.m.
- 5.06 Collection-Equipment: Contractor, at its sole cost and expense, agrees to furnish, all trucks, equipment, machines, carts and labor which are reasonably necessary to adequately, efficiently, and properly collect and transport garbage from accounts serviced by Contractor in accordance with this Agreement. Collection of garbage shall be made using sealed packer-type trucks, and such equipment shall not be allowed to leak nor scatter any waste within the limits of the City nor while in route to the disposal site, where such accumulation shall be dumped.

All motor vehicles used in performance of the obligations herein created shall be clearly marked with the Contractor's name, telephone number and unit number legible from 150 feet. All collection equipment shall be maintained in a first class, safe, and efficient working condition throughout the term of the Contract. Such vehicles shall be maintained and painted as often as necessary to preserve and present a well-kept appearance, and a regular preventative maintenance program. The City may inspect Contractors vehicles at any time to insure compliance of equipment with Contract, or require equipment replacement

schedule to be submitted to City. Such vehicles shall be washed and painted or repainted as often as necessary to keep them in a neat and sanitary condition.

- 5.07 Disposal: The Contractor shall deliver solid waste collected to the designated landfill, known as Eco-Vista located in Tontitown, Arkansas, unless otherwise specified by the City of Tontitown. If at some future time, there is no disposal site available, additional costs of disposing of said waste may be negotiated by the City and Contractor in good faith.

The Contractor shall strictly observe all laws, rules, and regulations governing disposal practices at the Disposal Site.

- 5.08 Non-Routine Collection: The Contractor will be required to provide annual Christmas tree collection.

- 5.09 Spillage: The Contractor shall not be responsible for scattered refuse unless the same has been caused by its acts or those of any of its employees, in which case all scattered refuse shall be picked up immediately by the Contractor. A scoop type shovel shall be maintained on each truck for clean-up activity. Contractor will not be required to clean up or collect loose refuse or spillage not caused by the acts of its employees, but shall report the location of such conditions to the Mayor's office of the City so that proper notice can be given to the customer at the premises to property contain refuse.

- 5.10 Vicious Animals: Employees of the Contractor shall not be required to expose themselves to the dangers of vicious animals to accomplish refuse collection in any case where the owner or tenants have animals at large, but the Contractor shall immediately notify the City, in writing, of such condition and of its inability to make collection.

- 5.11 Hazardous Waste: Contractor shall not be obligated to pick up Hazardous Waste, including refrigeration appliances that have not had CFC's removed by a certified technician, tires, automobile/vehicle batteries, petroleum products, paints and other chemicals and solvents identified as hazardous by the U.S. Environmental Protection Agency.

- 5.12 Protection From Scattering: Vehicles shall not be overloaded so as to scatter refuse; however, if refuse is scattered from Contractors vehicle for any reason, it shall be picked up immediately.

- 5.13 Accessibility: All trash at Residential Units shall be readily accessible to the Contractor's crew and not blocked. Unless there are unique circumstances approved by the City, bagged trash shall be placed at or within five (5) feet of the curb of a road or right of way or in the alley for those areas agreed to by the City and Contractor. Contractor shall make arrangements to provide special collection for individuals with demonstrated disabilities requiring "at door collection." To

qualify for “at door collection” the occupant of the Residential Unit shall present Contractor with medical evidence their inability to bring the bagged trash to the curb. Contractor’s employees shall not enter any residential unit to pick up the garbage.

- 5.14 Employee’s Conduct: The Contractor shall require all Contractor’s employees to be courteous at all times, not to use loud or profane language, and to do their work as quietly as possible.
- 5.15 Permits: The Contractor shall take out and pay for any permits required by the Arkansas Department of Environmental Quality, the City, or any other governmental authority.
- 5.16 Contract Management – Administration: The work included in this Agreement shall be under the administration of the Mayor or the Mayor’s duly authorized representative.
- 5.17 City’s Obligations: The City agrees to perform all obligations required of the City pursuant to the terms of this Agreement, including, but not limited, the following:
- (a) The Mayor or the Mayor’s designee shall communicate City decisions to Contractor on a timely basis from time to time as required under this Agreement;
 - (b) The City shall notify Contractor monthly in writing of Customers to be added or dropped from Contractor services, or of any change in Customer service;
 - (c) The City shall timely pay Contractor pursuant to this Agreement;
 - (d) The City shall timely inform Contractor of complaints made by Customers;
 - (e) The City shall work with Contractor in good faith to resolve complex Customer service issues; and
 - (f) The City shall educate Customers to encourage, promote and obtain proper Waste disposal and recycling as required by this Agreement, including educating Residential Unit Customers to assure proper and timely trash set out, and proper recycling techniques.
- 5.18 Enforcement: City grants unto Contractor the right to seek an injunction against any third party, which is believed to be infringing on the rights of Contractor to this Agreement, including Contractor’s exclusive franchise rights granted herein. By granting this right to Contractor, the City in no way reduces its right or

obligation to enforce this Agreement or any other City ordinance relating to the collection and disposal of Waste. Furthermore, Contractor shall have all rights and remedies available to it under Arkansas law to collect delinquent payment of fees by City. The City agrees to take all steps necessary and permitted by law to require Customers to comply with obligations to pay for Solid Waste collection services in accordance with this Agreement and City ordinances.

6. EMPLOYEE RELATIONS

6.1 Equal Opportunity: All contracts awarded by the City are subject to provisions of State and Federal laws to include the following:

(a). The Contractor will not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin, disability, age or other protective class recognized by the state or federal government. The Contractor will ensure that applicants are employed and the employees are treated during employment without regard to their race, color, sex, religion, national origin, disability age or recognized protected class. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; requirement of advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by an appropriate agency of the Federal government setting forth the requirements of these nondiscrimination provisions. Contractor will comply with the ADA and regulations promulgated pursuant thereto regarding qualified individuals with a disability.

(b). The Contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualifies applicants will receive consideration for employment without regard to race, color, sex, religion, national origin or age.

6.2 Personnel: All personnel of Contractor shall be competent and skilled in the performance of the work to which they are assigned. Contractor shall establish and maintain criteria for the hiring and performance of its personnel to monitor the competency and skill of its employees. Failure or delay in the performance of the Agreement due to the Contractor's inability to obtain personnel of the number and skill required shall constitute a default of the Agreement.

Whenever the Contractor's designated representative is not present, orders may be given by the Mayor, or designee, to the Contractor's senior route supervisor or route supervisor, who may have immediate charge thereof.

6.3 Drug Free Workplace: Contractor shall institute a Drug Free Workplace program and provide training and assistance in implementing the program.

7. RECORDS & REPORTING; ROUTES

- 7.1 Accurate Records: City and Contractor agree to maintain at their respective places of business adequate records relating to the performance of their respective duties under this Contract. Such records shall be made available at any time during reasonable business hours for inspection by the other party, at the inspecting party's expense, and upon reasonable advance notice; provided, however, only records directly relating to this Agreement and necessary to substantiate invoicing must be disclosed to the other party.
- 7.2 Routes: The Contractor, as reasonably approved by the City, shall establish Collection routes. City shall provide Contractor with maps of the City containing sufficient detail for Contractor to design collection routes. Contractor shall provide to the City route maps for approval by the City, which approval shall not be unreasonably withheld.

8. RATES AND BILLING

8.1 Contractor's Compensation:

(a). Initial Rate: Contractor's initial rate for Residential Waste collection shall be \$11.50 per Residential Unit per month (all rates and fees to be charged by Contractor hereunder referred to as the "Base Rates"). Contractor shall also be entitled to an additional \$2.50 per month if the Residential Customer subscribes to the Recycling Service. If the customer meets the requirements for the yellow bag program, the rate shall be \$1.54 per yellow bag instead of the \$11.50 monthly rate. However, if subscription recycling is desired, the \$2.50 fee would still be assessed. The Base Rate above is for four (4) Bags of Garbage collected from a Residential Unit per week. The rate for more than 4 Bags up to eight (8) Bags per week will be \$22.43 per Residential Unit per month. The Base Rate more than 8 Bags up to 12 up to twelve (12) Bags per week will be \$33.64 per Residential Unit per month. These rates do not include the City's franchise fee.

The current Residential Unit house counts are: 868 homes at Base Rate of no more than 4 Bags per week, 23 homes at more than 4 up to 8 Bags per week, 4 homes at more than 8 and up to 12 Bags per week, and 176 Recycling Services customers.

(b). Modification to Rates: Base Rates charged by Contractor for services will remain fixed as set forth above and will not be adjusted for changes in the CPI (as hereinafter defined), until five (5) years after the Effective Date of this Agreement. Commencing after the completion of the first five (5) years after the Effective Date of this Contract, and continuing annually on each anniversary date thereof, Base Rates for services shall be adjusted by the same percentage as the Consumer Price Index, US City Average for All Urban Consumers, Water, Sewer and Trash Collection, Not Seasonally Adjusted, Base Period December 1983 =

100 (published by the United States Bureau of Labor Statistics, Consumer Price Index) (the "C.P.I.") shall have increased during the preceding twelve months period beginning December 1 and ending November 30. In the event the U.S. Department of Labor, Bureau of Labor Statistics ceases to publish the C.P.I., the parties hereto agree to substitute another equally authoritative measure of change in the purchasing power of the U.S. dollar as may be then available to carry out the intent of this provision.

(i). Additional Adjustments: Contractor shall also be entitled to an increase in Base Rates upon thirty (30) days' written notice to the City, to offset any increase in fees or taxes due to new or amended local, state, or federal laws, rules, or regulations. Documentation of such increases shall be submitted to the City at its request.

8.2 Billing & Payment Process: The City or its designee will act as the billing and collection agent for Residential Units. Contractor shall send the City an invoice no later than the 12th day of the month for services the Contractor rendered during the preceding month. Within twenty (20) days after the City's receipt of Contractor's invoice, the City will send Contractor payment for all services rendered. Contractor's past due invoices shall bear interest at the highest rate permitted by law. The City will provide the Contractor Residential Unit house count changes in writing via the City's Billing Department. Contractor has the right to rely upon the Residential Unit house counts that the City provides to Contractor. Any errors or mistakes in the house count provided by the City to Contractor shall be corrected within 6 months of the date provided to the Contractor or the mistake is waived by both parties. Contractor has the right, but not the obligation, to verify the house count provided by the City.

8.3 Disposal: Contractor shall deliver all collected Residential Waste to the Disposal Site for disposal or processing. In the event the Disposal Site cannot accept the collected Waste due to uncontrollable circumstances not caused by Contractor, Contractor and the City agree to negotiate in good faith an adjustment of Contractor's compensation as a result of any change in Contractor's transportation costs. The City shall not unreasonably withhold agreement to such compensation.

Contractor warrants that all use of the Disposal Site granted under the terms of this Agreement shall be in complete accord with all applicable Federal, state and local laws and regulations now in effect or subsequently adopted governing the use of the landfill, including, but not limited to, the Environmental Protection Agency's regulations relative to solid waste and waste treatment and disposal.

Pursuant to ADEQ regulations, putrescible wastes, non-putrescible wastes and domestic wastes shall be disposed of in a Class I landfill facility. Putrescible wastes mean solid waste which contains organic matter capable of being decomposed by microorganisms and of such a character and proportion as to be capable of attracting or providing food for birds and potential disease vectors.

Furthermore, according to ADEQ regulations, inert non-putrescible wastes shall be disposed of in a Class IV landfill facility.

Contractor warrants that all of its drivers who haul Waste materials to the City's Landfill under the terms of this Agreement are properly licensed under and according to applicable law.

Contractor shall acquire title to the Solid Waste and Recyclable Materials when they are loaded onto Contractor's trucks. Title to Unacceptable Waste shall remain with the generator of the material.

9. INSURANCE

Insurance Requirements:

A. The Contractor shall secure and maintain throughout the duration of this Contract insurance of such types and in the amounts specified herein to protect Contractor and the interests of the City against all hazards or risks of loss as hereinafter specified. The form and limits of such insurance, together with the underwriter thereof in each case, must be acceptable to the City but regardless of such acceptance it shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times. Failure of the Contractor to maintain adequate coverage shall not relieve Contractor of any contractual responsibility or obligation.

Satisfactory certificates of insurance shall be filed with the City prior to starting any fieldwork on this Agreement. The certificate shall state that thirty (30) days advance written notice will be given to the City before any policy covered thereby is changed or canceled.

B. Worker's Compensation and Employers Liability: This insurance shall protect the Contractor against all claims under applicable state workers compensation laws. The Contractor shall also be protected against claims for injury, disease, or death of employees, which, for any reason, may not fall within the provisions of a workers compensation law. This policy shall include "all states" endorsement. The liability limits shall not be less than:

(a). <u>Worker's Compensation & Disability</u>	<u>Statutory</u>
Employer's Liability	\$1,000,000 each occurrence
Public Liability Insurance	\$1,000,000 each occurrence

The Contractor shall maintain during the life of this Agreement such General Liability Insurance as shall protect it against claims for damages resulting from (i) bodily injury, including wrongful death, and (ii) property damage, which may arise from operations under the Agreement whether such operations are conducted by Contractor or by any subcontractor or anyone directly or indirectly employed by either of them. The minimum acceptable limits of liability to be provided by such General Liability Insurance shall be as follows:

(i)	Bodily Injury Limits	\$500,000 each occurrence \$500,000 each aggregate
(ii)	Property Damage Limits	\$500,000 each occurrence \$500,000 each aggregate
(iii)	Environmental Impairment	\$1,000,000 each occurrence \$1,000,000 each aggregate

The General Liability Insurance required by the preceding subparagraph shall include the following extensions of coverage:

The property damage coverage shall include a Comprehensive General Liability for above policy or similar thereto.

The property damage coverage shall be included.

Contractual Liability coverage shall be included.

Protective Liability coverage shall be included to protect the Contractor against claims arising out of operations performed by its subcontractors.

Products liability and/or Completed Operations coverage shall be included.

C. Automobile Liability Insurance: The Contractor shall take out and maintain during the term of this Agreement such comprehensive automobile (vehicle) liability insurance as shall protect it against claims for damages resulting from (i) bodily injury, including wrongful death, and (ii) property damage, which may arise from the operations of any owned, hired or non-owned vehicles used by or for it in any capacity in connection with the carrying out of the Agreement. The minimum acceptable limits of liability to be provided by such comprehensive vehicle liability insurance shall be as follows:

(i)	Bodily Injury Limits	\$500,000 each occurrence
(ii)	Property Damage Limits	\$500,000 aggregate

D. **Umbrella Policy:** This insurance shall protect Contractor against all claims in excess of the limits provided under the Compensation, Comprehensive Automobile Liability, and the comprehensive General Liability. The liability limits of the Umbrella include the City, as additional insured and maintained in force for the duration of the Contractor by the Contractor. Policy shall provide a liability limit of not less than \$5,000,000 and shall protect the City against any and all claims and liabilities for injury to or death of person, or damage to property caused in whole or in part by the negligent acts or omissions of Contractor, his agents, employees, or subcontractors, to the extent caused by Contractor, in connection with or resulting from the operations performed under the terms of this Agreement.

E. **Proof of Carriage of Insurance:** Each certificate of insurance shall state the type of coverage certified and shall be identified as one of the following:

<u>Insurance Coverage</u>	<u>Limits</u>
Worker's Compensation	Statutory
Employer's Liability	\$1,000,000 each occurrence
Comprehensive General Liability	
Bodily Injury	\$500,000 each occurrence
	\$500,000 each aggregate
Property Damage	\$500,000 each occurrence
	\$500,000 each aggregate
Pollution Legal Liability	\$1,000,000 each occurrence
	\$1,000,000 each aggregate
Comprehensive Automobile	
Bodily Injury	\$500,000 each occurrence
Property Damage	\$500,000 each occurrence
Umbrella Policy	\$5,000,000 each occurrence

10. **INDEMNITY**

The Contractor will indemnify and save harmless the City and their respective officers, agents, servants, and employees from, and against, any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, and attorney's fees arising out of a willful or negligent act, or omission, including, but not limited to, actions arising under any local, state or federal environmental laws or regulations, of the Contractor, its officers, agents, servants, and employees, to the extent caused by the negligent acts or omissions of Contractor; provided, however, that the Contractor shall not be liable for any suits, actions, legal proceedings, claims, demands, damages, costs, expenses, and attorney's fees

arising out of the award of this Agreement or a willful or negligent act, or omission of the City, their officers, agents, servants, and employees.

The indemnification in this section shall be in effect during the term of this Agreement and for a period of three (3) years thereafter.

11. PERFORMANCE BOND

Prior to commencement of services under this Agreement, the Contractor shall furnish to the City, and keep current, a Performance Bond for the faithful performance of this Agreement and all obligations arising hereunder in the amount of Total Service Fee. It shall be executed by a surety company licensed to do business in the State of Arkansas and included on the list of surety companies approved by the Treasurer of the United States. Such Performance Bond shall survive any bankruptcy petition filed by the Contractor, or any other insolvency or reorganization action initiated by the Contractor.

12. DEFAULT

If the Contractor defaults under the performance of any of its covenants or conditions herein, and fails to cure such default within thirty (30) days after the City has given Contractor written notice of such default, City may (1) terminate this Agreement as of any date which City may select, provided dated such date is at least thirty (30) days after the expiration of the above thirty (30) day cure period, (2) cure the default at the expense of the Contractor, and/or (3) have recourse to any other rights or remedies available at law.

In addition to any other defaults, the City may deem the Contractor in default upon the occurrence of any of the following:

- A. The Contractor shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy (court) or a petition or answer seeking an arrangement for its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any other law or statute of the United States or any state thereof, or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property. In the event that any bankruptcy, insolvency, reorganization, receivership, or similar proceeding is instituted by or against Contractor, or in the event Contractor makes an assignment for the benefit of creditors, the Contractor shall not assert or list this Agreement as an asset of such action; or
- B. By order of decree of a court, the Contractor shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of the stockholders of the Contractor, seeking its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under

any law or statute of the United States or of any state thereof, provided that if any such judgment or order is started or vacated within sixty (60) days after the entry thereof, any notice of default shall be and become null, void and of no effect; unless such started judgment or order is reinstated in which case, said default shall be deemed immediate; or

- C. By, or pursuant to, or under the authority of any legislative act, resolution or rule or any order to decree of any Court or governmental board, agency or officer having jurisdiction, a service, trustee or liquidator shall take possession or control of all or substantially all the property of the contractor, and such possession or control shall continue in effect for a period of sixty (60) days; or
- D. The Contractor has defaulted by allowing any final judgment for the payment of money to stand against him unsatisfied and said default is not cured within thirty (30) days of receipt of written notice by the City to do so; or
- E. In the event that the unsatisfied final judgment under subsection (4) above is the subject of a judicial proceeding, the Contractor shall not be in default if the sum of money is bonded. The bonds shall be in the form acceptable to the City; or
- F. Failure to comply with the Equal Opportunity, Displaced Employees provisions, Drug Free Workplace or other personnel requirements described in Section 6 of this Agreement.

13. CITY DEFAULT

If the City defaults under the performance of any of its covenants or conditions contained herein, and fails to cure such default within thirty (30) days after Contractor has given City written notice of such default, Contractor may (1) terminate this Agreement as of any date which Contractor may select, provided dated such date is at least thirty (30) days after the expiration of the above thirty (30) day cure period, (2) cure the default at the expense of the City, and/or (3) have recourse to any other rights or remedies available at law.

14. MISCELLANEOUS

- 14.1 Assignment: The Contractor shall not assign the Agreement or any portion thereof or delegate any of the Contractor's rights or duties thereunder without written approval of the City, except to an affiliate of Contractor. This written approval shall not be considered as making the City a party to such subcontract or subjecting the City to liability of any kind to any subcontractor. No subcontract shall under any circumstances relieve the Contractor or the surety of liability and obligation under the contract, and all transactions shall be made through the Contractor. Subcontractors will be recognized and dealt with only as workers and representatives of the Contractor and as such shall be subject to the same

requirements of character and competence as required of the Contractor's employees. Any purported assignment made in violation of this provision shall be void and of no force and effect and shall constitute a material breach of this Agreement.

14.2 Governing Law: This Agreement shall be construed in accordance with the laws of the State of Arkansas, without regard to conflict of laws principles. The parties agree, and hereby give their consent, that jurisdiction and venue of any action brought to enforce, relating to, or arising out of this Agreement will be exclusively in the state or federal courts having jurisdiction in the county where the services are provided. In the event it becomes necessary for either party to institute an action to enforce or interpret this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and expenses incurred to defend or prosecute such action.

14.3 Notices: All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given (i) if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, (ii) by delivering same in person to the intended addressee, (iii) or by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee. Notice so mailed shall be effective upon its deposit with the United States Postal Service or any successor thereto; notice sent by such a commercial delivery service shall be effective upon delivery to such commercial delivery service; notice given by personal delivery shall be effective only if and when received by the addressee; and notice given by other means shall be effective only if and when received at the office or designated place or machine of the intended addressee. Notwithstanding anything contained herein to the contrary, any notice of default under this Agreement must be both (i) mailed by Certified Mail, Return Receipt Requested and (ii) by first class United States mail, postage prepaid. For purposes of notice, the addresses of the parties shall be as set forth below; provided, however, that either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other party in the manner set forth herein.

If to the City, at:

City of Tontitown
Attn: Mayor
201 East Henri De Tonti
Tontitown, Arkansas 72770
Attention: Tontitown City Mayor

City Attorney
R. Justin Eichmann
Harrington, Miller, Kieklak, Eichmann &
Brown, P.A.
4710 S. Thompson St., Suite 102
Springdale, AR 72764

If to the Contractor at: Waste Management of Arkansas, Inc.
1041 Arbor Acres Avenue
Springdale, AR 72762-6223
Attn: Public Sector Manager

with a copy to: Waste Management of Arkansas, Inc.
9708 Giles Lane
Austin, TX 78754
Attn: Senior Legal Counsel; and

- 14.4 Expansion of Contract Area: The City may expand the service area with annexations of contiguous property by giving Contractor thirty (30) days advance notice. The Contractor shall adjust service to the expanded area upon receiving proper notification from the City. The City shall make the appropriate changes to the Remuneration due to the Contractor upon the beginning of service.
- 14.5 Compliance with Laws: The Contractor shall conduct its operations under this Agreement in compliance with all applicable Federal, State and local laws and regulations.
- 14.6 Emergency Service Provisions: In the event of a hurricane, tornado, major storm, natural disaster, or other such event, the City may grant the Contractor a variance from regular routes and schedules. As soon as practicable after such event, the Contractor shall advise the City when it is anticipated that normal routes and schedules can be resumed. The City shall make an effort through the local news media to inform the public when regular services may be resumed. Contractor and City understand and agree that also, in the event of a hurricane, tornado, major storm, natural disaster, Contractor shall have no obligation under this Agreement to collect any storm debris resulting therefrom.
- 14.7 Severability: If any provision of this Agreement shall be declared illegal, void or unenforceable by a court of competent jurisdiction, the other provisions shall not be affected but shall remain in full force and effect.
- 14.8 Modification: This Agreement constitutes the entire agreement by the parties and it may not be altered, revised or modified except by a written modification signed and properly authorized by the parties.

14.9 Proprietary Information as Property of Company: Contractor and City recognize that in order to comply with all the terms and conditions of this Agreement it may, on occasion, be necessary for the Contractor to provide the City access to certain proprietary information. To the extent that such information is individually noted and marked "Proprietary" by the Contractor, the City acknowledges that such information will always be considered to be in the sole custody and control of the Contractor, that the information is only being reviewed by the City, and, that despite the immediate location of such material, the Contractor shall never be deemed to have provided the material to the City for its possession and control, nor to include such information as a part of any public record. In the absence of a court order issued by a court of competent jurisdiction, or a subpoena duly issued according to law, should any person request access to such information solely upon the basis of state or federal freedom of information laws, the City shall immediately notify Contractor and Contractor shall take whatever appropriate action it deems necessary, including without limitation, filing a temporary injunction. City agrees not to disclose any of the information during the pendency of such legal matter. Nothing in this Agreement should be considered to mean that in the event it is necessary for purposes of litigation, state or federal public finance laws, or otherwise, for the City to publish such information, the City is waiving any right to request publication or to comply with any appropriate order, statute, regulation, subpoena or request for publication of such material.

14.10 Force Majeure: The performance of this Agreement may be suspended and the obligations of either party excused in the event of and during the period that such performance is prevented or delayed by a Force Majeure occurrence. "Force Majeure" shall mean:

- (a). Any actual or threatened act of God, including hurricanes, tornadoes, landslides, lightning, earthquakes, weather conditions, fire, flood, explosion, sabotage or similar occurrence, acts of a public enemy, extortion, war, blockade or insurrection, riot, civil disturbance, strike or other labor disturbances, governmental actions or regulations, governmental requests or requisitions for national defense, or breakdown or injury to, or shortage in, facilities used for the handling, processing or transportation of Solid Waste or any other cause beyond the reasonable control of either party;
- (b). The order or judgment of any federal, State, or local court, administrative agency or governmental body (excluding decisions of federal courts interpreting federal tax laws, and decisions of State courts interpreting State tax laws) if it is not also the result of the willful misconduct or negligent action or inaction of the party relying thereon; provided that neither the contesting in good faith of any such order or judgment nor the failure to so contest shall constitute or be construed as a measure of willful misconduct or negligent action or inaction of such party;

- (c). The suspension, termination, interruption, denial, or non-renewal of any permit or approval essential to the operation of the Contractor; or
- (d). A Change in Law: "Change in Law" means (i) the adoption, promulgation, or modification or reauthorization after the date of this Agreement of any law, regulation, order, statute, ordinance, rule or binding judicial or administrative ruling that was not adopted, promulgated, modified or reissued on or before the date of this Agreement which materially and adversely affects the operations of Contractor, or (ii) the imposition of any materially adverse conditions in connection with the issuance, renewal, or modification of any permit, license, registration, notice of intent or approval after the date of this Agreement, which in the case of either (a) or (b) establishes requirements affecting a party's operation under this Agreement that is materially more burdensome than the requirements that are applicable to such party and in effect as of the date of this Agreement. A change in any federal, State, county, or other tax law or workers compensation law shall not be a Change of Law.

- 14.11 Prior Agreements: This Agreement contains the entire agreement between the parties hereto with respect to the matter set forth herein. No provision of any other document, including any request for proposal, shall be deemed incorporated herein, it being the intent of the parties that this Agreement sets forth the full agreement of the parties with respect to the services described herein. No change, alteration or amendment will be binding on either party unless set forth in a document duly executed by all parties hereto.
- 14.12 Non-Waiver: The failure of any party to insist upon strict performance of any of the terms, conditions, and provisions of this Agreement shall not be deemed a waiver of future compliance and shall in no way prejudice the remaining provisions of this Agreement.

IN WITNESS WHEREOF, the City and Contractor have executed this Agreement on the date hereinafter referred.

CITY OF TONTITOWN

By: _____

Its: Mayor

By: _____

Its: City Clerk

Date: _____

WASTE MANAGEMENT OF ARKANSAS, INC.

By: _____

Its: President

Date: _____

EXHIBIT "A"
(Area to be Attached)