

RESOLUTION NO. 2022-____

CITY OF TONTITOWN, WASHINGTON COUNTY, ARKANSAS

A RESOLUTION AUTHORIZING THE MAYOR TO NEGOTIATE AND EXECUTE AN AMENDMENT TO THE SOLID WASTE AND RECYCLABLES AGREEMENT WITH WASTE MANAGEMENT OF ARKANSAS, INC. FOR THE CITY OF TONTITOWN, ARKANSAS.

WHEREAS, the City of Tontitown entered into a Solid Waste and Recycling Agreement (“Agreement”) with Waste Management of Arkansas, Inc. (“WM”) on June 6th, 2017 pursuant to the requirements of Ark. Code Ann. § 8-6-201; and

WHEREAS, it has come to the attention of the City Council that it is necessary to make an amendment to the Agreement in order to transfer the responsibility for billing to WM for the direct billing of customers, and to put into effect certain others changes to the Agreement set forth hereto in the attached Exhibit “A”; and

WHEREAS, the City Council has reviewed and considered the proposed amendments and has determined that it would be in the best interest and benefit to the citizens of Tontitown to authorize the Mayor to negotiate and execute an Amendment to the Agreement based on the terms set forth herein.

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

Section 1. The Mayor is hereby authorized to negotiated execute an amendment to the Solid Waste and Recyclables Agreement by and between the City of Tontitown and Waste Management of Arkansas, Inc. in order to transfer responsibility of billing customers to Waste Management of Arkansas, Inc. and to put into effect certain changes to the Agreement as substantially set forth in the Amendment attached Exhibit “A”

PASSED AND APPROVED this _____ day of _____ 2022.

APPROVED:

Angela Russell, Mayor

ATTEST:

Rhonda Ardemagni, City Clerk-Treasurer

MUNICIPAL SOLID WASTE AND RECYCLABLES COLLECTION AGREEMENT

This Municipal Solid Waste and Recyclables Collection Agreement (this “Agreement”) is entered into as of the 1st day of October, 2022, between the **City of Tontitown, Arkansas** (“City”), acting by and through its duly authorized signatory, and **Waste Management of Arkansas, Inc.** (“Contractor”), an Arkansas corporation, acting by and through its duly authorized representative. The City and Contractor may each be referred to individually as “party” and may collectively be referred to as “parties.”

WITNESSETH:

WHEREAS, the City desires to grant to Contractor the exclusive right to continue operating and maintaining the service of collection, transportation, and disposal of residential waste and recyclables, over, upon, along and across the present and future streets, alleys, bridges, and public properties of the City, subject to the terms of this Agreement; and

WHEREAS, Contractor desires to continue operating and maintaining the service of collection, transportation, and disposal of residential waste and recyclables, over, upon, along and across the present and future streets, alleys, bridges, and public properties of the City, subject to the terms of this Agreement; and

WHEREAS, the City has negotiated in good faith with the Contractor for the services provided herein.

NOW, THEREFORE, for and in consideration of the mutual covenants set forth in this Agreement, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the parties hereto agree as follows:

1. DEFINITIONS:

- 1.01. **Bulky Waste:** 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 in a Polycart. A Bulky Waste item cannot be too large or too heavy to be safely lifted by two people.
- 1.02. **City:** The City of Tontitown, Arkansas.
- 1.03. **Construction and Demolition (C&D):** Waste building materials resulting from construction, remodeling, repair, or demolition operations that are directly or indirectly the by-products of construction work or that result from demolition of buildings or other structures.
- 1.10. **Contract Administrator:** That person, or designee, designated by the City to administer and monitor the provisions of this agreement.
- 1.11. **Contractor:** Waste Management of Arkansas, Inc.
- 1.12. **Customer:** The owner or tenant of a Residential Unit located within the City, and identified by the City as being eligible for and in need of the services provided by the Contractor under this Agreement.
- 1.13. **Dead Animals:** Animals or portions thereof that have expired from any cause except those slaughtered or killed for human use.

- 1.14. **Disabled Carryout:** Collection of a qualified disabled Residential Unit Customer's Waste and Recyclables Cart when placed outside the Customer's garage or carport, visible from the street, rather than curbside.
- 1.15. **Disposal Site:** A duly permitted sanitary landfill selected by Contractor.
- 1.16. **Garbage:** Solid waste consisting of putrescible or animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, handling and sale of produce and other food products, and all dead animals of less than ten pounds (10 lbs.) In weight, except those slaughtered for human consumption.
- 1.17. **Hazardous Waste:** Any material or waste identified or listed as a hazardous waste by the administrator of the environmental protection agency under the federal solid waste disposal act or by RCRA, 42 U.S.C. §6901, *et. seq.*, as amended.
- 1.18. **Medical Waste.** Waste generated by health care related facilities and associated with health care activities, not including garbage or rubbish generated from offices, kitchens, or other non-health-care activities. The term includes special waste from health care-related facilities which is comprised of animal waste, bulk blood and blood products, microbiological waste, pathological waste, and sharps as those terms are defined in 25 tac §1.132 (relating to definitions).
- 1.19. **Non-Recyclables:** Any materials in the single stream materials that are not Recyclables.
- 1.20. **Polycart or Cart:** A Contractor owned rubber-wheeled receptacle with a maximum capacity of 90 - 96 gallons constructed of plastic, metal and/or fiberglass, designed for automated or semi-automated solid waste or recyclables collection systems, and having a tight-fitting lid capable of preventing entrance into the container by small animals. The weight of a polycart and its contents shall not exceed 175 lbs. A Polycart is provided to a Residential Unit for the deposit of Waste and/or Recyclable Materials.
- 1.21. **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. However, recyclable material may become solid waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be solid waste, with respect to the party actually abandoning or disposing of such material.
- 1.22. **Residential Unit:** A residential dwelling within the service area of the City occupied by a person or group of persons comprising not more than four families. 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, consisting of four units, shall be treated as a Residential Unit, except that each single-family dwelling within any such Residential Unit shall be billed separately as a Residential Unit.

- 1.23. **Residential Waste:** All garbage, rubbish and waste at a Residential Unit, excluding Unacceptable Waste and C&D, that is generated by the owner, occupant or a third-party provider.
- 1.24. **Rubbish:** Nonputrescible solid waste (excluding ashes), consisting of both combustible and noncombustible waste materials. Combustible rubbish includes paper, rags, cartons, wood, wood shavings, furniture, rubber, plastics, yard trimmings, leaves, brush or similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).
- 1.25. **Single Stream Materials:** All materials deposited by a Residential Customer in the Customer's recycling Cart, including any Recyclables and Non-Recyclables.
- 1.26. **Solid Waste or Waste:** Non-hazardous solid waste generated by a Customer at a Residential Unit to be collected by Contractor under this Agreement. Solid waste excludes Unacceptable Waste and C&D.
- 1.27. **Special Waste:** Waste that requires special handling and management due to the nature of the waste, including, but not limited to, the following: (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, (g) residue and debris from the cleanup of a spill or release of chemical(s), or (h) any other waste defined by applicable law, rule or regulation as "special waste".
- 1.28. **Third-Party Provider:** A commercial business enterprise or third party that provides any type of services to Residential Units.
- 1.29. **Unacceptable Waste:** Any waste or material that (i) the acceptance and handling of which by contractor would cause a violation of any permit, condition, legal or regulatory requirement, (ii) substantial damage to contractor's equipment or facilities, or (iii) contains information (in hard copy or electronic format) that is protected or regulated under any local, state or federal privacy or data security laws, including without limitation, the Health Insurance Portability and Accountability Act (HIPPA), or (iv) presents a danger to the health or safety of the public or contractor's employees, and/or (v) is or contains hazardous waste, special waste, untreated medical waste, dead animals weighing ten pounds (10 lbs.) or greater, or (vi) is or contains solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit, or (vii) is 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, or (viii) results from activities associated with the exploration, development, or production of oil or gas or geothermal resources.
- 1.30. **Unusual Accumulations or Overage:** As to Residential Units, any Waste or Recyclables placed curbside on the regular collection day that are outside, on top of, placed next to, or sticking out of a Polycart, or in excess of the weight allowed for a Polycart.
- 1.31 **White Goods** shall mean appliances such as refrigerators, stoves, washers, dryers and other large enameled appliances, whose chlorofluorocarbons (CFCs) have been removed

by a certified technician.

- 1.32 **Yellow Bag Program:** A program offered to senior citizens, age 65 or greater, where instead of a base rate, a senior citizen may purchase yellow bags for the deposit of Waste generated at their Residential Unit. The Yellow Bags may be purchased in quantities of not less than five (5) at the Tontitown Water and Sewer Office.

2. GRANT OF EXCLUSIVE FRANCHISE:

Contractor is hereby granted the exclusive right and privilege within the corporate limits of the City to provide Residential Waste and Recyclables collection, transportation, disposal and/or processing from Residential Units, located within the City, including any tracts, territories and areas hereafter annexed to or acquired by City.

3. TERM:

This Agreement shall begin on October 1, 2023 ("Commencement Date") and concluding on June 6th, 2027. The term of this Agreement shall automatically extend without further action of the parties for an additional term of one (1) year, unless not less than one hundred eighty (180) days before the termination of the term, one party advises the other in writing of its desire to terminate this Agreement at the conclusion of the term of the Agreement.

4. RATES:

Contractor is authorized to charge, and shall receive from the City, the rates set forth on **Schedule "A"** ("Base Rates") attached hereto and incorporated herein by reference upon the Commencement Date of this Agreement. The Base Rates are subject to adjustment as set forth in section 9 below.

5. CONTRACTOR SERVICES:

- 5.01. **Residential Unit Carts:** Contractor agrees to provide one Waste Polycart to each Residential Unit no later than the Commencement Date of this Agreement. Contractor agrees to provide one Recyclables Polycart to each Residential Unit that is an existing subscriber of the recycling collection services. A Residential Unit Customer may request an additional Polycart and Contractor will provide an additional Cart at the rate set forth in **Schedule A**, as adjusted, under this Agreement. All Residential Units that fall under this the scope of this Agreement will be invoiced for the Waste and Recyclables Cart collection services provided by Contractor.

5.02 **Residential Collection:** Contractor shall collect Residential Waste generated at a Residential Unit and placed in that Residential Unit's Waste Polycart once per week. The Contractor shall not be obligated to collect any Waste not properly contained in the Customer's Waste Polycart.

- (A) Construction Debris generated at a Residential Unit by the owner or tenant of that Residential Unit, and not using the services of a third-party provider, shall be subject to the Bulky Waste definition and limitations set forth in this Agreement. Any Waste, Construction Debris, or Bulky Waste generated by a Third-Party

Provider hired by the Residential Unit owner or tenant is deemed commercial waste and Contractor has no obligation to collect those materials as part of this Agreement.

- 5.02 **Bulky Waste Collection:** Contractor shall provide a monthly Bulky Waste collection service to Residential Units for collection of Bulky Waste. 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 each month. All Bulky Waste shall be placed within three (3) feet of the curb, swale, paved surface of the roadway, closest accessible roadway, or other location agreed to by Contractor and Customer, that will provide safe and efficient accessibility to Contractor's collection crew and vehicle.
- 5.03 **Disabled Carryout Service:** Contractor, at no additional cost to the City, shall provide a special collection service to those Residential Unit Customers that the City has determined are qualified as disabled and unable to roll their Cart to the curb. In order to qualify, no able-bodied person capable of rolling the Cart to the curb can be living at the Residential Unit. The City has sole responsibility for determining which Residential Unit Customers qualify for this special service. The City will provide Contractor with a complete list of qualifying customers' addresses each time a modification is made. Disabled Carryout service means the Customer must place their Waste and/or Recyclables Cart(s) outside their garage or carport, where the Cart is visible from the street, rather than curbside. Contractor may refuse to provide this service if the location of the Polycart exceeds 125 feet from the curb line or edge of pavement and no such service will be provided for Bulky Waste collection. Contractor shall not have to go through gates or fences to access such Polycart.
- 5.04 **Yellow Bag Program:** If a Residential Unit Customer meets the requirements of the Yellow Bag Program, the Customer shall be allowed to place Waste in Yellow Bags curbside for collection by Contractor.
- 5.05 **Residential Recyclables Collection:**
- (A) Contractor shall collect Residential Unit Recyclables placed in Recyclables Carts once every-other-week, per an agreed upon schedule with the City. Residential Unit Customers must place all Recyclables into the Recyclables Cart. Contractor shall not be required to collect any Recyclable Materials that are not placed in a Recyclables Cart. In addition, Contractor shall not be required to collect Recyclable Materials if the Customer does not segregate the Recyclable Materials from the remainder of the residential Waste.
- (B) **Recyclables Specifications:** The following are recyclables that Residential Unit Customers may deposit into the Recyclables Carts. To be acceptable, the Recyclables must be clean, dry, loose (not bagged), unshredded, empty and include only the following:

Aluminum cans	Newspaper
PET plastic bottles with the symbol #1 – withscrew tops only	Mail

HDPE plastic bottles with the symbol #2 (milk, water bottles detergent, and Shampoo bottles, etc.)	Uncoated paperboard (ex. Cereal boxes; food and snack boxes)
Plastic bottles and tubs with symbol #5 - empty	Uncoated printing, writing and office paper
Steel and tin cans	Old corrugated containers/cardboard (uncoated)
	Magazines, glossy inserts and pamphlets

Nonrecyclables include, but are not limited to, the following:

Plastic bags and bagged materials (even if containing Recyclables)	Microwavable trays
Porcelain and ceramics; light bulbs, mirrors	Glass food and beverage containers – brown, clear, or green
Window or auto glass	Coated cardboard
Soiled paper, including paper plates, cups and pizza boxes	Plastics not listed above including but not limited to those with symbols #3, #4, #6, #7 and unnumbered plastics, including utensils
Expanded polystyrene	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	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 Waste or containers that contained Unacceptable Waste	Napkins, paper towels, tissue, paper plates, paper cups, and plastic utensils
Any paper recyclable materials or Pieces of paper recyclables less than 4" in size in any dimension	Propane tanks, batteries
Cartons	Aseptic containers

(C) **Delivery Specifications.** Residential Unit Customers shall deposit only the Recyclables listed above into their Recyclables Carts. If a load of material does not meet these specifications, the recycling facility may reject the load and the City may be charged for the resulting transportation, handling, and disposal costs for the non-recyclables. The recycling facility or Contractor has the right to dispose of all residue, contamination, and Non-Recyclables resulting from or remaining after the processing of the Single Stream Materials collected from the Residential Units under this Agreement. The City acknowledges that Contractor may face unforeseen charges or increases based on the recycling market, the quality of the materials collected within the City, and/or uncontrollable circumstances, including without limitation, changes in law, and the City agrees to pay these charges so long as Contractor provides the City with written documentation explaining or justifying the increase prior to the City's payment.

(D) **Recycling Market Changes:** The market for recyclables continues to evolve and is volatile. As such, Contractor cannot make any representations as to the marketability of the Recyclables, and when no reasonable commercial market exists for a commodity, contractor and/or the recycling facility reserves the right to dispose of

that material. Contractor also reserves the right to add or delete materials from the list of recyclables based upon requests or demands from the recycling facility, changes in market conditions, uncontrollable circumstances, governmental restraint, or changes in laws, rules, regulations, or ordinances, and Contractor will provide written notice to the City of those changes. The recycling facility reserves the right to dispose of particular Recyclables when no reasonable commercial market exists for a commodity. In the event that a change in applicable law or a material change in market conditions that has the effect of materially altering the terms of this agreement or substantially affects the benefit(s) bargained for by the parties, the parties may agree to amend the terms of the recycling portion of the Agreement to reflect the current market or legal conditions.

5.06 Carts/Placement/Overage:

- (A) **Carts:** Contractor agrees to provide one (1) Waste Polycart and (1) Recycling Polycart to each Residential Unit for the deposit of Waste and Recyclables. The Carts shall be placed by the Customer of a Residential Unit in a location that is readily accessible to Contractor and its collection equipment, not to exceed three (3) feet from the curb or edge of the travelled portion of the street, road or alley, and not to be located in a manner that will block the driveway or mailbox or otherwise inhibit proper servicing. The City shall aid Contractor in resolving problems of Cart location by the Customer. Customers shall not overload Carts, and the Carts shall be loaded such that the lids shall close securely.
- (B) **Unusual Accumulations/Overage:** Contractor shall not be required to collect any Residential Waste or Recyclables (i) from a Polycart that is overloaded or whose lid cannot fully close, or (ii) a Polycart that is not properly placed curbside, unless otherwise specifically expressed in this Agreement. Contractor shall have no obligation to collect Unusual Accumulations/Overage and may charge for the collection of same so long as Contractor provides a digital image or photograph of the Overage to the Residential Unit Customer upon request. If a Residential Unit sets out any Overage materials on three or more Waste or Recyclables Collection days in any six (6) month period, then the City has the authority to order an additional Waste or Recyclables Polycart for that Residential Unit and add the Cart to the Residential Unit's account at the then-current Base Rate.
- (C) The Carts furnished by the Contractor hereunder shall remain the property of Contractor, and the Customer will have no interest in the Carts. The Carts shall remain at the location of the Residential Unit where delivered by Contractor. If a Cart is damaged beyond repair, the Contractor must provide a replacement Cart to the Residential Unit location at no charge. Any Cart removed from, lost, or missing from a Customer location is deemed lost, and Contractor agrees to provide a replacement Cart at a cost of \$70.00 per Cart to the City.

5.06. Additional Services/Residential Units Located on Specific Roads.

- (A) Contractor agrees to collect Waste and Recyclables (if those Customers subscribe) in Carts and Bulky Waste from Customers who live in Residential Units located on Klenc Road from Highway 412 to Washington County Road 857/Kelly Avenue to Dowell Road and Dowell Road to Arbor Acres Avenue at no charge.

(B) Contractor agrees to provide two passes during each Agreement year to each Residential Unit Customer to self-haul acceptable Waste to Contractor's Eco-Vista Landfill for disposal, subject to the following conditions:

- (1) The Residential Unit Customer must show proof of residency within the City by bringing both a photo identification card (driver's license, passport, etc.) and a recent utility bill to the Landfill at the time of delivery;
- (2) A Residential Unit Customer using a disposal pass may deliver waste to the Eco-Vista Landfill in a car or pick-up truck with a trailer no larger than sixteen feet (but no dump trailers are allowed);
- (3) No Third-Party Providers or commercial businesses are entitled to use the annual passes, which are intended solely for City residents to use when they self-haul waste; and
- (4) Residential Unit Customers must comply with the Landfill's safety rules and procedures.

5.07. **Unacceptable Waste:** Contractor shall not be obligated to collect any Unacceptable Waste. Title to Unacceptable Waste shall not pass to Contractor, and liability for any Unacceptable Waste shall remain with the generator of such material.

5.08 **Services Provided to City or City Facilities:** The Contractor will provide, at no charge, the following Waste collection services at City facilities:

- City Hall – one 4-yard dumpster and one 96-gallon Cart for Waste
- Fire Department – one 4-yard dumpster

Additional or new City facilities or buildings will only be serviced by Contractor at no charge upon the mutual written agreement of both parties.

6. **COLLECTION OPERATION:**

6.01. **Hours of Operation:** Collection of Residential Waste shall begin no earlier than 7:00 a.m. and may not extend beyond 6:00 p.m. No collections shall be made on Sunday.

6.02. **Routes of Collection:** Collection routes shall be established by the Contractor as reasonably approved by City. 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.

6.03. **Holidays:** The following are holidays for purposes of this Agreement:

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

Contractor may decide to observe any or all of the above-mentioned holidays by suspension or collection service on the holiday, but the Contractor is responsible for providing make-up collection for residential routes that occur on specified holidays. Make-up days are the next business day following the holiday and every remaining route day scheduled for that week will be pushed a day.

- 6.04. **Complaints:** Customer complaints shall be directed by the City to Contractor, and Contractor shall promptly resolve any complaint based on the nature of the complaint. Contractor shall be responsible for maintaining a log of complaints based on the information provided to Contractor by the City, and shall provide the City, on a monthly basis, with a summary of all complaints. Any alleged missed pickups will be investigated by Contractor and, if such allegations are verified, Contractor shall arrange for collection on the next business day after receipt of such complaint. If the missed pickup is a result of Customer related acts or omissions, the City shall take appropriate action to cause such Customer to subsequently properly set out such Waste and/or Recyclables.
- 6.05. **Collection Equipment:** Contractor, at its sole cost and expense, agrees to furnish, all trucks, equipment, machines, and labor which are reasonably necessary to adequately, efficiently, and properly collect and transport waste from customers serviced by Contractor in accordance with this agreement.
- 6.06. **Disposal:** Contractor shall deliver Waste collected to a duly permitted disposal site selected by Contractor and operated in compliance with rules stipulated by the applicable state agency and/or the U.S. Environmental Protection Agency.
- 6.07. **Spillage:** Contractor shall not be responsible for scattered refuse unless the same has been caused by Contractor, in which case all scattered refuse shall be picked up immediately by Contractor.
- 6.08. **Vicious Animals:** Employees of the Contractor shall not be required to expose themselves to the dangers of vicious animals in order to accomplish refuse collection service. Contractor shall immediately notify the City, in writing, of such condition and of his inability to make collection.
- 6.09. **Protection from Scattering:** Each Contractor vehicle shall be equipped with a cover which may be net with mesh not greater than one and one-half (1-1/2) inches, or tarpaulin, or fully enclosed metal top to prevent leakage, blowing or scattering of refuse onto public or private property.
- 6.10. **Point of Contact.** All dealings and contacts between Contractor and the City shall be directed between Public Sector Solutions Manager of Contractor, or such other individual identified by Contractor, and the contract administrator designated by the City.

7. **LICENSE AND TAXES:**

Contractor shall obtain at its sole expense all licenses and permits required by the city and the state and shall maintain same in full force and effect.

8. **BILLING:**

- (A) The City or its designee shall continue to act as the billing and collection agent for Residential Units for services performed by Contractor through December 31, 2022. 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.

- (B) Contractor agrees to assume the obligation to invoice Residential Units for services performed as of January 1, 2023. Contractor shall provide quarterly invoices in advance and collection services for all Residential Units. Customers shall remit to Contractor payment within thirty (30) days after receipt of invoice. All past due invoices shall bear interest at the highest rate permitted by law. If the Residential Unit Customers fail to timely pay their invoices, Contractor has the right to suspend services to any Customer that has failed to pay Contractor as prescribed above.
- (C) If Contractor suspends service to a customer for failure to timely pay Contractor's invoices, Contractor has the right to charge a service reactivation fee and/or finance charges or late payment fees if such service to the customer is reinstated.

9. MODIFICATION TO RATES:

- (A) Base Rates charged by Contractor for services will remain fixed as set forth on Schedule "A" and will be adjusted beginning on June 1, 2023 and each June 1 thereafter, including any renewal term of this Agreement. The Base Rates will be adjusted based on changes in the Consumer Price Index (as hereinafter defined). On each June 1st, the Base Rates for services shall be adjusted by the average monthly percentage increase in the Consumer Price Index, US City Average for All Urban Consumers, Water, Sewer, Trash, Not Seasonally Adjusted, Base Period December 1983 = 100 (published by the United States Bureau of Labor Statistics, Consumer Price Index) (the "C.P.I.") over the twelve most recently published months for which the data has been published. The average will be computed by calculating the 12-month percentage change in the CPI each month during the applicable 12-month period. Once that average increase percentage change is determined, then the average increase percentage change for the 12-month period during the immediately prior year will be subtracted therefrom. The difference shall be the percentage increase adjustment that will be applied to the then current Base Rates. 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 so as to carry out the intent of this provision.
- (B) **Additional Adjustments.** Contractor shall also be entitled to an increase in Base Rates from time to time during the term of this Agreement, and upon thirty (30) days' written notice to the City, to offset any change in uncontrollable conditions which increase the Contractor's costs, including but not limited to, increases in disposal costs, increases in landfill fees, changes in the ordinances under which the Contractor is to operate, or changes in federal, state or local laws, rules or regulations. Documentation of such increases shall be submitted to the City at its request.

10. CITY'S OBLIGATIONS:

The City agrees to perform the following obligations:

- (A) The City shall designate the contract administrator, who shall communicate city decisions to Contractor on a timely basis from time to time as required under this Agreement;
- (B) The City shall provide the total number of Residential Units entitled to receive services to the Contractor no later than the 25th day of each month (i.e., the total house count that will receive contractor services). Contractor will use that monthly Residential Unit total in its next invoice to the City or if City fails to timely provide the monthly total, Contractor will use the most recent monthly total provided by the City. Contractor may rely upon the total house count numbers provided by the City. Any errors or mistakes in the total house count provided by the City to Contractor shall be corrected within six (6) months of the date provided to the Contractor or the mistake is waived and released by both parties. Contractor may verify the total house count provided by the City;
- (c) The City shall timely pay Contractor pursuant to Section 8 of 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 as required by this Agreement, including educating Residential Unit customers to assure proper and timely cart set out.
- (G) City shall provide Contractor with maps (GIS shapefiles) of the City containing sufficient detail for Contractor to design or modify collection routes. Additionally, the City shall provide at least six (6) months advanced written notice of its intent to adjust its boundaries, annex new territory and/or approve new developments resulting in an increase in the number of Residential Units that Contractor is expected to service.

11. COMPLIANCE WITH LAWS:

Contractor, its officers, agents, employees, contractors, and subcontractors, shall comply with all national, state and local standards, codes and ordinances, laws, and regulations applicable to the Contractor's services, equipment and materials used as set forth in this Agreement. Any terms or provisions of this Agreement waiving any rules, regulations, or requirements of these authorities are void and unenforceable. It is expressly agreed that nothing in this Agreement shall be construed in any manner to abridge the right of City to pass or enforce necessary police and health regulation for the protection of its inhabitants. It is further agreed and understood that, if the City calls the attention of Contractor to any such violations on the part of the Contractor, its officers, agents, employees, contractors, or subcontractors, then Contractor shall immediately desist from such activity and correct such violation. Contractor shall be responsible for obtaining all necessary permits, certificates and/or licenses to fulfill its contractual obligations.

12. COMMUNICATION:

Contractor shall maintain an office or such other facility or toll-free customer services number through which it may be contacted by telephone without charge. Such office shall

be equipped with sufficient telephones and shall have a responsible person in charge between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding Holidays.

13. ENFORCEMENT:

The City shall take any action reasonably necessary to prevent any other solid waste collection company from providing waste or recyclables services within the City in violation of the exclusive franchise rights granted herein. If the City fails to take action to enforce the exclusive franchise rights, then the Contractor will have the right to take action to protect its exclusive rights granted under this Agreement. The City agrees to take all steps necessary and permitted by law to require Customers to comply with the terms of this Agreement.

14. TRANSFERABILITY OF AGREEMENT:

This Agreement shall not be assignable or otherwise transferable by the Contractor without the prior written consent of the City which shall not be unreasonably withheld; provided, however, that the Contractor may assign this Agreement to any direct or indirect affiliate or subsidiary of the Contractor or to any person or entity succeeding to all or substantially all of the Contractor's assets (whether by operation of law, merger, consolidation or otherwise) without the City's consent. Upon the assignment, the assignee shall assume all obligations of the Contractor hereunder.

15. LANDFILL CAPACITY:

Contractor shall have and maintain during the term hereof adequate disposal capacity for the Waste to be collected under this Agreement.

16. TERMINATION:

Except as otherwise provided herein, if either party defaults in the performance of any of the covenants or conditions contained herein, and fails to cure such default within thirty (30) days after the non-defaulting party has given the defaulting party written notice of such default (or if such default is of a nature that it cannot be cured within such thirty (30) day period, the defaulting party fails to commence the curing of such default within such thirty (30) day period, and fails to thereafter diligently pursue the curing thereof) (the "Cure Period"), the non-defaulting party may: (a) terminate this Agreement as of any date which the non-defaulting party may select, provided said date is at least thirty (30) days after the expiration of the Cure Period; (b) cure the default at the expense of the defaulting party; or (c) have recourse to any other right or remedy to which it may be entitled by law, including, but not limited to, the right to all damages or losses suffered as a result of such termination. In the event either party waives default by the other party, such waiver shall not be construed or determined to be a continuing waiver of the same or any subsequent breach or default.

17. DISPUTE RESOLUTION:

The parties shall endeavor to settle all disputes under, or relating to, this Agreement by amicable negotiations. Except as otherwise provided herein, any claim, dispute, disagreement or controversy that arises among the parties under or relating to this

Agreement that is not amicably settled shall be submitted to mediation. If the parties remain unable to resolve the controversy through mediation, then either party may pursue their claim, dispute, disagreement or controversy in a court with proper venue in the state within which the services are being performed. The Parties expressly agree to litigate any disputes, claims, or controversies arising out of or relating to this Agreement.

18. 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) An act of nature, including hurricanes, tornadoes, earthquakes, severe weather conditions, fire, flood, explosion, epidemic or pandemic, sabotage or similar occurrence, acts of a public enemy, extortion, war, blockade or insurrection, riot, civil disturbance, strikes, labor or parts shortages, 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; or

(b) a Change in Law.

(c) "Change in Law" means (i) the adoption, promulgation, modification, interpretation, or application after the effective date of this Agreement of any law, regulation, order, statute, ordinance, rule or binding judicial or administrative ruling that was not adopted, promulgated, modified, interpreted or applied similarly on or before the date of this Agreement, or (ii) the imposition of any material 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 are more burdensome than the requirements applicable to such party and in effect as of the effective 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. However, in the event that a federal, State or local entity imposes a fee, charge or tax after the date of this Agreement that applies to a party's operations per se, such fee, charge or tax shall be treated as a Change in Law.

19. EVIDENCE OF INSURANCE:

Contractor shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in conjunction with the performance of the work hereunder by the Contractor, its agents, representatives, employees, or subcontractors. The City shall be named as an additional insured under the policies, except for workers' compensation, and shall have coverage for liability assumed under an insured contract. Contractor shall provide the City with a certificate of insurance reflecting the City's additional insured status and agreeing to give the City at least 30 days' written notice in case of policy termination. The cost of such insurance shall be borne by the Contractor. Minimum Limits of Insurance:

Type of Coverage	Per Occurrence Min	Aggregate Min
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Workers Compensation	Statutory	As required by law
Employer's Liability	\$500,000	
Commercial General Liability	\$1,000,000	\$1,000,000
Auto Liability	\$1,000,000	\$1,000,000
Bodily Injury	\$1,000,000	
Property Damage	\$ 500,000	
Umbrella Liability Policy	\$2,000,000	\$2,000,000

20. INDEMNITY:

The Contractor agrees to 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.

21. PERFORMANCE BOND:

The Contractor shall furnish a performance bond as security for the faithful performance of this Agreement. Said performance bond will be in the amount of \$100,000 and will be renewed on an annual basis. The Contractor shall pay premiums for the bond. A certificate from the surety showing that the bond premiums are paid in full shall accompany the bond. Such certificate shall be submitted to the City with the bond on an annual basis. The surety on the bond shall be a duly authorized corporate surety authorized to do business in the State of Arkansas.

22. OWNERSHIP:

Title to Waste shall pass to Contractor when placed in Contractor's collection vehicle. Title to Unacceptable Waste shall remain with the generator of such Unacceptable Waste.

23. SEVERABILITY:

If a court of competent jurisdiction finds or rules that any part of this Agreement is invalid or unlawful, the remainder of the Agreement continues to be binding on the Parties.

24. 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.

25. 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 Agreement. 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.

26. ATTORNEY'S FEES AND LAW:

The negotiation and interpretation of this Agreement shall be construed under and governed by the laws of the State of Arkansas, without regard to its choice of law provisions. The prevailing party in any lawsuit shall have the right to recover its reasonable attorneys' fees and costs from the non-prevailing party.

27. 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 firstclass United States mail, postage prepaid, registered or certified with return receipt requested, (ii) by delivering same in person to the intended addressee, (iii) 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, or (iv) by prepaid telegram, telex, or facsimile to the 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) faxed to the alleged defaulting party to constitute proper notice hereunder. 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

If to the Contractor at:

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

or such other addresses as the parties may hereafter specify by written notice delivered in accordance herewith.

28. DISCRIMINATION PROHIBITED:

Contractor, in the execution, performance, or attempted performance of this Agreement, shall not discriminate against any person or persons because of sex, race, religion, color, or national origin. Contractor must be an equal opportunity employer.

29. DISASTER EVENT:

Contractor and City understand and agree that, in the event of a hurricane, tornado, major storm, flood, natural disaster, war, act of terrorism, pandemic, or other Act of God ("Disaster Event"), Contractor shall have no obligation under this Agreement to collect any Waste, debris or material resulting from the Disaster Event. The City has the right to engage a contractor of its choice to collect material or debris resulting from a Disaster Event. The parties reserve the right to enter into a separate, mutually acceptable written agreement for the collection of debris and material resulting from a Disaster Event.

32. INDEPENDENT CONTRACTOR

Contractor is an independent contractor, and, except as provided otherwise in this section, neither Contractor, nor any employee or agent thereof, shall be deemed for any reason to be an employee or agent of the City. City shall have no liability or responsibility for any direct payment of any salaries, wages, payroll taxes, or any and all other forms or types of compensation or benefits to any personnel performing services for City under this Agreement. Contractor shall be solely responsible for all compensation, benefits, insurance and employment-related rights of any person providing Services hereunder during the course of or arising or accruing as a result of any employment, whether past or present, with Contractor.

33. AUTHORITY TO EXECUTE

The person or persons executing this Agreement represent and warrant that they are fully authorized to sign and so execute this Agreement and to bind their respective entities to the performance of its obligations hereunder.

34. WAIVER

Failure to enforce any provision of this Agreement shall not be deemed a waiver of that provision. Waiver of any right or power arising out of this Agreement shall not be deemed waiver of any other right or power.

35. 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.

36. 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.

37. PROPRIETARY INFORMATION/PROPERTY OF CONTRACTOR

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.

38. ENTIRE AGREEMENT

This Agreement, along with attached exhibits, constitutes the complete, entire and final agreement of the Parties hereto with respect to the subject matter hereof, and shall supersede any and all previous communications, representations, and agreements, whether oral or written, with respect to the subject matter hereof. Invalidation of any of the provisions of this Agreement or any paragraph sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.

39. COUNTERPARTS:

This Agreement and any amendments may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. For purposes of executing this Agreement, scanned signatures shall be as valid as the original.

40. EXHIBITS

All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

ENTERED AS OF THE ___th DAY OF ___ 2022.

CITY:

CONTRACTOR:

TONTITOWN, ARKANSAS
INC.

WASTE MANAGEMENT OF ARKANSAS,

BY: _____

**SCHEDULE A
(Base Rates)**

RESIDENTIAL UNITS	FREQUENCY OF COLLECTION	BASE RATE
1 – Contractor Provided Waste Cart	Once per week	\$ 13.50 per month
1 – Contractor Provided Recyclables Cart	Recyclables Cart every other week	\$ 3.50 per month
Each Additional Cart (Waste or Recycle)		\$ 6.50 per month
Each Yellow Bag Collected by Contractor	Once per week	\$1.54 per Bag

