



Sustainability in Action

Richard Dzik
City of Huber Heights Ohio
6131 Taylorsville Rd
Huber Heights, Ohio 45424

April 19, 2024

RE: Solid Waste Collection and Recycling Contract Addendum

Dear Mr. Richard Dzik,

This addendum is for the original contract that was signed on 8/03/2021 – page 2 Paragraph 4 – Pricing. The rate listed on the contract as Senior Rate for the Contract Year of July 1, 2025 – June 30, 2026 is \$17.73, that is rate is not correct and has been corrected to reflect a 3% PI under the terms of the contract. Republic Services has corrected that Contract Year to July 1, 2025 – June 30, 2026 to \$14.73

4. Pricing.

a. Contractor shall provide the services hereunder and in return shall bill each Residential Dwelling customer based on the following rate schedule:

Contract Year	Standard Rate	Senior Rate	Optional Cart Rental Fee	Optional 2nd Cart Rental Fee
July 1, 2021 – June 30, 2022	\$14.54	\$13.09	\$1.00	\$3.00
July 1, 2022 – June 30, 2023	\$14.98	\$13.48	\$1.19	\$3.15
July 1, 2023 – June 30, 2024	\$15.43	\$13.88	\$1.39	\$3.31
July 1, 2024 – June 30, 2025	\$15.89	\$14.30	\$1.58	\$3.47
July 1, 2025 – June 30, 2026	\$16.37	\$14.73	\$1.77	\$3.65

b. Contractor shall provide a ten (10) percent discount to residents sixty-five (65) and older.

c. The monthly rate above is all inclusive and expressly includes, (but is not limited to) any and all tipping fees or related or similar fees or charges; any and all fuel charges or related or similar charges or fees; any and all environmental recovery fees, impact fees, or similar charges or fees; any and all cost for bulk item



Sustainability in Action

Thank you again for allowing Republic Services to be your partner in your community.

Sincerely,

Tonia Hance Manager, Municipal Services
513-612-3713

City of Huber Heights
an Ohio Municipal Corporation

Dempsey Waste, II Inc, d.b.a.
Republic Services of Dayton, an
Ohio Corporation

By: Richard S. Dzubka
Its: City Manager
Date: 5/28/2024

By: MACK LENT
Its: GENERAL MANAGER
Date: 05/02/2024

"Excluded Item" shall mean hazardous or infectious waste, materials or substances, (but shall not include common household products typically found in residential households that may contain such waste, materials or substances), medical wastes, and radioactive wastes, each as defined by applicable federal, state or local laws or regulations; excluded items shall also include whole waste tires, lead acid batteries, and hot ashes.

2. **Collection of Waste Material and Recyclables.** Contractor shall collect an unlimited amount of Waste Material once each week from each Residential Dwelling pursuant to the approved route schedule, for which containers are placed at the curb, edge of street or right-of-way. Recyclable materials to be collected once every two weeks, shall include, but not be limited to, newspapers, magazines, catalogs, telephone books, junk mail, paper cartons, #1, #2, and #6 plastics, and all glass food and drink containers (clear or colored), and aluminum and bi-metal beverage cans.

Collections for Residential Dwellings shall be no earlier than 7:00 a.m. and no later than 6:00 p.m., Monday through Friday. The following shall be holidays for purposes of this Agreement: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Collections for the Holiday and the following days of the week shall be delayed by one (1) day.

Contractor shall provide each residence with a recycling cart (standard 96 gallon and minimum 65 gallon). An additional recycling bin shall be provided at the request of the resident at no additional cost. The Color of the recycling bin shall be blue with attached yellow lid.

Contractor shall remove all materials and contents set out by residents, at curbside except for any Excluded Items and shall avoid spilling waste material, and clean up the collection area if the waste is spilled. Contractor shall handle all containers without abuse and to return all emptied containers to the location where the owner set them. Containers destroyed or removed by the Contractor shall be replaced by the Contractor and at the Contractor's expense.

3. **Exclusive License.** The Contractor is hereby granted the exclusive license and privilege within the territorial jurisdiction of the City of Huber Heights and shall furnish all personnel, labor, equipment, trucks, and all other items necessary to collect Waste Materials and recyclables during the term of this Agreement for all Residential Dwellings.

4. **Pricing.**

a. Contractor shall provide the services hereunder and in return shall bill each Residential Dwelling customer based on the following rate schedule:

Contract Year	Standard Rate	Senior Rate	Optional Cart Rental Fee	Optional 2nd Cart Rental Fee
July 1, 2021 - June 30, 2022	\$14.54	\$13.09	\$1.00	\$3.00
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b. Contractor shall provide a ten (10) percent discount to residents sixty-five (65) and older.

c. The monthly rate above is all inclusive and expressly includes, (but is not limited to) any and all tipping fees or related or similar fee or charges; any and all fuel charges or related or similar charges or fees; any and all environmental recovery fees, impact fees, or similar charges or fees; any and all cost for bulk item

**AGREEMENT FOR SOLID WASTE COLLECTION AND DISPOSAL
INCLUDING SERVICES FOR TRASH, RECYCLING AND YARD WASTE**

THIS AGREEMENT, (the "Agreement") is made and entered into this 27 day of July, 2021, by and between the City of Huber Height, Ohio, an Ohio municipal corporation, ("City") and Dempsey Waste Systems, II Inc. d.b.a. Republic Services of Dayton, an Ohio corporation qualified to do and actually doing business in the State of Ohio ("Contractor").

WHEREAS, as a valid exercise of its police power over sanitation and public health, and in order to help protect the public health safety and general welfare, City Council has decided to provide a solid waste collection and disposal program for the City; and

WHEREAS, Council has determined that providing a single trash hauler for solid waste and recycling is in the best interest of the City for reasons including but not limited to being able to provide in many cases, a less expensive trash removal service for citizens and limiting the wear on public roads by cutting down on multiple trash haulers; and

NOW, THEREFORE, for good and valuable consideration the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. Definitions. For purposes of this Agreement, the following terms shall be defined as follows:

"Waste Material" The term "waste material" shall include all municipal solid waste originating from the use of property situated only within the corporate limits of the City of Huber Heights, Ohio, and more specifically being identified in the following categories:

- A. All solid waste material that size will allow to be placed in the equipment of Contractor, provided such equipment is reasonably equivalent to the size of standard rear load front load or side load hopper. All cardboard boxes broken down will be accepted.
- B. Large trash items, including, but not limited to, refrigerators, dishwashers, dryers, sofas, chairs, carpet and mattresses (provided however, mattresses must be sealed/wrapped in plastic).
- C. Garbage as defined as organic waste of animal, fish, fruit, or vegetable matter arising from or attendant to the storage, dealing in, preparation or cooking of food for human consumption.
- D. Cold ashes placed in a separate container.
- E. All brush tied in bundles not more than 4 feet in length; grass clippings, leaves, limbs/branches and other yard trimmings.
- F. Christmas Trees. Christmas tree pick up is included at no extra charge from December 26 through mid-January of each year. Christmas trees will be picked up at curbside

"Residential Dwelling" shall mean a single family and two family properties within the corporate limits of the City.

"*Excluded Item*" shall mean hazardous or infectious waste, materials or substances, (but shall not include common household products typically found in residential households that may contain such waste, materials or substances), medical wastes, and radioactive wastes, each as defined by applicable federal, state or local laws or regulations; excluded items shall also include whole waste tires, lead acid batteries, and hot ashes.

2. **Collection of Waste Material and Recyclables.** Contractor shall collect an unlimited amount of Waste Material once each week from each Residential Dwelling pursuant to the approved route schedule, for which containers are placed at the curb, edge of street or right-of-way. Recyclable materials to be collected once every two weeks, shall include, but not be limited to, newspapers, magazines, catalogs, telephone books, junk mail, paper cartons, #1, #2, and #6 plastics, and all glass food and drink containers (clear or colored), and aluminum and bi-metal beverage cans.

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Contractor shall provide each residence with a recycling cart (standard 96 gallon and minimum 65 gallon). An additional recycling bin shall be provided at the request of the resident at no additional cost. The Color of the recycling bin shall be blue with attached yellow lid.

Contractor shall remove all materials and contents set out by residents, at curbside except for any Excluded Items and shall avoid spilling waste material, and clean up the collection area if the waste is spilled. Contractor shall handle all containers without abuse and to return all emptied containers to the location where the owner set them. Containers destroyed or removed by the Contractor shall be replaced by the Contractor and at the Contractor's expense.

3. **Exclusive License.** The Contractor is hereby granted the exclusive license and privilege within the territorial jurisdiction of the City of Huber Heights and shall furnish all personnel, labor, equipment, trucks, and all other items necessary to collect Waste Materials and recyclables during the term of this Agreement for all Residential Dwellings.

4. **Pricing.**

- a. Contractor shall provide the services hereunder and in return shall bill each Residential Dwelling customer based on the following rate schedule:

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- b. Contractor shall provide a ten (10) percent discount to residents sixty-five (65) and older.

- c. The monthly rate above is all inclusive and expressly includes, (but is not limited to) any and all tipping fees or related or similar fee or charges; any and all fuel charges or related or similar charges or fees; any and all environmental recovery fees, impact fees, or similar charges or fees; any and all cost for bulk item

pick-up (including appliances containing CFC's, provided however, Contractor may charge a reasonable fee to the resident for removal of the CFC from an appliance); any and all federal, state, district, and/or other related taxes or fees existing at the time of execution of this Agreement; any charges for waste removal from designated City facilities as described in section 23 below; all curbside recycling costs; delivery, maintenance and replacement of all recycling containers and carts; and subject to section 4(c) and 4 (d) below, any other costs related to the collection and/or disposal of Waste Material and/or recyclables hereunder, all of which Contractor expressly agrees to pay without altering the above monthly rate or otherwise passing on the charge to the City or its residents nor shall the existence of any such fees or any changes thereto, be the basis for termination of this Agreement by Contractor. It is expressly agreed that Contractor will not be entitled to a fuel sur-charge.

d. Contractor shall provide City with all current Federal, State, County, District or Local fees, charges and taxes applicable to the Huber Heights collection and disposal services provided hereunder, including any such fee or charge for the disposal cost imposed by the disposal facility (currently Montgomery County Transfer). Should (i) any of such fees be raised by the Federal, State, County, District or Local jurisdiction or should any new Federal, State, County, District or Local fees that were not in existence at the time of execution of this Agreement, be enacted during the term of this Agreement, and such fee (whether designated as a fee, charge, or tax) that directly impacts the cost of the services provided hereunder by Contractor and that must be paid by Contractor in order to provide the services to Huber Heights, or (ii) should disposal cost increases based on documentation of increases imposed by the disposal facility (currently Montgomery County Transfer), Contractor may request that such additional cost be passed on to the residents of Huber Heights. In such event, Contractor shall notify Huber Heights City Council and provide City Council with sufficient information to justify any requested pass through of such cost to the residents of the City. A request to pass through such additional cost to residents must be approved by City Council but will not be unreasonably refused by City Council. Notwithstanding the foregoing, with respect to disposal cost increases, if alternative disposal facilities are available and the use of which will not result in an increase for disposal, no rate adjustment will be made.

5. **Payments.** Contractor shall be responsible for the collection of all payments from Residential Dwellings. City residents shall be billed quarterly at the rate set forth in Section 4 above, without further charges or fees or surcharges (other than customary late fees for late payment, NSF checks, and reasonable reinstatement fee if service was discontinued due to non payment). Property owners shall have the option to temporarily suspend service for homes that are vacant for thirty days or longer.
6. **Term.** The term of this Agreement shall be from July 1, 2021 (the "Effective Date") until June 30, 2026. Either the City or the Contractor may terminate the Agreement with cause, with a 120-day notice by registered or certified mail notification to the other party. "With Cause" shall mean a party's failure to adhere to a material provision in this Agreement. The City reserves the right to terminate this Agreement immediately upon written notice by registered or certified mail to the Contractor if the Contractor is adjudged as bankrupt, makes a general assignment for the benefit of its creditors, has a receiver appointed on account of its insolvency or Contractor is unable or unwilling to provide the services required of this Agreement due to closure or lack of accessible landfills, labor disputes or any other action that prevents delivery of services for a period of seven (7) days or longer. The City reserves the right to request new proposals after the five-year period. The City shall also have the right to extend the contract at one-year intervals for up to a maximum of three (3) years. The three, one-year options shall be mutually negotiated and agreed upon at least 180 days prior to the expiration of the term. At the end of the initial 5-year term, the Contractor shall be permitted to provide an alternate proposal for the remaining three years instead of renegotiating at the end of each option year. Contractor will work in good faith in providing bi-weekly recycling (at additional cost to City) if requested by City.
7. **Route Schedule.** The route schedule, which must be approved by the City Manager prior to commencement of services hereunder, and shall upon approval be attached to this contract as an Exhibit and incorporated herein by this reference, will be the approved route schedule. If, for any reason the

Contractor requires a change in the route schedule, it will first obtain the written approval of the City. Contractor shall at its sole cost and expense, notify the residents affected by any approved change in the route schedule.

8. **Performance.** If the City determines that the work is not being performed in a satisfactory manner, the City will so notify the Contractor, who will then immediately commence to rectify the problem areas. Excessive complaints or failure to rectify the source of such complaints will be grounds for termination of the Agreement "for cause". Should the City feel compelled to mobilize its own workers to correct problems created by non-compliance of this Agreement by Contractor, the Contractor shall reimburse the City for such funds necessary to complete the work as guaranteed by the contract. The City shall determine such reimbursement and equipment costs necessary to rectify the problem and shall be paid by the contractor within thirty-days (30) of the City's request for reimbursement.
9. **Disposal of Collected Items.** All Waste Materials collected by the Contractor shall be legally disposed of outside the corporate limits of the City of Huber Heights at one of the Montgomery County Transfer Stations. The contractor shall transport the recovered recyclable materials to a processing site. At no time shall recycled materials be disposed of in a landfill or incinerator. The City shall not to be responsible for any problems arising at the disposal site as a result of solid waste or recyclables collected in the City or any other place.
10. **Contractor's employees.** Contractor's employees shall not at any time exhibit improper or abusive language or unacceptable or improper conduct to the public. Contractor shall remove an employee that violates this provision from the City's route upon request by the City. All Contractor employees collecting waste or recyclables shall wear uniforms and all OSHA required Personal Protection Equipment. Uniforms will identify Contractor and at a minimum the employee's first name. Contractor shall assure all of its drivers are validly licensed, have any required endorsements for equipment being driven and have safe driving records. Contractor will maintain sufficient personnel to adhere to the route schedule in this Agreement.
11. **Equipment.** The Contractor shall maintain an adequate number of vehicles for all collection services required under this Agreement. All vehicles and other equipment used by the contractor for the collection and removal of waste material and recyclables in Huber Heights shall be kept neat, clean and sanitary in good working order, and shall be licensed any and all applicable State, County and or local authorities. All vehicles that provide collection of trash and recyclables shall have labeling that identifies which of the materials are being collected. The labeling shall be affixed to the vehicle and must be readily visible to anyone who observes the collection of trash, recyclables, and yard waste. The materials being deposited into the vehicle must match the labeling on that same vehicle. Any dumpsters/containers provided must also be labeled. The materials being deposited into the vehicle from the dumpster/container must match the labeling on that same vehicle.
12. **Missed Premises.** If any premises or collections are missed, the contractor shall return to make pickup on that regularly scheduled day or at the beginning of the next day's route if contractor was notified after that day's route was completed.
13. **Indemnity.** Contractor shall indemnify, hold harmless and defend the City, its elected officials, officers, employees, agents and volunteers ("Indemnitees") against any and all liability, loss, costs, damages, expenses, claims or actions, including reasonable attorney's fees which the Indemnitees may hereafter sustain, incur or be required to pay, arising wholly or in part due to any negligent act or omission, or willful misconduct of Contractor, its agents, servants or employees, in the execution, performance or failure to adequately perform Contractor's obligations pursuant to this contract. Contractor will be held liable for any damage, injury (including death) or destruction based upon, connected with, or related to contractor's waste removal personnel or equipment while performing services for the City.

14. **Performance Bond.** Contractor shall furnish and maintain any and all performance bonds required under the Request for Proposals for Solid Waste Collection and Disposal.

15. **Insurance.**

Contractor shall at all times during the Agreement maintain in full force and effect the following insurance from insurer(s) rated A- or better by A.M. Best in amounts sufficient to protect the Contractor and City from claims under Workers Compensation Acts and any other claims for property damage and/or bodily injury, including death, which may arise from the performance of the Work under this Agreement, whether the Work is performed by the Contractor, its subcontractor, or anyone directly or indirectly employed by either of them.

Limits of coverage to be as follows:

		Statutory
(a)	Workers' Compensation	
	Employers Liability/Ohio Stop Gap	\$ 1,000,000
(b)	Commercial General Liability:	
	Bodily injury/property damage per occurrence	\$ 1,000,000
	General Aggregate	\$ 2,000,000
	Products/Completed Operations Aggregate	\$ 2,000,000
(c)	Commercial Automobile Liability:	
	Combined Single Limit (including Owned, Hired, and Non-Owned Autos)	\$1,000,000
(d)	Excess/Umbrella Liability (over Employer's Liability, General Liability, and Auto)	\$ 5,000,000

The General Liability policy must be written on the current edition of ISO form CG 00 01 or equivalent. The policy shall have no modifications limiting coverage for contractual liability, damage to work performed by subcontractors, residential construction, earth movement, explosion, collapse, or underground damage. The policy shall be endorsed to provide that the General Aggregate Limit applies separately to each of the insured Contractor's projects. The Owner (including its officers, directors and employees) shall be named as Additional Insured on the General Liability policy on ISO form CG 20 10 11 85 or its equivalent, affording coverage to Additional Insured(s) for claims arising out of both ongoing and completed operations. Owner shall also receive coverage as an additional insured Contractor's Auto Liability policy. Contractor's policies shall be primary insurance as respects Owner, and any other insurance policy that Owner may have in effect shall be deemed excess and not contributory. The General Liability policy affording coverage to Owner as Additional Insured must be maintained for three (3) years after completion of the project. If any of the Work is performed by subcontractors, Contractor shall be responsible for ensuring subcontractors comply with these insurance requirements and extend coverage to both Contractor and Owner as additionally insured.

The Contractor shall purchase and maintain an Installation Floater, covering loss or damage to materials and/or equipment suffered during the course of the Work. This insurance shall include the interests of the Owner, Contractor, and any Subcontractors. The policy shall be written on special form and shall cover all materials specified for the job, whether onsite, offsite or in transit.

The Contractor will submit to the Owner certificates of insurance (including a certificate of compliance from the Ohio Bureau of Workers' Compensation for Ohio subcontractors) certifying that the insurance policies required by this agreement are in force and shall be maintained for the duration of the Project. Contractor shall also provide copies of additional insured endorsement(s) as required herein. Full copies of policies shall be provided upon Owner's request. Certificates shall reflect Owner's status as an additional insured and shall provide that Owner is to be provided thirty (30) days advance written notice in the case of cancellation or nonrenewal of the required policies (10 days if cancelled due to nonpayment of premium)

As an alternative to the above, Contractor may insure the above commercial liability and property coverage under a plan of self-insurance. Each insurance policy with respect to public liability insurance may provide for a self-insured retention of an amount of \$250,000 with the result that the Contractor is its own insurer to that extent. The Contractor's parent corporation may provide the coverage.

16. **Local Contact.** The City shall be given the name and phone number of the single appropriate person within the Contractor's employment with whom complaints can be aired and remedied. The City shall also be given the name and phone number of the foreman or other assigned representative of the Contractor who is responsible for all collections (residential solid waste and recycling). Contractor shall maintain an office or such other facilities through which it can be contacted. It shall be equipped with sufficient telephones and shall have a responsible person in charge from 8:00 a.m. to 5:00 p.m. on regular collection days. Contractor shall maintain 1-800 or other toll free telephone service if said calls would otherwise require long distance telephone service.
17. **Compliance with law.** Contractor shall, at its sole cost and without increasing the amount paid by Huber Heights residents as set forth in this Agreement, adhere to all federal and state laws, regulations, ordinances, and other policies that pertain to actions performed for and within the City of Huber Heights, including but not limited to applicable requirements of the Montgomery County Solid Waste District Solid Waste Management Plan and any amendments if and when they are adopted and any and all laws that involve compliance with environmental rules or regulations. Contractor shall, at its sole cost and expense, obtain all licenses and permits and promptly pay all taxes required by the City (including but not limited to withholding taxes).
18. **Assignment.** No assignment of the Agreement or any right accruing under this Agreement shall be made in whole or in part by the Contractor without the express written consent of the City, which consent shall not be unreasonably withheld; in the event of any assignment, the assignee shall assume the liability of the Agreement and the Contractor shall guarantee performance by the assignee.
19. **Records.** Contractor shall be required to keep records and submit reports to comply with the Montgomery County Solid Waste Management District's Annual District Reporting Requirements. These reports will serve as a means to apprise City staff and the Montgomery County Solid Waste Management District of the status of solid waste, recycling, and yard waste composting activities and expenditures. Reporting requirements may include, but are not limited to:
 - A. **Quarterly Project Status Report**

The contractor shall provide quarterly project status reports. These reports shall be due within thirty (30) days of the close of the quarter being reported. At a minimum, the reports shall include:

 1. Tons of recyclable materials collected and recycled and location of processing facility.
 2. Tons of Solid Waste collected and disposed and location of disposal facility.
 3. Number or percentage of residents participating in the curbside recycling and yard waste programs.
 4. Quarters to be reported shall include:
1st Quarter = January, February, March
2nd Quarter = April, May, June
3rd Quarter = July, August, September

4th Quarter = October, November, December

B. Annual Reports

Contractor shall provide year-end annual reports for each year the project is in operation. These reports will be due within 45 days of the end of the Calendar year. At a minimum, the report shall include the information included in the quarterly project status reports.

20. Default. In case of default by the Contractor, the City may procure the articles of services from other sources with or without further advertising and may hold the Contractor responsible for any excess costs occasioned thereby.
21. Annual Leaf Collection. Nothing herein shall prohibit the City from continuing its annual leaf collection program with in-house staff. The Contractor shall be required to provide pick up for all other special/bulk normal household items.

22. Community. The Contractor shall:

- A. Participate at an average of two Huber Height community events per year.
- B. Develop, in cooperation with and subject to approval by the City, comprehensive education materials explaining how the refuse collection and curbside recycling will work, scheduled pick-up routes, holiday information, a thorough description of the recyclable materials that will be accepted, etc.
- C. Within 14 days of full execution of this Agreement, Contractor shall at its sole cost, reasonably notify Huber Heights residents, and all employees and agents of Contractor that respond to inquiries from Huber Heights residents, of the final pricing, options and billing information. Such notice shall be made via direct mail or email in addition to social media.

23. Municipal Facilities Service. The following City of Huber Heights facilities shall be provided with dumpster collection services, or in the case of the RTA locations, trash can collection services, as follows with no fee to the City:

City Hall/Police Dept., 6131/ 6121 Taylorsville Road
Montgomery County Municipal Courts, 6111 Taylorsville Road
Thomas Cloud Park 4707 Brandt Pike
Fire Station 22 7014 Brandt Pike
Fire Station 23 7435 Old Troy Pike
Fire Station 25 9975 Old Troy Pike
Division of Taxation
Division of Water and Wastewater
Senior Center, 6428 Chambersburg Road
Public Works Department 7020 Brandt Pike
16 RTA trash cans at 14 locations throughout the City
The Kroger Aquatic Center at The Heights
The Rose Music Center at The Heights

All Municipal Facilities above shall receive service 1 day per week during summer and winter services except the Public Works Department will receive service 2 days per week year round, Thomas Cloud Park and the Kroger Aquatic Center at The Heights will require 2 days per week during summer service and will have no winter service. Summer service will commence the first of April and conclude at the end of

October. Winter service will commence the first of November and conclude the end of March. The City reserves the right to add other City facilities that will require like or similar service.

24. **Complaints.** All complaints from Citizens shall be made directly to the Contractor and shall be given prompt and courteous attention.
25. **No Discrimination.** Contractor shall not discriminate against any person because of race, sex, age, creed, color, religion or national origin.
26. **Excluded Waste.** If Excluded Waste is discovered before it is collected by Contractor, Contractor may refuse to collect the entire bin, container, bag or bundle of waste. In such situations, Contractor shall contact the City and the City shall undertake appropriate action to ensure that such Excluded Waste is removed and properly disposed of by the depositor or generator of the waste. In the event any Excluded Waste is not discovered by Contractor before it is collected, Contractor may, in its sole discretion, remove, transport and dispose of such Excluded Waste at a location authorized to accept such Excluded Waste in accordance with all applicable laws and charge the depositor or generator of such Excluded Waste all direct and indirect costs incurred due to removal, remediation, handling, transportation, delivery and disposal of such Excluded Waste. Contractor shall release City from any liability for any such costs incurred by Contractor in connection with such Excluded Waste, except to the extent that such Excluded Waste is determined to be attributed to the City.
27. **Independent Contractor.** Contractor and its employees shall perform all work and service hereunder as an independent contractor. Neither Contractor nor any of its officers, directors, employees, agents or representatives shall be deemed to be the employees of the City, nor shall they be entitled to any benefits made available to employees of the City. Contractor shall be solely responsible for the compliance with all applicable federal and state laws with respect to its officers, directors, employees, agents or representatives. Any and all payroll taxes, social security benefits, insurance requirements, or employment benefits of any kind whatsoever of Contractor its officers, directors, employees, agents or representatives shall be borne exclusively by Contractor and not the City. Nothing herein is intended to, or shall be deemed to, create a partnership, joint venture, agency, or other relationship creating fiduciary or quasi-fiduciary duties or similar duties and obligations or otherwise subject the parties to joint and several or vicarious liability or to impose any duty, obligation, or liability that would arise therefrom with respect to either or both of the Parties. The relationship between the Parties shall be limited to the obligations in this Agreement.
28. **Miscellaneous.** This Agreement shall be binding upon and inure solely to the benefit of the parties and their permitted assigns. If any provision of this Agreement shall be invalid, illegal or unenforceable, it shall be modified so as to be valid, legal and enforceable but so as most nearly to retain the intent of the parties. If such modification is not possible, such provision shall be severed from this Agreement. In either case, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected thereby. The failure or delay on the part of either party to exercise any right, power, privilege or remedy under this Agreement shall not constitute a waiver thereof. No modification or waiver by either party of any provision shall be deemed to have been made unless made in writing. Any waiver by a party for one or more similar events shall not be construed to apply to any other events whether similar or not. This Agreement shall be interpreted and governed by the laws of the state of Ohio. This Agreement sets forth the entire agreement of the parties and supersedes all prior agreements, whether written or oral, that exist between the parties regarding the subject matter of this Contract. The specifications, Notice to Bidder and other documents associative with the Request for Proposal for Solid Waste Collection and Disposal, (the "Bid Documents") are hereby made part of this Contract by reference. To the extent of any conflict between any of the Bid Documents and this Agreement, the terms of this Agreement shall apply. This Agreement was negotiated between the Parties, each of whom had the

opportunity to consult with legal counsel during the negotiation, drafting, and execution of this Agreement, and the Parties agree that this Agreement shall not be construed against any Party as the drafter.

29. **Force Majeure.** Except for City's obligation to pay amounts due to Contractor, any failure or delay in performance under this Agreement due to contingencies beyond a party's reasonable control, including, but not limited to, riots, strikes, terrorist acts, compliance with applicable laws or governmental orders, fires, bad weather and acts of God, shall not constitute a breach of this Agreement, but shall entitle the affected party to be relieved of performance at the current pricing levels under this Agreement during the term of such event and for a reasonable time thereafter. The collection or disposal of any increased volume resulting from a natural disaster or terrorist act over which the Contractor has no control, shall be included as part of the Contractor's service under this Agreement. In the event of such a natural disaster or terrorist act, the Contractor and the City shall negotiate the payment to be made to the Contractor. Further, when the City and the Contractor reach such agreement, then the City shall grant the Contractor variances in routes and schedules, as deemed necessary, of the Contractor.
30. **Title to Waste.** Notwithstanding anything set forth in this Agreement or otherwise to the contrary, ownership and liability of Excluded Items shall not pass to Contractor.
- 31.

City of Huber Heights
an Ohio Municipal Corporation


By: Scott P. Falkowski
Its: INTERIM CITY MANAGER
Date: 8/3/21

Dempsey Waste Systems, II Inc. d.b.a. Republic
Services of Dayton, an Ohio corporation


By: _____
Its: _____
Date: 08/03/2021 General Manager