

AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING A NEW SOLID WASTE MANAGEMENT CONTRACT WITH ALLIED WASTE SERVICES OF NORTH AMERICA, LLC DBA REPUBLIC SERVICES OF WEST VIRGINIA, THAT WILL TAKE EFFECT ON OCTOBER 1, 2012.

The City of Morgantown hereby ordains that its City Manager is authorized to execute the agreement hereto attached, by and on behalf of the City of Morgantown.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

CITY OF MORGANTOWN
SOLID WASTE MATERIALS MANAGEMENT CONTRACT

This Agreement for the collection, transportation and disposal of non-hazardous Solid Waste and Recyclable Materials (“the Agreement”) is made this 1st day of October, 2012, by and between the City of Morgantown, West Virginia (“City”) and Allied Waste Services of North America, LLC, DBA Republic Services of West Virginia (“Contractor”).

WHEREAS, the Legislature of the State of West Virginia has declared that inadequately controlled and improper collection, transportation, processing and disposal of solid waste may threaten the environment and is not in the interest of protecting the public health, safety and welfare; and has imposed requirements and standards for the proper collection and disposal of solid waste; and

WHEREAS, the City of Morgantown has the plenary power, within its municipal boundaries, to prohibit the accumulation and require the disposal of garbage, refuse, trash and other solid wastes and to establish and maintain facilities and programs for the efficient removal and disposal of garbage, refuse, trash, and other solid waste and Recyclable Materials; and

WHEREAS, the City is charged with the duty and responsibility of providing efficient, reasonably priced and safe collection and disposal services of all solid waste which is subject to the City’s jurisdiction; and

WHEREAS, to safely, properly and efficiently collect and dispose of Solid Waste and recyclable materials and to implement a comprehensive solid waste management program, the City has determined that it is necessary to utilize a contractor to assist the City in this regard; and

WHEREAS, the principle goal and objective of this Agreement is to provide for the

effective collection of solid waste at the most reasonable cost; to divert materials from landfills, to promote resident education and participation, to encourage coordination and cooperation with other solid waste management agencies, and to assure continuing evaluation and improvement of program effectiveness; and

WHEREAS, Contractor has demonstrated its willingness to provide specialized services as agent for the City hereunder, and to assist the City in implementing a comprehensive Solid Waste Management Program; and has agreed to perform hereunder subject to the continuing and primary oversight by the City, to assure quality service at reasonable cost, which will benefit the City and all residents receiving City services;

WHEREAS, Contractor recognizes that its operation within the municipality of Morgantown is controlled by the terms and conditions provided within this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the City and Contractor do hereby agree as follows:

I. Definitions. As used herein, the following terms shall have the following meanings:

A. Apartment Unit- shall mean all premises, locations or entities, public or private requiring Residential Solid Waste and Recyclable Materials collection and delivery within the corporate limits of the City and not a Residential Unit. An Apartment Unit shall be deemed occupied subject to Section 1139.15 (a) of the City's Solid Waste Collection Ordinance.

- B. City- shall mean the City of Morgantown, West Virginia, and all areas within which the City now has or may hereafter acquire jurisdiction.
- C. City Manager- shall mean the City Manager of the City of Morgantown, West Virginia.
- D. Commercial Solid Waste- shall mean all Solid Waste generated by a producer at a Commercial Unit.
- E. Commercial Unit- shall mean all premises, locations or entities, public or private, requiring Solid Waste collection and disposal within the corporate limits of the City, not a residential unit.
- F. Contractor- shall mean Allied Waste Services of North America, LLC, DBA Republic Services of West Virginia, which has been chosen by the City of Morgantown to perform the City's solid waste services within the City of Morgantown.
- G. Drop-Off Recycling - Program(s) which the City may implement whereby drop-off centers/locations are designated by the City so that solid waste producers within the City may deposit recyclable materials, as designated by the City. By virtue of this contract it is understood that the Contractor will service such drop-off centers with documented adjustments, as necessary.
- H. Hazardous Waste- shall mean waste, in any amount, which is defined, characterized or designated as hazardous by the United States Environmental Protection Agency or appropriate State agency by or

pursuant to federal, state or local law, or waste, in any amount, which is regulated as hazardous under federal, state law or local law.

- I. Holidays- shall mean New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.
- J. Landfill - “Landfill” means any solid waste facility for the disposal of solid waste on land, and also means any system, facility, land, contiguous land, improvements on the land, structures or other appurtenances or methods used for processing, recycling or disposing of solid waste, including landfills, transfer stations, resource recovery facilities and other such facilities not herein specified.
- K. Ordinance- shall mean the Solid Waste Collection Ordinance of the City of Morgantown, West Virginia, as set forth in Article 1139 of the City’s Solid Waste Collection Ordinance, as amended; or additional City ordinances relating to solid waste or Recyclable Materials.
- L. Recyclable Materials- shall mean bi-metal beverage cans, aluminum beverage cans, glass bottles, steel cans, newspaper, corrugated cardboard and plastics, and other materials as may be defined as Recyclable Materials under the West Virginia Code, or applicable local, state and federal laws or regulations, and under Code 1-7 of the Society of Plastics Industries.
- M. Recycling Container- shall mean a receptacle designed for the purpose of curbside collection of Recyclable Materials. The receptacle shall be one

made of fiberglass or plastic that has been accepted by other cities with experience in curbside recycling.

- N. Residential Solid Waste- shall mean all Solid Waste generated by a producer at an Apartment Unit or a Residential Unit.
- O. Residential Unit- shall mean a dwelling within the corporate limits of the City comprising not more than one occupied unit. A Residential Unit shall be deemed occupied subject to Section 1139.15 (a) of the City's Solid Waste Collection Ordinance.
- P. Service Area- shall mean the area within the geographic limits and legal jurisdiction of the City of Morgantown in which Solid Waste collection, transportation and disposal service is or may be provided by or on behalf of the City.
- Q. Solid Waste- shall mean those items included within the definition of solid waste as now or hereafter set forth in West Virginia Code, Chapter 20, Article 5f, Section 2 (i) and in Article 1139 of the Codified Ordinances of the City. Solid Waste does not include Hazardous Waste.
- R. Solid Waste Contract Compliance Officer - As used herein, the position within the City Administration which the City Manager may create for the purpose of assuring that the Contractor is complying with the terms and conditions of this Agreement.
- S. Yard Waste - means grass clippings, weeds, leaves, brush, garden waste, shrub or tree prunings and other living or dead plant tissues, except that

such materials which, due to inadvertent contamination or mixture with other substances which render the waste unsuitable for composting, shall not be considered to be yard waste; provided that the same or similar waste generated by commercial agricultural enterprises is excluded.

II. General Provisions.

- A. Exclusive Agreement. During the term of this Agreement, Contractor shall be the City's sole contractor and Agent for the collection and disposal of residential and commercial non-hazardous Solid Waste and Recyclable Materials within the City's jurisdiction. Nothing herein will prohibit existing recycling programs in the City from continuing. Contractor shall have the privilege of hauling Solid Waste over the streets and all other public thoroughfares within the City. It is understood by the parties hereto that this Agreement shall not constitute a franchise and is not to be deemed or construed as such. Contractor will recognize any and all certificates of convenience and necessity issued to collect commercial trash within the City of Morgantown by the West Virginia Public Service Commission. It is also understood that the City's authority to terminate Contractor's right to provide Residential Solid Waste service within the City of Morgantown shall supercede any authorization issued to Contractor by the West Virginia Public Service Commission or any other governmental entity. See Section VII and XI (D) of this Agreement for further discussion of the City's ultimate right to terminate Contractor's

authority to provide garbage service within the City of Morgantown.

- B. Services to City. Contractor shall, as Agent and Contractor for the City, on a daily basis or as otherwise agreed, and without charge to the City, collect, transport and dispose of all Solid Waste and Recyclable Materials from all municipally-owned or operated buildings, pools, parks and recycling centers, as well as Solid Waste deposited in street or other public trash receptacles (collectively "Municipal Facilities"). Contractor further agrees to provide to the City, at no cost, sanitation trucks and employees which will assist the City in cleaning up after special events such as festivals, and parades, not to exceed six per year, and also, after unscheduled events such as block parties. Contractor agrees to offer Saturday and Sunday service in the downtown business district and other areas within the City where deemed practical. Contractor shall provide commercial and public solid waste containers in the City's Downtown Business District which are to be for weekend solid waste collection.
- C. Evidence of Landfill. Contractor shall provide the City with written evidence demonstrating that the Contractor has available to it a Solid Waste landfill which is licensed to accept all of the Solid Waste collected within the City. Said written evidence shall certify that said Solid Waste landfill presently meets all applicable State and Federal requirements, rules and regulations and will do so throughout the term of this Agreement.

- D. Compliance with Laws. If the performance of this Agreement is affected by new laws, regulations, rules, ordinances or executive orders, or amendments to existing laws during the term of this Agreement, or any extensions thereof, then the parties shall negotiate new terms and conditions of this Agreement as necessary to insure compliance with the same. The foregoing shall apply should the City of Morgantown be selected for the State of West Virginia's Home Rule Pilot Program and thereafter determine that it wishes to enact local legislation governing garbage services within its corporate limits.
- E. Term of Agreement. This Agreement shall be for a five (5) year term beginning on October 1, 2012, and ending on September 30, 2017. The initial five (5) year term of this Agreement may be extended for two (2) additional five (5) year periods upon such terms as may be negotiated and approved; provided, that negotiations are completed at least six (6) months prior to the date each such additional term is to commence. In the event that negotiations are not completed at least six (6) months prior to the date each such additional term is to commence, the City may, at its option, seek proposals from new contractors or perform such services with its own personnel and equipment.
- F. Hours of Operation. On collection days, Contractor shall not start residential solid waste collections before 6:00 a.m. and shall not collect after 6:00 p.m. Exceptions to collection hours shall be effected only upon

the mutual agreement of the City and Contractor, or when Contractor reasonably determines that an exception is necessary in order to complete collection on an existing collection route due to unusual circumstances. e “Downtown” business area shall be completed by 7:00 a.m.

- G. Routes of Collection. Collection routes shall be approved by the City. Contractor shall submit a map designating the collection routes to the City for its approval. Such map shall be of a size to clearly show all pertinent information. The Contractor may from time to time propose to the City for approval, changes in routes or days of collection. Upon the City Manager’s approval of any such proposed changes, the Contractor shall promptly give written or published notice to the affected solid waste producers.
- H. Holidays. The Contractor may suspend Solid Waste collection on the following holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. The Contractor’s decision to suspend collection on any or all of these holidays shall not relieve the Contractor of its obligation to provide collection service in accordance with the terms of this Agreement.
- I. Complaints. All complaints by Solid Waste producers shall be made directly to the Contractor and shall be given prompt and courteous attention. In the case of alleged missed collections, the Contractor shall investigate and, if such allegations are verified, shall arrange for the

collection of the Solid Waste not collected, within twelve (12) business hours after the complaint is received. The Contractor shall maintain a written daily log of all such complaints which shall indicate the name and address of complainant, date received, nature of complaint, and date and nature of corrective action taken by the Contractor. Contractor shall forward to the City Manager at the end of each month a copy of the complaint log for said month. Contractor will also provide a monthly list to the City Manager on the amount of **solid waste** containers switched out on a monthly basis in the City of Morgantown. Contractor will continue to work with the City to provide recommendations to improve the sign up of every resident in Morgantown for Solid Waste collection service.

- J. Account Billing and Collection. Contractor agrees to be responsible for billing and collecting on accounts for all Solid Waste collections services provided pursuant to this Agreement, at no cost to the City. It is understood that each property owner or occupant of a residential Solid Waste producing unit shall be responsible for the payment of Solid Waste collection services provided by Contractor. Contractor shall bill the owners of each and every such residential Solid Waste producing unit provided, that upon application by the occupant of any such residential Solid Waste producing unit filed with the Contractor and accompanied by an appropriate affidavit showing the occupant's status as such, such bills may be rendered to the occupant. In the event that any such account

becomes 60 days delinquent in payment, Contractor is authorized to discontinue its collection of refuse at any such location. At the time that the residence pays its past due balance, Contractor will collect all accumulated Solid Waste at the residence on the next collection day. Contractor will provide the City notification of delinquent accounts and individual residences at which collection will be suspended, and the City will take appropriate action, including the issuance of citations to assure compliance with applicable State Statutes and Municipal Ordinances. If the City determines that a particular residence(s) is becoming a health hazard, it is authorized to require Contractor to do a courtesy pickup of Solid Waste after the City has issued citations to responsible parties. In no event will the City be financially responsible to the Contractor for any delinquent accounts. Contractor agrees to offer a one month discount each year to Morgantown customers who are being billed as Residential Solid Waste accounts and who pay in advance for twelve (12) months service. In the event a residence does not subscribe for Solid Waste collection with Contractor, said residence will not have its solid waste collected until such time as it subscribes to and pays for the service. Once the residence subscribes for the service, Contractor will collect all Solid Waste that has accumulated at the residence on the next collection day.

After the first year of this Agreement, the City may assume responsibility for and administer all residential solid waste accounts within the City by providing contractor with sixty (60) days written notice of intent to do so.

- K. Collection Equipment. Contractor agrees to provide an adequate number of vehicles for collection services. All such vehicles and all other equipment, including dumpsters, shall be kept in good repair, appearance, and in a sanitary condition at all times. Each vehicle shall have clearly visible on each side the identity and Morgantown telephone number of the Contractor.
- L. Hauling. All hauling of Solid Waste by the Contractor shall be done in accordance with applicable state and federal laws and the Morgantown City Code. All drivers and other truck personnel shall be clean and neat and appropriately dressed with identification, and shall, at all times, be courteous to all customers. Contractor shall maintain and provide to the City an employee handbook and/or other rules, which shall, among other things, prescribe the duties and responsibilities of the employees, and reflect a policy precluding any form of discrimination, sexual harassment, and the use of alcohol or controlled substances.
- M. Disposal. All Solid Waste collected for disposal by the Contractor shall be disposed of in accordance with all applicable Federal and State laws, and the City's Solid Waste Collection Ordinance.
- N. Notification. The Contractor shall notify all producers about complaint

procedures, rates, regulations and days for scheduled solid waste collection.

- O. Point of Contact. All dealing and contacts between the Contractor and the City shall be directed by the Contractor to the City of Morgantown City Manager, and by the City to the local managing officer or designated representative of the Contractor.
- P. Non-discrimination. Contractor agrees not to discriminate against any person because of age, race, sex, religion, physical handicap, or country of national origin.
- Q. Indemnity. The Contractor agrees to indemnify, save harmless, and exempt the City, its officers, agents, servants, and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, and reasonable attorney's fees incident to any work done in the performance of this Agreement arising out of a willful or negligent act or omission or any strict liability of the Contractor, its officers, agents, servants, and employees; 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 a willful or negligent act or omission of the City, its officers, agents, servants and employees.
- R. Licenses and Taxes. The Contractor agrees to obtain all required Federal, State and Municipal licenses and permits which may be required as a

result of the Agreement and promptly pay all taxes levied by the City or any other taxing authority.

S. Insurance. The Contractor agrees at all times during the life of this Agreement to maintain in full force and effect Employer's Liability, Workers' Compensation, Public Liability and Property Damage Insurance. In addition, Contractor shall obtain a waiver of subrogation from its insurers waiving any right of subrogation against the City herein, except for the sole negligence or willful misconduct of the City; and shall list the City as an additional insured on all such insurance policies, except Workers' Compensation. All insurance shall be by insurers and for policy limits reasonably acceptable to the City and before commencement of work hereunder, the Contractor agrees to furnish the City certificates of insurance to the effect that such insurance has been procured and is in force. The certificates shall contain the following express obligation:

"This is to certify that the policies of insurance described herein have been issued to the insured for whom this certificate is executed and are in force at this time. In the event of cancellation, thirty (30) days prior written notice will be given the City of Morgantown."

For purpose of the Agreement, the Contractor shall carry the following types of insurance in at least the limits specified below:

<u>Coverages</u>	<u>Limits of Liability</u>
(1) Workers' Compensation	Statutory
(2) Employer's Liability	\$500,000

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| (3) | Bodily Injury Liability
Except Automobile | \$500,000 each occurrence
\$1,000,000 aggregate |
| (4) | Property Damage Liability
Except Automobile | \$500,000 each occurrence
\$500,000 aggregate |
| (5) | Automobile Bodily Injury
Liability | \$500,000 each person
\$1,000,000 each occurrence |
| (6) | Automobile Property Damage
Liability | \$1,000,000 each occurrence |
| (7) | Excess Umbrella Liability | \$5,000,000 each occurrence |

T. Penalties. It is understood that Contractor will be subject to penalties for certain non performance of acts required by this Agreement that are proven to be due to negligence on Contractor's part. To that extent, at the time this Agreement is executed, Contractor will set up a joint account with the City which the City may draw down from to cover the penalties hereinafter set forth. Contractor will initially deposit \$3,500⁰⁰ in the account and will replenish it to the \$3,500⁰⁰ level each time the account balance drops below \$1,000⁰⁰. The specific non performance acts and penalties to be paid to the City by Contractor are as follows:

<u>Omission</u>	<u>Penalty</u>
Commencement of collection of residential solid waste prior to 6:00 a.m. except as permitted by contract or by City Manager.	\$100 ⁰⁰ per incident (Each truck on each route is a separate incident)
Failure to collect spillage	\$15 ⁰⁰ per incident

when containers are being emptied into truck.

Failure to collect missed solid waste, recyclables or paid specials of a current subscribing customer within one business day after a makeup request is given to the Contractor.

\$15⁰⁰ per incident to a maximum of \$150.00 per truck, per day

Any additional misses at the same address, of a current subscribing customer within 3 months after Contractor's receipt of 2nd notice regarding no collection.

\$50⁰⁰ each incident

Missed collection of whole block. (This excludes collections prevented by weather and holiday rescheduling.) A whole block miss is defined as missing 5 or more houses on the same side of the street.

\$200⁰⁰ per whole block

Failure to replace or fix commercial container that is reported to contractor with 10 business days of notification.

\$30⁰⁰ per day per container

Both the City and the Contractor must verify the complaints listed above based upon good faith efforts. The above penalties will not be assessed if Contractor documents blocked streets by notifying the City Manager's office. Contractor will collect the Solid Waste the next business day that the street is unblocked and passable for its collection vehicle(s). The above penalties will not be assessed in the event collections are prevented by inclement weather or holiday rescheduling.

U. Performance Bond.

- (1) The Contractor shall provide the City with a corporate surety bond or cash equivalent as security for performance of this Contract. Said surety bond or cash equivalent shall be two million dollars (\$2,000,000.00). Said security shall remain in effect and place for the life of this Agreement.
- (2) Premium for the bond described above shall be paid by the Contractor. A certificate from the surety showing that the bond premiums are paid in full shall accompany the bond.
- (3) The surety on the bond shall be a duly authorized corporate surety company authorized to do business in the State of West Virginia.
- (4) Power of Attorney- Attorneys-in-fact who sign performance bonds or contract bonds must file with each bond a certified and effectively dated copy of their power of attorney.
- (5) In the event the City terminates this Agreement pursuant to Section IX herein and Contractor challenges said termination and bond forfeiture in a court of law, Contractor shall continue to perform the services required by this Agreement until such time as the termination issue is resolved by the court.

V. Rates. Rates and charges for Residential and Commercial Solid Waste service shall be as set forth and described in the Exhibit attached hereto

and shall be in accordance with duly enacted City Ordinances. It is understood that all such rates are subject to W.Va. Public Service Commission approval.

- W. Items Not Covered By This Agreement. Contractor shall not be required by this Agreement to collect, remove or dispose of the following types of items: sewage, animal excreta, the carcasses of animals, vehicles or parts of vehicles, tires, hazardous waste, or material resulting from the demolition, repair, alteration or erection of buildings or structures (collectively "Excluded Waste"). Title to and liability to excluded waste shall remain with the generator of such waste and shall at no time pass to Contractor.

III. Residential Solid Waste Accounts.

The parties hereto agree to the following:

- A. Once a week pickup of Solid Waste and pickup of Recyclable Materials every two weeks.
- B. Solid Waste is to be placed for collection in metal or molded plastic containers with lids of not more than 30 gallon capacity
- C. Pickup shall be at curbside except for backyard elderly and disabled accounts. It is understood that the Contractor will throughout the life of this Agreement service elderly and disabled backyard residential accounts at no extra charge to any such customer; provided that any such customer offers proof acceptable to the Contractor that no one resides at any such

location who can carry the Solid Waste and Recyclables to curbside. A list of current backyard accounts has been provided by the City to the Contractor.

- D. Contractor will provide recycling carts at no cost to the customer. Service frequencies for residential recycling pickup will be one time per week. Resident recycling carts shall be 65 gallon, except senior citizens shall be provided 32 gallon carts. Republic shall retain ownership of the carts and provide for their maintenance. All such carts will be delivered to residents within 6 months of this Agreement being executed by the parties. The City shall have the right to determine the color of such carts.
- E. In the event a scheduled holiday may preclude collection, said collection shall be made up in the same week, so that no such customer is without service during a particular week. The Contractor shall timely advise all affected customers of schedule changes due to a holiday.
- F. The Contractor will at no extra cost to the customer collect and dispose of all furniture, appliances (with any freon removed), and other "white goods" household items placed at curbside.
- G. Small businesses (three 30 gallon containers or less once a week) shall be treated and billed as residential solid waste accounts.
- H. Contractor shall collect and dispose of grass clippings, leaves and small limbs or branches placed at curbside at no extra cost until such time as the disposal of such materials at landfills is prohibited by applicable State

or Federal law or regulations.

IV. Commercial Solid Waste Accounts.

- A. Except as set forth below, the Contractor shall provide for collection at least once each week at all commercial establishments and all buildings containing more than two apartments or residential units. Such collection shall be made at the curbside closest to a public road, or if the customer is not immediately adjacent to a public road, at the closest accessible public alleyway. Contractor will not relocate any such collection point within a public way from that previously used by the City without first obtaining the permission of the City Manager.
- B. Notwithstanding the above, the Contractor may provide container collection service for other commercial customers or multiple family dwelling units as may be reasonably necessary or required. The frequency of collection and the size of the container to be utilized shall be mutually agreed upon by the Contractor and customer, in order to minimize any dangers to health and safety and to maximize savings for the customer.
- C. Certain Commercial Units may be required to utilize dumpster container service as provided in the Ordinance as may be reasonably necessary or required. Such customers shall be provided a container which conforms to the requirements of the Solid Waste Collection Ordinance. If Commercial Units have existing dumpster containers, then Contractor

shall utilize these containers if collection can be made using Contractor's automated collection trucks. If Contractor cannot collect from any existing dumpster container using Contractor's automated collection trucks, then Contractor shall offer to purchase these dumpsters from their owners at fair market value, and provide to said customers replacement dumpsters which Contractor's equipment can utilize.

- D. Commercial Units or buildings containing more than two apartments or residential units which are required to utilize dumpster containers shall place such containers for collection at a location designated by the Contractor and approved by the City Manager.

V. Recycling Program- General Provisions.

- A. Materials to be collected by the Contractor shall include: glass bottles (green, clear and brown), metal beverage and food cans, paper milk and juice containers, aluminum cans, egg cartons, plastic bottles, newspaper, magazines, junk mail, dry non-coated food paper, boxboard (dry food containers), cardboard and other materials as may be agreed to by the parties hereto and which are defined as Recyclable Materials under the West Virginia Code, or applicable State and Federal laws or regulations, and plastic beverage containers (Code 1-7 as defined by the Society of Plastics Industries).
- B. The City will mail an informational letter to the residents introducing the recycling program and the menu of products that will be recycled.

- C. The Contractor shall provide for a public education program which shall describe the benefits of recycling generally and the aspects of the recyclable collection program specifically. At a minimum, the education program will include an **semi**-annual direct mailing by Contractor to all residential, apartment dwelling units, and new subscribers describing different types of recycling and refuse collection information. Any information recommended by the City to recycling or refuse collection will be included. This information will include, but not limited to: information on recycling material and collection, benefits of recycling, contact information for the Contractor, services offered by the Contractor, proper placement of Solid Waste material to be collected, and other related matters. The Contractor will also work with the Monongalia County Board of Education in an effort to encourage programs aimed at educating students regarding the importance of recycling.
- D. Allied Waste will continue to deposit all recyclables collected with the Monongalia County Solid Waste Authority. The foregoing can only be discontinued with 60 days prior written notice of the same by Allied Waste to the City of Morgantown and the Monongalia County Solid Waste Authority. During that 60 day period, Allied Waste is obligated to fully disclose to the City and County Solid Waste Authority the reason(s) for discontinuing the practice and to negotiate in good faith any mitigating or corrective actions the City or the County Solid Waste

Authority may take that would allow the practice to continue.

- E. The Contractor shall issue a report on a quarterly basis to the City Manager detailing the amounts of recyclable materials collected and disposed of in the City.
- F. Contractor agrees that it will neither deposit recyclable materials, which it collects as a part of the recycling program, at any landfill; nor cause the same to be incinerated; that it will remove all such recyclable materials from the solid waste stream.
- G. The parties hereto agree to work together in an effort to meet the State of West Virginia's recycling goals of reducing the disposal of municipal solid waste.

VI. Location of Solid Waste and Recyclable Containers For Collection.

Solid Waste and Recyclable containers shall be placed as close to the curb or edge of pavement as practicable without interfering with or endangering the movement of vehicles or pedestrians. At all times, the City's Solid Waste Collection Ordinance shall control should there be a question regarding the placement of containers. When construction work is being performed in the right of way, Solid Waste and Recyclable containers shall be placed as close as practicable to an access point for the collection vehicles. The Contractor may decline to service any Solid Waste and Recyclable containers not properly placed at curbside or backdoor, as permitted, and shall notify the City of such service issue. Commercial units or buildings containing more than three apartments or

residential units which are required to utilize dumpster containers shall place such containers for collection at a location designated by the Contractor and approved by the City Manager.

- VII. Exclusive Contract. To the extent permissible by law, the Contractor is the only entity or individual having a Solid Waste Service Agreement with the City. It is understood by the parties that any authorization that the Contractor may receive from the State or any other entity, other than the City, to conduct its residential solid waste collection business within the City of Morgantown shall be conditioned upon and subject to an Agreement being in effect between the City and Contractor. Should this Agreement terminate, it is the understanding of the parties hereto that any such rights granted by the State or any other authority regarding residential solid waste collection within the City will also terminate. It is further understood and agreed to by the parties hereto that Contractor will not seek any authorizations, certificates or change of status as it pertains to residential solid waste collection within the City of Morgantown from any governmental entity without first receiving written permission to do so from the City of Morgantown.
- VIII. Transferability of Agreement. No assignment or transfer of this Agreement or any right accruing thereunder shall be made in whole or in part by the Contractor without the express written consent of the City and such consent by the City shall be discretionary.
- IX. Default and Termination. This Agreement shall be subject to termination by the

City should any one or more of the following conditions of default occur:

- (A) If Contractor shall neglect or fail to perform or observe any of the terms, provisions, conditions, or covenants herein contained and on Contractor's part to be performed and observed and if Contractor fails to commence corrective actions or measures within ten (10) days after receipt of written notice from City, to Contractor, or if Contractor fails to correct or cure the breach within any other time period which may be set by the City.
- (B) If Contractor shall discontinue any or all of its operations under this Agreement.
- (C) Contractor files a voluntary or involuntary petition in bankruptcy, including reorganization plan, makes a general or other assignment for the benefit of creditors, is adjudicated as bankrupt or if a receiver is appointed for the property or affairs of Contractor and such receivership is not vacated within thirty (30) days after appointment of such receiver.
- (D) The occurrence of any act which operates to deprive the Contractor permanently of the rights, powers and privileges necessary for the proper conduct and operation of its business granted herein.
- (E) If Contractor shall fail to abide by all applicable laws, ordinances, rules and regulations of the United States of America, State of West Virginia and the City. In the event any condition of default shall occur, City then, or at any time thereafter, which such breach is continuing, shall have the

right, at its election, to terminate this Agreement by giving at least ten (10) days written notice to Contractor, subject to the provisions contained within Subsection (A) herein. The failure of the City to insist, in any one or more instance, upon the strict performance by the Contractor of any of the provisioner, terms, covenants, reservations, conditions or stipulations contained in this Agreement shall not be considered as a waiver or relinquishment thereof for the future, but the same shall remain and continue in full force and effect, and no waiver of the conditions or stipulations hereof shall be deemed to have been made in any instance unless expressly in writing.

X. Force Majeure

Neither the City nor the Contractor shall be liable for the failure to perform their duties hereunder if such failure is caused by a catastrophe, riot, war, governmental order or regulation, fire, accident, Act of God or other similar or different contingency beyond the reasonable control of the parties hereto.

XI. Miscellaneous Provisions

(A). If any term, clause or provision of this Agreement shall be adjudged by any court or government agency to be invalid or contrary to any applicable law or regulation, such invalidation or determination shall not affect the validity and enforceability of the remaining portions of the clauses and provisions of this Agreement; and to this end, the terms, clauses and provisions of this Agreement are hereby agreed to be

severable.

- (B) The City's Solid Waste Collection Ordinance (and any future amendments thereto) is hereby incorporated within this Agreement as a part thereof and shall be complied with by the parties hereto.
- (C) Both parties hereto acknowledge and agree that this document contains the entire Agreement between the parties and that they have not relied upon any statements, representations, agreements or warranties, except such as are expressed herein, and that no amendment or modification of this Agreement shall be valid or binding unless expressed in writing and executed by the parties hereto within an amending Agreement in the same manner as the execution of this Agreement.
- (D) This Agreement can be modified in writing by the parties at anytime during its term so as to comply with applicable West Virginia law. It is understood by the parties that should the City of Morgantown be granted temporary or permanent "Home Rule status" by the State of West Virginia during the term of this Agreement, the City may require amendment of this Agreement, or even termination of this Agreement, so as to comply with legislation enacted by the City while exercising its Home Rule position. In the event the City terminates this Agreement during its initial five year term as a result of the foregoing, and awards its solid waste collection service contract to another garbage contractor,

Contractor shall have the right to reimbursement from the City of Morgantown for any costs that it has incurred in preparation for offering its services to the City during its initial five year term of this Agreement and which can not be recouped by Contractor due to the Agreement being terminated before the five year term is completed. Should Contractor present any such claim for reimbursement to the City, it is to be accompanied by financial documentation that clearly substantiates the claim. In the event the City disagrees with the amount of the claim being presented to it, the parties hereto shall enter into good faith negotiations to resolve the matter. In the event such negotiations are unsuccessful in resolving the matter, the parties will contact the Dean of the West Virginia University College of Law and request that he/she assist them in obtaining a member of the Law School's faculty who has the expertise to review the position of both parties and thereafter render a decision regarding the claim. The parties hereto shall present the matter to the Law School faculty member who will thereafter render a decision. That decision shall be binding upon the parties. Should the Law School faculty member require payment for his/her services, the parties shall each pay one half.

- (E) This Agreement shall be deemed to have been made in and construed in accordance with the laws of the State of West Virginia. Any disputes arising hereunder shall be cognizable only in the Circuit Court of

customers are no longer paying for the position of part time Solid Waste Contract Compliance Officer.

IN WITNESS WHEREOF, the parties hereto have signed below by and through their authorized representatives.

THE CITY OF MORGANTOWN,
a municipal corporation,

ALLIED WASTE SERVICES OF NORTH AMERICA, LLC
a Delaware limited liability company,
dba Republic Services of West Virginia

By: _____
Terrence R. Moore

Its: City Manager

By: _____

Its: _____

EXHIBIT

RESIDENTIAL SOLID WASTE

The new residential rates will be as follows:

October 1, 2012- September 30, 2013	\$15.25/month
October 1, 2013- September 30, 2014	\$15.25/month
October 1, 2014- September 30, 2015	\$15.50/month
October 1, 2015 - September 30, 2016	\$16.00/month
October 1, 2016- September 30, 2017	\$16.50/month

The foregoing fees shall be billed by the Contractor to each and every Residential Solid Waste producer. Should any such unit be occupied for less than a full three-month billing cycle, upon request and proof of same, the contractor shall prorate the occupant's sanitation bill for that three-month billing cycle; however, in all such cases the occupant shall be billed a full month for any month that he or she occupied such unit for one day or more. A property owner seeking to have any such unit exempted from sanitation billing due to non-occupancy shall submit a signed affidavit to the Contractor requesting such exemption on a form prescribed by Contractor; in all such cases payment shall be required for any month that the unit is occupied for one day or more.

A one month discount shall be offered to any person paying in advance for twelve months service.

EXHIBIT

COMMERCIAL SOLID WASTE

Current Commercial Solid Waste rates being charged by the Contractor and previously approved by the City at the time of execution of this Agreement will increase by 5% (five percent) on October 1, 2012, and an additional 3% (three percent) on each anniversary date that this Agreement is in effect.

The foregoing shall be the maximum monthly rates which shall be charged for commercial solid waste service. However, the Contractor shall be authorized to negotiate lower rates with each commercial solid waste account at the particular facts of a particular case might warrant.

Should any such Commercial Solid Waste unit be occupied for less than a full three-month billing cycle, upon request and proof of same, the Contractor shall prorate the occupant's sanitation bill for that three-month billing cycle; however, in all such cases the occupant shall be billed a full month for any month that the unit was occupied for one day or more. A property owner seeking to have any such unit exempted from sanitation billing due to non-occupancy shall submit a signed affidavit to the Contractor requesting such exemption on a form prescribed by Contractor; in all such cases payment shall be required for any month that the unit is occupied for one day or more.

Small commercial businesses generating less than three 30 gallon containers or less per week shall be treated and billed as residential solid waste accounts.