

Ordinance No. _____

An ordinance approving an agreement between ATS Operating, LLC ("ATS") and the Metropolitan Government of Nashville and Davidson County, by and through the Office of Family Safety ("OFS"), to collect clothing and/or other household item donations on a regular basis from OFS on behalf of one or more charitable organizations.

WHEREAS, there is a revocable collections agreement between ATS Operating, LLC and the Office of Family Safety wherein ATS is granted non-exclusive rights of ingress and egress for purposes of donation collections; and,

WHEREAS, ATS agrees to collect the donations from the collections point on a regular basis, but no less than once per month, and to keep any collection receptacle in a reasonably clean condition; and,

WHEREAS, OFS agrees to adhere to certain donations standards and expectations and permit access to portions of the property for the collections; and,

WHEREAS, it is to the benefit of the citizens of the Metropolitan Government of Nashville and Davidson County that this agreement be approved.

NOW, THEREFORE BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That the agreement between ATS Operating, LLC and the Metropolitan Government of Nashville and Davidson County, by and through the Office of Family Safety, to collect clothing and/or other household item donations, a copy of which is attached hereto and incorporated herein, is hereby approved.

Section 2. That this ordinance shall take effect from and after its adoption, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

RECOMMENDED BY:

Signed by:

313802429935C485

Diane Lance, Director
Metro Office of Family Safety

INTRODUCED BY:

Member(s) of Council

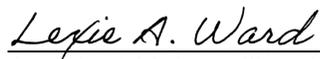
APPROVED AS TO AVAILABILITY OF FUNDS:

Signed by:

62977A2A9742460...

Jenneen Reed, Director
Department of Finance

APPROVED AS TO FORM AND LEGALITY:



Assistant Metropolitan Attorney

Revocable Collections Agreement between the Metropolitan Government of Nashville and Davidson County and ATS Operating, LLC ("ATS").

REVOCABLE COLLECTIONS AGREEMENT BETWEEN
THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY
AND ATS OPERATING, LLC

THIS REVOCABLE COLLECTIONS AGREEMENT (this "Agreement") is entered into and deemed made effective as of _____, by and between **The Metropolitan Government of Nashville and Davidson County by and through the Office of Family Safety** ("Owner"), and ATS OPERATING, LLC ("ATS").

WHEREAS, Owner owns that certain real property more particularly described as The Family Safety Center 610 Murfreesboro Pike, Nashville, TN 37210 (the "Property"); and

WHEREAS, ATS desires to collect clothing and/or other household items (the "Donations") on a regular basis from the Owner at the Property on behalf of one or more charitable organizations.

In consideration of the mutual promises and covenants set forth herein, the parties hereto do hereby agree as follows:

1) Owner grants ATS the right to collect the Donations during the term hereof and if deemed necessary place, maintain and operate one or more bins, trailers or trucks (a "Collection Receptacle") on the Property, for purposes of collecting the Owner's Donations. Additionally, Owner grants ATS together with its donors and other invitees non-exclusive rights of ingress and egress, during business hours or specific hours set by the staff, of the Property while staff is present, to and from the Collections Receptacle or Collections Point (Loading Dock, Back Door, Front Door etc.) across the remainder of that portion of the Property which is generally common areas, parking lots and drive aisles.

2) The term of this Agreement shall commence as of the Effective Date and shall continue for an initial trial period of three (3) months thereafter. During which time, audits of Donations collected may be performed in order to determine the percentage of store quality product. If determined said percentage is too low, ATS has the right to renegotiate this Agreement at the end of this trial period. If said percentage is acceptable, a full term of twelve (12) months may commence at the agreement of all parties, unless otherwise terminated by ten (10) days written notice by either party. The parties have the right to renew the term hereof for one (1) additional periods of twelve (12) months, upon agreement by both Parties.

3) Either Party shall have the right to terminate this agreement, with or without cause, upon thirty (30) days written notice to the other Party.

4) ATS shall pay Owner in the amount of one-hundred and fifty dollars (\$150) monthly during the trial period. ATS shall then pay \$0.08 per pound per collection thereafter.

5) ATS agrees to collect the Donations from the Collections Point on a regular basis, but no less than once per month, and to keep any Collection Receptacle in a reasonably clean condition. If Owner contacts ATS regarding the condition of any Collection Receptacle not meeting acceptable standards, or that a Collection Receptacle requires immediate collection, ATS shall come to collect and/or clean the contents of the receptacle within three (3) business days of notification.

6) Donations standards and expectations shall be set between each party prior to the commencement of the initial trial period. Owner agrees to adhere to the following Donations standards and Owner agrees to adhere to the following Donations Standards and Expectations: All items must be bagged or boxed, meet general product standards as listed on attached Acceptable Items List and not contain mold, mildew, or anything to contaminate donations. Items shall not contain tags.

Revocable Collections Agreement between the Metropolitan Government of Nashville and Davidson County and ATS Operating, LLC ("ATS").

7) During the term of this Contract, Licensor shall at its sole expense obtain and maintain in full force and effect for the duration of the Agreement and any extension hereof at least the following types and amounts of insurance for claims which may arise from or in connection with this Agreement.

- a) ATS will maintain liability insurance with respect to the Donation Site and, shall (i) cause Owner to be named as an additional insured, and (ii) provide Owner with a certificate of insurance.
- b) ATS shall maintain Commercial General Liability Insurance occurrence version commercial general liability insurance or equivalent form with a limit of not less than one million (\$1,000,000.00) dollars each occurrence for bodily injury, personal injury, and property damage.
- c) Workers Compensation Insurance must be provided with statutory limits required by the State of Tennessee or other applicable laws and the Employer's Liability Insurance with limits of no less than one hundred thousand (\$100,000) dollars, as required by the laws of Tennessee.
- d) ATS shall provide Metro with an updated Certificate of Insurance annually, at renewal, that indicates Licensor has insurance coverage as described above.
- e) Metro is a metropolitan form of government as set out under the Governmental Tort Liability Act in Tennessee Code Annotated § 29-20-101, et seq., and as such has its liability defined by law. The Metropolitan Government of Nashville and Davidson County carries no liability insurance; however, it is self-insured in an adequately funded Self-Insurance Program, up to the limits as set out in the statute. This self-insurance is for the benefit of the Metro Government only and provides no indemnification for any other entity whatsoever.
- f) For any claims related to this agreement, Licensor's insurance coverage shall be primary insurance as respects Metro, its officers, officials, employees, and volunteers. Any insurance or self-insurance programs covering Metro, its officials, officers, employees, and volunteers shall be excess of Licensor's insurance and shall not contribute with it.

8) Metro shall not be responsible for any taxes that are imposed on ATS. Furthermore, ATS understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to Metro.

9) Any notices required pursuant to this Agreement shall be in writing. Addresses to which notices shall be sent are as follows:

METROPLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

ATTN: The Office of Family Safety
610 Murfreesboro Pike
Nashville, TN 37210

ATS Operating, LLC:

1900 Crestwood Blvd., Suite 302
Irondale, AL 35210

10) Metro and ATS's representatives and employees shall perform their professional work free of any direction or control by ATS. ATS shall neither have nor exercise any control or direction over the methods by which Metro or Metro's subcontractors, representatives or its employees shall perform their work and functions. Nothing in this Agreement is intended nor shall be construed to create an employer/employee relationship, partnership or a joint venture relationship between Metro and/or Metro's subcontractors, representatives and employees and ATS.

11) This Agreement shall be construed and interpreted according to the laws of the State of Tennessee. Tennessee law shall govern regardless of any language in any attachment or other document that

Revocable Collections Agreement between the Metropolitan Government of Nashville and Davidson County and ATS Operating, LLC ("ATS").

the Lessor may provide.

12) Any action between the parties arising from this Agreement shall be maintained in the courts of Davidson County, Tennessee.

13) This Agreement may not be altered or amended, except by an instrument in writing signed by the parties hereto. Neither this Agreement nor any short-form or memorandum hereof shall be recorded in public real estate records. This Agreement contains and embodies the entire agreement of the parties hereto as to the subject matters hereof and supersedes all prior oral or written agreements, negotiations, proposals, representations and warranties between the parties hereto as pertains to the Property, or any portions thereof. Any and all obligations and liability of Metro existing hereunder as of the expiration or earlier termination of this Agreement for matters predating such expiration or termination date shall survive such expiration or earlier termination. If any term or provision of this Agreement or any application thereof shall be deemed invalid or unenforceable, the remainder of this Agreement shall not be affected thereby. No course of dealing or course of performance between ATS and Metro, or any failure or delay on the part of either of them in exercising any rights or remedies hereunder, shall operate as a waiver of any rights or remedies, and no single or partial exercise of any rights or remedies hereunder shall operate as a waiver or preclude the exercise of any other rights or remedies hereunder. As applicable, both parties each represent and warrant on their respective behalf that: (a) it is in good standing as an entity in all legally required jurisdictions and has authority to enter into and perform the obligations under this Agreement and (b) the individual executing and delivering this Agreement individually or on behalf of its respective party has been properly authorized to do so and such execution and delivery shall bind the parties hereto.

14) ATS Shall indemnify and hold harmless Metro, its officers, agents, and employees from:

- (1) Any claims, damages, costs, and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of ATS, its officers, employees and/or agents, including its sub or independent contractors, in connection with the performance of this agreement; and,
- (2) Any claims, damages, penalties, costs, and attorney fees arising from any failure of ATS, its officers, employees and/or agents including its sub or independent contractors, to observe applicable laws, including but not limited to, labor laws and minimum wage laws.
- (3) Metro will not indemnify, defend, or hold harmless in any fashion ATS from any claims arising from any failure, regardless of any language in any attachment or other document that ATS may provide.

15) The parties shall be excused for the period of any delay and shall not be deemed in default with respect to this agreement when prevented from so doing by cause or causes beyond the parties' control, which shall include, without limitation, all labor disputes, fire or other casualty, acts of God, fire, flood, riot, or any other cause whether similar or dissimilar to the foregoing, not within the control of the respective parties.

16) This contract sets forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of the parties.

17) The Agreement shall not be binding upon the parties until it has been signed first by ATS and then by the authorized representatives of the Metropolitan Government and has been filed in the office with the Metropolitan Clerk. When it has been so signed and filed, this Agreement shall be effective as of the date first written above.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

Revocable Collections Agreement between the Metropolitan Government of Nashville and Davidson County and
ATS Operating, LLC ("ATS").

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed effective as of the
Effective Date.

**THE METROPOLITAN GOVERNMENT
OF NASHVILLE AND DAVIDSON
COUNTY:**


Office of Family Safety

**APPROVED AS TO AVAILABILITY OF
FUNDS:**

Signed by:

62377A2A8742469...
Director of Finance

**APPROVED AS TO RISK AND
INSURANCE:**

DocuSigned by:

68804BF12FD744C...
Director of Insurance

**APPROVED AS TO FORM AND
LEGALITY:**


Assistant Metropolitan Attorney

FILED IN THE OFFICE OF THE CLERK:

Metropolitan Clerk

ATS Operating, LLC

By (print): Ryan Court

Signature: 

Title: Donations Growth and Development Mgr