

ROWAN COUNTY

AGREEMENT FOR SERVICES

NORTH CAROLINA

This Agreement is made and entered into between Rowan County, North Carolina (“County”) and **Republic Services of North Carolina, LLC dba Republic Waste Services** (“Provider”).

WHEREAS, the County and the Provider wish to enter into a contract under which the Provider will exclusively provide certain specified services and/or materials to the County in exchange for payment. NOW, THEREFORE, in consideration of the mutual covenants, promises, terms, conditions, and agreements herein, the County and the Provider agree as follows:

1. Definition.

Applicable Law. Applicable Law means any applicable law (whether statutory or common), including statutes, ordinances, regulations, rules, governmental orders, governmental decrees, judicial judgments, constitutional provisions, and requirements of any kind and nature promulgated or issued by any governmental authority claiming or having jurisdiction.

Hazardous Waste. Hazardous waste includes, but is not limited to, any amount of waste listed or characterized as hazardous by the United States Environmental Protection Agency or any state agency pursuant to RCRA, and including future amendments thereto, and any other Applicable Law.

Recyclable Material. Recyclable Material consists of any material or substance at County’s Locations that can be put to beneficial re-use or sold in recognized markets for purposes other than disposal, including, without limitation, uncontaminated non-hazardous corrugated cardboard, white paper, newsprint and other paper; plastics and plastic film; ferrous and non-ferrous metals; and glass.

Solid Waste. Solid Waste is any nonhazardous solid waste generated at County’s Property that is not excluded by the provisions of this Agreement. Solid Waste shall not include any Excluded Waste.

Excluded Waste. Excluded Waste means: (1) Hazardous Waste; (2) radioactive, volatile, corrosive, highly flammable, explosive, biomedical, infectious, biohazardous, or toxic waste as defined by Applicable Law; or (3) any otherwise regulated waste.

Waste Material. Waste Material is all Solid Waste and, if designated in this Agreement, Recyclable Material that are not excluded by this Agreement. Waste Material does not include any Excluded Waste.

2. Services To Be Performed. The Provider agrees to perform the services and to provide the materials (all collectively called the “Services”) for the County as described in Section A of the attached Exhibit A (the “Contract Specifications”), which is incorporated into this Agreement by reference as if it were fully set forth herein. The Provider warrants that all materials it provides shall be of good quality and shall meet industry standards and the Provider warrants that it shall perform all Services in a good and workmanlike manner, in accordance with industry standards.

3. Term. The term of this Agreement shall be as provided in Section B of the attached Exhibit A, the Contract Specifications.

4. Payment. In accordance with Section C of the attached Exhibit A, the Contract Specifications, the County agrees to pay the Provider for Services performed in accordance with this Agreement. The County shall pay each invoice within thirty (30) days of its submission. All unpaid

invoices shall carry interest at a rate of 1.5% per month or, if lower, the maximum rate permitted by Applicable Law in the state, until the balance is paid in full. Each invoice shall document the work performed and the basis for the amount of payment sought. Provider shall increase the rates for all services effective on each anniversary of the Effective Date of this Agreement per the percentage increase in the Consumer Price Index for All Urban Consumers (Water, Sewer and Trash Collection Services) U.S. City Average, as published by United States Department of Labor, Bureau of Statistics (the "CPI"). For the CPI calculation, rates will be adjusted using the most recently available trailing twelve (12) months average CPI compared to the twelve (12) months preceding. Further, Provider may increase the rates for services due to (a) changes in local, state, or federal statutes, rules, ordinances regulations, or other laws; (b) increased fuel costs; and (c) adjustments for fuel recovery fee (FRF). Any of the foregoing cost adjustments shall be retroactive to the effective date of such increase or change in cost. If the Provider fails to perform in accordance with this Agreement, the County may send a written notice to the Provider stating such failure, upon which the Provider may correct its performance. The County's remedies under this Agreement are not exclusive and are in addition to all other rights and remedies provided by law.

5. Non-waiver. If the County at any time does not require the Provider to satisfy any of the Provider's obligations under this Agreement, or if the County fails at any time to exercise any right or privilege granted to it by this Agreement, that shall waive or limit the County's ability to require the Provider to satisfy those obligations in the future or the County's ability to enforce its rights or privileges in the future. If the County waives any breach of this Agreement by the Provider, which shall not be deemed a waiver of any later breach by the Provider, nor shall it be deemed a waiver of this section of the Agreement.

6. Independent Contractor. For purposes of this Agreement, the Provider at all times shall be considered an independent contractor, and the County shall not be deemed the employer of the Provider or of any of the Provider's agents or employees, nor shall the County be responsible for the actions or omissions of the Provider or its agents and employees. For purposes of this Agreement, the Provider and its agents and employees shall not be deemed an employee of the County for any purpose, including (by example only and not for purposes of limitation) federal or state income taxation, unemployment benefits, or worker's compensation benefits.

7. Insurance. For the term of this Agreement, the Provider shall maintain at its sole expense the insurance specified in Section E of the attached Exhibit A, the Contract Specifications. All insurance policies shall be issued by a company authorized to issue insurance in the State of North Carolina. Before beginning to perform under this Agreement, the Provider shall provide the County with a certificate of insurance showing that all insurance required by this Agreement is in effect, and the Provider shall keep that certificate current by submitting to the County updated certificates as the Provider's insurance policies are renewed or otherwise modified. The County shall be named as an additional insured. The Provider shall notify the County immediately if any insurance required by this Agreement will be or has been cancelled or not renewed or if the amount of coverage of any such insurance will be or has been reduced.

8. Indemnity. The Provider agrees that it shall defend, indemnify, and hold harmless the County from and against any and all , liabilities, claims, demands, suits, actual costs, direct damages, or actual expenses (including reasonable attorneys' fees) arising from Provider's gross negligence or willful misconduct while providing services under this Agreement. claimed for bodily injury, death, or property damage. Notwithstanding the foregoing, Provider shall have no obligation to indemnify, defend or hold harmless County or any third parties for any such liability or claim to the extent resulting from the negligence or, willful misconduct by County or any such third parties. The Provider's obligations under this section shall survive termination of this Agreement.

9. Title and Right to Refuse Excluded Waste: Title to Waste Material shall pass to Provider when loaded into Provider's collection vehicle or otherwise received by Provider. Title to and liability for any Excluded Waste shall at no time pass to Provider.

If Excluded Waste is discovered before it is collected by Provider, Provider may refuse to collect the entire Waste Container that contains the Excluded Waste. In such situations, Provider shall contact the County and the County shall promptly undertake appropriate action to ensure that such Excluded Waste is removed and properly disposed of by the depositor or generator of the Excluded Waste. In the event Excluded Waste is present but not discovered until after it has been collected by Provider, Provider may, in its sole discretion, remove, transport, and dispose of such Excluded Waste at a facility authorized to accept such Excluded Waste in accordance with Applicable Law and charge the depositor or generator of such Excluded Waste for all direct and indirect costs incurred due to the removal, remediation, handling, transportation, delivery, and disposal of such Excluded Waste. The County shall provide all reasonable assistance to Provider to conduct an investigation to determine the identity of the depositor or generator of the Excluded Waste and to collect the costs incurred by Provider in connection with such Excluded Waste. Subject to the County's providing all such reasonable assistance to Provider, Provider shall release County from any liability for any such costs incurred by Provider in connection with such Excluded Waste, except to the extent that such Excluded Waste is determined to be attributed to the County.

10. Termination. Notwithstanding any other provision of this Agreement (including any provision in the attached Exhibit A), if either party materially breaches this Agreement and fails to substantially cure such breach within thirty (30) days after receipt of written notice from the non-breaching party specifying such breach in reasonable detail, the non-breaching party may terminate this Agreement by providing a thirty (30) days' written notice to the breaching party. However, if the breach cannot be substantially cured within thirty (30) days, the Agreement may not be terminated if a cure is commenced within the cure period and for as long thereafter as a cure is diligently pursued. Upon termination, County shall pay Provider only such charges and fees for the Services performed on or before the termination effective date and Provider shall collect its equipment, and shall have no further obligation to perform any Services under this Agreement. Further this agreement includes the following Non-appropriation Clause: Provider acknowledges that Rowan County is a governmental entity, and the contract validity is based upon the availability of public funding under the authority of its statutory mandate. In the event that public funds are unavailable and not appropriated for the performance of Rowan County's obligations under this contract, then this contract shall expire upon thirty (30) days after written notice to Provider of the unavailability and non-appropriation of public funds. It is expressly agreed that Rowan County shall not activate this non-appropriation provision for its convenience or to circumvent the requirements of this contract, but only as an emergency fiscal measure during a substantial fiscal crisis, which affects generally its governmental operations. In the event of a change in Rowan County's statutory authority, mandate and mandated functions, by state and federal legislative or regulatory action, which adversely affects Rowan County's authority to continue its obligations under this contract, then this contract shall terminate upon thirty (30) days' written notice to Provider of such limitation or change in Rowan County's legal authority.

11. Force Majeure. Except for County's obligation to pay amounts due to Provider, any failure or delay in performance under this Agreement due to contingencies beyond a party's reasonable control, including, but not limited to, strikes, riots, 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 flood, hurricane or similar or different Act of God over which Provider has no control, shall not be included as part of Provider's service under this Agreement. In the event of increased volume due to a Force Majeure event, Provider and the County shall negotiate the additional payment to be

made to Provider. Further, the County shall grant Provider variances in routes and schedules as deemed necessary by Provider to accommodate collection of the increased volume of Waste Materials.

12. Equipment and Access. Any equipment Provider furnishes shall remain Provider's property. County shall be liable for all loss or damage to such equipment (except for normal wear and tear and for loss or damage resulting from Provider's handling of the equipment). County shall use the equipment only for its proper and intended purpose and shall not overload (by weight or volume), move or alter the equipment. County shall be liable for all losses arising from any injury or death to persons or loss or damage to property (including the equipment) arising out of County's use, operation or possession of the equipment. County shall provide safe, unobstructed access to the equipment on the scheduled collection day. Provider may charge an additional fee for any additional collection service required by County's failure to provide access.

13. Entire Agreement. This Agreement (including the attached Exhibit A, the Contract Specifications) constitutes the complete and entire Agreement between the County and the Provider concerning the subject matter of the Agreement and supersedes any and all prior agreements, discussions, understandings, promises, or representations concerning that subject matter. This Agreement may be modified only by a writing signed by both the County and the Provider.

14. Governing Law and Forum for Disputes. This Agreement shall be governed by the laws of the State of North Carolina without regard to North Carolina's choice of law provisions. In the event of any dispute arising under this Agreement, both parties waive any right to jury trial. Any lawsuit concerning this Agreement and/or the Services must be filed in Rowan County, North Carolina, unless it is properly filed in federal court, in which case it must be filed in the federal District Court for the Middle District of North Carolina. Upon commencement of any litigation, the successful party shall be entitled to recover, in addition to such other relief as the court may award, its reasonable attorneys' fees or other costs incurred in such litigation.

15. Severance Clause. If any part of this Agreement is deemed unenforceable by a court of competent jurisdiction, then that part shall be enforced to the greatest extent legally possible, and the rest of this Agreement will remain in full force and effect.

16. Compliance With Laws. The parties acknowledge and agree that they will perform all Services and will satisfy all of their obligations under this Agreement in full compliance with all applicable federal, state, and local laws and regulations.

17. Records. All materials, reports, etc. generated pursuant to this Agreement shall at all times remain the property of Rowan County, with copies of all such materials, reports, etc. being provided to Rowan County upon County's prior request. It is further understood that some materials may be subject to NC Public Records laws, and any request for documents pursuant to such shall be processed through Rowan County prior to their release.

18. Repair of Damages. The Provider shall repair any damages that it causes to the County's property due to its gross negligence or willful misconduct, except normal wear and tear caused pursuant to the services performed under this Agreement. .

19. Titles and Headings. Titles and headings used in this Agreement are for convenience only and do not limit or modify the language within each section of this Agreement.

20. Assignment. The Provider or County may not assign its rights or obligations under this Agreement, without written approval from the other party, which may not be unreasonably withheld, delayed or conditioned; provided, however, that Provider may assign this Agreement, without consent, to an affiliate of Provider or in connection with the sale of Provider's business.

21. Notices. Any notice or communication to the County or the Provider for purposes of this Agreement shall be delivered or shall be deposited in the United States Mail, first class, addressed to the addressee in Section E of the attached Exhibit A, the Contract Specifications.

22. Number and gender. This Agreement's use of singular, plural, masculine, feminine, and neuter pronouns shall include the others as the context may require.

23. Exhibit A. To the extent of a conflict between the above language of this Agreement and the attached Exhibit A (the Contract Specifications), the above language of this Agreement will control.

IN WITNESS WHEREOF, the County and the Provider have caused this Agreement to be executed as of the Effective Date.

THE COUNTY

BY: _____

Name: Aaron Church

Title: County Manager

THE PROVIDER

BY: _____

Name: _____

Title: _____

EXHIBIT A

CONTRACT SPECIFICATIONS

- A. Services To Be Performed By The Provider.
Provide Solid Waste Collection for multiple locations around Rowan County. Services required are spelled out in attached proposal responses (Attachment A and B)
- B. Term of the Agreement.
The initial contract term of three (3) years beginning July 1, 2022 and subject to renewal for an additional three (3) year terms based on mutual agreement of the parties. Pricing will be reviewed annually and adjusted (+/-) based on CPI for Water/Sewer Trash March Index to be effective July 1st for the duration of contract.
- C. Payment to the Provider.
Pricing is included in Attachment A and B. Payments will be made monthly to provider. Initial Annual Rate not to exceed \$350,000.
- D. E-Verify. North Carolina General Statutes prohibit counties from entering into contract with contractors and subcontractors who have not complied with the requirement of Article 2 of Chapter 64 of the NC General Statutes. When required by law, the Contractor must submit the E-Verify Affidavit with bid proposals and/or contracts.
- E. Insurance. During this Agreement's term, the Provider shall maintain worker's compensation insurance as required by North Carolina law to cover all of the Provider's employees engaged in any work under the Agreement. The Provider shall also maintain the following insurance to cover its performance under this Agreement during the Agreement's term:
- General commercial liability in the amount of \$500,000 per occurrence / \$1,000,000 aggregate with County listed as additional insured.
 - Workers' Compensation in the amount of \$500,000 employer's liability
 - Automobile liability covering all owned, hired, and non-owned vehicles used in connection with this Agreement. The minimum combined single limit shall be \$1,000,000 for bodily injury and property damage; and, \$1,000,000 uninsured/underinsured motorist coverage with County listed as additional insured.
- E. Contact Information.

THE COUNTY

AARON CHURCH,
COUNTY MANAGER
130 West Innes Street
Salisbury, NC 28144
Telephone: 704-216-8180

THE PROVIDER

These Contract Specifications are effective on the date signed and hereby acknowledged and agreed to by:

THE COUNTY

THE PROVIDER

BY: _____

BY: _____

Name: Aaron Church

Name: _____

Title: County Manager

Title: _____

Date: _____

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

(Signature of County Finance Officer)