

YADKIN COUNTY

NORTH CAROLINA

FIRST AMENDMENT TO AGREEMENT FOR SERVICES

This First Amendment to Agreement for Services is made and entered into this 16th day of March, 2015 ("Effective Date") between Yadkin County, North Carolina ("County") and Republic Services of North Carolina, LLC ("Provider").

RECITALS

A. The parties entered into that certain Agreement for Services, dated October 15, 2014 (the "Agreement"), pursuant to which Contractor agreed to operate, maintain, and manage the County Transfer Station, provide all necessary equipment, staff, fuel, fuel storage, and related items to accept, inspect, load Municipal Solid Waste received at the County Transfer Station, and transport the Municipal Solid Waste from the County Transfer Station to a permitted Subtitle D landfill.

B. The parties have agreed to extend the term of the Agreement to add Provider's trade name to facilitate the payment for Services as more fully set forth in this Amendment.

AGREEMENT

NOW, THEREFORE, for good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged by the parties, the County and Contractor agree as follows:

1. Provider. The parties acknowledge that Provider was identified by its legal name in the Agreement but that certain invoices for the Services show Provider's trade name, which is Foothills Regional MSW Landfill. County agrees that all references to Provider in the Agreement shall mean Republic Services of North Carolina, LLC d/b/a Foothills Regional MSW Landfill and that it shall pay invoices with Provider's trade name on them for the Services in accordance with the Agreement.

2. Payment of Past Invoices. Within two business days of the full execution of this Agreement, County shall pay Provider for all past due invoices from October 2014 to date.

3. Continuing Effect. Except as expressly amended and modified by the terms of this Amendment, all terms and provisions of Agreement shall remain in full force and effect between the parties during the term of the Agreement.

4. Definitions of Terms. Terms used but not otherwise defined in this Amendment shall have the meanings assigned to them in the Agreement.

5. Amendments and Modifications. The parties agree that any future amendments or modifications to this Amendment shall be in writing and executed by both parties.

6. Execution of Counterparts. This Amendment may be executed in any number of counterparts each of which shall be deemed an original.

7. Authority. Each of the parties represents that the person signing this Amendment on behalf of the party has been authorized to do so by specific action of that party in accordance with applicable law and procedures.

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

Yadkin County

BY: *Lisa Hughes*

Name: Lisa Hughes

Title: County Manager

Republic Services of North Carolina, LLC

BY: *Drew Isenhour*

Name: Drew Isenhour

Title: V.P.

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

Gary Brown
Deputy Finance Officer

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YADKIN COUNTY

AGREEMENT FOR SERVICES

NORTH CAROLINA

This Agreement is made and entered into this 15th day of October, 2014 ("Effective Date") between Yadkin County, North Carolina ("County") and Republic Services of North Carolina, LLC ("Provider").

WHEREAS, the County and the Provider wish to enter into a contract under which the Provider will 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. 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 County's expectations and approval, and the Provider warrants that it shall perform all Services in a good and workmanlike manner, in accordance with industry standards and the County's expectations, and to the County's full satisfaction.

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

3. Payment. In accordance with Section C of the attached Exhibit A, the Contract Specifications, the County agrees to pay the Provider for Services satisfactorily performed in accordance with this Agreement. The County shall pay each properly submitted invoice within thirty (30) days of its submission. Each invoice shall document, to the County's satisfaction, the work performed and the basis for the amount of payment sought. If the Provider fails to perform in accordance with this Agreement, the County may, without penalty, withhold any payment(s) associated with Services not properly performed until and unless the Provider completes or corrects its performance, as applicable. The County's remedies under this Agreement are not exclusive and are in addition to all other rights and remedies provided by law.

4. 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 not 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, that 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.

5. 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.

6. Insurance. For the term of this Agreement, the Provider shall maintain at its sole expense the insurance specified in Section D of the attached Exhibit A, the Contract Specifications; provided, however, that the required limit for commercial general liability insurance shall be \$5 million. 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 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.

7. Indemnity. The Provider agrees that it shall defend, indemnify, and hold harmless the County and its officials, employees, and agents from and against any and all losses, liabilities, claims, demands, suits, costs, damages, or expenses (including reasonable attorneys' fees) arising from or related to this Agreement and/or the Services, including (by example only and not for purposes of limitation) those for bodily injury, death, or property damage. The Provider's obligations under this section shall survive termination of this Agreement.

8. Termination. Notwithstanding any other provision of this Agreement (including any provision in the attached Exhibit A), this Agreement may be terminated at any time by mutual written agreement of the County and the Provider, or it may be terminated by the County upon ninety (90) days' written notice to the Provider. Ninety days' written notice for termination by the County is not required if the County is terminating because the Provider has breached the Agreement.

9. Title to Waste. Title to and liability for Unacceptable Waste or Hazardous Waste shall at no time pass to the Provider.

10. 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.

11. 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. Any lawsuit or other legal proceeding concerning this Agreement and/or the Services must be filed in Yadkin 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.

12. 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.

13. Compliance With Laws. The Provider acknowledges and agrees that it will perform all Services and will satisfy all of its obligations under this Agreement in full compliance with all applicable Federal, State, and local laws and regulations.

14. Repair of Damages. The Provider shall promptly and fully repair any damages that it or its employees or agents cause to the County's property. Alternatively, the County may choose in its discretion to require the Provider to fully compensate the County for any such damages rather than have the Provider repair them.

15. 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.

16. Non-Assignment. The Provider may not assign its rights or obligations under this Agreement, nor may it sub-contract any part of this Agreement, without written approval from the County.

17. 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.

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

19. 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

Republic Services of North Carolina, LLC

BY: 

Name: Lisa L. Hughes

Title: Interim County Manager / Finance

BY: 

Name: Drew Isenhour

Title: V.P.

EXHIBIT A

CONTRACT SPECIFICATIONS

A. Services To Be Performed By The Provider. (The Services may also be described on one or more attached sheets, but each must be signed by the Provider and the County.)

Transfer Station Operations

The Provider shall operate, maintain, and manage the County Transfer Station provide all necessary equipment, staff, fuel, fuel storage, and related items to accept, inspect, and load Municipal Solid Waste received at the County Transfer Station. The provider shall transport the Municipal Solid Waste from the County Transfer Station to a permitted Subtitle D landfill. Provider shall only accept materials that can be properly disposed of in a North Carolina permitted Subtitle D landfill facility. The Provider shall maintain the right to reject Unacceptable Waste.

The Provider shall promptly load all County Municipal Solid Waste accepted at the County Transfer Station. At the conclusion of each operating day, all Municipal Solid Waste shall be removed from the inside and around the County Transfer Station facility and the facility shall be maintained in a clean and sanitary fashion. All waste receipts shall be placed and securely covered within the bed of a tractor trailer vehicle. At the conclusion of daily operations, all loaded tractor trailer vehicles shall be removed from the interior of the County Transfer Station facility. The Provider shall maintain and repair the County Transfer Station and all components thereof including, without limitation, the driving surface, tipping floor, loading bay, push walls, facility walls, ventilation equipment, fuel containment units, loading equipment, and any and all compaction equipment. Normal wear and tear is anticipated. The Provider shall maintain appropriate certifications and licenses for staff providing services within the transfer station facility. All equipment shall be maintained in working order to ensure that services can be provided. All equipment licensing, inspections, and maintenance shall be the responsibility of the Provider.

The County will maintain and repair the access roads and all sanitary and storm sewer connections and components, and utilities associated with the County Transfer Station facility and surrounding grounds. The County shall maintain the right to interview and inspect the staff, facility, equipment, and operations at the County Transfer Station any time upon prior notification of the Provider. The County will apply for and maintain all governmental approvals and operating permits for the transfer station. The contract recipient will be a co-permittee as appropriate and necessary. The County will maintain ownership and operations of the scale and scale house as well as document all inbound and outbound waste volumes. The County will weigh each collection vehicle and provide a weigh ticket upon request. The County will be responsible for submitting all regulatory annual reports related to the County Transfer Station operations. The Provider shall be capable of providing supplementary waste management information upon request but no later than July 30th of each year to fulfill this regulatory obligation.

Waste Transportation Services

The Provider shall provide the necessary equipment minimally sized as having a forty-eight (48) foot open-top, leak resistant transfer container with an operated loaded capacity of up to twenty-two

(22) tons of Municipal Solid Waste. The Provider shall provide the labor, fuel, materials, and supervision to transfer the containers from the County Transfer Station to a permitted Subtitle D landfill facility. The Provider shall be responsible for all truck/container connections and disconnections, cleanup upon disconnection, tarping each container prior to storage and transport, and unloading operations. The Provider is responsible for providing an adequate number of employees, trucks, and containers to handle the anticipated daily and annual volumes of waste requiring transport. The Provider will be responsible for moving the transfer containers in and out of the transfer station building using a yard truck appropriately sized to complete this task.

Waste Disposal Services

The Provider is responsible for providing disposal services at a permitted Subtitle D landfill facility. The Provider shall confirm and certify that such facility has the capacity to accept the daily and annual volumes throughout the term of this contract. The Provider may identify multiple locations; however, the cost incurred by the County for providing this service shall not fluctuate.

The Provider will be responsible for paying any tipping and handling fees, and pass through charges associated with such disposal.

B. Term of the Agreement. (Check the one provision that applies.)

☒ This Agreement shall be for five (5) years, ending on September 30, 2019 with the County retaining unilateral right of renewal in authorizing an extension of a subsequent five (5) year period at the discretion of the County. Either party shall notify the other of their desire for non-renewal at least ninety (90) days prior to the end of the contract term.

☐ This Agreement shall continue until the Provider has completed the Services to the County's satisfaction.

☐ This Agreement shall continue until terminated in accordance with Section 8 of the Agreement.

C. Payment to the Provider. (Check the provision that applies.)

☒ The County shall pay the Provider \$47.78 (plus taxes and fees) per Ton of Municipal Solid Waste for the Services on a monthly basis for an average of 26,000 Tons per year (the "Service Fee").

☐ The County shall pay the Provider a total of \$ _____ for all Services performed under this Agreement. The Provider will invoice the County for Services as they are performed, but no more frequently than monthly.

On July 1, 2015 and each July 1st thereafter during the Term the Service Fee then in effect shall be increased in an amount equal to the percentage increases 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"). Rates will be adjusted using the month of March trailing 12 months average CPI compared to the 12 months preceding.

Contractor shall be entitled to an automatic increase in the Service Fee equal to the amount of any fee, surcharge, duty, tax or other charges of any nature imposed by any governmental entity that is payable by reason of the nature of the transportation or disposal operations conducted by Contractor, and any other sales or service taxes of general application to the operation of the transportation services and/or the Landfill. Such fee, charge, duty, tax or other charge shall be paid by the County in the form of an increase in the Service Fee and shall include, by way of example and not limitation, any state superfund tax for funding waste disposal and minimization studies or projects, taxes or fees, and any other tax, fee, surcharge or like charge. Without limiting the foregoing, Contractor shall be entitled to an automatic increase in the Service Fee to offset any change in law or regulation concerning the receipt, transportation, disposal or handling of waste material at the Landfill, which law or regulation becomes effective after the effective date of this Agreement; including, without limitation, any law or regulation resulting in a requirement that transportation from the Transfer Station to the Landfill be re-routed. The County will not be responsible for charges imposed by any governmental entity which are imposed as a fine or penalty resulting from the intentional or negligent acts or mismanagement by Contractor; provided, however, that the County shall be responsible for all fines and penalties levied as a result of the overloading of trailers and/or vehicles by the County, its employees or agents.

D. 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 (check all that apply):

X General commercial liability in the amount of \$1,000,000 per occurrence / \$2,000,000 aggregate.

X 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.

X Workers' Compensation in the statutory amount and employer's liability in the amount of \$500,000.

E. Contact Information.

THE COUNTY

Yadkin County
Aaron Church, Yadkin County Manager
217 E. Willow St.
Yadkinville, NC 27055
336-679-4200

THE PROVIDER

Republic Services of North Carolina,
LLC, Attn: Area President
1220 Commerce Street SW, Box 1
Conover, NC 28613
828-695-2050

These Contract Specifications are hereby acknowledged and agreed to by:

THE COUNTY

BY: *Lisa L. Hughes*

Name: Lisa L. Hughes

Title: Interim County Manager / Finance

THE PROVIDER

BY: *Drew Isenhour*

Name: Drew Isenhour

Title: V.P.

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

Lisa L. Hughes

Definitions

The following definitions are applicable to all parts of this solicitation.

Amendment: a document issued by Yadkin County to supplement the original solicitation.

Applicable Law: the agreement, claims, or disputes relating to this solicitation or agreement that may result, and all rights and obligation of the parties shall be interpreted, enforced, construed, and governed by and under the laws of the State of North Carolina.

Contract Commencement Date: the date by which the service contract is executed and delivered to all parties.

County: the County of Yadkin, North Carolina and/or its governing body, the Yadkin County Commissioner.

County Solid Waste: any solid waste generated within the County.

County Transfer Station: the Yadkin County municipal solid waste transfer station located at 1149 Landfill Road, Yadkinville, NC.

Governmental Approvals: all permits, licenses and approvals required for the operation of the County Transfer Station.

Hazardous Waste: means a solid waste, or combination of solid wastes, which because of its quantity, concentration or physical, chemical or infectious characteristics may [§ 130A.290 (a)(8)]:

- a. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or
- b. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.

Municipal Solid Waste: any solid waste resulting from the operation of residential, commercial, industrial, governmental, or institutional establishments that would normally be collected, processed, and disposed of through a public or private solid waste management service. Municipal solid waste does not include hazardous waste, sludge, industrial waste managed in a solid waste management facility owned and operated by the generator of the industrial waste for management of that waste, or solid waste from mining or agricultural operations [§ 130A.290(a)(18a)].

Offeror: the single legal entity submitting the offer to provide the requested services.

Recyclable Material: those materials which are capable of being recycled and which would otherwise be processed or disposed of as solid waste [§130A.290(a)(26)].

Special Waste: solid wastes that can require special handling and management, including white goods, whole tires, used oil, lead-acid batteries, and medical wastes [§130A.290(a)(40)].

Ton: two thousand (2,000) pounds.

Unacceptable Waste: highly flammable substances, Hazardous Waste Materials, liquid wastes, special wastes, certain pathological and biological wastes, explosives, toxic materials, radioactive materials, material that the disposal facility is not authorized to receive and/or dispose of, and other materials deemed by state, federal or local law, or in the reasonable discretion of Provider, to be dangerous or threatening to health or the environment, or which cannot be legally accepted at the applicable disposal facility.