

STATE OF NORTH CAROLINA

FRANCHISE SERVICE CONTRACT

COUNTY OF BUNCOMBE

THIS FRANCHISE SERVICES CONTRACT, made and entered into this ____ day of June 2019, by and between the Buncombe County, a body politic and existing under the laws of the State of North Carolina (hereinafter referred to as "County"), and Waste Pro of North Carolina, Inc., a North Carolina corporation organized and doing business in the State of North Carolina (hereinafter sometimes referred to as "Contractor").

RECITALS

WHEREAS, the County's current exclusive franchise for the collection and disposal of residential solid waste and the collection of recyclable materials in unincorporated areas of Buncombe County expires at midnight on December 31, 2019;

WHEREAS, in response to a Request for Proposals ("RFP") for a new franchise to replace the existing service a number of bids were placed and after careful review and consideration the bid of Contractor was determined to be most qualified to provide the best and most efficient service to citizens in the franchise area; and

WHEREAS, subject to the terms and conditions of NCGS §153A-136 and Chapter 62, Division 2 of the Buncombe County Code of Ordinances, the RFP and addenda thereto, the Application and Contract Documents, and this Franchise Service Contract, the County is willing to offer and the Contractor is willing to accept a five (5) year exclusive franchise for the collection and disposal of solid waste and collection of recyclable materials in unincorporated areas of Buncombe County to include two additional two (2) year extensions at the option of the County.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained in this Contract, the parties hereby agree as follows:

ARTICLE I

DEFINITIONS

1. DEFINITIONS

Whenever in these specifications, Contract, and/or other documents the following terms are used, the intent and meaning shall be interpreted as follows:

- 1.1. Application: The prepared forms and information that the Contractor is to submit or has submitted for the contemplated work. The terms "bid" and "proposal" and "application" shall be considered the same.
- 1.2. Area Miss: For purposes of Liquidated Damages, an Area Miss shall be considered 100 misses on any given day that Subscribers are expecting service.

- 1.3. Back Door Service: Back Door Service is a service that Contractor will provide at no extra cost to handicapped individuals provided they show proof with a doctor's note and verification that no able-bodied persons reside at the residence requesting such service.
- 1.4. Basic Service: Curbside or mailbox collection of refuse and recyclable materials.
- 1.5. Bid: The prepared forms and information that the Contractor is to submit or has submitted for the contemplated work. The terms "bid" and "proposal" and "application" shall be considered the same.
- 1.6. Bidder: Any individual, firm, corporation, or partnership submitting a bid for the work contemplated.
- 1.7. Bulky Waste: Waste types that are too large to be accepted through regular waste collection.
- 1.8. Collection: Regular removal of solid waste and recycling from property by the owner or occupant or by the franchised collector.
- 1.9. Conflicting Terms: Where any item in the General Specifications conflicts with or is inconsistent with an item contained elsewhere in the Contract documents, the item set forth elsewhere in the Contract documents shall control.
- 1.10. Contract and/or Contract Documents: The Contract shall include the Contractor's proposal, advertisement for bids, the RFP and addenda thereto, instructions to Contractors, terms and conditions, specifications, insurance certificates, and the Buncombe County Code of Ordinances, Article II, Section 62-26 through Section 62-47.

It is understood that all items and sections herein contained are hereby made a part of the specifications and Contract and are to be considered one instrument. The intent is to make them explanatory one of the other. No papers attached to or bound with any of the above shall be detached there from, as all are necessary parts thereof.

The sub-headings in these specifications are intended for convenience of reference only and shall not be considered as having any bearing on the interpretations thereof.

Contractor is responsible for ensuring all portions of the Contract are enforced by any subcontractor.

- 1.11. Contractor: The terms "Franchised Collector" and/or "Franchised Hauler" may be used interchangeably with the term "Contractor" and shall be considered the same.
- 1.12. County's Designated Representative: The County's Designated Representative shall be the Solid Waste Director. Currently, the Solid Waste Director is Mr. Dane Pedersen, 81 Panther Branch Rd, Alexander, NC 28701; Phone (828) 250-5460.
- 1.13. Disposal: Delivery of solid waste to the Buncombe County Sanitary Landfill, Buncombe County Transfer Station, or other location as designated by the County's Designated Representative.

- 1.14. Materials Recovery Facility: A specialized plant that receives, separates, and prepares recyclable materials for marketing to end-user manufacturers.
- 1.15. Missed Service: Any reported or discovered missed collection from any one (1)-unit location at the time it is reported or discovered. Once any route has been completed, or is scheduled to have been completed, any unit missed will be designated as a Missed Service, regardless of the time of day.
- 1.16. Premium Service: Premium service is an upgrade service option for Subscribers desiring such level of service. If a Subscriber selects Premium Service, the Contractor will provide back-door pickup and/or pickup down a long, remote private driveway. In these instances, the Subscriber will be assessed an additional monthly fee as proposed in the cost proposal section of the RFP.
- 1.17. Proposal: The prepared forms and information that the Contractor is to submit or has submitted for the contemplated work. The terms “bid” and “proposal” and “application” shall be considered the same.
- 1.18. Recycling Rejects: Recycling that is not accepted by the Materials Recovery Facility due to an unacceptable level of comingling with refuse.
- 1.19. Repeat Missed Service: For a unit, a Missed Service or a Valid Miss that occurs more than once in a thirty (30) day period. This may also refer to a Repeat Missed Service in an Area Miss.
- 1.20. Rollout Waste Carts: Contractor-provided rollout waste & recycling carts. A plastic receptacle for the storage of either garbage or recyclable material with wheels and lid.
- 1.21. Small Business: Businesses whose refuse disposal needs do not exceed those allowed for Subscribers.
- 1.22. Specifications: The directions, requirements, and provisions herein contained in the RFP and addenda thereto, relating to the method and manner of performing the work, or the quantity and quality of material to be furnished, or the results to be obtained under the Contract.
- 1.23. Subscriber: Occupants, owners, tenants, lessees, or proprietors of residences who are users of franchised collection services.
- 1.24. Subcontractor: Any individual, firm, or corporation with whom a Contractor, with the written consent of the Buncombe County Board of Commissioners, sublets, assigns, or otherwise disposes of any part of the work covered by the Contract.
- 1.25. Valid Miss: A Missed Service that has not been collected by the times specified in Section 14, and that upon investigation is determined that it was missed by the Contractor’s negligence or omission.

ARTICLE II

RULES OF CONSTRUCTION

2. RULES OF CONSTRUCTION

Unless the context otherwise indicates:

- a. Words importing the singular shall include the plural and vice versa, and words importing the masculine gender shall include the feminine and neuter genders as well;
- b. All references to Articles, Sections, or Exhibits are references to Articles, Sections, and Exhibits of this Contract;
- c. All references to officers are references to County officers; and
- d. The headings herein are solely for convenience of reference and shall not constitute a part of this Contract nor shall they affect its meanings, construction, or effect.

ARTICLE III

GENERAL SPECIFICATIONS

3. GENERAL SPECIFICATIONS

- 3.1. Solid Waste Franchise: This Contract grants an exclusive franchise for the collection and disposal of solid waste and collection of specified recyclable items in the unincorporated areas of Buncombe County, sometimes referred to herein as the "Franchise". The franchise term will be for a period of five (5) years. The initial term shall begin on January 1, 2020 and end at 11:59:59 p.m. on December 31, 2024.
- 3.2. Franchise Term: The County reserves the option, to be exercised in its sole discretion, to renew the Contract for up to two (2) additional two (2) year terms. Unless sooner terminated or forfeited as provided for in the franchise documents, and provided the Contractor has complied with all the terms, conditions, and provisions of the Franchise, then County may in its sole discretion notify the Contractor of its intent to renew the Franchise. The County will notify the Contractor at least 18 months prior to the expiration of the initial term and before any renewal term. The Contractor will notify the County within thirty (30) days of its intent to accept or deny the renewal.

ARTICLE IV

GENERAL CONDITIONS

4. GENERAL CONDITIONS

- 4.1. Mediation: Any claim, dispute, or other matter in question arising out of or related to this Contract shall be subject to voluntary non-binding mediation as a condition precedent to the institution of legal or equitable proceedings by either party. If the parties are unable to agree upon a certified mediator to hear their dispute, the President of the Buncombe County Bar Association shall name a mediator to hear the matter. The parties shall equally share the mediator's fee. The mediation shall be held in Asheville at a location designated by the mediator selected to hear the matter.
- 4.2. Legal Proceedings: Claims, disputes, and/or other matters in question between the parties that are not resolved by mediation shall be heard in the North Carolina General Courts of Justice in

Asheville, Buncombe County, North Carolina, which said Court shall have jurisdiction to hear any dispute between the parties arising out of this Contract. The Parties hereby agree that this paragraph establishes exclusive and sole jurisdiction for any legal proceeding in Buncombe County, North Carolina.

- 4.3. Familiarity with Laws, etc.: The Contractor is assumed to have made itself familiar with all federal, state, and local laws, ordinances, and regulations, which may in any manner, affect those engaged or employed in the work or the materials or equipment used in or upon the work, or in any way that affects the conduct of the work. No pleas of misunderstanding will be considered on account of the ignorance thereof. If the Contractor shall discover any provisions in the specifications or Contract which are contrary to or inconsistent with any such law, ordinance, or regulation, the Contractor shall forthwith report it to the County's Designated Representative in writing.
- 4.4. Scope: The work to be performed under these specifications is to cover the completed work called for herein. The Contractor shall furnish all vehicles, machinery, tools, equipment, materials, and labor necessary to complete the work.
- 4.5. Observance of Laws: The Contractor shall at all times observe and comply with all federal, state, and local laws, ordinances, regulations, and all such decrees as exist at present or may be enacted during the Franchise Term by bodies or tribunals having any jurisdiction or authority over the work in any manner affecting the conduct of the work. No plea of misunderstanding will be considered on account of the Contractor's ignorance thereof.
- 4.6. Permits and Licenses: The Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary for the due and lawful prosecution of the work unless otherwise noted in the specification or plans herein.
- 4.7. Notices: Any notice permitted or required under this Contract from one party to the other must be in writing and will be effective (a) on the date it was actually delivered to the addressee if delivered personally, or sent by a nationally recognized courier (such as FedEx or United Parcel Service) or sent by facsimile, or (b) three days after having been deposited in the United States mail, if sent by certified mail, return receipt request, in each case to the respective addresses of Waste Pro of North Carolina, Inc. and the County listed below, or those other addresses of which either party gives the other party written notice:

If to Contractor, to:

If to the County, to:

Dane Pederson, Solid Waste Director
81 Panther Branch Rd
Alexander, NC 28701

With copy to:

Ron Venturella, Procurement Manager
200 College Street, 4th floor
Asheville, NC 28801

Any addressee may designate additional or different addresses for communications by notice given under this Section to each of the others.

- 4.8. Assignments: The Contractor shall not sublease, subcontract, convey, assign, or otherwise transfer the whole or any part of this Contract or Franchise without the prior express written approval and consent of the Buncombe County Board of Commissioners and which approval and consent may be withheld by said Board for any reason or no reason.
- 4.9. Public Convenience and Safety: The Contractor at all times shall conduct the work in such a manner as to ensure the least obstruction to vehicular and pedestrian traffic. The convenience of the general public shall be satisfactorily provided for.

The Contractor shall, at his own risk and expense, protect any and all roads, private drives, alleys and cartways, buildings, bridges, fences, walls, property monuments, pipes, and other structures and objects legally existing adjacent to the work being performed; and in the event of any injury or damage to such public or private property by reason of, or as a result of the execution of the work provided for herein, the Contractor shall, at his own cost and expense make all such repairs as may be necessary to restore such property to its former condition.

- 4.10. Indemnification of the County: Contractor shall indemnify, defend, and hold harmless the County and its subsidiaries, divisions, officers, directors, and employees from all liability, loss, costs, claims, damages, expenses, attorney fees, judgments, and awards arising or claimed to have arisen, from any injury caused by, or allegedly caused by, either in whole or in part, any act or omission of the Contractor or any employee, agent, or assignee of the Contractor. Contractor shall indemnify the County in all instances except where the County is primarily negligent through an act or omission. Nothing herein shall be construed as a waiver on the part of the County to any defense of any claim, including, but not limited to the defense of governmental immunity. And that the County's obligations under this paragraph shall be limited to the extent and manner of recovery pursuant to County's self-insured claim policies and North Carolina law.
- 4.11. Insurance: Contractor agrees its insurance policies shall be endorsed evidencing the minimum insurance coverage and limits set forth below prior to the effective date of the awarded Franchise. The insurance coverage and limits set forth below shall be deemed minimum coverage limits and shall not be construed in any way as a limitation on Contractor's duty to

carry adequate insurance. All policies of insurance shall be primary insurance and non-contributory with respect to all other available sources. The minimum insurance coverage which the Contractor shall procure and maintain at its sole cost and expense during the term of the contract is as follows:

- 4.11.1. Worker's Compensation: Coverage at the statutory limits in compliance with applicable State and Federal laws. Contractor shall ensure that any subcontractors also have workers compensation coverage at the statutory limits.
- 4.11.2. Employer's Liability: Coverage with minimum limits of \$1,000,000 per each employee accident and \$1,000,000 per each employee disease.
- 4.11.3. Commercial General Liability: Insurance covering all operations performed by the Contractor with a minimum limit of \$10,000,000 per occurrence with a \$10,000,000 aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations or Contractual Liability.
- 4.11.4. Business Automobile Liability: Insurance covering all owned, non-owned, and hired vehicles used in performance of this Contract. The minimum combined single limit per occurrence shall be \$5,000,000 and shall include uninsured/underinsured motorist coverage per N.C. Gen. Stat. § 20-279.21.
- 4.11.5. Umbrella/Excess Liability: If the Contractor's underlying liability policy limits are less than those required, Contractor may provide an excess or umbrella policy to meet the required limits of insurance. The excess or umbrella policy shall extend coverage over all underlying liability policies. Any additional insured under any policy of the underlying insurance will automatically be an additional insured under this insurance.
- 4.11.6. Pollution Liability: Insurance covering potential pollution risk to the environment or losses caused by pollution conditions that may arise from the operations of the Contractor in performance of the Contract with a minimum limit of \$1,000,000 per loss with a \$1,000,000 aggregate. Policy shall cover the Contractor's completed operations. If the coverage is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to the coverage under the policy precedes the effective date of this Contract, and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning from the time that work under this Contract is completed.
- 4.11.7. Additional Insurance Provisions: If the Contractor maintains higher limits than the minimums shown above, the County requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

The Contractor shall provide the County with certificates of insurance on an approved form, evidencing the above amounts. All liability policies and certificates shall name Buncombe County as an additional insured. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under the Contract and

remain in effect for the duration of the Contract.

Each insurance policy required above shall state that coverage shall not be canceled, except with written notice to the County, delivered in accordance with the policy provisions. All insurance shall be procured from reputable insurers authorized and qualified to do business in North Carolina with a rating of A- VII or better as determined by A. M. Best Company and shall be in a form acceptable to the County.

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that Buncombe County is an additional insured on insurance required from subcontractors.

Waiver of Subrogation: Contractor hereby grants to County a waiver of any right to subrogation, which any insurer of said Contractor may acquire against the County by virtue of payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

The limits of coverage under each insurance policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under this Contract.

Nothing in this section is intended to affect or abrogate Buncombe County's governmental immunity.

Should there be a lapse in insurance coverage at any time, the Contract shall be a breach and subject to termination, and the issuance of the performance bond will be triggered.

4.12. Performance Bond: Before commencing work, the Contractor shall furnish to the County a performance bond in the minimum amount of One Million Dollars (\$1,000,000). The Contractor is required to procure and maintain the performance bond at its sole cost and expense. Throughout the term of this Contract, Contractor shall not permit said bond to be canceled or modified or to expire without providing the County thirty (30) days advanced, written notice and without first obtaining a replacement bond satisfactory to the County. In the event the Contractor fails to comply with the terms and conditions of the Contract, the County may take all actions necessary to secure replacement solid waste and recyclable materials collection for the remainder of any agreed-upon Contract term.

4.12.1. All bonds shall be in the forms prescribed by law or regulation and be executed by such sureties legally authorized to do business in the State of North Carolina.

4.12.2. If the surety on any bond furnished by the Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated or it ceases to meet the requirements herein, the Contractor shall within five days thereafter substitute another performance bond, which must be acceptable to Buncombe County.

4.13. Equal Employment Opportunity/Affirmative Action Assurance: Buncombe County is firmly committed to a policy of non-discrimination in employment and to a program of achieving total

equality of opportunity for all applicants and employees through aggressive affirmative action. Contractor shall conduct its business and employment practices without regard to race, creed, color, national origin, religion, political affiliation, marital status, physical condition, sex, or age (except where physical condition, sex, or ages are legitimate occupation qualifications), or any other non-merit factor. Contractor employees are to be treated equitably without regard to these non-merit factors throughout their employment.

- 4.14. Nondiscrimination in Employment: During the term of the franchise, the Contractor agrees as follows: The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and the employees are treated during employment, without regard to race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- 4.15. Drug-free Workplace: The Buncombe County Board of Commissioners requires all its Contractors to maintain a drug-free workplace. Companies that provide supplies and/or services to the County shall certify that they have implemented effective policies and procedures to maintain a drug-free workplace. Upon request, the Contractor shall provide documentation to support this certification.
- 4.16. Failure to Comply with Conditions of Franchise and Forfeiture: Failure to comply with the terms and conditions of this Contract and any franchise granted hereunder shall be addressed as set forth in Buncombe County Code of Ordinances, Article II, Section 62-45(b)(10). A Contractor may forfeit the franchise through express written waiver with a 180-day notice. The Board of Commissioners may also determine the Contractor has forfeited the Contract through nonuse, abandonment, or lack of compliance.
- 4.17. E-Verify Requirements: As a condition for payment under this franchise, Contractor shall: (i) comply with N.C. Gen. Stat. Sections 64-25 et seq. (the "E-Verify Requirements"); and (ii) cause each subcontractor hereunder to comply with such requirements. Contractor will indemnify and save harmless the County from all losses, damages, fees, costs, expenses, fines, and other liabilities resulting from any failure by Contractor or any subcontractor to comply with the E-Verify Requirements.
- 4.18. Property Rights: The Contractor shall maintain a list of all Subscribers in unincorporated areas of Buncombe County, including each customer's street and mailing address and phone number, and a description of service(s) provided to each Subscriber (e.g., basic service, premium service, provision of carts). The list of current Subscribers associated with the Contract is deemed the property of Buncombe County and shall be provided to the County in its correct form upon request by the County.
- 4.19. Transition of Services: The Contractor shall cooperate with the County and any new contractor(s) that may be assuming the provision of services hereunder after the end of the franchise period or upon termination of the franchise. This includes, but is not limited to,

supplying a list of Subscribers and other actions as necessary to effect a smooth transition of services.

- 4.20. The Contractor shall notify the County upon finding Hazardous Waste in the waste materials. The Contractor shall not endeavor to collect and place Hazardous Waste in its vehicles.

ARTICLE V

MISCELLANEOUS TERMS

5. MISCELLANEOUS TERMS

- 5.1. The Company shall provide adequate supervision to assure that all work will be done in accordance with these Contract terms and generally accepted solid waste disposal practices.
- 5.2. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assignees where an assignment has been permitted.
- 5.3. In the event that any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, on its face or as applied, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein or modified if possible, consistent with the intent of the parties. The remainder of the Contract shall not be affected thereby, and all other provisions shall remain valid and enforceable.
- 5.4. This Contract constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter of this Contract.
- 5.5. No failure or delay by either party to enforce any right or term herein shall operate as a waiver thereof or as an on-going waiver, nor shall any partial exercise thereof preclude any further exercise thereof or the exercise of any other right, power, or privilege.
- 5.6. Time is of the essence for each and every part of this Contract.

ARTICLE VI

TYPE OF COLLECTION

6. TYPE OF COLLECTION

- 6.1. The Contractor will be responsible for operating a Subscriber-Based Model, where Buncombe County residents can opt-in for refuse and recyclable materials collection. The following services shall be provided in the described manner:
 - 6.1.1. Refuse collection: Contractor-provided rollout waste carts. No bags accepted if outside of the cart unless the bags are marked with a Contractor-provided tag. Weekly collection

provided.

- 6.1.2. Recycling collection: Contractor-provided rollout recycling carts. No bags accepted if outside of the cart unless marked with a Contractor-provided tag. Every-other week collection provided.
- 6.1.3. Back Door Service: Back Door Service is a service that Contractor will provide at no extra cost to handicapped individuals provided they show proof with a doctor's note and verification that no able-bodied persons reside at the residence requesting such service.
- 6.1.4. Premium Service: Premium service is an upgrade service option for Subscribers desiring such level of service. If a Subscriber selects Premium Service, the Contractor will provide back-door pickup and/or pickup down a long, remote private driveway. In these instances, the Subscriber will be assessed an additional monthly fee as proposed in the cost proposal section of the RFP.
- 6.1.5. Bulky Waste Collection: Contractor will provide bulky waste collection when requested by the Subscriber for the additional fee proposed in the cost proposal section of the RFP.
- 6.1.6. Bear-proof Rollout Carts: Contractor is to provide bear-proof carts for an additional fee as proposed in cost proposal section of the RFP.

ARTICLE VII

OPERATIONS

7. OPERATIONS

7.1. Service Area:

- 7.1.1. The areas to be served are all areas that lie outside of the corporate limits of the municipalities within Buncombe County. Should any portion of any unincorporated area, town, or city be annexed or incorporated during the term of this Franchise, that area shall then be expressly excluded from the provisions of this Franchise. Notwithstanding any displacement provisions outlined in North Carolina General Statutes, the Contractor shall not request or receive any adjustment in fees from Buncombe County as a result of any annexation or incorporation.
- 7.1.2. If residents or other persons needing residential collection services call an agent of Buncombe County to request service, those residents will be referred to the Contractor.

7.2. Schedules and Routes:

- 7.2.1. The Contractor shall render continuous, weekly service on a regular schedule, as approved by the County's Designated Representative, to every residence or place of small business in unincorporated areas of Buncombe County. Services should only be rendered in circumstances where the occupant, owner, tenant, lessee, or proprietor of a residence is willing to subscribe to and pay for the services. Small businesses shall have the option to opt-in to services.
- 7.2.2. The Contractor shall provide weekly refuse collection and disposal and every-other week collection of recyclable items in rollout carts provided to all Subscribers. Collection of refuse and recyclable items shall be scheduled on the same day. Collection will be done Monday through Friday. In the event of inclement weather or if for any other reason

collection is missed, every effort must be made to pick up refuse and recyclable items the next day. In case of holidays or emergencies, Saturday collection is allowed by approval of the County's Designated Representative.

7.2.3. The Contractor shall be responsible for setting the day(s) of collection. On or by November 30, 2019, the Contractor will furnish the County's Designated Representative with a detailed map and schedule showing the areas to be collected by the day and by the week. Contractor is responsible for assisting with notification of the public about any changes to the collection schedule. Once the collection day has been set for an area, the day cannot be changed without the approval of the County's Designated Representative.

7.3. Holidays:

The following shall be holidays for purposes of providing service under this Contract:

New Year's Day
Independence Day
Thanksgiving Day
Christmas Day

On holidays that fall on a weekday, collection is to shift back to the next business day. All subsequent collection days will also be affected and a Saturday collection will be required. The regular schedule will be reinstated on the following Monday. The County reserves the right to modify/change any designated holiday schedules by giving sixty (60) days notice. Some additional waste should be expected around holidays, and the Contractor should be able to accommodate that waste at no additional charge.

7.4. Public Education:

Education and awareness programs for proper waste disposal and recycling shall be conducted by the Contractor such that every customer has equal exposure to such information.

7.5. Emergency Plan:

No later than twenty-five (25) working days prior to initiation or service, the Contractor shall submit an Emergency Plan to the County which shall detail those actions which the Contractor will take to deal with emergency situations such as extreme cold temperatures, snow/ice, fire, or natural disaster which would require a deviation from normal operating procedures. The Emergency Plan shall also include emergency phone numbers for the Contractor and for key contact persons, such that a responsible contact person is available to the County at all times. The Emergency Plan must also include Subscriber notification procedures. If any of the above occurs as an unforeseen event, the County should be contacted immediately to coordinate emergency service efforts. Upon County approval, this document will become an Exhibit to this Contract.

7.6. Progress Meetings:

Designated staff of the Contractor and the County shall hold monthly progress meetings to discuss process improvements and movement toward shared goals.

7.7. Accidents:

The Contractor shall immediately notify by telephone the County's Designated Representative or his designee of all vehicular accidents in which there is serious personal injury or a fatality.

7.8. Vicious Animals:

Employees of the Contractor shall not be required to expose themselves to the dangers of vicious animals in order to accomplish refuse collection in any case where the owner or tenants have animals at large, but the Contractor shall immediately notify the County of such condition and of the inability to make collection.

ARTICLE VIII

EQUIPMENT AND PERSONNEL

8. EQUIPMENT AND PERSONNEL

- 8.1. The Contractor shall provide all of the vehicles, equipment, personnel, and other items necessary to perform the work granted under the franchise.
- 8.2. The Contractor shall maintain an office within Buncombe County, which shall be equipped with a local telephone number and adequately staffed with qualified personnel as may be necessary to receive and process Subscriber service requests, inquiries, or complaints. The offices of the Contractor shall be staffed during the hours of 8 a.m. to 5 p.m., Monday through Friday, during the term of the Franchise. The Contractor should endeavor to maximize the use of technology for after hours to allow for customer inquiries and complaints. The Contractor shall have a dedicated webpage for Buncombe County and shall publicize the page for customer and collector communication. In addition, the Contractor shall utilize social media and other technologies available for dissemination of information.
- 8.3. The Contractor shall ensure by all necessary means that sufficient vehicles, equipment, personnel, and other necessary items are available to meet service requirements throughout the term of the Franchise. In the event of equipment breakdown, the Contractor must have an alternate method of pickup arranged in order that service will not be seriously interrupted.
- 8.4. All proposed equipment shall be on-site and prepared for beginning work for this Contract before December 20, 2019. The Contractor shall notify the County when the equipment is received in order for the County to verify its availability.
- 8.5. All personnel shall serve the public in a courteous and helpful manner. The County may require that any personnel that is discourteous, belligerent, profane, or in any way intimidating toward Subscribers be barred from further work.
- 8.6. All personnel who will be responsible for driving waste collection vehicles shall maintain a valid driver's license. A uniform and official company name badge are encouraged. Employees shall be required to wear appropriate Personal Protection Equipment. Operations shall be conducted in compliance with applicable safety regulations and laws.

8.7. Training records of employees shall be documented and provided to the County's Designated Representative on an annual basis.

8.8. Collection Equipment

8.8.1. The Contractor shall keep all vehicles fully licensed and inspected as required by the State of North Carolina. The Contractor shall comply with any state and local vehicle registration, permitting, or regulatory requirements.

8.8.2. All vehicles must be uniformly identified including company name, vehicle number, and phone number. All vehicles should be painted the same color. Subcontractor vehicles should also be easily identifiable.

8.8.3. Vehicles or containers used for the collection and transportation of solid waste and/or recyclable materials shall be leak-proof, durable, and of easily cleanable construction. All vehicles, equipment, and/or containers used for collection and transportation shall be maintained in good repair and cleaned as often as necessary to maintain sanitary conditions and prevent a nuisance or insect breeding. There shall be no garbage or recyclable items on the outside of the vehicle in any manner.

8.8.4. An updated list of all vehicles and equipment to be used, along with year of manufacture and condition of each, shall be submitted to the County's Designated Representative by January 1 on an annual basis during the term of the franchise.

8.8.5. The County's Designated Representative may inspect vehicles or require other documentation as necessary to ensure all vehicles and equipment meet the specifications outlined herein. The County's Designated Representative also shall work with the Contractor to conduct inspections as needed to provide the initial and annual written statement required in Buncombe County Code of Ordinances, Article II, Section 62-45(b)(8) and (9).

ARTICLE IX

HAULING

9. HAULING

9.1. Spillage and Leakage: The Contractor shall comply with all federal, state, and local laws including, but not limited to, health and safety regulations related to the protection of the environment. Vehicles and containers used for the collection and transportation of solid waste and recyclable materials shall be loaded and moved in such a manner that the contents will not fall, leak, or spill, and shall be covered when necessary to keep contents dry and to prevent blowing of material. If spillage should occur, the material shall be picked up immediately by the Contractor and returned to the vehicle or container and the area shall be properly cleaned. See penalty schedule for fines related to these issues.

ARTICLE X

REFUSE DISPOSAL

10. REFUSE DISPOSAL

- 10.1. Location of Materials for Collection: All refuse shall be bagged within the rollout carts and shall be placed at curbside or designated collection site for collection. Recyclable materials shall be placed in a rollout cart provided by the Contractor. Curbside refers to that portion of right-of-way adjacent to paved or traveled town, NCDOT, or private roadways (including alleys). Carts shall be placed as close to the roadway as is practicable without interfering with or endangering the movement of vehicles or pedestrians. When construction work is being performed in the right-of-way, carts shall be placed as close as feasible to an access point for the collection vehicle. The Contractor may decline to collect any item not so placed.
- 10.2. Rebates: Rebates will not be applicable to residential tonnage collected through this Franchise. The Contractor remains eligible for any available rebates on commercial tonnage.
- 10.3. Non-compliant Material Marking: The Contractor will mark any non-compliant materials set out for disposal with a sticker/hanger. Stickers/hangers shall be approved by the County prior to use.
- 10.4. Refuse Disposal Site:
- 10.4.1. The Contractor is required to transport and deliver all solid waste collected under this Franchise to the County-owned landfill (81 Panther Branch Road, Alexander, NC 28701) or to the Buncombe County Transfer Station (190 Hominy Creek Road, Asheville, NC 28806). The Contractor is responsible for paying all tipping fees associated with disposal of solid waste. No solid waste may be transported to, transferred, or disposed of at any other location within Buncombe County or outside of Buncombe County without the written, advance approval of the County's Designated Representative.
- 10.4.2. The County reserves the right to change the disposal site and assign a new disposal site at any given time. If the disposal site is changed, the County shall notify the Contractor at least sixty (60) days in advance of the proposed change.
- 10.5. Disposal of Other Materials: Disposal of yard waste (e.g., brush, leaves, grass clippings, pallets), white goods, televisions/electronics, and other items are not covered under this Franchise. Those items are banned by law from North Carolina landfills. The Subscriber may negotiate with the Contractor or another contractor for the removal of these items as necessary. If the Contractor accepts these items, the materials must be separated from the solid waste and recycled in a manner consistent with all federal, state, and local regulations. Tonnages of these types of recycled materials must be reported to the County each month as outlined in Section 11. Other items that are banned from North Carolina landfills include aluminum cans, plastic bottles, oil filters, tires, and lead acid batteries.

ARTICLE XI

RECYCLING

11. RECYCLING

11.1. Recycling Collection

11.1.1. The Contractor shall collect all recyclable items placed at the curb or designated collection location in a rollout container or in a bag marked with a Contractor-provided tag on the service day at each location. Recyclable materials must be placed in a separate collection vehicle or placed in a bin on the vehicle that is separate from other waste collected. The Contractor is not required to collect recyclable items that are mixed with trash or other debris.

11.1.2. Items to be recycled shall include:

- Mixed paper (e.g., newspaper and inserts, catalogs, junk mail, magazines, envelopes, office paper, cereal boxes, phone books, shredded paper (place in paper bag with top rolled down));
- Metal cans (e.g., aluminum, steel, tin, empty aerosol cans);
- Plastic containers (e.g., food, beverage, personal care, or household plastic containers);
- Glass bottles and jars (e.g., clear, brown, green);
- Aluminum Pie Tins, Food Trays;
- Milk and Juice Cartons;
- Juice Boxes;
- Cardboard (separate from all items listed above, lay flat under bins or bluebags).

11.1.3. Buncombe County may expand its recycling program in the future. The Contractor shall be able to accommodate additional recyclable materials at no charge to the Subscriber. County and Contractor are to agree on terms of accepting additional recycling materials. If additional recyclable materials are added for collection, the County shall notify the Contractor at least sixty (60) days in advance of the proposed change.

11.1.4. When the recycling container with recyclable materials is mixed with trash or other debris, the Contractor shall leave the recyclable items at the curb and attach a hanger or sticker designed and supplied by the Contractor to those rollout carts found unacceptable for collection. The sticker/hanger shall include information on why the collection was not made and a telephone number to contact for more information. On or by November 30, 2019 the sticker/hanger shall be submitted to the County's Designated Representative for approval.

11.2. Recycling Disposal

11.2.1. It will be the Contractor's sole responsibility to market, transport, and deliver all recyclable items collected to a Materials Recovery Facility. Recyclable materials that the Contractor is required to collect as identified in Section 11.1.2 shall not be transported or delivered to or accepted by the Buncombe County Solid Waste Management Facility or Transfer Station. The Contractor shall be solely responsible for compliance with federal, state, and local laws and ordinances, including but not limited to, equipment

and permitting requirements applicable to the transport, delivery, and/or processing of recycling and resource recovery equipment and facilities. At no time should the Contractor expect a reduction in the tipping fee from Buncombe County or an increase in the monthly Subscriber fee because of unacceptable or unmarketable recyclable materials.

11.2.2. The Contractor may bring those recyclable materials to the Buncombe County Solid Waste Management Facility that are not required to be collected as a part of basic service under this Franchise (e.g., white goods, electronics). However, the Contractor shall be responsible for paying any fees charged by the landfill facility related to the recyclable materials to be accepted.

11.3. General Recycling

11.3.1. If the County finds that at any given time the Contractor exceeds more than five percent (5%) recyclable rejects because of poor collection methods, the County will notify the Contractor of probationary status. Continued rejects exceeding five percent (5%) may be a breach of Contract and subject to termination of the Franchise agreement. The Contractor is responsible for all disposal costs for rejects.

11.3.2. Buncombe County has no control over recycling markets. At no time will the Contractor discontinue its recycling program or collection of any of the prior mentioned recyclable items without the approval of the Buncombe County Board of Commissioners. Violation of this provision will be considered a violation of the performance bond. Contractor may petition the County for rate adjustments associated with recycling markets at reasonable times, not to exceed once per year, on the basis of higher than normal increased costs beyond the Contractor's and the County's control. Higher than normal costs will be considered as any amount higher than 20 percent over the preceding calendar year.

11.3.3. On or by March 31, 2020, and continuing on an annual basis thereafter throughout the term of the Franchise, the Contractor shall deliver to each Subscriber literature explaining the recycling program and materials to be recycled. Said literature will be provided by the Contractor and approved by the County's Designated Representative.

11.4. Reporting on Recycling

11.4.1. It will be the Contractor's responsibility to verify to the County the amount of recyclable items collected and marketed for all Franchise customers and all commercial cardboard within Buncombe County. A report will be sent to the Director, or designee, of the Solid Waste Department by the tenth of each month for the previous month's collections. The report will contain (a) the quantity of materials received and (b) the percentage of recyclable materials disposed of because of unacceptable quality. Actual weights of recyclable materials must be obtained by using scales certified by the North Carolina Department of Agriculture and Consumer Services, Standards Division, 1050 Mail Service Center, Raleigh, NC 27699-1050. The North Carolina Department of Environmental Quality (DEQ) requires accurate weights. Failure to provide the monthly

report in a timely manner will be subject to the fines outlined in Section 15.

11.4.2. The Contractor shall report on the following materials, which shall include, but not be limited to:

- Commingled Recycling (/carts)
- Residential cardboard
- Commercial cardboard-County customers
- White goods/scrap metal
- Yard waste
- TV's/electronics

ARTICLE XII

BASIS AND METHOD OF PAYMENT

12. BASIS AND METHOD OF PAYMENT

- 12.1. Rates: For collection services specified in Section 6 above, the Contractor shall charge Subscribers the rates proposed in its bid to the RFP as shown on Exhibit A attached hereto, the "Cost Proposal."
- 12.2. Billing and collection of the amount due from Subscribers will be the responsibility of the Contractor.

ARTICLE XIII

COMPENSATION AND ADJUSTMENTS

13. COMPENSATION ADJUSTMENTS

- 13.1. If in any year Buncombe County has an increase in the tipping fee, then the Contractor will be due an adjustment based on the following: for every \$1.00 increase in the tipping fee the County imposes, the Contractor will be granted an increase of \$.10 per month per Subscriber.
- 13.2. Except as noted in 13.1 above or as may be otherwise provided under Buncombe County Code of Ordinances, Article II, Section 62-47, the County will not entertain increases in the per month Subscriber fee before January 1, 2022. For every subsequent year of the Franchise Term the Contractor will be entitled to an annual rate increase equal to the percentage increase in the annual consumer price index ("CPI") for the prior calendar year next preceding October 31, 2021. The index to be used is the Consumer Price Index, Urban Wage Earners and Clerical Workers, U. S. City Average, All Items, published by the United States Department of Labor, Bureau of Labor Statistics and in effect as of October 31st next preceding the date of the salary adjustment. Seasonally adjusted data will not be used.

ARTICLE XIV

MISSED SERVICE

14. MISSED SERVICE

14.1. Missed Service Report:

- 14.1.1. Contractor is responsible for receiving and managing calls of Missed Service. Contractor is responsible for keeping record of, and being able to provide a record of, all missed services as requested. Contractor's local office and representatives are required to be staffed at a level to provide service to Subscribers when Missed Service calls are made.
- 14.1.2. If County receives a report of a Missed Service, the County will notify the Contractor immediately with the date and address where the Missed Service occurred. Notification of a Missed Service Report will be made as described in section 14.1.3.
- 14.1.3. If the County sends (via electronic, written, or verbal communication) a Missed Service Report to a Customer Service email contact specified by the Contractor or provides verbal notification of a Missed Service to the Contractor between the hours of 7:00 a.m. to 4:00 p.m. on any given collection day, the Contractor shall provide collection by 8:00 p.m. on the same day. The Contractor shall collect any Missed Service Reports received after 4:00 p.m. by the end of the following scheduled collection day. Once the County has sent a Missed Service Report, it shall be considered received by the Contractor.
- 14.1.4. When the Contractor's equipment operators are responding to Missed Service Reports, they shall be responsible for checking other locations in the same vicinity for other possible misses in order to prevent additional calls from other Subscribers reporting collection misses.
- 14.1.5. The Contractor is responsible for investigating and providing a response to a Missed Service Report. If the Contractor does not provide a response, it will be considered a Valid Miss. Penalties for non-compliance will apply if not addressed per the specified timeframe.
- 14.1.6. If the Contractor verifies and documents that the service was missed because the refuse was not placed at the roadside in a timely manner, it is not considered a Missed Service. The Contractor is responsible for Subscriber education in these instances.
- 14.1.7. The Contractor shall collect refuse and recyclable materials in response to the Missed Service Report and shall transport the materials to the appropriate and approved disposal facility.
- 14.1.8. The Contractor shall notify the County via an agreed upon method, in response to the Missed Service Report, of the date and time that collection was completed.
- 14.1.9. Communication from the Contractor on the status of each day's route completion is vital so that the County can adequately respond to Customer complaints as they are received. Any changes or delays in route completion, which occur during the day, shall immediately be reported to the County. This notification shall include any open routes not covered in the morning and equipment breakdowns or any other event, which could

affect the normal time of completion of any route. If the Contractor does not keep the County informed as required, any reported or discovered collection miss for routes, which are scheduled to have been completed for that collection day, will be designated as a Valid Miss.

14.1.10. Valid Missed Service Reports result in additional work for the County, requiring staff time to handle Customer service requests as well as follow-up to ensure completion. Therefore, the Contractor shall use its best efforts to minimize the number of Valid Missed Services. If the Contractor fails to provide collection of a Valid Missed Service by the times specified in Section 14.1.3, the Contractor shall pay the County damages in the amounts listed in the liquidated damages schedule (Section 15).

14.1.11. The Contractor shall remain responsible for providing collection. However, if the Contractor fails to pick up a Valid Missed Service Report by the times specified in Section 14.1.3, the County may elect to charge the Contractor damages in the amount specified in the liquidated damages schedule. The intent is to ensure that quality customer service is provided to each unit at all times.

14.2. Repeat Missed Services: The Contractor is responsible for avoiding Repeat Missed Collections. Should the Contractor fail to provide immediate collection of a Repeat Missed Collection, the County may, in its sole discretion, charge the Contractor collection damages as outlined in the penalties schedule.

14.3. Area Miss: The Contractor shall respond to an Area Miss in the same time frame and manner as specified in Section 14.1.3. If the Contractor fails to provide collection by the times specified in Section 14.1.3, the County may elect to charge the Contractor collection damages as outlined in the liquidated damages schedule.

ARTICLE XV

LIQUIDATED DAMAGES

15. LIQUIDATED DAMAGES

Violation	Penalty
1 to 10 valid misses during any one calendar month	\$200/valid miss
11 to 20 valid misses during any one calendar month	\$300/valid miss
21 or more valid misses during any one calendar month	\$500/valid miss
200 or more valid misses during any one calendar month	In addition to penalties above, \$5,000/month in which there are more than 200 valid misses
Second or third repeat missed collection at any one location during a 30 day period	\$500/repeat miss
Fourth or more repeat missed collection at any one location during a 30 day period	\$1,000/repeat miss
Area miss of 100 locations	\$2,000/area miss
Each additional location missed over 100 locations in an	\$20/location (in addition to \$2,000)

Violation	Penalty
area miss	
Recyclable materials report not sent to Buncombe County Solid Waste by the 10 th of each month for the previous month's collections	\$100 for 1 st missed month, increases \$200 for each missed month after
Failure to deliver recycling materials on an annual basis as described in Section 11.3.3	\$100
Leaking truck or debris leaving the truck while hauling	\$1,000/violation
Termination of Contract due to breach of Contract	Transfer of ownership of rollout carts to Buncombe County as described in section 16

ARTICLE XVI

TERMINATION

16. TERMINATION

Should the County determine that the Contractor is in breach of Contract or in default of its Contract provisions, written notice of the breach or default shall be provided to the Contractor by the County. Should the Contractor fail to correct the breach or default within thirty (30) days after delivery of the written notice, then the County may terminate this Contract in its discretion by providing the Contractor three (3) months' notice of such termination.

Should the Contractor determine that the County is in breach of Contract or in default of its Contract provisions, written notice of the breach or default shall be provided to the County by the Contractor. Should the County fail to correct the breach or default within thirty (30) days after delivery of the written notice, then the Contractor may terminate this Contract in its discretion by providing three (3) months' notice of such termination.

In the event of termination of the Franchise due to breach, County will have the option to buy the rollout carts. The purchase price of said rollout carts by County will be calculated on the following schedule:

- Year 2020 - 85% of Cost
- Year 2021 - 70% of Cost
- Year 2022 - 55% of Cost
- Year 2023 - 40% of Cost
- Year 2024 - 25% of Cost
- Year 2025 - 10% of Cost
- Year 2026 and thereafter - 0% of cost, or \$1.00

The Cost will be determined by receipts provided to County demonstrating the costs charged to and paid by Contractor, excluding delivery fees, for rollout carts provided to Subscribers in the Franchise area on or before December 31, 2019. In no event shall such Cost be greater than the cost estimate for rollout carts in the RFP of Contractor.

If the Contractor should fail to provide the services required hereunder for a period of seven (7) consecutive working days, other than for reason of a Force Majeure, and the Contractor does not cure such failure within three (3) days of written notice, the County may immediately terminate this Contract. Should this occur, then Contractor will be deemed to have abandoned the Franchise and the rollout carts will become the property of the County as part of Liquidated Damages.

In the case of early termination, the County shall be allowed to make demand for its Damages under the terms and provisions of the Performance Bond, in addition to its other legal and equitable remedies that are available under the laws or the United States and the State of North Carolina.

16.1. Force Majeure, Storm, and Other Disasters

Except with regard to a party's obligation to make payments due under this Contract in the event either party hereto is rendered unable, wholly or in part, by a Force Majeure to carry out its obligations, then upon a written notice setting forth the specifics within a reasonable time, the obligations of the party giving such notice, insofar as they are affected by such Force Majeure, from its inception, shall be excused during the entire period of any inability so caused but for no longer period. Furthermore, in the event of such Force Majeure, the County shall grant the Contractor variances in routes and schedules as may be deemed necessary by Contractor and agreed to by the County

ARTICLE XVII

ATTACHMENTS

17. ATTACHMENTS

Other documents, if any, forming part of the Contract are as follows:

- Exhibit A: Contractor's proposal
- Exhibit B: Advertisement for bids
- Exhibit C: Request for Proposals
- Exhibit D: RFP Addendum 1
- Exhibit E: RFP Addendum 2
- Exhibit F: Certificates of Insurance
- Exhibit G: Buncombe County Code of Ordinances, Article II, Section 62-26 through Section 62-47
- Exhibit H: Emergency Plan (*pending*)

[Signature Page Follows]

SIGNATURE PAGE 1 OF 2 TO FRANCHISE SERVICE CONTRACT BETWEEN
WASTE PRO OF NORTH CAROLINA, INC. and BUNCOMBE COUNTY

IN WITNESS WHEREOF, the parties have caused this Franchise Service Contract to be executed in their corporate names by their duly authorized officers, all as of the date first above written.

WASTE PRO OF NORTH CAROLINA, INC.

ATTEST:

By: Jennifer Herring
Printed Name: JENNIFER HERRING
Title: DIRECTOR OF GOVERNMENT RELATIONS

By: Ralph Gingles
Printed Name: Ralph Gingles
Title: DIVISIONAL VICE PRESIDENT

**SIGNATURE PAGE 2 OF 2 TO FRANCHISE SERVICE CONTRACT BETWEEN
WASTE PRO OF NORTH CAROLINA, INC. and BUNCOMBE COUNTY**

[SEAL]

BUNCOMBE COUNTY

ATTEST:

Lamar Joyner, Clerk to the Board

By: _____
Brownie Newman, Chair
Buncombe County Board of Commissioners

This instrument has been preaudited
in the manner required by The Local
Government Budget and Fiscal Control Act

Name: Donald Warn
Finance Officer
Buncombe County, North Carolina