

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE  
FRANCHISE SERVICE CONTRACT



**THIS FRANCHISE SERVICES CONTRACT** made and entered into this [ ] day of [DATE], 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 FCC Environmental Services, LLC, a Delaware limited liability company 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, 2024;
- 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 seven (7) year exclusive franchise for the collection and disposal of solid waste and collection of recyclable materials in unincorporated areas of Buncombe County to include a one (1) year additional 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

### 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 Contractor is obligated to provide services.
- 1.3. Basic Service: Roadside or mailbox collection of refuse and recyclable materials.

- 1.4. 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.
- 1.5. Bulky Waste: Waste types that are too large to be accepted through regular waste collection.
- 1.6. Change in Law: (i) the adoption, promulgation, or modification after the Effective Date of any law, regulation, order, statute, ordinance, or rule that was not adopted, promulgated, or modified on or before the Effective Date; or (ii) the imposition of any material conditions in connection with the issuance, renewal, or modification of any permit, license, or approval after the Effective Date, which in the case of either (i) or (ii) establishes requirements affecting Contractor’s operation under this Contract more burdensome than the requirements that are applicable to Contractor in effect as of the Effective Date.
- 1.7. Contingency Plan: The Contingency Plan shall mean the Contractor’s plan for avoiding an interruption in Residential Solid Waste Collection Service if an emergency or other situation renders the Contractor’s operations or equipment unusable.
- 1.8. Collection: Regular removal of solid waste and recycling from property by the owner or occupant or by the franchised collector.
- 1.9. 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.

- 1.10. Contractor: The terms “Franchised Collector,” “Hauler,” and/or “Franchised Hauler” may be used interchangeably with the term “Contractor” and shall be considered the same.
- 1.11. 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.
- 1.12. Designated Service Area: The designated service area under the franchise agreement encompasses all unincorporated areas within Buncombe County, excluding municipalities within the county. This area delineates the geographic scope the Hauler is granted exclusive rights and responsibilities for the collection, transportation, and disposal of solid waste and recycling generated by subscribers.
- 1.13. Disability Service: Premium service at the cost of basic service to accommodate subscribers with

physical disabilities. Must have a doctor's note to qualify.

- 1.14. Disposal: Delivery of solid waste to the Buncombe County Sanitary Landfill, Buncombe County Transfer Station, or other location as reasonably designated by the County's Designated Representative.
- 1.15. Existing Collection Points: The initial waste and recycling collection points assigned by the hauler associated with the service type.
- 1.16. Low-Income Program: There is a reduced monthly fee provided to low-income households that meet the income eligibility requirements (150% and below the Federal Poverty level).
- 1.17. Materials Recovery Facility (MRF): A specialized plant that receives, separates, and prepares recyclable materials for marketing to end-user manufacturers.
- 1.18. 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.
- 1.19. Notice of Refusal: A written communication placed on uncollected garbage or recycling items to inform subscribers that their garbage or recycling cannot be picked up due to non-compliance with collection guidelines and regulations.
- 1.20. Physical Disability: For this Contract, a physical disability is defined in the context of being unable to roll a 96-gallon garbage can to the roadside through a condition or physical impairment including but not limited to mobility challenges, weakness, or other physical limitations.
- 1.21. Premium Service: An upgraded service requested by subscribers that allows the contractor to pick up trash and recyclable materials next to/adjacent to houses/garages by way of individual driveways for an additional/increased fee. The contractor should use the appropriate equipment/techniques to minimize the risk of damage to driveways, structures, etc.
- 1.22. 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.
- 1.23. Rejects: Recycling that is not accepted by the Materials Recovery Facility due to an unacceptable level of comingling or contamination with refuse.
- 1.24. Request for Proposal (RFP): Request for the prepared forms and information that the Contractor is to submit or has submitted for the contemplated work by the County.
- 1.25. 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.
- 1.26. Roadside: Refers to that portion of right-of-way adjacent to paved, graveled, or traveled town, NCDOT, or private roadways (including alleys).

- 1.27. 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, along with a Contractor decal. Can be used interchangeably with “roll carts.”
- 1.28. Small Business: Businesses whose refuse and recycling disposal needs do not exceed those allowed for subscribers (96-Gallon Rollout Carts. No bags accepted if outside of the cart).
- 1.29. 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.
- 1.30. Subscriber: Occupants, owners, tenants, lessees, or proprietors of residences who are users of franchised collection services.
- 1.31. 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.
- 1.32. Transition Plan: A transition plan for a solid waste management contract outlines the systematic process for transferring responsibilities, resources, and operations from the incumbent waste management provider to the newly contracted company. This plan delineates key milestones, timelines, roles, and communication strategies to ensure a seamless transition while minimizing disruptions to waste collection, disposal, and recycling services for the involved stakeholders and communities.
- 1.33. Valid Miss: A Missed Service that has not been collected by the times specified in Section 17.1.5, and that upon investigation is determined that it was missed by the Contractor’s negligence or omission.
- 1.34. Waste: Any material, substance, or product discarded that is no longer needed. Can be used interchangeably in this Contract with “trash,” “garbage,” and “refuse.” Recyclable materials are not included in this definition.

## ARTICLE II

## 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

## 3. FRANCHISE TERM

- 3.1. Initial Term of Lease. The Initial Term of this Franchise shall begin on January 1, 2025, and end at 11:59:59 p.m. on December 31, 2031.
- 3.2. Renewal Term. Unless sooner terminated as herein provided, and provided Contractor has complied with all terms, conditions and provisions of this Franchise and this Franchise Service Contract then the County may in its sole discretion notify the Contractor of its intent to renew the Franchise for one additional one-year term upon the same terms and conditions of the Franchise and this Franchise Service Contract then in force and effect. The County will notify the Contractor of its intent to renew at least 18 months prior to the expiration of the initial term. The Contractor will notify the County within thirty (30) days of such notification of its intent to accept or deny the renewal.

#### ARTICLE IV

### 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 FCC Environmental Services, LLC and the County listed below, or those other addresses of which either party gives the other party written notice:

If to FCC, to: Dan Brazil, Chief Operating Officer  
460 Wildwood Forest Dr., Suite 100  
Spring, TX 77380

With copy to: Joel Blake, Head of Legal  
460 Wildwood Forest Dr., Suite 100  
Spring, TX 77380

If to County, to: Dane Pedersen, Solid Waste Director  
81 Panther Branch Rd.  
Alexander, NC 28701

With copy to: Ron Venturella, Procurement Manager  
200 College St. 4<sup>th</sup> Floor  
Asheville, NC 28801

Any addressee may designate additional or different addresses for communications by notice 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/or the County's Designated Representative and which approval and consent shall not be unreasonably withheld ; provided, however, that Contractor may assign all or any portion of this Agreement to any direct or indirect wholly-owned subsidiary of Contractor at any time.
- 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, reasonable attorney fees, judgments, and awards arising or claimed to have arisen, from any injury caused by, either in whole or in part, any negligent 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 the 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. The 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 \$1,000,000 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 \$1,000,000 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. Insurance Limits. 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.

The Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that Buncombe County is 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 Opportunity/Non-Discrimination Assurance. During the term of this Franchise, the Contractor will ensure that it is following all Federal and State laws and requirements concerning fair employment of individuals who belong to a legally recognized protected class and concerning the treatment of all employees without regard to discrimination by reason of an employee belonging to a legally recognized protected class.
- 4.14. 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.
- 4.15. 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.
- 4.16. 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. The 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.
- 4.17. 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.
- 4.18. 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, requested reports associated with this Contract, and other actions as necessary to effect a smooth transition of services. In the event the County does not exercise its renewal option pursuant to Section 3.2 of this Agreement, the County shall purchase all outstanding carts from Contractor for the remaining book value (12.5% of the original price). In the event the County does exercise its renewal option pursuant to Section 3.2 of this Agreement, at the end of the Renewal Term, Contractor may assign its rights and interests in Contractor provided carts and the County shall not unreasonably reject such assignment.

- 4.19. 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**

### **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**

### **6. INCOMING TRANSITION PLAN**

- 6.1. No Interruption. In the period between the Effective Date and the Service Commitment Date, the Contractor shall not interrupt or otherwise disrupt the Residential Solid Waste Collection Service being provided to subscribers by the party providing such service through December 31, 2024.
- 6.2. Transition Plan: On or before July 1, 2024, the Contractor shall deliver their Transition Plan to the County detailing how the Contractor will achieve the requirements associated with the Franchise

Contract. The Transition Plan must be acceptable to the County. If any portion of the Transition Plan is not acceptable, then on or before July 31, 2024, the County shall deliver notify Contractor specifically stating the deficiencies within the Transition Plan that must be corrected. The Contractor must correct all deficiencies in the Transition Plan on or before August 31, 2024.

6.3. Basic Service Collection Points. All existing collection points from the previous hauler Contract’s service will remain for subscribers within this contract. For example, all existing collection points for Basic Service customers prior to this Contract will remain as existing Basic Service collection points for subscribers within this Contract, all of the Premium Service existing collection points will remain Premium Service collection points.

6.4. Transition Transparency. Immediately following the execution of the Contract leading up to the enacting of service from the Contractor to subscribers, the Contractor will meet with the County, at minimum, monthly to discuss updates of the transition plan and to ensure the timeline associated with delivery of services is being met.

6.5. Failure to Meet Schedule for Post Award Contractor Deliverables. Failure to provide any post award Contractor Deliverable listed below by the scheduled date shall result in an administrative charge of \$2,000 per calendar day.

6.6. Timeline. The following are deadlines associated with the transition of service for the Contractor.

Date	Item
January 3, 2024	Request for Proposal (RFP) date of issuance.
January 18, 2024	Mandatory pre-bid conference.
January 26, 2024	Deadline to submit questions in writing.
February 2, 2024	Question responses published.
February 16, 2024	Application submissions due.
March 15, 2024	In-Person prospective Contractor interviews/presentations.
March 19, 2024	Commissioners’ Meeting – Request for Action to enter negotiations .
March 25, 2024	Initial meeting between Contractor in negotiations and Buncombe County.
April 8, 2024	Finalize negotiations.
April 16, 2024 Or May 7, 2024	Contractor presentation to Board of Commissioners and first reading of Franchise Agreement.
May 21, 2024	Second reading and final approval of Franchise Agreement Contract.
July 1, 2024	Transition Plan due to the County.
September 1, 2024	<u>Contractor Deliverable</u> . Contingency Plan laid out in Section 8.6.
November 30, 2024	<u>Contractor Deliverable</u> . Due date for Contractor to present the Notice For Refusal (Sec. 12.3) and Excess Waste Bag-Tag (8.1.11) to be used.
November 30, 2024	<u>Contractor Deliverable</u> . Contractor presents Buncombe County with a detailed map and schedule of collection services.
December 6, 2024	<u>Contractor Deliverable</u> . Deadline for Contractor’s emergency plan.
December 20, 2024	<u>Contractor Deliverable</u> . All proposed equipment shall be on-site and prepared for beginning work of this Contract deadline.
December 27, 2024	<u>Contractor Deliverable</u> . Contractor provides notification of collection employees having run routes with their collection vehicles in Buncombe County.

January 1, 2025	<u>Contractor Deliverable</u> . The Contractor begins waste collection service responsibilities to subscribers based on submitted schedule.
January 1, 2025, or by Initial Subscriber’s Service Pickup Day	<u>Contractor Deliverable</u> . Roll carts assembled and delivered to all existing customers.

**ARTICLE VII**

**7. COMPENSATION & ADJUSTMENTS**

7.1. 2025 Subscriber Fees. The following outlines the costs for subscribers associated with the services provided under this Franchise Agreement:

Service Type	Subscriber Cost in 2025
Basic Service	\$28.65
Premium Service	\$59.00
Bulky Pickup Service and Disposal (Per Item) (*)	\$25.00
Bear Carts (Purchase)	\$320.00
Bear Carts (Monthly Lease)	\$10.00
Additional Cart with Service (Monthly Lease)	\$12.00
Disability Program	\$28.65
Low-Income Program (**)	15% Off Basic Service
Excess Waste Bag-Tag (per bag) (***)	\$3.00

- (\*) Items must be accepted by the County for disposal and are limited to a maximum weight of 75 pounds.
- (\*\*) This program is limited to 700 eligible Subscribers and will be available on a first come, first served basis. Subscribers who want to apply must be below 150% of the federal poverty level OR be a recipient of a federal public assistance program.
- (\*\*\*) See Section 8.1.11.

7.2. Tipping Fee Increase. The Contractor may petition the County for a rate increase, on the basis of the County increasing its Tipping Fee costs. The County will not withhold such approval unreasonably. The contractor shall provide supporting documentation as may reasonably be necessary, as determined by the County, to decide on the validity of the request. In no event will such rate increase exceed any additional costs of operations attributed to such Tipping Fee increase.

7.3. CPI-U: The Contractor is not entitled to increase their per month subscriber fee before January 1, 2027. On January 1 of 2027 and all subsequent January 1<sup>st</sup> within the contract term, the Contractor shall be entitled to a subscriber fee increase as a result of the CPI increase. The Contractor shall thereafter increase subscriber fees based on the Consumer Price Index, Urban Consumer, U.S. City Average – Garbage and trash collection (not seasonally adjusted), for the month ending September 30, annual percentage change (“Index”). All items are published by the United States

Department of Labor, Bureau of Labor Statistics. The Contractor will notify the County of the change in subscriber fee based on CPI-U two months prior to implementation.

The parties agree that any such annual rate increase shall be no less than three-point five percent (3.5%) for any single year.

The parties also agree that any annual rate adjustment based on the CPI-U shall not exceed five percent (5%) for any single year, regardless of whether or not the Index reflects a higher percentage amount.

- 7.4 Change in Law: Notwithstanding anything herein to the contrary, Contractor may petition the County for an additional rate adjustment resulting from a Change in Law. The Contractor's request shall contain proof and justification to support the need for the rate adjustment. The County may request from the Contractor such further information as may be reasonably necessary in making its determination. Within sixty (60) calendar days of receipt of the request, the County shall make a determination regarding the fairness of the request and shall provide Contractor with a written response detailing its determination. The adjusted rates shall become effective upon the County's approval. The County shall not arbitrarily deny a reasonable request for a rate adjustment due to a Change in Law.

## **ARTICLE VIII**

### **8. TYPE OF COLLECTION & SERVICE SPECIFICATIONS**

- 8.1. 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 Contractor will not be allowed to refuse service to any household within the designated service area. The following services shall be provided in the described manner:
- 8.1.1. Basic Service: Contractor-provided 96-Gallon Rollout Waste Carts for weekly refuse and every other week recycling collection. No refuse bags accepted if outside of the cart (unless tagged in reference to Sec. 8.1.11). No recycling accepted outside of the cart unless it is neatly stacked cardboard outside of rollout recycling cart.
  - 8.1.2. Refuse collection: Contractor-provided rollout waste carts. No bags accepted if outside of the cart (unless tagged in reference to Sec. 8.1.11). Weekly collection provided.
  - 8.1.3. Recycling collection: Contractor-provided rollout recycling carts. Neatly stacked cardboard outside of rollout recycling carts is accepted. Every other week a collection is provided.
  - 8.1.4. Disability Service: Disability Service is a service that the Contractor will provide at no additional cost to a person with a physical disability provided they show proof with a doctor's note and verification that no able-bodied persons reside at the residence requesting such service. Eligibility screening for the Disability Service program is to be determined by the Contractor. Disability service provides eligible subscribers with Premium Service at the cost of Basic Service.
  - 8.1.5. Premium Service: An upgraded service requested by subscribers that allows the contractor to pick up trash and recyclable materials next to/adjacent to houses/garages

by way of individual driveways for an additional/increased fee. The contractor should use the appropriate equipment/techniques to minimize the risk of damage to driveways, structures, etc. In these instances, the subscriber will be assessed an additional monthly fee as proposed in the cost proposal section of the RFP (Sect. 7).

- 8.1.6. 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 (Sec. 7). Individual items must be accepted by the County for disposal and are limited to a maximum weight of 75 pounds.
- 8.1.7. Bear-proof Rollout Carts: Contractor is to provide bear-proof carts for an additional fee as proposed in cost proposal section of the RFP (Sec. 7).
- 8.1.8. Low Income Program: The Low-Income Program is a discounted service provided to low-income individuals to receive Basic Service. Applicants must be at or below 150% of the federal poverty level OR be a recipient of a federal public assistance program. This program is limited to 700 eligible Subscribers and will be available on a first come, first served basis.
- 8.1.9. Additional Carts: Additional carts for waste and recycling can be provided to the customers for a monthly lease fee as proposed in the cost proposal section of the RFP (Sec. 7).
- 8.1.10. Replacement of Rollout Carts: The Contractor shall replace any roll cart damaged within seven (7) days. No additional fee will be charged to the subscriber to replace a damaged cart.
- 8.1.11. Excess Waste Bag-Tag: The Contractor shall make available purchasable tags to place on excess refuse collection in bags placed outside of rollout carts (“Excess Waste Bag-Tag(s)”). At the onset of service under this Contract, each Subscriber household will be given two (2) free Excess Waste Bag-Tags. Subscribers may purchase additional Excess Waste Bag-Tags directly from Contractor through its website or by calling Contractor’s Buncombe County office, at the price set forth in Section 7.1. Excess Waste Bag-Tags cannot be used for recycling collection. Bags without Excess Waste Bag-Tags outside of carts can be refused by the Contractor per Section 12.1.

## ARTICLE IX

### 9. OPERATIONS

#### 9.1. Service Area:

- 9.1.1. 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.
- 9.1.2. 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.

9.2. Schedules and Routes:

- 9.2.1. 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.
- 9.2.2. 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.
- 9.2.3. The Contractor shall be responsible for setting the day(s) of collection. On or by November 30, 2024, 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. The 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.

9.3. Holidays:

The following shall be holidays on which Contractor shall not provide services on:

New Year's Day  
Independence Day  
Thanksgiving Day  
Christmas Day  
Labor Day  
Memorial 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.

9.4. Public Education:

Education and awareness programs for proper waste disposal and recycling shall be conducted by the Contractor such that every subscriber has equal exposure to such information. The Contractor shall also supply subscribers with recycling information on an annual basis as laid out in the Annual Reporting attachment.

9.5. 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.

9.6. Contingency Plan.

The Contractor shall develop a Contingency Plan which shall describe the Contractor's plan of action if an emergency or other situation renders the Contractor's operations yard or equipment unusable. The Contingency Plan shall describe the steps that the Contractor shall take to avoid interruptions or reductions in its residential solid waste collection service. The plan shall be submitted to the County on or before September 1, 2024. Thereafter, the Contingency plan shall be annually updated and resubmitted to the County every November 1, and also within two (2) days after the Contractor revises the plan for any reason. The Contingency Plan and all revisions to the plan are subject to the County's approval.

9.7. Progress Meetings:

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

9.8. 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.

9.9. 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 X

### 10. EQUIPMENT AND PERSONNEL

- 10.1. The Contractor shall provide all of the vehicles, equipment, personnel, and other items necessary to perform the work granted under the franchise.
- 10.2. 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 an equipment breakdown, the contractor must have an alternate method of pickup arranged so service will not be seriously interrupted. The contractor shall make Buncombe County aware of the software and other technologies used.
- 10.3. The Contractor shall ensure assembled Roll Carts will be distributed to all existing customers



by January 1, 2025 – or on or before the subscriber’s initial pickup service date. All new or replacement containers shall be delivered to the subscriber in no more than seven (7) days from the date of the request or be subject to the penalties listed in Section 18.

- 10.4. 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. The County shall have the right to inspect the Contractor’s facilities and operations at any reasonable time to determine whether the performance complies with the Franchise Agreement requirements without prior notice.
- 10.5. 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.
- 10.6. All proposed equipment shall be on-site and prepared for beginning work for this Contract before December 20, 2024. The Contractor shall notify the County when the equipment is received in order for the County to verify its availability.
- 10.7. 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.
- 10.8. 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 is encouraged. Employees shall be required to wear appropriate Personal Protection Equipment. Operations shall be conducted in compliance with applicable safety regulations and laws.
- 10.9. Training records of employees shall be documented and provided to the County’s Designated Representative on an annual basis.
- 10.10. Collection Equipment
  - 10.10.1. 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.
  - 10.10.2. Collection vehicles are to be no older than the term length of the contract.
  - 10.10.3. 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.
  - 10.10.4. 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.

10.10.5. 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.

10.10.6. 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 XI**

### **11. HAULING**

11.1. **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 XII**

### **12. REFUSE DISPOSAL**

12.1. **Location of Materials for Collection:** All refuse shall be bagged within the rollout carts and shall be placed roadside for collection. Recyclable materials shall be placed in a rollout cart roadside, or if cardboard, neatly stacked next to rollout cart. Roadside refers to that portion of right-of-way adjacent to paved, graveled, or traveled town, NCDOT, or private roadways (including alleys). Carts shall be placed as close to the roadway as practical 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 though they must supply information to the subscriber as to why the material was not accepted.

For all services, existing collection points will remain as established by the previous Contract. If disputes arise with property owners as to pick-up location, or if contractor wants to change the pickup location, the contractor is responsible for working with the subscriber/property owner to find an agreeable location. This includes bulky waste collection points with multiple carts.

12.2. **Rebates:** Rebates will not be applicable to residential tonnage collected through this Franchise. The Contractor remains eligible for any available rebates on commercial tonnage.

12.3. **Notice of Refusal:** 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.

12.4. Refuse Disposal Site:

12.4.1. 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.

12.4.2. The County reserves the right to reasonably 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.

12.5. 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 12 and 15. Other items that are banned from North Carolina landfills include aluminum cans, plastic bottles, oil filters, tires, and lead acid batteries.

**ARTICLE XIII**

**13. FINANCIAL REPORTING**

13.1 The Contractor shall provide annually a report containing the relevant financial information for the services provided under this Franchise, including revenues by customer class, operating expenses, disposal expenses, recycling facility costs, and liquidated damages.

**ARTICLE XIV**

**14. RECYCLING**

14.1. Recycling Collection

14.1.1. The Contractor shall collect all recyclable items placed at the existing designated collection location in a rollout container 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. Cardboard may be neatly stacked next to rollout container. The Contractor is not required to collect recyclable items that are mixed with trash or other debris.

14.1.2. 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).

14.1.3. 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.

14.1.4. When the recycling container with recyclable materials is mixed with trash or other debris, the Contractor shall leave the recyclable items at the existing designated location 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, 2024, the sticker/hanger shall be submitted to the County's Designated Representative for approval.

#### 14.2. Recycling Disposal

14.2.1. 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 12.1.2 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 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.

14.2.2. 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.

#### 14.3. General Recycling

14.3.1. If the County finds that at any given time the Contractor exceeds more than five percent (5%) recyclable rejections 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.

14.3.2. 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. The County will not withhold such approval unreasonably.

14.3.3. On or by October 31, 2025, 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.

14.4. Reporting on Recycling

14.4.1. 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 18.

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

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

**ARTICLE XV**

**15. REPORTING REQUIREMENTS**

15.1. The following is a list of all the required reports from the Contractor to the County on a scheduled basis with deadlines.

Date or Time Schedule	Report Due
10 <sup>th</sup> of each Month (if applicable)	Tonnages of recycled items not covered in Franchise Agreement (i.e. yard waste, white goods, electronics/televisions, etc.)

10 <sup>th</sup> of each Month (Beginning February 2025)	Quantity of recycled materials received and percentage of recyclable materials disposed of because of unacceptable quality. The report should also include the amount of recycling for the following materials: commingled recycling, residential cardboard, commercial cardboard, and scrap metal. This report can also house (if applicable) the yard waste, white goods, and TV/electronics collection information.
10 <sup>th</sup> of each Month (Beginning February 2025)	Monthly report with the following information: litter and spillage summary, property damage summary, roll cart repair and replacement summary, and roll carts issued by location.
10 <sup>th</sup> of each Month (if applicable) (Beginning February 2025) <i>or</i> Within 15 days of County Request	Missed Service Report due to the County.
Monthly schedule TBD.	Contractor and County shall hold monthly progress meetings.
March 31 (Annually beginning in 2026)	Contractor supplies recycling literature to all subscribers, to include what can and cannot be recycled.
End of April (Annually beginning in 2026)	Financial report laid out in Section 13.1. of the Franchise Contract.
October 31 (Annually beginning in 2025)	Training records of employees.
January 1 (Beginning in 2026)	Updated list of all equipment and vehicles, along with year of manufacturing and conditions of each, supplied to the County.
15 Business Days upon Request	Any miscellaneous reports requested by the County associated with this Franchise Contract. See Section 14.2.
1 <sup>st</sup> of November (Annually beginning in 2026)	Updated Contingency Plan due to the County.

- 15.2. Miscellaneous Reports. Miscellaneous Reports can include but is not limited to number of active subscribers, number of disability subscribers, number of low-income subscribers, bear cart subscribers, proof of insurance, and any other reports mutually agreed upon by the County and Contractor as achievable to create and relay within fifteen (15) business days.
- 15.3. Report Deadlines. Reports not submitted to Buncombe County within the established timeframe set forth through this Contract are subject to liquidated damages in Section 18.

## **ARTICLE XVI**

### **16. BASIS AND METHOD OF PAYMENT**

- 16.1. Rates: For collection services specified in Section 8 above, the Contractor shall charge Subscribers the rates proposed in its bid to the RFP as shown in Section 7.0.
- 16.2. Billing and collection of the amount due from Subscribers will be the responsibility of the Contractor.

## ARTICLE XVII

### 17. MISSED SERVICE

#### 17.1. Missed Service Report:

- 17.1.1. Valid Miss: A Missed Service that has not been collected by the times specified in Section 17.1.5., and that upon investigation is determined that it was missed by the Contractor's negligence or omission.
- 17.1.2. The contractor is responsible for receiving and managing Missed Service calls. The contractor is responsible for keeping a record of, and being able to provide a record of, all missed services by October 31 each year or as requested within 15 business days. 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.
- 17.1.3. 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.
- 17.1.4. If the Hauler receives a Missed Service, they will include it in a monthly or as requested report with mitigation response by the County. This report will be due within ten (10) after the end of each month or the Contractor will be subject to the penalties laid out in Section 18.
- 17.1.5. 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 3:00 p.m. on any given collection day, the Contractor shall provide collection by 7:00 p.m. on the same day. The Contractor shall collect any Missed Service Reports received after 3:00 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.
- 17.1.6. 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.
- 17.1.7. 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.
- 17.1.8. 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.
- 17.1.9. 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.
- 17.1.10. 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.

- 17.1.11. 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.
- 17.1.12. 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 17.1.5., the Contractor shall pay the County damages in the amounts listed in the liquidated damages schedule (Section 18).
- 17.1.13. 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 17.1.5., 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.
- 17.2. 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.
- 17.3. Area Miss: The Contractor shall respond to an Area Miss in the same time frame and manner as specified in Section 17.1.5. If the Contractor fails to provide collection by the times specified in Section 17.1.5., the County may elect to charge the Contractor collection damages as outlined in the liquidated damages schedule.

#### ARTICLE XVIII

### 18. VLIQUIDATED DAMAGES

<b>Violation</b>	<b>Penalty</b>
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 area miss	\$20/location (in addition to \$2,000)
Recyclable materials report/Missed Service Report not sent to Buncombe County Solid Waste by the 10 <sup>th</sup> of each month for the previous month's collections	\$100 for 1 <sup>st</sup> missed month, increases \$200 for each missed month after
Failure to deliver recycling materials on an annual basis as described in Section 12.1.1.	\$100/day
Any report pertaining to this Contract or Franchise Agreement not supplied to the County within the timelines laid out in this Contract not met.	\$200/day per violation
Failure to notify the County on spillage within 24 hours.	\$1,000/day per violation
Failure to clean up spillage	\$2,500/day per violation
Failure to provide or replace cart in required time.	\$100/day per household
Operating unsafe equipment	\$1,000/day
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 19.
Failure to meet schedule for post award contract deliverables established in Section 6.4.	\$2,000 per calendar day

The above liquidate damages shall apply, except to the extent of a Force Majeure Event

#### **ARTICLE XVIII**

### **19. TERMINATION**

19.1. Should the County determine that the Contractor is in material breach of Contract or in material 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 cure or commence to cure the material breach or material 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 material breach of Contract or in material 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 cure or commence to cure the breach or default within thirty (30) days after delivery of the written notice, then the Contractor may terminate this Contract at its discretion by providing six (6) months' notice of such termination.

In the event of termination of the Franchise due to material 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 2025 – 87.5% of Cost
- Year 2026 - 75% of Cost
- Year 2027 – 62.5% of Cost
- Year 2028 - 50% of Cost
- Year 2029 – 37.5% of Cost
- Year 2030 - 25% of Cost
- Year 2031 – 12.5% of Cost
- 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, 2024. 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 or commence to 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.

19.2. 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 Event 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 a Force Majeure Event, the County shall grant the Contractor variances in routes and schedules as may be deemed necessary by Contractor and agreed to by the County.

18.2 For purposes of this Contract, a Force Majeure Event shall mean any event or circumstance outside the reasonable control of either the County or Contractor, including but not limited to the following:

18.2.1 Strikes and work stoppages unless caused by a negligent act or omission of Contractor or its agents or assignments;

18.2.2 Acts of God, tornado, hurricanes, floods, sinkholes, fires, and explosions (except those caused by negligence of Contractor, its agents, and assignments), landslides, earthquakes, pandemics, epidemics, quarantine, pestilence, and inclement weather, or any other event which Contractor could not have reasonably controlled or anticipated and overcome through the exercise of commercially reasonable diligence;

18.2.3 Acts of public enemy acts of war, terrorism, effects of nuclear radiation, blockades, insurrection, riots, civil disturbances, or national or international calamities;

18.2.4 Suspension, termination, or interruption of utilities necessary to the operation of duties under this Contract.

#### **ARTICLE XIX**

### **20. ATTACHMENTS & ADDENDUMS**

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

- Attachment A: RFP
- Attachment B: Solid Waste Ordinance
- Attachment C: Current Subscriber Addresses
- Attachment D: Discount Program/Premium/Bear Cart Addresses
- Attachment E: Q&A Correspondences between County and Contractor
- Attachment F: Contractor's Application
- Attachment G: Contractor's Interview Transcript
- Attachment H: Contractor's Interview Presentation
- Attachment I: Hauler Rebate Program Information

20.2. Future Addendum Items.

- Certificate of Insurance
- Performance Bond
- Contractor's Emergency Plan
- Presentation to Board of Commissioners

(Signature Page Follows)

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**SIGNATURE PAGE 1 OF 2 TO FRANCHISE SERVICE CONTRACT BETWEEN FCC ENVIRONMENTAL SERVICES, 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

**FCC ENVIRONMETNAL SERVICES,LLC**

**ATTEST:**

\_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

\*\*\*\*\*

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

DRAFT

**SIGNATURE PAGE 2 OF 2 TO FRANCHISE SERVICE CONTRACT BETWEEN FCC ENVIRONMENTAL SERVICES, INC. and BUNCOMBE COUNTY**

[SEAL]

BUNCOMBE COUNTY

ATTEST:

By: \_\_\_\_\_

Brownie Newman, Chair

Buncombe County Board of Commissioners

\_\_\_\_\_  
#####, Clerk to the Board

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

\_\_\_\_\_  
Name: #####  
Finance Officer  
Buncombe County, NC

DRAFT