

REQUEST FOR BOARD ACTION

**HENDERSON COUNTY
BOARD OF COMMISSIONERS**

MEETING DATE: May 20, 2015

SUBJECT: Revised Agreement Per 5/4/2015 Board Comments
2015 Solid Waste Hauling and Disposal Agreement

PRESENTER: Marcus Jones, PE

ATTACHMENTS: Yes

1. Proposed Transportation & Disposal Agreement with Republic Services with Revisions from 5/4/2015
2. Proposed Transportation & Disposal Agreement with Republic Services with Revisions from 5/4/2015 with Comments

SUMMARY OF REQUEST:

During the Board's May 4, 2015 Meeting, staff was directed to revise the proposed Agreement with Republic Services to transport and dispose of solid waste from the County's Stoney Mountain Transfer Station. The revisions are to make clear that Republic will only dispose of the County's waste in a permitted and County approved Landfill. The attached agreement was developed by the County Attorney and Republic Services. Also, a copy of the revised agreement with markups is attached to highlight the changes made.

BOARD ACTION REQUESTED:

Approve the revised agreement with Republic Services of Kentucky, LLC to transport and dispose of the County's waste from the Stoney Mountain Transfer Station effective July 1, 2015.

Suggested Motion:

I move the Board approve the revised agreement with Republic Services of Kentucky, LLC to transport and dispose of the County's waste from the Stoney Mountain Transfer Station effective July 1, 2015.

TRANSPORTATION AND DISPOSAL AGREEMENT

THIS TRANSPORTATION AND DISPOSAL AGREEMENT (this “Agreement”) is entered into effective as of July 1, 2015, by and between the County of Henderson, a political subdivision, organized and existing under the laws of the State of North Carolina (“County”), and Republic Services of Kentucky, LLC, a Kentucky limited liability company (“Republic”).

RECITALS

WHEREAS, the County owns the Transfer Station (as defined below);

WHEREAS, the County has a need for certain waste delivered to the Transfer Station to be transported and disposed of in a disposal facility;

WHEREAS, the County issued a Request for Proposals for Hauling and Disposal Services for Solid Waste with responses due April 2, 2015;

WHEREAS, Republic is a provider of solid waste transportation and disposal services and operates a disposal facility, and Republic responded to the County’s Request for Proposals;

WHEREAS, the County, after evaluating responses to its Request for Proposals, selected Republic to transport and dispose of certain waste delivered to the Transfer Station upon the terms and conditions set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, each intending to be legally bound, agree as follows:

1. Definitions. For the purpose of this Agreement, the following terms shall have the meanings set forth below:

(a) “Affiliate” shall have the meaning set forth in Rule 12b-2 of the General Rules and Regulations under the Securities and Exchange Act of 1934, as amended, and shall additionally include successors, designees, and assigns,

(b) “Agreement” means this Transportation and Disposal Agreement between Republic and the County, as modified, supplemented or restated from time to time, together with any exhibits, schedules or attachments hereto.

(c) “Construction or Demolition Waste” means solid waste resulting solely from construction, remodeling, repair, or demolition operations on buildings, or other structures, but does not include inert debris, land-clearing debris or yard debris.

(d) “County Area” means the geographic jurisdiction of the County and each municipality within the County,

(e) “CPI” means the Consumer Price Index for All Urban Consumers (Water, Sewer and Trash Collection Services) U.S. City Average, as published by United States Department of Labor, Bureau of Statistics.

(f) “Disposal Facility” means the disposal facility known as the Upstate Regional MSW Landfill, located at 868 Wildcat Road, Enoree, South Carolina, 29331 and owned by Republic or any other disposal facility designated by Republic. A ten (10) day notice shall be given to the County prior to any change in the landfill used for disposal.

(g) “Effective Date” means July 1, 2015.

(h) “Environmental Laws” means all applicable laws, directives, rules, ordinances, codes, guidelines, regulations, governmental, administrative or judicial orders or decrees or other legal requirements of any kind, including, without limitation, common law, whether currently in existence or hereafter promulgated, enacted, adopted or amended, relating to safety, preservation or protection of human health and the environment (including, without limitation, ambient air, surface water, groundwater, land, or subsurface strata) and/or relating to the handling, treatment, transportation or disposal of waste, substances or materials, including, without limitation, any matters related to Releases and threatened Releases of materials and substances,

(i) “Fees and Taxes” means any federal, state, local or other taxes, assessments, fees, host charges, surcharges or similar charges directly or indirectly related to the acceptance, transportation, or disposal of Waste which are imposed on the Disposal Facility or Republic by law, ordinance, rule, regulation and/or agreement with a governmental authority at any time during the term of this Agreement, whether imposed retroactively or prospectively as such may be increased from time to time.

(j) “Force Majeure” means any event relied upon by Republic as justification for delay in or excuse from complying with any obligation required of Republic under this Agreement, including, without limitation: (i) an act of God, landslide, lightning, earthquake, fire, explosion, storm, flood or similar occurrence; (ii) any act of any federal, state, county or local court, administrative agency or governmental office or body that stays, invalidates, or otherwise affects this Agreement, the operation of, or any permits or licenses associated with or related to, the Disposal Facility with respect to the acceptance, transportation and/or disposal of Waste; (iii) (a) the denial, loss, suspension, expiration, termination, failure of renewal or (b) the attainment of any maximum disposal amounts within any applicable time period, of any permit, license or other governmental approval required to accept, transport and/or dispose of Waste; (iv) the adoption or change (including a change in interpretation or enforcement) of any federal, state, county, or local law, rule, permit, regulation or ordinance after the Effective Date hereof, applicable to the obligations hereunder, including, without limitation, such changes that have a substantial, material and adverse effect on the cost of performing the contractual obligations herein; (v) the institution of a legal or administrative action, or similar proceeding, by any person or entity which delays or prevents any aspect of the acceptance, transport and/or disposal of Waste; or (vi) the failure of Republic to obtain an expansion of the Disposal Facility for the acceptance and disposal of waste.

(k) “Hazardous Materials” means any pollutant, contaminant, hazardous or toxic substance, constituent or material, including, without limitation, petroleum products and their derivatives, or other substances, regulated under or pursuant to any Environmental Laws. The term “Hazardous Materials” also includes Hazardous Waste and any pollutant, contaminant, hazardous or toxic substance, constituent or material, including, without limitation, petroleum products and their derivatives, or other substance that is, on or after the Effective Date of this Agreement, deemed hazardous by any judicial or governmental entity, body or agency having jurisdiction to make that determination.

(l) “Hazardous Waste” means any waste regulated as hazardous under or pursuant to any Environmental Laws. The term “Hazardous Waste” also includes any waste that is, on or after the Effective Date of this Agreement, deemed hazardous by any judicial or governmental entity, body or agency having jurisdiction to make that determination.

(m) “Release” means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration into the indoor or outdoor environment, including, without limitation, the movement of Hazardous Materials through the ambient air, soil, subsurface water, groundwater, wetlands, lands or subsurface strata.

(n) “Special Waste” means non-hazardous waste that requires special handling or management due to its composition or volume. All such waste must comply with Republic’s Special Waste procedures prior to acceptance.

(o) “Ton” means 2,000 pounds.

(p) “Transfer Station” means the transfer station owned by the County and located at 802 Stoney Mountain Road, Hendersonville, North Carolina,

(q) “Unacceptable Waste” means any and all solid waste which the Disposal Facility is not authorized to accept for disposal pursuant to its permits and licenses, including, without limitation, yard waste, highly inflammable substances, Hazardous Materials, Hazardous Waste, liquid wastes, certain pathological and biological wastes, explosives, radioactive materials, and other materials deemed by local, state, or federal law, or in the reasonable discretion of Republic, to be dangerous or threatening to human health or the environment, to the transport of Waste, or to the operations conducted at the Disposal Facility.

(r) “Waste” means any and all non-hazardous solid waste, including construction and demolition materials but excluding Unacceptable Waste, transported from the Transfer Station and delivered to the Disposal Facility by Republic on behalf of the County which Republic is authorized to transport and which the Disposal Facility is authorized to accept pursuant to its permits and licenses in existence at such time.

2. Term. Subject to the terms and conditions of this Agreement, the term of this Agreement shall commence on the Effective Date and shall continue for five years (the “Initial Term”). Upon the mutual agreement of the parties at the end of the Initial Term, this Agreement may be renewed for additional one year periods (each, a “Renewal Term”, and collectively with the Initial Term, the “Term”).

3. Disposal Fees.

3.1 The County shall pay Republic disposal fees of \$35.24 per Ton for the transportation of Waste, including Construction or Demolition Waste, from the Transfer Station to the Disposal Facility and the disposal of Waste at the Disposal Facility, plus any (i) Fees and Taxes and (ii) increased operational costs or expenses incurred by Republic caused by the adoption or change (including a change in interpretation or enforcement) of any Environmental Laws or regulations, whether imposed retroactively or prospectively (such amount as adjusted by (i) and (ii) is referred to herein as the “Disposal Fees”). The Disposal Fees, specified in this Section 3 shall be increased in accordance with any increases to the CPI as follows: effective on July 1 of each year during the Term (commencing on July 1, 2016), the Disposal Fees shall be increased by 90% of the increase in the CPI. If the CPI does not increase, then no adjustments shall be made to the Disposal Fees in such year. The change in the CPI shall be measured by comparing the CPI of April of the current year to the CPI of April of the previous year not to exceed 5% each year. The term “Disposal Fees” as used in this Agreement shall include any adjustments made pursuant to the immediately preceding sentence. The parties hereto agree that the Disposal Fees only apply to Waste delivered to the Disposal Facility if such Waste is collected from the Transfer Station and delivered to the Disposal Facility by long-haul transfer trailers. The CPI adjustment shall be automatic.

3.2 The Disposal Fee is based upon diesel fuel cost of \$3.00 per gallon. Each \$0.10 increase or decrease above or below this range will result in a 1% fuel surcharge or credit per Department of Energy published price for Lower Atlantic Region. The price posted on the last Monday of each month shall be used to determine the fuel surcharge or credit applicable for the upcoming month’s billing.

3.3 The Disposal Fee is also based on a minimum average load weight of Waste transported from the Transfer Station hereunder of 19 tons (the “Minimum Average”). If the monthly average load is less than the Minimum Average, the parties agree that all of the loads for the month will be billed at the Minimum Average. Republic or its subcontractor may request to haul a load less than the Minimum Average for trailer logistical purposes, and in such event, such load would be disregarded in calculating the average load weight for purposes under this Section 3.3.

3.4 If Republic performs disposal services outside its regular business hours or any additional services due to special circumstances concerning the services hereunder not caused by Republic (including, without limitation, as requested by the County), Republic may adjust the Disposal Fees to offset the additional costs in performing such services.

3.5 Republic shall send the County an invoice for the Disposal Fees. The County shall pay Republic the full amount within one month of receipt of the invoice via check, electronic fund transfer (EFT) or automated clearing house (ACH), without offset. Unpaid invoices shall carry interest at the lesser of (i) of one and one half percent (1.5%) per month or (ii) the maximum amount permitted under applicable law. The obligations of the County to pay the Disposal Fees and other amounts payable hereunder shall be absolute and unconditional. In the event that the County fails to timely pay any outstanding amount that is not being contested by the County in good faith, Republic may, in addition to any other remedies available to Republic,

suspend the County's right of transport and disposal of Waste at the Disposal Facility pursuant to this Agreement and/or terminate this Agreement, by giving thirty (30) days written notice to the County.

3.6 Republic may increase the Disposal Fees as a result of any of the following acts which occur outside of Republic's control (i) any increases in taxes, fees and other governmental charges, and (ii) certain increases in costs incurred by Republic due to (a) any third party or municipal disposal facility being used, (b) changes in local, state, or federal rules, ordinances or regulations, or (c) changes in taxes, fees or other governmental charges (other than income or real property taxes). Notwithstanding anything to the contrary in Section 3.6(ii), neither party anticipates using any third party or municipal disposal facility, and none will be used in the absence of governmental regulation requiring the same.

3.7 In the event that (i) any Waste requires special handling or management due to its composition or volume or (ii) Republic agrees to dispose of any Unacceptable Waste, the County and Republic shall determine in advance, on a case by case basis, the charge to the County for Republic's transportation and disposal of such wastes. Payment for such transportation and disposal shall be upon the same terms as the payment of other Disposal Fees.

4. Delivery and Acceptance of Waste.

4.1 The County agrees that all of the Waste delivered to the Transfer Station shall be loaded by the County onto Republic's transportation vehicles and transported and delivered by Republic to the Disposal Facility. All trailers, trucks and any other equipment that Republic furnishes under this Agreement shall remain Republic's property, The County shall use the equipment only for its proper and intended purpose and shall not overload (by weight or volume), move or alter the equipment.

4.2 Republic shall have the right to weigh all vehicles delivering Waste to the Disposal Facility. At any time, Republic or the County may confirm the tare weight of any vehicle delivering Waste to the Disposal Facility on behalf of the County.

4.3 The County acknowledges that Republic intends to reject waste that, in Republic's sole determination, contains Unacceptable Waste, would be in violation of this Agreement, Republic's then existing licenses or permits, or would result in a violation of applicable federal, state or local laws, statutes, orders, rules, regulations or ordinances. The operator of the Transfer Station shall visually inspect Waste delivered to the Transfer Station. If, following Republic's acceptance of a load of waste hereunder, Republic determines that Unacceptable Waste has been loaded onto its vehicles or included in such waste, Republic shall provide telephonic notice to the County as soon as reasonably practicable to the County manager or his designee (who has been so designated in writing to Republic) of such Unacceptable Waste, and Republic shall provide written follow-up notice to the County manager of such Unacceptable Waste within two (2) business days after the date of such determination, Republic can reject such waste at any time during the execution of services under this Agreement, including after such waste has been delivered to the Disposal Facility.

4.4 Ownership of Waste delivered to the Disposal Facility on behalf of the County shall pass to and be accepted by Republic when the vehicle transporting the Waste leaves the Transfer Station. Ownership of Unacceptable Waste loaded onto Republic's vehicles or delivered to the Disposal Facility by or on behalf of the County shall not pass to Republic at any time unless Republic specifically agrees in writing in advance to accept such Unacceptable Waste.

4.5 Republic may detain and inspect the contents of all vehicles delivering Waste on behalf of the County that are delivering Waste to the Disposal Facility.

4.6 The County shall not load onto Republic's vehicles Unacceptable Waste or cause Unacceptable Waste to be delivered or disposed of at the Disposal Facility. If any Unacceptable Waste is loaded onto Republic's vehicles or delivered to the Disposal Facility by or on behalf of the County, Republic shall have the right to refuse or reject such waste or, if not detected prior to loading onto Republic's vehicles or acceptance at the Disposal Facility, Republic may remove such waste and assure its proper disposal, all at the County's expense, which expense the County agrees to promptly pay upon presentation by Republic of an invoice setting forth the actual costs in reasonable detail.

4.7 If Republic's trucks receive Unacceptable Waste at the Transfer Station, or deliver such waste to the Disposal Facility, and that delivery disrupts or otherwise affects the normal operations of the transportation of Waste or the Disposal Facility, or if Republic incurs any liabilities, obligations, costs, expenses (including reasonable attorneys' fees and costs) or damages as a result of the transportation or delivery of such waste, the County shall be liable to Republic, and upon presentation by Republic of an accounting in reasonable detail, the County shall promptly pay, perform and discharge Republic for and indemnify and hold Republic harmless against all such liabilities, obligations, costs, expenses or damages that Republic incurs as a result of the transportation or delivery of Unacceptable Waste.

4.8 In addition to other remedies provided in this Agreement, Republic may suspend the services it is required to provide pursuant to this Agreement and/or terminate this Agreement upon repeated loadings or deliveries or the one-time intentional loading or delivery of Unacceptable Waste by the County, as such are determined by Republic. In such event, Republic shall notify the County in writing of its intention to suspend services and/or terminate this Agreement, and such suspension and/or termination shall become effective one hundred twenty (120) days following delivery of such notice (provided, however, if during such one hundred twenty (120) day period, Unacceptable Waste is loaded or delivered to Republic, then Republic may suspend and/or terminate this Agreement immediately),

4.9 Republic shall only be responsible for transportation of Waste from the Transfer Station to the Disposal Facility. Republic shall not be responsible or liable for any other transportation, including redelivery to the County, of any waste, including Unacceptable Waste. Republic may, in its sole discretion, deem a violation by the County of any applicable law, statutes, ordinances, rules, regulations, or orders relating to the transportation and handling of solid waste a breach of this Agreement.

4.10 Republic agrees to comply in all material respects with all applicable federal, state, and local laws, statutes, ordinances, rules, regulations, operational plans and orders concerning the transportation and handling of solid waste.

4.11 Republic shall not be responsible for injuries, damages, or fines, including, without limitation, overweight penalties or losses, excluding overweight axles, damage to driveways, parking areas, loading areas, or other surfaces at the Transfer Station, arising directly or indirectly from or connected in any manner with overload. Republic shall also be responsible for tarping and untarping the trailers upon receipt and disposal of Waste and shall not negligently allow any Waste to fall out of its trailers during the hauling and transportation of Waste to and from the Disposal Facility. The County shall be responsible for damage to Republic's trailers, including damage to trailers belonging to any of Republic's subcontractors, resulting from negligent or willful acts or omissions of the County or any of its officers or employees.

4.12 The County shall operate the Transfer Station during the following hours: Monday through Saturday — 8:00 AM to 5:00 PM, excluding holidays as established by the County. Republic will supply an adequate number of spare trailers to be used to load and store all solid waste to assure that the waste is never left on the tipping floor overnight. The County will provide a vehicle to move spare trailers at the solid waste transfer station. Republic will be allowed to operate outside of operating hours and will be issued a key to gain access to the Solid Waste Transfer Station. If at any time the County has to leave Waste on the tipping floor overnight due to Republic's inability to transport the Waste in a timely manner on the terms and conditions of this Agreement, Republic will forfeit the disposal fee for this load. Republic would also be responsible for half (1/2) of any fines levied against the County by the State as a result of its inability to transport such Waste, subject in all cases to the terms and conditions of this Agreement (including without limitation, Section 5).

4.13 Republic shall have the right, in its sole discretion, to subcontract the transportation of Waste from the Transfer Station to the Disposal Facility without the consent of the County. Republic shall continue to be responsible for its transportation obligations in the event transportation of waste is subcontracted. Republic, and not the County, shall be liable for any obligations between Republic and any subcontractor.

5. Suspension and/or Termination. In the event of an event of Force Majeure, either party hereunder may suspend its obligations hereunder and such party shall not have any liability to the other party due to such Force Majeure or such suspension. It is mutually understood and agreed that the obligation of Republic to transport and dispose of Waste for the Disposal Fees provided in Section 3, as adjusted, for a period of not less than forty-two (42) months is fixed and non-terminable, provided, however, that Republic may terminate this Agreement upon (i) an event of Force Majeure which continues unabated for a period of thirty (30) days and which, in Republic's reasonable discretion, renders the transportation of Waste or operation or maintenance of the Disposal Facility infeasible for any reason; or (ii) any breach or default of this Agreement by the County, pursuant to Section 11 hereof.

6. Covenants, Representations and Warranties of the County. The County agrees and represents and warrants to Republic as follows:

6.1 Existence and Good Standing. The County is and will continue to be throughout the term hereof) validly existing as a political subdivision and is in good standing under the laws of the State of North Carolina.

6.2 Approval and Authorization. The County has full power and authority to enter into this Agreement and to fully perform all of its duties and obligations hereunder pursuant to various and other enabling sections of the North Carolina General Statutes. The Board has duly authorized and the applicable North Carolina statutes so authorize the following: the execution and delivery of this Agreement, the County's performance of all of its duties and obligations contained herein, the County's collection of all necessary fees and charges, the County's making of all necessary expenditures, and the County's taking of all other necessary actions to meet these obligations, including, but not limited to, to the extent allowed by law and the North Carolina and United States Constitutions, and adopting solid waste management plans. This Agreement constitutes a valid and legally binding obligation of the County during the term of this Agreement, is binding upon all future Boards, and is enforceable in accordance with its terms.

6.3 No Litigation. There is no action, suit, or proceeding pending or, to the best of County's knowledge and belief, threatened against or affecting the County, at law or in equity or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality wherein any decision, ruling or finding would adversely affect the transactions contemplated herein.

6.4 Non-discretionary Functions. This Agreement pertains solely to non-discretionary, proprietary functions. The County's continuing obligations under this Agreement bind all future County Boards or other governing bodies, during the term of this Agreement, to make all necessary appropriations and take all necessary actions to meet these obligations.

6.5 County Support. The County fully supports the operation of the Transfer Station and the transport and disposal by Republic of Waste at the Disposal Facility and is committed to fully supporting the performance of this Agreement.

6.6 Covenant for Delivery of Waste. The County, shall: (i) exclusively use the Transfer Station and the Disposal Facility for disposal of all Waste delivered to the Transfer Station from within the County; (ii) not contract with any other Person for services which are the same or similar to those provided by Republic in this Agreement; and (iii) not establish or operate a solid waste management facility within the County Area offering the same or similar services as those provided by Republic in this Agreement; provided, however, that nothing herein shall prevent the County and municipalities within the County from implementing waste recycling and waste reduction programs.

7. Covenants, Representations and Warranties of Republic. Republic represents and warrants as follows:

7.1 Existence and Good Standing. Republic is duly organized under the laws of Kentucky and is authorized to do business in North Carolina and will continue to be, throughout the term hereof validly existing in good standing under the laws of the State of Kentucky and authorized to do business in the State of North Carolina.

7.2 Approval and Authorization. Republic has all requisite power and authority to enter into and fully perform this Agreement. Republic's execution and delivery of this Agreement and Republic's performance of all of their duties and obligations contained herein have been duly authorized by all necessary action on the part of Republic, and this Agreement of Republic is enforceable against Republic in accordance with its terms.

7.3 No Litigation. There is no action, suit or proceeding pending or, to the best knowledge and belief of Republic, threatened against or affecting Republic, or any of its affiliates, at law or in equity or before or by any federal, state, municipal, or other governmental department wherein any decision would materially, adversely affect the transactions contemplated herein.

7.4 Compliance with Laws. Republic covenants and agrees that, in the operation of the Disposal Facility, Republic will comply, in all material respects, with any and all federal, state, and local laws, including all Environmental Laws applicable to Republic concerning the operation of the Disposal Facility subject to Republic's right to contest in good faith the interpretation, application and enforcement of any such laws.

8. Indemnification.

8.1 Indemnification by Republic. Republic agrees to indemnify and save harmless the County, its officers and employees from any loss, claim, liability, penalty, fine, forfeiture, demand, cause of action, damages, suit and costs and expenses incidental thereto (including cost of defense, settlement and reasonable attorney's fees including any of the preceding relating to liability under the Environmental Laws or to investigation and cleanup under the Environmental Laws) ("Indemnified Costs"), arising out of or in connection with Republic's negligent performance of this Agreement; provided, however, that Republic shall not indemnify the County or any of its officers or employees from any Indemnified Costs to the extent caused by or resulting from any negligent or willful act or omission of the County or any of its officers, employees, agents or contractors, or any breach by the County of any agreement, representation or warranty of the County contained in this Agreement. Further, Republic agrees to indemnify and save harmless the County, its officers and employees from any loss, claim, liability, penalty, fine, forfeiture, demand, cause of action, damages, suit and costs and expenses incidental thereto (including cost of defense, settlement and reasonable attorneys' fees) incurred by the County to the extent caused by the loss of any required permits or authority to do business by Republic (or any of its affiliates providing services under this Agreement) that materially affect Republic's ability to provide the services under this Agreement. The indemnity obligation of Republic under this Section 8.1 shall survive the expiration or termination of this Agreement, for any reason whatsoever, subject to any applicable statute of limitation.

8.2 Indemnification by the County. The County agrees to indemnify, defend and save harmless Republic, its officers and employees, from any Indemnified Costs caused by or resulting from any negligent or willful act or omission of the County, its officers, employees, agents or contractors, or resulting from the breach by the County of any of the agreements, representations, or warranties of the County contained in this Agreement: provided, however, that the County shall not indemnify Republic from Indemnified Costs to the extent caused by or resulting from any negligent or willful act or omission of Republic, its officers, employees, agents or contractors including, without limitation, any such act or omission in connection with

Republic’s transport and disposal of Waste, or any breach by Republic of any agreement, representation or warranty of Republic contained in this Agreement. The indemnity obligations of the County under this Section 8.2 shall survive the expiration or termination of this Agreement for any reason whatsoever, subject to any applicable statute of limitation. The County agrees not to contest by action or defense the enforceability of its indemnity obligations herein.

9. Insurance. Republic shall at all times, during the term of this Agreement, maintain in full force and effect coverage in the amounts shown below. Before commencement of work hereunder, Republic agrees to furnish the County certificates of insurance to the effect that such insurance has been procured and is in force. The certificates shall contain the following express obligations: “This is to certify that the policies of insurance described herein have been issued to the insured for which this certificate is executed and are in force at this time.” Additionally, the insurance will include a Notice of Endorsement that will provide the County with thirty (30) days prior notice of a cancellation or material change in policy affecting Republic.

For purposes of this Agreement, Republic shall carry the following types of insurance in at least the limits specified below:

<u>Coverage</u>	<u>Limits of Liability</u>
Worker’s Compensation	Statutory Limits
Employer’s Liability	\$1,000,000 \$1,000,000 Aggregate
Commercial General Liability (Bodily Injury and Property Damage)	\$1,000,000 each occurrence \$3,000,000 aggregate
Commercial Automobile Liability (Bodily Injury and Property Damage)	\$1,000,000 each occurrence \$3,000,000 aggregate
Excess/Umbrella Liability	\$3,000,000 each occurrence

10. Notices. All notices or other communications to be given hereunder shall be in writing and shall be sent by overnight delivery or registered or certified United States mail, return receipt requested, properly addressed as follows:

To Republic:

Area President and General Manager
 Republic Services of South Carolina, LLC
 684 Mauldin Road
 Greenville, SC 29607

With copies to:

Republic Services, Inc.

18500 North Allied Way
Phoenix, AZ 85054
ATTN: Deputy General Counsel, East Region

To The County:

Henderson County
1 Historic Courthouse Square, Suite 2
Hendersonville, NC 28792
Attn: County Manager

With copy to:

Henderson County
1 Historic Courthouse Square, Suite 5
Hendersonville, NC 28792
Attn: County Attorney

11. Default; Remedies.

11.1 Breaches. A breach of this Agreement shall mean a material failure to comply with any of the material provisions of this Agreement.

11.2 Events of Default. An event of default shall include, but not be limited to, the following:

(a) Republic voluntarily commencing any proceeding or filing any petition seeking relief under the United States Bankruptcy Code or any federal, state or foreign bankruptcy, insolvency or similar law; (ii) consenting to the institution of, or failing to controvert in a timely and appropriate manner, any such proceeding or filing of any such petition; (iii) applying for or consenting to the appointment of a receiver, trustee, custodian, sequestrator or similar official for a substantial part of its property; (iv) filing an answer admitting the material allegations of a petition filed against it in any such proceeding; or (v) making a general assignment for the benefit of creditors;

(b) the commencement of an involuntary proceeding or the filing of an involuntary petition in a court of competent jurisdiction seeking (i) relief in respect of Republic, or of a substantial part of Republic's property, under the United States Bankruptcy Code or any other federal, state or foreign bankruptcy, insolvency or similar law, which petition shall remain undismissed for 120 days; (ii) the appointment of a receiver, trustee, custodian, sequestrator or similar official for Republic or for a substantial part of Republic's property and such petition shall continue undismissed for 120 days; or (iii) an order or decree approving or ordering any of the foregoing shall continue and stay in effect for 60 days;

(c) a breach of this Agreement by Republic or the County, which breach is not cured pursuant to Section 11.3 hereof;

(d) failure to maintain the insurance required under Section 10. Notwithstanding any other provision, the County may terminate this Agreement if Republic does not reinstate coverage within fifteen (15) days after receipt of written notice from the County; or

- 12.
- (e) failure of the County to fulfill its cooperation obligations in Section
 - (f) failure of Republic to transport the waste in a timely manner, as discussed in Section 4.12

11.3 Obligation to Cure Breaches. Each party shall in the case of any breach of its obligations under this Agreement either (i) cure the breach within 30 days of receipt of written notice from the non-breaching party, or (ii) continuously demonstrate within such cure period that it is actively and continuously pursuing a course of action which reasonably be expected to lead to a curing of the breach (the 30-day period will be extended for so long as the breaching party is actively and continuously pursuing such a course); provided, however, that if any party to this Agreement fails to pay the other party or parties any sum or dollar amount required to be paid when due hereunder, cure shall consist of payment which shall be made within 15 days of written demand from the non-breaching party, together with interest accruing at the legal rate from the date the payment was due.

11.4 Remedies for Default.

(a) In the event of a default under this Agreement, the non-defaulting party shall, upon 5 days prior written notice to the defaulting party, have the right, but not the obligation or duty, to cure such default, including the right to offset the costs of curing the default against any sums due which become due to the defaulting party under this Agreement. In any event, such costs shall be considered Indemnified Costs. The non-defaulting party shall use its commercially reasonable efforts to employ an economically reasonable method of curing any such default.

(b) If an event of default occurs and is not cured in the manner allowed hereunder, then the non-defaulting party shall have the right to (i) take whatever action at law or in equity that it deems necessary or desirable to collect any amounts then due or thereafter to become due under this Agreement or to enforce performance of any covenant or obligation of the breaching party under this Agreement; and/or (ii) suspended services provided pursuant to this agreement or terminate this Agreement.

(c) Notwithstanding any other provision in this Section in recognition of the gravity and scope of the subject matter of this Agreement, the parties agree that, notwithstanding the provisions for breach, cure and default hereunder, no party to this Agreement may elect to terminate this Agreement upon a default by the other party until the party seeking termination has first sent 90 days prior written notice of termination to the defaulting party, provided, however, that (i) only 60 days notice of termination is required if a default is based on a failure to pay fees when due under this Agreement, and (ii) termination is effective upon the County's receipt of notice where the default is the repeated or one-time intentional loading or delivery of Unacceptable Waste, as provided in Section 4.08. Notwithstanding anything to the contrary in this Agreement, for purposes of termination, unless otherwise specified therein, the written notice of breach and Obligation to cure contemplated in Section 11.3 shall be deemed the written notice of termination contemplated in this Subsection, and the cure period required under Section 11.3 shall be included within, and not in addition to, the notice period requirements in this

Subsection. Provided, however, that there shall be no cure for repeated violations of the same or similar nature which have been the subject of default and cure in the past.

(d) Subject to the terms and conditions of Section 11 hereof, all rights and remedies under this Section are cumulative and the exercise of any one remedy does not preclude the exercise of one or more of any other available remedies, including any remedies not specified herein.

12. County Cooperation In Maintaining Waste Disposal. The County shall fully and actively support the transport of Waste from the Transfer Station and disposal of Waste at the Disposal Facility, cooperate fully with Republic in order to assist Republic in maintaining approvals and permits for such transport and disposal that are contemplated by this Agreement (including, without limitation, cooperation related to permits and amendments), and shall supply to Republic in a timely manner such information as Republic may reasonably request which is necessary or useful to Republic in fulfilling such obligations and which the County has in its possession or control.

13. Independent Contractor; No Agency. Republic will act hereunder as an independent contractor and not as an agent of the County. Similarly, the County is neither an agent of Republic nor empowered or authorized to Obligate Republic in any way.

14. Assignment. Neither party shall assign, transfer or delegate, or permit the assignment, transfer or delegation of, this Agreement or any right or duty hereunder, without the prior written consent of the other party, which shall not be unreasonably withheld, provided, however, for purposes of this section, neither the transfer or assignment of this Agreement to corporate affiliates of Republic, nor the change of control of Republic, will be deemed an assignment, transfer or delegation.

15. Severability. In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, unconstitutional, or unenforceable in any respect, such invalidity, illegality, unconstitutionality or unenforceability shall not affect any other provision of this Agreement and this Agreement shall be construed as if such invalid, illegal, unconstitutional or unenforceable provision had never been contained herein; provided, however, that it is the intention of the parties hereto that in lieu of each term, clause, or provision that is held to be invalid, illegal or unenforceable, there shall be added by mutual agreement as part of this Agreement a term, clause or provision as similar in terms to such invalid, illegal or unenforceable term, clause or provision as may be possible and valid, legal or enforceable. Notwithstanding the above, if the term of this Agreement is held to be invalid, illegal, or unenforceable in any respect, then the term of this Agreement shall automatically be the maximum valid and legal term allowed by applicable common or statutory law.

16. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

17. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. Specifically, this Agreement shall bind the successors and assigns of the County, including, but not limited to, any transferee of the

Transfer Station, as if such successors and assigns had executed this Agreement on the date hereof, and such shall inure to the benefit of Republic and its successors and assigns.

18. Construction. Words importing the singular number shall include the plural in each case and vice versa, and words importing persons shall include firms, corporations, or other entities. The terms “herein”, “hereunder”, “hereto”, “hereof” and any similar terms, shall refer to this Agreement; the term “heretofore” shall mean before the date of adoption of this Agreement; and the term “hereafter” shall mean after the date of this Agreement, This Agreement is the result of joint negotiations and authorship and no part of this Agreement shall be construed as the product of any one of the parties hereto.

19. Entire Agreement. This Agreement constitutes the entire understanding between the County and Republic, and cancels and supersedes all prior negotiations, representations, understandings and agreements, either written or oral, between such parties with respect to the subject matter hereof. No changes, amendments, alterations, or modifications to this Agreement will be effective unless in writing and signed by the parties hereto.

20. Counterparts. This Agreement may be executed in two counterparts, each of which will be considered an original.

21. Court Jurisdiction. The parties mutually consent and agree that the court of competent jurisdiction with respect to any legal actions related to this Agreement shall be the United States District Court for the Western District of North Carolina.

[Signature page to follow]

IN WITNESS WHEREOF, the County and Republic have caused their respective duly authorized officers or representatives to execute this Agreement, as of the day and year first above written.

ATTEST:

HENDERSON COUNTY, NORTH CAROLINA

By: _____
Clerk to the Board

By: _____
County Manager

[Seal]

APPROVED AS TO FORM:

By: _____
County Attorney

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

By: _____
County Finance Officer

ATTEST:

REPUBLIC SERVICES OF KENTUCKY, LLC

By: _____

By: Steve Walker
Name: STEVE WALKER
Title: GM

County of Henderson

Fuel Surcharge Chart

UPSTATE REGIONAL LANDFILL.

[Need to insert]

TRANSPORTATION AND DISPOSAL AGREEMENT

THIS TRANSPORTATION AND DISPOSAL AGREEMENT (this “Agreement”) is entered into effective as of July 1, 2015, by and between the County of Henderson, a political subdivision, organized and existing under the laws of the State of North Carolina (“County”), and Republic Services of Kentucky, LLC, a Kentucky limited liability company (“Republic”).

RECITALS

WHEREAS, the County owns the Transfer Station (as defined below);

WHEREAS, the County has a need for certain waste delivered to the Transfer Station to be transported and disposed of in a disposal facility;

WHEREAS, the County issued a Request for Proposals for Hauling and Disposal Services for Solid Waste with responses due April 2, 2015;

WHEREAS, Republic is a provider of solid waste transportation and disposal services and operates a disposal facility, and Republic responded to the County’s Request for Proposals;

WHEREAS, the County, after evaluating responses to its Request for Proposals, selected Republic to transport and dispose of certain waste delivered to the Transfer Station upon the terms and conditions set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, each intending to be legally bound, agree as follows:

1. Definitions. For the purpose of this Agreement, the following terms shall have the meanings set forth below:

(a) “Affiliate” shall have the meaning set forth in Rule 12b-2 of the General Rules and Regulations under the Securities and Exchange Act of 1934, as amended, and shall additionally include successors, designees, and assigns,

(b) “Agreement” means this Transportation and Disposal Agreement between Republic and the County, as modified, supplemented or restated from time to time, together with any exhibits, schedules or attachments hereto.

(c) “Construction or Demolition Waste” means solid waste resulting solely from construction, remodeling, repair, or demolition operations on buildings, or other structures, but does not include inert debris, land-clearing debris or yard debris.

(d) “County Area” means the geographic jurisdiction of the County and each municipality within the County,

(e) “CPI” means the Consumer Price Index for All Urban Consumers (Water, Sewer and Trash Collection Services) U.S. City Average, as published by United States Department of Labor, Bureau of Statistics.

(f) “Disposal Facility” means the disposal facility known as the Upstate Regional MSW Landfill, located at 868 Wildcat Road, Enoree, South Carolina, 29331 and owned by Republic or any other disposal facility designated by Republic. A ten (10) day notice shall be given to the County prior to any change in the landfill used for disposal.

(g) “Effective Date” means July 1, 2015.

(h) “Environmental Laws” means all applicable laws, directives, rules, ordinances, codes, guidelines, regulations, governmental, administrative or judicial orders or decrees or other legal requirements of any kind, including, without limitation, common law, whether currently in existence or hereafter promulgated, enacted, adopted or amended, relating to safety, preservation or protection of human health and the environment (including, without limitation, ambient air, surface water, groundwater, land, or subsurface strata) and/or relating to the handling, treatment, transportation or disposal of waste, substances or materials, including, without limitation, any matters related to Releases and threatened Releases of materials and substances,

(i) “Fees and Taxes” means any federal, state, local or other taxes, assessments, fees, host charges, surcharges or similar charges directly or indirectly related to the acceptance, transportation, or disposal of Waste which are imposed on the Disposal Facility or Republic by law, ordinance, rule, regulation and/or agreement with a governmental authority at any time during the term of this Agreement, whether imposed retroactively or prospectively as such may be increased from time to time.

(j) “Force Majeure” means any event relied upon by Republic as justification for delay in or excuse from complying with any obligation required of Republic under this Agreement, including, without limitation: (i) an act of God, landslide, lightning, earthquake, fire, explosion, storm, flood or similar occurrence; (ii) any act of any federal, state, county or local court, administrative agency or governmental office or body that stays, invalidates, or otherwise affects this Agreement, the operation of, or any permits or licenses associated with or related to, the Disposal Facility with respect to the acceptance, transportation and/or disposal of Waste; (iii) (a) the denial, loss, suspension, expiration, termination, failure of renewal or (b) the attainment of any maximum disposal amounts within any applicable time period, of any permit, license or other governmental approval required to accept, transport and/or dispose of Waste; (iv) the adoption or change (including a change in interpretation or enforcement) of any federal, state, county, or local law, rule, permit, regulation or ordinance after the Effective Date hereof, applicable to the obligations hereunder, including, without limitation, such changes that have a substantial, material and adverse effect on the cost of performing the contractual obligations herein; (v) the institution of a legal or administrative action, or similar proceeding, by any person or entity which delays or prevents any aspect of the acceptance, transport and/or disposal of Waste; or (vi) the failure of Republic to obtain an expansion of the Disposal Facility for the acceptance and disposal of waste.

(k) “Hazardous Materials” means any pollutant, contaminant, hazardous or toxic substance, constituent or material, including, without limitation, petroleum products and their derivatives, or other substances, regulated under or pursuant to any Environmental Laws. The term “Hazardous Materials” also includes Hazardous Waste and any pollutant, contaminant, hazardous or toxic substance, constituent or material, including, without limitation, petroleum products and their derivatives, or other substance that is, on or after the Effective Date of this Agreement, deemed hazardous by any judicial or governmental entity, body or agency having jurisdiction to make that determination.

(l) “Hazardous Waste” means any waste regulated as hazardous under or pursuant to any Environmental Laws. The term “Hazardous Waste” also includes any waste that is, on or after the Effective Date of this Agreement, deemed hazardous by any judicial or governmental entity, body or agency having jurisdiction to make that determination.

(m) “Release” means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration into the indoor or outdoor environment, including, without limitation, the movement of Hazardous Materials through the ambient air, soil, subsurface water, groundwater, wetlands, lands or subsurface strata.

(n) “Special Waste” means non-hazardous waste that requires special handling or management due to its composition or volume. All such waste must comply with Republic’s Special Waste procedures prior to acceptance.

(o) “Ton” means 2,000 pounds.

(p) “Transfer Station” means the transfer station owned by the County and located at 802 Stoney Mountain Road, Hendersonville, North Carolina,

(q) “Unacceptable Waste” means any and all solid waste which the Disposal Facility is not authorized to accept for disposal pursuant to its permits and licenses, including, without limitation, yard waste, highly inflammable substances, Hazardous Materials, Hazardous Waste, liquid wastes, certain pathological and biological wastes, explosives, radioactive materials, and other materials deemed by local, state, or federal law, or in the reasonable discretion of Republic, to be dangerous or threatening to human health or the environment, to the transport of Waste, or to the operations conducted at the Disposal Facility.

(r) “Waste” means any and all non-hazardous solid waste, including construction and demolition materials but excluding Unacceptable Waste, transported from the Transfer Station and delivered to the Disposal Facility by Republic on behalf of the County which Republic is authorized to transport and which the Disposal Facility is authorized to accept pursuant to its permits and licenses in existence at such time.

2. Term. Subject to the terms and conditions of this Agreement, the term of this Agreement shall commence on the Effective Date and shall continue for five years (the “Initial Term”). Upon the mutual agreement of the parties at the end of the Initial Term, this Agreement may be renewed for additional one year periods (each, a “Renewal Term”, and collectively with the Initial Term, the “Term”).

3. Disposal Fees.

3.1 The County shall pay Republic disposal fees of \$35.24 per Ton for the transportation of Waste, including Construction or Demolition Waste, from the Transfer Station to the Disposal Facility and the disposal of Waste at the Disposal Facility, plus any (i) Fees and Taxes and (ii) increased operational costs or expenses incurred by Republic caused by the adoption or change (including a change in interpretation or enforcement) of any Environmental Laws or regulations, whether imposed retroactively or prospectively (such amount as adjusted by (i) and (ii) is referred to herein as the “Disposal Fees”). The Disposal Fees, specified in this Section 3 shall be increased in accordance with any increases to the CPI as follows: effective on July 1 of each year during the Term (commencing on July 1, 2016), the Disposal Fees shall be increased by 90% of the increase in the CPI. If the CPI does not increase, then no adjustments shall be made to the Disposal Fees in such year. The change in the CPI shall be measured by comparing the CPI of April of the current year to the CPI of April of the previous year not to exceed 5% each year. The term “Disposal Fees” as used in this Agreement shall include any adjustments made pursuant to the immediately preceding sentence. The parties hereto agree that the Disposal Fees only apply to Waste delivered to the Disposal Facility if such Waste is collected from the Transfer Station and delivered to the Disposal Facility by long-haul transfer trailers. The CPI adjustment shall be automatic.

3.2 The Disposal Fee is based upon diesel fuel cost of \$3.00 per gallon. Each \$0.10 increase or decrease above or below this range will result in a 1% fuel surcharge or credit per Department of Energy published price for Lower Atlantic Region. The price posted on the last Monday of each month shall be used to determine the fuel surcharge or credit applicable for the upcoming month’s billing.

3.3 The Disposal Fee is also based on a minimum average load weight of Waste transported from the Transfer Station hereunder of 19 tons (the “Minimum Average”). If the monthly average load is less than the Minimum Average, the parties agree that all of the loads for the month will be billed at the Minimum Average. Republic or its subcontractor may request to haul a load less than the Minimum Average for trailer logistical purposes, and in such event, such load would be disregarded in calculating the average load weight for purposes under this Section 3.3.

3.4 If Republic performs disposal services outside its regular business hours or any additional services due to special circumstances concerning the services hereunder not caused by Republic (including, without limitation, as requested by the County), Republic may adjust the Disposal Fees to offset the additional costs in performing such services.

3.5 Republic shall send the County an invoice for the Disposal Fees. The County shall pay Republic the full amount within one month of receipt of the invoice via check, electronic fund transfer (EFT) or automated clearing house (ACH), without offset. Unpaid invoices shall carry interest at the lesser of (i) of one and one half percent (1.5%) per month or (ii) the maximum amount permitted under applicable law. The obligations of the County to pay the Disposal Fees and other amounts payable hereunder shall be absolute and unconditional. In the event that the County fails to timely pay any outstanding amount that is not being contested by the County in good faith, Republic may, in addition to any other remedies available to

Republic, suspend the County's right of transport and disposal of Waste at the Disposal Facility pursuant to this Agreement and/or terminate this Agreement, by giving thirty (30) days written notice to the County.

3.6 Republic may increase the Disposal Fees as a result of any of the following acts which occur outside of Republic's control (i) any increases in taxes, fees and other governmental charges, and (ii) certain increases in costs incurred by Republic due to (a) any third party or municipal disposal facility being used, (b) changes in local, state, or federal rules, ordinances or regulations, or (c) changes in taxes, fees or other governmental charges (other than income or real property taxes). Notwithstanding anything to the contrary in Section 3.6(ii), neither party anticipates using any third party or municipal disposal facility, and none will be used in the absence of governmental regulation requiring the same.

3.7 In the event that (i) any Waste requires special handling or management due to its composition or volume or (ii) Republic agrees to dispose of any Unacceptable Waste, the County and Republic shall determine in advance, on a case by case basis, the charge to the County for Republic's transportation and disposal of such wastes. Payment for such transportation and disposal shall be upon the same terms as the payment of other Disposal Fees.

4. Delivery and Acceptance of Waste.

4.1 The County agrees that all of the Waste delivered to the Transfer Station shall be loaded by the County onto Republic's transportation vehicles and transported and delivered by Republic to the Disposal Facility. All trailers, trucks and any other equipment that Republic furnishes under this Agreement shall remain Republic's property, The County shall use the equipment only for its proper and intended purpose and shall not overload (by weight or volume), move or alter the equipment.

4.2 Republic shall have the right to weigh all vehicles delivering Waste to the Disposal Facility. At any time, Republic or the County may confirm the tare weight of any vehicle delivering Waste to the Disposal Facility on behalf of the County.

4.3 The County acknowledges that Republic intends to reject waste that, in Republic's sole determination, contains Unacceptable Waste, would be in violation of this Agreement, Republic's then existing licenses or permits, or would result in a violation of applicable federal, state or local laws, statutes, orders, rules, regulations or ordinances. The operator of the Transfer Station shall visually inspect Waste delivered to the Transfer Station. If, following Republic's acceptance of a load of waste hereunder, Republic determines that Unacceptable Waste has been loaded onto its vehicles or included in such waste, Republic shall provide telephonic notice to the County as soon as reasonably practicable to the County manager or his designee (who has been so designated in writing to Republic) of such Unacceptable Waste, and Republic shall provide written follow-up notice to the County manager of such Unacceptable Waste within two (2) business days after the date of such determination, Republic can reject such waste at any time during the execution of services under this Agreement, including after such waste has been delivered to the Disposal Facility.

4.4 Ownership of Waste delivered to the Disposal Facility on behalf of the County shall pass to and be accepted by Republic when the vehicle transporting the Waste leaves the Transfer Station. Ownership of Unacceptable Waste loaded onto Republic's vehicles or delivered to the Disposal Facility by or on behalf of the County shall not pass to Republic at any time unless Republic specifically agrees in writing in advance to accept such Unacceptable Waste.

4.5 Republic may detain and inspect the contents of all vehicles delivering Waste on behalf of the County that are delivering Waste to the Disposal Facility.

4.6 The County shall not load onto Republic's vehicles Unacceptable Waste or cause Unacceptable Waste to be delivered or disposed of at the Disposal Facility. If any Unacceptable Waste is loaded onto Republic's vehicles or delivered to the Disposal Facility by or on behalf of the County, Republic shall have the right to refuse or reject such waste or, if not detected prior to loading onto Republic's vehicles or acceptance at the Disposal Facility, Republic may remove such waste and assure its proper disposal, all at the County's expense, which expense the County agrees to promptly pay upon presentation by Republic of an invoice setting forth the actual costs in reasonable detail.

4.7 If Republic's trucks receive Unacceptable Waste at the Transfer Station, or deliver such waste to the Disposal Facility, and that delivery disrupts or otherwise affects the normal operations of the transportation of Waste or the Disposal Facility, or if Republic incurs any liabilities, obligations, costs, expenses (including reasonable attorneys' fees and costs) or damages as a result of the transportation or delivery of such waste, the County shall be liable to Republic, and upon presentation by Republic of an accounting in reasonable detail, the County shall promptly pay, perform and discharge Republic for and indemnify and hold Republic harmless against all such liabilities, obligations, costs, expenses or damages that Republic incurs as a result of the transportation or delivery of Unacceptable Waste.

4.8 In addition to other remedies provided in this Agreement, Republic may suspend the services it is required to provide pursuant to this Agreement and/or terminate this Agreement upon repeated loadings or deliveries or the one-time intentional loading or delivery of Unacceptable Waste by the County, as such are determined by Republic. In such event, Republic shall notify the County in writing of its intention to suspend services and/or terminate this Agreement, and such suspension and/or termination shall become effective one hundred twenty (120) days following delivery of such notice (provided, however, if during such one hundred twenty (120) day period, Unacceptable Waste is loaded or delivered to Republic, then Republic may suspend and/or terminate this Agreement immediately),

4.9 Republic shall only be responsible for transportation of Waste from the Transfer Station to the Disposal Facility. Republic shall not be responsible or liable for any other transportation, including redelivery to the County, of any waste, including Unacceptable Waste. Republic may, in its sole discretion, deem a violation by the County of any applicable law, statutes, ordinances, rules, regulations, or orders relating to the transportation and handling of solid waste a breach of this Agreement.

4.10 Republic agrees to comply in all material respects with all applicable federal, state, and local laws, statutes, ordinances, rules, regulations, operational plans and orders concerning the transportation and handling of solid waste.

4.11 Republic shall not be responsible for injuries, damages, or fines, including, without limitation, overweight penalties or losses, excluding overweight axles, damage to driveways, parking areas, loading areas, or other surfaces at the Transfer Station, arising directly or indirectly from or connected in any manner with overload. Republic shall also be responsible for tarping and untarping the trailers upon receipt and disposal of Waste and shall not negligently allow any Waste to fall out of its trailers during the hauling and transportation of Waste to and from the Disposal Facility. The County shall be responsible for damage to Republic's trailers, including damage to trailers belonging to any of Republic's subcontractors, resulting from negligent or willful acts or omissions of the County or any of its officers or employees.

4.12 The County shall operate the Transfer Station during the following hours: Monday through Saturday — 8:00 AM to 5:00 PM, excluding holidays as established by the County. Republic will supply an adequate number of spare trailers to be used to load and store all solid waste to assure that the waste is never left on the tipping floor overnight. The County will provide a vehicle to move spare trailers at the solid waste transfer station. Republic will be allowed to operate outside of operating hours and will be issued a key to gain access to the Solid Waste Transfer Station. If at any time the County has to leave Waste on the tipping floor overnight due to Republic's inability to transport the Waste in a timely manner on the terms and conditions of this Agreement, Republic will forfeit the disposal fee for this load. Republic would also be responsible for half (1/2) of any fines levied against the County by the State as a result of its inability to transport such Waste, subject in all cases to the terms and conditions of this Agreement (including without limitation, Section 5).

4.13 Republic shall have the right, in its sole discretion, to subcontract the transportation of Waste from the Transfer Station to the Disposal Facility without the consent of the County. Republic shall continue to be responsible for its transportation obligations in the event transportation of waste is subcontracted. Republic, and not the County, shall be liable for any obligations between Republic and any subcontractor.

5. Suspension and/or Termination. In the event of an event of Force Majeure, either party hereunder may suspend its obligations hereunder and such party shall not have any liability to the other party due to such Force Majeure or such suspension. It is mutually understood and agreed that the obligation of Republic to transport and dispose of Waste for the Disposal Fees provided in Section 3, as adjusted, for a period of not less than forty-two (42) months is fixed and non-terminable, provided, however, that Republic may terminate this Agreement upon (i) an event of Force Majeure which continues unabated for a period of thirty (30) days and which, in Republic's reasonable discretion, renders the transportation of Waste or operation or maintenance of the Disposal Facility infeasible for any reason; or (ii) any breach or default of this Agreement by the County, pursuant to Section 11 hereof.

6. Covenants, Representations and Warranties of the County. The County agrees and represents and warrants to Republic as follows:

6.1 Existence and Good Standing. The County is and will continue to be throughout the term hereof) validly existing as a political subdivision and is in good standing under the laws of the State of North Carolina.

6.2 Approval and Authorization. The County has full power and authority to enter into this Agreement and to fully perform all of its duties and obligations hereunder pursuant to various and other enabling sections of the North Carolina General Statutes. The Board has duly authorized and the applicable North Carolina statutes so authorize the following: the execution and delivery of this Agreement, the County's performance of all of its duties and obligations contained herein, the County's collection of all necessary fees and charges, the County's making of all necessary expenditures, and the County's taking of all other necessary actions to meet these obligations, including, but not limited to, to the extent allowed by law and the North Carolina and United States Constitutions, and adopting solid waste management plans. This Agreement constitutes a valid and legally binding obligation of the County during the term of this Agreement, is binding upon all future Boards, and is enforceable in accordance with its terms.

6.3 No Litigation. There is no action, suit, or proceeding pending or, to the best of County's knowledge and belief, threatened against or affecting the County, at law or in equity or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality wherein any decision, ruling or finding would adversely affect the transactions contemplated herein.

6.4 Non-discretionary Functions. This Agreement pertains solely to non-discretionary, proprietary functions. The County's continuing obligations under this Agreement bind all future County Boards or other governing bodies, during the term of this Agreement, to make all necessary appropriations and take all necessary actions to meet these obligations.

6.5 County Support. The County fully supports the operation of the Transfer Station and the transport and disposal by Republic of Waste at the Disposal Facility and is committed to fully supporting the performance of this Agreement.

6.6 Covenant for Delivery of Waste. The County, shall: (i) exclusively use the Transfer Station and the Disposal Facility for disposal of all Waste delivered to the Transfer Station from within the County; (ii) not contract with any other Person for services which are the same or similar to those provided by Republic in this Agreement; and (iii) not establish or operate a solid waste management facility within the County Area offering the same or similar services as those provided by Republic in this Agreement; provided, however, that nothing herein shall prevent the County and municipalities within the County from implementing waste recycling and waste reduction programs.

7. Covenants, Representations and Warranties of Republic. Republic represents and warrants as follows:

7.1 Existence and Good Standing. Republic is duly organized under the laws of Kentucky and is authorized to do business in North Carolina and will continue to be,

throughout the term hereof validly existing in good standing under the laws of the State of Kentucky and authorized to do business in the State of North Carolina.

7.2 Approval and Authorization. Republic has all requisite power and authority to enter into and fully perform this Agreement. Republic's execution and delivery of this Agreement and Republic's performance of all of their duties and obligations contained herein have been duly authorized by all necessary action on the part of Republic, and this Agreement of Republic is enforceable against Republic in accordance with its terms.

7.3 No Litigation. There is no action, suit or proceeding pending or, to the best knowledge and belief of Republic, threatened against or affecting Republic, or any of its affiliates, at law or in equity or before or by any federal, state, municipal, or other governmental department wherein any decision would materially, adversely affect the transactions contemplated herein.

7.4 Compliance with Laws. Republic covenants and agrees that, in the operation of the Disposal Facility, Republic will comply, in all material respects, with any and all federal, state, and local laws, including all Environmental Laws applicable to Republic concerning the operation of the Disposal Facility subject to Republic's right to contest in good faith the interpretation, application and enforcement of any such laws.

8. Indemnification.

8.1 Indemnification by Republic. Republic agrees to indemnify and save harmless the County, its officers and employees from any loss, claim, liability, penalty, fine, forfeiture, demand, cause of action, damages, suit and costs and expenses incidental thereto (including cost of defense, settlement and reasonable attorney's fees including any of the preceding relating to liability under the Environmental Laws or to investigation and cleanup under the Environmental Laws) ("Indemnified Costs"), arising out of or in connection with Republic's negligent performance of this Agreement; provided, however, that Republic shall not indemnify the County or any of its officers or employees from any Indemnified Costs to the extent caused by or resulting from any negligent or willful act or omission of the County or any of its officers, employees, agents or contractors, or any breach by the County of any agreement, representation or warranty of the County contained in this Agreement. Further, Republic agrees to indemnify and save harmless the County, its officers and employees from any loss, claim, liability, penalty, fine, forfeiture, demand, cause of action, damages, suit and costs and expenses incidental thereto (including cost of defense, settlement and reasonable attorneys' fees) incurred by the County to the extent caused by the loss of any required permits or authority to do business by Republic (or any of its affiliates providing services under this Agreement) that materially affect Republic's ability to provide the services under this Agreement. The indemnity obligation of Republic under this Section 8.1 shall survive the expiration or termination of this Agreement, for any reason whatsoever, subject to any applicable statute of limitation.

8.2 Indemnification by the County. The County agrees to indemnify, defend and save harmless Republic, its officers and employees, from any Indemnified Costs caused by or resulting from any negligent or willful act or omission of the County, its officers, employees, agents or contractors, or resulting from the breach by the County of any of the agreements,

representations, or warranties of the County contained in this Agreement: provided, however, that the County shall not indemnify Republic from Indemnified Costs to the extent caused by or resulting from any negligent or willful act or omission of Republic, its officers, employees, agents or contractors including, without limitation, any such act or omission in connection with Republic’s transport and disposal of Waste, or any breach by Republic of any agreement, representation or warranty of Republic contained in this Agreement. The indemnity obligations of the County under this Section 8.2 shall survive the expiration or termination of this Agreement for any reason whatsoever, subject to any applicable statute of limitation. The County agrees not to contest by action or defense the enforceability of its indemnity obligations herein.

9. Insurance. Republic shall at all times, during the term of this Agreement, maintain in full force and effect coverage in the amounts shown below. Before commencement of work hereunder, Republic agrees to furnish the County certificates of insurance to the effect that such insurance has been procured and is in force. The certificates shall contain the following express obligations: “This is to certify that the policies of insurance described herein have been issued to the insured for which this certificate is executed and are in force at this time.” Additionally, the insurance will include a Notice of Endorsement that will provide the County with thirty (30) days prior notice of a cancellation or material change in policy affecting Republic.

For purposes of this Agreement, Republic shall carry the following types of insurance in at least the limits specified below:

<u>Coverage</u>	<u>Limits of Liability</u>
Worker’s Compensation	Statutory Limits
Employer’s Liability	\$1,000,000 \$1,000,000 Aggregate
Commercial General Liability (Bodily Injury and Property Damage)	\$1,000,000 each occurrence \$3,000,000 aggregate
Commercial Automobile Liability (Bodily Injury and Property Damage)	\$1,000,000 each occurrence \$3,000,000 aggregate
Excess/Umbrella Liability	\$3,000,000 each occurrence

10. Notices. All notices or other communications to be given hereunder shall be in writing and shall be sent by overnight delivery or registered or certified United States mail, return receipt requested, properly addressed as follows:

To Republic:

Area President and General Manager
 Republic Services of South Carolina, LLC
 684 Mauldin Road

Greenville, SC 29607

With copies to:

Republic Services, Inc.
18500 North Allied Way
Phoenix, AZ 85054
ATTN: Deputy General Counsel, East Region

To The County:

Henderson County
1 Historic Courthouse Square, Suite 2
Hendersonville, NC 28792
Attn: County Manager

With copy to:

Henderson County
1 Historic Courthouse Square, Suite 5
Hendersonville, NC 28792
Attn: County Attorney

11. Default; Remedies.

11.1 Breaches. A breach of this Agreement shall mean a material failure to comply with any of the material provisions of this Agreement.

11.2 Events of Default. An event of default shall include, but not be limited to, the following:

(a) Republic voluntarily commencing any proceeding or filing any petition seeking relief under the United States Bankruptcy Code or any federal, state or foreign bankruptcy, insolvency or similar law; (ii) consenting to the institution of, or failing to controvert in a timely and appropriate manner, any such proceeding or filing of any such petition; (iii) applying for or consenting to the appointment of a receiver, trustee, custodian, sequestrator or similar official for a substantial part of its property; (iv) filing an answer admitting the material allegations of a petition filed against it in any such proceeding; or (v) making a general assignment for the benefit of creditors;

(b) the commencement of an involuntary proceeding or the filing of an involuntary petition in a court of competent jurisdiction seeking (i) relief in respect of Republic, or of a substantial part of Republic's property, under the United States Bankruptcy Code or any other federal, state or foreign bankruptcy, insolvency or similar law, which petition shall remain undismissed for 120 days; (ii) the appointment of a receiver, trustee, custodian, sequestrator or similar official for Republic or for a substantial part of Republic's property and such petition shall continue undismissed for 120 days; or (iii) an order or decree approving or ordering any of the foregoing shall continue and stay in effect for 60 days;

(c) a breach of this Agreement by Republic or the County, which breach is not cured pursuant to Section 11.3 hereof;

(d) failure to maintain the insurance required under Section 10. Notwithstanding any other provision, the County may terminate this Agreement if Republic does not reinstate coverage within fifteen (15) days after receipt of written notice from the County; or

(e) failure of the County to fulfill its cooperation obligations in Section 12.

(f) failure of Republic to transport the waste in a timely manner, as discussed in Section 4.12

11.3 Obligation to Cure Breaches. Each party shall in the case of any breach of its obligations under this Agreement either (i) cure the breach within 30 days of receipt of written notice from the non-breaching party, or (ii) continuously demonstrate within such cure period that it is actively and continuously pursuing a course of action which reasonably be expected to lead to a curing of the breach (the 30-day period will be extended for so long as the breaching party is actively and continuously pursuing such a course); provided, however, that if any party to this Agreement fails to pay the other party or parties any sum or dollar amount required to be paid when due hereunder, cure shall consist of payment which shall be made within 15 days of written demand from the non-breaching party, together with interest accruing at the legal rate from the date the payment was due.

11.4 Remedies for Default.

(a) In the event of a default under this Agreement, the non-defaulting party shall, upon 5 days prior written notice to the defaulting party, have the right, but not the obligation or duty, to cure such default, including the right to offset the costs of curing the default against any sums due which become due to the defaulting party under this Agreement. In any event, such costs shall be considered Indemnified Costs. The non-defaulting party shall use its commercially reasonable efforts to employ an economically reasonable method of curing any such default.

(b) If an event of default occurs and is not cured in the manner allowed hereunder, then the non-defaulting party shall have the right to (i) take whatever action at law or in equity that it deems necessary or desirable to collect any amounts then due or thereafter to become due under this Agreement or to enforce performance of any covenant or obligation of the breaching party under this Agreement; and/or (ii) suspended services provided pursuant to this agreement or terminate this Agreement.

(c) Notwithstanding any other provision in this Section in recognition of the gravity and scope of the subject matter of this Agreement, the parties agree that, notwithstanding the provisions for breach, cure and default hereunder, no party to this Agreement may elect to terminate this Agreement upon a default by the other party until the party seeking termination has first sent 90 days prior written notice of termination to the defaulting party, provided, however, that (i) only 60 days notice of termination is required if a default is based on a failure to pay fees when due under this Agreement, and (ii) termination is effective upon the County's receipt of notice where the default is the repeated or one-time intentional loading or delivery of Unacceptable Waste, as provided in Section 4.08. Notwithstanding anything to the contrary in this Agreement, for purposes of termination, unless otherwise specified therein, the written notice of breach and Obligation to cure contemplated in Section 11.3 shall be deemed the written notice of termination contemplated in this Subsection, and the cure period required under Section 11.3 shall be included within, and not in addition to,

the notice period requirements in this Subsection. Provided, however, that there shall be no cure for repeated violations of the same or similar nature which have been the subject of default and cure in the past.

(d) Subject to the terms and conditions of Section 11 hereof, all rights and remedies under this Section are cumulative and the exercise of any one remedy does not preclude the exercise of one or more of any other available remedies, including any remedies not specified herein.

12. County Cooperation In Maintaining Waste Disposal. The County shall fully and actively support the transport of Waste from the Transfer Station and disposal of Waste at the Disposal Facility, cooperate fully with Republic in order to assist Republic in maintaining approvals and permits for such transport and disposal that are contemplated by this Agreement (including, without limitation, cooperation related to permits and amendments), and shall supply to Republic in a timely manner such information as Republic may reasonably request which is necessary or useful to Republic in fulfilling such obligations and which the County has in its possession or control.

13. Independent Contractor; No Agency. Republic will act hereunder as an independent contractor and not as an agent of the County. Similarly, the County is neither an agent of Republic nor empowered or authorized to Obligate Republic in any way.

14. Assignment. Neither party shall assign, transfer or delegate, or permit the assignment, transfer or delegation of, this Agreement or any right or duty hereunder, without the prior written consent of the other party, which shall not be unreasonably withheld, provided, however, for purposes of this section, neither the transfer or assignment of this Agreement to corporate affiliates of Republic, nor the change of control of Republic, will be deemed an assignment, transfer or delegation.

15. Severability. In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, unconstitutional, or unenforceable in any respect, such invalidity, illegality, unconstitutionality or unenforceability shall not affect any other provision of this Agreement and this Agreement shall be construed as if such invalid, illegal, unconstitutional or unenforceable provision had never been contained herein; provided, however, that it is the intention of the parties hereto that in lieu of each term, clause, or provision that is held to be invalid, illegal or unenforceable, there shall be added by mutual agreement as part of this Agreement a term, clause or provision as similar in terms to such invalid, illegal or unenforceable term, clause or provision as may be possible and valid, legal or enforceable. Notwithstanding the above, if the term of this Agreement is held to be invalid, illegal, or unenforceable in any respect, then the term of this Agreement shall automatically be the maximum valid and legal term allowed by applicable common or statutory law.

16. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

17. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. Specifically, this Agreement shall

bind the successors and assigns of the County, including, but not limited to, any transferee of the Transfer Station, as if such successors and assigns had executed this Agreement on the date hereof, and such shall inure to the benefit of Republic and its successors and assigns.

18. Construction. Words importing the singular number shall include the plural in each case and vice versa, and words importing persons shall include firms, corporations, or other entities. The terms “herein”, “hereunder”, “hereto”, “hereof” and any similar terms, shall refer to this Agreement; the term “heretofore” shall mean before the date of adoption of this Agreement; and the term “hereafter” shall mean after the date of this Agreement, This Agreement is the result of joint negotiations and authorship and no part of this Agreement shall be construed as the product of any one of the parties hereto.

19. Entire Agreement. This Agreement constitutes the entire understanding between the County and Republic, and cancels and supersedes all prior negotiations, representations, understandings and agreements, either written or oral, between such parties with respect to the subject matter hereof. No changes, amendments, alterations, or modifications to this Agreement will be effective unless in writing and signed by the parties hereto.

20. Counterparts. This Agreement may be executed in two counterparts, each of which will be considered an original.

21. Court Jurisdiction. The parties mutually consent and agree that the court of competent jurisdiction with respect to any legal actions related to this Agreement shall be the United States District Court for the Western District of North Carolina.

[Signature page to follow]

IN WITNESS WHEREOF, the County and Republic have caused their respective duly authorized officers or representatives to execute this Agreement, as of the day and year first above written.

ATTEST:

HENDERSON COUNTY, NORTH CAROLINA

By: _____
Clerk to the Board

By: _____
County Manager

[Seal]

APPROVED AS TO FORM:

By: _____
County Attorney

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

By: _____
County Finance Officer

ATTEST:

REPUBLIC SERVICES OF KENTUCKY, LLC

By: _____

By: _____
Name: _____
Title: _____

County of Henderson

Fuel Surcharge Chart

UPSTATE REGIONAL LANDFILL.

[Need to insert]