



TOWN OF NORTH, SC  
9305 NORTH ROAD  
NORTH, SOUTH CAROLINA 29112

REQUEST FOR PROPOSAL  
for  
Residential & Commercial Solid Waste Collection

January 1, 2018

Proposals are due March 16, 2018, no later than 10:00 AM, Local Time.

Note: Upon receipt of this package, please forward your contact information to Patty Carson via email at [mayor@townofnorth-sc.gov](mailto:mayor@townofnorth-sc.gov) to ensure timely receipt of any addenda.

Vendor is ultimately responsible for verifying receipt of all addenda prior to the proposal opening.

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Proposal Price Sheet

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Sample Agreement for Residential, Commercial, and Bulk Solid Waste Collection Services

# Request for Proposals for Residential, Commercial, and Bulk Solid Waste Collection

## **Section 1.0 – Introduction/Overview**

### 1.1 Purpose/Objective

Town of North, South Carolina (hereinafter, “Town”) has issued this Request for Proposal (hereinafter, “RFP”) for the sole purpose and intent of obtaining proposals from interested and qualified Offerors to provide Residential and Commercial Solid Waste Collection.

### 1.2 Background

The Town has an estimated population of 850 people residing in an approximately one square mile area. The Town, and area on water system within one-half mile of town limits, contains an estimated 600 single-family household units. There is an additional account in the Town’s utility billing system comprised of multi-family units (MFUs), and 30 dwelling units are estimated to comprise this account. Refuse collection from MFUs is not part of this request for proposal. The Town estimates that service will be provided to approximately 270 units.

### 1.3 Inquiries

Questions related to this RFP should be sent to Town of North. All questions should be submitted in writing to Patty Carson, Mayor, mayor@townofnorth-sc.gov or via regular mail at P.O. Box 399, North, SC, 29112, Attention: Patty Carson. Please include the RFP page number and paragraph number for each question in order to ensure that questions are responded to correctly.

Offerors must clearly understand that the only official answer or position of the Town will be made in writing and that answers will be sent to all Offerors.

### 1.4 General Information/Method of Source Selection

There is no expressed or implied obligation for the Town to reimburse responding firms for any expenses incurred in preparing proposals in response to this request.

To be considered, a master copy of the proposal must be received by Patty Carson, Mayor, at North Town Hall, 9305 North Road, North, South Carolina, 29112, on March 16, 2018 by 10:00am local time. The Town reserves the right to reject any or all proposals submitted.

The Mayor and Town Clerk will evaluate proposals submitted. Town Council will make the final decision. During the evaluation process, the Town reserves the right, where it may serve the Town’s best interest, to request additional information or clarifications from proposers, or to allow corrections of errors or omissions.

The Town reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that proposal is selected. Submission of a proposal indicates acceptance by the proposer of the conditions contained in this request for proposals, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the Town and the proposer selected.

It is anticipated the selection of a proposer will be completed on April 9, 2018. Following the notification of the selected proposer, it is expected a contract will be executed between both parties by June 1, 2018, with contract service to begin July 1, 2018.

An award, if made, will be made to the responsible Offeror whose proposal is most advantageous to the Town, taking into consideration the factors set forth in this RFP including, but not solely based on price.

The Town may, as is deemed necessary, conduct discussions with responsible Offerors that have been determined to be reasonably eligible of being selected for award for the purpose of clarification to assure full understanding of and responsiveness to solicitation requirements.

1.5 **Minimum Criteria Used to Determine “Responsibility” of Each Offeror**

- Does the Offeror demonstrate an understanding of the Town’s needs?
- Can the Offeror respond to customer service requests in a timely manner?
- Does the Offeror possess the ability, capacity, skill, and financial resources to provide the requested service?
- Can the Offeror take upon itself the responsibilities set forth in the RFP and produce the required outcomes in this RFP?
- Does the Offeror have the character, integrity, reputation, judgment, experience, and efficiency required by the contract?
- Has the Offeror performed satisfactorily in previous contracts of similar size and scope; or, if the prime contractor has not performed a contract of similar size and scope, has it otherwise demonstrated its capability to perform the contract the Town seeks to establish through this RFP?

1.6 **Projected Timetable**

The following projected timetable should be used as a working guide for planning purposes. The Town reserves the right to adjust this timetable as required during the course of the RFP process.

<u>Event</u>	<u>Date</u>
RFP Notice Issued	01/09/2018
Last Date for Receipt of Questions	01/31/2018
Addendum Issued for Pre-Proposal Questions	2/16/2018
Proposal Close Date	03/16/2018
Evaluation of Proposals	04/06/2018
Projected Award	04/09/2018
Contract Execution	06/01/2018
Projected Contract Start Date	07/01/2018

**Section 2.0 – General Description of Required Performance Outcomes**

At a minimum, the contractor must achieve and maintain the performance outcomes listed below and consistent with performance standards agreed to by all parties through a contract as a result of this RFP. Offerors may also propose additional performance outcomes beyond those minimally required.

2.1 **Scope of Work**

Service(s) to be provided include weekly collection of residential solid waste from rollcarts provided by the contractor and commercial solid waste from various sized containers.

The Contractor will supply and the Town will deliver roll-carts to each customer as replacements or new services are needed. The Contractor will supply and deliver commercial bins.

All solid waste shall be ultimately disposed of in a designated, fully permitted, Sub-title D Municipal Solid Waste landfill. A fully permitted MSW Transfer Station may be utilized. The Contractor shall be responsible for the disposal cost associated with the solid waste collection.

The Town will pay the Contractor on a monthly basis, based on the timely invoice with details regarding each household. The Town will then invoice customers for solid waste collection, and the Town will direct all calls regarding complaints and/or questions to the Contractor. The contractor must provide a toll-free phone number which it can be contacted.

2.2 Proposal Cost Format

Proposals must be in the following format to be considered as the RFP Cost Format. Rates must include all fees, charges, surcharges. Rates must be submitted in the format shown on the Proposal Price Sheet, incorporated herein as Attachment "A".

**Section 3.0 – Constraints on Contractor**

- 3.1 The Contractor shall perform service in accordance with the Town of North's Solid Waste Management Ordinance (Town of North Code of Ordinances, Chapter 10, Article II).
- 3.2 The Contractor shall abide by all terms and conditions set forth in this RFP and in any subsequent contract with the Town.
- 3.3 All collections shall, except as expressly permitted by the Town, be limited to the hours between 7:00 a.m. and 7:00 p.m. Monday through Saturday. Sunday collections are not permitted unless expressly authorized by the Mayor.

**Section 4.0 – Contractor's Personnel Requirements**

- 4.1 The Contractor must provide a central point of contact person(s) to ensure coordination of each service and/or program, as well as individuals that have the necessary expertise to "trouble shoot" any problems as they may arise.
- 4.2 The Contractor must provide all personnel necessary to discharge all obligations and duties set forth in this RFP and in any subsequent contract with the Town.

**Section 5.0 – Contractor's Responsibilities**

Before submitting a proposal, each Offeror shall make all investigations and examinations necessary to ascertain all conditions and requirements affecting the full performance of the contract. No plea of ignorance of such conditions and requirements resulting from failure to make such investigations and examinations will relieve the successful Offeror from any obligation to comply with every detail and with all provisions and requirements of the contract documents, or will be accepted as a basis for any claim whatsoever for any monetary consideration on the part of the Offeror.

**Section 6.0 – Terms and Conditions of Contract for Services**

A contract resulting from this RFP shall be subject to the terms and conditions set forth in a contract substantially in the form of the attached "Agreement for Solid Waste Collection Service Program", incorporated herein as Attachment "B".

**Section 7.0 – Instructions for Proposal**

7.1 Compliance with the RFP

Proposals must be in strict compliance with this Request for Proposal. Failure to comply with all provisions of the RFP may result in disqualification.

7.2 Acknowledgment of Insurance Requirements

By signing its proposal, the Offeror acknowledges that it has read and understands the insurance requirements for the proposal. The Offeror also understands that the evidence of required insurance must be submitted within fifteen (15) working days following notification of its offer being

accepted; otherwise, the Town may rescind its acceptance of the Offeror's proposal. See Attachment A for insurance requirements.

7.3 Delivery of Proposals

All proposals are to be sealed and delivered before 10 a.m. Local Time, on 03/16/2018 to:

Patty Carson  
Town of North  
9305 North Road  
P.O. Box 399  
North, SC 29112

The Town will not accept any proposals received after the date/time stated herein, and shall request Offeror to make arrangements to retrieve late proposals.

The Town shall not bear the responsibility for proposals delivered past the stated date and/or time, or to an incorrect address by Offeror's personnel or by the Offeror's outside carrier.

Offerors must submit one (1) designated original, and two (2) numbered exact copies of the proposal (total of 3). Proposals will be opened publicly in a manner to avoid public disclosure of contents; however, only names and proposed rates of Offerors will be read aloud.

List the Request for Proposal (RFP) on the outside of the box or envelope and note "Proposal Enclosed".

7.4 Evaluation of Proposals (Procedure)

The Town will first examine proposals to eliminate those that are clearly non-responsive to the stated requirements. Therefore, Offerors should exercise particular care in reviewing the proposal format required for this RFP.

The Town shall then score all proposals based upon the evaluation factors detailed herein.

Upon completion of the scoring, the Town may recommend short-listing the proposals that are potentially acceptable.

The detailed evaluation that follows the initial examination may result in more than one finalist. At this point, the Town may request presentations by Offerors, and carry out contract negotiations for the purpose of obtaining best and final offers.

The Town of North reserves the right to withdraw this RFP at any time and for any reason, and to issue such clarifications, modifications, and/or amendments as it may deem appropriate.

Receipt of a proposal by the Town or a submission of a proposal to the Town offers no rights upon the Offeror nor obligates the Town in any manner.

The Town reserves the right to waive minor irregularities in proposals, provided that such action is in the best interest of the Town. Any such waiver shall not modify any remaining RFP requirements or excuse the Offeror from full compliance with the RFP specifications and other contract requirements if the Offeror is awarded the contract.

7.5 Ambiguity, Conflict, or Other Errors in the RFP

If an Offeror discovers any ambiguity, conflict, discrepancy, omission, or other error in the RFP, they shall immediately notify the Mayor of such error in writing and request modification or

clarification of the document. The Town will make modifications by issuing a written revision and will give written notice to all parties who have received this RFP from the Town.

The Offeror is responsible for clarifying any ambiguity, conflict, discrepancy, omission, or other error in the Request for Proposals prior to submitting the proposal or it shall be waived.

7.6 Proposal and Presentation Costs

The Town will not be liable in any way for any costs incurred by any Offeror in the preparation of its proposal in response to this RFP, nor for the presentation of its proposal and/or participation in any discussions or negotiations.

7.7 Rejection of Proposals

The Town reserves the right to accept or reject in whole or in part any or all proposals submitted. The Town shall reject the proposal of any Offeror that is determined to be non-responsive. The unreasonable failure of an Offeror to promptly supply information in connection with respect to responsibility may be grounds for a determination of non-responsibility.

7.8 Acceptance of Proposals

The Town shall accept the proposal that it determines, in its sole discretion, is in the best interest of the Town, always provided that the Town reserves the right to not accept any proposal at all.

7.9 Requests for Clarification of Proposals

Requests by the Town for clarification of proposals shall be in writing. Said requests shall not alter the Offeror's pricing information contained in its proposal.

7.10 Validity of Proposals

All proposals shall be valid for a period of ninety (90) days from the submission date.

7.11 Response Format

Proposals should be prepared simply and economically, providing a straightforward concise description of the Offeror's approach and ability to meet the Town needs, as stated in the RFP.

(Attachments to follow)

**Attachment "A"**

**Request for Proposal  
Residential & Commercial Solid Waste Collection  
Town of North**

**Proposal Price Sheet**

**Contractor Name:** \_\_\_\_\_

**Contact Person:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

**Fax:** \_\_\_\_\_

**E-Mail:** \_\_\_\_\_

**Once a week Residential Curbside Garbage Collection from 90 gallon Contractor Roll-Carts:**

\$ \_\_\_\_\_ Unit Price/month

**Once a week Commercial Container Garbage Collection from Contractor Provided Containers:**

\$ \_\_\_\_\_ 4yd dumpster

\$ \_\_\_\_\_ 6yd dumpster

\$ \_\_\_\_\_ 8yd dumpster

**Twice a Week Commercial Container Garbage Collection from Contractor Provided Containers:**

\$ \_\_\_\_\_ 4yd dumpster

\$ \_\_\_\_\_ 6yd dumpster

\$ \_\_\_\_\_ 8 yd dumpster

**Attachment "B"**

**SAMPLE AGREEMENT FOR  
RESIDENTIAL, COMMERCIAL, AND BULK SOLID WASTE  
COLLECTION SERVICES**

THIS AGREEMENT FOR RESIDENTIAL, COMMERCIAL, AND BULK SOLID WASTE COLLECTION SERVICES (the "Agreement") made and entered into on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, (the "Effective Date") by and between the Town of North, a political subdivision of the State of South Carolina, by and through its Town Council (the "Town") and \_\_\_\_\_ (the "Contractor").

**WHEREAS**, it is necessary for Town to promote, preserve and protect the public health of its citizens and the removal of garbage, refuse and other waste material generated within the Town is a valid exercise of powers of the Town; and

**WHEREAS**, in connection therewith, the Town prepared and issued that certain Request for Proposal for Residential & Commercial Solid Waste Collection, and all addenda thereto (collectively referred to as the "RFP"); and

**WHEREAS**, in response to the RFP, the Contractor submitted a proposal to the Town (the "Proposal") and such Proposal has been accepted by the Town; and

**WHEREAS**, the granting of an exclusive Agreement to a private company for the collection, transportation and disposal of solid waste is a valid function of the Town and such Agreement is proprietary in nature; and

**WHEREAS**, Town and Contractor are desirous of entering into this Agreement, under the terms of which, Contractor shall have an exclusive Agreement for a specified period of time for the collection of Residential and Commercial Solid Waste; and

**WHEREAS**, the Town has conducted an investigation and has determined that the Contractor and its affiliates have a proven excellent reputation for providing the types of services required under this Agreement and that the Contractor has access to significant capital resources that would be available to fund the fulfillment of its responsibilities under this Agreement, all of which should greatly benefit Town; and

**WHEREAS**, the Town has determined that Contractor has expended substantial capital to acquire this Agreement and will expend significant additional amounts of capital during the term of this Agreement to fulfill its responsibilities in providing high quality solid waste collection, transportation and disposal services to Town residents, all of which should greatly benefit the Town; and

**WHEREAS**, the Town and Contractor have agreed to the conditions, terms, rates, provisions and considerations under which Contractor shall perform such solid waste collection, transportation and disposal services as herein set out, and for the compensation as hereinafter provided and the Town has deemed it to be in the best interest of the Town and the residents of the Town to enter into this Agreement upon such terms and conditions set forth herein in order to ensure high quality services by the Contractor to the residents of the Town; and

**WHEREAS**, the Town agrees to pay for the services to be provided by Contractor as set forth herein.

**NOW THEREFORE**, in consideration for the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

## **Section 1.0 - Definitions**

For purposes of this Agreement, the following terms shall be defined as follows; provided however, nothing contained herein shall be interpreted to require the Contractor to undertake any conduct which is contrary to federal, state or local law.

1.1 “Agreement” has the meaning set forth in the first paragraph above, and includes all Schedules and Exhibits attached hereto.

1.2 “Biomedical Waste” means pathological waste, regulated medical waste, biological waste cultures and stocks of infectious agents and associated biologicals, contaminated animal carcasses (body parts, their bedding, and other wastes from such animals), sharps, chemotherapy waste, discarded medical equipment and parts, not including expendable supplies and materials which have not been contaminated.

1.3 “Bulk Waste” means discarded items that are larger than three (3) feet in any dimension, and/or heavier than fifty (50) pounds in weight, and/or otherwise will not fit within an empty Cart, including but not limited to items such as mattresses and box springs, indoor/outdoor furniture, swing sets, plastic swimming pools, large toys, bicycles, fish aquariums, sofas, chairs, tables, carpets and other similar items.

1.4 “C&D Materials” means solid waste generated solely from the construction, remodeling, repair, or demolition operations on pavement and buildings or structures. Such waste includes, but is not limited to, wood, bricks, metal, concrete, wall board, paper, cardboard, carpeting, construction materials resulting from remodeling, inert waste landfill material, and other non-putrescible wastes which have a low potential for groundwater contamination. C&D Materials does not include Hazardous Waste or municipal and industrial wastes that may be generated by the on-going operations at buildings or structures.

1.5 “Cart” means a roll-out receptacle for Residential Solid Waste provided by the Contractor, constructed of plastic, metal or fiberglass, having handles of adequate strength for lifting, and having a tight fitting lid.

1.6 “Town” means the Town of North which shall include, for purposes of this Agreement, the incorporated area of the Town and the areas outside the corporate bounds of the Town and receiving Town service(s).

1.7 “Commercial Premise” means a place of business or apartment complex within the Town and listed as a commercial premise by the Town.

1.8 “Commercial Bin” means a covered receptacle constructed of metal provided by the Contractor that can be dumped in a rear-loading garbage truck. Commercial Bins may or may not be placed Curbside but shall be placed in locations agreed upon between the Customer and the Town.

1.9 “Commercial Solid Waste” means all Garbage, Refuse, and C&D Materials generated by a Commercial Premise, excluding automobile parts, tires, Yard Trash, Bulk Waste, White Goods, Hazardous Waste, or any Unacceptable Waste or materials as determined by the Contractor.

1.10 “Contractor” has the meaning set forth in the first paragraph above.

1.11 “Curbside” means the location that is within at least four (4) feet of the curb, paved surface of the public road, closest accessible public right-of-way, or other such location designated by the Contractor that will provide a safe and efficient accessibility to the Contractor’s personnel and vehicles for the placement of Carts, Yard Trash, Bulk Waste and White Goods for collection pursuant to the terms of this Agreement. For purposes of this Agreement, public road or public right-of-way means a road owned and maintained by the Town, County of Orangeburg, State of South Carolina, or special district, or a road on private property

for which an easement has been granted to the public and such road is constructed and maintained to a standard whereby access is available by the Contractor's vehicles.

1.12 "Customer" means the owner and/or occupant of a Residential Premise or Commercial Premise.

1.13 "Disabled Person" means the owner of the Residential Premises who is disabled to the extent that he or she is incapable of placing his or her Cart at the Curbside location for collection by the Contractor and otherwise complies with the provisions of Section 3.3 below. Disabled Person shall include an owner of a Residential Premise with a temporary disability not to exceed 90 days. Disabled Person shall not include any person located at a commercial premise.

1.14 "Force Majeure" means any act, event, or condition having a direct material adverse effect on a party's ability to perform any obligation, agreement or covenant under this Agreement, including without limitation, Contractor's ability to collect, transport or dispose of Residential, Commercial, or Bulk Solid Waste, if such act, event, or condition is beyond the reasonable control of the party. Such acts, events, or conditions shall include, but shall not be limited to, the following: (a) an act of God, lightning, earthquake, fire, severe weather conditions, epidemic, land-slide, drought, hurricane, tornado, storm, explosion, partial or entire failure of utilities, flood, nuclear radiation, act of a public enemy, war, blockade, insurrection, riot or civil disturbance, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain, condemnation, or other taking by the act of any governmental body on behalf of any public, quasi-public, or private entity; or (b) the order, judgment, action, or determination of any federal, state, or local court, administrative agency, or governmental body (excepting decision interpreting federal, state, and local tax laws), which adversely affects the: (i) the ability of Contractor to perform the services contemplated hereunder; (ii) the right or ability of the Contractor to dispose of the Residential, Commercial, or Bulk Solid Waste or (iii) the suspension, termination, interruption, denial, or failure or renewal or issuance of any permit, license, consent, authorization, or approval necessary to for Contractor to perform the services contemplated hereunder.

1.15 "Garbage" means non-Hazardous solid waste consisting of all putrescible wastes, including animal offal and carcasses, and recognizable industrial by-products, but excluding sewage and human waste.

1.16 "Hazardous Waste" means a solid waste as defined in 130A-290(a)(8), General Statutes of South Carolina. Hazardous Waste does not include those solid wastes excluded from regulation pursuant to 40 CFR 261.4, incorporated by reference in 15A NCAC 13A .0006. Hazardous Waste does include hazardous waste generated by conditionally exempt small quantity generators as defined in 40 CFR 261.5, incorporated by reference in 15A NCAC 13A .0006.

1.17 "Non-Curbside Services" has the meaning set forth in Section 3.3.

1.18 "Residential Premise" means a dwelling within the Town occupied by a person or group of persons, including single family homes, duplexes, triplexes, quadraplexes, and mobile homes, whether such mobile homes are registered as vehicles or assessed as real property.

1.19 "Residential Solid Waste" means all Garbage and Refuse generated by a Residential Premise, excluding automobile parts, tires, C&D Materials, Yard Trash, Bulk Waste, White Goods, Hazardous Waste, or any Unacceptable Waste or materials as determined by the Contractor.

1.19 "Refuse" means non-putrescible solid waste consisting of paper, rags, cardboard, cartons, wood, rubber, plastics, glass, crockery, metal cans or other such waste.

1.20 "Services" has the meaning set forth below in Section 2.2.

1.21 “Special Waste” means any and all treated/de-characterized (formerly hazardous) wastes; polychlorinated biphenyl (PCB) wastes; industrial process wastes; asbestos containing material; chemical containing equipment; demolition debris; incinerator ash; medical wastes; off-spec chemicals; sludges; spill cleanup wastes; underground storage tank (UST) soils; and wastes from service industries.

1.22 “Term” has the meaning set forth below in Section 2.4.

1.23 “Unacceptable Waste” means (a) waste and materials that are not part of the Services contemplated hereunder as determined by Contractor, (b) Hazardous Waste, Biomedical Waste, Special Waste, tires, paints, paint solvents, unemptied aerosol cans, compressed gas cylinders, large engine parts, small engines containing oils or fuels, chemicals, large glass panes, large tree debris, stumps, ammunition of any type, dead animals larger than 10 lbs, and firearms, (c) waste of which the acceptance and handling by Contractor would cause a violation of any permit condition, legal or regulatory requirement, substantial damage to Contractor's vehicles, equipment or facilities, or present a substantial danger to the health or safety of the public or Contractor's employees, and (d) waste which is or may be prohibited from disposal at the applicable disposal site by local, federal or state law, regulation, rule, code, ordinance, order, permit or permit condition.

1.24 “White Goods” means household appliances such as refrigerators, stoves, washers, dryers, water heaters and other large enameled appliances, which do not contain PCB or chlorofluorocarbon refrigerant units and have been officially certified to that effect, and in the case of freezers and refrigerators, which have had the doors removed.

1.25 “Yard Trash” means vegetative matter resulting from landscaping maintenance at a Residential Premise other than mining, agricultural, and silvicultural operations. The term specifically excludes all wood that has been treated or preserved with chromated copper arsenate (CCA), pentachlorophenol, or other chemicals which have been classified as known human carcinogens by the United States Environmental Protection Agency.

## **Section 2.0 – Scope of Agreement**

2.1 Recitals; Conflict. The parties hereto acknowledge and agree that the “whereas” recitals set forth above are true and correct and are hereby incorporated herein by this reference. The parties further acknowledge and agree that in the event of any conflict between this Agreement and the RFP, the Proposal, or any other documents submitted by or to the Town and Contractor, this Agreement shall prevail and control.

2.2 Scope. The work under this Agreement shall consist of the collection of Residential and Commercial Solid Waste by Contractor from the Residential and Commercial Premises. In the performance of the Services, Contractor shall also provide the supervision, materials, and equipment necessary to complete the Services in accordance with the terms of this Agreement. Collection of Residential and Commercial Solid Waste by Contractor shall not be mandatory for all Residential and Commercial Premises in the Town. The scope of the Services to be provided by Contractor hereunder shall not be amended or modified without the mutual consent of the parties hereto.

2.3 Exclusivity. During Term of this Agreement, Contractor shall provide the Services in accordance with the terms of this Agreement, and shall have the sole and exclusive right to provide the Services throughout the Town. The Town hereby grants, and the Contractor hereby accepts, the sole and exclusive Agreement, license and privilege to provide the Services during the Term of this Agreement and all renewal terms thereto. All such rights shall be exclusive to the Contractor and no other person or entity except the Contractor may offer or provide the Services as contemplated hereby. The Town further agrees that so long as Contractor is not in default hereunder, it will not enter into any agreement or understanding with any other person or entity for performance of the Services contemplated hereby during the Term hereof.

2.4 Term. The term of this Agreement shall be for the period beginning on \_\_\_\_\_, and expiring five years later (the "Initial Term"). Upon the expiration of the Initial Term, this Agreement shall be automatically renewed for additional one (1)-year terms (each a "Renewal Term" and together with the Initial Term, the "Term") unless either party provides at least ninety (90) days prior written notice to the other party of its intent not to renew the Agreement prior to the expiration of the Initial Term or any Renewal Term. The terms and conditions of this Agreement during the Renewal Term shall be upon the same terms, conditions and fees as set forth herein, unless agreed to otherwise in writing by both parties in an amendment to this Agreement.

### **Section 3.0 – Contractor Responsibilities**

#### **3.1 Services Provided**

3.1.1 Residential Solid Waste. Contractor shall collect Residential Solid Waste that is timely placed in a Cart from each Residential Premise one (1) time per week at Curbside. The Customer located at the Residential Premise shall place only bagged Residential Solid Waste in the Cart and shall place the Cart at Curbside by 7:00 am on the designated collection day. Contractor shall not be deemed to be in default in any manner of this Agreement in the event Contractor fails or refuses to collect any such Residential Solid Waste from any Residential Premises because such Residential Solid Waste was not timely placed in a Cart at Curbside in accordance with this Agreement. Contractor shall not be responsible for collection of any Residential Solid waste not properly and timely placed in a Cart in the proper location at Curbside at the designated time and on the designated date, and has the right to refuse to collect all Unacceptable Waste. Customers may request more frequent Service or special services at a price to be agreed upon by such Customer and Contractor and paid by the Customer to Contractor.

3.1.2 Commercial Solid Waste. Contractor shall collect Commercial Solid Waste that is timely placed in a Commercial Bin from each Commercial Premises. The Town shall designate to the Contractor which Commercial Premises shall be collected once per week and which Commercial Premises shall be collected twice per week. The Customer located at the Commercial Premises shall place Commercial Solid Waste in either a Cart at Curbside or in a Commercial Bin by 7:00 am on the designated collection day. Contractor shall in not be deemed to be in default in any manner of this Agreement in the event Contractor fails or refuses to collect any such Commercial Solid Waste from any Commercial Premises because such Commercial Solid Waste was not timely placed in a Cart at Curbside or in a Commercial Bin in accordance with this Agreement. Contractor shall not be responsible for collection of any Commercial Solid waste not properly and timely placed in a Cart in the proper location at Curbside or in a Commercial Bin at the designated time and on the designated date, and has the right to refuse to collect all Unacceptable Waste. Customers may request more frequent Service or special services at a price to be agreed upon by such Customer and Contractor and paid by the Customer to Contractor.

3.1.3 Yard Waste and Bulk Waste. Contractor shall not collect Yard Waste or Bulk Waste.

3.1.4 Disposal of Waste. Contractor may deliver all Residential and Commercial Solid Waste collected by Contractor to a disposal or other processing facility as determined by the Contractor in its sole discretion as long as it meets South Carolina's rules and regulations for proper disposal for that specific waste material.

3.2 Carts and Commercial Bins. Contractor shall furnish the Carts and Commercial Bins (or "Bins") for every Residential and Commercial Premises receiving the Services as contemplated by this Agreement. Such Carts and Bins shall at all times remain the property of Contractor. It shall be the responsibility of the Customers of the Residential and Commercial Premises to properly use and safeguard the Contractor's Carts and Bins. Contractor shall maintain the Carts and Bins in reasonably good condition, normal wear and tear excepted. Each Customer has the care, custody and control of any Cart or Bin furnished by Contractor, and such Customer shall have the sole responsibility, and shall be liable, for all loss and damage, normal wear and tear excepted, to such Cart or Bin and for the cleanliness and safekeeping of

such Cart or Bin. Contractor shall have the right to charge Customers for the cost of repair or replacement of Carts and Bins, including delivery fees, if such repair or replacement is required as a result of abuse, misuse or damage, fire, or theft. Customers may request one or more additional Carts or Bins from Town for an additional volume of collection Services. Customers shall pay Town for each additional Cart or Bin, and Contractor shall receive payment from the Town for the additional Service to be provided to such Customer, as if such additional Service constituted an additional Residential or Commercial Premises, at the then applicable rate of compensation payable to Contractor as contemplated by this Agreement.

3.3 Non-Curbside Service for Disabled Persons. Contractor shall provide back/side-door Residential Solid Waste collection services (“Non-Curbside Service”) to Disabled Persons as identified by the Town who are physically unable to place the Cart at Curbside for collection by Contractor at the designated time and date contemplated by this Agreement. In no case will the quantity of persons receiving Non-Curbside Services exceed two percent (2%) of the total Residential Premises located in the Town. Contractor shall provide Non-Curbside Service at no additional charge than the Service Fees then in effect for those residents not physically able to take Carts to Curbside, provided however, that such exemptions will be granted only if there is no other occupant of the Residential Premises physically capable of placing the Cart at Curbside. Prior to Contractor being required to provide such Non-Curbside Service to any person, any such person requesting Non-Curbside Service must obtain a physician’s certificate certifying such disability and provide the physician’s certificate to the Contractor. In no event will Non-Curbside Service be provided at a distance of more than 150 feet from the public roadway. In the event Non-Curbside Service is provided pursuant to this Section 3.3, the Disabled Person shall use the Cart for storage of Residential Solid Waste but must place the Residential Solid Waste in bags, designed to accommodate storage of waste, each bag not to exceed 30 pounds in weight.

3.4 Location of Carts for Collection. Carts shall be placed at Curbside for collection service as described herein. Carts shall be placed as close to the roadway as practicable without interfering with or endangering the movement of vehicles or pedestrians. When construction work is being performed in the right-of-way, Carts shall be placed as close as practicable to an access point for the Contractor’s collection vehicle that permits access by Contractor’s collection vehicle to the Carts without endangering Contractor’s employees or equipment.

3.5 Hours and Days of Operation; Holidays

3.5.1 Collection of Solid Waste under this Agreement shall not start before 7:00 am nor continue after 7:00 pm each day. No collection of Solid Waste under this Agreement shall take place on any Sunday.

3.5.2 The following shall be holidays for the purpose of this Agreement (each a “Holiday”):

- New Years’ Day
- Memorial Day
- Independence Day
- Labor Day
- Thanksgiving Day
- Day after Thanksgiving
- Christmas Eve
- Christmas Day

Contractor may decide to observe any or all of the above mentioned Holidays by suspension of Services on the Holiday, but such decision does not relieve the Contractor of its obligation to provide the Residential Solid Waste collection service at least once per week (Monday - Saturday) or Commercial Solid Waste collection service at least once per week within the week the Holiday occurs (a “Holiday Week”). The Contractor will not be allowed to perform collection Services on Sunday during a Holiday Week. The Contractor shall be responsible for properly notifying the Town 30 days in advance of any changes in collection schedules due to observance of Holidays or for other reasons.

3.6 Routes of Collection. Collection routes shall be established by the Contractor. Contractor shall submit a map designating the collection routes with the days of pick-up to the Town for its approval, which approval shall not be unreasonably withheld. The Contractor may from time-to-time propose to Town for approval changes in routes or days of collection, which approval shall not be unreasonably withheld.

3.7 Complaints; Missed Collections.

3.7.1 Contractor shall furnish the Town instructions for contacting the Contractor in the event of Customer complaints. Contractor shall also furnish each Residential Premises with instructions for contacting Contractor by local telephone for information or for service complaints. All complaints made to Contractor shall be given prompt and courteous attention.

3.7.2 In the case of alleged missed scheduled collections for Solid Waste (a "Missed Collection"), Contractor shall investigate and advise the Town how it will address the issue within twenty-four (24) hours after the complaint is received. Contractor will be responsible for receiving all reports of Missed Collections from Residential or Commercial Premises and rectifying the Missed Collection with the Customer located at the Residential or Commercial Premises. In the event the Missed Collection was due solely to the fault of the Contractor and such Missed Collection was not due to an event of Force Majeure, Contractor shall notify Town to deliver an additional residential cart for use until the next collection date.

3.8 Collection Equipment and Personnel.

3.8.1 The Contractor shall provide an adequate number of vehicles and personnel for regular collection Services. All collection vehicles and other equipment shall be kept in good repair, normal wear and tear excepted. Each collection vehicle shall have clearly visible on each side the identity and telephone number of the Contractor. All Residential or Commercial Solid Waste hauled by the Contractor shall be so contained, tied, covered, or enclosed such that leaking, spilling, or blowing are prevented.

3.8.2 The Contractor shall assign a qualified person or persons to be in charge of its performance of this Agreement. The Contractor's employees performing the Services contemplated hereunder shall wear a uniform or shirt bearing the Contractor's name. Each employee of Contractor who drives a vehicle pursuant to his or her duties in the performance of this Agreement shall, at all times, carry a valid South Carolina driver's license for the type of vehicle he or she is driving. The Contractor shall provide operating and safety training for all personnel.

3.9 Access. The Contractor shall be required to provide the collection Services described herein to all Residential Premises located on publicly-owned roadways accessible to standard solid waste collection vehicles. The Town shall require occupants of Residential Premises to place Carts at Curbside for collection in accordance with the terms and conditions of this Agreement. The Town shall require the Customer located at the Residential Premises not accessible to standard solid waste collection vehicles to place Carts at an accessible location on a publicly-owned roadway as determined by the Contractor. Contractor shall not be liable in any way, and shall not be deemed to be in breach of this Agreement, for the failure to collect any Residential or Commercial Solid Waste or other acceptable materials in the event Contractor did not have or was denied access to the Residential or Commercial Premises or to the Customer's Cart or Commercial Bin and other materials to be collected as provided hereunder.

3.10 Office. The Contractor shall maintain an office or such other facilities through which it can be contacted. It shall be equipped with sufficient local service telephones and shall have a person to answer such telephones from 8:00 a.m. to 5:00 p.m. daily Monday through Friday.

3.11 Natural Disasters. In the event of a hurricane, tornado, major storm or other natural disaster, the Contractor's sole responsibility shall be to reestablish regular routes and schedules for the Services as soon after the natural disaster as possible. The collection of Residential Solid Waste shall be the highest priority. The collection of debris generated by a natural disaster shall not be the responsibility of the

Contractor. Under a separate agreement, the Town shall procure collection services for debris generated by a natural disaster. The Contractor agrees to provide reasonable cooperation, at no additional cost to the Contractor unless agreed to by the parties, with the Town and the person or entity collecting the debris in the aftermath of a natural disaster in an effort to return the Town to its pre-disaster state. The Contractor shall resume its performance of Services as soon as commercially practicable after such storm or disaster.

3.12 Compliance With Law; Permits. The Contractor shall comply with all applicable local, state and federal laws, rules, regulations, ordinances and statutes in the performance of this Agreement; provided, however that this Agreement shall govern the obligations of the Contractor where there exists conflicting ordinances of the Town on the subject, and the Town agrees to waive the requirements of such ordinances in the event of such a conflict. In the event that the collection or disposal of any solid waste hereunder shall become restricted or prohibited by any such applicable law, ordinance, statute, rule or regulation, such type of waste shall be eliminated from the requirements and provisions of this Agreement. Contractor shall obtain all applicable permits, licenses and other approvals necessary to perform the Services.

3.13 Delinquent and Closed Accounts. The Contractor shall discontinue the Services at any Residential Premises if directed to so, in writing, by the Town. Upon further written notification by the Town, the Contractor shall resume the Services contemplated hereunder on the next regularly scheduled collection day. The Town shall indemnify and hold the Contractor harmless from any claims, suits, actions, losses, damages, liabilities or expenses (including but not limited to expenses of investigation and attorney's fees) resulting from the Contractor's discontinuing service at any location at the direction of the Town.

#### **Section 4.0 – Town Responsibilities**

4.1 Initiation of Accounts and Billing. The Town will be responsible for billing and collecting the Service Fee for the Services rendered by Contractor from all Residential Premises and Commercial Premises. The Town will also be responsible for setting up all new accounts with respect to newly constructed Residential Premises and receiving any necessary information from such new Residential Premises and for referring the owners of such new Residential Premises to the Contractor so that the Contractor can initiate service.

4.2 Public Education and Outreach. The Contractor will be responsible for conducting all outreach related to the Services.

4.3 Service Referrals. The Town will be responsible for referring to Contractor any service requests by the Customers and/or complaints of which the Town becomes aware that are not reported directly to the Contractor.

4.4 Compliance With Law. The Town shall comply with all applicable local, state and federal laws, rules, regulations, ordinances, consents, judgments and statutes in the performance of this Agreement.

#### **Section 5.0 – Compensation**

##### **5.1 Fees and Payment**

5.1.1 Beginning on the Effective Date, for and in consideration of the Services to be performed in accordance with this Agreement, the Town will pay the Contractor the Service Fees set forth on Exhibit A attached hereto and incorporated herein, as may be adjusted pursuant to the terms of this Agreement (the "Service Fees"). The Town shall pay the Service Fees to Contractor by the tenth (10th) day of each calendar month for the Services rendered during the previous calendar month. The Town shall submit, together with payment, a statement of the Services Fees that the Town believes to be due and owing to Contractor for the Services rendered by the Contractor during the previous calendar month (the "Statement of Fees") based the terms and conditions of this Agreement. Such Statement of Fees shall include the number of Residential Premises receiving the Services. The Town shall pay to the Contractor the amounts set forth in the Statement

of Fees and otherwise as contemplated hereby. Upon receipt of the Statement of Fees issued by the Town, the Contractor shall notify the Town of any dispute it may have with respect to the Town's Statement of Fees, provided that the Town shall pay all undisputed amounts in accordance with this Agreement. If the parties are unable to settle any such disputes with respect to any Statement of Fees within a commercially reasonable time, then the parties shall submit such dispute to the dispute resolution procedure set forth in Section 10.2.

5.1.2 The Town shall submit statements and collect the fees for the Services rendered by Contractor from all Residential and Commercial Premises, including those accounts which are delinquent. The Contractor shall be entitled to payment for Services rendered irrespective of whether or not the Town collects amounts owed from the Residential and Commercial Premises. For purposes of calculating the amount of the Service Fees to be paid to the Contractor, the number of Residential Units shall be based on the Town's utility billing system for the applicable calendar month.

## 5.2 Service Fee Adjustments

5.2.1 The Service Fees payable to the Contractor pursuant to this Agreement will be automatically adjusted on each one-year anniversary date of the Effective Date of this Agreement during the Term hereof, beginning on \_\_\_\_\_, 20\_\_, such that the Service Fees for the immediately ensuing twelve (12)-month period shall be increased on the basis of 100% of the increase, if any, in the Consumer Price Index for All Urban Consumers, U.S. Town Average, by expenditure category and commodity and service group, Water and Sewer and Trash Collection Services, as published by the U.S. Department of Labor, Bureau of Labor Statistics (the "CPI"), during the immediately preceding twelve-(12) month period. In the event the U.S. Department of Labor, Bureau of Labor Statistics ceases to publish the CPI, the parties hereto agree to substitute another equally authoritative measure of change in the purchasing power of the U.S. dollar as may then be available so as to carry out the intent of this provision.

5.2.2 The Town recognizes that one of the primary costs of the contractor to fulfill this contract is the price of vehicle fuel which is outside the control of the Contractor. The Town is willing to negotiate an "energy shock" clause based up on using the US Energy Information Administration (USEIA) Index: <http://tonto.eia.doe.gov/oog/info/wohdp/diesel.asp>.

5.3 Other Service Fee Adjustments. In addition to the adjustments to the Service fees set forth in Section 5.2, the Town agrees that Contractor may also increase rates from time to time, to adjust for increases in operational costs or expenses incurred by Contractor: (a) as a result of a "Change In Law," whether imposed retroactively or prospectively. A Change In Law means any amendment to, or promulgation of any federal, state, Town, Town, or local statute, regulation, or ordinance after the date of this Agreement that imposes, changes, modifies, and/or alters requirements upon: (i) performing the Services; (ii) the operation of the applicable disposal facility accepting the solid waste collected pursuant to this Agreement; or (iii) the disposal of Residential or Commercial Solid Waste or which statute, regulation, or ordinance requires the Contractor to seek either an amendment or modification to, or re-issuance of any required permits, licenses, certificates of public convenience and necessity, approval or authorization issued by any governmental body entitling the Contractor to perform the Services; (b) due to any new or additional Fees and Taxes imposed after the date hereof. 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 Collection Services which are imposed on the Contractor by law, ordinance or regulation and/or agreement with a governmental body, whether imposed retroactively or prospectively; and (c) a result of an event of Force Majeure that materially and adversely affects the cost of collection, transportation or disposal of solid waste by Contractor. In addition to the foregoing, the Contractor shall be permitted to charge for Non-Curbside Collection if, during the preceding period, the number of Service Units qualifying for such Collection reached two percent (2%) of Residential Premises.

## **Section 6.0 - Indemnity**

The Contractor will indemnify, defend and hold harmless the Town, its officers, agents, and employees (the "Town Parties") from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, including reasonable attorney's fees ("Damages"), arising out of the negligent act or failure to act of the Contractor its officers, agents, and employees in the Contractor's performance of this Agreement; provided however, nothing herein shall require Contractor to indemnify, defend or hold the Town Parties harmless from any such Damages that result from, are due to or arise in connection with the acts of, or any failure to act by, any Town Party. The Town will indemnify, defend and hold harmless the Contractor, its parent corporation, affiliates and their respective officers, directors, agents, members, servants, representatives and employees from and against any and all Damages, arising out of the negligent act or failure to act of the Town Parties or any breach by the Town of any covenant, agreement, obligation, representation or warranty set forth herein.

## **Section 7.0 – Insurance**

The Contractor shall at all times during the Agreement maintain in full force and effect Employer's Liability, Workmen's Compensation, Public Liability, and Property Damage Insurance. All insurance shall be by insurers and for policy limits acceptable to the Town and before commencement of work hereunder the Contractor agrees to furnish the Town certificates of insurance or other evidence satisfactory to the Town to effect that such insurance has been procured and is in force. For the purpose of this Agreement, the Contractor shall carry the following types of insurance in at least the limits specified below:

COVERAGES	LIMITS OF LIABILITY
Workers' Compensation	Statutory
Employer's Liability	\$500,000
Bodily Injury Liability	\$500,000 each occurrence
Except Automobile	\$1,000,000 aggregate
Property Damage Liability	\$500,000 each occurrence
Except Automobile	\$500,000 each occurrence
Automobile Bodily Injury	\$500,000 each person
Liability	\$1,000,000 each occurrence
Automobile Property Damage Liability	\$500,000 each occurrence
Excess Umbrella Liability	\$5,000,000 each occurrence

## **Section 8.0 – Title to Waste**

Title to the Residential Waste to be collected under this Contractor shall pass to the Contractor once it is placed in the vehicle under control of the Contractor; provided however, that the Contractor shall not accept title to waste or materials that are Unacceptable Waste regardless of whether the Unacceptable Waste is loaded in the vehicle or unloaded, and title to such waste shall remain at all times with the Town and/or the generator thereof. The Contractor shall not be required to collect or dispose of Unacceptable Waste set-out by any Residential Premises.

## **Section 9.0 – Events of Default; Remedies**

9.1 Events of Default by Contractor. The following shall constitute events of default on the part of the Contractor except to the extent caused by the occurrence of an event of Force Majeure or the acts of, or failure to act by, the Town, its officers, employees, agents or representatives:

9.1.1 Failure by the Contractor to perform any material obligation of the Contractor under the terms of this Agreement, and continuance of such failure after (i) written notice thereof has been provided by the Town specifying such failure and requesting that such condition be remedied, and (ii) Contractor's failure to cure the default or immediately initiate and diligently pursue reasonable action and cure such non

performance within fifteen (15) days after receiving notice from the Town (provided, if such failure is of a nature that it cannot be cured within such fifteen (15) day period, Contractor shall not be in default if Contractor commences the curing of such failure within such fifteen (15) day period, and diligently pursues the curing thereof; or

9.1.2 The Contractor becomes insolvent or bankrupt and cannot to pay its debts when they become due, files a petition in bankruptcy or has such a petition filed against it (and fails to lift any stay imposed thereby within ninety (90) days after such stay becomes effective), has a receiver appointed with respect to all or substantially all of its assets; makes an assignment for the benefit of creditors; or ceases to do business in the ordinary course.

9.2 Events of Default by Town. The following shall constitute events of default on the part of the Town, except to the extent excused by the occurrence of an event of Force Majeure or the act of, or failure to act by, the Contractor:

9.2.1 A failure by the Town to timely perform any obligation under the terms of this Agreement, and the continuance of such failure after (i) written notice thereof has been provided by the Contractor specifying such failure and requesting that such condition be remedied, and (ii) Town's failure to cure the default or immediately initiate and diligently pursue reasonable action and cure such nonperformance within fifteen (15) Days after receiving notice from the Contractor (provided, if such failure is of a nature that it cannot be cured within such fifteen (15) day period, the Town shall not be in Default if Contractor commences the curing of such failure within such fifteen (15) day period, and diligently pursues the curing thereof); provided however, the Town shall immediately be in default of this Agreement in the event the Town fails to pay any amount owing to Contractor when due, and Contractor shall have no such obligation to provide any notice thereof to the Town or to provide the Town with such fifteen (15) day period to cure such default; or

9.2.2 The Town becomes insolvent or bankrupt and cannot to pay its obligations when they become due, files a petition in bankruptcy or has such a petition filed against it (and fails to lift any stay imposed thereby within ninety (90) days after such stay becomes effective), has a receiver appointed with respect to all or substantially all of its assets; makes an assignment for the benefit of creditors; or ceases to do business in the ordinary course.

### 9.3. Remedies Upon an Event of Default

9.3.1 If a party is in default pursuant to this Section 9, then, at the option of the non-defaulting party, this Agreement may be immediately terminated or suspended upon written notice to the defaulting party as contemplated by this Section 9, or this Agreement may be continued in force and the non-defaulting party shall have the right to take whatever action at law or in equity deemed 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 defaulting party under this Agreement; provided however, notwithstanding any alleged default by Contractor, or the election of any remedy by Town in the event of such default by Contractor, Town agrees to pay the Service Fees due and owing to Contractor for all Services rendered in accordance with this Agreement.

9.3.2 The rights and remedies under this paragraph shall be in addition to those otherwise allowed by law or in equity. Any and all rights and remedies which either party may have under this Agreement, at law or in equity, shall be cumulative and shall not be deemed inconsistent with each other, and any two or more of all such rights and remedies may be exercised at the same time insofar as permitted by law. Any rights of the Contractor not expressly granted in this Agreement are reserved by Contractor.

9.3.3 The failure of either party at any time to require performance by the other party of any provisions hereof shall in no way affect the right of such party thereafter to enforce the same. Nor shall waiver by either party of any breach of any provisions hereof be taken or held to be waived of any succeeding breach of such provisions or as a waiver of any provision itself. Further, each party agrees that the Contractor

would be irreparably damaged if any provisions of this Agreement were not performed in accordance with its specific terms or was otherwise breached by the Town. Therefore, the parties agree that the Contractor shall be entitled to an injunction or injunctions, without being required to post any form of bond, to prevent breaches of this Agreement or any of its provisions by the Town and to specifically enforce this Agreement or any of its terms and provisions, in addition to any other remedy to which the Contractor may be entitled, at law or in equity.

9.3.4 In addition to the forgoing and any other rights or remedies that Contractor may have pursuant to this Agreement or at law or in equity, in the event the Town fails to make any payment to Contractor when due as required by the provisions of this Agreement, the Town shall immediately provide Contractor with a complete list of all Residential Premises and any other person or entity receiving collection Services by Contractor as provided for hereunder, such list to include such information as Contractor deems necessary. The Town expressly acknowledges and agrees that in such an event of default by Town, Contractor shall have the right, but not the obligation, without any further action by the parties hereto, to bill such Residential Premises and any other person or entity directly for the Services rendered by Contractor, to terminate or suspend any collection Services immediately upon nonpayment by such Residential Premises and to pursue any rights and remedies available to Contractor at law or in equity as a result of such nonpayment.

9.4 Force Majeure. Except in the case of nonpayment of the Service Fees by the Town and the agreements and obligations by the Town set forth in Sections 2.2 and 2.3, in the event either party is rendered unable, in whole or in part, to perform its obligations hereunder due to an event of Force Majeure, it shall notify the other party of such event and the obligations of such party may be suspended during the continuation of any inability so caused by such event of Force Majeure. Except in the case of nonpayment of the Service Fees by the Town and the agreements and obligations by the Town set forth in Sections 2.2 and 2.3, neither party shall be liable in any manner, and neither party shall be considered in default hereunder, for any failure to perform its respective obligations under this Agreement if such failure to perform is due to an event of Force Majeure.

**Section 10.0 – Miscellaneous Provisions**

10.1 Notice. Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by a nationally recognized overnight delivery service, or certified mail, postage prepaid as follows:

As to the Town:  
Mayor Patty Carson  
9305 North Road  
PO Box 399  
North, SC 29112

As to Contractor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_

Notices shall be effective upon delivery or refusal of delivery at the address specified above. Changes in the respective addresses to which such notice is to be directed, may be made from time to time by written notice.

## 10.2 Dispute Resolution; Choice of Law; Attorney's Fees

10.2.1 This Agreement shall be governed by and interpreted under the laws of the State of South Carolina. Any dispute or difference between or among any of the parties hereto arising out of or in connection with this Agreement or the transactions contemplated hereby which such parties are unable to resolve themselves will be submitted to a mediation process in accordance with a mutually agreeable mediation procedure, to be completed no later than thirty (30) days following a written request for mediation by either party. Any dispute which cannot be resolved through the mediation process will be submitted to and resolved by arbitration before a single arbitrator, for amounts in dispute under Five Thousand and 00/100 Dollars (\$5,000.00) and otherwise before a panel of three (3) arbitrators, pursuant to the Commercial Arbitration Rules of the American Arbitration Association, as supplemented or modified by the provisions of this Section 10.2. The arbitrator(s) will consider the dispute at issue in \_\_\_\_\_, \_\_\_\_\_ within one hundred twenty (120) days (or such other period as may be acceptable to the parties to the dispute) of the designation of the arbitrator. The arbitrator(s) will be bound to follow the laws of the State of South Carolina, decisional and statutory, in reaching any decision and making any award and will deliver a written award, including written findings of fact and conclusions of law, with respect to the dispute to each of the arbitrating parties, who will promptly act in accordance therewith. Any award of the arbitrator(s) will be final, conclusive and binding on the arbitrating parties. Any party to an arbitration may enforce any award rendered pursuant to the arbitration provisions of this Section 10.2 by bringing suit in any court of competent jurisdiction. All costs and expenses attributable to the arbitrator(s) will be allocated between the parties to the arbitration in such manner as the arbitrator(s) determine to be appropriate under the circumstances. Any party may file a copy of this Section 10.2 with any arbitrator or court as written evidence of the knowing, voluntary and bargained agreement among the parties hereto with respect to the subject matter of this Section 10.2.

10.2.2 In the event that either party is required to take any legal action to enforce the terms and conditions of this Agreement because of the breach of or failure to perform any term or condition by the other party, the losing party agrees to pay all costs expended by the other party, including reasonable attorney fees.

10.3 Independent Contractor. Contractor, in the performance of this Agreement, is acting as an independent contractor and not as an employee, agent, partner or joint venturer of Town, and neither party shall not hold itself out as such or knowingly permit another to rely on such belief. Nothing in this Agreement is intended or shall be construed to create any association, partnership, joint venture or employment relationship between the parties, nor shall Town have any right to enter into any agreement or commitment on behalf of Contractor or to bind Contractor in any respect whatsoever. Contractor's personnel shall not be considered employees of the Town by reason of their performance of the Services or other work or services contemplated by this Agreement and Contractor shall bear sole responsibility for all payroll and employment taxes relating to Contractor's personnel.

10.4 Entire Agreement; Binding Agreement. This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representation or modifications concerning this instrument shall be of no force or effect and this Agreement may not be amended or modified except by a subsequent modification in writing signed by the parties hereto. This Agreement shall inure to the benefit of and shall be binding upon the Contractor, the Town and their respective successors and assigns, subject, however, to the limitations contained in this Agreement.

10.5 Severability. If any part of this Agreement for any reason is declared invalid, such decision shall not affect the validity of any remaining portion, which remaining portion shall remain in force and effect as if this Agreement had been executed with the invalid portion thereof eliminated. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. It is hereby declared the intention of the parties that they would have executed the remaining portion of this Agreement without including any such part, parts or portions which may, for any reason, be hereinafter declared invalid.

10.6 No Waiver. Neither any failure nor any delay by any party in exercising any right, power or privilege under this Agreement or any of the documents referred to in this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege.

10.7 Captions. The titles or headings preceding any section or paragraph are for reference and convenience only and shall be in no way construed to be a material part of this Agreement.

10.8 Assignment. No assignment or transfer of this Agreement or any right occurring under this Agreement shall be made in whole or part by the Contractor without the express written consent of the Town, such consent not to be unreasonably withheld or delayed; provided however, the Contractor may assign or transfer this Agreement to an affiliate without the consent of the Town.

10.9 Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

10.10 Representations. The Town represents and warrants to Contractor and covenants and agrees as follows:

- a. The parties signing this Agreement on behalf of the Town have been authorized to do so by specific action of the North Town Council adopted the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ in open meeting and of record in its official minutes.
- b. The Town validly exists as a political subdivision under the laws of the State of South Carolina. The Town has full power and authority to enter into this Agreement and to fully perform all of its duties and obligations hereunder. This Agreement constitutes a valid and legally binding obligation of the Town, enforceable in accordance with its terms. Without limiting the generality of any of the foregoing, the Town has provided all public notices and held all public meetings, hearings, and the like required by applicable law, rule, regulation or ordinance in connection with the Town's and execution of this Agreement.
- c. No consents or approvals are needed for the entering into or performance of this Agreement by the Town. Neither the entering into nor the performance of this Agreement by the Town will result in a violation of or be in conflict with any statute, rule, regulation, ordinance, agreement, instrument, judgment, decree, or order to which the Town is a party or by which the Town or its assets is bound.
- d. There is no action, suit, judgment, consent order or investigation or proceeding pending or, to the best of the Town's knowledge and belief, threatened, relating to this Agreement. The Town will notify Contractor promptly if any such action, suit, investigation or proceeding is instituted or threatened. In connection with the execution, delivery and performance of this Agreement, the Town is in compliance with all applicable federal, state and local laws, rules, regulations, orders, ordinances, judgments permits, licenses, approvals, and variances, and the Town has not received any notice of any complaint or violation of any of the foregoing. The Town will notify the Contractor promptly upon receipt of any complaint or notice of non-compliance with any of the foregoing.
- e. The representations and warranties of the Town are true and correct in all material respects at and as of the Effective Date and continuing during the Term of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date evidenced on the first page hereof.

**TOWN OF NORTH**

\_\_\_\_\_ By: \_\_\_\_\_  
Witness  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_ Attest: \_\_\_\_\_  
Notary Public

**CONTRACTOR**

\_\_\_\_\_ By: \_\_\_\_\_  
Witness  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_ Attest: \_\_\_\_\_  
Notary Public