

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK) **INTERLOCAL WASTE COLLECTION
AND RECYCLING AGREEMENT**

THIS INTERLOCAL WASTE COLLECTION AND RECYCLING AGREEMENT ("Agreement") is made this ____ day of December 2011, between the City of Rock Hill ("City") and Rock Hill School District Number Three ("School District") (the City and School District are collectively referred to as the "Parties").

RECITALS:

WHEREAS, the City provides solid waste collection and disposal services, including recycling, in and around its municipal limits ("Services") and the School District is in need of such Services;

WHEREAS, the City and the School District recognize and agree that while this Agreement provides waste collection and disposal services, it also provides extensive recycling services which will benefit both Parties; and

WHEREAS, the Parties recognize and agree that this Agreement may need to be modified to reflect changing needs and collection and disposal costs.

WITNESSETH:

NOW, THEREFORE, for and in consideration of the terms, covenants and conditions set forth hereinbelow, it is hereby agreed between the City and School District as follows.

1. **Recitals Incorporated Herein.** The above recitals are hereby incorporated in and made a part of this Agreement as fully as if set forth verbatim herein. By signing this Agreement, the City and School District acknowledge reading, understanding and agreeing to all of the above recitals.

1. **Provision of Disposal Services.** The City shall commence the Services to the School District on January 1, 2012. The City will collect and dispose of solid waste and recycling from the School District's schools and facilities listed on **Exhibit A** in accordance with the schedule set forth on **Exhibit A**.

2. **Rates; Annual Review.** The City will charge and the School District will pay \$54.50 per ton of solid waste collected from the School District. Notwithstanding the foregoing, the Parties agree that the minimum amount due for

disposal services will be \$125,000 per calendar year and the maximum will be \$140,000 per calendar year based on forty-one weeks of collection. Additional weeks of Service along with collection services beyond that set forth in **Exhibit A** will be billed as additional services at the applicable per ton rate and not subject to the maximum amount.

The rate (the per ton rate along with minimum and maximum amount) is subject to adjustment based upon changed circumstance (including but not limited to increased tipping fees or government regulations). The City will provide justification for any increases and notify the School District of any such increases in January of each year in order to project the budget impacts of the following fiscal year. The Parties will negotiate in good faith. If the Parties are unable to agree on a rate increase, either party may terminate this Agreement by providing the other party at least 30 days written notice.

3. **Recycling.** The City will provide containers and programs for the School District to develop a comprehensive recycling program. The City will credit the School District for the total net revenue collected from the School District's recycling program. This credit will offset the monthly solid waste fees. During the first year of this Agreement, the City agrees to credit a minimum amount of \$28,000 for recycling revenue.

4. **Billing.** On or before the 10th day of each month, the City shall furnish the School District a statement of the volume of disposed solid waste by the City during the billing period covered by such statement and the City shall compute the amount of the charges to be paid by the School District. The School District shall remit payment to the City on or before the 24th day of each month. Late payments shall be subject to a 2% penalty.

5. **Reports.** The City will provide the School District quarterly reports setting forth the amount of collected solid waste and recycling. The reports will also set forth the collection trips to each site along with estimated quantities of waste and recycling from each site.

6. **Exclusivity.** The School District shall be obligated by virtue of this Agreement to obtain all waste disposal and recycling services from the City for the facilities and schools set forth in **Exhibit A** during the term of this Agreement.

7. **Term of Agreement.** This Agreement shall become effective on January 1, 2012 ("Effective Date"). The Agreement shall remain valid and enforceable for a period of five (5) years from the Effective Date. At the end of the original term, this Agreement shall be renewed automatically for successive one year terms unless the City and/or the School District furnishes the other with notice in writing of non-renewal at least sixty (60) days prior to the annual renewal date (60 days prior to January 1).

8. **Events of Default; Remedies.** If the School District fails to pay all amounts due and owing for Services after expiration of a ten (10) day notice to cure period, the City shall be entitled to stop providing Services and/or terminate this Agreement. In the event any Party breaches or fails to perform any other material obligation of this Agreement, the other Party, may seek enforcement action. In addition, and as a part of the same proceeding, the prevailing Party may recover attorneys' fees incurred and may recover for the actual loss of any net revenues, costs or expenses caused by the failure of performance of this Agreement.

9. **Modification of Agreement.** The terms, covenants and provisions of this Agreement may be modified or altered only by written consent executed by both Parties, acting through their respective governing bodies.

10. **Regulatory Agencies.** The School District and the City hereby agree to use best efforts to meet or comply with all rules, regulations or laws of any governing authorities with regulatory jurisdiction over it while this Agreement is in force and effect; provided, however, that this clause shall not be construed as waiving the right of either to challenge the validity of such rule, regulation, or law on any basis, including the impairment of this Agreement. The Parties agree that the Services shall be subject to governmental regulatory authorities with jurisdiction over waste disposal, including, but not limited to, South Carolina Department of Health and Environmental Control ("DHEC") and the U.S. Department of Environmental Protection ("EPA"). The School District further agrees to comply with all City of Rock Hill rules and regulations, including but limited to those found in Rock Hill City Code, Chapter 17, Solid Waste, as amended.

11. **Governing Law.** This Agreement shall be governed, construed and enforced in accordance with the laws of the state of South Carolina, and the School District and the City hereby consent to the exclusive jurisdiction of the courts of the

state of South Carolina for the purpose of resolution of any dispute which may arise hereunder.

12. **Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by certified or registered mail, postage prepaid, addressed as follows:

The City of Rock Hill
P.O. Box 11706
Rock Hill, SC 29731-1706
Attn: Director of Public Works

Rock Hill School District Number Three
P.O. Drawer 10072
Rock Hill, SC 29731
Attn: Purchasing Director

13. **Severability.** If any section, paragraph, clause or provision of this Agreement shall be finally adjudicated by a court of competent jurisdiction to be invalid and/or waived through non-enforcement, this Agreement shall be otherwise unaffected by such determination and all of the provisions of this Agreement shall otherwise remain in full force and effect as though such section, paragraph, clause or provision or any part thereof so adjudicated to be invalid and/or waived through non-enforcement had not been adjudicated at all. In the event of any such invalidity, the Parties shall promptly negotiate in good faith valid new provisions to restore this Agreement to its original intent and effect. If either of the School District or the City decides not to enforce a provision of this Agreement, such decision in favor of non-enforcement shall not constitute a complete and full waiver of the right of the non-enforcing party in the future to enforce that provision in the event of any subsequent breach or failure to comply in full with that provision of the Agreement.

14. **Termination.** This Agreement shall be subject to involuntary termination for a material breach after failure to cure in accordance with the default provisions herein.

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

16. **Authority to Bind.** The undersigned, on behalf of the City and School District, by their signatures herein below, purport to bind, covenant, represent and warrant that they have the authority of their respective principals to bind the City

and School District to the terms, covenants and conditions of this Agreement.

17. **Caption Sections.** Paragraphs, titles, headings and captions contained in this Agreement are inserted only for convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provisions hereof.

18. **Exhibits Incorporated by Reference.** All exhibits referenced in this Agreement are incorporated herein by reference as integral parts of this Agreement and shall be considered reiterated herein as fully as if such provisions had been set forth verbatim in this Agreement.

19. **Entire Agreement.** This Agreement shall constitute the entire understanding between the Parties, superseding any and all prior or contemporaneous understandings, oral or written, specifically including any prior written agreements and addenda thereto, pertaining to the subject matter contained herein. Neither the City nor the School District has relied, or will rely, upon any oral or written representation or oral or written information made or given to either by any representative of the other or anyone on its behalf prior to or contemporaneous with the execution of this Agreement.

IN WITNESS WHEREOF, the City and School District have caused this Agreement to be executed on the day and year first above written.

CITY OF ROCK HILL

ROCK HILL SCHOOL DISTRICT

By: _____

By:

Its: _____

Its: _____

Date: _____

Date:

Witnesses

Witnesses
