

AMERICAN RECYCLING OF NC-JACKSON COUNTY AGREEMENT TO  
RECYCLE COMMINGLED CONTAINERS AND RESIDENTIAL FIBER

This agreement made and entered into this 1<sup>st</sup> day of June 2017, by and between County of Jackson with offices at 401 Grindstaff Cove Road, Suite A227, Sylva, NC 28773 and American Recycling of WNC ("ARWNC") located at 1291 Sand Hill Road, Candler, NC 28715.

In consideration of the covenants and undertakings of the parties hereto and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, County and ARWNC hereby agree as follows:

**Section 1. DEFINITIONS**

"Average Commodity Revenue (ACR)" means, with regard to Commingled Containers, The weighted net revenue received from the disposition of all yield from the Commingled Containers by ARWNC at the Facility as defined herein. The ACR shall be calculated each month and utilized for the purpose of determining the Tip Rate applied to the Commingled Containers delivered on behalf of the city. The ACR shall be calculated using all commodities and residue related to commingled containers that were sold and/or shipped during the current billing month and shall be weighted according to the weight and Net Revenue received or cost of disposition for each of the commodities and residue.

"CPI" is the consumer Price Index of the Southeast US area, all items, as published by The United States Department of Labor.

"Facility" means the American Recycling of WNC facility at 1291 Sand Hill Road, Candler, NC 28715.

"Materials Acceptance Protocol" is included in this agreement as Attachment 1 and Means the recyclable material that is allowed to be delivered as Commingled Containers and Residential Fiber.

"Net Revenue" means the monies received by the processor from the sale of facility Produced product(s) minus any direct costs of ARWNC related to the transportation of product.

"Commingled Containers" means recyclable glass, metal, plastic and other recyclables From residential, commercial, and institutional sources as defined in the Materials Acceptance Protocol.

"Residential Fiber" means recyclable paper from residential, commercial, and Institutional sources as defined in the Materials Acceptance Protocol.

## "Hauler's Rules" -Attachment 2

"Recyclables" means all items listed in the Materials Acceptance Protocol collected from residential sources within the County.

"Addition Hauling Fee" means any addition charges paid (\$150/load) for by the County and reimbursed by ARWNC to cover the additional costs associated with delivering recyclables to ARSC's plant in Greenville.

### Section 2. RESPONSIBILITIES OF COUNTY

1. County or their designee shall deliver or cause to be delivered to the Facility all recyclables as listed in section I, above, received by collections made by County. The parties expect that approximately 80 tons per month of Commingled Containers and 120 tons per month of Residential Fiber will be generated within the County.
2. County shall comply with the Materials Acceptance Protocol.
3. County will make reasonable efforts to eliminate the scavenging of recyclables. County will guarantee no scavenging by its own crews.
4. County will cause its loads to be delivered so as to conform to operating hours and delivery routines and standards described in the Hauler's-Rules.

### Section 3. RESPONSIBILITIES OF ARWNC

1. ARWNC will receive, process and market all Commingled Containers and Residential Fiber delivered to the facility by the County defined in Section I of this agreement.
2. ARWNC will provide County with a monthly report which shall indicate the date, time, and net weight for each load, a report of the total tons received for that calendar month, and a billing summary.
3. ARWNC agrees that all Recyclables that it receives from County pursuant to this Contract will be marketed for the purpose of turning Recyclables into new Products.

### Section 4. TERM

The initial term of this agreement will begin on June 1<sup>st</sup>, 2017 and end on December 31, 2018.

## Section 5. PRICE

**RESIDENTIAL FIBER:** For Residential Fiber, ARSC will pay the County a Tip Rate based on the following formula:

ARWNC will pay to County 87% of the High Pulp & Paper Weekly for Mixed Paper #2. See attachment III (Proposal dated May 9, 2017)

In no case will the Tip Rate payment for Residential Fiber be any less than \$27.00 per ton.

**COMMINGLED CONTAINERS:** For Commingled Containers (consisting of #1 & #2 plastics, steel/tin cans, aluminum cans and glass bottles), the Tip Rate will be based on the following formula:

ARWNC will pay to County 90% of the index less \$85/ton. The index is based off of the current month's prices for each of the grades as reported in the Secondary Materials Pricing Publication for the southeast markets. See chart in Attachment III (Proposal dated May 9, 2017)

In no case will the Tip Rate payment for Commingled Containers be any less than of \$7.50 per ton.

In the previous contract between the Parties, ARWNC failed to pay County the minimum Tip Rate for Comingled Containers. The Parties have agreed to resolve this issue in the following manner: County will accept a minimum Tip Rate of \$7.50 per ton for Comingled Containers for the unpaid period beginning July 1, 2016 through April 1, 2017 for a total amount of \$4,293.30 owed to County by ARWNC. ARWNC will pay this amount to County by paying to County an additional \$5 per ton on Comingled Container and materials, pursuant to this Agreement, or a minimum rate of \$400.00 per month, whichever is greater, until County is repaid the \$4,293.30 it is owed in addition to all new payments.

**OLD CORRUGATED CONTAINERS:** For OCC, ARWNC will pay the County a Tip Rate based on the following formula:

ARWNC will pay to County 80% of market price based on OCC in Pulp & Paper Weekly.

## Section 6. INDEMNIFICATION AND INSURANCE

- A. Each party shall be responsible for its own acts and for the acts of its agents, officers, employees, licensees, contractors, and anyone else for whom such party has legal responsibility. Each party does hereby agree to indemnify and hold harmless the other from and against any and all suits, judgments, costs, and Expenses arising out of personal injury (including death) or property damage which were caused by the wrongful acts, omissions to act, or negligence of the Indemnifying party, its agents, officers, employees, licensees, contractors and anyone else for whom such party has legal responsibility.



- B. If personal injury (including death) or property damage is caused in part by the wrongful acts, omission to act, or negligence of both parties, or their respective agents, officers, employees, licensees, contractors, or others for whom each party has legal responsibility, then, in such event, the parties shall share proportionately the liability for such damage or injury.

As reasonably requested by ARWNC, the County or their designee shall provide to ARWNC evidence of insurance against any damage, liability, loss, or expense accruing to ARWNC or the Facility from the vehicles which deliver recyclables to the facility for the County or by the drivers thereof.

As reasonably requested by the County, ARWNC shall provide to the County evidence of insurance against any damage liability, loss or expense caused by ARWNC that accrues to the County's drivers and vehicles which deliver Recyclables to the Facility for the County.

#### **Section 7. EVENTS OF DEFAULT**

No waiver by either party with respect to any breach or default or of any right or remedy shall be deemed to constitute a continuing waiver of any other breach or any other right or remedy, unless such waiver is expressed in writing and signed by the party to be bound. No failure by the party to exercise a right or remedy available hereunder, or otherwise available under law shall constitute a waiver of any obligation of the other party to perform strictly in accordance with the terms hereof. Notwithstanding the aforementioned, the following events shall, without limitation, constitute an Event of Default:

- If County should fail to deliver all Recyclables collected by County during the term of this agreement.
- If ARWNC should fail to accept any Recyclables collected by County during the term of this agreement.
- If County should fail to pay the Tip Rate to ARWNC.
- If ARWNC should fail to pay the Tip Rate to the County.

#### **Section 8. CONTINGENCIES/FORCE MAJEURE**

Either party to the agreement shall be excused from failure to perform any of its obligations hereunder if and to the extent such failure to perform is caused by, arises out of, or is attributable to war, riot, fire, explosion, acts of God, labor disputes, sabotage, accident, embargo, injunction, compliance with governmental order, inability to obtain fuel or raw materials preventing either party from performing any of its obligations hereunder, provided the party claiming such excuse shall promptly notify the other party of the reason therefore and the approximate duration of such delay or failure.



**Section 9. TERMINATION**

In the event there should be a material default, including without limitation an Event of Default, in the performance of any covenant or obligation of County or ARWNC which has not been remedied within thirty (30) days after receipt of written notice from the other party specifying such default, the notifying party may terminate this agreement upon written notice. Termination by one party for fault of the other party shall not constitute a waiver of any obligation of the other party to perform strictly in accordance with the terms hereof. Nothing in this agreement shall negate or affect the right of either party to exercise any right, power or remedy permitted to it by law, in equity, or under this agreement.

**Section 10. GOVERNING LAW**

This Agreement and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by the laws of the State North Carolina without reference to any conflicts of laws principles to the contrary. If any of the provisions of this agreement is declared invalid, the remainder of the agreement shall not be affected thereby, and each term and provision of the agreement shall be valid and enforced to the fullest extent permitted by law.

**Section 11 . PAYMENT**

Billing and reporting shall be made on a monthly basis and payment shall be made within thirty (30) days of receipt of invoice.

**EXECUTION**

Signatures:  
American Recycling of WNC

County of Jackson

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

Brian Thomas McMahan

\_\_\_\_\_  
Print Name  
Chairman

\_\_\_\_\_  
Title of Authorized Officer

\_\_\_\_\_  
Title of Authorized Officer  
06/01/2017

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Attest: Angela M. Winchester, Clerk to the Board



### ATTACHMENT III

May 9, 2017

Chad Parker  
Jackson County Solid Waste Dept.  
401 Grindstaff Cove Road  
Sylva, NC 28779

Dear Chad:

Please see below our proposal for service and pricing of your recyclables:

1. Residential Fiber (consisting of Newspapers, cardboard, chipboard, junk mail and other miscellaneous papers) -American recycling will pay to Jackson County 87% of the High PPW for Mix Paper (#2). May PPW Pricing for Mix Paper is \$70.00 per ton. Jackson County will be paid as follows:

<b>Residential Mix</b>	<b>\$60.90/ton</b>	<b>(87% of \$70 =\$60.90)</b>
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A floor price of \$27.00 per ton would be in effect for the term of the agreement.

2. Commingled Containers (consisting of #1 and #2 plastics, tin and aluminum cans and glass bottles). American Recycling will pay Jackson County 90% of the Index -\$85/ton. The Index is based off of the current month's prices for each of the grades. We assign percentages to each grade as it is represented in the loads by volume and multiply that percentage by the price. The Index price for May was \$106.45/ton. Jackson County's price for May of 2017 would be:

<b>Commingled Containers</b>	<b>\$10.81/ton</b>	<b>(\$106.45 * 90% =\$95.80 - \$85)</b>
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In no case will the Tip Rate payment for Commingled Containers be any less than of \$7.50 per ton.

In the previous contract between the Parties, ARWNC failed to pay County the minimum Tip Rate for Comingled Containers. The Parties have agreed to resolve this issue in the following manner: County will accept a minimum Tip Rate of \$7.50 per ton for Comingled Containers for the unpaid period beginning July 1, 2016 through April 1, 2017 for a total amount of \$4,293.30 owed to



County by ARWNC. ARWNC will pay this amount to County by paying to County an additional \$5 per ton on Comingled Container and materials, pursuant to this Agreement, or a minimum rate of \$400.00 per month, whichever is greater, until County is repaid the \$4,293.30 it is owed in addition to all new payments.

<b>Average Market Value</b>			<b>May-17</b>
<b>MATERIAL</b>	<b>Percentage<sup>1</sup></b>	<b>Waste News Pricing Type<sup>2</sup></b>	<b>\$/ton</b>
<b>Aluminum</b>	<b>3.65%</b>	Aluminum Cans (loose price)	590.00
<b>Steel</b>	<b>10.68%</b>	Steel Cans (loose price)	17.50
<b>HDPE Colored</b>	<b>8.40%</b>	Colored HDPE (baled)	355.00
<b>HDPE Natural</b>	<b>4.20%</b>	Natural HDPE (baled)	635.00
<b>PET</b>	<b>12.40%</b>	PET (baled)	275.00
<b>Mixed Plastics</b>	<b>8.07%</b>	All containers 1-7s	-7.00
<b>Mixed Glass</b>	<b>48.20%</b>	3 Sort Glass	-10.00
<b>Residuals</b>	<b>4.40%</b>	All non recyclable material	-49.00
	<b>100.00%</b>	<b>Average Monthly Market Value</b>	<b>\$106.45</b>

The percentages above are what we consider to be the makeup of the County's Commingle Stream. Additional tests can be done at the request of either party to identify changes in the waste stream.