

STATE OF NORTH CAROLINA

RUTHERFORD COUNTY

RECYCLING & DISPOSAL CONTRACT

This Scrap Tire Recycling and Disposal Contract (“Contract”) made and entered on this 1st. day of October 2022 (“Anniversary Date”), by and between Rutherford County a political subdivision of the State of North Carolina, hereafter referred to as “County” and U.S. Tire Recycling at 6322 Poplar Tent Road Concord, North Carolina 28027, herein after referred to as the “Contractor”.

WITNESSETH

WHEREAS, the County chooses to recycle its scrap tires when possible and has determined that this service can best be provided through a service contract with a qualified firm: and,

WHEREAS, the Contractor is qualified to provide collection, transportation recycling and disposal of tires and other scrap rubber and has the necessary equipment, personnel, facilities, expertise, financial resources and management skills to provide a high level of service.

1) Scrap Tire Volume Generated

It is unknown how many scrap tires that the County receives at its landfill annually. However, the Contractor understands that the County does not control the scrap tire waste stream and that there is no guaranteed volume that will be received during the term of this Contract.

2) Recycling and Disposal Services

a) Contractor Responsibilities

The Contractor agrees to stage a van trailer at the County’s designated sites and to transport, process, recycle or dispose of all scrap tires loaded in said trailer. Furthermore, the Contractor shall be responsible for hauling, processing, recycling and/or disposing of all scrap tires in accordance with all applicable state, federal, and local environmental and safety laws, regulations, permits, ordinances, and standards.

b) County Responsibilities

The County shall make available ample space in a manner acceptable to Contractor to provide for efficient handling of containers and materials contained therein.

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3) Term

This Contract shall be in full force and effect for a period of five (5) years from the date of execution, unless terminated earlier per Section 8 (b) with two (2) automatically extended annual renewal terms at the end of each successive term unless either party notifies the other party in writing 30 days prior to the expiration of the term of his desire to terminate this contract, in which case the term shall end as scheduled.

4) Time of Performance

U. S. Tire Recycling shall load and remove each loaded container from the Rutherford County Landfill and other county designated sites seven (7) days from receipt of notice from Rutherford County that the tires are ready for removal, with the exception of weekends and nationally recognized holidays. U. S. Tire Recycling reserves the right to reject or apply a special handling sur-charge fee any and all tires that appear to have been burned, buried or shredded prior to transfer to their facility.

5) Invoices

The Contractor shall invoice the County for scrap tires collected and transported since the previous invoice. Each invoice shall be according to the fees per Section 6. Each invoice shall include a dated listing of the loads collected and transported.

6) Collection Disposal Fees

The County shall pay Contractor, for the work described in Section 2, including processing and transportation of all passenger and truck tires, the sum of \$104.32 per ton, with a ten (10) ton minimum per load requirement. Freight will be charged at \$440.00 per load in addition to a \$25.00 Environmental Fee charge for each trailer pulled from the county collection site. Off road tires are charged at the same rate of \$104.32 per ton plus an additional \$0.18 per pound with no minimum tonnage. A Consumer Price Index adjustment will be calculated in March of each year and will be applied to the contract price each year on July 1. Super Single Truck tires are charged at the same rate of \$104.32 per ton plus an additional \$0.05 per pound with no minimum tonnage. U. S. Tire Recycling reserves the right to reject or apply a special handling sur-charge fee for any and all tires that appear to have been burned, buried or shredded prior to transfer to their facility.

The calculation of this charge is on a base price of diesel being \$2.50 to \$2.74 per gallon. Total round-trip miles of 176 for this transaction are multiplied times the “price adjustment per mile” for the average fuel cost at the time of service.

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The average price is verified weekly from the U.S. Energy Information Administration and can be accessed by internet at <http://www.eia.gov/petroleum/gasdiesel/> or by phone at 202-586-6966. The price adjustments per mile are listed below:

Price per Gallon	Price Adjustment per mile
\$2.50 - \$2.74	+0.30
\$2.75 - \$2.99	+0.35
\$3.00 - \$3.24	+0.40
\$3.25 - \$3.49	+0.45
\$3.50 - \$3.74	+0.50
\$3.75 - \$3.99	+0.55
\$4.00 - \$4.24	+0.60
\$4.25 - \$4.49	+0.65
\$4.50 - \$4.74	+0.70
\$4.75 - \$4.99	+0.75
\$5.00 - \$5.24	+0.80

Formula follows with the price of fuel

In the event of a discrepancy between Contractor and County records, such invoice shall be paid less the amount of the discrepancy. A notice of discrepancy with supporting documentation, shall be promptly sent to Contractor and the two parties shall reconcile records and invoices at the earliest possible date. Such reconciliation shall be reflected on the next invoice from Contractor.

7) Taxes, etc. clause

Should the local, state, or federal government impose a franchise fee or tax, Contractor will pass this fee on to the county, or Contractor and County will agree to cancel the contract. Should such termination or recession occur before performance of the activity herein provided is begun, all parties hereto shall be released from the provisions hereof without liability or obligation. Should such termination or recession occur after such performance is begun, the liability and obligations of the parties shall be limited to settlement of all proper claims based upon performance prior to termination or recession of this contract. In no case shall the Company be liable or responsible for any other cost of obtaining, preparing, maintaining, or operating the facilities for deposit of said tires nor shall Company be liable or responsible for any of the cost of obtaining, preparing, maintaining or operating the location for assembly, collection, and removal of said tires.

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8) Termination

This Contract may be terminated according to either of the following provisions:

a) Default: If either party hereto deems the other party hereto to be in default of any provision hereof, the claiming party shall provide notice in writing to the defaulting party of said default. If said defaulting party fails to correct the default within twenty (20) working days from the date of notice, the other party may terminate this Contract immediately. In case of such termination the party terminating this contract shall forthwith give the other party written notice of such termination.

b) Mutual Agreement: This Contract may be terminated by mutual agreement of the parties hereto, at any time.

9) Force Majeure

a) Suspension of Performance: The performance of its duties and obligations hereunder by either party shall be suspended to the extent that such performance, in whole or in part, shall be rendered impracticable by Force Majeure.

b) Definition: Force Majeure - For purposes herein, Force Majeure shall be termed as any event or occurrence of any nature or kind in respect to the duties herein that is beyond the control of and occurs without the negligence of the party invoking the same, including without limitation: acts of God or of a public enemy, acts of government or governmental authority in either its sovereign or contractual capacity, wars, riots, fires, floods, explosions, epidemics, boycotts, excessive fuel prices, blackouts, strikes, labor disputes, equipment breakdowns, and any transportation problem directly affecting or inhibiting pickups.

c) Notice: In the event that either party hereto determines that a Force majeure has occurred, or its is likely to occur, said party shall promptly furnish to the other party notice in writing of such Force Majeure, setting forth the nature of such problem, the anticipated effect thereof on said party's performance hereunder and when normal performance may be expected. In the event of excessive fuel prices of over the road diesel, Contractor and City will negotiate satisfactory terms for both parties involved.

d) No Unreasonable Delay: Any party hereto whose performance hereunder is delayed or prevented by a factor of Force Majeure, and said party subsequently invokes

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Force Majeure, shall take all reasonable steps to resume, with the least possible delay, compliance with its obligations hereunder, provided that said party shall not be required to settle any strike or labor dispute on terms not acceptable to it.

10) Representations

10.1) The Contractor represents, warrants and covenants to County that:

a) It is an entity duly organized, validly existing and in good standing under the laws of the State of North Carolina and is duly and validly qualified to conduct business and is in good standing in all jurisdictions in which such qualification is necessary.

b) The execution, delivery and performance of this Contract have been duly and validly authorized by all corporate action required to be taken and will not result in a breach of, constitute a Default under, or violate the terms of Contractor's organizational agreement, or any rule, regulation, judgment, decree, order, or agreement to which Contractor is a party or by which it may be bound.

c) Contractor shall comply with all environmental and other applicable governmental permits, guidelines and actions during the term hereof, and has paid and will pay all valid charges and assessments in connection therewith. Contractor hereby indemnifies City against any punitive or other action resulting from or associated with Contractor's failure to do so.

10.2) County represents, warrants and covenants to Contractor that:

a) The execution, delivery and performance of this Contract by County have been duly and validly authorized by all corporate action required to be taken and will not result in a breach of, constitute a Default under, or violate the terms of decree, order, contract or agreement to which County is a party or by which it may be bound. Concurrently herewith, County tenders unto Contractor a certified copy of the resolution of its Board of Commissioners authorizing execution and delivery of this Contract.

11) Insurance

Contractor does hereby attest that it has general liability insurance coverage (which covers all its operations including but not limited to motor vehicle transportation) in the minimum amount of one million (\$1,000,000.00) dollars. A "Certificate of Insurance" affirming said coverage is attached hereto as an integral part of this Contract. County shall be listed as an additional insured under said Certificate of Insurance and a copy of said endorsement shall be provided to County within ten (10) days signing of Contract. Contractor shall at all times during the existence of this contract maintain

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liability insurance coverage in the amount not less than one million (\$1,000,000.00) dollars.

12) Hold Harmless

The Contractor does hereby indemnify and hold the County free and harmless from liability on account of injury or damage to persons or property which may result from the negligent conduct or operations arising out of the business of collection, removal and transportation of tires in accordance with the terms of this contract; and, in the event that any suit or proceeding is brought against the County at law or in equity, either independently or jointly with the Contractor, or either of them, on account of such negligent acts, the Contractor will defend the County in any such suit or proceeding at the cost of the Contractor, and in the event of a final judgment of decree being brought against either of them, the Contractor will pay such judgment or comply with such decree with all costs and expenses of whatsoever nature and hold the County harmless therefrom.

13) Dispute

Any matter that arises hereunder that cannot be settled in negotiations between the parties hereto shall be handled according to the laws, legal processes and courts of the State of North Carolina. Any final decision there from shall be valid and binding upon the parties hereto and enforceable at law. Venue for any action arising out of this contract shall be the general court of justice, **County of Rutherford, NC**

14) Title

Title to any and all tires collected by Contractor shall pass to Contractor upon pickup from County and becomes the sole and complete property and responsibility of Contractor at the moment trailer containing such tires becomes attached through hitch to truck owned or used by Contractor to collect any such items in compliance with this Agreement.

15) Indemnification

Each party hereto agrees to indemnify and save harmless the other party, its officers, directors, sub-contractors and employees from any loss, claim, liability, penalty, fine, forfeiture, demand, cause of action, damages, suit and costs and expenses incidental thereto (including cost of defense, settlement and reasonable attorney's fees including any of the preceding relating to liability under the Environmental Laws or to investigation and cleanup under the Environmental Laws) (hereinafter "Indemnified Costs"), arising out of or in connection with the negligent performance of this Agreement by said party; provided, however, that each party shall not indemnify the other party or any of its

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officers or employees from any Indemnified Costs to the extent caused by or resulting from any negligent or willful act or omission of the other party or any of its officers, employees, agents or contractors, or any breach by the other party of any Agreement, representation or warranty contained in this Agreement. The indemnity obligation of each party shall survive the expiration or termination of this Agreement, for any reason whatsoever, subject to any applicable statute of limitation.

16) Miscellaneous

16.1) Contractor agrees to be an equal opportunity employer and not discriminate based on race, religion, or sex.

16.2) This Contract may be changed only by agreement in writing and signed by both parties hereto.

16.3) This Contract embodies the entire contract between the parties and supersedes any prior agreements and understanding, oral and/or written.

16.4) This Contract may be executed simultaneously in two or more counterparts, each of which shall be deemed an original.

16.5) This Contract shall be governed by the laws of the State of North Carolina.

16.6) The sections and heading in the Contract are for reference purposes only and shall not affect in any way the meaning of this Contract or any part herein.

16.7) In the event that any provision of this Contract shall be determined to be invalid, this Contract thereupon shall be deemed to have been amended to eliminate such provisions so the remaining provisions of this Contract shall be valid and binding.

16.8) All notices and other formal communications hereunder shall be made in writing and given or delivered by certified United States mail to the principal and at the address designated below. Acceptance thereof shall be deemed to constitute receipt.

Contractor

U.S. Tire Recycling
6322 Poplar Tent Road
Concord, North Carolina 28027

COUNTY

Rutherford County
289 N. Main Street
Rutherford, NC 28139

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16.9) Any waiver made hereto shall be deemed to be limited in application to the matters explicitly referred to therein and shall neither be construed as, nor entitle the other party to a waiver by said party of any similar matter.

16.10) This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, but neither this Contract nor any of the rights, interests, or obligations hereunder shall be assigned by either party hereto without the prior written consent of the other party hereto, which consent shall not be unreasonable withheld or delayed.

IN WITNESS WHEREOF, the parties hereto have set their respective hands and seals as of the date first above written.

RUTHERFORD COUNTY

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RUTHERFORD COUNTY

BY _____

ATTEST

U.S. TIRE RECYCLING

BY _____

ATTEST
