

**STATE OF NORTH CAROLINA
COUNTY OF CRAVEN**

SOLID WASTE FRANCHISE AGREEMENT

THIS AGREEMENT made and entered into this 7th day of June, 2006, by and between **CRAVEN COUNTY**, a body politic of the State of North Carolina (hereinafter referred to as "County"), and **ERNEST BERRY SANITATION**, a corporation with its principal office and place of business in New Bern, North Carolina (hereinafter referred to as "The Contractor");

ARTICLE 1 AUTHORITY

Without limitation, the following portions of the Constitution and General Statutes of North Carolina are recited herein as authority for this Agreement:

1.

North Carolina Constitution, Article V §2(7) - Contracts

"The General Assembly may enact laws whereby the State; any county, city or town, and any other public corporation may contract with and appropriate money to any person, association, or corporation for the accomplishment of public purposes only."

2.

N. C. G. S. §153A-11 - Corporate Powers

"The inhabitants of each county are a body politic and corporate under the name specified in the act creating the county. Under that name they ... may contract and be contracted with... and have and may exercise in conformity with the law of this State county powers, rights, duties, functions, privileges, and immunities of every name and nature."

3.

N.C.G.S. §153A-449 - Contracts with private entities

"A county may contract with and appropriate money to any person, association, or corporation, in order to carry out any public purpose that the county is authorized by law to engage in."

4.

N.C.G.S. §130A-309.03 - Findings, Purposes

(a) The General Assembly finds that:

(1) Inefficient and improper methods of managing solid waste create hazards to public health, cause pollution of air and water resources, constitute a waste of natural resources, have an adverse effect on land values, and create public nuisances...

(3) The continuing technological progress and improvements in methods of manufacture, packaging, and marketing of consumer products have resulted in an ever-mounting increase of the mass of material discarded by the purchasers of the products...

(4) The economic growth and population growth of our State have required increased industrial production together with related commercial and agricultural operations to meet our needs, which have resulted in a rising tide of unwanted and discarded materials.

(5) The failure or inability to economically recover material and energy resources from solid waste results in the unnecessary waste and depletion of our natural resources; such that, maximum resource recovery from solid waste and maximum recycling and reuse of the resources must be considered goals of the State.

(6) Certain solid waste, due to its quantity, concentration, or physical, chemical, biological or infectious characteristics is exceptionally hazardous to human health, safety and to the environment, such that exceptional attention to the transportation, disposal, storage and treatment of the waste is necessary to protect human health, safety, and welfare and to protect the environment...

(b) It is the purpose of this Part to:

(1) Regulate in the most economically feasible, cost-effective and environmentally safe manner the storage, collection, transport, separation, processing, recycling and disposal of solid waste in order to protect the public health, safety and welfare, enhance the environment for the people of this State and recover resources which have the potential for further usefulness...

(3) Require counties and municipalities to adequately plan and provide efficient, environmentally acceptable solid waste management programs and require counties to plan for proper hazardous waste management...

(7) Promote the reduction, recycling, reuse, or treatment of solid waste, specifically including hazardous waste, in lieu of disposal of the waste...

(9) Encourage counties and municipalities to utilize all means reasonably available to promote efficient and proper methods of managing solid waste and to promote the economical recovery of material and energy resources from solid waste, including contracting with persons to provide or operate resource recovery services or facilities on behalf of the county or municipality...

(10) Promote the education of the general public and the training of solid waste professionals to reduce the production of solid waste, to ensure proper disposal of solid waste and

to encourage recycling...

(14) Require counties to develop and implement recycling programs so that valuable materials may be returned to productive use, energy and natural resources conserved and the useful life of solid waste management facilities extended...

(16) Require counties, municipalities and State agencies to determine the full cost of providing storage, collection, transport, separation, processing, recycling, and disposal of solid waste in an environmentally safe manner, and to encourage counties, municipalities, and State agencies to contact with private persons for any or all the services in order to assure that the services are provided in the most cost-effective manner."

5.

N.C.G.S. §153A-136 - Regulation of Solid Wastes

(a) A county may by ordinance regulate the storage, collection, transportation, use, disposal, and other disposition of solid wastes. Such an ordinance may:

(1) Regulate the activities of persons, firms, and corporations, both public and private...

(3) Grant a franchise to one or more persons for the exclusive right to commercially collect or dispose of solid wastes within all or a defined portion of the county and prohibit any other person from commercially collecting or disposing of solid wastes in that area. The Board of Commissioners may set the terms of any franchise, except that no franchise may be granted for a period exceeding seven years, nor may any franchise by its terms impair the authority of the Board of Commissioners to regulate fees as authorized by this section.

(4) Regulate the fees, if any, that may be charged by licensed or franchised persons for collecting or disposing of solid wastes.

(5) Require the source separation of materials from solid waste prior to collection of the solid waste for disposal.

(6) Require participation in a recycling program which has been approved by the Board of Commissioners.

(7) Include any other proper matter.

(b) "Any ordinance adopted pursuant to this section shall be consistent with and supplementary to any rules adopted by the Commission for Health Services or the Department of Environment, Health and Natural Resources."

6.

N.C.G.S. &153A-1 22 - Territorial jurisdiction of county ordinances

"Except as otherwise provided in this Article, the Board of Commissioners may make any ordinance adopted pursuant to this Article applicable to any part of the county not within a city. In addition, the governing board of a city may by resolution permit a county ordinance adopted pursuant to this Article to be applicable within the city. The city may by resolution withdraw its permission to such an ordinance. If it does so, the city shall give written notice to the county of its withdrawal of permission; 30 days after the day the county receives notice the county ordinance ceases to be applicable within the city."

ARTICLE II
RECITALS

The following recitals are herewith set forth as statements of existing facts and are hereby incorporated as substantive parts of this Agreement:

1.

The Craven County Board of Commissioners (hereinafter "The Board") has determined that it is in the best interests of the citizens of Craven County to institute a county-wide solid waste collection program.

2.

Certain Municipalities within Craven County have expressed their agreement in permitting this agreement to be applicable within their boundaries in accordance with North Carolina General Statute § 153A-122 by approving and executing Interlocal Solid Waste Agreements.

3.

The parties have reached an agreement with respect to the furnishing of solid waste collection services for Craven County.

4.

The board has approved fee schedules as submitted by each franchised hauler.

5.

The board has passed an ordinance allowing it to enter into exclusive franchise agreements for the collection of solid waste in Craven County.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the legal existence and sufficiency of which the parties admit, the County and the Contractor enter into this franchise agreement:

ARTICLE III
Definitions

The following terms used in this agreement have the meanings indicated in this section unless the context of the agreement clearly requires otherwise:

1. **"Board"** – means the Board of Commissioners of Craven County.
2. **"CRSWMA"** – means the Coastal Regional Solid Waste Management Authority.
3. **"Cart/Container"** – means a receptacle for the storage and collection of solid waste pursuant to this ordinance. Additionally, the container may be used to store Solid Waste Collection Bags and may hold 33, 64 and 90 gallons by volume or 50, 100 and 150 pounds by weight respectively.
4. **"Collection"** – means the act of removing solid waste or recyclable solid waste materials from a point of generation to a central storage point or to a disposal site and from a central storage point to a disposal site.
5. **"Convenience Centers"** – means an area designated by Craven County and staffed by employees for receipt of Solid Waste and specified recyclable solid waste materials.
6. **"Coordinator"** – means and refers to the Solid Waste Disposal Supervisor or other person designated by the Board for the coordination of the collection and disposal of solid waste and recyclable solid waste materials within Craven County.
7. **"County"** – means and refers to Craven County, North Carolina, a body politic and corporate of the State of North Carolina.
8. **"Curbside"** – means the location adjacent to but no more than 10 feet from the edge of a roadway providing access to a residence or hand commercial establishment.
9. **"Customer"** – means the beneficiary of curbside collection services provided by a franchisee including, but not limited to, residences and hand commercial establishments.
10. **"Director"** – means the Assistant County Manager or other person designated by the Board.
11. **"Dumpster"** – means stationary solid waste containers which require mechanical pick-up by customized loading vehicles, including roll-off containers, which involve the collection of industrial and/or construction debris.
12. **"Effective Date"** – means and refers to July 1, 2006.
13. **"Extra Services"** – means solid waste collection services rendered in addition to once-

per-week curbside collection. These services may include any service relating to the collection of solid waste, but not recyclable solid waste which may be agreed upon between the franchisee and any customer authorized to receive such solid waste collection services from the franchisee pursuant to this franchise agreement.

14. **"DELETE"**

15. **"Flat Fee Customer"** – means any Craven County resident who wishes to contract solid waste services, rather than using solid waste disposal stickers, with his or her designated franchisee for a fee.

16. **"Franchise Area"** – means specified areas of the County granted to Franchisees for the collection of solid waste or recyclable solid waste materials pursuant to Article IV of the Ordinance.

17. **"Franchisee"** – means a person who has been granted a franchise for the collection of solid waste or recyclable solid waste materials pursuant to Article IV of the Ordinance.

18. **"Hand Commercial Establishment"** – means any commercial entity disposing of less than three (3) cubic yards of solid waste per week or receiving solid waste collection service under this franchise, but not dumpster service, or any multifamily residential building not receiving dumpster service.

19. **"Hazardous Waste"** – means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical or infectious characteristics may:

a. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitative reversible illness; or

b. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

20. **"Industrial Solid Waste"** – means solid waste generated by industrial processes and manufacturing.

21. **"Landfill"** – means and refers to the Coastal Regional Solid Waste Landfill, located at Tuscarora, Craven County, North Carolina.

22. **"Ordinance"** – means the Craven County Ordinance relating to the franchising of private solid waste and recyclable solid waste material collectors and the collection and disposal of solid waste and recyclable solid waste materials within Craven County.

23. **"Person"** – means an individual, corporation, company, association, partnership, unit of local government, State agency, federal agency or other legal entity.

24. **"Private Drive"** – means a vehicular access serving one single family residence.
25. **"Recyclable Solid Waste Material"** – means those materials which are capable of being recycled and which would otherwise be processed or disposed of as solid waste. These items include, but are not necessarily limited to, newspaper (with inserts), aluminum cans and aluminum foil products, PETE and HDPE (#1 & #2) plastic containers including natural and pigmented containers such as blue, white and red colored plastics, clear, green and brown glass containers, corrugated cardboard (OCC) steel food cans, steel aerosol cans and steel paint cans.
26. **"Recycling"** – means any process by which solid waste or materials which would otherwise become solid waste are collected, separated or processed, and reused or returned to use in the form of raw materials or products.
27. **"Recycling Container"** – means a container provided by Craven County or its designee for collection of specified recyclable solid waste materials or any container used by a residence or hand commercial establishment and clearly designated to contain such specified recyclable solid waste materials.
28. **"Residence"** – means any single family dwelling, household or unit.
29. **"Roadway"** – means a common vehicular means of access to three (3) or more customers connected to a state or municipal road and which is reasonably accessible by solid waste collection vehicles, taking into consideration roadway surface conditions and turnaround space for the vehicles.
30. **"Solid Waste"** – means all material customarily referred to as garbage or refuse and other discarded material, including solid, semi-solid materials or materials resulting from community activities, but does not include hazardous waste or solid or dissolved materials in domestic sewage or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act as amended (86 STAT. 880) or source, special nuclear or by-product materials as defined by the Atomic Energy Act of 1954, as amended (68 STAT. 923).
31. **"Solid Waste Collection Bag"** – means a bag designated for collection of solid waste pursuant to this ordinance with a capacity not to exceed 33 gallons by volume and 50 pounds by weight.
32. **"Solid Waste Collection Sticker"** – means a perforated adhesive sticker authorized for use by Craven County to be placed on solid waste collection bags or containers indicating that it is permissible for such bag or container, with a sticker attached, to be collected by a franchisee or received at a staffed convenience center for disposal. One (1), two (2) and three (3) stickers are required for 33, 64 and 90 gallons by volume and up to 50, 100 and 150 pounds by weight respectively.
33. **"Solid Waste Franchise Area Map"** – means a map maintained by Craven County

and indicating specified areas within Craven County for collection of solid waste or recyclable solid waste by franchisees.

ARTICLE IV
EFFECT

By the power vested in the County to grant exclusive franchises, this agreement hereby grants the exclusive right to the collection of solid waste materials (other than recyclable materials) at all residences and hand commercial establishments (herein "Customers") in the designated area of Craven County hereinafter referred to as Franchise Areas E, as shown on the Craven County Solid Waste Franchise Area Map which is by reference incorporated herein.

ARTICLE V
TERMS OF THE FRANCHISE

The franchise granted under the provisions of this Agreement shall exist for an initial period from July 1, 2006 until June 30, 2009 unless the franchisee sooner voluntarily surrenders the grant of the franchise, or unless the franchise is suspended, revoked, terminated, or otherwise altered for cause, or renewed as set forth herein. Upon the termination of the second year of this franchise, the board will conduct a review of the franchisee's performance to determine the desirability of renewal for a three (3) year period beyond the original three (3) years. Provided, however, in no event is a franchise period to exceed ten (10) years.

- ✓ Just cause for the termination of this contract shall be a material breach of the terms of the ordinance or of the franchise as set out herein.

ARTICLE VII
INSURANCE

The contractor shall carry and keep current workmen's compensation and unemployment insurance as required by the State of North Carolina. General liability and automobile liability coverage will be maintained with not less than the following limits:

Workers Compensation	Statutory Limits
Bodily Injury Liability	\$100,000 each person
	\$300,000 each occurrence
Property Damage Liability	\$50,000 each occurrence
General Liability	\$500,000 each occurrence

Contractor agrees to furnish proof of existence of such coverage to County at least ten (10) days prior to the effective date of this franchise and from time to time thereafter as County reasonably may request. County shall be designated as an insured on all insurance policies providing the required Overages for purposes of this contract. Each such policy shall contain a clause that the insurer will not cancel or modify the insurance coverage without first giving

County a minimum of ten (10) days advance written notice.

ARTICLE VII
PERFORMANCE

The Contractor shall perform its obligations in a fair and efficient manner. If the County reasonably deems that the Contractor is not performing as required under the terms of this franchise or the ordinance, then the County shall notify the Contractor in writing of the deficiencies. In the event that the Contractor fails to remedy the deficiencies within thirty (30) days after receipt of such notice of deficiencies, then the County may terminate this contract. The Contractor shall be responsible for damages as provided by law to include reasonable attorneys fees incurred in enforcing this agreement.

Deficient performance by the Contractor shall not be deemed to constitute grounds for termination when it is the result of conditions not reasonably within the control of the Contractor including, but not limited to, civil disorder, natural disasters, or inclement weather so severe that safe travel is made impossible.

Contractor shall collect solid waste according to the method prescribed by the Director, the Coordinator and the Ordinance.

ARTICLE VIII
COLLECTION, TRANSPORTATION AND
RECORD-KEEPING DUTIES OF
THE CONTRACTOR

1. **Collection** – The Contractor shall provide collection of solid waste for all residential and hand commercial establishments on a weekly basis in accordance with the ordinance. Collection shall not begin prior to 7:00 a.m.
2. **Transportation** – All materials hauled by the Contractor shall be so contained that leaking, spilling or blowing contents from the vehicle or container is prevented. In the event of any spillage, the Contractor shall immediately clean up the litter.
3. **Record-Keeping** – The Contractor shall maintain records on the number of solid waste collection stickers collected from customers within the franchise area. Those records shall be furnished to the County by the 15th of each month for the preceding month. Monthly and year-to-date information shall also be included on each report.

ARTICLE IX
CONDITIONS OF FRANCHISE

This franchise is subject to the following terms and conditions:

1. All vehicles used for collection shall be cleaned regularly in accordance with all local,

state, and federal laws and regulations.

2. In the event of equipment breakdown the Contractor must have an alternate method of pickup arranged in order that the service shall not be interrupted.

3. The Contractor shall work with the Coordinator and shall determine and establish schedules and routes within each franchised area based on need and economic factors. Each customer shall receive one pickup per week on a regularly scheduled basis, unless otherwise approved by the Director. The franchised collector shall base his collection upon the method established by the Coordinator and the Director.

4. Each Contractor shall furnish to the Coordinator such records related to the operation of his franchise with accurate and current information as requested. Contractor shall not be required to furnish records of a proprietary nature, i.e., profit and loss or balance sheet financial information.

5. Within two weeks following the granting of this franchise the Contractor shall execute the Franchise Agreement in duplicate, one copy to be retained by the franchised collector and an original to be returned to the Director. Unless said Agreement is returned within two weeks after the grant of this franchise, such franchise may be terminated by the Board, unless such time is extended for cause.

6. Solid waste shall be transported in the collection vehicle directly to the CRSWMA landfill or to a disposal area designated by the Director or the County.

7. The Contractor shall place the annual permit as required by CRSWMA pursuant to the ordinance for the satisfactory passage of inspection in a proper place on the vehicle to be determined by CRSWMA.

8. In the event the Director finds that the Contractor has failed to comply with the terms and conditions of this franchise, the Director shall attempt an informal resolution of this problem with the Contractor. If the problem is not resolved the Director will advise the Contractor and may also advise the Board in writing as to his findings. The Director may then make recommendations as to what action he feels should be taken by the Board.

9. In the event the Contractor is aggrieved by the findings or recommendations of the Director, the Contractor, upon request, shall be given a hearing by a committee of three (3) members having the following composition: One representative of Craven County, as appointed by the Director, one member appointed by the Contractor and a third member agreed to by the other two designees. At the hearing the Contractor shall have the opportunity to show cause as to why the findings of the Director are incorrect, or why the action recommended by the Director should not be taken by the Board. The Board must give consideration to the recommendation of the committee but is not bound by it.

10. The Contractor shall assign, and solely shall be responsible for the supervision of,

qualified personnel to manage and operate the collection system within its franchised area. Each employee shall carry a valid operator's license for the type of vehicle which he or she is required to operate. The Contractor shall provide operation and safety training for all operational personnel. The County shall have no responsibility whatsoever for the acts or omissions of the Contractor's personnel.

11. The Contractor agrees that in the performance of this contract the Contractor will not discriminate against any employee or applicant because of race, color, creed, national origin, sex, age, ancestry or sexual preference.

12. The Contractor shall be responsible for obtaining all federal, state and local permits or licenses required for the operation of its business in the County and in the State of North Carolina including, but not limited to, permits or licenses required under any federal, state or local law, regulation, standard, ordinance or decree concerning the collection, transport, manifesting, storage, treatment, recycling and/or disposal of solid, toxic or hazardous materials as and to the extent applicable to the business and activities of the Contractor. The Contractor shall obtain all such permits and licenses prior to the commencement of the initial term hereof.

13. The Contractor shall abide by the terms and conditions of the ordinance.

ARTICLE X COMPENSATION FOR SERVICES

Solid Waste Collection Stickers - For each bag or cart of solid waste collected by the franchisee, the appropriate number of stickers shall be attached by the customer before collection. Franchisee shall remove the perforated portion of said sticker from each bag franchisee collects and shall turn each perforated portion of each sticker in to the County Solid Waste Coordinator. For each perforated portion of sticker returned to the County, the County shall pay said franchisee, within seven (7) business days of receipt of the sticker, funds in amounts as determined by the schedule of rates, fees, etc. as established by the Board of Commissioners of Craven County. It is understood and agreed that the initial fee paid shall be \$2.10 per sticker. This shall represent the full and total compensation for these services, with the exception of any payment received from customers for extra services rendered.

Of the \$2.10 amount per sticker, \$.85 is paid to the franchisee for the disposal of up to 50 pounds of solid waste at the CRSWMA landfill at a current rate of \$34.00 per ton. In the event of an increase in this disposal rate, the appropriate adjustment will be made within 30 days of the increase in rate. If the disposal rate decreases, the current rate of \$34.00 per ton will continue to be used as a basis for reimbursement for disposal. The formula for this calculation is as follows:

Disposal Rate divided by 2,000 pounds times 50 pounds

Example: $\frac{\$34.00}{2,000 \text{ lbs/ton}} = \$.017 \text{ /pound} \times 50 \text{ pounds} = \$.85$

The additional \$1.25 amount per sticker is for collection. This amount will be adjusted by one hundred percent (100%) of the change in the Consumer Price Index (CPI) using the transportation index as measured by the Bureau of Labor Statistics, Southeast Regional Office (All Urban Consumers - 50,000 - 450,000 population), United States Department of Labor. Provided, however, the percentage increase or decrease per annum shall not exceed seven percent (7%). Consideration will be given for the period from July 1, 2006 through December 31, 2006 (effective date for change July 1, 2007), then from January 1, 2007 through December 31, 2007, and annually thereafter for the remainder of the contract.

In addition to the compensation hereinabove mentioned, the franchisee shall be entitled to such sums as he may receive from customers from the lease or purchase of a cart for the storage of solid waste collection bags.

ARTICLE XI **INDEMNIFICATION**

Contractor shall indemnify and hold harmless the County and its officers, agents, servants and employees from and against any and all loss, cost, damage and expense of any kind, including attorney fees and disbursements, incurred by or threatened against Contractor arising out of, in connection with or attributable to (a) the acts or omissions of Contractor or any of its agents, employees, servants, independent contractors or subcontractors except to the extent any such act or omission shall be the result of willful malfeasance or negligence on the part of the County, or (b) the failure of Contractor to perform its duties and obligations under this contract or otherwise to comply with the terms hereof.

ARTICLE XII **MISCELLANEOUS PROVISIONS**

1. This contract shall be binding upon the successors, assigns, agents, officials and employees of the parties and constitute the entire understanding of the parties. This contract may be assigned in accordance with the provisions of the Ordinance.

2. Without in any way limiting or diminishing the specific duties and responsibilities of the Contractor set forth above. Contractor at all times during the initial and any extension term of this contract shall fully comply with all federal, state and local laws, rules, regulations, orders and requirements relating to health, safety and the environment, including without limitation those relating to ambient air, surface and ground water, surface and sub-surface soils and other natural resources and those relating to the manufacture, processing, distribution, use, treatment, storage, handling, transportation, release, disposal or importing and exporting of hazardous substances, solid waste, hazardous waste, pollutants, contaminants, toxic substances, asbestos, oil, other petroleum, chemical, biological or radioactive substances.

3. The Contractor will take all safety, preventative and remedial measures required by any and all directives from the North Carolina Department of Environment, Health and Natural Resources, the United States Environmental Protection Agency, the Occupational Safety and Health Administration, and any other federal, state or local agency having jurisdiction over Contractor or its activities.

4. This contract shall be modified, amended or changed only pursuant to a writing signed by each of the parties hereto.

5. The authority for the granting of this franchise is provided in the Craven County Ordinance Relating to the Franchising of Private Solid Waste and Recyclable Materials Collectors and the Collection and Disposal of Solid Waste and Recyclable Materials within Craven County, and its terms and conditions are hereby incorporated by reference herein.

ARTICLE XIII **INTEGRATION**

This contract contains the entire agreement of the parties and no representation, inducements, or other covenant between the parties not included herein shall be of any force and effect.

ARTICLE XIV **CHOICE OF LAW**

This agreement shall be governed by the laws of the State of North Carolina.

ARTICLE XV **INDEPENDENT CONTRACTOR**

The parties hereto expressly acknowledge and agree that Contractor is an independent contractor and that nothing contained herein is intended or shall be construed as creating between Contractor and County an employer/employee, joint venture or principal/agent relationship, or a partnership. Under no circumstances shall the County be required to withhold on behalf of any employee of Contractor any sums for income tax, unemployment insurance, social security or any other withholding pursuant to any law or the requirement of any governmental body, or make available to any employee of Contractor any of the benefits afforded to employees of the County. All of such foregoing payments, withholdings and benefits are the sole and absolute responsibility of the Contractor.

IN TESTIMONY WHEREOF said parties have hereunto set their hands and seals the day and year first above written.

CONTRACTOR

By: Ernest B. Berry

ATTEST:

Budjet Las

CRAVEN COUNTY

By: Reynolds

ATTEST:

Sue-Loe M. Boya

CLERK TO THE BOARD