



MEMORANDUM

To: Mayor and City Councilors

From: Rich Olson, City Manager

Date: April 24, 2017

Re: Consideration – Agreement with Republic Services of North Carolina, LLC for Leachate Disposal

BACKGROUND:

On November 28, 1995, the City executed an agreement (attached) for the disposal at the City's wastewater treatment plant of leachate collected at Republic Service's landfill in Bertie County, North Carolina. Agreement conditions included leachate quality, fee schedule, testing schedule, and termination. This agreement was subsequently amended in 2001.

ANALYSIS:

Republic Services was required to submit semi-annual testing for pollutants of concern as listed in the agreement. Review of data submitted between January 2014 and January 2017 indicates the leachate exceeded the pollutant limits specified in the agreement multiple times. Attachment B is a table of the leachate data.

Of particular concern is the exceptionally high strength of TKN (Total Kjeldahl Nitrogen). TKN is the sum of the organic nitrogen compounds and ammonia-nitrogen in the wastewater. During wastewater treatment, most of the TKN will be converted to ammonia-nitrogen. Ammonia-nitrogen exerts a strong oxygen demand during biological treatment and at high concentrations inhibits wastewater treatment organisms. Additionally, the City's NPDES permit to discharge treated wastewater to the river limits ammonia-nitrogen to 4 mg/l monthly average.

Typical domestic wastewater strength for TKN is 40 to 60 mg/l. 2016 and 2017 TKN data indicates a leachate strength average of 1750 mg/l. On a typical workday, approximately 36,000 gallons of leachate is transported to the wastewater treatment plant. The daily TKN load from Republic Waste is approximately equivalent to the TKN load of 6300 single family residences or 15,000 individuals.

Previous analysis of the wastewater treatment plant's capability to treat ammonia-nitrogen indicates a design ammonia influent load capacity of 938.25 pounds per day. The landfill leachate equivalent ammonia-nitrogen load is near 500 pounds per day. With consideration of a domestic wastewater ammonia-nitrogen load of approximately

680 pounds per day, the wastewater treatment plant can be considered as overloaded by 242 pounds per day for ammonia-nitrogen and at significant risk of NPDES permit limit violations. In the past, the City has received NOV's for exceeding our ammonia-nitrogen limits. It is not in the City's best interest to continue in this agreement under the existing fee schedule and conditions. There is no maximum daily volume of leachate stated in the agreement. In addition, based on the existing fee schedule, we are losing hundreds of thousands of dollars each year in revenue.

Due to Republic Waste Services leachate disposal at concentrations in excess of agreement limitations and the significant risk of NPDES permit ammonia-nitrogen limit exceedance, staff recommends that suspension of landfill leachate be considered in accordance with Section 7(b) of the agreement. Republic Waste Services was notified of their violation of the agreement on April 20, 2017 and has until May 1, 2017 to correct the violations before suspension, based on the agreement. Additionally, staff recommends that termination of the agreement be initiated at this time. Section 11 of the agreement provides a six-month termination notice period.

FINANCIAL:

The Finance Committee discussed this matter during their meeting of April 20, 2017. Upon motion made by Mayor Peel, seconded by Councilman Donnelly, the committee unanimously recommended approval by the City Council.

STAFF RECOMMENDATION:

By motion, authorize staff to suspend the agreement with Republic Services of North Carolina, LLC pursuant to Section 7(B) of the agreement on May 1, 2017 and proceed toward termination of the agreement pursuant to Section 11 of the agreement if necessary.

AGREEMENT

THIS AGREEMENT entered into this the 28th day of November, 1995, by and between the CITY OF ELIZABETH CITY, a municipality organized and existing under the laws of the State of North Carolina ("City"), and East Carolina Environmental, Inc., a corporation organized and existing under the laws of the Commonwealth of Kentucky ("East Carolina").

On 2nd day of April 2001, this agreement was modified to reflect a name change only for "East Carolina" to Republic Services of North Carolina, LLC, a corporation organized and existing under the laws of the State of North Carolina ("Republic Services"). Therefore due to this modification of the original agreement, "East Carolina" shall now be referred to as "Republic Services".

RECITALS

- A. Republic Services desires to contract with the City for the disposal of leachate collected at Republic Service's landfill in Bertie County, North Carolina ("Landfill").
- B. The City desires to perform such disposal services for Republic Services in accordance with the written terms of this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged by each of the parties to this Agreement, the parties agree as follows:

1. Definitions: For purposes of this Agreement, the following terms shall have the meanings set forth below:

(a) "Agreement" means this Agreement between the City and Republic Services, as modified, supplemented or restated from time to time.

(b) "Effective Date" means the date first above written.

(c) "Disposal Site" means the site designated by the City in which the Leachate shall be disposed.

(d) "Leachate" means any liquid, including any suspended components in the liquid, that has percolated through or drained from waste is acceptable to the City.

2. Term: The Term of this Agreement shall commence as of the Effective Date and shall continue in full force and effect for a period of five (5) years ("Initial Term"). Thereafter, this Agreement shall be renewed automatically for successive one (1) year periods without further action of the parties, or may be canceled at the end of the

Initial Term or at the end of any one (1) year extension by either party sending sixty (60) days notice prior to the expiration of the Initial Term or any successive one (1) year terms.

3. Covenants, Representations and Warranties of the City:
The City represents, warrants and agrees as follows:

(a) Existence and Good Standing: The City is and will continue to be throughout the term hereof duly organized and existing as a political subdivision in good standing under the laws of the State of North Carolina.

(b) Approval and Authorization: The City has full power and authority to enter into this Agreement and to fully perform all of its duties and obligations hereunder.

(c) Compliance with Laws: The City covenants and agrees to dispose of the Leachate in compliance with any and all current future federal, state, and local laws and regulations applicable to the disposal of Leachate.

4. Covenants, Representations and Warranties of Republic Services:
Republic Services represents, warrants and agrees as follows:

(a) Existence and Good Standing: Republic Services is and will continue to be throughout the term hereof duly organized and existing as a corporation under the laws of the State of North Carolina.

(b) Approval and Authorization: Republic Services has full power and authority to enter into this Agreement and to fully perform all of its duties and obligations hereunder.

(c) Compliance with Laws and Permits: Republic Services covenants to conduct its operations in compliance with any and all applicable federal, state and local permits, laws and regulations as now exists or as may be in existence during the term of this Agreement.

5. Services of the City:

(a) The City shall accept for disposal all Leachate delivered to the Disposal Site, except as provided in Section 7 hereof. The City shall treat all Leachate prior to discharge in accordance with all applicable laws, regulations, ordinances, and permits.

(b) The City shall provide an inspector at the Disposal Site to evaluate the Leachate and disposal operations. The City shall be notified by a representative of Republic Services of the expected arrival time of each load.

6. Transportation of Leachate: Republic Services shall be responsible for all aspects of the transportation of Leachate to the Disposal Site.

7. Acceptance of Leachate:

(a) Republic Services acknowledges that the City intends to reject Leachate that would be in violation of the City's licenses or permits or would result in a violation of applicable federal, state or local laws, regulations or ordinances.

(b) The City reserves the right to allow continuous disposal of Leachate if any of the allowable peaks, as specified in Exhibit A attached hereto, are exceeded. The disposal shall continue as long as no adverse effects are evident at the POTW plant. Unless otherwise specified, the City shall notify Republic Services in writing within five (5) days of receipt of the analysis of any violation that would require consideration of suspending the disposal operations. Republic Services shall be given ten (10) working days to rectify the violation in order to avoid suspension of this Agreement.

8. Leachate Testing Requirements: Republic Services, at its own expense, shall retain an independent laboratory to test the Leachate for the parameters set forth in Exhibit A on a monthly basis for the first six (6) months of this Agreement. Thereafter, the tests shall be conducted semi-annually.

9. Service Fees: Republic Services shall pay the City within thirty (30) days of receipt of invoice for services provided in the previous month in accordance with the following schedule:

Year 1	\$.035 per gallon
Year 2	\$.03 per gallon
Year 3	\$.025 per gallon
Year 4	\$.02 per gallon
Year 5	\$.015 per gallon

In the event that this Agreement is extended beyond the Initial Term, the service fees payable to the City shall be computed at a rate not to exceed \$.015 per gallon during the successive one-year terms.

10. Indemnification:

(a) Indemnification of Republic Services. The City agrees to indemnify and save harmless Republic Services, its corporate affiliates, officers, directors, shareholders, agents, employees and attorneys (collectively "Republic Services") from any loss, claim, liability, penalty, fine, forfeiture, demand, cause of action, suit and costs incidental thereto (including cost of defense, settlement and reasonable attorney's fees), caused by or resulting from any negligent or willful act or omission of the City, agents or employees in connection with this Agreement or resulting from a breach by the City of any of the agreements, representations, or warranties of the City contained in this Agreement. The indemnity obligation of the City under this Section shall survive the expiration or termination of this Agreement subject to any applicable statute of limitation.

(b) Indemnification of the City. Republic Services agrees to indemnify and save harmless the City, its agents and employees (collectively "City") from any loss, claim, liability, penalty, fine, forfeiture, demand, cause of action, suit and costs incidental thereto (including cost of defense, settlement and reasonable attorney's fees), caused by or resulting from any negligent or willful act or omission of Republic Services its agents or employees in connection with this Agreement or resulting from a breach by Republic Services of any of the agreements, representations, or warranties of Republic Services contained in this Agreement. The indemnity obligation of Republic Services under this section shall survive the expiration or termination of this Agreement subject to any applicable statute of limitation.

11. Termination: Either party may terminate this Agreement upon (1) six (6) months written notice of termination to the other party or (2) a breach of any obligation hereunder that remains uncured for a period of thirty (30) days. The non-defaulting party shall send the defaulting party thirty (30) days notice of termination. Such notice of termination shall be subsequent to earlier notice of breach and failure to cure the subject breach. If the event of default is cured within thirty (30) days of such notice of termination, the notice of termination shall then be of no effect and this Agreement shall remain in full force and effect.

12. Notices: All notices required to be given by the terms of this Agreement shall be in writing, and deemed given when sent by registered or certified mail, postage prepaid, return receipt requested, at the respective addresses set forth below:

City:

City of Elizabeth City
Post Office Box 347
Elizabeth City, NC 27909
ATTN: Director of Public Works

Republic Services: Republic Services of North Carolina, LLC
771 Corporate Drive
Suite 1000
Lexington, Kentucky 40503
ATTN: Jack Baker

Either party may designate a different address by written notice given to the other.

13. Miscellaneous: This Agreement sets forth the entire agreement and understanding of the parties hereto with respect to the subject matter of this Agreement and supersedes all arrangements, communications, representatives or warranties, whether oral or written, by any officer, employee or representative of either party hereto. There are no restrictions, representations, warranties, covenants or undertakings other than those expressly set forth or referred to herein. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective subsidiaries, successors and assigns; provided, however, that no party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other party, except that Republic Services may assign to an affiliate its rights and obligations under this Agreement. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted the waiver. The provisions of this Agreement are independent of and severable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that any provision may be invalid or unenforceable in whole or in part. This Agreement shall be construed and enforced in accordance with the laws of the State of North Carolina. All warranties and indemnifications contained herein shall survive the termination of this agreement.

IN WITNESS THEREOF, the parties execute this Agreement in duplicate originals as of the day and year first above written.

ATTEST:

REPUBLIC SERVICES OF
NORTH CAROLINA, LLC

BY:

John S. Murray
GM of Landfills & TS Carolina
RSG

BY:

Drew Johnson

ITS:

Area President

ATTEST:

CITY OF ELIZABETH CITY

BY:

Tramaine A. Pierce

BY:

Brett J. Van N

ITS:

Mayor

**EXHIBIT A
CITY OF ELIZABETH CITY**

Leachate Disposal Program

Specific Pollutant Limits

Pollutant	Daily Composite (mg/L)	Allowable Peaks (mg/L)
Arsenic ✓	0.003	0.009
Cadmium ✓	0.003	0.009
Copper ✓	0.061	0.183
Lead ✓	0.049	0.147
Mercury ✓	0.0003	0.0009
Nickel ✓	0.021	0.063
Total Chromium ✓	0.05	0.15
Silver ✓	0.005	0.015
Zinc ✓	0.175	0.525
Cyanide ✓	0.041	0.123
Total Phenols ✓	0.3	0.9
BOD ✓	250	1500
COD ✓	700	2100
Oil & Grease ✓	100	100
TSS ✓	250	750
TKN ✓	40	120

Note: The allowable peaks are established to determine if excessive loading of the POTW plant may take place. These peaks are maximum allowed.

The Director of Public Works reserves the right to allow continuous disposal of leachate if any of the allowable peaks are exceeded. The disposal will continue as long as no adverse effects shall be realized at the POTW plant. Unless otherwise specified, POTW owner shall notify leachate facility owner by writing of any violation that would require consideration of suspending the disposal operation within five (5) days of receipt of analysis. The facility owner would be given ten (10) working days to rectify the violation in order to avoid suspension of disposal contract.

Analyte	Jan-14	Jul-14	Jan-15	Jul-15	Jan-16	Jul-16	Jan-17	Daily Composite	Allowable Peaks
	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L
BOD	1470	2950	375	481	244	1890	1220	250	1500
COD	3470	7850	2270	2400	2630	5780	9020	700	2100
Cyanide, Total	0.010	0.000	0.000	0.000	0.000	0	0	0.041	0.123
Oil & Grease (HEMI)	7	17	8	14	6	14	38	100	100
Total Phenols as Phenol	2.4	4.3	2.2	1.0	0.2	3	4	0.3	0.9
TKN as N	466	700	714	160	1160	2220	1870	40	120
TSS	49	160	46	197	53	117	230	250	750
Arsenic	0.126	0.222	0.132	0.393	0.218	0	0	0.003	0.009
Cadmium	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.003	0.009
Chromium	0.07	0.10	0.10	0.16	0.21	0.38	0.34	0.05	0.15
Copper	0.013	0.018	0.065	0.017	0.064	0.004	0.009	0.061	0.183
Lead	0.004	0.006	0.004	0.002	0.003	0.003	0.008	0.049	0.147
Nickel	0.059	0.061	0.081	0.130	0.123	0.146	0.153	0.021	0.063
Silver	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.005	0.015
Zinc	0.040	0.314	0.120	0.037	0.055	0.181	0.470	0.175	0.525
Mercury	0.0001	0.0002	0.0001	0.0001	0.0000	0.0000	0.0000	0.0003	0.0009