

RESOLUTION NO. 2016-394

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE COUNTY ADMINISTRATOR OR HIS DESIGNEE TO EXECUTE THE "FIRST AMENDMENT TO AMENDED AND RESTATED FRANCHISE AGREEMENT FOR THE COLLECTION AND TRANSPORTATION OF RESIDENTIAL WASTE," ON BEHALF OF THE COUNTY, WITH ADVANCED DISPOSAL SERVICES OF JACKSONVILLE, LLC; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

RECITALS

WHEREAS, on May 20, 2014, the Board of County Commissioners ("Board") of St. Johns County ("County") held a duly noticed public hearing and concluded that it is in the public interest to enter into an "Amended and Restated Franchise Agreement for the Collection and Transportation of Residential Waste" ("Agreement") with Advanced Disposal Services of Jacksonville, LLC. ("Contractor"); and

WHEREAS, on June 2, 2014, the Board's duly authorized representative executed the Agreement with the Contractor, pursuant to the authority granted by the Board in Resolution 2014-143; and

WHEREAS, the Contractor has requested additional amendments to the Agreement because the Contractor claims its costs have increased, its revenues have decreased, and the provisions in the Agreement are no longer sufficient to adequately compensate the Contractor for the services it provides to the County; and

WHEREAS, the County and the Contractor have negotiated new terms and conditions for the Agreement that are acceptable to both parties and satisfactorily resolve the Contractor's claims; and

WHEREAS, the new terms and conditions for the Agreement have been incorporated into the "First Amendment to Amended and Restated Franchise Agreement for the Collection and Transportation of Residential Waste" ("Second Amendment"), which is attached hereto; and

WHEREAS, after considering the relevant issues at a public hearing on December 20, 2016, the Board finds that the Second Amendment provides benefits to the County and, therefore, it is in the public interest to enter into the First Amendment with the Contractor.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY:

Section 1. The recitals set forth above are incorporated into the body of this resolution and are adopted as findings of fact.

Section 2. The County Administrator, or his designee, is authorized to execute the First Amendment with Advanced Disposal Services of Jacksonville, LLC, on behalf of the County, for the purposes mentioned above.

Section 3. If any provision of this resolution shall be held or deemed to be illegal, inoperative or unenforceable, the same shall not affect any other provision or cause any other provision to be invalid, inoperative or unenforceable to any extent whatsoever.

Section 4. To the extent that there are typographical or administrative errors or omissions in the First Amendment that do not change the tone, tenor, or concept of this resolution, the First Amendment may be revised without subsequent approval of the Board of County Commissioners.

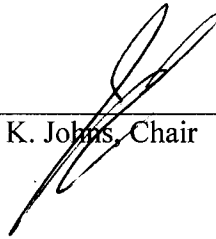
Section 5. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED this 20 day of December, 2016.

ATTEST: Hunter S. Conrad, Clerk

By: Pam Halterman
Deputy Clerk

By: _____
James K. Johns, Chair



RENDITION DATE 12/21/16



**FIRST AMENDMENT TO
AMENDED AND RESTATED FRANCHISE AGREEMENT
FOR THE COLLECTION AND TRANSPORTATION
OF RESIDENTIAL WASTE**

This "First Amendment to Amended and Restated Franchise Agreement for the Collection and Transportation of Residential Waste" ("First Amendment") is made and entered into this ____ day of _____, 2016, by and between St. Johns County, a political subdivision of the State of Florida ("County"), and Advanced Disposal Services of Florida, LLC, a Delaware limited partnership, which is licensed to do business in Florida ("Contractor").

WHEREAS, on May 20, 2014, the Board of County Commissioners ("Board") held a duly noticed public hearing and concluded that it is in the public interest to enter into an "Amended and Restated Franchise Agreement for the Collection and Transportation of Residential Waste" ("Agreement") with the Contractor; and

WHEREAS, on June 4, 2014, the Board's duly authorized representative executed the Agreement with the Contractor; and

WHEREAS, the Contractor now requests an amendment to the Agreement because the Contractor alleges it is suffering financial hardships that warrant extraordinary relief pursuant to Section 9.3 of the Agreement; and

WHEREAS, the Contractor claims that the Contractor's cost of providing collection services to the County has increased because there is a shortage of qualified drivers available in the area to work for the Contractor under the Agreement, and these conditions force the Contractor to pay a premium to hire competent drivers; and

WHEREAS, the Contractor claims that the Rates paid to the Contractor under the Agreement are inadequate because the Consumer Price Index used in the Agreement does not accurately reflect the impact of inflation on the Contractor's costs; and

WHEREAS, the County has requested the Contractor to deliver the County's Recyclable Materials to a Recycling facility that is operated by Republic Services of Florida, Limited Partnership ("Republic"), in Duval County, Florida; and,

WHEREAS, the Contractor claims that its costs will increase if it complies with the County's request, because the Contractor will need to pay Republic to transport the County's Recyclable Materials from Nine Mile Road to Duval County, and the Contractor will need to pay Republic for the disposal of the Rejects and Residue that are mixed with the County's Recyclable Materials; and

WHEREAS, the County does not wish to grant extraordinary relief to the Contractor pursuant to Section 9.3 of the Agreement, but the County is willing to amend the Agreement to address the Contractor's claims; and

WHEREAS, the Contractor agrees that the proposed amendments to the Agreement, as set forth below, provide a satisfactory and complete resolution of the Contractor's claims; and

WHEREAS, the Board finds that this First Amendment provides benefits to the County and thus is in the public interest.

NOW, THEREFORE, in consideration of the mutual covenants contained in this First Amendment and the other good and valuable consideration provided by the Parties to each other, the receipt and sufficiency of which are hereby acknowledged, the County and the Contractor agree to be bound by and comply with all of the terms and conditions of this First Amendment, as set forth below.

SECTION 1. The County and the Contractor agree that the recitals set forth above are true, accurate, and correct. These recitals are adopted by reference as if set forth fully herein.

SECTION 2. Section 9.2 (CPI Adjustment) of the Agreement is hereby amended to read as follows:

Once each year, the County shall adjust the Contractor's Rates, upward or downward, to reflect the percentage change in the consumer price index (CPI) that occurred during the preceding twelve months. However, the CPI adjustment shall not exceed four percent (4%) in any one year (i.e., the CPI adjustment shall not be greater than four percent (4%) of the Rate in effect immediately before the adjustment occurs). The CPI adjustments shall be based on the consumer price index published by the United States Department of Labor, Bureau of Labor

Statistics, for All Urban Consumers (CPI-U).
More specifically, the CPI adjustments shall be
based on the CPI-U, as reported by detailed
expenditure category for "All items less food and
energy - Garbage and trash collection," U.S. City
Average, Base Period: December 1983 = 100 ~~for all~~
~~items in the wage earners and clerical workers~~
~~(CPI-W) category for the South Urban Area.~~

Each CPI adjustment shall take effect on October 1; however, there shall be no CPI adjustment in October 2014. The first CPI adjustment shall take effect on October 1, 2015. The CPI adjustment shall reflect the percentage change in the CPI, measured from April 1st in the previous calendar year to March 31st of the calendar year in which the adjustment will occur. The percentage change in the CPI shall be calculated by using the following formula:

PC equals CPI 1, divided by CPI 2, minus
1.0, multiplied by 100

Where:

PC is the percentage change in the CPI
from one year to the next

CPI 1 is the CPI index number for the
most recent April (e.g., April 2015)

CPI 2 is the CPI index number for April
in the year before CPI 1 (e.g., April 2014)

Notwithstanding the foregoing provisions of this Section 9.2, the CPI adjustments that shall take effect on October 1, 2015, ~~2016,~~ and ~~2017,~~ shall be calculated in a different manner. Specifically, after the CPI adjustments for October 1, 2015, ~~2016,~~ and ~~2017,~~ are is calculated in accordance with the procedures described above, the amount of the increase or decrease in the Rates shall be reduced by an additional two percent (2%). For example, if the CPI adjustment for October 1, 2015 is calculated to increase the Rates by three percent (3%), the actual CPI adjustment shall only increase the Rates by one percent (1%). Similarly, if the CPI adjustment for

October 1, 2015 is calculated to increase the Rates by one-half of one percent (0.5%), the actual CPI adjustment shall reduce the Rates by one and one-half percent (1.5%).

SECTION 3. Section 14.1 (Delivery to Designated Facilities) of the Agreement is hereby amended to read as follows:

The Contractor shall deliver all of the Solid Waste it collects in the Service Area pursuant to this Agreement to a Solid Waste Management Facility or Recycling facility designated by the County. The designated facilities for the disposal of Garbage and Rubbish are the Tillman Ridge Transfer Station, which is located at 3005 Allen Nease Road, Elkton, Florida 32033, and the County's Stratton Road Transfer Station, which is located at 250 Stratton Road North, St. Augustine, Florida 32095. The designated facilities for the disposal of Yard Waste are the privately operated Yard Waste facility that is located at the Nine Mile Road Landfill, 445-A International Golf Parkway, St. Augustine, Florida 32095, and the facility operated by Indianhead Exploration, LLC, which is located at 1700 Adams Acres Road, St. Augustine, Florida 32084. The Contractor shall deliver, or arrange for the delivery of, all of the Source Separated Recyclable Materials it collects under this Agreement to a properly licensed Recycling facility. The designated Recycling Facility shall be the Recycling facility located at 7000 Imeson Road, Jacksonville, Florida, unless the Contract Administrator approves the use of a different facility. ~~subject to the approval of the Contract Administrator, which shall not be unreasonably delayed or denied.~~

SECTION 4. The preceding sections of this First Amendment show the only changes that are being made to the Agreement. In this First Amendment, additions to the Agreement are underlined and deletions are shown with stricken text (e.g., ~~strike-throughs~~). The capitalized words and phrases in this First Amendment are defined in the Agreement.

SECTION 5. Pursuant to Section 9.2 of the Agreement, the Contractor's Rates are adjusted once each year, based on the annual change in a Consumer Price Index that is designated in

the Agreement, and the adjustments take effect on October 1 each year. Pursuant to Section 2 of this First Amendment, the Consumer Price Index designated by the Parties will change when this First Amendment becomes effective. For the purposes of this Section 5 only, the Consumer Price Index designated in Section 2 of this First Amendment shall be referred to as the "New CPI."

The Parties wish to apply the New CPI retroactively. More specifically, the Parties wish to adjust the Contractor's Rates, based on the New CPI, and then apply the adjusted Rates ("New Rates") to all of the Contractor's work under the Agreement from October 1, 2016 until the next time that the Rates are adjusted (presumably October 1, 2017). Accordingly, and notwithstanding anything else contained in the Agreement or this First Amendment, the Parties agree as follows:

(a) the Contractor's Rates shall be adjusted when this First Amendment takes effect, based on the New CPI, and thereafter the County shall pay the New Rates, except as otherwise provided in the Agreement;

(b) the Contractor's New Rates shall be used by the County to calculate the amount of money owed to the Contractor for the services provided by the Contractor in compliance with the requirements in the Agreement from October 1, 2016, to the effective date of this First Amendment; and

(c) if the calculations performed by the County pursuant to Section 5(b), above, demonstrate that the County owes additional money to the Contractor for its work from October 1, 2016 until the effective date of this First Agreement, the County shall pay the necessary sum to the Contractor in compliance with Section 9.5 of the Agreement.

SECTION 6. The Agreement shall remain in full force and effect, except as explicitly revised in this First Amendment.

IN WITNESS WHEREOF, the County and the Contractor have executed this First Amendment as of the date first written above.

ATTEST: BOARD OF COUNTY COMMISSIONERS,
ST. JOHNS COUNTY

Clerk

By: _____

_____, Chair

APPROVED AS TO FORM AND
CORRECTNESS:

COUNTY ATTORNEY'S OFFICE

CONTRACTOR

By: _____

(Print or Type Name and Title)

Witness

Signature of Witness

Print or Type Name of Witness

Witness

Signature of Witness

Print or Type Name of Witness