

RESOLUTION NO. 2010- 16

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, PROVISIONS, CONDITIONS, AND REQUIREMENTS OF A FRANCHISE EXTENSION AGREEMENT BETWEEN ST. JOHNS COUNTY, FLORIDA, AND REPUBLIC SERVICES OF FLORIDA, LIMITED PARTNERSHIP, A DELAWARE LIMITED PARTNERSHIP D/B/A SEABOARD WASTE SYSTEMS ("SEABOARD") AND AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE THE FRANCHISE EXTENSION AGREEMENT FOR THE COLLECTION AND TRANSPORTATION OF RESIDENTIAL SOLID WASTE IN ST. JOHNS COUNTY, FLORIDA, ON BEHALF OF ST. JOHNS COUNTY.

WHEREAS, on February 14, 2003, St. Johns County (County) issued a Request For Proposals (RFP) for the collection and transportation of Residential Solid Waste in the County; and

WHEREAS, on May 28, 2003, the Board of County Commissioners (Board) held a public hearing, in order to evaluate the proposals received in response to the County's RFP; and

WHEREAS, the Board selected the Contractor to provide its services in certain designated areas of the County; and

WHEREAS, on August 1, 2003, the Board entered into a Franchise Agreement for the Collection and Transportation of Residential Solid Waste in the northern area of St. Johns County (Franchise Agreement) with Seaboard (Contractor); and

WHEREAS, the Franchise Agreement contains terms and conditions that govern the Contractor's services to the County, and otherwise are in the public interest; and

WHEREAS, the Franchise Agreement explicitly provides that the County and the Contractor may extend their agreement for a term of seven (7) years or less; and

WHEREAS, the County wishes to continue to receive the solid waste services provided by the Contractor, and the Contractor wishes to continue to provide the solid waste services needed by the County, subject to the terms and conditions set forth in the attached and incorporated Franchise Extension Agreement (Extension Agreement); and

WHEREAS, on January 19, 2010, the Board held a public meeting and concluded that it is the public interest to enter into the attached and incorporated Extension Agreement with the Contractor.

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

Section 1. The above recitals are hereby incorporated into the body of this Resolution and are adopted as Findings of Fact.

Section 2. The Board of County Commissioners of St. Johns County, Florida, approves the terms, provisions, conditions, and requirements of a Solid Waste Franchise Extension Agreement between St. Johns County, Florida, and Republic Services of Florida, Limited Partnership, a Delaware limited partnership d/b/a Seaboard Waste Systems and authorizes the County Administrator, or designee, to execute the attached and incorporated Solid Waste Franchise Extension Agreement for the Collection and Transportation of Residential Solid Waste in St. Johns County, Florida, on behalf of St. Johns County.

Section 3. To the extent that there are typographical and/or administrative errors or issues that do not change the tone, tenor, or concept of this Resolution and/or the attached and incorporated Extension Agreement, then this Resolution and/or the attached and incorporated Extension Agreement may be revised without subsequent approval of the Board of County Commissioners.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 19th day of January, 2010.

BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA

Attest: Cheryl Strickland, Clerk

By: Pam Halterman
Deputy Clerk

By:

[Signature]
Chair

RENDITION DATE 1/20/10



**FRANCHISE EXTENSION AGREEMENT
FOR THE COLLECTION AND TRANSPORTATION
OF RESIDENTIAL SOLID WASTE
IN ST. JOHNS COUNTY**

This "Franchise Extension Agreement for the Collection and Transportation of Residential Solid Waste in St. Johns County" ("Extension Agreement") is made and entered into this _____ day of _____, 2010, by and between St. Johns County, a political subdivision of the state of Florida (hereinafter referred to as "County"), and Republic Services of Florida, LP, a Delaware limited partnership d/b/a Seaboard Waste Systems, which is authorized to do business in Florida (hereinafter referred to as "Contractor").

WHEREAS, on February 14, 2003, the County issued a request for proposals ("RFP") from private companies for the collection and transportation of Residential Solid Waste in the County; and

WHEREAS, on May 28, 2003 the Board of County Commissioners ("Board") held a public hearing to evaluate the proposals it received in response to the County's RFP; and

WHEREAS, the Board selected the Contractor to provide its services in certain designated areas of the County; and

WHEREAS, on August 1, 2003 the Board entered into a "Franchise Agreement for the Collection and Transportation of Residential Solid Waste in St. Johns County" ("Franchise Agreement") with the Contractor;

WHEREAS, the Franchise Agreement contains terms and conditions that govern the Contractor's services to the County and otherwise are in the public interest; and

WHEREAS, the Franchise Agreement explicitly provides that the County and the Contractor may extend their agreement for a term of seven (7) years or less; and

WHEREAS, the County wishes to continue to receive the solid waste services provided by the Contractor, and the Contractor wishes to continue to provide the solid waste services needed by the County, subject to the terms and conditions set forth in this Extension Agreement

WHEREAS, on _____, 2010, the Board held a public meeting and concluded that it is in the public interest to enter into this Extension Agreement with the Contractor.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Extension Agreement 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 Extension Agreement, as set forth below.

1. Term

The term of this Extension Agreement shall be seven (7) years, beginning at 12:01 a.m. on August 1, 2010. For the purposes of this Extension Agreement, the County and the Contractor agree that the term of the original Franchise Agreement expires at midnight on July 31, 2010.

2. The Franchise Agreement

The Contractor shall provide its services to the County in compliance with the terms and conditions contained in the Franchise Agreement, as amended and modified by this Extension Agreement. The Franchise Agreement is hereby adopted by reference and incorporated herein, subject to the terms and conditions contained in this Extension Agreement. If there is a conflict between a provision in this Extension Agreement and a provision in the Franchise Agreement, the provisions contained in this Extension Agreement shall prevail. The Franchise Agreement is Attachment A to this Extension Agreement.

3. Amendments to Franchise Agreement

This Extension Agreement amends some of the provisions contained in the Franchise Agreement, as described below. Additions to the Franchise Agreement are shown herein by underlining. Deletions from the Franchise Agreement are shown herein by striking through the text of the Franchise Agreement. All of the terms and conditions contained in the Franchise Agreement shall remain unchanged, except as shown in paragraphs 3.A through 3.R, below.

A. Section 2.27 of the Franchise Agreement is amended as follows:

Recyclable Materials or **Recyclables** means all of the materials identified in Attachment B, which is attached to the Extension Agreement ~~newspaper, metal containers, corrugated cardboard, plastic containers (all types), and aluminum containers.~~

B. Section 2.28 (Residential Property) of the Franchise Agreement is amended by deleting the last sentence in the definition of Residential Property, as follows:

~~Residential Property shall not mean those portions of mobile home parks or the mobile homes located thereon where the County Property Appraiser does not individually assess the parcels.~~

C. Section 5.14 (Recycling Containers) of the Franchise Agreement is amended by adding the following paragraph to the end of Section 5.14:

On or before October 1, 2010, the Contractor shall purchase and deliver one new recycling container to each Customer in the Service Area. All of the recycling containers provided by the Contractor pursuant to this paragraph shall be equal to or better than the recycling containers that were previously provided by the County to the Customers. The size, color, and technical specifications of the recycling containers shall be subject to the prior approval of the Contract Administrator. All costs associated with the procurement, storage, and distribution of the recycling containers pursuant to this paragraph shall be paid by the Contractor.

D. Section 9.2 (CPI Adjustment) of the Franchise Agreement is amended as follows:

CPI Adjustment: Once each year, the County shall adjust the Contractor's rates, upward or downward, to

reflect changes in the consumer price index (CPI) that have occurred during the preceding twelve months. However, the CPI adjustment shall not exceed five percent (5%) in any one year. 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 items in the wage earners and clerical workers (CPI-W) category for the South Urban Area Region. The first CPI adjustment shall take effect on October 1, ~~2010~~ 2004.

Each CPI adjustment shall take effect on October 1. 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. Notwithstanding anything else contained herein, there shall not be any increase in the rates set forth in Attachment C to the Extension Agreement, based on a change in the CPI, before October 1, 2010.

E. Section 9.10 ("Overpayments and Underpayments") of the Franchise Agreement shall be amended by adding the following paragraph to the end of Section 9.10:

Notwithstanding anything else contained herein, the County shall have no obligation to pay the Contractor for services rendered by the Contractor more than one (1) calendar month before the Contractor notifies the Contract Administrator that the Contractor has been providing its service to a person that was omitted from the County's list of Customers. The Contractor waives its right to payment for services provided more than one (1) calendar month prior to its notice to the Contract Administrator. For example, if the Contractor gives notice in October that the Contractor has provided service to a Customer since June, the Contractor shall receive payment for the services it provided in September and October, but the Contractor shall not be entitled to any payment for services it rendered prior to September.

F. The Franchise Agreement is amended by adding a new Section 9.11 (Fuel Adjustment Fee), as follows:

9.11 Fuel Adjustment Fee: The County shall pay an additional fee (i.e., "the Fuel Adjustment Fee") to the Contractor, and the Contractor shall pay a Fuel Adjustment Fee to the County, when required by the provisions of this Section 9.11. The Fuel Adjustment Fee shall be invoiced quarterly in arrears. The Fuel Adjustment Fee shall reflect the monthly changes in the price of Number 2 Diesel, as reported in the FDOT Fuel and Bit Price Index (FDOT Index) (<http://www.dot.state.fl.us/construction/fuel&bit/Fuel&Bit.shtm>), and the amount of fuel used by the Contractor.

The Fuel Adjustment Fee shall be paid for fuel that is used by the Contractor's collection vehicles, but only when such vehicles are used to collect and transport the County's Residential Solid Waste in St. Johns County in compliance with the Agreement. The Contractor shall compile and maintain accurate records demonstrating that the Contractor has complied with the requirements in this Section 9.11. The County may withhold payment of any invoice from the Contractor for the Fuel Adjustment Fee until the Contractor provides adequate documentation to support the invoice. At any time the County may monitor and audit the fuel consumption records of the Contractor for collection and transportation of the County's Residential Solid Waste.

The "Base Fuel Price" (BFP) will be set at \$1.3700 per gallon, beginning October 1, 2009. The Base Fuel Price shall be adjusted each month thereafter, based on the change during the preceding month in the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics, for all items in the wage earners and clerical workers (CPI-W) category for the South Urban Area. This CPI adjustment will establish a "Monthly Base Fuel Price" (MBFP).

The MBFP will be subtracted from the FDOT Index Price for that month to derive the "Unfunded Cost" per gallon for the subject month. This Unfunded Cost will then be multiplied by the number of gallons consumed

by the Contractor during the month. When this calculation produces a positive number, the resulting amount will be paid by the County to the Contractor. When this process produces a negative number, the County will deduct the resulting amount from the County's payments to the Contractor.

The Fuel Adjustment Fee shall be calculated by using the following formulas:

$$\text{BFP X Monthly CPI Adjustment} = \text{MBFP}$$

$$\text{FDOT Index} - \text{MBFP} = \text{Unfunded Cost (Per Gallon)}$$

$$\text{Gallons Used by Contractor X Unfunded Cost} = \text{Fuel Adjustment Fee}$$

The following examples demonstrate how the Fuel Adjustment Fee will be calculated:

Example No. 1:

$$\text{\$1.3700 (BFP) X 1.003 (CPI Adjustment)} = \text{\$1.3741 (MBFP)}$$

$$\text{\$1.8399 (FDOT Index)} - \text{\$1.3741 (MBFP)} = \text{\$0.4658 (Unfunded Cost)}$$

$$\text{1,000 Gallons (Fuel Used) X \$0.4658 (Unfunded Cost)} = \text{\$465.80 (Fuel Adjustment Fee paid by the County to the Contractor)}$$

Example No. 2:

$$\text{\$1.3700 (BFP) X 0.995 (CPI Adjustment)} = \text{\$1.3631 (MBFP)}$$

$$\text{\$1.3000 (FDOT Index)} - \text{\$1.3631 (MBFP)} = \text{(\$0.0631) (Unfunded Cost)}$$

$$\text{1,000 Gallons (Fuel Used) X (\$0.0631) (Unfunded Cost)} = \text{\$63.10 (Fuel Adjustment Fee paid by the Contractor to the County)}$$

G. Section 17.2 of the Franchise Agreement is amended as follows:

On or before the tenth day of each month, the Contractor shall provide the Contract Administrator with a copy of a monthly summary of the ~~the standard forms for each~~ complaints received by the Contractor during the preceding month ~~prior day~~.

H. Section 17.4 of the Franchise Agreement is amended as follows:

Each month ~~day~~ the Contractor shall provide the Contract Administrator with a written report, in a format approved by the Contract Administrator, concerning the complaints received during the preceding month.

I. Section 20.1 of the Franchise Agreement is amended by adding the following provisions to the end of Section 20.1:

Notwithstanding anything else contained herein, the County has the exclusive authority to determine: (a) whether any emergency services are needed from the Contractor; (b) the scope of any emergency services that shall be provided by the Contractor; (c) the duration of any emergency services that are provided by the Contractor; (d) whether the Contractor must use open-top trucks and open-top containers when providing emergency services; and (e) whether, and the extent to which, the County shall use the services of other contractors to provide emergency services.

J. Section 20.3 of the Franchise Agreement is amended by deleting the following paragraph from Section 20.3:

~~In the event that a Major Storm generates such a large quantity of Storm Debris that the Contractor cannot reasonably collect and dispose of all of the Storm Debris, the County may also utilize other parties to perform clean up work.~~

K. Section 20.6 ("Compensation and Payment to the Contractor") of the Franchise Agreement is amended by adding the following paragraph to the end of Section 20.6:

Notwithstanding anything else contained herein, the County may, in its sole discretion, compensate the Contractor for Storm Debris clean-up work based on the volume (e.g., cubic yards) of material collected by the Contractor, instead of paying an hourly rate. In such cases, the Contractor shall be paid the applicable rates set forth in Attachment C to the Extension Agreement. In all cases, however, the Contractor shall fully comply with the most current FEMA requirements and procedures that are applicable to the Contractor's operations, recordkeeping, reporting, and other matters related to the collection, removal, and disposal of debris.

The Contractor shall not be required to pay any disposal fee for the disposal of Storm Debris collected from Customers in the Service Area, if the Contractor (a) complies with all of the applicable requirements in Section 20 of the Franchise Agreement and (b) delivers the Storm Debris to the Solid Waste Management Facility designated by the County for the disposal of such Storm Debris.

L. Section 24.1 (Insurance; General Requirements) of the Franchise Agreement is amended by adding the following language to the end of Section 24.1:

The County shall be named as an additional insured in the general liability, vehicle liability, and umbrella liability policies required pursuant to Sections 24.2, 24.3, and 24.5, below to the extent of Contractor's negligence. The Contractor shall ensure that any subcontractors comply with the insurance requirements herein.

M. Section 26 (Indemnification) of the Franchise Agreement is amended as follows:

The Contractor shall indemnify, defend, and hold harmless the County (including its elected officials, officers, employees, agents, and representatives) from and against any and all liabilities, losses, claims, damages, taxes (including interest or penalties), costs and expenses (including reasonable attorney's fees, paralegal fees, and the costs of investigations, whether incurred prior to, during or after a trial, appeal, arbitration, or mediation), that in any way arise from, or in connection with, or as a result of (a) this Agreement; ~~or~~ (b) the Contractor's negligent acts or omissions or willful misconduct under this Agreement or in the County; or (c) the County's decision to award the Extension Agreement to the Contractor. The provisions of this Section shall survive the termination of the ~~is~~ Extension Agreement.

N. Section 29 (Contract Termination) of the Franchise Agreement is amended by adding a new Section 29.2 (Termination for Convenience), as follows:

29.2 Termination for Convenience: The County and the Contractor shall each have the right to terminate the Extension Agreement, without cause and solely for the convenience of the terminating party, on August 1, 2013 or any time thereafter. To exercise this right, the party wishing to terminate the Extension Agreement must deliver written notice of termination to the other party at least one year (365 calendar days) before the date when termination will occur.

O. Section 39 (Notices) of the Franchise Agreement is amended by adding the following paragraph at the end of Section 39:

Either party may designate a new representative or a new address for the delivery of any notice that is given to them. The designation of a new representative or new address shall be accomplished by providing written notice to the other party of such change.

P. The Franchise Agreement includes Exhibit A, which is a map and legal description of the Service Area. The map and legal description attached to the Franchise Agreement as Exhibit A are hereby deleted in their entirety and replaced with the map and legal description attached to this Extension Agreement as Attachment D.

Q. Exhibit B to the Franchise Agreement is amended as follows:

Subject to the requirements contained in the Franchise Agreement, the County shall pay the disposal fees (i.e., tipping fees) for Residential Solid Waste pursuant to Section 3.4 of the Franchise Agreement, and the County shall pay the disposal fees for Storm Debris pursuant to Section 20.6 of the Franchise Agreement, if the Residential Solid Waste and Storm Debris are delivered to the recycling or disposal facility designated by the County.

R. Exhibit D (Awarded Bid Rate) to the Franchise Agreement is deleted in its entirety and replaced with Attachment C, which is attached to this Extension Agreement.

4. Attachments to the Extension Agreement

All of the attachments to this Extension Agreement are incorporated herein by reference.

5. Amendments to the Extension Agreement

This Extension Agreement constitutes the entire agreement and understanding between the County and the Contractor with regard to the issues addressed herein. This Extension Agreement shall not be considered modified, altered, changed, or amended in any respect unless this Extension Agreement is amended in writing and the amendment is signed by the Contractor and the Board or its designee.

IN WITNESS WHEREOF, the County and the Contractor have each, by an authorized person or agent, executed this Extension Agreement as of the date first written above.

ATTEST:

BOARD OF COUNTY COMMISSIONERS,
ST. JOHNS COUNTY, FLORIDA

By: _____

Printed Name

CHAIR

APPROVED AS TO FORM AND
CORRECTNESS:

COUNTY ATTORNEY

WITNESS

REPUBLIC SERVICES OF FLORIDA
D/B/A SEABOARD WASTE SYSTEMS

Signature

BY _____

Printed Name

Printed Name: _____

Date: _____

Title: _____

Date: _____

WITNESS

Signature

Printed Name

Date: _____

Date: _____

Attachment A

REPUBLIC INDUSTRIES, INC.

FRANCHISE AGREEMENT

FOR THE COLLECTION

AND TRANSPORTATION

OF RESIDENTIAL SOLID WASTE

IN ST. JOHNS COUNTY

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FRANCHISE AGREEMENT
FOR THE COLLECTION AND TRANSPORTATION
OF RESIDENTIAL SOLID WASTE
IN ST. JOHNS COUNTY

This "Franchise Agreement for the Collection and Transportation of Residential Solid Waste in St. Johns County" ("Agreement") is made and entered into this _____ day of _____, 2003, by and between St. Johns County, a political subdivision of the State of Florida (hereinafter referred to as "County"), and REPUBLIC SERVICES OF FLORIDA LP, a corporation authorized to do business in Florida (hereinafter referred to as "Contractor").

WHEREAS, the County issued a request for proposals from private companies for the collection and transportation of Residential Solid Waste in the County; and

WHEREAS, the Contractor was selected by the County to provide such services in the Service Area; and

WHEREAS, the Contractor wishes to provide the services requested by the County, subject to the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement 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 Agreement, as set forth below.

1. **Term:**

The initial term of this Agreement shall be seven (7) years, beginning on the Commencement Date. This Agreement may be extended one time only, with the consent of the County and the Contractor, for a term of seven (7) years or less.

2. **Definitions:**

To the extent any definition contained herein conflicts with similar definitions contained in any federal, state or local law, the definition herein shall prevail. Nothing contained herein, however, shall be interpreted to require the

Contractor to undertake any conduct that is contrary to federal, state, or local law.

- 2.1 **Agreement** means this Franchise Agreement for the Collection and Transportation of Residential Solid Waste in St. Johns County.
- 2.2 **Applicable Law** means any local, state or federal statute, law, constitution, charter, ordinance, judgment, order, decree, permit, rule, regulation, directive, policy, standard or similar binding authority, or a judicial or administrative interpretation of any of the same, which is in effect or is enacted, adopted, promulgated, issued or enforced by a governmental body during the term of this Agreement, and applies or relates in any manner to the performance of the County or the Contractor under this Agreement.
- 2.3 **Biomedical Waste** means any solid or liquid waste which may present a threat of infection to human beings, including, but not limited to, non-liquid human tissues and body parts; laboratory and veterinary waste which contain human-disease-causing agents; discarded disposable sharps (needles); human blood, human blood products and blood fluids; and any other materials which have been determined by federal, state or local regulatory agencies to present a significant risk of infection to persons outside the generating facility.
- 2.4 **Board** means the Board of County Commissioners of St. Johns County, Florida.
- 2.5 **Bulky Waste** means large items of Residential Solid Waste, which cannot be placed for collection in a Garbage Receptacle because of their volume, size, shape or weight. Bulky Waste includes, but is not limited to, White Goods, toilets, sinks, bicycles, mattresses, carpet, fencing, large household furnishings, car and boat seats and steering wheels, and other interior car and boat components, but not engines, tires, boats, or vehicle bodies.
- 2.6 **Change in Law** means (a) the adoption, promulgation, or modification of any Applicable Law after the Effective Date or (b) the imposition of any condition in connection with the issuance, renewal, or modification of any permit, license or approval after the Effective Date, which in the case of either (a) or (b) establishes one or more requirements which directly and substantially affect the Contractor's or the County's performance under this Agreement. A change in any tax law or workers compensation law shall not be a Change in Law. A change in the amount of any fuel tax shall not be a Change in Law.
- 2.7 **Commencement Date** means the date selected by the Board when the Contractor shall begin to provide collection services under this Agreement.

- 2.8 **Construction and Demolition Debris** means discarded materials generally considered to be not water-soluble and non-hazardous in nature including but not limited to steel, glass, brick, concrete, asphalt, roofing materials, pipe gypsum wallboard, lumber from the construction or destruction of a structure as part of a construction or demolition project or from the renovation of a structure, and including rocks, soils, tree remains, trees, and other vegetative matter which normally results from land clearing or land development operations of a construction project, including such debris from construction of structures at a site remote from the construction or demolition project site. Mixing of Construction and Demolition Debris with other types of Solid Waste will cause it to be classified as other than Construction and Demolition Debris.
- 2.9 **Contractor** means the waste collection company that has been awarded the residential waste collection franchise for a specific franchised area of the County.
- 2.10 **Contract Administrator** means the person designated by the County Administrator to serve as the County's primary representative in the County's dealings with the Contractor under this Agreement.
- 2.11 **County** means St. Johns County, Florida.
- 2.12 **County Administrator** means the chief executive officer of the County or that person's designee.
- 2.13 **County Code** means the laws, ordinances, policies, regulations, resolutions and other requirements adopted by the Board, as amended.
- 2.14 **Curbside Collection Point** means the location where the Contractor shall pick up the Residential Solid Waste discarded by a Customer.
- 2.15 **Customer** means a person that lives in the Service Area and is entitled to have their Residential Solid Waste collected by the Contractor under this Agreement, as determined by the Contract Administrator.
- 2.16 **Effective Date** means the date when the Board or the Board's authorized representative signs this Agreement.
- 2.17 **Exclusive Franchise** means the County's grant of authority to a single company to collect and transport Residential Solid Waste generated by Customers within the Service Area.

- 2.18 **Force Majeure** means an event that has a direct, material and adverse effect on the performance of the County or Contractor under this Agreement, and prevents the County or Contractor from fulfilling its duties and obligations under the Agreement, and is not the result of negligence or lack of reasonable diligence, and is not reasonably within the party's control, and is not reasonably foreseeable or, if foreseeable, not reasonably avoidable. A Force Majeure event may include but is not limited to a fire, explosion, lightning, tornado, flood, or hurricane.
- 2.19 **Garbage** means all kitchen and table food waste, and all animal or vegetable waste that is attendant with or results from the storage, preparation, cooking or handling of food materials.
- 2.20 **Garbage Receptacle** means any commonly available container made of light gauge steel, galvanized metal, plastic, or other non-absorbent material, with a maximum capacity of thirty-three (33) gallons, which is closed at one end and open at the other, and furnished with a closely fitted top or lid, and handles by which it may be lifted. A Customer may use a heavy duty, securely tied, plastic bag in lieu of a Garbage Receptacle. A Customer also may use a cardboard box if the contents are contained and the weight is not excessive. Cardboard boxes are not acceptable during wet weather conditions.
- 2.21 **Hazardous Waste** means a Solid Waste, or a combination of Solid Wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, or may pose a substantial present or potential hazard to human health or the environment when improperly transported, disposed of, stored, treated, or otherwise managed. Hazardous Waste includes all materials regulated as hazardous substances or Hazardous Waste under Chapter 62-730, Florida Administrative Code, or any Applicable Law.
- 2.22 **Industrial Waste** means the Solid Waste generated by manufacturing and industrial processes, but not Hazardous Waste.
- 2.23 **Major Storm** means but is not limited to a hurricane, tropical storm, tornado, or other weather having high winds of such severity as to generate greater than normal volumes of Yard Waste and other vegetative debris requiring removal.
- 2.24 **Multifamily Residential Property** means a building or complex of buildings on a single parcel of land divided horizontally or vertically and designed for and occupied by more than four single-family housekeeping units.

- 2.25 **Rate** means the amount that the Contractor may charge each month for the collection of Residential Solid Waste from one Customer.
- 2.26 **Recovered Materials** shall mean materials that are recovered from Solid Waste for reuse or resale.
- 2.27 **Recyclable Materials or Recyclables** means newspaper, metal containers, corrugated cardboard, plastic containers (all types), and aluminum containers.
- 2.28 **Residential Property** means real property located within the Service Area that is used or designed for use as a residence, dwelling, or habitat for one or more people, whether occupied or not, and shall include but not be limited to single family residences; real property improved to accommodate mobile homes and the mobile homes, if any, located thereon, regardless of whether such mobile homes are registered as vehicles or assessed as real property; duplex homes; triplex homes; quadraplex homes; quintex homes; apartment buildings, time share buildings, and condominium buildings comprising five units or less; and premises occupied as a residence or dwelling that are located on commercially zoned property. Residential Property shall not mean those portions of mobile home parks or the mobile homes located thereon where the County Property Appraiser does not individually assess the parcels.
- 2.29 **Residential Solid Waste** shall mean rubbish, refuse, Garbage, Recyclable Materials, Yard Waste and Bulky Waste produced at or generated on Residential Property as a result of the normal housekeeping activities of a residence. Residential Solid Waste includes discarded materials from “do it yourself” repairs, renovations and projects, provided that such materials do not exceed one cubic yard per week per Customer. Residential Solid Waste does not include sludge, Industrial Waste, Construction and Demolition Debris, Hazardous Waste, land clearing debris, radiological waste, waste tires, lead-acid batteries, Solid Waste from farming operations, or wrecked, scrapped, ruined or dismantled vehicles, boats, aircraft or their parts.
- 2.30 **Service Area** means the geographic area in the County that is depicted in Exhibit A (Map and Legal Description), which is attached to this Agreement and incorporated herein by reference.
- 2.31 **Severe Weather Conditions** shall mean unusual or extreme weather conditions that affect the Service Area in a manner that results in the need for additional equipment and manpower to remove Storm Debris. The County Administrator shall determine whether Severe Weather Conditions have occurred.

- 2.32 **Solid Waste Management Facility** means any Solid Waste disposal area, volume reduction plant, transfer station, materials recovery facility, or other facility, the purpose of which is resource recovery or the disposal, recycling, processing, or storage of Solid Waste. The term does not include Recovered Materials processing facilities which meet the requirements of Section 403.7045(1)(e), Florida Statutes, except the portion of such facility, if any, that is used for the management of Solid Waste.
- 2.33 **Special Waste** means Solid Waste that can require special handling and management, including, but not limited to tires, used oil, lead-acid batteries, computers and or computer monitors, Construction and Demolition Debris, ash residue, and Biomedical Wastes.
- 2.34 **Storm Debris** means vegetative debris generated by a Major Storm, including tree limbs, trunks, branches and stumps; palm fronds; bagged or containerized vegetative debris; and other debris, excluding Yard Waste generated in the normal and usual care and maintenance of the lawns and landscaping of residential premises. Storm Debris shall not include any Solid Waste that cannot be accepted for disposal in an approved Yard Waste disposal facility.
- 2.35 **White Goods** means discarded refrigerators, ranges, water heaters, freezers, and other similar, large, domestic and commercial appliances.
- 2.36 **Yard Waste** means vegetative matter resulting from landscaping and yard maintenance and beautification projects, such as leaves, grass cuttings, palm fronds, shrubbery and tree trimmings.

3. Scope of Franchise:

- 3.1 Subject to the terms and conditions of this Agreement, the County hereby grants an Exclusive Franchise to the Contractor for the collection and transportation of Residential Solid Waste generated by Customers within the Service Area.
- 3.2 The Contractor shall collect and transport Residential Solid Waste in accordance with the requirements of this Agreement.
- 3.3 The Contractor shall not bill or collect any money from Customers for the standard services the Contractor provides under this Agreement. The Contractor shall bill and collect its fees from Customers that receive special services, subject to the limitations contained in Section 19 of this Agreement.
- 3.4 The Contractor shall not be required to pay any disposal or processing fee for the disposal of Residential Solid Waste collected from Customers in the Service

Area, provided the Contractor delivers the Residential Solid Waste to the County's transfer station on Allen Neese Road. The Contractor shall not be required to pay any disposal fee for the disposal of Yard Waste collected from Customers in the Service Area, provided the Contractor delivers the Yard Waste to the County's Construction and Demolition Debris landfill on Nine Mile Road. (Exhibit B, Yard Waste Disposal Fees)

- 3.5 The Contractor shall provide any and all services and supplies necessary to satisfy the requirements of this Agreement, including but not limited to labor, supervision, vehicles, machines, equipment, bonds, permits, licenses, taxes, and franchise fees. The Contractor shall be solely responsible for paying all costs and expenses associated with the provision of such services and supplies.
- 3.6 The Contractor shall deliver all of the Residential Solid Waste it collects from Customers in the Service Area to the Solid Waste Management Facility or Facilities designated by the Contract Administrator.
- 3.7 Notwithstanding anything else contained in this Agreement, the County may authorize up to three (3) County authorized contractors to collect Residential Solid Waste from customers in the southern portion of the County who are not franchised under this agreement. Any Customer in the southern portion of the County may elect to use the services of a County authorized contractor. However, no independent contractor may serve more than one hundred (100) customers. (Exhibit C, Three Vendors (3) and Customer List)
- 3.8 Notwithstanding anything else contained in this Agreement, the County may allow non-profit organizations or certain other persons to collect and transport their own Residential Solid Waste to a Solid Waste Management Facility.
- 3.9 This Agreement does not convey any rights or remedies to the Contractor that are not expressly identified herein. Among other things, this Agreement does not give the Contractor any right to collect, transport, process or dispose of Industrial Waste, Construction and Demolition Debris, Yard Waste, land clearing debris, Special Waste, Hazardous Waste, or Solid Waste generated by commercial businesses or not-for-profit, governmental, or institutional entities.

4. Contractor's Minimum Obligations:

- 4.1 This Agreement establishes the minimum standards and requirements for the Contractor's performance. All of the Contractor's activities must be performed safely, in strict compliance with the requirements of this Agreement and all Applicable Laws, and in accordance with the highest professional standards and best management practices for the Solid Waste industry.

4.2 Subject to the provisions contained in this Agreement, the Contractor shall collect all of the Residential Solid Waste generated in the Service Area and placed at the Curbside Collection Point by Customers.

5. Collection Schedules and Practices:

5.1 Frequency of Collection for Garbage, Recyclables and Yard Waste: The Contractor shall provide at least three separate collection services for each Customer each week. At least once each week, the Contractor shall provide each Customer with: (a) a separate collection service for Garbage, refuse, rubbish, and similar materials; (b) a separate collection service for Yard Waste; and (c) a separate collection service for Recyclable Materials. Each one of these three collection services shall be provided on a regularly scheduled basis each week, but all of the collection services do not need to be provided on the same day.

5.2 Collection of Bulky Waste: The Contractor shall collect White Goods and other Bulky Waste generated by the Customers in the Service Area. The Contractor's vehicle operators shall provide daily notification to their supervisor of any Bulky Waste placed at a Customer's Curbside Collection Point. The Contractor shall collect the Bulky Waste within (a) two (2) days after the Contractor receives a request from a customer or the County or (b) five (5) days after the materials are placed at the Curbside Collection Point, whichever occurs first.

5.3. Holiday and Sunday Schedule: The Contractor may collect Residential Solid Waste in the Service Area every day except Sunday, Thanksgiving Day, Christmas Day, and New Years Day. Collections on Sundays and holidays shall be allowed if the Contract Administrator determines such collections are necessary for the protection of the public health, safety or welfare. If a holiday coincides with a Customer's regularly scheduled collection day, the Contractor shall provide advance written notice to each Customer concerning any alternate collection days.

5.4 Hours of Collection: The Contractor may collect Residential Solid Waste from 6 a.m. until 6 p.m., Monday through Friday, and from 7 a.m. until 2 p.m. on Saturday, except holidays. The Contractor may collect Yard Waste and Bulky Waste until 8 p.m., Monday through Friday, during the months of April through September. The remaining months of the contract year shall be from 6 a.m. until 6 p.m., Monday through Friday and from 7 a.m. until 2 p.m. on Saturday, except holidays. The contractor must comply with the hours of collection. The Contractor also may extend its hours of operation when necessary to respond to Severe Weather Conditions, Force Majeure, or other

extraordinary circumstances, provided that the Contractor has received the prior approval of the Contract Administrator.

- 5.5 Quantities: The Contractor shall collect all of the Residential Solid Waste, including all of the Yard Waste, each Customer in the Service Area places at the Curbside Collection Point.
- 5.6 Oversize and Overweight Materials: The Contractor is not obligated to collect:
(a) the Solid Waste in any filled Garbage Receptacle that weighs more than fifty (50) pounds; (b) whole trees; (c) land clearing debris; (d) any single piece of Yard Waste that weighs more than fifty (50) pounds or is more than six (6) feet in length; or (e) leaves or loose Yard Waste, unless such materials have been bagged, bundled, tied, or placed in a Garbage Receptacle. If these or other inappropriate materials are placed at the Curbside Collection Point, the Contractor may refuse to collect them, but in such cases the Contractor shall leave a notice (e.g., red tag) explaining why the materials were not collected.
- 5.7 Timely Collections: The Contractor shall collect the Residential Solid Waste from each Customer on the scheduled collection day, unless the Contract Administrator approves a deviation from the schedule due to Severe Weather Conditions, Force Majeure, or other extraordinary circumstances.
- 5.8 Inadequate Service: The Contract Administrator may require the Contractor to revisit part or all of a collection route when the Contract Administrator determines that the Contractor provided inadequate service on that route.
- 5.9 Curbside Collection Point: Except as otherwise provided herein, the Curbside Collection Point shall be selected by the Customer. The Curbside Collection Point may be located anywhere along the frontal property line of a Residential Property, within six (6) feet of the edge of a public or private roadway that allows reasonable access by waste collection vehicles. If a roadway has swales or open ditches, the Curbside Collection Point shall be located on the roadway side of the swale or open ditch. If a Residential Property is relatively large, (in excess of one (1) acre) the Curbside Collection Point shall be near or adjacent to the Customer's driveway. If a Residential Property is located in a manner that makes curbside collection unduly difficult for the Contractor's employees and vehicle, an alternate location for the placement of the Customer's Residential Solid Waste may be established by the Customer and the Contractor, at no extra cost to the Customer or the County.
- 5.10 Solid Waste Collection and Handling: The Contractor shall perform its duties under this Agreement with a minimum of noise and disturbance to the public. Residential Solid Waste shall be collected carefully, in a timely manner, during the authorized days and times for collections. The Contractor shall place a

notice (e.g., red tag) on any materials that are not collected, explaining why the materials were not collected. Each Garbage Receptacle shall be emptied and returned to its original location, in an upright manner, with the cover on or adjacent to the Garbage Receptacle.

- 5.11 Spillage: The Contractor shall not cause or allow any litter or spillage of Solid Waste or other materials to occur in the County as a result of the Contractor's activities. When the Contractor is transporting Solid Waste or other materials, the materials shall be contained, tied, or enclosed so that leaking, spilling and blowing are prevented. The Contractor shall immediately clean up any litter, leakage or spillage caused by the Contractor's activities. If spillage occurs with oil, hydraulic fluids, or other liquids, the Contractor shall immediately clean up the spill and then report the time, location, and other relevant details to the Contract Administrator.
- 5.12 Commingling of Materials Prohibited: When collecting or transporting Solid Waste or Recyclables, the Contractor shall not commingle: (a) Recyclables with Garbage, Yard Waste or other types of Solid Waste; (b) Yard Waste with Garbage or other types of Solid Waste; (c) Residential Solid Waste with Solid Waste or other materials collected or generated outside of the County; or (d) Residential Solid Waste with Solid Waste or other materials collected at or generated on any property that is not Residential Property. Different types of Recyclable Materials may be commingled.
- 5.13 Hazardous Waste Prohibited: The Contractor shall not collect any item or material that is a Hazardous Waste. If Hazardous Waste is placed at a Customer's Curbside Collection Point, the Contractor shall leave a notice informing the Customer that the Hazardous Waste cannot be collected by the Contractor and providing the phone number for the County facilities that will assist the Customer with the proper handling and disposal of the Customer's materials. The Contractor also shall promptly provide the Customer's address to the County so that the County can notify the Customer about the proper disposal methods for the Customer's materials.
- 5.14 Recycling Containers: After the Commencement Date, the Contractor shall deliver one recycling container to each new Customer within five (5) days after the Customer is added to the Contractor's collection route. The Contractor also shall provide one additional container or one replacement container when requested to do so by a Customer or the Contract Administrator, and the container(s) shall be delivered on or before the next regularly scheduled collection day for Recyclable Materials. The County shall provide the Contractor with the recycling containers that are to be distributed pursuant to this paragraph.

- 5.15 **Recyclable Materials:** After the Contractor collects a Customer's Recyclable Materials, the Contractor shall deliver the Recyclables to a Solid Waste Management Facility for processing. The Contractor shall deliver the Recyclables only to those facilities that have been approved in advance by the Contract Administrator, and the Contractor shall not change facilities without receiving the Contract Administrator's prior written approval. The Contract Administrator shall approve a facility only if and only for so long as the Contractor can demonstrate that the facility can and will recycle or beneficially reuse the County's Recyclable Materials. The Recyclable Materials collected in the Service Area shall not be disposed in a landfill or elsewhere, unless the Contractor receives the County Administrator's prior written approval for such disposal. The Contractor shall keep any revenues generated by the sale of the Recyclable Materials. The Contractor shall be solely responsible for paying the costs of processing Recyclable Materials and disposing any contaminated or unacceptable materials.
- 5.16 **Physical Disability:** When the Contractor is notified by the Contract Administrator that a Customer is physically unable to place their Garbage Receptacle or recycling container at the Curbside Collection Point, the Contractor shall collect the Customer's Residential Solid Waste at a location that is more convenient for the Customer. The Contractor shall provide this service at no extra cost to the Customer or the County. The Contractor and the Customer shall work together to identify the alternate collection point, and the Contract Administrator shall resolve any dispute between the Contractor and the Customer relating to this issue.
- 5.17 **Vacant Lots and Residential Construction:** The Contractor is not required under this Agreement to remove any Solid Waste or other material accumulated on vacant property, or resulting from the construction of new homes or buildings.
6. **Repair of Damaged Property:** The Contractor shall promptly notify the Contract Administrator whenever the Contractor's activities cause any injury or damage to any person or property.
- 6.1 If a dispute arises between a Customer and the Contractor, the Contract Administrator may determine the Contractor's responsibility under this Agreement for repairing or replacing damaged property. In cases involving damages to public property, the County shall have the option of performing the repair or replacement itself, or using the services of a private contractor, or requiring the Contractor to repair the damages. In all cases, the Contractor shall be solely responsible for paying the cost of repairing or replacing the property it damaged.

7. Customer Disputes with Contractor: The Contract Administrator has the authority to resolve any disputes between a Customer and the Contractor concerning any matter arising under this Agreement, including but not limited to the location of the Curbside Collection Point, the timing and level of service to be provided to the Customer, and the amount of any fees to be paid for special services.
8. Treating Commercial and Multifamily Residences as Residential Property:
- 8.1 Under this Agreement, the Contractor shall not collect, and shall not be paid for the collection of, Solid Waste from any commercial establishments, businesses or industries.
- 8.2 Subject to various requirements, the County may allow certain Multifamily Residential Property, condominiums, and subdivisions to change from commercial Solid Waste collection services to residential collection service. If the County allows such changes to occur in the future, the Contract Administrator and the Contractor shall jointly account for and agree upon the number of new Customers that will receive collection services from the Contractor under this Agreement. If there is a dispute between the County and the Contractor about this issue, the Contractor initially shall be paid only for the number of Customers that both parties agree upon. When the dispute is resolved, the Contractor shall be paid retroactively, if necessary to make the Contractor whole for the services it has provided.
9. Rates, Compensation and Franchise Fees:
- 9.1 The County shall pay the Contractor for the services rendered by the Contractor in compliance with the terms and conditions of this Agreement. The Contractor shall be paid in accordance with the rates set forth in Exhibit D (Awarded Bid Rate), which is attached hereto and incorporated herein.
- 9.2 CPI Adjustment: Once each year, the County shall adjust the Contractor's rates, upward or downward, to reflect changes in the consumer price index (CPI) that have occurred during the preceding twelve months. However, the CPI adjustment shall not exceed five percent (5%) in any one year. 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 items in the wage earners and clerical workers category for the South Region. The first CPI adjustment shall take effect on October 1, 2004.

- 9.3 **Extraordinary Rate Adjustment:** Once each year, the Contractor may petition the County for a rate adjustment, based on extraordinary changes in the cost of providing services under this Agreement. The Contractor shall submit appropriate documentation to fully explain and support any claim for a rate adjustment. The Contractor's request shall include an audited statement that documents the extraordinary changes in the Contractor's costs. The Contract Administrator shall review and recommend approval or denial of the rate adjustment. The Board shall consider the Contractor's request for a rate adjustment at a duly noticed public meeting. At its sole discretion, the Board may approve or deny the request. If the request is granted, the Board shall have the right to reduce the Contractor's rates when the cost of the Contractor's operations return to normal. Every six (6) months after a request is granted, the Board shall have the right to request, and the Contractor shall prepare, an updated audit to demonstrate why the extraordinary rate adjustment should remain in effect.
- 9.4 **Contractor's Invoices:** The Contractor shall prepare and submit a monthly invoice to the County for the work that was performed during the preceding month. The invoice shall identify the number of Customers that were served, the rate that should be charged for each Customer, and the total payment due to the Contractor. The first invoice shall cover the period from the Commencement Date until the end of the first calendar month. Thereafter, each invoice shall cover the work performed during the preceding calendar month.
- 9.5 **Payment Time:** The Contractor shall be paid all undisputed amounts within forty-five (45) days after the County receives a proper invoice for the work performed by the Contractor during the preceding month.
- 9.6 **Payment Calculation:** The Contractor's total monthly fee shall be calculated by multiplying the appropriate rate times the total number of Customers served by the Contractor during the preceding month, as determined by the County.
- 9.7 **The Franchise Fee shall be delivered to the County each month with the Contractor's invoice for its services under this Agreement.** The Contractor shall pay a franchise fee to the County for any revenue generated above and beyond the base revenue generated for County Franchise Area (1 day a week collection for solid waste, recycling and yard waste collection). Additional or Special Services rendered to individual residential units or communities shall require the Contractor to pay a two percent (2%) Franchise Fee on the gross revenue collected for, but not limited to, special services or additional collections. The Franchise Fee shall be delivered to the County each month with an explanation of the special services or additional collections rendered.

- 9.8 Number of Customers: The County and the Contractor shall work together to identify the number of Customers that are served by the Contractor under this Agreement. The number of Customers shall be verified within six (6) months of the Commencement Date, and shall be reconfirmed from time-to-time thereafter, when deemed necessary by the County. The number of Customers shall be verified by performing an actual visual count of each Residential Property, or by using geographic information systems, or by using other methods that are acceptable to the County and the Contractor.
- 9.9 Adjustments to Customer List: The County shall adjust the number of Customers, upward or downward, once each month, based on the County Building Department's latest data concerning the issuance of new certificates of occupancy for Residential Property and mobile homes, and the issuance of demolition permits, and other relevant information.
- 9.10 Overpayments and Underpayments: If the Contractor provides service to a person that has been mistakenly omitted from the County's list of Customers, the Contractor shall provide the Contract Administrator with appropriate information, in the format requested by the Contract Administrator, to determine whether the person should be added to the County's Customer list. If the Contract Administrator verifies that the person should be added to the County's Customer list, the County shall pay the Contractor for its services to the Customer. If the County overpays the Contractor for any reason, the Contractor shall promptly notify the Contract Administrator, and the County shall adjust its monthly payments to the Contractor to offset any prior overpayments.

10. Changes in Work:

- 10.1 The County shall have the unilateral right to make changes in this Agreement to benefit the public health, safety or welfare, or to comply with a Change in Law. The County at its sole discretion may make modifications to this Agreement relating to the scope of the Contractor's services and the methods of providing those services, including but not limited to the routes, schedules, procedures, and operations of the Contractor.

The County shall use the following procedure when implementing a proposed change to this Agreement:

- (a) The County shall send reasonable advance notice to the Contractor of the proposed change in service;
- (b) The County shall provide the Contractor with a reasonable period of time to implement the proposed change;

- (c) The County and the Contractor shall negotiate in good faith to establish the amount of any adjustment, upward or downward, in the Contractor's rates that are appropriate in light of the proposed change in service;
- (d) In the event the County and the Contractor cannot reach an agreement as to the amount of any adjustment in the Contractor's rates, then the County shall have the right to require that the dispute be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association;
- (e) Upon receiving notice of the County's intent to submit the dispute to arbitration, the Contractor shall implement the change in service as directed by the County, with the adjustment in rates proposed by the County. The County and the Contractor agree that the adjustment in rates set by the arbitrator shall be implemented retroactively to the beginning of the change in service so that the parties are made whole.
- (f) The cost of arbitration shall be shared and paid equally by the Contractor and the County.

11. Operation During a Dispute: If a dispute arises between the County, the Contractor, or any other party that in any way relates to the Contractor's performance under this Agreement, the Contractor shall continue to perform its duties in strict compliance with the terms and conditions of this Agreement, regardless of the pending dispute.

12. Notification by Contractor:

12.1 Public Notice of Schedules and Services: At least ten (10) days but not more than twenty (20) days prior to the Commencement Date, the Contractor shall provide notice to its Customers concerning the Contractor's schedules and services. The notice shall be published in the local newspaper that has the largest circulation in the Service Area. Notice also shall be delivered to each Customer, by using door hangers, flyers, or similar means. The content and form of the notice are subject to the prior approval of the Contract Administrator. At a minimum, the notices shall include the following information:

- (a) The collection day for each collection route and for each type of material (i.e., Garbage, Recyclables, and Yard Waste). The door hangers also shall include the approximate time (i.e., morning or afternoon) when each collection service is scheduled.

- (b) The types of special services that will be provided by the Contractor, if requested by the Customer.
- (c) The location of the Contractor's office, the Contractor's mailing address, and the Contractor's toll-free telephone number, which should be called for information about the Contractor's services or to report a complaint.
- (d) The name of the Contractor's manager for the service area.
- (e) The types of materials that the Contractor will not collect (e.g., Hazardous Waste).
- (f) The size and weight limitations, if any, on the materials that the Contractor will collect (e.g., fifty (50) pounds per garbage receptacle).
- (g) The telephone number to call for information from the County about its services and facilities.
- (h) The proposed date and location of any upcoming community cleanup program.

- 12.2 Notification of Route and Schedule Changes: The Contractor may change its collection routes, schedules, and manner of collection, but shall provide written notification to all affected Customers at least ten (10) days before the Contractor implements the change. Notification of changes shall be provided to each Customer with a door hanger, flyer or other method approved by the Contract Administrator. During the first week following the change, the Contractor shall provide an additional notice to each Customer that fails to place its Residential Solid Waste at the Curbside Collection Point at the appropriate time or in the appropriate manner.
- 12.3 Notification to County of Routes and Schedules: At least thirty (30) days before the Commencement Date, the Contractor shall provide the Contract Administrator with a map showing all of the routes that the Contractor will use for the collection of Residential Solid Waste in the Service Area. The route map shall designate the beginning and ending point of each route, and the days and times when service will be provided to each route. If the Contractor decides to make any temporary changes to a route or the day, time or manner of collection, the Contractor shall immediately provide verbal notification to the Contract Administrator and then shall provide written confirmation within one business day. If the Contractor wishes to make a permanent change to any route or the day, time or manner of collection, the Contractor shall provide written notice and an updated map to the Contract Administrator at least fifteen (15) days before the Contractor implements the change.

13. **Public Awareness, Education and Community Clean Up Programs:** The Contractor shall assist the County with its efforts to inform the public about the goals and objectives of the County's Solid Waste management program.
- 13.1 At least once each calendar year, the Contractor shall provide each Customer with informational, promotional, and educational materials concerning the waste management programs and services offered by the County and Contractor. These materials shall include information about the proper management and disposal of Hazardous Waste and Special Waste, and shall identify the locations of the County's collection centers for such materials. The form and content of the materials shall be subject to the prior approval of the Contract Administrator. This annual informational service is in addition to the Contractor's initial notification to the public about the Contractor's schedules.
- 13.2 The Contractor shall conduct twelve (12) community clean up programs each calendar year. The County, in consultation with the Contractor, shall designate the times, locations, and scope of each clean up program. The Contractor shall publish notice of each program in the local newspaper and shall deliver door hangers or flyers to those Customers or areas designated by the County. The notices shall be subject to the prior approval of the Contract Administrator. The Contractor shall provide at least four (4) containers, each with a minimum capacity of forty (40) cubic yards, for each program. The Contractor shall pay the cost of collecting and transporting the contents of the containers to the County's Solid Waste Management Facilities. The County shall pay the cost of disposal for the materials collected during the clean up programs.
14. **Delivery to Designated Disposal Facilities:**
- 14.1 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 designated by the County.
- 14.2 **Prohibited Deliveries:** Unless the Contractor receives the Contract Administrator's prior written approval, the Contractor shall not deliver the following materials to a Solid Waste Management Facility owned by the County: (a) Hazardous Waste; (b) Solid Waste that is not authorized for processing or disposal at the County's facility, in compliance with all Applicable Laws; and (c) Solid Waste collected outside of the County.
- 14.3 **Restricted Deliveries:** If the Contractor collects Solid Waste in the County from a person that is not a Customer under this Agreement, or if the Contractor collects materials from a Customer that are not Residential Solid Waste, the Contractor may deliver the Solid Waste to a Solid Waste

Management Facility owned by the County, but in such cases, the Contractor must notify the Contract Administrator at or before the time the Solid Waste is delivered to the County's facility and the Contractor must pay the applicable disposal and processing fees to the County. Among other things, these requirements apply to the disposal of Solid Waste that the Contractor collects in the County from commercial, industrial, governmental and institutional properties and entities.

- 14.4 Misuse of Residential Waste Collection Vehicles: Unless the Contractor receives the prior approval of the Contract Administrator, the Contractor shall only use its residential waste collection vehicle (e.g., rear loading vehicles) to collect Residential Solid Waste generated by a Customer, and shall not use such vehicles to collect Solid Waste generated on or by commercial, industrial, governmental or institutional properties or entities. Unless the Contractor receives the Contract Administrator's prior approval, the Contractor shall pay the applicable processing and disposal fees for the entire load, and shall be subject to liquidated damages or other sanctions under this Agreement, if the Contractor uses a residential waste collection vehicle to deliver Solid Waste generated on or from commercial, industrial, governmental or institutional properties or entities, or to deliver such waste with Residential Solid Waste.

15. Contractor Personnel:

- 15.1 The Contractor shall designate one or more qualified persons to supervise and be responsible for the Contractor's operations within the Service Area. The Contract Administrator shall be given the name(s) of the Contractor's supervisor(s) and the telephone number(s) where the supervisor(s) can be reached twenty-four (24) hours per day.
- 15.2 The Contractor's collection employees shall wear a uniform or shirt, clearly identifying the Contractor's name and the name of the employee, at all times when the employee is working in the County.
- 15.3 All of the Contractor's drivers shall carry a valid Florida commercial driver's license, suitable for the type of vehicle that is being driven, at all times when operating collection equipment in the County. The Contractor shall ensure that all of its employees are fully trained and qualified before they drive any equipment in the County or undertake any other duties under this Agreement.
- 15.4 The Contractor shall provide operating and safety training for all of its personnel before they commence work under this Agreement and such training shall be updated on a regular basis. The Contractor shall initiate and maintain a drug screening program for its employees during their employment with the franchised waste collector. The Contractor's drivers shall be assigned to routes

in the Service Area only after they are aware of the specific area and route that is to be served.

- 15.5 Before beginning work under this Agreement, the Contractor shall inform all of its collection employees about the procedures that are to be followed in the event that the employees are involved in an accident with a vehicle, or other circumstances where there is damage to public or private property, or cases involving complaints from Customers. The Contractor's employees shall at all times and in all circumstances treat all Customers in a polite and courteous manner. The Contractor's employees shall not use loud or profane language while performing their duties under this Agreement. If a Customer is belligerent or unduly upset, the Contractor shall promptly notify the Contract Administrator. If deemed necessary, the Contract Administrator shall work with the Contractor to resolve the Customer's complaint. The Contractor shall provide each employee with a telephone number to call in the event of an accident or emergency.

16. Collection Vehicles and Equipment:

- 16.1 General Standards: At all times the Contractor shall have available (i.e., in a local equipment/vehicle yard) and in good working condition, adequate numbers and types of vehicles and equipment to efficiently and timely perform the Contractor's duties under this Agreement. All vehicles and equipment shall be licensed in the state of Florida, operated in compliance with all applicable laws, and maintained in compliance with the manufacturer's recommendations. The Contractor's Solid Waste collection equipment shall be of the enclosed loader packer type, or other equipment that meets industry standards and complies with the requirements of the American National Standards Institute (ANSI). The Contractor's Recyclable Materials collection vehicles shall be dual compartment equipment (one compartment for paper products; one compartment for other recyclable materials), or other equipment that is compatible with the County's needs, suitable for unloading at the County's designated facility, and in compliance with industry standards and ANSI requirements. All of the Contractor's Solid Waste collection equipment and Recyclable Material collection equipment shall be subject to the County's prior approval.
- 16.2 Condition: All of the Contractor's vehicles and equipment shall be maintained and kept in good repair and appearance, and in a clean and sanitary condition, at all times. The Contractor shall wash, clean, repair or maintain any vehicle or piece of equipment within 48 hours after being requested to do so by the Contract Administrator. The Contractor's vehicles and equipment shall be no more than three (3) years old on the Commencement Date. The Contractor shall not use any vehicle or equipment that is more than seven (7) years old,

except on an emergency basis. The condition and age of the collection equipment is required in order to serve the County's needs in insuring the health and safety of its residents and the infrastructure of the communities within the County that are served.

- 16.3 Vehicle Identification: All of the vehicles used by the Contractor for the collection of Solid Waste or Recyclable Materials shall clearly identify the Contractor's name, local telephone number, and vehicle number, on both sides and the rear of the vehicles in letters and numbers that are at least five (5) inches tall. Equipment shall be marked in a similar manner. Recycling collection vehicles shall be clearly marked to indicate that they are used for recycling.
- 16.4 Reserve Vehicles: The Contractor shall have available reserve vehicles and equipment, which can be put into service within two (2) hours of any breakdown. Such reserve vehicles and equipment shall correspond in size and capacity to the vehicles and equipment used by the Contractor to perform its duties under this Agreement. Vehicles and equipment required for extended emergencies shall be addressed in accordance with Section 20 of this Agreement.
- 16.5 Properly Equipped Vehicles: Each of the Contractor's collection vehicles shall carry at all times appropriate tools and supplies to clean up any litter or spillage that may occur while the vehicles are being used in the County. Each vehicle shall at all times carry a spill response kit, which is suitable and adequate for cleaning up any leaks or spills of oil, hydraulic fluid, or other liquids from the Contractor's vehicles.
- 16.6 Properly Loaded Vehicles: All of the Contractor's vehicles shall be covered, enclosed, sealed or otherwise secured to prevent blowing or littering of Solid Waste, and spillage of fluids. The Contractor's vehicles shall not be overloaded, either by weight or by stacking oversized or excessive materials on the vehicle.
- 16.7 Vehicle Inventory: At least ten (10) days before the Commencement Date, the Contractor shall provide the Contract Administrator with a list of the vehicles that will be used to provide the services required under this Agreement. The list shall be presented in a format approved by the Contract Administrator. At a minimum, the Contractor's list shall identify (a) the type of vehicle; (b) the make, model and model year; (c) the license tag number; (d) the vehicle identification number; (e) the vehicle's age; and (f) the date when the vehicle will be replaced. The Contractor's list also shall provide the same information for each reserve vehicle. The Contractor's list shall be updated at least once every six months and provided to the Contract Administrator.

- 16.8 Contractor's Local Office: The Contractor shall maintain an office within the Service Area, which shall be equipped with a sufficient number of employees and telephones to enable the Contractor to receive and respond to complaints promptly. At least two toll-free telephones numbers for the office shall be listed in the local telephone directory. The office shall be open to the public at least from 7 a.m. until 6 p.m., Monday through Friday, and 7 a.m. until 3 p.m. on Saturday, except July 4th, Thanksgiving Day, Christmas Day, and New Years Day. The Contractor shall use a telephone answering machine or service to receive Customer inquiries when the office is closed.
- 16.9 Contractor's Equipment Yard: The Contractor's equipment yard shall be maintained in a safe condition, in compliance with all applicable laws. The Contractor's equipment shall be stored and secured in the Contractor's equipment yard, which shall be closed and locked after normal business hours.
- 16.10 Inspection of Contractor's Work: The County shall have the right to inspect the Contractor's office, equipment yard, and equipment during normal business hours to evaluate whether the Contractor is in compliance with the requirements of this Agreement. The County also may perform unannounced inspections and evaluations of the Contractor's routes and performance under this Agreement.
- 16.11 Notice of Violations: The Contractor shall promptly provide written notification to the Contract Administrator if the Contractor or its employees receive a ticket or citation by any law enforcement agency while performing any work in the County.

17. Complaints:

- 17.1 The Contractor shall prepare and maintain a complaint log for all of the complaints received from individuals and the County. Each complaint shall be recorded on a standard form, in a format approved by the Contract Administrator, and the forms shall be kept in the complaint log. At a minimum, the standard forms shall include the following information: (a) the date and time when the complaint was received; (b) the date and time when the problem occurred; (c) the source of the complaint (Customer, County or other); (d) the name, address, and telephone number of the person reporting the complaint, and the location of the problem, if different than the complainant's address; (e) the Contractor's truck number, if available; (f) the nature of the complaint; (g) the name of the person assigned by the Contractor to respond to the complaint; (h) the ultimate action taken by the Contractor; and (i) the date and time when the complaint was resolved.

- 17.2 On or before the tenth day of each month, the Contractor shall provide the Contract Administrator with a copy of the standard forms for each complaint received by the Contractor during the preceding month.
- 17.3 The Contractor shall respond to all complaints as expeditiously as possible. If the Contractor receives a complaint before 12:00 noon, Monday through Friday, the Contractor shall respond to the complaint on the day it is received. If a complaint is received after 12:00 noon, or on a Saturday, or on the day before an authorized holiday, the Contractor shall respond no later than 12:00 noon on the next business day.
- 17.4 Each day the Contractor shall provide the Contract Administrator with a written report, in a format approved by the Contract Administrator, concerning the complaints received during the prior day. At a minimum, the report shall identify the number of complaints received, the general nature of the complaints, the number of complaints that have not been resolved, and the basic facts concerning any complaints that have been unresolved for more than two business days. The Contract Administrator may require less frequent reporting of complaints if the Contract Administrator deems it appropriate.
- 17.5 If the Contractor is unable to resolve a complaint or other problem within the time specified herein, or if the Contractor disputes the validity of a Customer complaint, the Contractor must notify the County in writing within the time period specified herein for addressing the problem. The Contractor's notification shall provide sufficient information to explain the Contractor's position and any suggestions for resolving the issue.
- 17.6 The County, at its discretion, may attempt to resolve complaints that are not timely resolved by the Contractor. The Contractor shall be liable for any costs reasonably incurred by the County to resolve such complaints.
18. **Liquidated Damages:**
- 18.1 The Contractor and the County agree that the Contractor's failure to perform in strict compliance with this Agreement will cause the County to incur expenses and damages that will be difficult to calculate, at best. Accordingly, the County and the Contractor agree that the following amounts are reasonable estimates of the County's damages, and thus constitute liquidated damages, and not penalties, for the Contractor's breach of this Agreement. These liquidated damages are supplemental to any other remedies the County may have under this Agreement or at law or in equity. If the Contractor fails to perform in accordance with this agreement, the County, without waiving any other remedies, and without reducing the Contractor's obligation to operate in strict compliance with the terms of this Agreement, may deduct the following

amounts from any sum that otherwise would be payable to the Contractor under this Agreement:

- | | | |
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| 18.2 | Failure to address a Customer's complaint by the close of business on the next business day. | \$25 per incident |
| 18.3 | Failure to leave a notice with a Customer, or failure to notify the County, if the Customer places unacceptable or inappropriately prepared materials at the Curbside Collection Point. | \$25 per incident |
| 18.4 | Failure to return Garbage Receptacles or recycling containers to the Curbside Collection Point at three (3) or more residential units on one route. | \$10 per residence |
| 18.5 | Collection of materials on days or at times that are not authorized by this Agreement, when such collections occur more than three (3) times in a thirty (30) day period. | \$100 per incident |
| 18.6 | Failure of Contractor's employees to conduct themselves in an appropriate manner or failure to treat Customers in a polite and courteous manner. | \$50 per incident |
| 18.7 | Failure of Contractor's employees to comply with uniform requirements. | \$50 per incident |
| 18.8 | Commingling Yard Waste or Recyclables with Garbage or other inappropriate Materials. | \$200 per incident |
| 18.9 | Commingling commercial waste or other types of inappropriate material with Residential Solid Waste for disposal at the County's Solid Waste Management Facility. | \$1,000 per incident |
| 18.10 | Delivering commercial or other types of inappropriate Solid Waste to the County's | \$1,000 per incident |

Facilities in a residential waste collection vehicle.

- | | | |
|-------|---|--|
| 18.11 | Failure to clean up spillage (e.g., oil, hydraulic fluid, garbage, recyclables) or litter on the day notice of such spillage or litter is received. | \$100 per incident |
| 18.12 | Failure to maintain office hours and supervisory contacts required by this Agreement. | \$50 per incident |
| 18.13 | Failure to properly display Contractor's name, local phone number and vehicle number on equipment and vehicles. | \$50 per incident |
| 18.14 | Failure to provide the initial or annual notices to Customers concerning schedules and Solid Waste services. | \$50 per day after the due date |
| 18.15 | Failure to submit an annual certification by the date prescribed in Section 28, below. | \$50 per day |
| 18.16 | Contractor's vehicle operator not in possession of a valid commercial driver's license. | \$100 per incident |
| 18.17 | Failure to complete an incomplete route within the time period requested by the Contract Administrator. | \$100 per incident |
| 18.18 | Failure to deliver Solid Waste collected pursuant to this Agreement to the designated facility. | \$1,000 per load |
| 18.19 | Failure to receive prior approval or give proper notification of a change to a route, schedule or method of collection. | \$500 per incident |
| 18.20 | Delivery of out-of-county Solid Waste at the County's facility for disposal as Residential Solid Waste. | \$5,000 per load for the first incident; \$10,000 per load for any subsequent incident |

- 18.21 Failure to carry a spill response kit in the Contractor's collection vehicle. \$50 per incident
- 18.22 Disposal of Recyclable Material. \$300 per load
- 18.23 Failure to submit a required report or document to the County in compliance with the deadlines in this Agreement. \$100 per incident; \$100 per day after 30 days

18.24 The Contractor shall not be required to pay liquidated damages in those cases where the delay or failure in the Contractor's performance was excused in writing in advance by the Contract Administrator, or was due to an unforeseen cause that was beyond the Contractor's reasonable control and was not the result of an error or negligence by the Contractor.

18.25 The Contract Administrator shall notify the Contractor in writing if the County intends to assess liquidated damages, and shall state the basis for each assessment. If the Contractor disputes the County's claim for liquidated damages, the Contractor shall, within five (5) days of receiving the Contract Administrator's notice, submit a written objection that identifies the grounds for the Contractor's position. If the Contractor cannot resolve its dispute with the Contract Administrator or the County Administrator, the Contractor may present the dispute to the Board, which shall provide the Contractor with an opportunity to be heard at a public meeting.

18.26 The County shall not assess liquidated damages for violations of this Agreement that occur within thirty (30) days of the Commencement Date, except violations of Sections 18.6, 18.8, 18.9, 18.10, 18.20 and 18.22.

19. Special Collection Procedures and Additional Collection Services:

19.1 Additional Collection Services for Communities: Under this Agreement, the Contractor must collect Residential Solid Waste (e.g., Garbage, Recyclables, and Yard Waste) from each Customer, once each week, at the Curbside Collection Point. Subject to the conditions set forth herein, the Contractor shall collect one or more materials two times each week, or shall collect one or more materials at a location other than the curbside (e.g., at a side door location or at a centralized location in the community), if requested to do so. Such services shall be provided by the Contractor if a community (e.g., subdivision) with an established homeowners association, a municipal service district (MSD), or some other entity responsible for the financial obligations of the community and/or individual with authorization to contract for services and incur debt

requests additional collection services, but the Contractor's services shall be subject to the following criteria:

- (a) The community and/or individual and the Contractor must enter into a written agreement, which provides that the community or individual shall be solely responsible for paying the Contractor for the additional services, and such services shall be provided to all of the existing and future residential units in the community.
 - (b) If such an entity requests additional or modified service, it will be for every residential unit within their community and/or individual and will be billed by the Contractor, in addition to the County's annual special assessment for residential collection, recycling and disposal. The Contractor shall be solely responsible for collecting its fees from the community and/or individual.
 - (c) The Contractor shall contract individually with the community and/or individual, determine the level of additional or modified service, and bill and collect independently of the general requirements in this Agreement.
 - (d) Any revenues collected by the Contractor for such services shall be subject to a two percent (2%) franchise fee, which shall be paid to the County on a monthly basis.
 - (e) The cost of the Contractor's services shall be established by negotiations between the Contractor, the community and/or individual, but shall be subject to review and approval by the Contract Administrator before the Contractor begins providing the new services. The cost of the Contractor's services must be reasonable when considered in light of the Rates established in this Agreement and other relevant factors. The Contractor agrees that the base price for its additional or modified service will be based on a rate not to exceed eighty percent (80%) of the Rate for the Residential Solid Waste collection services already being rendered. (Exhibit E, Existing Special Contracts and Contacts)
- 19.2 Additional Collection Services for Individuals: The Contractor may collect Residential Solid Waste that has accumulated on a vacant lot, if requested by an individual. The Contractor also may provide additional collection services for Residential Solid Waste generated in the Service Area when approved in advance in writing by the County Administrator. The Contractor shall negotiate a rate for its services and sign a contract before providing any services under this paragraph. The Contractor's gross revenues for such services shall be subject to the County's two percent (2%) franchise fee. The Contractor

shall be solely responsible for collecting and the individual shall be solely responsible for paying any fees for the Contractor's services.

20. Emergency Services:

- 20.1 The Contractor shall provide emergency services from time to time, beyond the standard scope of services provided under this Agreement, for the collection, transportation and potential processing of Storm Debris generated by a Severe Weather Condition.

The Contractor shall provide the emergency services, as directed by the County, in accordance with the terms, conditions and provisions contained in this Section.

- 20.2 Declaration of a Severe Weather Condition: In order for the Contractor to be obligated to provide emergency services, the County must first determine and declare that a Severe Weather Condition has occurred within St. Johns County that requires emergency clean up, and then the Contractor shall be authorized in writing by the County Administrator to take appropriate clean up action.

- 20.3 Performance of Storm Debris Clean Up Work: The Contractor shall conduct Storm Debris clean up work in accordance with the prioritized work schedule prepared by the County. The Contractor shall collect Storm Debris from public property and public-rights of way within the Service Area as directed and shall transport Storm Debris to the facility designated by the County Administrator. The Contractor shall utilize standard waste collection vehicles and personnel in the performance of the work, and may utilize other approved special vehicles and equipment and personnel, including subcontractors, if so authorized by the County Administrator in advance in writing. The Contractor shall collect all Storm Debris that has been cut up, piled, containerized or otherwise properly prepared for collection that is of such size and weight to reasonably be loaded by hand by two men. The Contractor may be required to load larger or heavier piles or individual items of Storm Debris if the Contractor is equipped to provide mechanical loading of such larger or heavier Storm Debris.

In the event that a Major Storm generates such a large quantity of Storm Debris that the Contractor cannot reasonably collect and dispose of all of the Storm Debris, the County may also utilize other parties to perform clean up work.

The Contractor shall continue the Storm Debris clean up work until directed by the County Administrator to cease such work.

- 20.4 Term of Service for Storm Debris Clean Up: The term of this additional service will run concurrently with the term of this Agreement.
- 20.5 Records: The Contractor shall maintain detailed records, as specified by the Contract Administrator, to properly document the trucks, equipment and personnel used in the performance of Storm Debris clean up work and the actual work hours, by day, of such vehicles, equipment and personnel utilized for such work. The records shall be maintained in such manner as to fully support the quantity of work for which the Contractor invoices the County for compensation. The Contractor agrees to maintain for three years from the date of final payment and until all other pending matters are closed under this Agreement, all books, documents, papers and records pertinent to the work performed under this Agreement. The Contractor agrees to provide to the County, the federal grantor agency, the Comptroller General of the United States, the U.S. Federal Emergency Management Agency (FEMA), or any of their duly authorized representatives access to such books, documents, papers, and records for the purpose of examining, auditing, and copying the same. The Contractor further agrees to include these provisions in any subcontracts issued in connection with this Agreement.
- 20.6 Compensation and Payment to the Contractor: The County shall compensate the Contractor for Storm Debris clean up work based on an hourly rate per truck for a standard rear end loader waste collection truck with a two man crew or a standard roll-off type truck with a 20, 30 or 40 yard container, driver and a two man crew. The hourly rates are set forth in Exhibit D (Awarded Bid Rate), which is attached hereto.

The Contractor will invoice the County with the following information in order to be compensated for any services rendered.

- (a) The truck identification numbers and size of vehicles.
- (b) The names of the employees rendering the clean up service.
- (c) The time the operation began and the time the operation was completed.
- (d) All weigh tickets from the disposal facility for Storm Debris.
- (e) The routes that were collected (street names).

The hourly rate for specialized vehicles, equipment and personnel used for mechanical collection and loading, for subcontractors, and for other work shall be negotiated and approved by the County Administrator before the Contractor commences work.

The hourly rate shall not include compensation for the cost of disposal of Storm Debris at the designated disposal facility.

The Contractor shall invoice the County for Storm Debris clean up work upon completion of the work. The County shall make payment to the Contractor in the full amount of the approved invoice amount within three (3) months of the date of the invoice.

21. **Successors and Assigns:** The County and the Contractor each binds itself and its successors, executors, administrators and assigns to the other party, and to the successors, executors, administrators and assigns of the other party. Neither party may sell, assign, convey or transfer its interest in this Agreement without the prior written consent of the other. A sale of the assets of the Contractor, or a change in the ownership operational or managerial portion of the Company, shall be deemed a sale and transfer of this Agreement. No sale, transfer, conveyance or transfer of the Contractor's interest in this Agreement shall be valid unless and until the Board approves such transaction at a duly noticed public meeting.
22. **Permits and Licenses:** On or before the Commencement Date, the Contractor shall obtain, at its expense, all of the permits, licenses, registrations, and other approvals necessary to provide the services required in this Agreement. The Contractor shall keep all such approvals current and in effect at all times until this Agreement is terminated.
23. **Taxes and Expenses:** The Contractor shall be solely liable for and shall pay all federal, state and local taxes, fees, expenses, and other charges associated with the Contractor's activities and performance under this Agreement, including but not limited to sales, use, social security, workers compensation, unemployment, property, fuel, and other taxes chargeable against the labor, material, equipment, real estate and other items necessary for the Contractor's performance under this Agreement.
24. **Insurance:**
 - 24.1 **General Requirements:** The Contractor shall not commence work under this Agreement until all insurance required under this section has been obtained by the Contractor and the original certificates of insurance have been delivered to and approved by the Contract Administrator. The certificates shall clearly indicate that the Contractor has obtained insurance of the type, amount, and classification required for strict compliance with this Agreement and that no material change or cancellation for the insurance shall be effective without providing thirty (30) days prior written notice to the County. All insurance

policies shall be issued by companies authorized to do business under the laws of the State of Florida.

The Contractor's liability and obligations under this Agreement shall not be limited by, or in any way to, any insurance coverage, or by any provision in or exclusion or omission from any insurance policy.

- 24.2 **General Liability:** During the term of this Agreement, the Contractor shall maintain Comprehensive General Liability Insurance in the amount of \$2,000,000 per occurrence, including coverage for bodily injury, wrongful death, broad form property damage, and blanket contractual liability. The insurance policy shall provide coverage for the Contractor and anyone for whom the Contractor may be responsible.
- 24.3 **Vehicle Liability:** During the term of this Agreement, the Contractor shall maintain Comprehensive Vehicle Liability Insurance in the amount of \$2,000,000 per Person for bodily injury and property damage and \$2,000,000 per occurrence, to protect the Contractor from claims for damages for bodily injury, including wrongful death, as well as for claims for property damage, which may arise from the ownership, use, or maintenance of owned and non-owned vehicles whether such operations be performed by the Contractor or by anyone directly or indirectly employed by the Contractor.
- 24.4 **Workers' Compensation:** During the term of this Agreement, the Contractor shall maintain Workers' Compensation Insurance and Employer's Liability Insurance in at least such amounts as are required by Florida law for all of its employees.
- 24.5 **Umbrella Liability:** During the term of this Agreement, the Contractor shall maintain an umbrella or excess liability insurance policy in an amount equal to or greater than \$5,000,000.

25. **Performance Bond or Letter of Credit:** At least twenty (20) days before the Commencement Date, the Contractor shall furnish to the County a performance bond executed by a surety company licensed to do business in the State of Florida or an irrevocable letter of credit issued by a local bank for the faithful performance of the Contractor's obligations under this Agreement. The bond or letter of credit shall be in an amount that is (a) equal to the total revenue that is generated by the Contractor by providing residential collection services under this Agreement for three (3) months or (b) one million dollars, whichever is larger. The form of the performance bond or letter of credit is subject to approval by the County Attorney.
26. **Indemnification:** The Contractor shall indemnify, defend, and hold harmless the County (including its elected officials, officers, employees, agents, and representatives) from and against any and all liabilities, losses, claims, damages, taxes (including interest or penalties), costs and expenses (including reasonable attorney's fees, paralegal fees, and the costs of investigations, whether incurred prior to, during or after a trial, appeal, arbitration, or mediation), that in any way arise from, or in connection with, or as a result of (a) this Agreement; or (b) the Contractor's activities under this Agreement or in the County. The provisions of this Section shall survive the termination of this Agreement.
27. **Books and Records:** In its local office, the Contractor shall maintain neat and orderly records demonstrating the Contractor's compliance with the requirements of this Agreement. During normal business hours, the County shall have the right to review and copy all of the records maintained by the Contractor pertinent to the services provided under this Agreement. The Contractor's records shall be retained, and shall be available for inspection by the County, for at least three (3) years after this Agreement is terminated.
28. **Annual Certifications:** An independent, certified public accountant, licensed to do business in the State of Florida, shall review the Contractor's books and records each year and shall certify that the Contractor has: (a) fully and timely paid all of the franchise fees that are due and owing to the County under this Agreement; and (b) charged the appropriate amounts to the County for its services, based on the provisions of this Agreement. The written certification shall be delivered to the Contract Administrator within one hundred and twenty (120) days of the end of the Contractor's fiscal year.

The Contractor shall file and keep current with the County all documents and reports required by this Agreement. During the month of September in each year this Agreement is in effect, the Contractor shall verify and certify in writing to the County that all required documents are current and on file with the County, including, but not limited to, certificates of insurance, audits,

performance bonds or letters of credit, route schedules and maps, and equipment lists.

29. **Contract Termination:**

29.1 **Termination for Lack of Funding:** The County's contractual authority is limited to the funds available and appropriated. The County has established a non-ad-valorem assessment to pay for the collection of Residential Solid Waste. The County shall have the right to terminate this Agreement by providing six (6) months' advance written notice to the Contractor, if this non-ad-valorem assessment is invalidated or discontinued and the Board concludes the County has insufficient funds to continue with this exclusive franchise.

30. **Default by Contractor:** Any of the following occurrences shall constitute an event of default:

- (a) The Contractor shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in Bankruptcy Court or a petition or answer seeking an arrangement for its reorganization or the readjustment of its indebtedness under the federal bankruptcy law or under any other law or statute of the United States or any state thereof, or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or

- (b) By order or decree of a Court, the Contractor shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of the stockholders of the Contractor, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any state thereof, provided that if any such judgment or order is stayed or vacated within sixty (60) days after the entry thereof, any notice of termination shall be and become null, void and of no effect unless such stayed judgment or order is reinstated, in which case said default shall be deemed immediate; or
 - (c) By or pursuant to or under authority of any legislative act, resolution, or rule or any order or decree of any Court or governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator shall take possession or control of all or substantially all of the property of the Contractor and such possession or control shall continue in effect for a period of sixty (60) days; or
 - (d) The Contractor has failed or refused to perform or comply with the terms, conditions, or covenants in this Agreement or any Applicable Law or has wrongfully failed or refused to comply with the instructions of the Contract Administrator relative thereto.
31. **Notice of Default:** Upon the occurrence of an event of default by the Contractor, the County shall give the Contractor ten (10) days written notice to cure the default. In the case of an event of default which cannot, with due diligence and good faith, be cured within the applicable cure period, the Contractor shall have such additional time as is reasonably necessary to cure the default, provided the Contractor commences to cure within the foregoing cure period and thereafter proceeds diligently and continuously in good faith to complete the necessary cure.
32. **County's Remedies:** Upon a default and the expiration of any applicable grace period, the County shall have the following rights and remedies, which are supplemental to any other remedies available under this Agreement or in law or equity:
- (a) To terminate this Agreement, whereupon the parties shall be relieved of all further obligations to each other;
 - (b) To restrain by injunction or obtain a decree specifically compelling performance of any term or provision of this Agreement;

- (c) To recover all direct and indirect damages, costs, and expenses which result from the Contractor's default

33. Procedure for Termination for Default:

- 33.1 Upon the Contractor's receiving a notice of the proposed termination for default, and upon the County Administrator's recommendation to the Board that the Contractor be terminated, the County shall give at least ten (10) days notice to the Contractor prior to holding a public hearing. Should the Board find either a continual breach or a single material breach of the Agreement that justifies termination, the Board can elect to terminate the Agreement. In lieu of or in addition to the foregoing, the County may also direct the County Attorney to institute appropriate action, such as exercising the performance bond or undertaking legal procedures to recover damages.
 - 33.2 In the event of termination, the Contractor shall not be entitled to receive any further payment under this Agreement until the County has determined and collected any damages resulting from the Contractor's termination, including but not limited to, the County's costs associated with completing the Contractor's services.
 - 33.3 Upon termination, the Contractor shall promptly provide the County with the Contractor's records and documents, including electronic records and documents, related to the current collection and transportation services performed under this Agreement, and including the Contractor's collection service list of residential units. All such records and documents shall thereafter become the sole property of the County.
- 34. Repeat Violations of Agreement:** In addition to the above, if the Contractor's record of performance shows that the Contractor has frequently, regularly or repetitively defaulted in the performance of any of the covenants or conditions required herein to be kept and performed by the Contractor, and regardless of whether the Contractor has corrected each individual condition of default, or paid liquidated damages, the Contractor shall be deemed a "habitual violator" and shall forfeit the right to any further notice or grace period to correct, and all of said defaults shall be considered cumulative and collectively shall constitute a condition of irredeemable default. The County shall thereupon issue the Contractor a final warning, citing the circumstances therefore, and any single default by the Contractor of whatever nature, subsequent to the issuance of the County's notice, shall be grounds for immediate termination of this Agreement. In such event, the County may terminate this Agreement by giving written notice to the Contractor, and the termination shall be effective five calendar days later. Immediately upon

receipt of the County's notice of termination, the Contractor shall cease any further performance under this Agreement.

35. **Title to Residential Solid Waste:** The County shall at all times own and hold title to all Residential Solid Waste collected by the Contractor pursuant to this Agreement, and the Contractor shall have no right to take, keep, process, alter, remove or dispose of any such material, except as specifically authorized by this Agreement.
36. **Choice of Law and Venue:** This Agreement shall be governed by the laws of the State of Florida. Venue for any legal actions instituted under, based on, or arising out of this Agreement shall be in St. Johns County, Florida.
37. **Remedies Not Exclusive:** No remedy herein conferred upon any party is intended to be exclusive of any other remedy. Each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.
38. **Attorneys' Fees and Costs:** If any legal action or other proceeding is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, court costs and all expenses, even if not taxable as court costs, including, without limitation, all such fees, costs and expenses incident to appeals, in addition to any other relief to which such party or parties may be entitled.
39. **Notices:** Any notice, request, demand, consent, approval or other communication required or permitted by this Agreement shall be given or made in writing and shall be served (as elected by the party giving such notice) by any of the following methods:
 - (a) Hand delivery to the other party; or
 - (b) Delivery by commercial overnight courier service; or
 - (c) Mailed by registered or certified mail (postage prepaid), return receipt requested.

For purposes of any notice provided under this Agreement, the addresses are as follows:

CONTRACTOR:

AREA PRESIDENT
REPUBLIC SERVICES OF FLORIDA LP
8619 Western Way
Jacksonville, FL 32256
COPIES TO:

GENERAL MANAGER
SEABOARD WASTE SYSTEMS
445 International Golf Parkway
St. Augustine, FL 32095

COUNTY:

COPIES TO:

Contract Administrator

County Attorney

Notice given in accordance with the provisions of this Section shall be deemed to be delivered and effective on the date of hand delivery or on the second day after the date of the deposit with an overnight courier or on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not delivered if mailed.

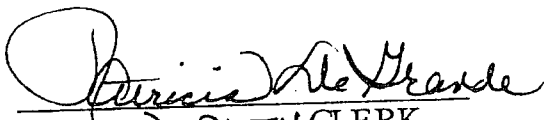
40. **Severability:** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable for the remainder of this Agreement, then the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.
41. **Independent Contractor:** The Contractor shall be an independent contractor and shall have complete charge of its workers engaged in the performance of this agreement. The Contractor is not an agent, representative or employee of the County and nothing herein is intended or should be construed as establishing the relationship of partners, or joint ventures, between the Contractor and the County.
42. **Waiver of Claims:** Unless otherwise specifically provided by this Agreement, no delay or failure to exercise a right under this Agreement shall impair such right or shall be construed to be a waiver thereof, but such right may be exercised from time to time and as often as deemed expedient. The failure of the County or the Contractor at any time to require performance by the other party of any term in this Agreement shall in no way affect the right of the County or the Contractor thereafter to enforce same; nor shall waiver by the

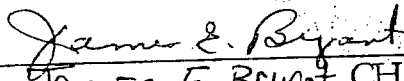
County or the Contractor of any breach of any provision of this Agreement be taken or held to be a waiver of any succeeding breach of such term or as a waiver of any term itself. To be effective, any waiver shall be in writing and signed by the party granting such waiver. Any such waiver shall be limited to the particular right so waived and shall not be deemed to waive any other right under this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the respective authorized representatives as of the date first above written.

ATTEST: Cheryl Strickland, Clerk

BOARD OF COUNTY COMMISSIONERS,
ST. JOHNS COUNTY

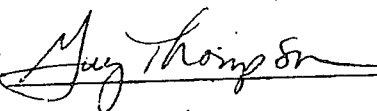

DEPUTY CLERK


JAMES E. BRYANT, CHAIR

APPROVED AS TO FORM AND
CORRECTNESS:


COUNTY ATTORNEY

CONTRACTOR

BY 

(Print or Type Name and Title)

GUY THOMPSON
Area President

LEGAL AND MAP OF SERVICE AREA

EXHIBIT A

YARD WASTE DISPOSAL FEES

The Waste Disposal Fees for basic disposal services are not required to be paid by the Residential Franchise Solid Waste Collection Hauler.

EXHIBIT B

COUNTY AUTHORIZED CONTRACTORS WITHIN THE SOUTHERN
FRANCHISE SERVICE AREA AND THEIR EXISTING CUSTOMERS
(ATTACHED)

EXHIBIT C

AWARDED BID RATE

This Exhibit reflects the awarded bid rate for basic services rendered within the agreement one (1) day a week collection and transportation of solid waste, recycling and yard waste.

A. Rates for:

	North Service Area	South Service Area	Combined Service Areas
1 DAY A WEEK SOLID WASTE COLLECTION	\$5.04		
1 DAY A WEEK RECYCLING	1.40		
1 DAY A WEEK YARD WASTE	1.25		
TOTALS	\$7.69		

B. Awarded rate for equipment and two (2) man crew to be utilized during severe weather conditions, storm cleanup and when authorized by the board of county commissioners or the County Administrator

EQUIPMENT VEHICLE AND TWO (2) MAN CREW	DOLLAR AMOUNT
<i>Equipment \$64.00</i> <i>Manpower 36.00</i>	<i>\$100.00</i>

EXHIBIT D

**LIST OF EXISTING SPECIAL COLLECTION AND SERVICE
LOCATIONS AND CONTACT PERSONNEL**

The Plantation Of Ponte Vedra

Contact Person: Allen Van Winkle (904) 273-2800

Sawgrass

Contact Person: Pat Arenas (904) 273-9832

Marsh Landing

Contact Person: Janet Pritchard (904) 273-3033

Municipal Service District (MSD)

Contact Person: Robert Becker (904) 705-2177

EXHIBIT E

Attachment B

November 1, 2009

Mr. Daryl Locklear
Assistant County Manager
St. Johns County 500 San Sebastian View
St. Augustine, FL 32084

Mr. Joe Stephenson Director of Public Works
St. Johns County
1625 Highway 16
St. Augustine, Florida 32084

Dear Daryl and Joe,

Thank you for meeting with us over the last few months to discuss a potential renewal of the existing Solid Waste Collection Franchise between St. Johns County and Seaboard Waste. We understand the County's goal keep its costs low and to enhance its recycling options for your residents. Therefore, we propose the following amendments to our existing contract:

- 1) Increase the volume of recyclables collected and processed by increasing the number of approved recyclable items from 7 items to 27 items.

Current recyclables Listing:

Newspaper
Corrugated Cardboard
Aluminum Containers
Metal Containers
Plastics 1 & 2
Glass- clear, brown & green

Proposed Recyclables Listing:

Plastic food, beverage, detergent bottles and jugs labeled #1-#7
Pill Bottles
Water Bottles
Glass bottles and jars (green, brown, and clear)
Metal cans
Aluminum Cans
Newspapers and inserts (on rainy days, please hold until next collection day)
Magazines
Catalogs
Telephone books
Brown paper bags (can also be used to hold excess recyclables)
Corrugated cardboard (flattened and cut in pieces 2' by 3' or smaller)
Office Paper
Copy Paper
Shredded Paper in Paper Bag
File Folders
File or Packing Boxes
Junk Mail
Cereal Boxes
Brown Gray Fiber packages (soda cartons, dry food packages, etc.)

*No plastic bags, mild cartons, or juice boxes
No motor oil, pool chemical, pesticide or fertilizer bottles
No loose shredded paper*

- 2) Increase the number of 18 gallon recycle bins delivered and serviced at each home from one to two bins for a total of 36 gallons of recyclable materials storage per home
- 3) Amend the contract to allow for changes in solid waste and recycling technology to read as follows:

Suggested New Section 3.10:

Notwithstanding anything the contrary set forth herein, in the event (i) either party becomes aware of the availability of new or different technology from that which is currently commercially reasonably available as of the date of this Agreement, that materially changes, modifies, or alters the current standard and industry accepted methods of collection, transportation, processing and/or disposal of Residential Solid Waste and/or Recycling or the types of Residential Solid Waste and/or Recyclable Materials to be collected by Contractor pursuant to this Agreement: or (ii) any governmental body having jurisdiction over the County, the Contractor or this Agreement, promulgates, adopts, issues or amends a mandate or other governmental recommendation that imposes, changes, modifies, and/or alters any requirements upon the collection, transportation, processing and/or disposal of Residential Solid Waste and/or Recyclable Materials by Contractor as contemplated by this Agreement or the types of Residential Solid Waste and/or Recyclable Materials to be collected by Contractor hereunder, then, in either event, each of the County and the Contractor agree to negotiate in good faith with the other party regarding any modifications or amendments to this Agreement such party deems necessary to account for either (i) or (ii) above, any such modifications or amendments to be mutually agreed to by the parties hereto in writing solely pursuant to a duly approved, delivered and executed written amendment to the Agreement by an authorized representative of both the County and the Contractor.

- 4) Amend the contract as follows:

Upon the anniversary date of the 3rd year of this extension Contractor shall have the unilateral right to cancel this agreement in its entirety at any point in time thereafter. Contractor shall provide the County with six (6) months notice prior to the end date of service to allow for the County to make other arrangements for service. Said termination shall not preclude Contractor from participating in any subsequent bidding or Request for Proposal process for the collection of solid waste, yard trash, and recycling materials by the County.

We look forward to discussing the above with you and continuing our successful partnership with St. Johns County. Please do not hesitate to call me at (904)755-7344 if you have any questions or would like to discuss this further.

Sincerely,

Andrew King
General Manager

Attachment C

ESTABLISHED RATE

This Exhibit reflects the established rate for basic services rendered within the agreement one (1) day a week collection and transport of solid waste, recycling, and yard waste.

A. Rates for:

	North Service Area	South Service Area	Combined Service Area
1 DAY A WEEK SOLID WASTE COLLECTION	\$5.96		
1 DAY A WEEK RECYCLING	\$2.96		
1 DAY A WEEK YARD WASTE	\$1.49		
TOTALS	\$10.41		



B. Established rate for unit cost per cubic yard to cut load and transport to be utilized during severe weather conditions, storm cleanup and when authorized by the board of county commissioners or the County Administrator.

Unit cost per cubic yard to cut load and transport	Dollar Amount : \$15.00
Compacted Weighed Loads	Dollar Amount : \$60.00

EXHIBIT D

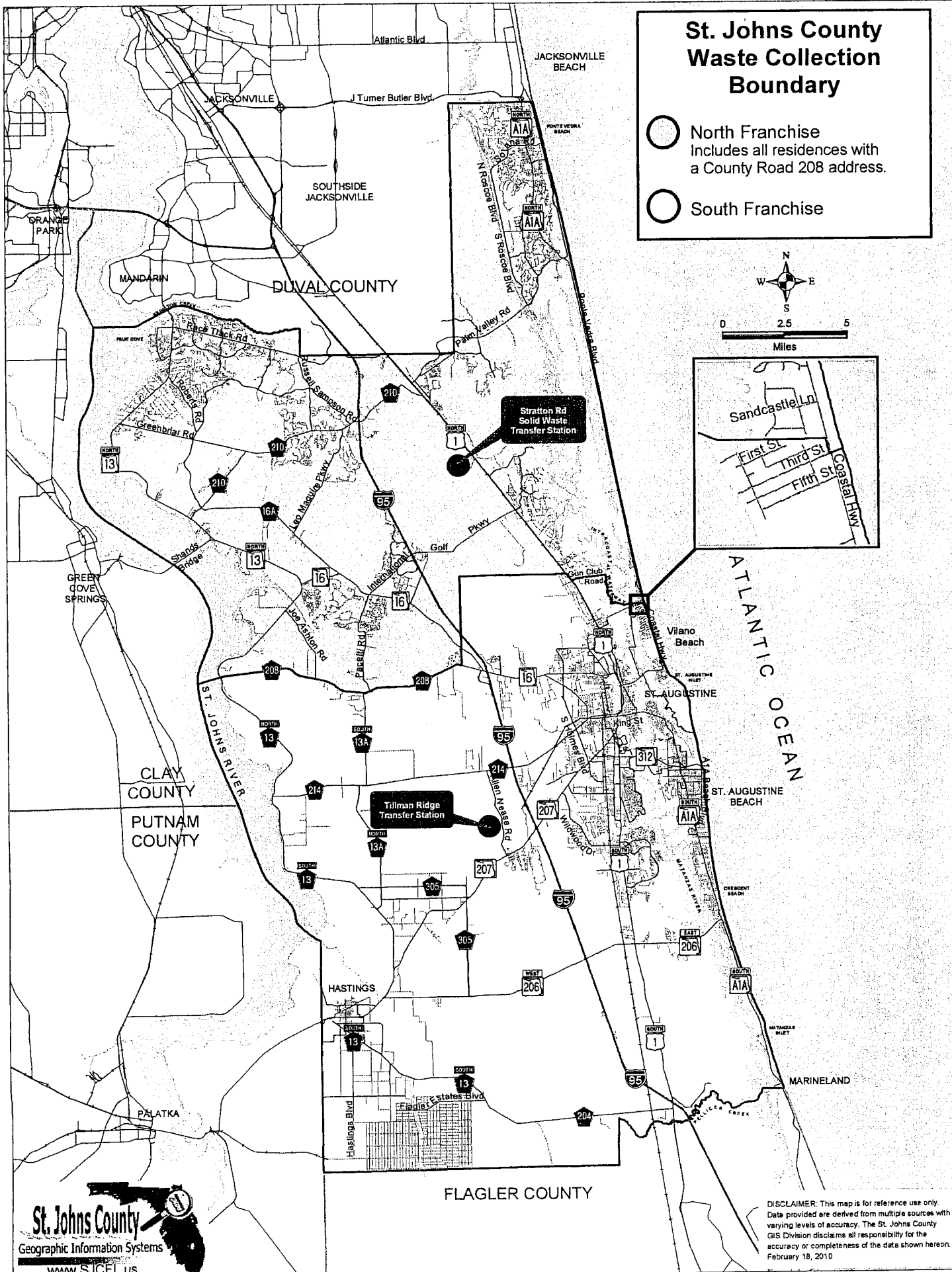
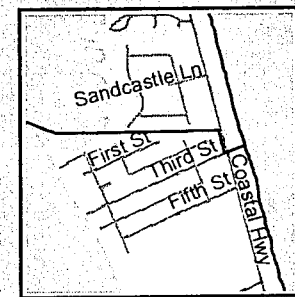
Attachment D

St. Johns County Waste Collection Boundary

-  North Franchise
Includes all residences with a County Road 208 address.
-  South Franchise



0 2.5 5
Miles



Attachment D

ST. JOHNS COUNTY WASTE COLLECTION BOUNDARY – FEBRUARY 16, 2010

NORTH FRANCHISE AREA

ALL OF ST. JOHNS COUNTY, FLORIDA LYING NORTH OF THE FOLLOWING DESCRIBED LINE: BEGIN AT THE INTERSECTION OF THE WESTERLY PROLONGATION OF THE CENTERLINE OF COUNTY ROAD 208 WITH THE WEST MARGIN OF THE MAIN CHANNEL OF THE ST. JOHNS RIVER; THENCE EASTERLY, ALONG SAID WESTERLY PROLONGATION AND ALONG SAID CENTERLINE OF COUNTY ROAD 208 TO ITS INTERSECTION WITH THE LINE DIVIDING RANGES 28 AND 29 EAST, BOTH LYING IN TOWNSHIPS 6 AND 7 SOUTH OF SAID COUNTY; THENCE NORTHERLY, ALONG SAID RANGE LINE TO THE NORTH LINE OF SECTION 19, TOWNSHIP 6 SOUTH, RANGE 29 EAST; THENCE EASTERLY, ALONG THE NORTH LINE OF SECTION 19, ALONG A LINE FROM THE NORTHEAST CORNER OF SAID SECTION 19 TO THE NORTHWEST CORNER OF SECTION 20, AND ALONG THE NORTH LINE OF SAID SECTION 20, AND SECTIONS 21 AND 22, ALL LYING IN TOWNSHIP 6 SOUTH, RANGE 29 EAST TO THE WESTERLY LINE OF ST. JOHNS INDUSTRIAL PARK AN UNRECORDED PLAT; THENCE NORTHERLY, ALONG SAID WESTERLY LINE, TO THE NORTHWEST CORNER OF SAID ST. JOHNS INDUSTRIAL PARK; THENCE EASTERLY, ALONG THE NORTHERLY LINE OF SAID ST. JOHNS INDUSTRIAL PARK AND ITS EASTERLY PROLONGATION, TO THE CENTERLINE OF U.S. HIGHWAY NO. 1; THENCE SOUTHERLY, ALONG SAID CENTERLINE OF U.S. HIGHWAY NO. 1 TO ITS INTERSECTION WITH THE WESTERLY PROLONGATION OF THE CENTERLINE OF GUN CLUB ROAD; THENCE EASTERLY, ALONG SAID WESTERLY PROLONGATION, ALONG THE AFOREMENTIONED CENTERLINE OF GUN CLUB ROAD, AND ALONG THE EASTERLY PROLONGATION OF SAID CENTERLINE OF GUN CLUB ROAD TO THE WEST BANK OF THE INTRACOASTAL WATERWAY, ALSO KNOWN AS NORTH RIVER; THENCE SOUTHERLY, ALONG SAID WEST BANK, TO ITS INTERSECTION WITH A LINE WHICH BEARS SOUTH 69 DEGREES 19 MINUTES WEST FROM THE MOST NORTHWESTERLY CORNER OF THOSE LANDS AS DESCRIBED IN OFFICIAL RECORDS 3234, PAGE 891 OF THE PUBLIC RECORDS OF SAID COUNTY; THENCE SOUTH 66 DEGREES 12 MINUTES EAST, ALONG THE NORTHEASTERLY LINE OF SAID LANDS, TO ITS INTERSECTION WITH THE WESTERLY PROLONGATION OF THE SOUTHERLY LINE OF PONTE VEDRA SHORES WEST AS RECORDED IN MAP BOOK 14, PAGES 34 AND 35 OF THE AFOREMENTIONED PUBLIC RECORDS; THENCE EASTERLY, ALONG SAID WESTERLY PROLONGATION AND ALONG SAID SOUTHERLY LINE TO THE WESTERLY RIGHT OF WAY OF COASTAL HIGHWAY (STATE ROAD NO. A1A); THENCE SOUTHERLY, ALONG SAID WESTERLY RIGHT OF WAY, TO ITS INTERSECTION WITH THE EASTERLY PROLONGATION OF THE CENTERLINE OF THIRD STREET AS SHOWN ON PLAT OF NORTH BEACH AS RECORDED IN MAP BOOK 3, PAGE 28 OF SAID PUBLIC RECORDS; THENCE EASTERLY, ALONG SAID EASTERLY

PLAT OF NORTH BEACH AS RECORDED IN MAP BOOK 3, PAGE 28 OF SAID
PUBLIC RECORDS; THENCE EASTERLY, ALONG SAID EASTERLY
PROLONGATION AND ALONG SAID CENTERLINE OF THIRD STREET TO THE
WATERS OF THE ATLANTIC OCEAN.

EXCLUDING ALL RESIDENCES WITH A COUNTY ROAD 208 ADDRESS.