

RESOLUTION NO. 2012- 335

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, PROVISIONS, CONDITIONS, AND REQUIREMENTS OF A NON-EXCLUSIVE FRANCHISE AGREEMENT FOR COMMERCIAL/ INDUSTRIAL SOLID WASTE BETWEEN ST. JOHNS COUNTY, FLORIDA, AND SOUTHERN COMFORT MOWING, INC., AND AUTHORIZING THE COUNTY ADMINISTRATOR OR DESIGNEE TO EXECUTE THE NON-EXCLUSIVE FRANCHISE AGREEMENT FOR COMMERCIAL/INDUSTRIAL SOLID WASTE ON BEHALF OF ST. JOHNS COUNTY

WHEREAS, Southern Comfort Mowing, Inc. wishes to collect and transport Commercial/Industrial Solid Waste within the unincorporated area of St. Johns County, Florida; and

WHEREAS, by entering into a Non-Exclusive Franchise Agreement for Commercial/Industrial Solid Waste with Southern Comfort Mowing, Inc., the St. Johns County Board of Commissioners ("Board") seeks to ensure that the collection and transport of Commercial/Industrial Solid Waste is performed in accordance with applicable local, state and federal regulations, and that such performance is consistent with the public interest; and

WHEREAS, the Board has reviewed the terms, provisions, conditions, and requirements of the Non-Exclusive Franchise Agreement for Commercial/Industrial Solid Waste (attached hereto as Exhibit A, and incorporated herein); and

WHEREAS, the Board has determined that entering into said Agreement with Southern Comfort Mowing, Inc. serves a public purpose and will not negatively impact the citizens of St. Johns County.

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 hereby approves the terms, provisions, conditions, and requirements of a Non-exclusive Franchise Agreement for Commercial/Industrial Solid Waste between St. Johns County, Florida, and Southern Comfort Mowing, Inc., and authorizes the County Administrator or designee to execute the Agreement on behalf of St. Johns County.

Section 3. To the extent that there are typographical, administrative and/or scrivener's errors or omissions that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval of the Board.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 20th day of November, 2012.

**BOARD OF COUNTY COMMISSIONERS OF
ST. JOHNS COUNTY, FLORIDA**

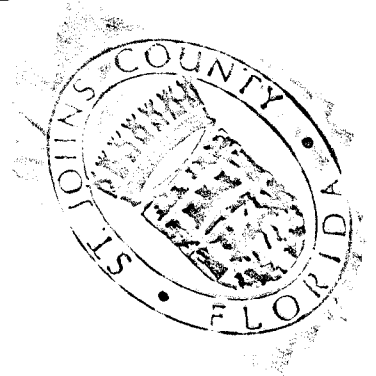
Attest:

Sam Heltemer
Deputy Clerk

By:

Jay Morris
Chair

RENDITION DATE 11/28/12



**ST. JOHNS COUNTY
NON-EXCLUSIVE FRANCHISE AGREEMENT FOR
COMMERCIAL / INDUSTRIAL SOLID WASTE COLLECTION FRANCHISE**

This Non-Exclusive Franchise Agreement for Commercial / Industrial Solid Waste Collection ("Agreement") is made between St. Johns County ("County"), a political subdivision of the State of Florida, and Southern Comfort, its successors and assigns, hereinafter referred to as the Franchisee.

WHEREAS, Franchisee wishes to collect and transport Commercial / Industrial Solid Waste in the unincorporated areas of St. Johns County; and

WHEREAS, the County wishes to ensure that the Franchisee's activities are performed in accordance with all applicable laws and is consistent with the public interest.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the County and Franchisee agree as follows:

ARTICLE I: DEFINITIONS

1.0 The words and terms used in this Agreement shall have the meaning set forth in Section 2 of County Ordinance 06-98 unless otherwise indicated herein.

ARTICLE II: FRANCHISEE'S GENERAL WARRANTY

2.0 By executing this Agreement, Franchisee acknowledges that it has read the provisions of County Ordinance 06-98 and this Agreement, and Franchisee agrees to comply at all times with the applicable provisions of Ordinance 06-98 and this Agreement.

ARTICLE III: NON-EXCLUSIVE FRANCHISE

3.0 The County hereby grants a non-exclusive Franchise to Franchisee for the collection of Commercial / Industrial Solid Waste and Transportation in the unincorporated areas of St. Johns County, subject to the terms and conditions of this Agreement and all applicable laws. This Franchise only authorizes the Franchisee to collect and transport Commercial / Industrial Solid Waste in roll-off containers, front

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loading vehicles, compactors or other commercial collection equipment standard to the industry for this type of service.

ARTICLE IV: TERM

4.0 This Agreement shall be effective when signed by the County's duly authorized representative. This Agreement shall run from the effective date and shall expire at 11:59 PM on June 30, 2014.

ARTICLE V: FRANCHISEE'S OPERATIONS

5.0 The Franchisee shall take all necessary steps to ensure that its operations are performed in compliance with all applicable provisions of the St. Johns County Code, Ordinances, and any other applicable local, state, or federal laws.

5.1 The Franchisee's employees shall be properly trained and qualified to perform the tasks assigned to them.

5.2 Franchisee may collect and transport Commercial / Industrial Solid Waste Collection between 7 AM and 6 PM, Monday through Saturday. Franchisee shall not collect or transport Commercial / Industrial Solid Waste Collection at other times, unless the Franchisee has received the prior approval of the Manager of the St. Johns County Solid Waste Department.

When collecting or transporting Commercial / Industrial Solid Waste Collection, Franchisee's employees shall wear a company shirt or uniform, which shall have the Franchisee's name or logo located in a conspicuous place.

5.3 All of the trucks used by the Franchisee for the collection of Commercial / Industrial Solid Waste Collection shall be marked with the name and phone number of the Franchisee in letters that are plainly visible and at least four inches high. Each commercial container used by the Franchisee for the collection of Commercial / Industrial Solid Waste Collection shall be labeled by the Franchisee on each long side (two sides) in the same manner.

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5.4 The Franchisee's commercial collections equipment and containers shall be securely covered and/or contained when holding or transporting commercial/industrial solid waste, as authorized under this agreement.

5.5 All of the rolling stock used by the Franchisee for transporting Commercial / Industrial Solid Waste Collection in St. Johns County shall be maintained in a good, clean, and safe operating condition, and be properly marked with the Franchisee's name, phone number, and vehicle number.

5.6 Franchisee shall provide the County with a list of the vehicles used by the Franchisee and the license plate number for each vehicle, and the Company's vehicle identification number (VIN). The Contractor shall ensure that the vehicle list shall be updated and submitted to the County within 30 days of any revisions including deletions and/or additions of the vehicles.

ARTICLE VI: DISPOSAL SITES

6.0 All of the Solid Waste, Commercial / Industrial Solid Waste Collection collected by the Franchisee shall be processed or disposed of at a duly licensed and permitted Solid Waste Management Facility accepting Commercial / Industrial Solid Waste.

ARTICLE VII: APPLICATION FEES

7.0 The Franchisee is required to complete and submit the standard St. Johns County application form for a Commercial / Industrial Non-Exclusive Franchise. A non-refundable \$500.00 application fee as well as a \$100.00 maintenance and management fee per vehicle will accompany the Franchisee's application to the County for the non-exclusive Franchise.

ARTICLE VIII: FRANCHISE FEES

8.0 The Franchisee shall pay a Franchise fee to the County for the privilege of using the public streets, roads, alleys and other thoroughfares of the County for the collection and transportation of Commercial / Industrial Solid Waste that originates in the

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unincorporated areas of the County. The Franchise fee also may be used to pay the cost of implementing, administering and enforcing the County's regulations for the safe handling of Commercial / Industrial Solid Waste Collection in the unincorporated areas of St. Johns County.

8.1 The Contractor shall agree in writing, on a form provided by the County at the time of non-exclusive Franchise application or renewal, that the Contractor will fully pay the applicable Franchise fee when the fee becomes due. The Franchise Fee for a Non-Exclusive Commercial / Industrial Solid Waste Collection and Transportation Franchise shall be equal to 5% of the gross revenues collected by the Franchisee for services provided pursuant to this agreement to include the collection and transportation of Commercial / Industrial Solid Waste originating in the unincorporated areas of St. Johns County provided that the commercial / industrial solid waste is directly transported to a landfill or transfer station owned by St. Johns County or other solid waste management facility approved by the County.

8.2 Franchise fees shall be paid to the County once each quarter. Franchise fees shall be delivered to the County no later than January 15, April 15, July 15, and October 15 of each year or within 60 days of termination of the Agreement. Each quarterly payment shall be based on the Gross Revenues earned by the Franchisee for the services provided pursuant to this Agreement for the preceding calendar quarter.

8.3 The Contractor shall provide the County with an audited financial statement to demonstrate that the Contractor has fully paid the applicable Franchise fee for the full three (3) year contract period or any partial period. The financial statement shall be prepared by an independent accounting firm in accordance with generally accepted accounting principles. Unless the County instructs the Contractor or otherwise, the Contractor shall deliver the audited financial statement to the County within 45 days prior to expiration of the three (3) year anniversary of the effective date of this Agreement, and after each three (3) year anniversary if the Agreement is extended, or within 60 days of the termination of this Agreement for any partial period.

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8.4 Each quarterly payment of the Franchise fee shall be accompanied by a true and accurate report demonstrating that the Franchise fee has been paid in full for the preceding calendar quarter.

8.5 The Contractor shall allow the County's auditors to inspect and examine the Franchisee's financial books and records to confirm the Contractor's compliance with this Agreement. The inspections shall be allowed by the Contractor at any reasonable time following a reasonable notice, which shall not be construed to exceed seven days. Additionally, the County's auditors may communicate directly with customers of the Contractor for the purpose of confirming the Contractor's compliance with this Agreement. Contractor shall comply with Chapter 119, Florida Statutes as related to public records.

8.6 If the Contractor fails to pay the full amount of the Franchise fee within 30 days of the end of each quarter, the County may suspend the Franchise until payment is made or may revoke the Franchise. The Contractor shall pay any and all of the County's expenses for the collection of the Franchise fee, including but not limited to court costs and reasonable attorneys' fees. Interest shall accrue on any unpaid Franchise fee at the maximum rate allowed by law.

ARTICLE IX: APPLICATION RENEWAL

9.0 Upon 60 days prior to the anniversary date of the Franchisee's non-exclusive Franchise for the collection of Commercial / Industrial Solid Waste, a renewal application may be submitted to the Department of Solid Waste Management. A \$500.00 renewal fee and a vehicle maintenance and management fee of \$100.00 per vehicle shall accompany said renewal application. During the review of the renewal application, the Franchisee will operate a non-exclusive Franchise for a period not to exceed 60 days or until the renewal application is accepted or denied within that 60-day period. Applications for renewal not meeting the above criteria shall not be considered bona fide applications.

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ARTICLE X: INSURANCE

10.0 The Franchisee shall not begin collecting or transporting Commercial / Industrial Solid Waste under this Agreement until appropriate certificates of insurance are provided to the County that demonstrates compliance with the insurance requirements of this Agreement. The Franchisee must maintain the insurance in full force and effect at all times throughout the term of this Agreement. The County shall be named as an additional insured on all of the insurance policies, except for workers compensation.

10.1 The Franchisee shall provide workers compensation and employer's liability insurance of at least \$100,000 for each person/accident and each person/disease, or the minimum amount required under Florida Law, whichever is greater.

10.2 The Franchisee shall provide commercial general liability insurance in the amount of \$1,000,000 per occurrence, and shall include coverage for bodily injury, death, property damage and other liabilities arising from or related to Franchisee's premises, operations, independent Franchisees, and contracts. The contractual coverage must specify that it covers the indemnification, and hold harmless provisions of this Agreement.

10.3 The Franchisee shall provide vehicle liability insurance with minimum combined single limits of \$1,000,000 for all owned, hired, and non-owned vehicles.

10.4 All of the companies providing insurance must be authorized to do business in the State of Florida. All of the insurance companies providing coverage must be rated A-IX or higher in the most recent edition of Best's Key Rating Guide.

10.6 No change or cancellation of any insurance required under this Agreement may be made unless thirty (30) days prior written notice is provided to the County. Each insurance certificate must name the County as an additional insured and contain a clause stating substantially as follows: "If any of the above-described policies are to be cancelled or undergo material change before the expiration date, the issuing insurance company will mail written notice to the St. Johns County Attorney at least 30 days before the effective date of the cancellation or change."

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ARTICLE XI: INDEMNIFICATION

11.0 The Franchisee agrees that it will indemnify, hold harmless and defend the County, its officials, officers, employees and agents, against, and assume all liability for, any and all claims, suits, causes of action, damages, liabilities, expenditures, or proceedings of any kind (collectively "claims") arising from or related to any of the Franchisee's activities or operations pursuant to this Agreement, including but not limited to claims based on bodily injury, loss of life or limb, damage to property, pollution or other environmental damages.

11.1 This provision relating to Indemnification, is separate and apart from, and is in no way limited by, any insurance provided by the Franchisee, pursuant to this Agreement, or otherwise.

ARTICLE XII: TERMINATION BY COUNTY

12.0 If there is a material breach of any term of this Agreement by the Contractor, the County shall notify the Contractor in writing of the breach and provide the Contractor with an opportunity to correct the breach. If the breach is not corrected within one (1) day of receipt of the written notice, the County may terminate the Agreement at any time at the County's discretion by providing written notice to the Contractor, which shall be effective upon the date specified in the notice. The Contractor shall immediately cease all activities under this Agreement. Among other things, a material breach of this Agreement shall be deemed to have occurred if: (a) the Contractor fails to pay Franchise fees at the times and in the amounts required by this Agreement; (b) the Contractor fails to file complete, accurate, and timely reports, as required by this Agreement; (c) the Contractor disposes of Solid Waste at a site other than a properly permitted and authorized Solid Waste Management Facility; (d) the Contractor collects or transports Solid Waste in a manner that is not authorized under this Agreement; (e) the Contractor fails to continuously maintain the types and amounts of insurance required under this Agreement; (f) the Contractor declares bankruptcy; or (g)

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the Contractor fails to comply with the applicable provisions of County Ordinance 06-98 or this Agreement.

12.1 If the Contractor has frequently, regularly, or repetitively defaulted in the performance of any of the requirements set forth in this agreement or the St. Johns County Ordinances and Regulations, the County Franchise Administrator may in its sole discretion deem the Contractor as a "Habitual Violator." All of the Contractor prior defaults shall be considered cumulative and collectively shall constitute a condition as to not warrant the renewal of their Non-Exclusive Commercial / Industrial Solid Waste Collection and Transportation Franchise. The Franchise Administrator shall issue in writing such notice of non-renewal once the proper documentation of the Franchise infractions has incurred. The Contractor shall notify all customers of the pending action as well as granting the customer the opportunity to prepare to solicit price quotes from other franchised haulers. The Contractor will also submit the same list of customers by billing name, address and phone number to the Franchise Administrator.

ARTICLE XIII: MISCELLANEOUS PROVISIONS

13.0 Representatives of the Parties

For the purposes of this Agreement, the Authorized representative of the County shall be County Administrator or the County Administrator's designee. The authorized representative of the Contractor for purposes of this Agreement shall be Samuel James. Either party may change its representative upon five (5) days, prior Notice to the other party.

13.1 Notices

All notices and consents required or permitted by this Agreement shall be in writing and transmitted in person or by registered or certified mail, return receipt requested, with notice deemed to be given upon receipt, as follows:

If to the County:

Solid Waste Manager
St. Johns County Solid Waste Department
3005 Allen Nease Road
Elkton, FL 32033

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If to the Contractor:

Southern Comfort
3175 US 1 S. Ste. 9
St. Augustine, FL 32086

Change in address must be provided to the other party within 15 days of notice of becoming effective.

13.2 Waiver

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 Franchisee 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 Franchisee thereafter to enforce same; nor shall waiver by the County or Franchisee of any breach of any term 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.

13.3 Agreement Governed by Florida Law; Venue

This Agreement shall be governed by and construed in accordance with the County Ordinance 99-27, as amended by Ordinance 06-98, and may be further amended by the laws of the State of Florida, and it shall be binding upon, and inure to the benefit of, the parties, their successors, and assigns. The Franchisee shall submit to service of process and the jurisdiction of the State of Florida for any controversy or claim arising out of or relating to the Agreement. Any action to interpret and/or enforce the Agreement shall be brought and maintained in the State of Florida. Venue shall be in St. Johns County, Florida.

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13.4 Assignment

This Agreement may not be sold, assigned or transferred by the Franchisee without Board of County Commissioners approval. As a condition precedent to receiving the County's consent, the Franchisee or the potential transferee must demonstrate that the transferee has the ability to comply with all of the applicable requirements set forth in this Agreement and St. Johns County Regulations.

13.5 Representations of the Franchisee

The Franchisee represents that (a) it is a corporation duly organized under the laws of the State of Florida or a person or an entity qualified to do business in the State of Florida, (b) this Agreement has been duly authorized, executed, and delivered in the State of Florida, and (c) it has the required power and authority to perform this Agreement.

13.6 Headings

Captions and headings in this Agreement are for ease of Reference only and do not constitute a part of this Agreement.

13.7 Severability

If any term, condition, covenant or obligation of this Agreement is declared illegal, void or unenforceable, the remaining terms will not be affected but will remain in full force and effect, and this Agreement shall be construed as if such illegal, void or unenforceable provision had never been contained herein.

13.8 Survivability

Any term, condition, covenant, or obligation, which requires performance by a party subsequent to termination of this Agreement, shall remain enforceable against such party subsequent to such termination.

13.9 Third Party Beneficiaries

It is agreed between the parties hereto that no provision of this Agreement is intended to create any third-party beneficiaries hereunder, or to authorize anyone not a party to this Agreement to maintain an action pursuant to the terms or provisions of this Agreement.

13.10 Personal Liability

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Nothing in this Agreement shall be construed as creating any personal liability on the part of any official, officer, employee, agent or representative of St. Johns County.

13.11 Independent Franchisee

When performing the activities required by this Agreement the Franchisee will be acting in the capacity of an independent Franchisee and not as an agent, employee, partner, joint venture or associate of the County. The Franchisee shall be solely responsible for the means, methods and procedures used by the Franchisee to perform under this Agreement. Neither the Franchisee nor any of its employees, officers, agents or sub-franchisees shall represent, act, purport to act, or be deemed to be the agent, representative, employee, or servant of the County.

The Franchisee shall have no authority to bind the County to any agreement or contract. No person performing any work or services for the Franchisee under this Agreement shall be entitled to any benefits available or granted to employees of the County.

13.12 Merger Clause

This Agreement constitutes the entire agreement and understanding of the parties as to all matters addressed or referred to herein.

This Agreement supersedes all prior and contemporaneous agreements and understandings, representations and warranties, whether oral or written, relating to such matters.

13.13 Fair Dealing.

The Franchisee declares and warrants that the Franchisee enters into the Agreement without reliance on or engaging in any collusion, bribery or fraud, that all of the Franchisee's representations in this Agreement are made fairly and in good faith, and that no County Commissioner, County officer, or County employee, directly shares or owns any percent of the total assets or capital stock of the Franchisee, nor will any such person directly or indirectly benefit from the profits or emoluments of this Agreement. The Franchisee warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Franchisee, to solicit or secure this Agreement and the Franchisee has not paid or agreed to pay any person, company,

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corporation, individual or firm, other than a bona fide employee working solely for the Franchisee, any fee, commission, percentage gift or any other compensation contingent upon or resulting from the award or making of this Agreement. Further, the Franchisee declares and warrants that the Franchisee is not subject to the restrictions in Section 287.133, Florida Statutes, for a public entity crime.

13.14 Sovereign Immunity

Nothing in this Agreement shall be interpreted or construed to mean that the County waives its common law sovereign immunity under Section 768.28, Florida Statutes.

13.15 Amendment

Except as otherwise specifically provided herein, this Agreement may be amended only by written instrument specifically referring to this Agreement and executed by both parties with the same formalities as this Agreement. The term Ordinance 99-27 as used in this document, shall mean said Ordinance as may be amended from time to time.

13.16 Access to Records

The access to, disclosure, non-disclosure, or exemption of records, data, documents, and/or materials, associated with this Agreement shall be subject to the applicable provisions of the Florida Public Records Law (Chapter 119, Florida Statutes), and other applicable State or Federal law. Access to such public records, may not be blocked, thwarted, and/or hindered by placing the public records in the possession of a third party, or an unaffiliated party.

13.17 Terms Generally

Whenever the context may require, any pronoun which is used in this Agreement shall include the corresponding masculine, feminine and neuter forms and the singular shall include the plural and vice versa. Unless otherwise specifically noted, the words "include," and "including" as used herein shall be deemed to be followed by the following phrase "without limitation". The words "agree," "agreement," "consent," "establish," "impose" as used herein shall be deemed to be followed by the phrase "which shall not be unreasonably withheld or delayed" except as specifically noted.

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Words or phrases, which are defined herein by reference to a statute, rule or regulation, shall have the meaning ascribed to such word or phrases as of the Effective Date, without regard to subsequent changes in such statutes, rules or regulations, unless otherwise provided.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on October 15, 2012.

Southern Comfort Moving Inc
Name of Company

By: [Signature]
Company Representative FL JS 20-780-58460
(CORPORATE SEAL) -6



Heather Proffitt
Notary

Notary Seal

Notarizing Samuel James Signature only H

ST. JOHNS COUNTY, acting by and through
its COUNTY ADMINISTRATOR

ATTEST: _____
Deputy Clerk

By: _____
County Administrator

(OFFICIAL SEAL)