

RESOLUTION NO. 2015-347

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE COUNTY ADMINISTRATOR OR HIS DESIGNEE TO EXECUTE THE "FIRST AMENDMENT TO AMENDED AND RESTATED CONTRACT FOR TRANSFER STATION OPERATIONS AND SOLID WASTE REMOVAL," ON BEHALF OF THE COUNTY, WITH WASTE MANAGEMENT INC. OF FLORIDA, A FLORIDA CORPORATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

RECITALS

WHEREAS, on November 17, 2015, the Board of County Commissioners ("Board") of St. Johns County ("County") held a duly noticed public hearing and concluded that it is in the public interest to enter into an "Amended and Restated Contract for Transfer Station Operations and Solid Waste Removal" ("Contract") with Waste Management Inc. of Florida, a Florida corporation ("Contractor"); and

WHEREAS, on April 23, 2014, the Board's duly authorized representative executed the Contract with the Contractor; and

WHEREAS, the Contractor and the County subsequently disagreed about the proper interpretation of Section 6.5.3 (Transportation Cost Adjustment) of the Contract; and

WHEREAS, the Contractor and the County wish to resolve their dispute by amending the Contract; and

WHEREAS, the proposed changes to Contract are contained in the "First Amendment to Amended and Restated Contract for Transfer Station Operations and Solid Waste Removal" ("First Amendment"), which is attached hereto; and

WHEREAS, after considering the relevant issues at a public hearing on November 17, 2015, the Board concluded that it is in the public interest to resolve the parties' dispute and execute the First Amendment with the Contractor.

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

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

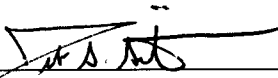
Section 2. The County Administrator, or his designee, is authorized to execute the First Amendment with Waste Management Inc. of Florida, on behalf of the County, for the purposes mentioned above.

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

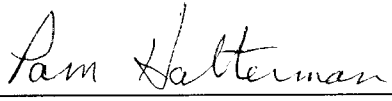
Section 4. To the extent that there are typographical or administrative errors or omissions in the First Amendment that do not change the tone, tenor, or concept of this resolution, the First Amendment may be revised without subsequent approval of the Board of County Commissioners.

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

PASSED AND ADOPTED this 17th day of November, 2015.

By: 
Chair

ATTEST: HUNTER S. CONRAD, Clerk

By: 
Deputy Clerk

RENDITION DATE 11/19/15



**FIRST AMENDMENT TO AMENDED AND RESTATED CONTRACT
FOR TRANSFER STATION OPERATIONS AND SOLID WASTE REMOVAL**

This "First Amendment to Amended and Restated Contract for Transfer Station Operations and Solid Waste Removal" ("First Amendment") is made and entered into this ____ day of _____, 2015, by and between St. Johns County, a political subdivision of the state of Florida ("County"), and Waste Management Inc. of Florida, a Florida corporation ("Contractor").

R E C I T A L S

WHEREAS, on April 23, 2014, the County and the Contractor entered into an "Amended and Restated Contract for Transfer Station Operations and Solid Waste Removal" ("Contract"); and

WHEREAS, after the County and the Contractor executed the Contract, they disagreed about the proper interpretation of Section 6.5.3 (Transportation Cost Adjustment) of the Contract, which explains how the County's payments to the Contractor will be adjusted when there are changes in the cost of transporting the County's Acceptable Waste to a Disposal Facility; and

WHEREAS, the County and the Contractor wish to resolve their dispute by amending the requirements in the Contract.

NOW, THEREFORE, in consideration of the mutual promises, covenants, agreements and conditions contained herein, and the mutual benefits provided hereunder, the receipt and sufficiency

of which are hereby acknowledged, the County and the Contractor agree to comply with and be bound by the following provisions of this First Amendment:

SECTION ONE. Section 6.5.3 (Transportation Cost Adjustment) of the Agreement is hereby deleted in its entirety and replaced with the following text:

6.5.3 Transportation Costs Adjustment

The per Ton rates established in Exhibit "D" are based on the operation of the Transfer Station, the cost of transportation from the Transfer Station to the Disposal Facility, and the cost of disposal at the Disposal Facility designated in Exhibit "E." There are three potential cost scenarios: (a) the use of the Tillman Ridge facility only; (b) the use of the Stratton Road facility only; and (c) the use of both the Tillman Ridge and Stratton Road facilities simultaneously. Each year the per Ton rates in Exhibit "D" will be adjusted pursuant to Section 6.5.1 to account for changes in the CPI; however, these per Ton rates will not be adjusted pursuant to this Section 6.5.3.

Each calendar quarter, the amount paid to the Contractor shall be revised in accordance with the procedure set forth in this Section 6.5.3. This adjustment (the "Transportation Costs Adjustment") to the Contractor's payments shall be made in January, April, July, and October each year. The amount of the Transportation Costs Adjustment shall be calculated monthly and paid quarterly, as described below.

The Transportation Costs Adjustment shall reflect the change in the cost incurred by the Contractor to transport the County's Acceptable Waste from the Transfer Stations to the Disposal Facility. The adjustment shall be calculated separately for each Transfer Station used under the Contract.

To determine the average cost of the fuel used to transport a Ton of Acceptable Waste from one of the County's Transfer Stations to a Disposal Facility, the Parties shall use the following formula ("Formula 1"):

$$A \times B \div C = D$$

Where:

"A" is the amount of diesel fuel used by the Contractor to transport a Load of Acceptable Waste from the Transfer Station to the Disposal Facility. This value shall be the average number of gallons used, calculated on a monthly basis.

"B" is the price per gallon of diesel fuel used by the Contractor to transport Acceptable Waste from the Transfer Station to the Disposal Facility. This value shall be the average price, determined on a monthly basis, as reported in the Fuel and Bituminous Price Index published by the Florida Department of Transportation at the following internet address:
<http://www.dot.state.fl.us/construction/fuel&bit/fuel&bit.shtm>

"C" is the number of Tons of Acceptable Waste transported from the Transfer Station to the Disposal Facility in a Load. This value shall be the average number, calculated on a monthly basis.

"D" is the average cost of the fuel used to transport one Ton of Acceptable Waste from the Transfer Station to the Disposal Facility.

To determine whether "D" (the cost of fuel per Ton) has increased or decreased during a specified period of time, the Parties shall use the following formula ("Formula 2"):

$$D2 - D1 = E$$

Where:

"D1" is the cost of fuel per Ton, as determined for the base month (July 2014).

"D2" is the cost of fuel per Ton, as determined for the second month of interest (e.g., August 2014).

"E" is the increase or decrease in the cost of fuel per Ton during the relevant time period (e.g., one month).

These formulas were used in the table below. Formula 1 was used to calculate "D", based on the actual values for "A", "B", and "C" in July 2014 (i.e., the "base month"). As shown in the top row in this table, "D" (i.e., the cost of fuel per Ton) in July 2014 was calculated to be \$5.2367. The values for the base month will remain fixed and they will be used when calculating the amount of the Transportation Costs Adjustments made throughout the term of this Contract.

The first Transportation Costs Adjustment was calculated for August 2014, based on the changes in transportation costs that occurred during the prior month. As indicated in the bottom row of the table, Formula 1 was used to calculate "D", based on the actual values for "A", "B", and "C" in August 2014.

In the table, Formula 2 was used to determine "E" - i.e., the change in the cost of fuel per Ton between July 2014 and August 2014.

(A) Average gallons of fuel used per Load	(B) FDOT Diesel Fuel Price Index per gallon	(C) Average Tons per Load	(D) Cost of fuel per Ton (A x B ÷ C = D)	(E) Increase or Decrease to base cost of fuel per Ton (D2 - D1 = E)	Month
41.54	3.0520	24.21	5.2367 (D1)		July 2014 (base month)
41.54	2.9803	23.97	5.1649 (D2)	-0.0718	August 2014

If the column labeled "Increase or Decrease to Base Cost of fuel per Ton" ("E") shows a positive number, there has been an increase in the cost of transporting Acceptable Waste during the previous month. Conversely, if the calculation results in a negative number, the cost of transporting Acceptable Waste has decreased during the previous month.

If there has been an increase in the cost of transporting Acceptable Waste, the Contractor's next invoice to the County shall show that the Contractor is entitled to receive additional funds (a "Supplemental Payment") from the County. If there has been a decrease in the cost of transporting Acceptable Waste, the Contractor's next invoice to the County shall reflect a reduction (a "Credit") in the amount to be paid.

The amount of the Supplemental Payment or Credit for each Transfer Station shall be calculated by multiplying the "Increase or Decrease to Base Cost of fuel per Ton" ("E" in Formula 2) times the number of Tons of Acceptable Waste that were transported by the Contractor from that Transfer Station to the Disposal Facility during the relevant month. This calculation shall be performed for each Transfer Station. The total amount of the Transportation Costs Adjustment for one month shall be the sum of the calculated amounts for both Transfer Stations. Three (3) monthly totals shall be

added together to determine the total amount of the quarterly Supplemental Payment or Credit.

As shown in the table above, between July 2014 and August 2014, the cost of fuel per Ton ("B") went down, the average number of Tons per Load ("C") decreased, and the cost of fuel per Ton ("D") went down by \$0.0718. If we use these values to calculate a hypothetical Transportation Costs Adjustment for one month, the County would receive a Credit from the Contractor, which would be equal to \$0.0718 multiplied by the number of Tons of Acceptable Waste that were transported by the Contractor for the County during that month.

When the Parties calculate the Transportation Costs Adjustment in the future, they will use the same approach shown in the table, but the second row of numbers will be replaced with the actual figures for the month that is being evaluated. For example, we can assume hypothetically that the actual figures in February 2016 will be as follows: "A" (average gallons of fuel per Load) is 41.54; "B" (FDOT Diesel Fuel Price Index per gallon) is \$3.20; and "C" (average Tons per Load) is 24.21. In this hypothetical calculation, "D" (cost of fuel per Ton) is \$5.4906. If we subtract "D1" (the cost of fuel per Ton in July 2014) from "D2" (the cost of fuel in February 2016), "E" is a positive number (\$0.2539). Thus, in this hypothetical, the Contractor is entitled to a Supplemental Payment equal to \$0.2539 multiplied by the number of Tons of Acceptable Waste transported by the Contractor during February 2016.

The Supplemental Payment to the Contractor, or the Credit to the County, shall be shown in the Contractor's invoice for the first month following the end of the calendar quarter. Thus, for example, a hypothetical Credit to the County for July, August, and September 2015 would be shown in the Contractor's invoice to the County for October 2015.

The "average gallons of fuel used per Load" ("A") and the "average Tons per Load" ("C") shall be based on the actual road test data for the vehicles used by the Contractor to transport the County's Acceptable Waste. Each month, for each Transfer Station, the Contractor shall summarize its road test data concerning (a) the actual fuel used by the Contractor

when transporting the County's Acceptable Waste to the Disposal Facility, (b) the average number of gallons of fuel used per Load, and (c) the average number of Tons of Acceptable Waste per Load. This summary shall be provided to the County with the Contractor's monthly calculation of the Supplemental Payment or Credit. Each year, the underlying road test data for September shall be provided to the County with the Contractor's invoice for October of that year. If the underlying road test data for any other month is requested by the County, the Contractor shall provide such data within ten (10) days.

SECTION TWO. Section 4.6 (The Disposal Facility) of the Contract is hereby amended to read as follows:

4.6 THE DISPOSAL FACILITY

The Contractor shall provide at its expense, unless otherwise expressly provided herein or by subsequent written agreement with the County, for the disposal of all of the Acceptable Waste delivered to the Transfer Station. ~~The County, at its option, may identify and designate one or more alternate or substitute Disposal Facilities.~~

The Contractor shall submit to the Director a copy of the current operating permit for each designated Disposal Facility at least sixty (60) Days before the Contractor begins to transport Solid Waste from the Transfer Station to the Disposal Facility, and the Contractor shall submit to the Director any new or revised operating or closure permit for such facility within thirty (30) Days after the permit is received the Disposal Facility. However, if notice and copies of said Permits, including new, revised, and closure Permits, will be otherwise provided to the County by a written agreement between the County and a Disposal Facility, the Contractor need not provide notice or copies of said Permits.

~~Until December 31, 2016, the Contractor shall, unless otherwise authorized in writing by the County Administrator, only use the approved Disposal Facility for the disposal of Acceptable Waste from the Transfer~~

~~Station. Until December 31, 2016, the County Administrator may select or approve one or more substitute Disposal Facilities for the disposal of Acceptable Waste from the Transfer Station. In such cases, the Contractor shall be required to deliver such quantities of Acceptable Waste as are identified by the County Administrator to the substitute Disposal Facility. The Contractor shall be given one hundred eighty (180) Days prior Notice before being required to dispose of Acceptable Waste at the alternate Disposal Facility.~~

The Contractor shall have their proposed and approved Disposal Facility, ~~and any County Administrator approved substitute Disposal Facility,~~ provide and certify the information required in the form provided in Exhibit "E." However, if said information will be otherwise provided and certified to the County by a written agreement between the County and the Disposal Facility, the Contractor need not provide for such information or certification.

~~In the event the County designates an alternate Disposal Facility to be used, the County and the Contractor may review the total cost differential of transfer station operations, transportation, and disposal (as an aggregate) and negotiate new terms and conditions of this Contract, including but not limited to (i) a new total rate, either up or down, (ii) additional services and (iii) other incentives to the County; all such negotiations shall be in good faith and any agreement from such negotiations shall be mutually acceptable to both Parties. Further, should the County seek to designate an alternate Disposal Facility as the result of a proposal that is for disposal only or includes other components (e.g., transfer station operations, transportation, or both), the County shall deliver such proposal to Contractor and Contractor shall have the option to match the proposal, thereby resolving the matter. In all such negotiations pursuant to this Section 4.6, each of the County and Contractor and the County must provide full disclosure of all costs of transfer station operations, transportation, and disposal at the current and proposed Disposal Facility. If the County and the Contractor are unable to agree about the new rate, or, in the case of a proposal as set forth~~

~~above, Contractor does not match the proposal, either Party may terminate this Contract after giving Notice to the other Party and such termination shall occur the later of one hundred eighty (180) days after Notice of the termination or December 31, 2016.~~

Underlined words shall be added to the Contract; words that are ~~stricken~~ shall be deleted from the Contract.

SECTION THREE. Section 6.5.4 (Transfer Tractors Using Compressed Natural Gas) is hereby amended to read as follows:

6.5.4 Transfer Tractors Using Compressed Natural Gas

In the future, the Contractor may wish to transport Acceptable Waste from the County's Transfer Station (i.e., Tillman Ridge, or Stratton Road, or both) by using Transfer Tractors or other vehicles that are fueled with compressed natural gas or liquefied natural gas (collectively, "CNG"), because CNG is less expensive than diesel fuel. The Contractor may use such vehicles to transport the County's Acceptable Waste, ~~provided that the Contractor and the County share in the cost savings that are enjoyed by the Contractor as a result of using CNG fueled vehicles. Before the Contractor begins to use any CNG fueled vehicles to transport the County's Acceptable Waste, the Contractor shall provide the County Administrator with (a) an economic analysis of the benefits that will be derived by using CNG fueled vehicles and (b) a proposal that provides for an equitable sharing of the savings derived by switching from diesel fuel to CNG. The Contractor shall not begin to use CNG fueled vehicles to transport the County's Acceptable Waste until the Contractor's proposal is approved in writing by the County Administrator. The County Administrator's approval shall not be unreasonably withheld or delayed. However, the County Administrator may request, and the Contractor shall promptly provide upon request, such additional information as is reasonably needed to evaluate the Contractor's proposal. In addition, the parties shall select an appropriate CNG fuel index on which to base adjustments to the Service Fee due to increases or~~

~~decreases in the cost of CNG in a manner similar to that used for diesel fuel. If the Contractor elects to use Transfer Tractors or other vehicles that are fueled with CNG, the Contractor shall be given the opportunity to obtain its CNG from the County's CNG fueling facility.~~

Underlined words shall be added to the Contract; words that are ~~stricken~~ shall be deleted from the Contract.

SECTION FOUR. A new Section 6.5.6 (Settlement of Outstanding Claims) shall be added to the Contract and it shall read as follows:

6.5.6 Settlement of Outstanding Claims

When the Contractor issues its next monthly invoice to the County after the Effective Date of the First Amendment, the Contractor shall reduce the invoice by the amount of Two Hundred Thirty One Thousand Eight Hundred Fifty Seven Dollars and Seventy Five Cents (\$231,857.75). This reduction in the amount owing to the Contractor shall settle and release the County's claims against the Contractor for previous adjustments to the Contractor's invoices that were due and owing to the County pursuant to Section 6.5.3. This settlement covers the County's claims for those adjustment that had accrued from the Effective Date of the Contract through and including the Effective Date of the First Amendment to the Contract.

Underlined words shall be added to the Contract; words that are ~~stricken~~ shall be deleted from the Contract.

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

SECTION SIX. The Effective Date of this First Amendment shall be the date first written above, which shall be the date when this First Amendment is executed by the County. The Contractor shall execute this First Amendment before the County.

IN WITNESS WHEREOF, the County and the Contractor have executed this First Amendment, by and through their duly authorized representatives, as of the date first written above.

St. Johns County

_____ Seal

By: _____
Signature

County Administrator, St. Johns County, FL

Date of Execution

HUNTER S. CONRAD, Clerk of Courts

By: _____
Deputy Clerk, St. Johns County, FL

Date of Execution

Contractor

WASTE MANAGEMENT INC. OF FLORIDA

By: _____

Printed Name: _____

Title: _____

Date of Execution

Witnesses:

Signature of Witness

Printed Name of Witness

Date

Signature of Witness

Printed Name of Witness

Date