

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

RECITALS

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

WHEREAS, on June 2, 2014, the Board's duly authorized representative executed the Agreement with the Contractor, pursuant to the authority granted by the Board in Resolution 2014-142; and

WHEREAS, on August 5, 2014, the Board approved an amendment to the Agreement, which was executed by the Board's representative on August 7, 2014, pursuant to the authority granted by the Board in Resolution 2014-202; and

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

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

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

WHEREAS, after considering the relevant issues at a public hearing on December 20, 2016, the Board finds that the Second Amendment provides benefits to the County and,

therefore, it is in the public interest to enter into the Second 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 Second Amendment with Republic Services of Florida, Limited Partnership, 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 Second Amendment that do not change the tone, tenor, or concept of this resolution, the Second Amendment may be revised without subsequent approval of the Board of County Commissioners.

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

PASSED AND ADOPTED this 20 day of December, 2016.

ATTEST: Hunter S. Conrad, Clerk

By: Pam Halterman
Deputy Clerk

By: _____
James K. Johns, Chair

RENDITION DATE 12/21/16



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

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

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

WHEREAS, on June 2, 2014, the Board's duly authorized representative executed the Agreement with the Contractor; and

WHEREAS, on August 5, 2014, the County and the Contractor executed the first amendment to the Agreement; and

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

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

WHEREAS, the Contractor claims that the Contractor's revenues have declined significantly because the prices it receives for selling the County's recyclable materials in the commodities markets have declined; and

WHEREAS, the Contractor claims that the Rates paid to the Contractor under the Agreement are inadequate because the

Consumer Price Index used in the Agreement does not accurately reflect the impact of inflation on the Contractor's costs; and

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

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

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

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

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

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

Once each year, the County shall adjust the Contractor's Rates, upward or downward, to reflect the percentage change in the consumer price index (CPI) that occurred during the preceding twelve months. However, the CPI adjustment shall not exceed four percent (4%) in any one year (i.e., the CPI adjustment shall not be greater than four percent (4%) of the Rate in effect immediately before the adjustment occurs). The CPI adjustments shall be based on the consumer price index published by the United States Department of Labor, Bureau of Labor Statistics, for All Urban Consumers (CPI-U). More specifically, the CPI adjustments shall be based on the CPI-U, as reported by detailed expenditure category for "All items less food and energy - Garbage and trash collection," U.S. City

Average, Base Period: December 1983 = 100 ~~for all items in the wage earners and clerical workers (CPI-W) category for the South Urban Area.~~

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

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

Where:

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

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

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

Notwithstanding the foregoing provisions of this Section 9.2, the CPI adjustments that shall take effect on October 1, 2015, ~~2016, and 2017,~~ shall be calculated in a different manner. Specifically, after the CPI adjustments for October 1, 2015, ~~2016, and 2017,~~ is calculated in accordance with the procedures described above, the amount of the increase or decrease in the Rates shall be reduced by an additional two percent (2%). For example, if the CPI adjustment for October 1, 2015 is calculated to increase the Rates by three percent (3%), the actual CPI adjustment shall only increase the Rates by one percent (1%). Similarly, if the CPI adjustment for October 1, 2015 is calculated to increase the Rates by one-half of one percent (0.5%), the actual CPI adjustment shall reduce the Rates by one and one-half percent (1.5%).

SECTION 3. Section 9.13 (CNG Fuel Adjustment Fee) is hereby deleted from the Agreement in its entirety, as shown below:

~~The County shall pay an additional fee ("CNG Fuel Adjustment Fee") to the Contractor, and the Contractor shall pay a CNG Fuel Adjustment Fee to the County, when required by the provisions of this Section 9.13. The CNG Fuel Adjustment Fee shall be invoiced quarterly in arrears. The CNG Fuel Adjustment Fee shall reflect the monthly difference between the price of CNG paid by the Contractor at the County's CNG Facility (i.e. the average price per gallon paid, as determined each month) and 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>). The CNG Fuel Adjustment Fee shall be paid for CNG that is used by the Contractor's collection vehicles, but only when such vehicles are used to collect and transport the County's Residential 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 9.13. The County may withhold payment of the CNG Fuel Adjustment Fee until the Contractor provides adequate documentation to support the CNG Fuel Adjustment Fee. At any time the County may monitor and audit the fuel consumption records of the Contractor concerning the collection and transportation of the County's Residential Waste.~~

~~If the cost per gallon of Number 2 Diesel exceeds the cost per gallon of CNG, the Contractor will pay to the County fifty percent (50%) of the difference between the cost of Number 2 Diesel and CNG for each gallon of CNG used for the collection and transportation of the County's Residential Waste in St. Johns County. For example, if Number 2 Diesel costs Two Dollars (\$2.00) per gallon and CNG costs One Dollar (\$1.00) per gallon, the Contractor will pay Fifty Cents (\$0.50) per gallon to the County. If the cost per gallon of CNG exceeds the cost per gallon of Number 2 Diesel, the County will pay to the Contractor fifty percent (50%) of the difference between the cost of CNG and Number 2 Diesel for each gallon used in the collection and~~

~~transportation of the County's Residential Waste in St. Johns County. For example, if CNG costs Three Dollars (\$3.00) per gallon and Number 2 Diesel costs Two Dollars (\$2.00) per gallon, the County will pay Fifty Cents (\$0.50) per gallon to the Contractor. If the difference between the cost per gallon of CNG and Number 2 Diesel is Ten Cents (\$0.10) or less, neither the Contractor nor the County shall be obligated to pay a CNG Fuel Adjustment Fee.~~

SECTION 4. Section 16.13 (CNG Fueling Station and Contractor's CNG Vehicles) of the Agreement is hereby amended to read as follows:

The County plans to participate in a public-private partnership and thereby arrange for the construction of a fueling station ("Fueling Station") for vehicles that use Compressed Natural Gas ("CNG"). The Fueling Station shall be owned, operated, and maintained by a private company. If the Fueling Station is located within a fifteen (15) mile radius of the Contractor's Facility at 445 Republic Drive, St. Augustine, Florida, the Contractor shall use the Fueling Station to fuel the CNG collection vehicles that the Contractor uses to collect and transport the County's Residential Waste in St. Johns County. The terms and conditions governing the Contractor's use of the Fueling Station shall be the subject of a separate agreement between the Contractor and the owner or operator of the Fueling Station.

The County anticipates that the Fueling Station will be constructed by July 2015. Within six (6) months after the CNG Fueling Station becomes available for the Contractor's use, the Contractor shall begin to replace the diesel fueled vehicles it uses for the collection of Recyclable Materials with CNG-fueled vehicles. ~~If the Fueling Station is available for the Contractor's use by January 1, 2016, t~~ The Contractor shall replace its vehicles in compliance with the following schedule:

- 2016—two CNG vehicles
- 2017—~~two~~ seven additional CNG vehicles
- 2018—~~two~~ additional CNG vehicles
- 2019—~~one~~ additional CNG vehicle
- 2020—~~one~~ additional CNG vehicle

~~2021 one additional CNG vehicle~~

The Contractor must comply with the requirements in this Section 16.13 only to the extent that the Fueling Station is operational, available for the Contractor's use, and has an adequate supply of CNG to meet the Contractor's needs.

SECTION 5. Section 9.14 (Proceeds from Recyclable Materials) in the Agreement is hereby amend by adding a new Subsection 9.14(h), which shall read as follows:

(h) The Contractor is obligated to pay a rebate to the County when the Total Weighted Average of the County's Recyclable Materials is greater than the Rebate Trigger, as described above. The Contractor agrees that it will work in good faith with the County to renegotiate the Rebate Trigger and/or the provisions in this Agreement concerning the sale of the County's Recyclable Materials if the Contractor establishes better terms for Duval County. However, any comparison to determine whether the Contractor has established better terms for Duval County than St. Johns must recognize and account for the differences between the Contractor's contractual arrangements with St. Johns County and Duval County, such as the transportation costs and transfer station operating costs that are incurred by the Contractor when it transports Recyclable Materials from St. Johns County to the Contractor's Recycling facility in Duval County, Florida, that the Contractor does not incur when providing its services to Duval County.

SECTION 6. The preceding sections of this Second Amendment show the only changes that are being made to the Agreement. In this Second Amendment, additions to the Agreement are underlined and deletions are shown with stricken text (e.g., ~~strike-throughs~~). The capitalized words and phrases in this Second Amendment are defined in the Agreement.

SECTION 7. Pursuant to Section 9.2 of the Agreement, the Contractor's Rates are adjusted once each year, based on the annual change in a Consumer Price Index that is designated in the Agreement, and the adjustments take effect on October 1 each year. Pursuant to Section 2 of this Second Amendment, the Consumer Price Index designated by the Parties will change when this Second Amendment becomes effective. For the purposes of

this Section 7 only, the Consumer Price Index designated in Section 2 of this Second Amendment shall be referred to as the "New CPI."

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

- (a) the Contractor's Rates shall be adjusted when this Second Amendment takes effect, based on the New CPI, and thereafter the County shall pay the New Rates, except as otherwise provided in the Agreement;
- (b) the Contractor's New Rates shall be used by the County to calculate the amount of money owed to the Contractor for the services provided by the Contractor in compliance with the requirements in the Agreement from October 1, 2016, to the effective date of this Second Amendment; and
- (c) if the calculations performed by the County pursuant to Section 7(b), above, demonstrate that the County owes additional money to the Contractor for its work from October 1, 2016 until the effective date of this Second Agreement, the County shall pay the necessary sum to the Contractor in compliance with Section 9.5 of the Agreement.

SECTION 8. The Agreement shall remain in full force and effect, except as explicitly revised in this Second Amendment.

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

ATTEST: BOARD OF COUNTY COMMISSIONERS,
ST. JOHNS COUNTY

By: _____

Clerk

_____, Chair

APPROVED AS TO FORM AND
CORRECTNESS:

COUNTY ATTORNEY'S OFFICE

CONTRACTOR

By: _____

(Print or Type Name and Title)

Witness

Signature of Witness

Print or Type Name of Witness

Witness

Signature of Witness

Print or Type Name of Witness