

RESOLUTION NO. 2018- 83

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 CONSTRUCTION AND DEMOLITION DEBRIS BETWEEN ST. JOHNS COUNTY, FLORIDA, AND SUN STATE DISPOSAL & RECYCLING, INC., AND AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE THE NON-EXCLUSIVE FRANCHISE AGREEMENT FOR CONSTRUCTION AND DEMOLITION DEBRIS ON BEHALF OF ST. JOHNS COUNTY

WHEREAS, Sun State Disposal & Recycling, Inc. wishes to collect and transport Construction and Demolition Debris within the unincorporated area of St. Johns County, Florida; and

WHEREAS, by entering into a Non-Exclusive Franchise Agreement for Construction and Demolition Debris with Sun State Disposal & Recycling, Inc., the St. Johns County Board of County Commissioners ("Board") seeks to ensure that the collection and transport of Construction and Demolition Debris 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 Construction and Demolition Debris (attached hereto as Exhibit A, and incorporated herein); and

WHEREAS, the Board has determined that entering into said Agreement with Sun State Disposal & Recycling, 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 the Non-exclusive Franchise Agreement for Construction and Demolition Debris between St. Johns County, Florida, and Sun State Disposal & Recycling, Inc., respectively, 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 20 day of March, 2018.

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

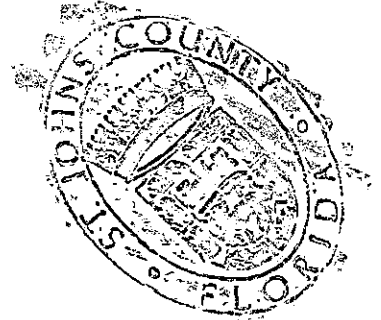
Attest:

Pam Halterman
Deputy Clerk

By:

[Signature]
Chair

RENDITION DATE MAR 22 2018



St. Johns County
Non Exclusive Franchise Agreement for Construction & Demolition Debris

**NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR CONSTRUCTION AND DEMOLITION DEBRIS**

This Non-Exclusive Franchise Agreement for Construction and Demolition Debris ("Agreement") is made between St. Johns County ("County"), a political subdivision of the State of Florida, and Sun State Disposal & Recycling, Inc. its successors and assigns, hereinafter referred to as the Contractor.

WHEREAS, Contractor wishes to collect and transport Construction and Demolition Debris in the unincorporated areas of St. Johns County; and

WHEREAS, the County wishes to ensure that the Contractor'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 Contractor 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: CONTRACTOR'S GENERAL WARRANTY

2.0 By executing this Agreement, Contractor acknowledges that it has read the provisions of County Ordinance 06-98 and this Agreement, and Contractor agrees to comply at all times with the applicable provisions of this Agreement and Ordinance 06-98, a copy of which is attached hereto, and incorporated herein.

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ARTICLE III: NON-EXCLUSIVE FRANCHISE

3.0 The County hereby grants a non-exclusive Franchise to Contractor for the collection of Construction and Demolition Debris in the unincorporated areas of St. Johns County, subject to the terms and conditions of this Agreement and all applicable laws. This Franchise agreement only authorizes the Contractor to collect Construction and Demolition Debris in roll-off containers or other commercial collection equipment standard to the industry for this type of service. No other collection or transportation of solid Waste or Construction and Demolition Debris is authorized under this Franchise.

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, 2018.

ARTICLE V: CONTRACTOR'S OPERATIONS

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

5.2 Contractor may collect and transport Construction and Demolition Debris after 7:00am until 7:00pm, Monday through Saturday and 9:00am until 7:00pm, Sundays and holidays as stated in St. Johns County Ordinance No. 2015-19. Contractor shall not collect or transport Construction and Demolition Debris at other times, unless the Contractor has received the prior written approval of the Manager of the St. Johns County Solid Waste Department.

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When collecting or transporting Construction and Demolition Debris, Contractor's employees shall wear a company shirt or uniform, which shall have the Contractor's name or logo in a conspicuous place.

5.3 All of the trucks used by the Contractor for the collection of Construction and Demolition Debris shall be marked with the name and phone number of the Contractor in letters that are plainly visible and at least four inches high. Each commercial container used by the Contractor for the collection of Construction and Demolition Debris shall be labeled by the Contractor on each long side (two sides) in the same manner.

5.4 The Contractor's roll-off and/or commercial containers shall be securely covered when transporting Construction and Demolition Debris, as authorized under this Agreement.

5.5 All of the rolling stock used by the Contractor for transporting Construction and Demolition Debris in St. Johns County shall be maintained in a good, clean, and safe operating condition, and be properly marked with the Contractor's name and phone number on all roll-off and/or commercial containers.

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

5.7 This Agreement authorizes the use of roll-off and/or commercial containers and other commercial collection equipment standard to the industry for this type of service. The Contractor may provide an unlimited number of roll-off and/or commercial containers for Construction and Demolition Debris, if the construction site is acceptable for their proper placement and there is a bona-fide need. However, any roll-off and/or commercial container holding more than a de minimis amount of Solid Waste other than Construction and Demolition Debris will be

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regulated as though the container were filled with Solid Waste and will require transport and disposal at a St. Johns County facility accepting such waste.

ARTICLE VI: DISPOSAL SITES

6.0 All of the Solid Waste, Construction and Demolition Debris collected by the Contractor shall be processed or disposed of at a duly licensed and permitted Solid Waste Management Facility accepting Construction and Demolition Debris.

ARTICLE VII: APPLICATION FEES

7.0 The Contractor is required to complete and submit the standard St. Johns County application form for non-exclusive Franchise to rent roll-off and/or commercial containers, collect Construction and Demolition Debris, transport said material and dispose of it in a duly licensed and permitted facility accepting Construction and Demolition Waste. A non-refundable \$500.00 application fee as well as a \$100.00 fee per vehicle will accompany the Contractor's application to the County for the non-exclusive Franchise.

ARTICLE VIII: FRANCHISE FEES

8.0 The Contractor 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 Construction and Demolition Debris that originates in the 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 Construction and Demolition Debris generated in the unincorporated areas of St. Johns County.

8.1 The Franchise fee shall be equal to ten percent (10%) of the Gross Revenues collected by the Contractor for the services provided pursuant to this Agreement, including the collection, transportation, processing and disposing of

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Construction and Demolition Debris originating in the unincorporated areas of St. Johns 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 Contractor for the services provided pursuant to this Agreement for the preceding calendar quarter.

8.3 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 otherwise, the Contractor shall deliver the audited financial statement to the County within 45 days following the expiration date of this Agreement or within 45 days of the termination of this Agreement for any partial period.

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 Contractor'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, which shall not be construed to exceed seven days from such request, following a reasonable notice. 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. To the extent authorized by Chapter 119, Florida Statutes, or other applicable laws, the information obtained by the County under this Section 8.5 shall remain confidential. Contractor shall comply with Chapter 119,

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Florida Statutes as related to public records. If the Contractor fails to pay the full amount of the Franchise fee in a timely manner, 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.

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 Between the dates of April 1 through June 1 in the same year as the termination date of the Contractor's non-exclusive Franchise agreement for the collection of Construction and Demolition Debris, a renewal application may be submitted to the Department of Solid Waste Management. A \$500.00 renewal fee and a vehicle fee of \$100.00 per vehicle shall accompany said renewal application. A surety bond or letter of credit in the amount of \$5,000.00 is also required with the application, in order to satisfy the surety requirements specified in St. Johns County Solid Waste Ordinance 06-98. During the review of the renewal application, the Contractor will operate as 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 commence work under this Contract until he/she has obtained all insurance required under this section and such insurance has been approved by the COUNTY. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The FRANCHISEE shall furnish proof of Insurance to the COUNTY prior to the commencement of operations. The Certificate(s) shall clearly indicate the CONTRACTOR has obtained insurance of the type, amount, and classification as required by contract and that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the COUNTY. Certificates shall specifically include the COUNTY as Additional Insured for all lines of coverage except Workers' Compensation and Professional Liability. A copy of the endorsement must accompany the certificate. Compliance with the foregoing requirements shall not relieve the FRANCHISEE of its liability and obligations under this Contract.

Certificate Holder Address: St. Johns County, a political
Subdivision of the State of Florida
500 San Sebastian View
St. Augustine, Fl 32084

10.1 The FRANCHISEE shall maintain during the life of this Contract, Comprehensive General Liability Insurance with minimum limits of \$1,000,000 per occurrence, \$2,000,000 aggregate, to protect the FRANCHISEE from claims for damages for bodily injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this contract, whether such operations be by the FRANCHISEE or by anyone directly employed by or contracting with the FRANCHISEE.

10.2 The FRANCHISEE shall maintain during the life of the contract, Professional Liability or Errors and Omissions Insurance with minimum limits of \$1,000,000, if applicable.

10.3 The FRANCHISEE shall maintain during the life of this Contract, Comprehensive Automobile Liability Insurance

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with minimum limits of \$300,000 combined single limit for bodily injury and property damage liability to protect the FRANCHISEE from claims for damages for bodily injury, including the ownership, use, or maintenance of owned and non-owned automobiles, including rented/hired automobiles whether such operations be by the FRANCHISEE or by anyone directly or indirectly employed by a FRANCHISEE.

10.4 The FRANCHISEE shall maintain during the life of this Contract, adequate Workers' Compensation Insurance in at least such amounts as required by Florida law.

10.5 In the event of unusual circumstances, the County Administrator or his designee may adjust these insurance requirements.

ARTICLE XI: INDEMNIFICATION

11.0 The Contractor 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 Contractor'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.

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

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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) the Contractor fails to comply with the applicable provisions of 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 in this Agreement or St. Johns County Regulations, the County may in its sole discretion deem the Contractor to be a "habitual violator," regardless of whether the Contractor has corrected each individual condition of default. Under such circumstances, the Contractor shall forfeit its right to any further grace period to correct or cure future defaults. All of the Contractor's prior defaults shall be considered cumulative and collectively shall constitute a condition of irredeemable default. The County shall issue the Contractor a notice that the Contractor has been deemed a "habitual violator." Thereafter, any single default by the Contractor of whatever nature shall be grounds for immediate termination of this Agreement. In the event of any such default, the County may terminate this Agreement by giving a 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. This section creates a supplemental and additional means of terminating this Agreement and it shall not be deemed to be in lieu of any other remedy available at law or equity.

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ARTICLE XIII: MISCELLANEOUS PROVISIONS

13.0 *Representatives of the Parties*

For the purposes of this Agreement, the Authorized representative of the County (as designated by the County Administrator) shall be the Solid Waste Manager of the St. Johns County Solid Waste Department or the Manager's designee. The authorized representative of the Contractor for purposes of this Agreement shall be Julie Thophr. Either party may change its representative upon five (5) days, prior written 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

If to the Contractor:

Sun State Disposal & Recycling Inc.
5800 Collier Rd.
Jacksonville, FL 32244

Changes in the respective addresses to which such notices may be directed may be made from time to time by either party by notice to the other party in writing.

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 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

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the County or Contractor thereafter to enforce same; nor shall waiver by the County or Contractor 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*

This Agreement shall be governed by and construed in accordance with 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 Contractor 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.

13.4 *Assignment*

This Agreement may not be sold, assigned or transferred by the Contractor without Board of County Commissioners approval in writing. As a condition precedent to receiving the County's consent, the Contractor 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 Contractor*

The Contractor 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.

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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*

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

13.11 *Independent Contractor*

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

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to be the agent, representative, employee, or servant of the County.

The Contractor shall have no authority to bind the County to any agreement or contract. No person performing any work or services for the Contractor 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 Contractor declares and warrants that the Contractor enters into the Agreement without reliance on or engaging in any collusion, bribery or fraud, that all of the Contractor's representations in this Agreement are made fairly and in good faith, and that no County Commissioner, County officer, or County employee, directly or indirectly owns more than 5% of the total assets or capital stock of the Contractor, nor will any such person directly or indirectly benefit by more than 5%, from the profits or emoluments of this Agreement. The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement and the Contractor has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage gift or any other compensation contingent upon or resulting from the award or making of this Agreement. Further, the contractor declares and warrants that the Contractor is not subject to the restrictions in Section 287.133, Florida Statutes, for a public entity crime.

13.14 *Sovereign Immunity*

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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 06-98 as used in this document, shall mean said Ordinance as may be amended from time to time.

13.16 *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. 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.

ARTICLE XIV: ACCESS TO RECORDS

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

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ARTICLE XV: REVIEW OF RECORDS

15.0 As a condition of entering into this Agreement, and in order to ensure compliance, especially as it relates to any applicable law, rule, or regulation, the Contractor authorized the County to examine, review, inspect, and/or audit the books, and records (including without limitation, data, documents, and correspondence), in order to determine whether compliance has been achieved with respect to the terms, conditions, provisions, rights, and responsibilities noted in this Agreement. It is specifically noted, that the Contractor is under no duty to provide access to documentation not related this Agreement, and/or is otherwise protected by County, State, and/or Federal law.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed
on _____, 2018

CONTRACTOR

Sun State Disposal & Recycling, Inc.
Name of Company

Printed Name: Marty Barker

Title: President

Signature: [Handwritten Signature]
Company Officer
(CORPORATE SEAL)

Date 2/7/18
[Handwritten Signature]
Notary



Notary Seal
State of Florida
Clay County

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

ATTEST: _____
Deputy Clerk

By: _____
County Administrator

Legal Review:

Assistant County Attorney