

**RESOLUTION NO: 2019- 298**

**A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, CONDITIONS, PROVISIONS, AND REQUIREMENTS OF "SECOND AMENDMENT TO THE AMENDED AND RESTATED FRANCHISE AGREEMENTS WITH ADVANCED DISPOSAL SERVICES" BETWEEN ST. JOHNS COUNTY AND ADVANCED DISPOSAL SERVICES OF JACKSONVILLE, LLC; AUTHORIZING THE CHAIR OF THE BOARD OF COUNTY COMMISSIONERS TO EXECUTE THE AGREEMENT ON BEHALF OF THE COUNTY; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**RECITALS**

**WHEREAS**, on or about June 4, 2014, St. Johns County ("County") and Advanced Disposal Services of Jacksonville, LLC ("Contractor") entered into an "Amended and Restated Franchise Agreement for the Collection and Transportation of Residential Waste" ("Agreement"); and

**WHEREAS**, on or about January 3, 2017, the County executed the first amendment to the Agreement, based on the Contractor's claim for extraordinary relief pursuant to Section 9.3 of the Agreement; and

**WHEREAS**, the Contractor now claims that additional relief should be provided by the County pursuant to Section 9.3 because the cost to the Contractor of processing recyclable materials collected in its service area pursuant to the Agreement has increased dramatically due to extraordinary factors in the global commodities market that were unforeseeable and beyond the Contractor's control; and

**WHEREAS**, in response to the Contractor's claim, on May 7, 2019, the Board of County Commissioners adopted Resolution No. 2019-147, which authorized the payment of \$45.00 to the Contractor for each ton of recyclable material that the Contractor delivers, or causes to be delivered, to a recycling facility pursuant to the Agreement between September 1, 2018 and September 30, 2019; and

**WHEREAS**, the County is also willing to amend the Agreement to further address and fully resolve the Contractor's claims; and

**WHEREAS**, the County and the Contractor have negotiated new terms and conditions for the Agreement that are acceptable to both parties and that have been incorporated into the "Second Amendment to Amended and Restated Franchise Agreement with Advanced Disposal" ("Second Amendment"), which is attached hereto; and

**WHEREAS**, the Contractor has acknowledged and agreed that the County's payments pursuant to Resolution No. 2019-147 and the Second Amendment provide a satisfactory and complete resolution of all of the Contractor's claims to date for extraordinary relief and, therefore, the County shall not be obligated to accept or approve any subsequent request by the Contractor for extraordinary relief based on the Contractor's claims to date that it will incur increased costs or suffer reduced revenues for the recycling services it provides under the Agreement; and

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

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

**Section 1.** The above Recitals are incorporated by reference into the body of this Resolution and such Recitals are adopted as findings of fact.

**Section 2.** The Board of County Commissioners of St. Johns County, Florida hereby approves the terms, provisions, conditions, and requirements of the Second Amendment between the County and Advanced Disposal Services of Jacksonville, LLC, and authorizes the Chair of the Board of County Commissioners to execute the Second Amendment on behalf of the County, in substantially the same form and format as attached.

**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 and/or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 12<sup>th</sup> day of September, 2019.

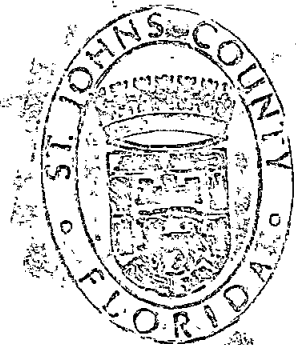
BOARD OF COUNTY COMMISSIONERS OF  
ST. JOHNS COUNTY, FLORIDA

By: Paul M. Waldron  
Paul M. Waldron, Chair

ATTEST: Hunter S. Conrad, Clerk of Court

By: Pam Halterman  
Deputy Clerk

RENDITION DATE 9/17/19



**SECOND AMENDMENT TO  
AMENDED AND RESTATED FRANCHISE AGREEMENT  
WITH ADVANCED DISPOSAL SERVICES**

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 \_\_\_\_\_, 2019, by and between St. Johns County, a political subdivision of the State of Florida ("County"), and Advanced Disposal Services of Jacksonville, LLC, a Delaware limited partnership, which is licensed to do business in Florida ("Contractor").

WHEREAS, on June 4, 2014 the County and the Contractor entered into an "Amended and Restated Franchise Agreement for the Collection and Transportation of Residential Waste" ("Agreement"); and

WHEREAS, on January 3, 2017 the County executed the first amendment to the Agreement, based on the Contractor's claim for extraordinary relief pursuant to Section 9.3 of the Agreement; and

WHEREAS, the Contractor now claims that additional relief should be provided by the County pursuant to Section 9.3 because the cost to the Contractor of processing Recyclable Materials collected in the Service Area pursuant to the Agreement has increased dramatically due to extraordinary factors in the global commodities market that were unforeseeable and beyond the Contractor's control; and

WHEREAS, in response to the Contractor's claim, on May 7, 2019 the Board of County Commissioners ("Board") adopted Resolution No. 2019-147, which authorized the payment of Forty-Five Dollars (\$45.00) to the Contractor for each ton of Recyclable Material that the Contractor delivers (or causes to be delivered) to a Recycling facility pursuant to the Agreement between September 1, 2018 and September 30, 2019; and

WHEREAS, the County is also willing to amend the Agreement to further address and fully resolve the Contractor's claims; and

WHEREAS, the Contractor acknowledges and agrees that the County's payments pursuant to Resolution No. 2019-147 and the proposed amendments to the Agreement, as described herein, provide a satisfactory and complete resolution of all of the

Contractor's claims to date for extraordinary relief and, therefore, the County shall not be obligated to accept or approve any subsequent request by the Contractor for extraordinary relief based on the Contractor's claims to date that it will incur increased costs or suffer reduced revenues for the Recycling services it provides under the Agreement; 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 3.4 (Disposal Fees) of the Agreement is hereby amended to read as follows:

The Contractor shall not be required to pay any disposal or processing fee for the disposal of Residential Waste collected from Customers in the Service Area, provided the Contractor delivers the Residential Waste to the County's Stratton Road Transfer Station, which is located at 250 North Stratton Road, St. Augustine, Florida 32095 or the County's Tillman Ridge Transfer Station, which is located at 3005 Allen Nease Road, Elkton, Florida 32033. The Contractor shall not be required to pay any disposal or processing fee for the disposal of Yard Waste collected from Customers in the Service Area, provided the Contractor delivers the Yard Waste to ~~one of the independent contractors that manages~~ Yard Waste for the County, ~~either at the Nine Mile Road Landfill, which is located at 445-A International Golf Parkway, St. Augustine, Florida 32095, or at the facility operated by Indianhead Exploration, LLC, which is located at 1700 Adams Acres Road, St. Augustine, Florida 32084.~~

SECTION 3. Section 5.14 (Commingling of Materials Prohibited) of the Agreement is hereby amended to read as follows:

When collecting or transporting Solid Waste or Source Separated Recyclables, the Contractor shall not commingle: (a) Source Separated Recyclables with Garbage, Yard Waste or other types of Solid Waste; (b) Yard Waste with Garbage, Bulky Waste, or other types of Solid Waste; (c) Residential Waste with Solid Waste or other materials collected or generated outside of the County; or (d) Residential Waste with Solid Waste or other materials collected at or generated on any property that is not Residential Property.

Different types of Recyclable Materials may be commingled by the Contractor if the Recyclable Materials are collected in the Service Area pursuant to this Agreement. When collecting or transporting Source Separated Recyclable Materials pursuant to this Agreement, the Contractor shall not place any material in its collection vehicle that was collected from or generated by a Person that is not a Customer under this Agreement, unless the Contractor receives the Contract Administrator's prior written approval. For example, Recyclable Materials collected from a business or collected from a Person outside of the Service Area shall not be placed in the Contractor's collection vehicle when the vehicle is transporting Source Separated Recyclable Materials pursuant to this Agreement. The requirements in this paragraph shall not apply to any third party that is transporting Recyclable Materials for the Contractor pursuant to Section 14.1, below.

SECTION 4. Section 5.16 (Processing Recyclable Materials, Rejects, and Residue) of the Agreement is hereby amended to read as follows:

After the Contractor collects a Customer's Source Separated Recyclable Materials, the Contractor shall deliver the Source Separated Recyclable Materials to a Solid Waste Management Facility or other facility for Recycling. The Contractor shall deliver the Source Separated Recyclable Materials only to those facilities that have been approved in advance by the Contract Administrator, and the Contractor shall not change facilities without receiving the Contract Administrator's prior written approval. The Contract Administrator shall approve a facility only if and only for so long as the Contractor can demonstrate that the

facility can and will Recycle or beneficially reuse the County's Source Separated Recyclable Materials collected in the Service Area. The Source Separated Recyclable Materials collected in the Service Area shall not be disposed of in a landfill or elsewhere, unless the Contractor receives the County Administrator's prior written approval for such disposal. However, the Contractor may dispose of Rejects and Residue in a landfill or other appropriate facility. The Contractor shall be solely responsible for paying the costs of collecting, transporting, handling, processing, and marketing Recyclable Materials, and the costs of removing and disposing any Rejects, Residue, or other contaminated or unacceptable materials. The County does not make and affirmatively disclaims any warranties or representations concerning the quantity or quality of the materials that Customers will set out for collection in Recycling Bins or Recycling Carts.

SECTION 5. Section 9.1 (Payments by the County) of the Agreement is hereby amended to read as follows:

Except as otherwise provided herein, the County shall pay the Contractor for the services rendered by the Contractor in compliance with the terms and conditions of this Agreement. The Contractor shall be paid in accordance with the Rates set forth in Exhibit D, which is attached hereto and incorporated herein. The Rates set forth in Exhibit D shall be applied uniformly to all Customers, regardless of the number of Garbage Cans, Recycling Bins, or Recycling Carts used by any Customer.

In addition to the other payments authorized herein, the County shall pay the Contractor a fee for processing each ton of Recyclable Materials that is collected by the Contractor in the Service Area and delivered to a designated Recycling facility in compliance with the requirements in this Agreement. More specifically, the Contractor shall be paid a processing fee of: (a) Sixty-Eight Dollars (\$68.00) for each ton of Recyclable Materials that is delivered by the Contractor to the Nine Mile Road Landfill, which is located at 445-A International Golf Parkway, St. Augustine, Florida 32095, and then transported to and processed at the Recycling facility located at 7000 Imeson Road, Jacksonville, Florida; and (b) Fifty-One Dollars and Forty-Seven Cents (\$51.47) for each ton of Recyclable

Materials that is delivered by the Contractor to the Recycling facility located at 1841 North State Street in Bunnell, Florida. These processing fees shall be paid to the Contractor for Recyclable Materials that are delivered on or after October 1, 2019, and shall thereafter be subject to adjustment pursuant to Section 9.2, below. The Contractor and County acknowledge and agree that the payment of these processing fees (i.e., the "Extraordinary Payments") constitute a satisfactory and complete resolution of the Contractor's request for extraordinary relief pursuant to Section 9.3, below, based on the Contractor's claim that it will incur increased costs and/or suffer reduced revenues as a result of the Recycling services the Contractor provides under the Agreement on and after October 1, 2019.

The Contractor and County acknowledge and agree that the separate fee (\$45.00 per ton of Recyclable Materials) paid by the County to the Contractor pursuant to Resolution No. 2019-147 constitutes a satisfactory and complete resolution of the Contractor's request for extraordinary relief pursuant to Section 9.3, below, for the Recycling services the Contractor provides to the County between September 1, 2018 and September 30, 2019.

SECTION 6. Section 9.4 (Contractor's Invoices) of the Agreement is hereby amended to read as follows:

No later than the tenth (10<sup>th</sup>) day of each month during the term of this Agreement, the Contractor shall prepare and submit an monthly invoice to the County for the collection services and other activities work that were was performed by the Contractor during the preceding month. The invoice shall identify the number of Customers that were served, the Rate that should be charged for each Customer, and the total payment due to the Contractor. The first invoice shall cover the period from the Effective Date until the end of the calendar month that includes the Effective Date. Thereafter, each invoice shall cover the work performed during the preceding calendar month. Each invoice shall include a statement from the Contractor confirming that the invoice is accurate in all respects and does not include any inappropriate charges or fees.

The Contractor's invoices for Extraordinary Payments pursuant to Section 9.1, above, shall be submitted to

the County by the tenth (10<sup>th</sup>) day of each month. A separate invoice shall be submitted for each Recycling facility that is used for processing Recyclable Materials that are collected by the Contractor in the Service Area in compliance with the requirements of this Agreement. Each invoice shall include a list that identifies each scale house (weight) ticket for each truck that delivered the Recyclable Materials collected in the Service Area to the Recycling facility during the month for which the invoice is being submitted. For each truck delivering Recyclable Materials, the invoice shall identify the date when the vehicle arrived at the Recycling facility, the vehicle identification number, and the number of tons of Recyclable Materials that were delivered to the Recycling facility. Each invoice also shall identify the total number of tons delivered to the Recycling facility during the month. Each invoice shall include a copy of each scale house (weight) ticket for each truck that delivered Recyclable Materials to the Recycling facility. If, pursuant to Section 14.1, below, the Contractor delivered Recyclable Materials to a third party for delivery to a designated Recycling Facility, the Contractor's invoices for Extraordinary Payments shall provide the information requested above for each delivery of Recyclable Materials to the third party, rather than the Recycling facility.

All of the Contractor's invoices shall be delivered to the following address:

St. Johns County Solid Waste Management  
2750 Industry Center Road  
St. Augustine, Florida 32084

SECTION 7. Section 9.6 (Payment Calculation) of the Agreement is hereby amended to read as follows:

The Contractor's total monthly fee for its collection services shall be calculated by multiplying the appropriate Rate times the total number of Customers served by the Contractor during the preceding month. The number of Customers shall be reported by the Contractor, but the number shall be subject to verification by the County. The amount of any Extraordinary Payment shall be calculated pursuant to Section 9.1, based on the documentation provided pursuant to Section 9.4, above.



SECTION 8. Section 14.1 (Delivery to Designated Facilities) of the Agreement is hereby amended to read as follows:

Except as otherwise provided herein, tThe Contractor shall deliver all of the Solid Waste it collects in the Service Area pursuant to this Agreement to a Solid Waste Management Facility or Recycling facility designated by the County. The designated facilities for the disposal of Garbage and Rubbish are the Tillman Ridge Transfer Station, which is located at 3005 Allen Nease Road, Elkton, Florida 32033, and the County's Stratton Road Transfer Station, which is located at 250 Stratton Road North, St. Augustine, Florida 32095. The designated facilityies for the disposal of Yard Waste is are the privately operated Yard Waste facility that is located at the Nine Mile Road Landfill, 445-A International Golf Parkway, St. Augustine, Florida 32095, and the facility operated by Indianhead Exploration, LLC, which is located at 1700 Adams Acres Road, St. Augustine, Florida 32084.

The Contractor shall deliver, or arrange for the delivery of, all of the Source Separated Recyclable Materials it collects under this Agreement to a properly licensed Recycling facility. The Recycling Facility shall be subject to the approval of the Contract Administrator, which shall not be unreasonably delayed or denied. At this time, the designated Recycling facilities shall be the Recycling facility located at 7000 Imeson Road, Jacksonville, Florida (i.e., the "Jacksonville Recycling Facility") and the Recycling facility located at 1841 North State Street, Bunnell, Florida. The Contractor shall collect Source Separated Recyclable Materials pursuant to this Agreement and then: (a) deliver those materials directly to a designated Recycling facility; or (b) deliver the Source Separated Recyclable Materials to a transfer station or other intermediate location where the materials will be shipped by a third party to the Jacksonville Recycling Facility. The County shall not be responsible for any cost or expense associated with the shipping, handling, or delivering of Source Separated Recyclable Materials by the third party from the transfer station or intermediate location to the Jacksonville Recycling Facility.

SECTION 9. Section 16.7 (Vehicle Inventory; Dedicated Fleet) of the Agreement is hereby amended to read as follows:

Within ten (10) days after the Effective Date, the Contractor shall provide the Contract Administrator with a list of the vehicles that will be used to provide the services required under this Agreement. The list shall be presented in a format approved by the Contract Administrator. At minimum, the Contractor's list shall identify: (a) the type of vehicle; (b) the make, model and model year; (c) the license tag number; (d) the vehicle identification number; (e) the vehicle's age; and (f) the date when the vehicle will be replaced. The Contractor's list also shall provide the same information for each reserve vehicle. Further, the Contractor's list shall identify the vehicles that will be used to deliver Recyclable Materials to the designated Recycling facilities and, for each such vehicle, shall identify the designated Recycling facility to which it will deliver Recyclable Materials and the days of the week on which it will do so. The Contractor's list shall be updated at least once every six (6) months and provided to the Contract Administrator.

The vehicles used to provide collection services under this Agreement shall not be used to collect Solid Waste or Recyclable Materials outside of the Service Area, and the vehicles used outside of the Service Area shall not be used to provide collection service pursuant to this Agreement, unless the Contractor receives the Contract Administrator's prior written approval for such action. If such approval is granted, the Contractor shall notify the Contract Administrator within one hour after a vehicle normally used outside the Service Area is brought into the County and used to provide collection service pursuant to this Agreement.

SECTION 10. Section 27.2 (Public Records Law) of the Agreement is hereby amended to read as follows:

The Contractor shall comply with any applicable requirements contained in the Florida public records law (Chapter 119, Florida Statutes), including but not limited to any applicable provisions in Section 119.0701, Florida Statutes. However, the Contractor does not waive any of its rights under the Florida public records law, including its right to not disclose certain trade secrets and confidential documents.

Pursuant to Section 119.0701, Florida Statutes, the Contractor shall:

(a) Keep and maintain public records required by the County to perform the services provided hereunder.

(b) Upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law for the duration of the term of this Agreement and following completion of this Agreement if the Contractor does not transfer the records to the County.

(d) Upon completion of the Agreement, transfer, at no cost, to the County all public records in the possession of the Contractor or keep and maintain public records required by the County to perform the service. If the Contractor transfers all public records to the County upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the information technology systems of the County.

If the Contractor fails to comply with the requirements in this Section 27.2, the County may enforce these provisions in accordance with the terms of this Agreement. If the Contractor fails to provide the public records to the County within a reasonable time, it may

be subject to penalties under Section 119.10, Florida Statutes.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, THE CONTRACTOR SHOULD CONTACT THE COUNTY'S CUSTODIAN OF PUBLIC RECORDS BY TELEPHONE AT (904) 209-0805, OR E-MAIL AT PUBLICRECORDS@SJCFI.US, OR MAIL AT ST. JOHNS COUNTY ATTORNEY, ATTN: PUBLIC RECORDS CUSTODIAN, 500 SAN SEBASTIAN VIEW, ST. AUGUSTINE, FL 32084.

SECTION 11. 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 12. The Agreement shall remain in full force and effect, except as explicitly revised in this Second Amendment.

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

ATTEST: Hunter S. Conrad, Clerk      ST. JOHNS COUNTY

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Paul M. Waldron, Chair  
Board of County Commissioners

APPROVED AS TO FORM:

By: \_\_\_\_\_  
County Attorney's Office

CONTRACTOR

By:

Charlie Gray  
Charlie Gray; Regional Vice President- South Region  
Advanced Disposal Services of Jacksonville, LLC

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Witness

Caren Owens

Signature of Witness

Caren Owens

Print or Type Name of Witness

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Witness

Joseph Sabwel

Signature of Witness

LAURA SABWEL

Print or Type Name of Witness