

RESOLUTION NO: 2019- 299

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, CONDITIONS, PROVISIONS, AND REQUIREMENTS OF "THIRD AMENDMENT TO THE AMENDED AND RESTATED FRANCHISE AGREEMENTS WITH REPUBLIC SERVICES" BETWEEN ST. JOHNS COUNTY AND REPUBLIC SERVICES OF FLORIDA, LIMITED PARTNERSHIP; 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 2, 2014, St. Johns County ("County") and Republic Services of Florida, Limited Partnership ("Contractor") entered into an "Amended and Restated Franchise Agreement for the Collection and Transportation of Residential Waste" ("Agreement"); and

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

WHEREAS, on or about January 3, 2017, the County executed a second 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 additional relief should be provided by the County pursuant to Section 9.3 of the Agreement because the Contractor has suffered a significant reduction in the revenues the Contractor receives when selling the County's recyclable materials, and such reductions are due to extraordinary events in the global commodities market that were unforeseeable and beyond the Contractor's control; and

WHEREAS, in response to the Contractor's claim, on or about May 7, 2019, the Board of County Commissioners adopted Resolution No. 2019-146, which authorized the payment of \$20.00 to the Contractor for each ton of recyclable material that is delivered to the Contractor's facility on St. Marks Pond Boulevard, St. Augustine, Florida, pursuant to the Agreement between August 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 "Third Amendment to Amended and Restated Franchise Agreement with Republic Services" ("Third Amendment"), which is attached hereto; and

WHEREAS, the County and the Contractor have acknowledged and agreed that (a) the County's payments pursuant to Resolution No. 2019-146 and the Third Amendment provide a satisfactory resolution of all of the Contractor's claims to date for extraordinary relief, (b) nothing contained in the Third Amendment shall be deemed to prohibit the Contractor from submitting requests for extraordinary relief in the future, and (c) neither the County's decision to grant relief

in the Third Amendment nor anything else contained therein shall obligate the County to approve any subsequent request by the Contractor for extraordinary relief; and

WHEREAS, the Board finds that this Third 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 Third Amendment between the County and Republic Services of Florida, Limited Partnership, and authorizes the Chair of the Board of County Commissioners to execute the Third 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 12th day of September, 2019.

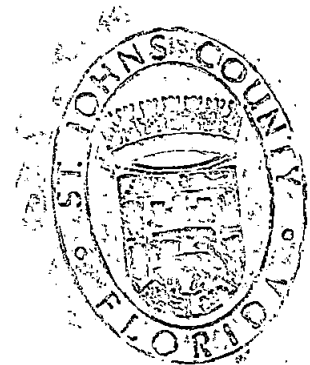
BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA

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

ATTEST: Hunter S. Conrad, Clerk of Court

By: Sam Halterman
Deputy Clerk

RENDITION DATE 9/17/19



**THIRD AMENDMENT TO
AMENDED AND RESTATED FRANCHISE AGREEMENT
WITH REPUBLIC SERVICES**

This "Third Amendment to Amended and Restated Franchise Agreement for the Collection and Transportation of Residential Waste" ("Third Amendment") is made and entered into this 24 day of July, 2019, 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 June 2, 2014, the County and Republic entered into an "Amended and Restated Franchise Agreement for the Collection and Transportation of Residential Waste" ("Agreement"); and

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

WHEREAS, on January 3, 2017, the County executed a second 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 additional relief should be provided by the County pursuant to Section 9.3 of the Agreement because the Contractor has suffered a significant reduction in the revenues the Contractor receives when selling the County's recyclable materials, and such reductions are due to extraordinary events 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 of St. Johns County ("Board") adopted Resolution No. 2019-146, which authorized the payment of Twenty Dollars (\$20.00) to the Contractor for each ton of Recyclable Material that is delivered to the Contractor's facility on St. Marks Pond Boulevard, St. Augustine, Florida, pursuant to the Agreement between August 1, 2018 and September 30, 2019; and

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

WHEREAS, the County and the Contractor acknowledge and agree that (a) the County's payments pursuant to Resolution No. 2019-146 and the proposed amendments to the Agreement, as described herein, provide a satisfactory resolution of all of the Contractor's claims to date for extraordinary relief, (b) nothing contained in this Third Amendment shall be deemed to prohibit the Contractor from submitting requests for extraordinary relief in the future, and (c) neither the County's decision to grant relief in this Third Amendment nor anything else contained herein shall obligate the County to approve any subsequent request by the Contractor for extraordinary relief; and

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

NOW, THEREFORE, in consideration of the mutual covenants contained in this Third 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 Third 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 St. Marks C&D Disposal Facility~~ Nine Mile Road Landfill, which is

located at 1000 St. Marks Pond Boulevard~~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 5.16 (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. 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 4. Section 5.29 (Operation of Recycling Facility) is hereby amended to read as follows:

The Contractor shall weigh each vehicle that delivers Recyclable Materials to the designated Recycling facility under this Agreement. The Contractor's records

shall identify the gross weight of each vehicle, the weight of the load delivered in each vehicle, the date when the vehicle delivered the load, and the times when the vehicle entered and left the Recycling facility. The Contractor shall record and keep this information in a manner that allows the Contractor to provide reports concerning the County's Recyclable Materials as required herein or reasonably requested by the County. The Contractor may use tare weights. If the Contractor chooses to use tare weights, all tare weights shall be recalibrated at least once every sixty (60) days. The County shall have the right, at its expense, to inspect the scale house records and test the accuracy of the scales at the Recycling Facility at any reasonable time.

No later than the tenth (10th) ~~twentieth (20th)~~ day of each month during the term of this Agreement, the Contractor shall submit a report to the Contract Administrator, in a format approved by the Contract Administrator. The report shall identify the total tonnage of Recyclable Materials delivered to the designated Recycling facility by the Contractor during the previous month. Upon request, the Contractor shall provide a breakdown of the deliveries by delivery date and time, vehicle number, and quantity of Recyclable Material per vehicle. In May 2015 and each May thereafter, the Contractor shall provide the Contract Administrator with a report identifying the total tons of Recyclable Materials delivered to the designated Recycling facility from the Service Area during the preceding twelve (12) months. Additionally, the Contractor shall provide the County with a copy of the Contractor's annual report to the Florida Department of Environmental Protection, summarizing the Recyclable Materials deliveries by type, quantity and source. The annual report shall be provided to the County within five (5) days after the report is submitted to the Florida Department of Environmental Protection. The records shall be maintained in compliance with Section 27, below.

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.

On October 1, 2019, the Rate in Exhibit D for "1 DAY A WEEK COLLECTION OF RECYCLABLES" shall be adjusted pursuant to Section 9.2 (CPI Adjustment), below, and then shall be increased one time by an additional Forty Cents (\$0.40) per Customer (i.e., the "Extraordinary Increase"). This Extraordinary Increase is not annual or otherwise recurring; it shall be applied one time only.

The Contractor and the County acknowledge and agree that: (a) the payment of this Extraordinary Increase constitutes a satisfactory resolution of the Contractor's requests to date for extraordinary relief pursuant to Section 9.3, below, based on the Contractor's claim that it will incur increased costs and suffer reduced revenues for the Recycling services it provides under the Agreement on and after October 1, 2019; (b) the separate fee (\$20.00 per ton of Recyclable Material) paid by the County to the Contractor until September 30, 2019 pursuant to Resolution No. 2019-146, constitutes a satisfactory and complete resolution of the Contractor's request for extraordinary relief pursuant to Section 9.3 for the Recycling services the Contractor provides before October 1, 2019; (c) nothing contained herein prohibits the Contractor from submitting requests for extraordinary relief in the future; and (d) neither the granting of extraordinary relief, as described in this Section 9.1, nor anything else contained herein obligates the County to grant extraordinary relief in the future.

SECTION 6. In Section 9.14 (Proceeds from Recyclable Materials) of the Agreement, subsection 9.14(g) is hereby amended to read as follows:

No later than the tenth (10th) ~~twentieth (20th)~~ day of each month during the term of this Agreement, the Contractor shall provide the Contract Administrator with all of the data and calculations necessary to determine whether, and the extent to which, a rebate should be paid to the

County for the Recyclable Materials collected during the preceding month. Among other things, the Contractor shall provide the Contract Administrator with the Average Market Value for each type of Recyclable Material, as set forth in www.RecyclingMarkets.net. If www.RecyclingMarkets.net is discontinued in the future, the County and the Contractor shall jointly select another reliable source of market data. In addition, the Contractor's monthly reports shall provide the Contract Administrator with the Average Market Value for each type of Recyclable Material, based on the value of those materials in Florida and the Southeastern United States, if such information is published in www.RecyclingMarkets.net.

SECTION 7. Section 14.1 (Delivery to Designated Facilities) of the Agreement is hereby amended to read as follows:

The 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 St. Marks C&D Disposal Facility~~Nine Mile Road Landfill, 1000 St. Marks Pond Boulevard~~~~445 A International Golf Parkway, St. Augustine, Florida 32095, and the facility operated by Indianhead Exploration, LLC, which is located at 1700 Adams Aeres Road, St. Augustine, Florida 32084.~~ The Source Separated Recyclable Materials collected under this Agreement shall be delivered to the Contractor's Solid Waste Management Facility located at 1000 St. Marks Pond Boulevard~~445 Republic Drive, St. Augustine, Florida,~~ and then transported to the designated Recycling Facility for Recyclable Materials, which is the Contractor's materials recovery facility located at 7000 Imeson Road, Jacksonville, Florida 32219.

SECTION 8. Section 27.2 (Public Records Law) 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 AT TELEPHONE: (904) 209-0805, E-MAIL: PUBLICRECORDS@SJCFE.US, OR MAIL: ST. JOHNS COUNTY ATTORNEY, ATTN: PUBLIC RECORDS CUSTODIAN, 500 SAN SEBASTIAN VIEW, ST. AUGUSTINE, FL 32084.

SECTION 9. The preceding sections of this Third Amendment show the only changes that are being made to the Agreement. In this Third 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 Third Amendment are defined in the Agreement.

SECTION 10. The Agreement shall remain in full force and effect, except as explicitly revised in this Third Amendment.

IN WITNESS WHEREOF, the County and the Contractor have executed this Third 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: Bill Brinkley

Bill Brinkley - General Manager
(Print or Type Name and Title)

Witness

[Signature]
Signature of Witness

Mitch Hopczyk
Print or Type Name of Witness

Witness

[Signature]
Signature of Witness.

Daniel J. Walsh
Print or Type Name of Witness