

THIRD AMENDMENT TO THE AGREEMENT

BETWEEN

CITY OF COCONUT CREEK

AND

REPUBLIC SERVICES OF FLORIDA, LIMITED PARTNERSHIP
d/b/a ALL SERVICE REFUSE

FOR

FURNISHING SOLID WASTE AND RECYCLING
COLLECTION SERVICES

This is a Third Amendment dated the ___ day of _____, 2017 to the Agreement dated the 22nd day of September, 2011 (“Agreement”), the First Amendment dated the 1st day of January, 2016 (“First Amendment”), and the Second Amendment dated the 28th day of July, 2016 (“Second Amendment”) between the CITY OF COCONUT CREEK, a municipal corporation of the State of Florida, its successors and assigns, (hereinafter referred to as “City”), through its Commissioners;

AND

REPUBLIC SERVICES OF FLORIDA, LIMITED PARTNERSHIP, d/b/a ALL SERVICE REFUSE, its successors and assigns, (hereinafter referred to as “Contractor”).

WHEREAS, Contractor is in the business of providing non-hazardous solid waste collection, transportation and disposal services; and

WHEREAS, City desires that Contractor provide such services to the residents and businesses of the City; and

WHEREAS, Contractor desires to perform and provide such services as required by the City; and

WHEREAS, the parties desire to extend the Agreement for an additional two (2) year term, as contemplated by the Agreement, beginning on October 1, 2017 and ending on September 30, 2019 as provided in Article I, “Franchise,” of the Agreement; and

WHEREAS, the parties intend that all terms and conditions as stated in the Agreement, and thereafter amended by the First and Second Amendments shall remain in full force and effect, subject only to the minor amendments contained herein, identified as the Third Amendment to the Agreement; and

CODING: Words in ~~struck through~~ type are deletions from existing text.
Words in underscored type are additions to existing text.
A line of *** indicates existing text not shown.

WHEREAS, the City and Contractor have mutually agreed upon the terms and conditions as modified herein and as allowed by Florida law; and

WHEREAS, the City has the ability to enter into this Third Amendment to the Agreement as amended, under Florida Law and its Home Rule Powers for the protection of the Public Health, Safety and Welfare of its citizens.

NOW THEREFORE, in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, City and Contractor hereby agree as follows:

1. The above recitals are true and correct and are incorporated herein by reference.

2. Paragraph 3.10 of the First Amendment to the Agreement shall be amended to read as follows:

3.10 Revisions of Charges and Rates. The rates established in this Third Amendment to the Agreement shall be adjusted on October 1, 2016~~7~~ as follows:

- (a) The disposal component of the residential rate shall be adjusted to reflect changes in the disposal fees charged by the receiving facility. The monthly residential rate shall reflect the increase or decrease in the percentage change in the disposal fee component of the rate. For purposes of this calculation, the Contract pricing is based upon a current disposal rate of 42.53~~96~~. The hauling rate and franchise fee portion shall be adjusted by CPI.
- (b) The rate for roll-off service (Rate Schedule) shall be adjusted by a direct pass through of increases in the per yard or per ton disposal rate charged by the disposal facility and adjustment in the hauling rate and franchise fee by the CPI per **Exhibit "A"**.
- (c) The rate for the commercial and residential containerized service hauling component shall be adjusted per the CPI calculations for the residential rate. The dumpster collection component shall be adjusted as per CPI calculations. Disposal component shall be adjusted as a percentage of change in the disposal rate.
- (d) The disposal (tonnage) component of the overall rate shall be audited annually at the City's discretion. A tonnage report shall consist of the completion of a total route within City without commingling trash/garbage with any other route (other than City's) and provide City with an accurate tonnage weight analysis report. Data collection reporting shall be submitted to the City in a mutually agreed format.

The Contractor agrees that any concessions made by the Contractor to any other comparable Broward County municipality that is similar in socio-economic, demographic makeup and provides similar services and where tonnages are disposed at a similar tipping fee at the same disposal facility for disposal fee pass-through shall likewise be granted to the City. Such concession is predicated on the formula utilized and the disposal sites utilized by the Broward County municipality, as well as operational issues being similar to the City.

(e) The franchise fee shall be adjusted in accordance with the CPI as stated in Article 5.

(f) If the City selects a new a new or alternate disposal facility for the disposal of Solid Waste or Recyclable Materials collected pursuant to this Agreement, the Contractor shall continue to be paid the Rates approved herein; without any increase, unless the Designated Facility is located more than 20 miles (measured in a straight line) from the Coconut Creek City Hall, which is located at 4800 West Copans Road, Coconut Creek, Florida. If the Designated Facility is located beyond this distance or if the operation of a new or alternate facility affects the operation of the Contractor, the City and the Contractor shall negotiate an appropriate adjustment in the Rates after the Contractor provides evidence of the operational effects of the change, and, thereafter, the Contractor shall be paid the adjusted Rates when the Contractor delivers Solid Waste or Recyclable Materials to the new or alternate Disposal Facility. The adjustment shall be limited to the amount that the Contractor's transportation or operational costs have increased as a result of having to transport the Solid Waste or Recyclable Materials more than 20 miles to the new or alternate Designated Facility (e.g., if the Designated Facility is located 30 miles from the Coconut Creek City Hall, the adjustment shall be based on the incremental cost of transporting the Solid Waste an additional ten miles and the additional operational costs). If the City and the Contractor are not able to negotiate an adjustment in the rates that is mutually acceptable and reasonable within 90 days of the City's notice that it has selected a new or alternate Disposal Facility located more than 20 miles away, then the City may terminate this Agreement with no less than 90 days written notice. In this event, the City will be responsible for reimbursing the Contractor for a prorated portion of the cost incurred by the Contractor for the purchase of the residential Recycling and Garbage Carts placed in use with the City's customers pursuant to this Agreement, as amended. Such cost will be paid within 30 days after the termination of this Agreement. The City's prorated portion of the cost shall be calculated using a straight-line method of depreciation, as follows:

City's Prorated Cost = Cost x Remaining Term/Initial Term

Cost shall mean the Contractor's documented cost of purchasing Recycling and Garbage Carts that are placed in use with the City's Residential Customers pursuant to this Agreement, as amended.

Remaining Term shall mean the number of days from (a) the date when the ~~First Third~~ Amendment to the Agreement is terminated (b) through and including September 30, 2017~~9~~ (i.e., the last day of the ~~First Third~~ Amendment to the Agreement).

If the City instructs the Contractor and the Contractor agrees to deliver Solid Waste or Recyclable Materials to a Designated Facility that is located more than 20 miles from the Coconut Creek City Hall, and the City requests such deliveries to be made before the City and the Contractor have negotiated and approved a mutually acceptable adjustment to the Rates, then the City shall pay the Contractor for the additional operational and transportation costs it incurred when delivering such materials to the Designated Facility. However, the City's obligation to pay such costs only applies to the extent that the transportation and operational costs are reasonable, fully documented by Contractor, and limited to the amount that the Contractor's transportation and operational costs incurred as a result of having to transport the Solid Waste or Recyclable Materials more than 20 miles and to any additional operational costs to the new or alternate Designated Facility.

Notwithstanding anything else contained herein, the City and Contractor agree that in the event the City directs Contractor to the South Waste-to-Energy Plant, then the collection rates will be as set forth in **Exhibit "D"** attached ~~to the First Amendment thereto~~ as adjusted for any CPI after the date of the First Amendment ~~this~~ Agreement.

- (g) **Extraordinary Rate Adjustment.** The Contractor may notify the City at any time for an additional rate adjustment on the basis of extraordinary and unusual changes in the cost of operations that could not have been reasonably foreseen by the prudent operator. The parties agree to comply with Section 6.10 in considering any such requests

3. Paragraph 3.13 of the First Amendment to the Agreement shall be amended to read as follows:

3.13 Franchise Fee/Fees Payable to the City.

- (a) The Contractor shall pay to the City as and for a franchise fee of twenty-five thousand (\$25,000) dollars on October 1, ~~2016~~ for each year of service~~the 2017 Contract Term~~.
- (b) The Contractor shall also pay a franchise fee on all revenue collected from all sources as per Exhibit "A". Payment of franchise fee is to be paid in full and quarterly no later than thirty (30) days of the close of the quarter. The franchise fee shall be increased per the CPI effective October 1, ~~2016~~ of the current year of service.
- (c) While the City bills single family residents for service, the Contractor shall pay the City an additional annual administration fee to be paid at two (2%) percent of the Monthly Billing Net of Franchise Fee for single family residential service (billing amount less franchise fee).
- (d) The Contractor shall pay to the City, on October 1, ~~2016~~ annually, the sum of twenty thousand (\$20,000) dollars to sponsor annual City events.
- (e) The Contractor shall pay to the City on October 1, ~~2016~~ annually, the sum of forty-five thousand (\$45,000) dollars to fund solid waste/recycling activity.

4. Paragraph 6.24 of the First Amendment to the Agreement shall be amended to read as follows:

6.24 **Public Records.** Contractor shall comply with all public records laws in accordance with Chapter 119, Florida Statutes. In accordance with state law, Contractor agrees to:

- ~~a) Notify the City of any public records requests received by Contractor related to this Agreement within three (3) days of receipt.~~
- ~~b) a) Keep and maintain all records that ordinarily and necessarily would be required by the City.~~
- ~~c) Provide the public with the access to public records on the same terms and conditions that the City would provide for the records and at a cost that does not exceed the costs provided in Chapter 119, Florida Statutes or as otherwise provided by law.~~
- ~~d) b) Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as~~

authorized by law.

~~e)~~ c) Meet all requirements for retaining public records and transfer, at no cost, to the City all records in possession of the Contractor at the termination of the contract and destroy any public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City. All records shall be transferred to the City prior to final payment being made to the Contractor.

~~f)~~ d) If Contractor does not comply with this section, the City shall enforce the Agreement provisions in accordance herewith and may unilaterally cancel this Agreement in accordance with state law.

e) IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLA. STAT., TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS AT 954-973-6774, PublicRecords@coconutcreek.net, 4800 West Copans Road, Coconut Creek, FL 33063.

5. Except to the extent modified herein, all other terms and conditions of the Agreement between the City of Coconut Creek and Republic Services of Florida, Limited Partnership d/b/a All Services Refuse for Furnishing Solid Waste and Recycling Collection Services dated September 22, 2011, the First Amendment thereto dated January 1, 2016, and the Second Amendment thereto dated July 28, 2016 shall remain in full force and effect.

6. The parties hereby agree to extend the Agreement for its final term, beginning on October 1, 2017 and ending on September 30, 2019.

IN WITNESS WHEREOF, the parties hereto have made and executed this Third Amendment on the respective dates under each signature: CITY through its City Commissioners, signing by and through its City Manager, authorized to execute same by Board Action on ____ day of _____, 2017, and REPUBLIC SERVICES OF FLORIDA, LIMITED PARTNERSHIP, signing by and through its Area Municipal Services Manager who is duly authorized to execute same.

City of Coconut Creek, Florida.

Mary C. Blasi, City Manager

Date: _____

Attest:

Leslie Wallace May, MMC
City Clerk

Approved as to form:

Terrill C. Pyburn, City Attorney

CONTRACTOR

REPUBLIC SERVICES OF FLORIDA,
LIMITED PARTNERSHIP d/b/a ALL
SERVICE REFUSE

by and through its General Partner
Republic Services of Florida, GP, Inc.

Signed and delivered

In the presence of witnesses

By: _____

Jean-Pierre Turgot
Authorized Representative

Date: _____

CORPORATE ACKNOWLEDGMENT

STATE OF _____)
 :
COUNTY OF _____)

I HEREBY CERTIFY that on this day, before me, an Officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared _____, of _____ a _____ Corporation/Limited Partnership, to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged before me that he/she executed the same.

WITNESS my hand and official seal this _____ day of _____, 2017.

Signature of Notary Public