

# RECYCLABLES TRANSFER AND/OR DISPOSAL PROCUREMENT AGREEMENT

**THIS RECYCLABLES TRANSFER AND/OR DISPOSAL PROCUREMENT AGREEMENT** (“Agreement” or “Contract”) is entered into this \_\_\_ day of September, 2020 by and between Indian River County Solid Waste Disposal District, a dependent special district of Indian River County, Florida, whose address is 1801 27<sup>th</sup> Street, Vero Beach, Florida, (“SWDD”), and Republic Services of Florida, Limited Partnership, whose address is 3905 Oslo Road, Vero Beach, Florida 32968 (“REPUBLIC”).

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## RECITALS

**WHEREAS**, on August 18, 2020, the SWDD Board acknowledged the request by REPUBLIC to bring single stream recyclables from the City of Palm Bay to the Recycling Transfer Facility at the Indian River County Landfill located at 1325 74<sup>th</sup> Avenue SW, Vero Beach, Florida, 32968; and

**WHEREAS**, under an existing purchase order issued by SWDD to REPUBLIC, recyclables are transferred from SWDD’s Recycling Transfer Facility to the Recycling Processing Facility owned and operated by St. Lucie County at 6120 Glades Cut-Off Road, Ft. Pierce, Florida 34981; and

**WHEREAS**, under an Interlocal Agreement for Recycling Services, St. Lucie County accepts and processes the recyclables received from SWDD’s Recycling Transfer Facility; and

**WHEREAS**, SWDD and REPUBLIC have mutually agreed to enter into this Agreement as set forth herein.

**NOW THEREFORE**, in consideration of the mutual undertakings herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree, as follows:

1. **Recitals.** The above recitals are true and correct and are incorporated herein.

2. **General Conditions:**

Contract Effective Date:	October 1, 2020
Term of Contract:	The initial term of this Agreement shall expire on September 30, 2025. At the end of the initial term, this Agreement shall be renewed and extended automatically, without any further action by either Party, for an additional term of five years, unless one Party provides notice to the other Party on or before November 1, 2024 that it does not wish to extend this Agreement.
Unit of Measure for Billing:	Ton - <i>unit of weight in the avoirdupois system equal to 2,000 pounds (907.18 kg) in the United States (the short ton).</i>
Transfer Station Fee:	\$90.00 Per Ton for Recyclable Materials delivered to the SWDD’s Recycling Transfer Station.

Disposal Fee:	\$70.00 Per Ton for Contaminated Loads delivered to the IRC Landfill.
Invoice Period:	All Payments Are Due Within 30 Days after Receipt of Invoice
Estimated Volume:	8,000 Tons Per Year (Average Acceptable Material) 10,000 Tons Per Year (Maximum Acceptable Material)

### 3. **Definitions:**

- a. Acceptable Material means a Load of Program Materials, which does not have an Excessive Amount of Non-Conforming Materials.
- b. Business Day means every day other than a Saturday, Sunday or a day on which banks are required or authorized by law or executive order to close in the State of Florida.
- c. Excessive Amount means, solely with regard to Loads of material delivered to the Facility pursuant to this Agreement, that twenty-five percent or more of the Load is comprised of Non-Conforming Material.
- d. Facility means the SWDD's Recycling Transfer Facility.
- e. Load(s) means the Recyclable Materials and other cargo in a truck or tractor-trailer that transports Recyclable Materials to the Facility.
- f. Non-Conforming Material means any material that is not a Program Material. Non-conforming Material also includes but is not limited to: (a) any Program Material that is mixed with or contaminated by solid or liquid waste; and (b) any Program Material that cannot be processed at St. Lucie County's Processing Facility or cannot be sold because it is too wet, too old, or otherwise in unacceptable condition.
- g. Program Materials means those Source Separated Recyclable Materials collected within the City of Palm Bay by REPUBLIC that SWDD will accept for delivery at the Facility. The current list of Program Materials is contained in Exhibit A.
- h. Recyclable Material means those materials that are capable of being recycled.

All references to Acceptable Material, Loads, Program Materials, Non-Conforming Material and Recyclable Material shall pertain to City of Palm Bay, unless otherwise designated as being from SWDD.

### 4. **Delivery of Materials:**

REPUBLIC may deliver up to the Maximum Volume of Acceptable Material and SWDD agrees to accept all Acceptable Material at the Facility. REPUBLIC may deliver in excess of the Maximum Volume of Acceptable Material only upon written approval from SWDD.

REPUBLIC shall cooperate with SWDD's designated representative that operates and maintains the SWDD's Recycling Transfer Facility and with SWDD's designated representative that transfers the Program Materials to the St. Lucie Recycling Processing Facility.

REPUBLIC is responsible for all costs including fuel and labor associated with the receiving and loading of Program Materials at the Facility.

**5. Delivery Procedures; Operation of the Landfill/Transfer Station:**

- (a) Reserved.
- (b) Compliance with Applicable Laws. REPUBLIC shall deliver Loads of Acceptable Materials to the Facility in compliance with all then-applicable federal, state and local laws, regulations, ordinances, rules, permits, licenses, and governmental orders or directives (collectively “Applicable Laws”). SWDD, or its designated representative, shall manage the Facility and handle all Acceptable Materials and dispose of any Non-Conforming Materials delivered by REPUBLIC in accordance with all Applicable Laws.
- (c) Title to Loads. Title to, and risk of loss and responsibility for, Loads delivered to the Facility shall never pass to SWDD or Indian River County.

**6. Reserved**

**7. Disposal Fees and Payments:**

- (a) Fees. REPUBLIC shall pay SWDD a transfer fee (the “Transfer Station Fee”) for all Acceptable Material delivered to and accepted at the Facility. In addition to the Transfer Fee, REPUBLIC shall pay a disposal fee (the “Disposal Fee”) for all Non-Conforming Material and such other fees as specified above, if any. The Indian River County Scalehouse shall be used for the weighing of all Acceptable Material and Non-Conforming Material to determine the total monthly quantity for billing purposes. Notwithstanding anything to the contrary set forth in this Agreement or otherwise, the Transfer Fee, as well as any other amounts REPUBLIC is to pay to SWDD hereunder, shall be increased every year using 100 percent change in the Consumer Price Index (CPI), specifically, the Urban Consumers Index, published by the U.S. Department of Labor, Bureau of Labor Statistics, for the Southern States.
- (b) Payment. SWDD shall transmit an itemized invoice to REPUBLIC, in form and substance satisfactory to REPUBLIC, of all Transfer Fees and Disposal Fees and other charges under this Contract on a periodic basis as indicated above. REPUBLIC shall pay all invoices within the time period indicated above. If REPUBLIC does not make payment within thirty days of such date, REPUBLIC shall pay a late payment fee in an amount of 1.5% per month. REPUBLIC may set off against any amounts owed under this Contract any amounts due REPUBLIC arising under this Contract.
- (c) Taxes. In addition to the Transfer Station Fee, Alternate Transfer Station Fee and Disposal Fee, REPUBLIC shall pay all federal, state, local or other taxes, fees, surcharges or similar charges related to the disposal of Acceptable Material that are imposed by law, ordinance, regulation, agreement with a governmental authority, governmental audit or otherwise.

**8. Insurance: During the term of this Agreement, REPUBLIC shall maintain the following insurance:**

<u>Workers’ Compensation:</u>	<u>Amount:</u>
Coverage A	Statutory
Coverage B – Employer’s Liability	\$2,000,000 each Bodily Injury by Accident
	\$2,000,000 policy limit Bodily Injury by Disease
	\$2,000,000 each occurrence Bodily Injury by Disease
<u>Automobile Liability:</u>	

Bodily Injury/Property Damage Combined – Single Limit	\$3,000,000 Coverage applies to all owned, non-owned, hired and leased vehicles (including trailers)
<u>Commercial General Liability:</u>	
Bodily Injury/Property Damage Combined – Single Limit	\$5,000,000 each occurrence, or, \$10,000,000 general aggregate
<u>Pollution Legal Liability:</u>	\$5,000,000

The insurance carriers providing the coverage required by this Section shall be rated at least A- VII by A.M. Best. REPUBLIC shall deliver the Certificates of Insurance evidencing the foregoing policies to SWDD before REPUBLIC delivers any Loads to the Facility pursuant to this Contract. The Certificates and the insurance policies required by this Section shall contain a provision that provides that the insurance coverage afforded under the policies will not be canceled or non-renewed until at least 30 days prior written notice has been given to SWDD, excluding workers' compensation and pollution legal liability. With the exception of the workers' compensation policy and the pollution legal liability policy, SWDD and its shareholders, partners, officers, directors, divisions, subdivisions, affiliates, agents, employees, successors and assigns shall be shown as additional insureds under all of the insurance policies required by this Section. The policies required by this Section shall be primary and the insurance providers shall agree to waive their rights of subrogation against SWDD and its shareholders, partners, officers, directors, divisions, subdivisions, affiliates, agents, employees, successors and assigns, excluding pollution legal liability.

**9. Changes and Amendments to Contract:**

This Contract may be changed at any time but only upon the mutual agreement of the Parties and the execution of a written amendment signed by the authorized representatives of both Parties.

**10. Non-Conforming Material Rejection Procedure:**

SWDD, or its designated representative, shall have the right to reject Non-Conforming Materials in the manner set forth in **Exhibit "B"**.

**11. Termination and/or Suspension:**

- (a) Either Party may terminate this Agreement for convenience, with or without cause, after giving written notice to the other Party. If a Party gives notice that it wishes to terminate this Agreement for convenience, the termination shall be effective 180 days after the notice of termination is delivered to the other Party. If the Interlocal Agreement for Recycling Services between SWDD and St. Lucie County is terminated for any reason, SWDD has the right to terminate this Agreement, with advanced notice to Republic, with an effective date being the effective date of the termination of the Interlocal Agreement for Recycling Services between SWDD and St. Lucie County.
- (b) If St. Lucie County issues a suspension from accepting the Program Materials from SWDD for any length of time exceeding ten (10) business days, then, for a period of up to six months, REPUBLIC shall provide an Alternate Processing Facility with the terms defined in **Exhibit "C"** for all Acceptable Material delivered to SWDD's Recycling Transfer Facility.
- (c) If St. Lucie County issues a suspension from accepting the Program Materials from SWDD for up to and including ten (10) business days and REPUBLIC does not take the Program Materials

to an Alternate Processing Facility, REPUBLIC shall pay the Alternate Transfer Station Fee as set forth in **Exhibit “C”** and may either remove the Program Materials at its own cost, including fuel and labor, or REPUBLIC shall pay the Disposal Fee for the Loads to be delivered to the IRC Landfill.

## **12. Responsibilities for Employment Taxes, Personal Injuries and Damages:**

- (a) Each Party shall be responsible for all employment taxes for its respective employees.
- (b) REPUBLIC agrees to indemnify, defend and hold harmless SWDD, its commissioners, officers, employees, agents, contractors, successors and assigns from and against any and all claims, counterclaims, suits, demands, actions, causes of action, damages, setoffs, liens, attachments, judgments, debts, expenses or other liabilities of whatsoever kind or nature, to the extent caused by or resulting from (i) any negligence or willful misconduct of REPUBLIC, its employees and agents in connection such party’s performance under this Contract, or (ii) a breach of any of the covenants, agreements, representations or warranties of such party set forth in this Contract.
- (c) Except as expressly stated in these standard terms, no indemnification obligations shall exist between REPUBLIC and SWDD.

## **13. Facility Transition Assistance:**

REPUBLIC supports the need by SWDD to upgrade the current Facility to a more permanent facility to avoid the loss of materials due to weather. Republic Services is open to discussing some transition cost assistance with the relocation of the existing single stream transfer station. This discussion will be addressed separately through a Memorandum of Understanding between SWDD and REPUBLIC. Any operational changes requiring additional services by REPUBLIC, if any, under that agreement will also be addressed separately.

## **14. General:**

- (a) Independent Contractor. Each party hereto shall perform their obligations under this Contract as independent contractors. Neither party hereto, nor any of its employees, agents or subcontractors, shall be, purport to be, or be deemed, the agent of the other party hereto.
- (b) Assignment; Binding Effect. Neither party hereto may assign this Contract without the other party’s prior written consent; provided, however, either party hereto may, without the prior consent of the other party hereto, assign this Contract to a subsidiary of the assigning party or its parent company, or to a successor-in-interest in such party’s business. This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assignees.
- (c) Entire Agreement. This Contract supersedes all prior agreements, written or oral, with respect to the subject matter of this Contract.
- (d) Severability. If any one or more of the provisions contained in this Contract is, for any reason, held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Contract, and all other provisions shall remain in full force and effect.

- (e) Waiver. No delay or omission by a party hereto in exercising any right under this Contract will operate as a waiver of that or any other right. A waiver or consent given by a party hereto on any occasion is effective only on that occasion and not any other.
- (f) Excusable Delays. Neither party hereto shall be liable for its failure to perform hereunder if performance is prevented by contingencies beyond its reasonable control, including, but not limited to, riots, war, fire, strikes, acts of God or changes in applicable law or regulations.
- (g) Governing Law, Venue. This Contract shall be governed by the laws of Florida. Venue for any dispute shall be in Indian River County, Florida.

[Signature Page To Follow]

**IN WITNESS WHEREOF**, the parties hereto have executed this Contract by their respective duly authorized officers to be effective as of the date above.

**Attest:**

Jeffrey R. Smith, Clerk of Court and  
Comptroller  
By:

**(Owner)**

**Solid Waste Disposal District  
Indian River County, Florida**

\_\_\_\_\_  
Deputy Clerk

\_\_\_\_\_  
Susan Adams, Chairman

**Date Approved by SWDD:**

\_\_\_\_\_

**Approved By:**

**Republic Services of Florida, Limited Partnership  
("Contractor")  
By: Republic Services of Florida GP, Inc.,  
its General Partner**

\_\_\_\_\_  
Jason E. Brown, County Administrator

Signature: \_\_\_\_\_

**Approved as to Form and Legal Sufficiency  
By:**

Date: \_\_\_\_\_

\_\_\_\_\_  
Dylan Reingold, County Attorney

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

## **EXHIBIT “A”**

### **LIST OF PROGRAM MATERIALS**

The following list of Program Materials are accepted by the St. Lucie Processing Facility:

#### **Bottles, Containers, Jars, Jugs**

Made of Plastic #1-#7 or Glass.

Examples include, but are not limited to: plastic soft drink bottles, water bottles, sports drink bottles, mouthwash bottles, salad dressing bottles, peanut butter jars, Milk jugs, shampoo bottles, laundry detergent bottles, yogurt and margarine tubs.

Empty & Rinse. NO Plastic Bags.

#### **Aluminum**

Beverage & Food Cans made of Aluminum.

Examples include, but are not limited to: aluminum beverage containers, food trays without food residue, sheets and flexible containers.

Empty, Rinse & Recycle.

#### **Steel and Tin Cans**

Beverage & Food Cans made Steel or Tin.

Examples include, but are not limited to: empty steel and tin aerosol cans, bi-metal containers, lids composed primarily of whole iron or steel. Paper labels are acceptable. Aerosol cans containing household hazardous material are not acceptable.

Empty, Rinse & Recycle.

#### **Cardboard**

Moving, Shipping, Shoe Boxes, etc.

Remove Packing Material/Plastic Wrap and Flatten. NO Greasy Pizza Boxes.

#### **Paper**

Catalogs & Magazines, Envelopes, Mail, Newspaper & Inserts, Office & Writing Paper, Postcards, telephone books.

Clean, Dry & Flat. NO Shredded Paper.

#### **Paperboard Boxes**

Cereal, Cracker, Pasta, Snack Boxes, etc.

Remove Plastic Bags & Plastic Wrap.

**Cookie Sheets, Lids, Pots & Pans** made of metal

*The following more stringent list of Program Materials are being accepted from the City of Palm Bay:  
**Mixed paper, Old Corrugated Cardboard (OCC), #1 and #2 plastic, Aluminum and Tin***



## **EXHIBIT “B”**

### **PROCEDURES FOR REJECTING NON-CONFORMING MATERIALS**

1. SWDD shall have the right to reject any item, material, Load, or partial Load of Program Materials that REPUBLIC delivers to the Facility if SWDD believes the item, material, Load, or partial Load is solid waste, hazardous waste, toxic waste, radioactive waste, biomedical waste, or other type of large or unsafe Non-Conforming Material that St. Lucie cannot safely, lawfully, or efficiently process at its Facility.
2. Subject to the conditions in the Agreement and this Exhibit “B,” SWDD, or its designated representative, shall have the right to reject any Load of material tendered by REPUBLIC at the Facility if SWDD determines that the Load contains an Excessive Amount of Non-Conforming Material. Excessive Amount means, solely with regard to Loads of material delivered to the Facility pursuant to this Agreement, that 25% or more of the Load is comprised of Non-Conforming Material. The 25% threshold may be based on volume or weight, as SWDD, or its designated representative, deems appropriate under the circumstances. When determining whether the Load exceeds this threshold, SWDD, or its designated representative, may rely on a visual observation and good faith estimate concerning the volume or weight of the Non-Conforming Material. At its option, SWDD may weigh or measure the Non-Conforming Material in the Load, but SWDD is not obligated to do so.
3. If SWDD, or its designated representative, decides to reject a Load of Recyclable Material that has been delivered to the Facility by REPUBLIC, SWDD, or its designated representative, shall: (a) isolate the Load and the delivery truck at the Facility; and (b) take several representative photographs of the Load and delivery truck from different perspectives. SWDD shall send the photographs to REPUBLIC via electronic mail (“e-mail”), which shall include a statement notifying REPUBLIC that SWDD has rejected the Load depicted in the photographs and assesses a “Disposal Fee” as set in the Agreement. REPUBLIC will have the right to visually inspect the Load at the Facility before SWDD takes any action with respect to the Load. REPUBLIC may, at its sole discretion, dispose of the Load at a disposal facility of its choice; however, the Load of Non-Conforming Materials must be removed from the Facility within five (5) business days. For the purposes of this Exhibit “B”, SWDD’s e-mail shall be addressed to the General Manager of REPUBLIC and a copy shall be addressed to the General Manager’s designee.

## **EXHIBIT “C”**

### **ALTERNATE PROCESSING FACILITY**

1. In the event St. Lucie County issues a suspension from accepting Program Materials from SWDD for any length of time exceeding ten (10) business days, then, for a period of up to six months, REPUBLIC shall provide an Alternate Processing Facility with the terms as follows:
  - (a) SWDD shall continue to allow REPUBLIC to transfer Program Materials from the City of Palm Bay to SWDD’s Recycling Transfer Facility such that all Acceptable Materials are diverted to an Alternate Processing Facility.
  - (b) REPUBLIC shall pay an “Alternate Transfer Station Fee” of \$5 per ton for all Program Materials from the City of Palm Bay.
  - (c) If SWDD, at its sole discretion, directs SWDD’s own Program Materials to an Alternate Processing Facility, then the cost for the transportation and processing of SWDD’s own Program Materials will be addressed between SWDD and REPUBLIC through an existing separate agreement.
  - (d) The “Disposal Fee” shall remain as is.
  - (e) REPUBLIC is responsible for all costs including fuel and labor associated with the receiving and loading of Program Materials at the Facility as well as any costs associated with the transferring of Program Materials from the Facility to an Alternate Processing Facility.

## EXHIBIT “D”

### CALCULATION OF RATE ADJUSTMENT

One Hundred Percent (100%) of the rate adjustment shall be based on the change in the Consumer Price Index (CPI). Specifically, the Urban Consumers Index, published by the U.S. Department of Labor, Bureau of Labor Statistics, for the Southern States.

The contract rates starting on October 1, 2020 shall remain through September 30, 2021. The first adjustment shall be effective October 1, 2021 and the adjustment shall be computed as follows: the net percentage change shall be 100 percent of the difference between the CPI as of the immediately preceding January and the second preceding January divided by the CPI as of the second preceding January.

If the designated index is discounted or substantially altered, Owner may select another relevant price index published by the United States Government or by a reputable publisher of financial and economic indices. The total rate adjustment is rounded to the nearest hundredth of a percent and in any given year shall not exceed three percent (3.0%) of the previous rate. No adjustment for a negative CPI.

### FORMULA FOR CALCULATING ANNUAL RATE ADJUSTMENT

$$\begin{aligned} \text{Annual Adjustment (as a Percentage) AA} &= (((\text{CPI2} - \text{CPI1}) / \text{CPI1}) \times 100); \\ \text{New Rate} &= \text{Round} ((\text{Current Rate} + \text{AA} \times \text{Current Rate}), 2) \end{aligned}$$

Where:

“CPI1” = published CPI average for the month of January of the prior year

“CPI2” = published CPI average for the month of January of the current year

### SAMPLE CALCULATION OF ANNUAL RATE ADJUSTMENT INCREASE

Assumptions: Current Rate = \$90.00                      CPI1 = 242.547  
CPI2 = 248.005

Annual Rate Adjustment =  $(248.005 - 242.547) / 242.547 \times 100 = 2.25\%$

*Annual Rate Adjustment of 2.25% is less than 3.0%, the maximum allowed.*

New Rate = ROUND  $((\$90.00 + 0.0225 \times \$90), 2) = \$92.03$

Annual Rate Adjustment is subject to the approval of the County Administrator or his designee.