

**FIRST AMENDMENT AND RENEWAL TO
BIOSOLIDS DISPOSAL AGREEMENT
BETWEEN
THE CITY OF VERO BEACH, FLORIDA
AND
THE INDIAN RIVER COUNTY SOLID WASTE DISPOSAL DISTRICT**

This FIRST AMENDMENT AND RENEWAL TO (hereinafter “First Amendment”) is made and entered into as of the _____ day of _____ 2022, by and between the **CITY OF VERO BEACH**, a Florida municipal corporation, whose mailing address is P. O. Box 1389, Vero Beach, Florida 32961-1389 (hereinafter “City”) and the **INDIAN RIVER COUNTY SOLID WASTE DISPOSAL DISTRICT**, a dependent special district of Indian River County, Florida, a political subdivision of the State of Florida, whose mailing address is 1801 27th Street, Vero Beach, Florida 32960 (hereinafter “SWDD”). City and SWDD may also be referred to herein individually as a “party” or collectively as the “parties.”

RECITALS

WHEREAS, on October 8, 2019, SWDD and the City entered into the Biosolids Disposal Agreement between Indian River County Solid Waste Disposal District (“SWDD”) and City of Vero Beach (“City”) (the “Agreement”); and

WHEREAS, the initial term of this agreement is for a period of three (3) years terminating on October 7, 2022, and the City has duly notified SWDD of its desire to renew; and

WHEREAS, the City and SWDD desire to amend Section 3. Term of the Agreement, to remove a time certain termination,

NOW THEREFORE, in consideration of the mutual covenants contained herein and other goods and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

Section 1. Recitals. The parties agree that the above recitals are true and correct by this reference incorporated herein and made part thereof.

Section 2. Amendment of Section 3 of the Agreement. Section 3 of the Agreement shall be revised to read as follows:

Section 3. Term of the Agreement.

This Agreement shall automatically renew each year on October 1, unless either party provides written notice to the other party of non-renewal at least one hundred and eighty (180) days prior to the annual renewal date. Notwithstanding the above, either party may terminate this Agreement, at any time and for any reason, upon at least ninety (90) days written notice to the other party. The City may terminate this Agreement due to an increase in the disposal fee pursuant to Section 4 below, by written notice to the SWDD within thirty (30) days of the approval of the fee increase by the SWDD governing board.

Section 3. The remaining terms and conditions of the Agreement shall remain in full force and effect.

Section 4. Effective Date. This First Amendment shall be effective as of the date that it is fully executed by both parties.

INDIAN RIVER COUNTY SOLID WASTE DISPOSAL DISTRICT

ATTEST: Jeffrey R. Smith, Clerk of **INDIAN RIVER COUNTY, BOARD OF**
Circuit Court and Comptroller **COUNTY COMMISSIONERS**

By: _____
Deputy Clerk

Sign: _____
By: Peter D. O'Bryan
Its: Chairman

Date: _____

(SEAL)

Approved as to form and legal sufficiency:

Approved:

Dylan Reingold
County Attorney

Jason E. Brown
County Administrator

Approved as to technical requirements:

Sean Lieske
Director of Utility Services

CITY OF VERO BEACH, FLORIDA

ATTEST:

VERO BEACH CITY COUNCIL

Tammy K. Bursick

Tammy K. Bursick
City Clerk

Sign: _____

By: Robert Brackett
Its: Mayor

Date: _____

9/26/22

(SEAL)

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization this 13th day of September 2022, by **Robert Brackett**, the Mayor, and attested by **Tammy K. Bursick**, the City Clerk, of the City of Vero Beach, Florida. Both are personally known to me.

Sign: _____

Sherril Philo

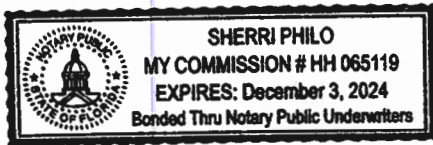
Notary Public, State of Florida at Large

Print Name: Sherril Philo

Notary Commission No.: _____

My Commission Expires: _____

Seal:



ADMINISTRATIVE REVIEW

(For Internal use Only-Sec. 2-77 COVB Code)

Approved as to form and legal sufficiency
for COVB only:

John S. Turner 8/26/22

John S. Turner
City Attorney

Date

Approved as conforming to municipal
policy:

Monte K. Falls

Monte K. Falls, P.E.

Date

City Manager

Approved as to technical requirements:

Robert J. Bolton 8/23/22

Robert J. Bolton, P.E.
Director, Water & Sewer

Date

Approved as to financial requirements:

Cynthia D. Lawson 8/23/22

Cynthia D. Lawson
Director, Finance

Date

BIOSOLIDS DISPOSAL AGREEMENT

BETWEEN

THE CITY OF VERO BEACH, FLORIDA

AND

THE INDIAN RIVER COUNTY SOLID WASTE DISPOSAL DISTRICT

THIS BIOSOLIDS DISPOSAL AGREEMENT ("Agreement") is made and entered into as of the 8th day of October 2019, by and between the City of Vero Beach, Florida, a Florida municipal corporation, whose mailing address is P. O. Box 1389, Vero Beach, FL 32961-1389 ("City") and the Indian River County Solid Waste Disposal District, a dependent special district of Indian River County, Florida, a political subdivision of the State of Florida, whose mailing address is 1801 27th Street, Vero Beach, FL 32960 ("SWDD").

WHEREAS, SWDD operates the Indian River County Class I landfill ("IRC Landfill") located at 1325 SW 74th Avenue in Vero Beach, Florida; and

WHEREAS, SWDD accepts Dewatered Biosolids ("Biosolids") for disposal at the IRC Landfill at a rate set annually by the Board of County Commissioners, sitting as the governing body of SWDD; and

WHEREAS, the City operates a municipal sewer system and sewer treatment facility which produces Biosolids which may be disposed of in a landfill such as the IRC Landfill; and

WHEREAS, the City has requested that SWDD accept the City's Biosolids for disposal in the IRC Landfill, and SWDD has agreed to accept the City's Biosolids for such disposal, all in accordance with the terms and conditions of this agreement,

WHEREAS, the City and SWDD find that the delivery of Biosolids by the City at the IRC Landfill and the acceptance of same for disposal by SWDD for the purposes stated herein constitute a public purpose and benefit.

NOW THEREFORE, in consideration of the mutual undertakings herein, and other good and valuable consideration, the parties agree, as follows:

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

Section 2. Delivery and Acceptance of Biosolids. The City, or its authorized Biosolid processor/transporter, shall process, transport and deliver to the IRC Landfill, Biosolids resulting from the operation of its municipal sewer system and sewer treatment facility (FLDEP Permit FLA021661) only. The City shall not process Biosolids materials from outside its jurisdiction. Biosolids shall be "tipped" by the City's processor/transporter in specific locations within the IRC.

Landfill as designated by SWDD or SWDD's representative. All Biosolids delivered by the City shall meet all requirements of the Quality Standards and Applicable Law, as defined below in Section 5 or in Exhibit A of this agreement. The parties shall cooperate with respect to the delivery schedule for the Biosolids, recognizing that the Biosolids must be mixed with other materials at the time of disposal in the IRC Landfill, and delivery of the Biosolids should be coordinated with the availability of the other materials. The City's processor/transporter shall comply with all other rules and regulations of SWDD relating to the IRC Landfill.e

Section 3. Term of the Agreement. The initial term of this agreement shall be two (2) years, commencing on July 8, 2019, and terminating on July 7, 2021. This Agreement shall automatically renew for an additional one (1) year term, unless either party provides written notice of non-renewal at least one hundred and eighty (180) days prior to expiration of the initial term. Notwithstanding the above, either party may terminate this Agreement at any time and for any reason upon at least ninety (90) days written notice to the other party. The City may terminate this Agreement due to an increase in the disposal fee pursuant to Section 4 below, by written notice to the SWDD within 30 days of the approval of the fee increase by the SWDD governing board.

Section 4. Disposal Fee. The City shall pay to SWDD a disposal fee in the initial amount of \$19.08 per ton, which amount shall apply through September 30, 2019. The City acknowledges that (a) the SWDD governing body, as part of its annual budgeting process, reviews all disposal fees at the IRC Landfill, and adjusts such fees as it determines necessary, and (b) the disposal fee starting October 1, 2019, and for each year thereafter (October 1 – September 30) will be the fee as determined by the SWDD governing board in its annual budgeting process.

Section 5. Quality Standards. All Biosolids delivered by the City or its processor/transporter for disposal in the IRC Landfill shall meet the following quality standards ("Quality Standards"):e

- 1.e Biosolids delivered to the IRC Landfill shall meet all Florida Department of Environmental Protection (FDEP) requirements for disposal in Class 1 Landfill, specifically, Biosolids as defined as "Residuals" or "Domestic Wastewater Residuals" in Chapter 62-624.200(6)e Florida Administrative Code (FAC), or as amended.e
- 2.e Biosolids delivered to the IRC Landfill must not be classified as Hazardous Waste under Chapter 62-730 FAC, or as amended.e
- 3.e The Biosolids delivered shall be a minimum Total Solids Percent of 17 percent solids, and the Biosolids must be able to pass a paint filter test upon receipt at the Landfill for disposal. No mixtures of foreign material are to be used to increase the solids content. At a minimum, the City shall provide SWDD a report with the Total Solids Percent of their Biosolids prior to the scheduling of the first delivery and annually thereafter.e
- 4.e At a minimum, the City will provide SWDD results from a Toxicity Characterization Leaching Procedure (TCLP) tests prior to the scheduling of the first delivery and annually thereafter to demonstrate that the Biosolids do not exceed regulatory levels for any of the parameters identified in Exhibit A, attached. This shall also be required should the wastewater facility generating the Biosolids experience any significant changes in the characteristics of the facility influent, or experience a plant upset or by-pass event that may change the make-up of the Biosolids.

5. SWDD reserves the right to randomly inspect loads to verify conditions above are being met. SWDD also reserves the right to refuse any deliveries of Biosolids not meeting conditions above.

Section 6. Applicable Law. Each party acknowledges that the processing, transport and disposal of Biosolids is heavily regulated by state and federal agencies having jurisdiction with respect to such matter. The City shall comply with all applicable state and federal laws, including, without limitation, rules and regulations (collectively "Applicable Law") relating to the processing and transport of Biosolids, including the quality or composition of Biosolids to be disposed of in a landfill such as the IRC Landfill, and SWDD shall comply with all requirements of Applicable Law relating to the method of disposal of Biosolids; provided, however, that SWDD shall not have liability with respect to the method of disposal of Biosolids which, with respect to quality or composition, do not meet the requirements of the Quality Standards or Applicable Law. In the event of a change in "Applicable Law" that has a direct, material and adverse effect upon the cost to SWDD of operating, maintaining or modifying disposal of Biosolids, SWDD and City shall mutually negotiate any necessary capital cost contribution or any necessary increase in the disposal Costs/ton commensurate with the necessary cost.

Section 7. Indemnification. To the extent permitted by law, each party shall hold harmless and indemnify the other party from and against any and all losses, damages, claims, causes of action, expenses and liabilities of any type whatsoever (collectively, "Claims") arising out of or relating to the indemnifying party's negligence, intentional wrongdoing, breach of applicable law or breach of this agreement; provided, however, that neither party shall be required to, hold harmless or indemnify the other party for any Claims arising out of or relating to such other party's negligence, intentional wrongdoing, breach of applicable law or breach of this agreement. Notwithstanding the above, for tort actions, neither party waives its sovereign immunity as set forth in Florida law and the parties' obligations under the Agreement shall be subject to the limitations set forth and provided for in Section 768.28, Florida Statutes.

Section 8. Insurance.

(a) The City, or its authorized Biosolids processor/transporter, shall obtain and maintain throughout the term of this Agreement at its expense the following insurance coverage from insurers who are licensed in the State of Florida and have a current rating of A- VII or better in "Best's Key Rating Guide," with respect to all activities relating in any way to the Biosolids which are the subject of this agreement: (1) workers' compensation coverage in compliance with State of Florida statutory requirements, (2) employer's liability insurance providing minimum coverage of \$100,000 per occurrence, \$100,000 by disease, and \$500,000 aggregate by disease, (3) commercial general liability insurance and automobile liability insurance providing minimum combined single limit coverage of \$1,000,000 for personal bodily injury, including, without limitation, death, and property damage, and (4) umbrella or excess liability coverage providing minimum coverage of \$1,000,000.

(b) Notwithstanding the minimum limits of coverage stated in subsection A above, the limits of each underlying insurance coverage must be at least as high as is necessary to support the excess liability insurance coverage referenced in subsection A(4).

(c) Proof of compliance with the above insurance requirements shall be provided by the City to SWDD no later than fifteen (15) days prior to commencement of delivery of Biosolids for disposal at the IRC Landfill, and thereafter throughout the term of this agreement, in the form of a certificate of insurance, which certificate shall provide for notice to SWDD no later than thirty (30) days prior to cancellation or non-renewal. Failure to do so shall allow SWDD to refuse delivery until such proof is provided, reviewed and approved by SWDD.

Section 9. Force Majeure/Emergency. Any non-performance of the terms or conditions of this agreement caused by or resulting from an event of Force Majeure (as defined below) shall not constitute a violation or event of default. In addition, SWDD reserves the right to refuse to accept the City's Biosolids in the event of an emergency, as determined by SWDD in its sole discretion. The City shall maintain an alternative method of disposal of its Biosolids, in the event that SWDD does not accept the Biosolids due to an emergency. For the purposes of this agreement, the term "Force Majeure" shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, explosions, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, tropical storms, floods, tornadoes, restraints of governments, civil disturbances, unavoidable breakage of machinery or equipment, enactment of applicable laws prohibiting performance, and other such causes not within the reasonable control of the party claiming the occurrence of an event of Force Majeure.

Section 10. Notices. Any notice required to be provided under this agreement shall be provided to the following persons and addresses:

If to the City:	City of Vero Beach 1053 20 th Place Post Office Box 1389 Vero Beach, Florida 32961-1389 Attention: City Manager cc: Director, Water and Sewer Services
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If to SWDD:	Indian River County Solid Waste Disposal District 1801 27 th Street Vero Beach, Florida 32960 Attention: County Administrator cc: Director of Utility Services
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Section 11. Default; Remedies for Default.

(a) The following shall be deemed to constitute a default of the terms of this Agreement:

1. The failure by City to pay any amount of money due under this Agreement;
2. The failure by City or SWDD to comply with any other provision or condition of this Agreement.

(b) The City and SWDD shall have all remedies for any default by the other party as provided for at law or in equity.

Section 12. Attorney's Fees. In the event of any litigation relating to this agreement, each party shall pay its own attorney's fees.

Section 13. Miscellaneous Provisions.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for resolution of any dispute arising hereunder shall be in Indian River County, Florida.

(b) This Agreement sets forth all the promises, agreements, conditions, and understandings, either oral or written, between them. No subsequent alteration, amendment, change, or addition to this Agreement will be binding on the City or SWDD unless in writing and signed by them and made a part of this Agreement by direct reference.

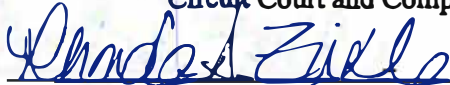
(c) The terms of this Agreement shall be binding on the respective successors, contractors, representatives, agents, and assigns of the parties. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party.

(d) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all which together will constitute one and the same instrument.

Section 14. Effective Date. This agreement shall be effective as of the date that it is fully executed by both parties.

INDIAN RIVER COUNTY, FLORIDA

ATTEST: Jeffrey R. Smith, Clerk of
Circuit Court and Comptroller


Deputy Clerk

SOLID WASTE DISPOSAL DISTRICT

By: 
Bob Solari
Chairman



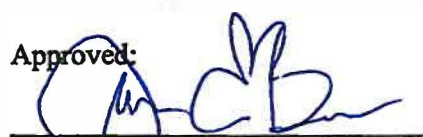
Date: October 8, 2019

(SEAL)

Approved as to form and legal sufficiency:


Dylan Reingold
County Attorney

Approved:


Jason E. Brown
County Administrator

Approved as to technical requirements:


Vincent Burke, P.E.
Director of Utility Services

SIGNATURE PAGES TO FOLLOW

CITY OF VERO BEACH, FLORIDA

ATTEST:

VERO BEACH CITY COUNCIL

Tammy K. Bursick
Tammy K. Bursick
City Clerk

By: Anthony W. Young
Val Zudans
Mayor

Vice Mayor

Date: 8/23/19

[SEAL]

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this 23rd day of August 2019, on behalf of the City of Vero Beach, Florida, by Monte K. Falls, as City Manager, and attested by Tammy K. Bursick, as City Clerk, of the City of Vero Beach, Florida. Both are personally known to me.

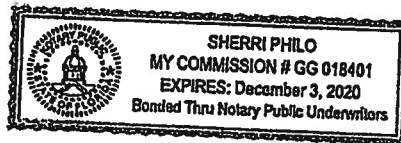
Sherry Philo

NOTARY PUBLIC

Print Name:

Commission No.:

My Commission Expires:



ADMINISTRATIVE REVIEW

(For Internal Use Only—Sec. 2-77 COVB Code)

Approved as to form and legal sufficiency:

John S. Turner
John S. Turner, City Attorney

Approved as conforming to municipal policy:

Monte K. Falls
Monte K. Falls, City Manager

Approved as to technical requirements:

Robert J. Bolton
Robert J. Bolton
Director, Water and Sewer Services

Exhibit A - Biosolids Quality Standards

MAXIMUM CONCENTRATION OF CONTAMINANTS FOR TOXICITY CHARACTERISTIC	
Contaminant	Regulatory Level (mg/L)
Arsenic	5.0
Barium	100.0
Benzene	0.5
Cadmium	1.0
Carbon tetrachloride	0.5
Chlordane	0.03
Chlorobenzene	100.0
Chloroform	6.0
Chromium	5.0
o-Cresol	200.0 ¹
m-Cresol	200.0 ¹
p-Cresol	200.0 ¹
Cresol	200.0 ¹
2,4-D	10.0
1,4-Dichlorobenzene	7.5
1,2-Dichloroethane	0.5
1,1-Dichloroethylene	0.7
2,4-Dinitrotoluene	0.13 ²
Endrin	0.02
Heptachlor (and its hydroxide)	0.008
Hexachlorobenzene	0.13 ²
Hexachloro-1,3-butadiene	0.5
Hexachloroethane	3.0
Lead	5.0
Lindane	0.4
Mercury	0.2
Methoxychlor	10.0
Methyl ethyl ketone	200.0
Nitrobenzene	2.0
Pentachlorophenol	100.0
Pyridine	5.0 ²
Selenium	1.0
Silver	5.0
Tetrachloroethylene	0.7
Toxaphene	0.5
Trichloroethylene	0.6
2,4,5-Trichlorophenol	400.0
2,4,6-Trichlorophenol	2.0
2,4,5-TP (Silvex)	1.0
Vinyl chloride	0.2

If o-, m-, and p-cresol concentrations cannot be differentiated, the total cresol (D026) concentration is used. The regulatory level of total cresol is 200 mg/L.

²Quantitation limit is greater than the calculated regulatory level. The quantitation limit therefore becomes the regulatory level.