

FIFTH AMENDMENT OF
SOLID WASTE AND RECYCLING COLLECTION FRANCHISE AGREEMENT

THIS FIFTH AMENDMENT OF THE SOLID WASTE AND RECYCLING COLLECTION FRANCHISE AGREEMENT, Lee County Contract No. 5170, is made and entered into on this 19th day of OCTOBER, 2017 by and between the Lee County Board of County Commissioners, a political subdivision of the State of Florida ("County") and Advanced Disposal Services Solid Waste Southeast, Inc. ("Contractor"), collectively, the "Parties."

RECITALS

WHEREAS, the County entered into a Solid Waste and Recycling Collection Franchise Agreement, Lee County Contract No. 5170, dated March 9, 2010 with the Contractor such that the Contractor provides collection and hauling service for Franchise Service Area Number 1 in Lee County ("Agreement"); and,

WHEREAS, the Parties desire to make certain amendments to the Agreement in accordance with **Section 39. MODIFICATION** of the Agreement.

OPERATIVE PROVISIONS

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND THE MUTUAL COVENANTS AND AGREEMENTS SET FORTH HEREIN, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES AGREE TO AMEND THE AGREEMENT AS FOLLOWS:

1. **Recitals**. The recitals set forth above are true and correct and incorporated herein as if set forth below.
2. The Parties hereby agree that **ARTICLE 27.0 ACCESS AND AUDITS** in the Agreement is superseded by the following:

- A. Contractor specifically acknowledges its obligations to comply with Section 119.0701, Florida Statutes, with regard to public records, and shall:
- 1) keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the services required under this Agreement;
 - 2) upon request from the County, 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;
 - 3) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law; and
 - 4) meet all requirements for retaining public records and transfer, at no cost to the County, all public records in possession of Contractor upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the County in a format that is compatible with the information technology system of the County.
- B. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239-533-2221, 2115 SECOND STREET, FORT MYERS, FL 33901, publicrecords@leegov.com; <http://www.leegov.com/publicrecords>.**
- C. Contractor shall provide, when requested, access by the County, Federal granting agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to this contract for the purpose of making audit, examination, excerpts, and transcriptions.
- D. Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- E. Contractor agrees to provide the FEMA Administrator or his authorized representatives' access to construction or other work sites pertaining to the work being completed under the contract.
- F. Contractor shall retain all records associated with Agreement for five (5) years after final payments and all other pending matters are closed.

G. The Contractor shall provide the County a Certified Financial Statement including, at a minimum, a Balance Sheet and an Income Statement representing the financial position and the results of operations respectively of the Contractor for each Service Area. The report must include the opinion of a Florida Certified Public Accountant, who has conducted an audit of the Contractor's books and records in accordance with Generally Accepted Accounting Principles, which include tests and other procedures necessary, that the Financial Statements are fairly presented, in all material aspects, in conformity with Generally Accepted Accounting Procedures. The annual audit shall reflect, at the very least, the format shown in Exhibit IV and the format must be approved by the County. The annual audit shall be delivered to the County within ninety (90) days of the twelve (12) month period ending the Contractor's fiscal year. If the Contractor's fiscal year coincides with the calendar year, the first year's audit shall be for a period of fifteen (15) months. No rate adjustments of any type will be granted to the Contractor unless all required audits and cost statements have been filed in a timely manner. Contractor shall perform commercial solid waste and recycling route audits annually.

3. The Parties hereby agree that the Agreement is amended to include the following provision:

ARTICLE 45.0 – NON-DISCRIMINATION

During the performance of this contract, the Contractor agrees as follows:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- C. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information

of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

- D. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- F. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- G. In the event of the Contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- H. The Contractor will include the provisions of paragraphs (A) through (H) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States

4. The parties hereby agree that herein after ARTICLE 45.0 PUBLIC ENTITY CRIMES will be renumbered to ARTICLE 46.0.
5. The parties hereby agree that herein after ARTICLE 46.0 COMMUNITY SERVICE will be renumbered to ARTICLE 47.0.
6. The parties hereby agree that herein after ARTICLE 47.0 CITIZENS DROP OFF AREA will be renumbered to ARTICLE 48.0.
7. The parties hereby agree that herein after ARTICLE 48.0 PILOT STUDIES will be renumbered to ARTICLE 49.0.
8. The parties hereby agree that herein after ARTICLE 49.0 CONTRACT PREPARATION AND TRANSITION PLAN will be renumbered to ARTICLE 50.0.
9. The Parties hereby agree that the Agreement is amended to include the following provisions:

FEDERALLY FUNDED CONTRACT REQUIREMENTS

ARTICLE 51.0 – PURPOSE

The Agreement is funded in whole or in part with federal funds and as such, is subject to federal requirements including, but not limited to, those set forth in 2 C.F.R. Part 200, Appendix II and as otherwise may be listed, below.

ARTICLE 52.0 – SUBCONTRACTS

The selected firm must require compliance with all federal requirements listed below of all subcontractors performing work the value of which is in excess of \$10,000, by including these federal requirements in all contracts with subcontractors.

ARTICLE 53.0 – SOLICITATION CONFLICT OF INTEREST

No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officers, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

ARTICLE 54.0 – APPLICABLE FEDERAL REQUIREMENTS – 2 C.F.R Part 200, APPENDIX II

Remedies. Unless otherwise provided by the Agreement, all claims, counter-claims, disputes and other matters in question between the County and the Contractor arising out of or relating to the Agreement between the parties, or the breach of it, that cannot be resolved by and between the parties after conferring in good faith, will be decided by a court of competent jurisdiction pursuant to Florida law. If such dispute is in state court, venue shall be in the Twentieth Judicial Circuit Court in and for Lee County, Florida. If in federal court, venue shall be in the U.S. District Court for the Middle District of Florida, Ft. Myers Division.

ARTICLE 55.0 - CLEAN AIR ACT (42 U.S.C. 7401 et seq.) and the FEDERAL WATER POLLUTION CONTROL ACT, AS AMENDED (33 U.S.C. 1251 et seq.)

The successful firm awarded a contract in excess of \$150,000 agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act as amended. Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

ARTICLE 56.0 - CONTRACT WORK HOURS & SAFETY STANDARDS (40 U.S.C. 3701-3708)

Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

ARTICLE 57.0 - SUSPENSION AND DEBARMENT

This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. §180.935).

The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

This certification is a material representation of fact relied upon by Constructor. If it is later determined that the Contractor did not comply with 2 C.F.R. pt.180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to Lee County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

ARTICLE 58.0 - BYRD ANTI-LOBBYING AMENDMENT

Contractor who applies or bids for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with nonfederal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

ARTICLE 59.00 - RECOVERED MATERIALS

Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. [78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

ARTICLE 60.0 - DHS SEAL, LOGO, AND FLAGS

The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

ARTICLE 61.0 - COMPLIANCE WITH FEDERAL LAW, REGULATIONS, and EXECUTIVE ORDERS

This is an acknowledgment that FEMA financial assistance will be used only to fund the Agreement only. The Contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

ARTICLE 62.0 - NO OBLIGATION BY THE FEDERAL GOVERNMENT

The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the Agreement.

ARTICLE 63.0 - FRAUD and FALSE OR FRAUDULENT OR RELATED ACTS

The Contractor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

ARTICLE 64.0 - OTHER REMEDIES AND RIGHTS


Pursuing any of the above remedies will not keep the County from pursuing any other rights or remedies, which may be otherwise available under law or in equity. If the County waives any right or remedy in this Agreement or fails to insist on strict performance by the Contractor, it will not affect, extend or waive any other right or remedy of the County, or affect the later exercise of the same right or remedy by the County for any other default by the Contractor.

10. All other terms and conditions of the Agreement and all amendments thereto remain in full force and effect.

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IN WITNESS WHEREOF this Fifth Amendment of the Agreement, executed on the date and year first written above.


COUNTY: LEE COUNTY, FLORIDA

BY: 
Pamela Keyes
Director of Utilities, on behalf of the Board
of County Commissioners

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY:

BY: 
County Attorney's Office

Advanced Disposal Services Solid Waste
Southeast, Inc.

BY: 
Authorized Signature

CHARLIE GRAY
Authorized Signature Printed Name

Linda Lee Bartlett
(Witness)

Donna La Fontaine
(Witness)

SOUTH RVP
Authorized Signature Title

CORPORATE SEAL:

