

**GOLDEN BEACH, FLORIDA  
RESOLUTION NO. 1075.98**

AN RESOLUTION OF THE TOWN COUNCIL OF GOLDEN BEACH, FLORIDA AMENDING THE AGREEMENT BETWEEN THE TOWN AND COMMUNITY RECYCLING; PROVIDING FOR A CHANGE IN THE NAME OF THE CONTRACTOR TO BFI WASTE SYSTEMS OF NORTH AMERICA, INC. TO REFLECT THE ACQUISITION BY A PARENT CORPORATION; PROVIDING FOR AN ADJUSTMENT TO THE MONTHLY PER HOUSE PICKUP AND DISPOSAL FEE; CONTINUING THE TWO YEAR TERM WITH OPTIONS OF THE TOWN TO RENEW OR CANCEL; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, the Town has an Agreement (originating February 14, 1994) for the collection and disposal of recyclable materials; and

**WHEREAS**, the Contractor providing this service, Industrial Waste Service, Inc. d/b/a Community Recycling, was acquired by a parent corporation, BFI Waste Systems of North America, Inc.; and

**WHEREAS**, the Agreement has a two year renewable term which the Town wishes to renew with the parent corporation; and

**WHEREAS**, the Town wishes to confirm the consumer price index (CPI) increase on the per house monthly pickup and disposal fee with the Contractor as provided in the original Agreement;

**NOW THEREFORE BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF GOLDEN BEACH, FLORIDA, AS FOLLOWS:**

**Section 1.** That the Agreement between BFI Waste Systems of North America, Inc. and the Town of Golden Beach for the collection and disposal of Recyclable Materials within the Town, the Agreement being attached to and made a part of this Resolution, is

hereby approved and the appropriate Town officials are hereby authorized and directed to execute the Agreement.

**Section 4. Severability.** That the provisions of this Resolution are declared to be severable and if any section, sentence, clause or phrase of this Resolution shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, clauses, sentences and phrases of this Resolution but they shall remain in effect, notwithstanding the invalidity of any part.

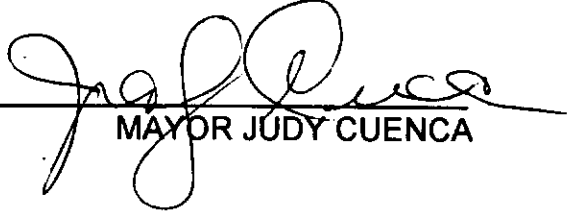
**Section 5. Conflict.** That all resolutions or parts of resolutions in conflict with this Resolution are hereby repealed to the extent of such conflict.

**Section 6. Effective Date.** That this Resolution shall become effective immediately upon approval of the Town Council.

The Motion to adopt the foregoing Resolution was offered by Vice Mayor Chikovsky, seconded by Councilman Fistel and on roll call the following vote ensued:

Mayor Cuenca	<u>Aye</u>
Vice Mayor Chikovsky	<u>Aye</u>
Councilwoman Addicott	<u>Aye</u>
Councilman Fistel	<u>Aye</u>

**PASSED AND ADOPTED** by the Town Council of the Town of Golden Beach this 20<sup>th</sup> day of January, 1998.

  
MAYOR JUDY CUENCA

ATTEST:

  
ROBERT "SKIP" JOHNSTON  
INTERIM TOWN CLERK

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

  
JON M. HENNING  
TOWN ATTORNEY

# **AGREEMENT**

**THIS AGREEMENT** is made and entered into this 1st day of February, 1998 between BFI Waste Systems of North America, Inc., a Delaware corporation ("Contractor") and the Town of Golden Beach (the "Town"), a Florida Municipal Corporation.

## **WITNESSETH:**

**WHEREAS**, Industrial Waste Service, Inc. d/b/a Community Recycling, a Florida Corporation, the predecessor corporation to the Contractor and the Town, entered into a contract effective February 14, 1994 for the collection and disposal of recyclable materials; and

**WHEREAS** the predecessor corporation is now owned by the Contractor; and

**WHEREAS**, Contractor and the Town desire to continue to provide for the collection of the recyclable materials from single family residences in the Town.

**WHEREAS**, the contract is still in effect; and

**NOW THEREFORE**, for and in consideration of the mutual promises set forth herein, the parties hereto agree as follows:

1. **Definitions**

"Accessible Location" shall mean with respect to each Residential Unit, a designated location along the side or at the rear of such Residential Unit from and to which Contractor has unobstructed, safe access at the time of collection.

"Collection Day" shall mean Wednesday, provided that if Christmas or the Fourth of July falls on Wednesday, the Collection Day shall be Thursday.

"Container" shall mean a 60 gallon plastic receptacle on wheels, with an insert creating two compartments, one for newspaper and one for commingled materials, used to contain Recyclable Materials from Residential Units.

"Force Majeure" shall mean an act of God, epidemic, lightning, earthquake, fire, explosion, storm, hurricane, flood or similar occurrence, strike, an act of a public enemy, or blockage, insurrection, riot, civil disturbance or similar occurrence, which has had or may reasonably be expected to have a material adverse effect on the rights or obligations under this Agreement which by the exercise of due diligence such parties shall not have been able to avoid.

"Monthly Unit Price" shall mean \$3.81, which if the term of this Agreement is renewed pursuant to Section 7 hereof, shall be adjusted annually commencing February 1, 1999 by the Consumer Price Index published by the U.S. Department of Labor, Bureau of Labor Statistics, as the Miami/Ft. Lauderdale Average.

"Recyclable Materials" shall be:

(a) newspapers, including the normal percentage of rotogravure and colored sections (phone books, magazines, and any paper other than newspaper are not acceptable);

(b) aluminum beverage cans, commingled with ferrous food containers (cans should be clean and dry);

(c) high density polyethylene plastics (HDPE 1-2-3) commingled with polyethylene terephthalate plastics (PET) (beverage containers only; clean and dry with lids removed);

(d) clear glass (beverage and food containers only; clean and dry with lids removed);

(e) brown glass (beverage and food containers only; clean and dry with lids removed); and

(f) any other recyclable material agreed to by the Town Manager and Contractor;

and shall not include white office paper, aerosol cans, pharmaceutical glass containers, medical waste containers, pesticide containers for hazardous waste or hazardous waste.

"Replacement Cost" shall mean \$70.00 per Container replaced by Contractor pursuant to Section 4 hereof, which amount shall be adjusted annually if the term of this Agreement is renewed pursuant to Section 7 hereof, commencing February 1, 1998 by the Consumer Price Index published by the U.S. Department of Labor, Bureau of Labor Statistics, as the Miami/Ft. Lauderdale Average.

"Residential Unit" shall mean a single family dwelling unit located within the Town.

2. **Collection Services.** In consideration of the payments set forth in Section 3 hereof and the Town's agreements set forth herein, Contractor shall place at each Residential Unit one Container, and during the term of this Agreement, collect once a week on each Collection Day from Containers located at an Accessible

Location on the premises of each Residential Unit, Recyclable Materials that are properly segregated, packaged and placed in such Containers in accordance with Contractor's instructions for preparation of Recyclable Materials. Any item that is not Recyclable Material shall be left in the Container with notification that the item was not acceptable. Community Recycling shall have the exclusive right to collect Recyclable Materials in the City during the term of this Agreement, as it may be renewed pursuant to Section 7 hereof.

3. **Payment for Services.** The Town agrees to pay Contractor on or before the 5th day of each month an amount equal to the Monthly Unit Price times the number of Residential Units in the Town as of the first day of such month. The Town shall notify Contractor of the issuance of a permanent or temporary certificate of occupancy for any new Residential Units within ten days of such issuance or the inclusion of any new Residential Units within the Town. Set forth as Exhibit A hereto is a list of the actual addresses of all Residential Units in the Town as of the date hereof.
4. **Ownership and Replacement of Containers.** During the initial two-year term of this Agreement set forth in Section 7 hereof, Contractor shall own the Containers, and in the event this Agreement is not renewed at the expiration of such initial term, may remove such containers from the Residential Units. In the event a Container is damaged for reason other than ordinary wear and tear during the initial two-year term to such an extent that it is not usable as determined by Contractor shall replace the Container and the Town shall pay to Contractor the Replacement Cost within 30 days of notification of such replacement.
5. In the event this Agreement is renewed for the subsequent period to February 1, 2000 pursuant to Section 7 hereof. Contractor shall transfer ownership of the Containers to the Town and execute any necessary instruments to effect such transfer of ownership. Subsequent to the transfer of ownership of the Containers to the Town, the Contractor shall not be required to maintain the Containers or replace damaged Containers.
6. **Ownership of Recyclable Materials.** Contractor shall be the owner of all Recyclable Materials it collects from the Residential Units and may recycle, process, and sell the Recyclable Materials, in its discretion. Neither the Town nor the owners of the Residential Units shall be entitled to the proceeds of any sale by Contractor of processed or unprocessed Recyclable Materials.
7. **Term.** The term of this Agreement shall be for two years, and automatically be renewed for successive two year periods upon mutual agreement of the parties hereto. If either party desires not to renew the agreement, then said party shall

provide to the other party written notice (certified mail), giving at least fifty (50) days prior to the end of the initial term or any renewal term.

8. **Marketing**. If requested by Contractor, the Town shall deliver to Contractor for distribution to the residents of Residential Units a letter urging such residents to participate in the recycling program.
  
9. **Force Majeure**. Neither party hereto shall be liable for its failure to carry out its obligations under this Agreement during any period when such party is rendered unable, wholly or in part, by Force Majeure to carry out such obligations, but the obligations of the party relying on such Force Majeure shall be suspended only during the continuance of any inability so caused and for no longer period, and such cause shall, so far as possible, be remedied with all reasonable dispatch.
  
10. **Indemnification**. Contractor shall indemnify, hold harmless and defend the Town, its officers, agents and employees against and assume all liability for any and all claims, suits, actions, damages, liabilities, expenditures, or causes of actions of any kind arising out of this Agreement including, but not limited to the use of the public streets. Said Contractor shall save the Town, its officers, agents and employees harmless from and against all judgments, orders, decrees, attorney's fees, costs, expenses and liabilities incurred in any about any such claim, investigation or defense thereof which may be entered, incurred or assessed as a result of the foregoing. Said Contractor shall defend, at its sole cost and expense, any legal action, claim or proceeding instituted by any person against the Town, its officers, agents and employees as a result of any claim, suit or cause of action accruing from activities authorized by this Agreement, for injuries to body, limb or property as set forth above.
  
11. **Insurance Required**
  - 1) Contractor must maintain throughout the entire term of this Agreement and any renewals thereof, the following insurance coverages:
    - (a) Commercial general liability in the amount of \$1,000,000 per occurrence for bodily injury coverage for contractual liability and specifically cover the indemnity agreement set forth in paragraph 10 above. The Town of Golden Beach must be named as an additional insured on this policy.
    - (b) Automobile liability in the amount of \$1,000,000 per occurrence for bodily injury and property damage, covering all vehicles owned,

leased or used by the Contractor within the limits of the Town. The Town must be named as an additional insured on this policy.

- (c) Workers compensation and employer's liability, as required by Florida State Statutes.
  - 2) All companies providing insurance shall be authorized to do business in the State of Florida and rated B+ VI or better by Best's Key Rating Guild, latest edition.
  - 3) No change or cancellation of this insurance shall be made without thirty (30) days written notice to the Town Manager.
12. **Notices.** All notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given only upon hand delivery thereof or upon delivery by United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

To the Town:           The Town of Golden Beach  
One Golden Beach Drive  
Golden Beach, Florida 33160  
Attention: The Town Manager

To Contractor:        BFI Waste Systems of North America, Inc.  
3840 N.W. 37th Court  
Miami, Florida 33142  
Attention: District Vice President

or to such other address or such other person as any party shall designate, in writing, to the other for such purposes.


13. **Entire Agreement.** This Agreement sets forth all the promises, covenants, agreements, conditions and understandings between the parties hereto, and supersedes all prior and contemporaneous agreements, understandings, inducements or conditions expressed or implied, oral or written, except as herein contained.
14. **Binding Effect; No Assignment.** This Agreement shall be binding upon the parties hereto, their heirs, administrators, successors and assigns. No party may assign to transfer its interests herein, or delegate its duties hereunder, without the written consent of the other party.



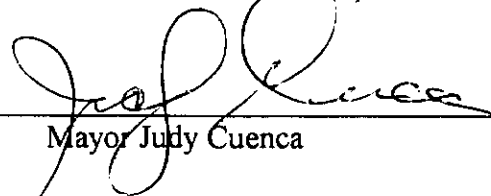
15. **Amendment.** The parties hereby irrevocably agree that no attempted amendment, modification, termination, discharge or change of this Agreement shall be valid and effective, unless the parties shall unanimously agree in writing to such amendment.
16. **Gender and Use of Singular and Plural.** All pronouns shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identity of the party or parties, or their personal representatives, successors, and assigns may require.
17. **Counterparts.** This Agreement and any Amendments may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.
18. **Headings.** The article and section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of the Agreement.
19. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Florida and any proceeding arising between the parties in any manner pertaining or related to this Agreement shall, to the extent permitted by law, be held in Dade County, Florida.
20. **Provisions Severable.** This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules, and regulations, of the jurisdiction in which the parties do business. If any provision of this Agreement, or the application thereof to any person or circumstances shall, for any reason or to any extent, is determined to be invalid or unenforceable, the remainder of this Agreement and application of such provision to other persons or circumstances shall not be affected thereby, but rather this Agreement shall be enforced to the greatest extent permitted by law.

IN WITNESS WHEREOF, the parties have hereunto executed this Agreement as of the day and year first above written.

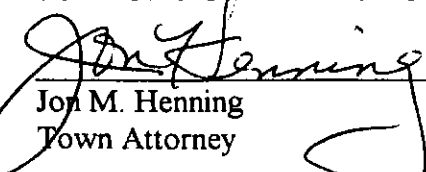
ATTEST:

  
\_\_\_\_\_  
Interim Town Clerk  
Robert "Skip" Johnston

TOWN OF GOLDEN BEACH, FLORIDA

By:   
\_\_\_\_\_  
Mayor Judy Cuenca

APPROVED AS TO LEGAL  
SUFFICIENCY AND AS TO FORM

  
\_\_\_\_\_  
Jon M. Henning  
Town Attorney

Date: 2/5/98

**BFI WASTE SYSTEMS OF NORTH AMERICA, INC.**

By: Jamie D. Coleman  
Signature

JAMIE D. COLEMAN  
Type or Print Name

Its: VICE President

Date: 1/30/98