

IN THE CIRCUIT COURT, FOURTH  
JUDICIAL CIRCUIT, IN AND FOR  
DUVAL COUNTY, FLORIDA

CASE NO.: 16-2009-CA-006572

DIVISION: CV-A

CONCERNED TAXPAYERS OF DUVAL  
COUNTY, INC., a Florida corporation; JOHN  
S. WINKLER, ANTHONY BATES, LYNNE A.  
PRICE, G. SCOTT MacNAUGHTON, JESSIE  
JOHNSON, JOSEPH ANDREWS, PHILLIP  
LAIBE, ROD MORRILL, SHANE SCHUMERTH,  
VICTOR WILHELM, CONRAD MARKLE and  
CURTIS WOLF, individually and as representative  
citizens and electors of Duval  
County and the consolidated City of Jacksonville,

Plaintiffs,

vs.

John Peyton, as elected Mayor of the CITY OF  
JACKSONVILLE, and Ronnie Fussell, as President  
of the JACKSONVILLE CITY COUNCIL,

Defendants.

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**COMPLAINT FOR DECLARATORY AND SUPPLEMENTAL RELIEF**

Plaintiffs, CONCERNED TAXPAYERS OF DUVAL COUNTY, INC., a Florida  
corporation; JOHN S. WINKLER, ANTHONY BATES, LYNNE A. PRICE, G. SCOTT  
MacNAUGHTON, JESSIE JOHNSON, JOSEPH ANDREWS, PHILLIP LAIBE, ROD  
MORRILL, SHANE SCHUMERTH, VICTOR WILHELM, CONRAD MARKLE and CURTIS  
WOLF, individually and as representative citizens and electors of Duval County and the  
consolidated City of Jacksonville, bring this complaint for declaratory and supplemental relief to

determine questions of construction and validity which arise under certain instruments in writing prepared by Defendant CITY OF JACKSONVILLE, and the effect thereon of its municipal ordinances, to obtain a declaration regarding the legal right of Defendant JACKSONVILLE CITY COUNCIL to waive the application of certain ordinances requiring competition in procurement of goods and services by the CITY OF JACKSONVILLE, and to grant options to purchase City real estate for an indefinite period of time without following Chapter 122 of the Ordinance Code, and granting supplemental equitable or legal relief as required to enforce such declaration. In support thereof the Plaintiffs, by and through undersigned counsel, state as follows:

**PRELIMINARY ALLEGATIONS COMMON TO BOTH COUNTS**

1. This is an action for a declaratory judgment and supplemental relief pursuant to Chapter 86 of the Florida Statutes and is within the jurisdictional authority of the Circuit Court of the Fourth Judicial Circuit of Florida, in and for Duval County, Florida.

2. At all times material hereto, Plaintiff CONCERNED TAXPAYERS OF DUVAL COUNTY, INC., has been a Florida domestic corporation organized not for profit and having its principal location in Duval County, Florida.

3. At all times material hereto, Plaintiffs JOHN S. WINKLER, ANTHONY BATES, LYNNE A. PRICE, G. SCOTT MacNAUGHTON, JESSIE JOHNSON, JOSEPH ANDREWS, PHILLIP LAIBE, ROD MORRILL, SHANE SCHUMERTH, VICTOR WILHELM, CONRAD MARKLE and CURTIS WOLF have all been citizens of Duval County and electors duly registered and qualified to vote in Duval County, Florida and individually and collectively are qualified to serve as class representatives of the residents, citizens, freeholders, electors, ad

valorem taxpayers, persons subject to special fees, and other persons affected by the proposed actions of the Defendants regarding which declarations and supplemental relief is being sought.

4. At all times material hereto, Defendant John Peyton, sued herein solely in his representative capacity as elected Mayor of the CITY OF JACKSONVILLE, has been sui juris, and CITY OF JACKSONVILLE has been a political subdivision of the State of Florida combining the functions of a municipality and of Duval County pursuant to a charter granted by the State.

5. At all times material hereto, Defendant Ronnie Fussell, sued herein solely in his representative capacity as President of the JACKSONVILLE CITY COUNCIL, has been sui juris, and the JACKSONVILLE CITY COUNCIL has been an elective legislative body of and for Defendant CITY OF JACKSONVILLE and has combined the legislative functions of both a municipality and Duval County pursuant to a charter granted by the State.

6. The Plaintiffs are persons whose rights, status or other equitable or legal relations are affected by instruments in writing prepared by Defendant CITY OF JACKSONVILLE and municipal ordinance of Defendant CITY OF JACKSONVILLE and therefore may have determined the questions of construction and validity which arise under these instruments in writing and municipal ordinance to obtain a declaration of rights, status, or other equitable or legal relations thereunder.

7. There is a bona fide, actual, present practical need for the declaration, which deals with present, ascertained or ascertainable states of facts or present controversies as to states of facts. Some immunity, power, privilege or right of the Plaintiffs is dependent upon the facts or the law applicable to the facts, and the Defendants have, or reasonably may have an actual,

present, adverse and antagonistic interest in the subject matter, either in fact or law. The antagonistic and adverse interests are all before the court by proper process or class representation and the relief sought is not merely giving of legal advice by the courts or the answer to questions propounded from curiosity but to resolve issues of great public concern in the realm of procurement and sales of public property.

8. The specific instruments in writing involved in this action are the “Request for Proposals (RFP) Proposal Documents Package Facility Development and Operations of North/West Landfill for City of Jacksonville as Provided by City of Jacksonville Ordinance No. 89-1179-669,” a copy of which is attached as Exhibit 1 and which is known hereafter as the “1990 RFP;” pending Jacksonville Municipal Ordinance 2008-538, a copy of which together with the November 17, 2008 draft of the “Amended and Restated Landfill Operation and Construction Agreement between the City of Jacksonville and Trail Ridge Landfill, Inc.” is attached as Exhibit 2 and which is known hereafter as the “Requested Procurement Code Waiver;” and Chapter 126 of the Jacksonville Ordinance Code, entitled and referred to hereafter as the “Procurement Code,” a current copy of which is attached as Exhibit 3.

9. On December 18, 2008 an Office of General Counsel Opinion stating that JACKSONVILLE CITY COUNCIL has the legal authority to waive the Procurement Rules as requested by the Mayor of the CITY OF JACKSONVILLE with respect to pending Ordinance 2008-538 was issued and is attached hereto as Exhibit 4. Additional portions of the municipal code (including but not limited to Chapter 122, as to sale of city property, and §386.202(c), requiring a specific term in years), charter, and the Florida Statutes (including but not limited to Chapters 180, 255, and 287, Procurement of Property and Services) which are referenced in the

Procurement Code or otherwise necessary to a proper declaration are not attached but are subject to judicial notice.

**COUNT I - LEGALITY OF ORDINANCE 2008-538**

10. The allegations of paragraphs 1 through 9, inclusive, are incorporated herein.

11. On February 27, 2009 the administration of the Defendant CITY OF JACKSONVILLE obtained an opinion from its own General Counsel's office that the landfill operations contract resulting from the 1990 RFP is unambiguous in defining the services provided thereunder to the City as ending when the current 144 acre landfill (constructed as a result of the 1990 RFP) reaches capacity. The official position of Defendant CITY OF JACKSONVILLE is that the 1990 RFP was, in essence, for the construction and operation of a landfill capable of holding approximately 14 million tons of certain trash, which was then believed to be adequate for the needs of the community for 20 years. The City now claims that the landfill eventually permitted and constructed pursuant to the 1990 RFP currently has a remaining useful capacity and life of five and one half years.

12. The "Amended and Restated Landfill Operation and Construction Agreement between the City of Jacksonville and Trail Ridge Landfill, Inc." dated November 17, 2008 and awaiting JACKSONVILLE CITY COUNSEL approval by a waiver of the Procurement Code contemplates the continued operation of one or more landfills holding not less than an additional 42 million tons of trash, operating over a period of multiple decades into the future at an additional cost to the City and its inhabitants of hundreds of millions of dollars in excess of that contemplated by the 1990 RFP. A plain and ordinary reading of the language of the City's Procurement Code, Chapter 126 of the Jacksonville Municipal Ordinance Code, indicates that

the dramatic expansion in size, scope, time and value of the work originally bid in 1990 as contemplated in the Requested Procurement Code Waiver requires the City to follow a process of competitive bidding, and none of the exceptions contained in the Procurement Code or conditions which would permit a waiver of competitive bidding by the City Council are applicable.

13. The Mayor disagrees, however, and has subsequently publicly expressed great anxiety as to the potential consequences of litigation which he maintains might result if Defendant JACKSONVILLE CITY COUNCIL fails to adopt his Request for Procurement Code Waiver and allow Defendant CITY OF JACKSONVILLE to execute and enter into the “Amended and Restated Landfill Operation and Construction Agreement between the City of Jacksonville and Trail Ridge Landfill, Inc.” without any competitive bid process.

14 It is necessary as a preliminary matter, therefore, for the court to determine that the 1990 RFP is unambiguous in defining the scope of work, when taken together with its four addenda, and that the scope of work requested and required pursuant to the “Amended and Restated Landfill Operation and Construction Agreement between the City of Jacksonville and Trail Ridge Landfill, Inc.” requires bidding under the Procurement Code.

15. As a separate and independent reason for the determination that Ordinance 2008-538 is illegal, provisions in the “Amended and Restated Landfill Operation and Construction Agreement between the City of Jacksonville and Trail Ridge Landfill, Inc.” would require the City, at an indeterminate time in the future not restricted to a set and ascertainable number of years, to convey both the Trail Ridge site and lands purchased by the CITY OF JACKSONVILLE within the last year to a named purchaser without following Ordinance Code

Chapter 122.

16. The nature of the relief sought in Count I is a declaration as to both whether or not the scope of work and anticipated expenditures contemplated by the Requested Procurement Code Waiver is in violation of Chapter 122 and/or changes the scope of work requested under the 1990 RFP in a way which is:

- a. outside any legislated exception to a competitive procurement process contained within the Procurement Code, and
- b. outside and beyond any legal waiver which can be granted by Defendants from the operation of the Procurement Code and/or the operation of Chapter 122 of the Ordinance Code.

**COUNT II – APPLICATION OF OGC OPINION OF DECEMBER 18, 2008  
TO PROCUREMENT OF LANDFILL OPERATIONS “SERVICES,” PROCUREMENT  
OF SERVICES IN GENERAL, AND SALES OF PUBLIC REAL PROPERTY**

17. The allegations of paragraphs 1 through 9, inclusive, are incorporated herein.

18. Even in the event that Ordinance 2008-538 is defeated or withdrawn, the Opinion of Jacksonville’s General Counsel contained in Exhibit 4 must still be addressed since either another restated contract based on landfill operations may be presented by the CITY OF JACKSONVILLE Administration to the JACKSONVILLE CITY COUNCIL for waiver under Chapters 126 and 122 of the Ordinance Code or any other so-called operations contract of sufficient size to require a waiver may be presented at any time and enacted in violation of the Ordinance Code on the strength and authority of Exhibit 4.

19. The specific nature of the “operations” covered by the 1990 RFP and/or the OGC Opinion of December 18, 2008 also need to be addressed to determine whether they are in fact

merely “services” or whether, without limitation, they incorporate aspects of “capital improvement” or other distinct categories of provided goods and services subject to competitive bidding and procurement.

20. There is a need for a declaration as to the effect, if any, of the legislative intent announced in the Procurement Code in favor of competitive bids on any proposed waiver as well as on the General Counsel’s interpretation of the code as always permitting a waiver of service contracts, without appropriation of specific funding for the services as required by §126.107(g).

21. The nature of the relief sought in Count II is a declaration as both whether or not the scope of work and anticipated expenditures contemplated by the any ordinance involving the so-called extension, modification, amendment and/or restatement of any existing contract entered into pursuant the 1990 RFP and which does not involve the present funding exception in Procurement Code §126.107(g) and which is indeterminate as to a known number of years can avoid the competitive bidding requirements of the Procurement Code via “waiver.” Furthermore, relief is sought determining that no real property purchased by the City can be sold in evasion of Chapter 122 by mere incorporation into a purported contract for “services.”

22. A speedy hearing and advance upon the court’s calendar is requested pursuant to Florida Statute Section 86.111 due to the importance of the public policy issues involved in this suit and the fact that a vote on the requested waiver or another proposed waiver in connection with landfill operations could occur at any time.

23. Plaintiffs request the award of their costs as in equity actions.

WHEREFORE, Plaintiffs respectfully request this Court

a) declare the rights of the parties,

b) define the scope of the 1990 RFP as providing (in material part) for operation of a landfill with an estimated capacity of 20 years,

c) declare that the Jacksonville City Council is without legal authority to vote on the Mayor of the City of Jacksonville's requested legislation waiving the Procurement Code as described herein or on any other legislation waiving the Procurement Code competitive bid requirements in connection with landfill operations contracts or other service contracts violating §126.107(g) having an expected value in excess of \$50,000,

d) determine whether Chapter 122 of the Ordinance Code applies to 2008-538 or any similar legislation purporting to grant an exclusive right to a purchaser to buy City real property in the future without a competitive process,

e) enjoin the Jacksonville City Council from attempting to unlawfully waive the Procurement Code as requested by the Mayor now or in the future, and to

f) award such other relief as is appropriate, including but not limited to the costs for this action pursuant to Florida Statute 86.111.

Respectfully submitted,  
/S/ JOHN S. WINKLER

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John S. Winkler, individually and as President,  
Concerned Taxpayers of Duval County, Inc.

JOHN S. WINKLER, P.A.  
/S/ JOHN S. WINKLER

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