

RESOLUTION NO. 2019 - 019

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING THE FIRST MODIFICATION TO THE TOWN'S AGREEMENTS WITH WASTE PRO OF FLORIDA, INC. RELATING TO THE TOWN'S SOLID WASTE, RECYCLABLES, AND BULK WASTE COLLECTION, DISPOSAL, AND PROCESSING SERVICES (WASTE HAULING AND WASTE DISPOSAL AGREEMENTS); CLARIFYING THE AGREEMENT'S LANGUAGE; MODIFYING THE AGREEMENTS BASED UPON RENEGOTIATED TERMS; AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR, AND TOWN ATTORNEY TO ENTER INTO THE FIRST MODIFICATION TO THE AGREEMENTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on June 29, 2017, the Town Council adopted Resolution 2017-048, selecting Waste Pro of Florida, Inc. as the Town's all-encompassing waste services provider; and

WHEREAS, shortly after service commenced, Hurricane Irma tore through Southwest Ranches and caused severe vegetative damage throughout the Town; and

WHEREAS, to prevent the comingling of non-hurricane vegetative debris, which would have invalidated FEMA reimbursement, the Town asked Waste Pro to not collect vegetative bulk debris until the Town's emergency response vendor performed a final pass through the Town; and

WHEREAS, despite the halt on vegetative bulk collection, Waste Pro continued to pick up white goods throughout the Town; and

WHEREAS, following its final pass, Waste Pro and the Town agreed to allow residents to have one additional month whereby residents could place whatever they had out for bulk collection, at no limit, and at no cost to the residents or the Town; and

WHEREAS, in addition, during this time, the Town and Waste Pro met to discuss several additional contractual matters, and offsets resulting from Waste Pro's non-collection of vegetative bulk during Hurricane Irma; and

WHEREAS, this Resolution, and the attached First Modification to the Agreements, serves to codify the agreement reached between the parties;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Southwest Ranches, Florida:

Section 1. The above-referenced recitals are true and correct and are incorporated herein by reference.

Section 2. The Town Council hereby approves the First Modification to the Town's Agreements with Waste Pro of Florida, Inc., relating to the Town's solid waste, recyclables, and bulk waste collection, disposal, and processing services (Waste Hauling and Waste Disposal Agreements).

Section 3: The Town Council hereby authorizes the Mayor, and Town Attorney to enter into the First Modification to the Agreements, in substantially the same form as that attached hereto as Exhibit "A", and to make such modifications, additions and/or deletions which they deem necessary and proper to effectuate the intent of this Resolution.

Section 4. That this Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED by the Town Council of the Town of Southwest

Ranches, Florida, this 13th day of December, 2018 on a motion by

C/M Schroeder and seconded by C/M Hartmann.

McKay	<u>Yes</u>	Ayes	<u>5</u>
Jablonski	<u>Yes</u>	Nays	<u>0</u>
Fisikelli	<u>Yes</u>	Absent	<u>0</u>
Hartmann	<u>Yes</u>	Abstaining	<u>0</u>
Schroeder	<u>Yes</u>		

Doug McKay
Doug McKay, Mayor

Attest:

Russell Muniz
Russell Muniz, Town Clerk

Approved as to Form and Correctness:

Keith M. Poliakoff
Keith M. Poliakoff, J.D., Town Attorney

EXHIBIT "A"

FIRST MODIFICATION TO THE AGREEMENTS

THIS FIRST MODIFICATION TO THE AGREEMENTS entered into as of the 13th day of December, 2018 between the Town of Southwest Ranches, a municipal corporation of the State of Florida (the "Town") and Waste Pro of Florida, Inc., a corporation of the State of Florida ("Contractor"), for the purpose of amending the Agreements between the Town and Consultant dated June 29, 2017 (the "Original Agreements").

WITNESSETH:

WHEREAS, on June 29, 2017, the Town Council adopted Resolution 2017-048, selecting Waste Pro of Florida, Inc. as the Town's all-encompassing waste services provider; and

WHEREAS, shortly after service commenced, Hurricane Irma tore through Southwest Ranches and caused severe vegetative damage throughout the Town; and

WHEREAS, to prevent the comingling of non-hurricane vegetative debris, which would have invalidated FEMA reimbursement, the Town asked Waste Pro to not collect vegetative bulk debris until the Town's emergency response vendor performed a final pass through the Town; and

WHEREAS, despite the halt on vegetative bulk collection, Waste Pro continued to pick up white goods throughout the Town; and

WHEREAS, following its final pass, Waste Pro and the Town agreed to allow residents to have one additional month whereby residents could place whatever they had out for bulk collection, at no limit, and at no cost to the residents or the Town; and

WHEREAS, in addition, during this time, the Town and Waste Pro met to discuss several additional contractual matters, and offsets resulting from Waste Pro's non-collection of vegetative bulk during Hurricane Irma; and

WHEREAS, this Resolution, and the attached First Modification to the Agreements, serves to codify the agreement reached between the parties;

NOW, THEREFORE, for and in consideration of the premises and for Ten Dollars (\$10.00) and for other good and valuable consideration the receipt and sufficiency whereof is hereby acknowledged, the parties hereto agree that the Original Agreement shall be amended as follows:

1. The foregoing recitals are true and correct and are incorporated herein by reference.
2. The Agreement relating to Solid Waste, Recyclables, and Bulk Waste Collection and Disposal Franchise Agreement shall be known as the "Waste Hauling Agreement", and the Agreement for Solid Waste Disposal and Recyclables Processing Services shall be known as the "Waste Disposal Agreement".
3. Section 12 "Residential Rates and Billing" Subsection J "Generation Factor Adjustments" of the Waste Hauling Agreement shall be amended as follows:

J. Generation Factor Adjustments. ~~The generation factors specified in Exhibit 1 that are used to calculate the rates for Solid Waste disposal and Bulk Waste disposal shall be set by July 15, 2018, and shall be adjusted October 1, 2018, and shall then remain constant for the remainder of the Contract term. The generation factors will be adjusted based on the average quantities of Residential Solid Waste and Residential Bulk Waste (not including Bulk Waste that exceeded the 12 cubic yard limit per pickup) collected per Residential Service Unit during the first Contract Year. Regardless of final determination of the average quantities of Residential Solid Waste and Residential Bulk Waste collected per Residential Service Unit during the first Contract Year, the adjusted generation factor for Residential Bulk Waste shall not exceed the FY 2016 level of 4.67 tons per Residential Service Unit per year and the generation factor for Residential Solid Waste shall not exceed the generation factor provided in Exhibit 1 of 1.28 tons per Residential Service Unit per year. The Contractor shall provide monthly documentation demonstrating the accuracy of the tonnage of Residential Solid Waste and Bulk Waste collected in the Town during the first Contract Year. The Solid Waste disposal element and Bulk Waste disposal element shall be calculated based on these adjusted generation factors, as well as the adjustments specified in Sections 12.H and 12.I above. Notwithstanding the CONTRACTOR provided monthly reporting, the TOWN may elect to conduct its own waste management study. The generation factors determined by that study will be the factors used in the CONTRACT.~~

4. Exhibit 2 "Commercial Collection and Disposal Service Rates", page 1 of the Waste Hauling Agreement, shall be modified as follows:

Commercial Disposal Service Rates shall be a direct pass through to the commercial customer. Such rate shall be set on or before August 1 of the calendar year, and shall be implemented from October 1 through September 30 of the proceeding calendar year. Contractor shall advise the Town in writing, and shall provide proof of its negotiated disposal rate, which shall be

in line with industry standards, by August 1 of each calendar year. Contractor shall provide the Town with monthly copies of all commercial customer bills reflecting the negotiated disposal rate. Although the Agreement contains various fees for commercial disposal services, if the Agreement is lacking such fee, such fee shall be at a rate negotiated directly between Contractor and the commercial client, which shall be in accordance with accepted industry standards.

5. Exhibit 2 "Commercial Collection and Disposal Service Rates", page 2 of the Waste Hauling Agreement, shall be modified as follows:

Disposal fees for Roll-Off Container and Compactor service will be charged based on actual weight and the Town's Solid Waste disposal fee of Solid Waste ~~Bulk Waste~~ disposal fee in effect at that time.

6. Section 1 "Effective Date, Commencement Date, and Term", Subsection B "Initial Term" of the Waste Disposal Agreement shall be modified as follows:

Initial Term The term of this Contract shall be for a ~~five (5) year~~ an initial period coinciding with the Hauling Agreement and terminating on September 30, 2022. ~~period beginning on the Commencement Date, and terminating five (on September 30, 2022.~~

7. Section 3 "Contractor's Disposal Responsibilities", Subsection 5 of the Waste Disposal Agreement shall be modified as follows:

(5) The CONTRACTOR is responsible to confirm ~~ensure~~ that ~~that~~ the Designated Receiving Facility and the Designated Disposal Facility are properly licensed, permitted, and are operated ~~at all times~~ in full compliance with all applicable local, State and Federal laws, regulations, permits and similar requirements.

8. Section 4 "Contractor's Recyclables Processing Responsibilities", Subsection 4 of the Waste Disposal Agreement shall be modified as follows:

~~(4) The CONTRACTOR shall be fully responsible for all aspects of the management, operations, and maintenance of the Designated Recycling Facility and Designated Processing Facility.~~

9. Section 4 "Contractor's Recyclables Processing Responsibilities", Subsection 5 of the Waste Disposal Agreement shall be modified as follows:

(5) The CONTRACTOR shall ~~ensure~~ confirm that the Designated Recycling Facility and Designated Processing Facility are operated ~~at all times~~ in full compliance with all applicable local, State, and Federal laws, regulations, permits, and similar requirements.

10. Section 29 "Assignment and Subletting" of the Waste Disposal Agreement shall be modified as follows:

SECTION 29. ASSIGNMENT AND SUBLETTING SUBCONTRACTING

No assignment or subcontracting of this Contract or any right occurring under this Contract shall be made in whole or in part by the CONTRACTOR without the express written consent of the Town Council. The TOWN shall have full discretion to approve or deny, with or without cause, any proposed or actual assignment or subcontract by the CONTRACTOR. Any assignment or subcontract of this Contract made by the CONTRACTOR without the express written consent of the Town Council shall be null and void and shall be grounds for the TOWN to declare a default of this Contract and immediately terminate this Contract by giving written notice to the CONTRACTOR, and upon the date of such notice this Contract shall be deemed immediately terminated, and upon such termination all liability of the TOWN under this Contract to the CONTRACTOR shall cease, and the TOWN shall have the right to call the performance bond and shall be free to negotiate with other contractors, the CONTRACTOR, or any other person or company for the service which is the subject of this Contract. In the event of any assignment or subcontract, the assignee or subcontractee shall fully assume all the liabilities of the CONTRACTOR.

11. Section 41. "State of Emergency" shall be added to the Waste Disposal Agreement as follows:

Section 41. State of Emergency

In the event of a declared State of Emergency, CONTRACTOR shall halt collection operations and shall await written confirmation from the Town as how to proceed. The TOWN shall not be charged for any period of time in which collection has been halted, and shall only be invoiced when collection resumes. If the TOWN elects to have the CONTRACTOR continue service, CONTRACTOR shall assist the TOWN in seeking eligible FEMA reimbursements, and shall provide the TOWN with the required documentation, including, but

not limited to, disposal tickets and payment for same. In no event shall the total monthly disposal costs exceed the then agreed upon costs for disposal.

12. The subsection directly under the Commercial Disposal Rate graphic on page 52, Exhibit 4 "Sample Calculation of Annual Rate Adjustments" of the Waste Disposal Agreement shall be modified as follows:

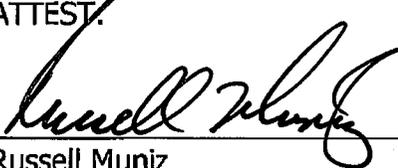
~~Bulk-Solid~~ Waste Disposal

13. All other terms and conditions not modified herein shall remain of full force and effect and binding upon the parties.

IN WITNESS WHEREOF, the TOWN and the CONTRACTOR have executed this Contract on the respective date(s) below each signature.

TOWN OF SOUTHWEST RANCHES, FLORIDA
A municipal corporation

ATTEST:



Russell Muniz
TOWN CLERK

By: 

Doug McKay, Mayor

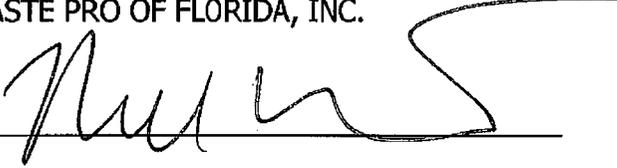
Date: 12/13/18

Date: 12/13/18

Approved as to form and correctness:



KEITH M. POLIAKOFF, J.D.
TOWN ATTORNEY
Date: 12/19/18

WASTE PRO OF FLORIDA, INC.


WITNESSES: _____

Print name: _____

Print Name: Russell Mackie

Print Title: Regional V.P

Date: _____

Date: 12/3/18