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**INTER-OFFICE CORRESPONDENCE**

**MEMORANDUM NO. 2023-008**

**TO:** Mayor Frank Ortis  
Members of the City Commission

**CC:** Charles F. Dodge, City Manager  
Mark Gomes, Procurement Director  
Oniel Garcia, Contracts Manager  
Michael F. Bailey, Utilities Director

**FROM:** Samuel S. Goren, City Attorney *SSG*  
Jacob G. Horowitz, Assistant City Attorney *JGH*  
Paul B. Hernandez, Assistant City Attorney *PBH*

**DATE:** January 25, 2023

**RE:** City of Pembroke Pines (“City”)/City Commission Agenda Item #3  
Commission Meeting Date January 18, 2023/Removal and Disposal  
of Grit and Screenings

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As you recall, the City Commission entertained a lengthy discussion at its January 18, 2023 Commission Meeting regarding the extent of Waste Pro of Florida’s (“Waste Pro”) exclusive franchise to provide waste collection and disposal services in and for the City. The discussion on Waste Pro’s existing right to provide waste collection services occurred during the Commission’s consideration of Invitation for Bid (“IFB”) # PSUT-22-03 on its Consent Agenda, awarding the removal and disposal of grit and screenings to A.J. Panzarella LLC d/b/a Panzarella Waste & Recycling Services (“Panzarella”).

Prior to the Commission’s vote to table the item until its February 1, 2023 meeting, the City Commission directed the City Attorney’s Office to provide a memorandum explaining whether the City may move forward with awarding the collection and disposal of grit and screenings contract to Panzarella or whether the City is required to contract such services with Waste Pro. As outlined in greater detail herein, the City Attorney recommends that the City may continue to consider the application as presented.

## Background

Much of the Commission's discussion centered around Chapter 94 of the City's Code. In practice, Chapter 94 serves to codify the garbage collection requirements present in the City's 1992 agreement with Industrial Waste Services, Inc. and a subsequent 2002 ordinance that sought to provide definitions to the words "Collector" and "Hauler", establish a centralized billing program, and require that all applications for occupational licenses be accompanied by a copy of the business' contract for garbage collection services.

Since the time that the 1992 and 2002 ordinances were codified, the City has entered into different contracts for waste collection and disposal services. Waste Pro has provided waste collection services for the City since 2013 and was preceded by Republic Services of Florida who had provided solid waste and recycling services to the City since 2002. It is our office's understanding that Waste Pro provided grit and screenings collection and disposal services from the City's Waste Water Treatment plant as the City's provider of waste collection services from 2013 until 2016, but notified the City in 2016 that continuing to provide grit and screenings collection services would require a separate agreement after one of the local collection facilities stopped accepting grit and screenings.

Pursuant to discussions with Waste Pro at the time, the City advertised IFB #PSUT-16-01 "Removal and Disposal of Grit and Screenings" on November 8, 2016 and subsequently awarded an agreement separate from the aforementioned Residential and Commercial Waste Collection Agreement, upon the City Commission's approval on December 14, 2016. Waste Pro and Panzarella both responded to the IFB and Waste Pro was ultimately selected by the City as the most responsive and responsible bidder.

As a result of the December 14, 2016 Commission approval, the City entered a two (2) year grit and screenings agreement between with Waste Pro for the period of January 1, 2017 through December 31, 2018 that included an option for two (2) additional two (2) year terms (the "Grit and Screenings Agreement"). The Commission later approved the First Amendment to the Grit and Screenings Agreement on August 22, 2018 to exercise the first two (2) year renewal option through December 31, 2020 and increase the collection and hauling rates. Similarly, on August 19, 2020, the City Commission approved the Contract Database Report and Department Recommendation, approving the Second Amendment to the Grit and Screenings Agreement to exercise the second two (2) year renewal option through December 31, 2022 and further increasing the collection and hauling rates.

Prior to the fulfillment of the Grit and Screenings Agreement's second and final renewal option on October 19, 2022, the Commission approved the advertisement of IFB #PSUT-22-03 for the removal and disposal of grit and screenings. Both Waste Pro and Panzarella responded and Panzarella was ultimately selected as the most responsive and responsible bidder. Prior to the Commission's consideration to award IFB-22-03, the City and Waste Pro entered into an additional third and fourth amendment to the Grit and Screenings Agreement under which Waste Pro continues to provide collection services for the City until such time that the City enters into a new agreement.

## Waste Pro Contract

Our office has also reviewed the original and amended waste collection agreement, entitled "First Amendment to Agreement for Residential Solid Waste, Residential Recycling, and Commercial Waste Collection Services between the City of Pembroke Pines and Waste Pro of

Florida, Inc.” (the “Agreement”) to determine whether the collection of grit and screenings from the Pembroke Pines Waste Water Treatment Plant is included as part of the existing obligations in Waste Pro’s Agreement with the City.

Article 3 of the Agreement outlines Waste Pro’s Services and Responsibilities. 3.1 provides that Waste Pro agrees to perform the residential solid waste, residential recycling (which has since been comingled with solid waste through the Amended Agreement), and commercial waste collection services within the City. Our office considered two possible avenues that could require Waste Pro to provide grit and screenings collection services to the City. More particularly, we analyzed whether grit and screenings collection is included as part of Waste Pro’s exclusive franchise under the contract and whether Waste Pro must collect grit and screenings under its contractual obligation to provide collection services to City facilities at no cost to the City.

#### I. Exclusive Franchise

Article 4 of the agreement provides Waste Pro with the exclusive franchise and the sole obligation to operate and maintain a comprehensive garbage, trash, and other refuse collection including roll off and removal system and service for residential and commercial customers in and for the City. 4.3 of the agreement and 1.2.3 of the RFP provide the service categories that are included within the exclusive franchise. Those service categories are as follows:

- Residential Regular Solid Waste;
- Residential Recycling;
- Commercial Waste (includes apartment complexes, but not condominiums).

The exclusive franchise makes no reference to government facilities, but rather limits Waste Pro’s service to residential and commercial customers. Nor does it specifically contemplate the type of waste that grit and screenings has been categorized as by the City. Waste Pro, and Panzarella individually and in separate emails have classified grit and screenings collection as special waste. Special Waste is defined by Florida Statutes as solid wastes that can require special handling and management. Moreover, while special waste is included within the Agreement and Florida Statute’s definition of “Solid Waste”, the Agreement limits Waste Pro’s exclusive franchise to Residential and Commercial solid waste. As such, it does not seem as though the Agreement’s exclusive franchise provision includes grit and screenings collection and disposal service from a government facility, such as the City’s Waste Water Treatment Plant.

It is also important to note that the City presently contracts with several different vendors to provide waste-related collection and disposal services that may not be included within Waste Pro’s exclusive franchise including:

1. Lime sludge removal with Pro Lime Corp.;
2. Hauling and disposition of biosolids with BCR Environmental Corp.;
3. Bulk waste pick up with Eastern Waste Systems, Inc.;
4. Household hazardous waste collection and disposal with Clean Harbors Environmental Services, Inc.

#### II. Service to City Facilities

Section 3.14 of the Agreement requires Waste Pro to provide for the collection of garbage, bulk trash, and recyclables at all City facilities at no cost to the City, which coincides with Section 1.3.8.1 of the IFB for the waste collection services which requires that the Contractor (Waste Pro)

“provide for the collection of garbage, bulk trash and recyclables at all City Facilities at no cost to the City.”<sup>1</sup> 3.14.4 provides that the list of City facilities can change and agrees that services are to be provided at all City locations. Lastly, Article 3 provides that Waste Pro shall be responsible for providing additional collection assistance, collection containers, and disposal services at no cost to the City.

1.3.8.5 of the IFB refers to Exhibit J, which lists all City facilities requiring waste collection services, including the Waste Water Treatment Plant located at 13955 Pembroke Road where the grit and screenings is to be collected. In addition to providing the location of City Facilities that require waste removal, Exhibit J also outlines service frequency, container type, and waste type among other things. The container type for the Waste Water Treatment Plant is listed as a front load dumpster and makes no reference to “grit” or, alternatively, a “grit container”. However, Exhibit J lists “solid waste” as the waste type for the Waste Water Treatment Plant. The inclusion of solid waste as the waste type is notable because it creates a conflict between 3.14 of the Agreement and 1.3.8.5 of the IFB. Pursuant to Florida Statute and the Agreement special waste is considered solid waste.

### Conclusion

Unlike past City waste collection agreements, the Agreement is silent on the collection of “special waste” such as grit and screenings. For instance, the 2002 agreement specifically omits the collection of special waste as a required services and provides that there may be an additional charge to the City agreed upon by the service provider and the City if special waste is required to be collected and disposed of. Further, the Application of Chapter 94 to this contract can provide Waste Pro the exclusive franchise to collect all waste from government facilities, including special waste. However, under the terms of the Agreement, Waste Pro would have to do so at no cost to the City.

The past performance and ongoing relationship between the City and Waste Pro since 2016, including Waste Pro’s participation in bids to provide grit and screenings collection and disposal services and the City’s procurement, approvals and administration of invitations to bid, contracts, and amendments for said services demonstrate that the parties agree that grit and screenings collection is a distinct service that stands apart from the Agreement in the same or similar manner as the various other waste-related collection services that the City contracts to other providers.

Pursuant to the foregoing, the City Attorney recommends that the City may continue to consider the application as presented.

SSG:JGH:PBH

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<sup>1</sup> “Garbage” is a defined term of the Agreement that is more narrowly defined than “Solid Waste”.