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INTER-OFFICE CORRESPONDENCE

MEMORANDUM NO. 2020-180

TO: Charles F. Dodge, City Manager

CC: Aner Gonzalez, Assistant City Manager
Lisa Chong, Finance Director

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

DATE: October 21, 2020

RE: City of Pembroke Pines ("City") / Waste Pro Contract Renewal

On March 26, 2013, the City and Waste Pro of Florida, Inc. ("Waste Pro") entered into an agreement for solid waste and recycling collection and disposal services (the "Original Agreement"). Section 3.2 of the Original Agreement provided for a five (5) year franchise term, with two (2) additional renewal options. The initial term of the Original Agreement commenced on June 1, 2013 and terminated on May 31, 2018.

I. Renewal Term

On June 5, 2018, the City and Waste Pro entered into the First Amendment to the Original Agreement. The First Amendment provided for a three (3) year renewal term, with an option for an additional, final one-year term. The first renewal term commenced on June 1, 2018 and will terminate on May 31, 2021. In accordance with the First Amendment, the City and Waste Pro have the option to extend the franchise for one (1) additional, one (1) year term.

II. Franchise Fee

The City's award of the Original Agreement to Waste Pro was the result of Request for Proposals #AD-12-03 (the "RFP"). The RFP was incorporated as an exhibit to the Original Agreement and the terms and conditions set forth therein remain binding on the parties. As part of Waste Pro's response to the RFP, Waste Pro submitted fee proposals for solid waste collection, including recycling and bulk services.

Section 3.14 of the RFP provides for yearly adjustments to the monthly rates, beginning on the anniversary date of the Original Agreement, based on the Consumer Price Index ("CPI") for All Urban Consumers for the Miami-Fort Lauderdale Area, Florida.

It is our understanding that the City Administration is currently negotiating the terms of a potential second and final amendment with Waste Pro. Since these services were competitively bid pursuant to the RFP, and given the fact that the RFP provides for rate adjustments pursuant to the CPI, it is our opinion that the monthly rates for services

established in any second amendment should be consistent with Waste Pro's response to the RFP, which is incorporated into the Original Agreement, as amended.

Additionally, Waste Pro's response to the RFP included proposals for bulk pick-up services once per month and twice per month. In the event that the City seeks to transition from twice per month bulk pick-up to once per month, the City Attorney's Office recommends utilizing the rate structure for once per month bulk pick-up, as set forth in Waste Pro's response to the RFP.

In accordance with Section 3.14 of the RFP, as previously cited, any adjustments to the fees for services should be limited to the CPI.

In our opinion, failure to adhere to the terms and conditions of the RFP and Waste Pro's response, which are both incorporated into the Original Agreement, as amended, may subject the City to scrutiny from the Broward County Office of the Inspector General ("OIG"). Be advised that the OIG, in accordance with Section 10.01(B) of the Broward County Charter, has jurisdiction over both the City and Waste Pro, as the City's contractor.

III. Transition

Section 3.14 of the First Amendment further provides for a transition process in the event that the agreement expires or is terminated for any reason. This section specifically states, as follows:

In the event of a termination, for any reason, or the expiration of the Renewal Term or any subsequent term, the Contractor shall coordinate and work with the City during any transition to a subsequent vendor and ensure that there is no disruption in services provided by the Original Agreement and this First Amendment.

In accordance with this section, in the event of a termination, Waste Pro is contractually required to coordinate with the City to ensure that there is a seamless transition to any subsequent vendor engaged to provide solid waste and recycling collection and disposal services.

IV. Conclusion

This memorandum is intended to respond to a number of specific questions posed by the City Administration related to Waste Pro and to assist the City with its negotiations of a potential second amendment to the Original Agreement.

Based on the foregoing, the City has the legal option to enter into a final one-year renewal term with Waste Pro. Should the parties desire to enter into a final renewal term, the fees for services should be consistent with the Original Agreement, as amended, subject only to adjustments in the CPI.

Please contact our office if there is any additional information that we can provide.