RESOLUTION NO. 2020-46

A RESOLUTION OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA AUTHORIZING THE INTERIM VILLAGE MANAGER TO EXECUTE AN AMENDMENT TO THE AGREEMENT BETWEEN THE VILLAGE OF BISCAYNE PARK AND WASTE PRO OF FLORIDA, INC. FOR SOLID WASTE AND RECYCLING COLLECTION SERVICES, TO EXTEND THE TERM OF THE AGREEMENT; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, on June 2, 2014, the Village of Biscayne Park ("Village") and Waste Pro of Florida, Inc. ("Waste Pro") entered into an Agreement for solid waste and recycling collection services, which Agreement is incorporated herein by reference as Exhibit "1" ("Agreement"); and

WHEREAS, the Agreement was scheduled to lapse on October 1, 2019; and

WHEREAS, the Village received a letter of Continuation of Services from Waste Pro dated September 30, 2019 extending the Agreement for ninety (90) calendar days through December 30, 2019 with the same rate of $27.70 per unit/per month; and

WHEREAS, the Village received a letter of Continuation of Services from Waste Pro dated February 4, 2020 extending the Agreement through April 30, 2020, with the same rate of $27.70 per unit/per month; and

WHEREAS, the Village received a letter of Continuation of Services from Waste Pro dated March 2, 2020, extending the Agreement through September 30, 2020, with a rate increase of $2.00 per unit/per month, effective May 1, 2020, bringing the cost of services to $29.70 per unit/per month; and

WHEREAS, the Village received a letter of Continuation of Services from Waste Pro dated July 22, 2020 proposing an extension of services through December 31, 2020, with a rate increase of $2.00 per unit/per month, effective October 1, 2020 bringing the cost of services to $ 31.70 per unit/per month; and

WHEREAS, the Village Commission believes it is in the best interest of the residents, property owners and visitors of the Village to extend the Agreement through the end of 2020 while the Village explores all of its options with regard to solid waste and recycling collection services in the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, THAT:

Section 1. Recitals. The above recitals are true and correct, and incorporated herein by this reference and are hereby adopted as the legislative and administrative findings of the Village Commission.

Section 2. **Extension of Waste Pro Agreement.** The letter of Continuation of Services dated July 22, 2020 extending the Agreement between the Village and Waste Pro for solid waste and recycling collection services through December 31, 2020 with a rate increase of $2.00 per unit/month, effective October 1, 2020 a copy of which is attached hereto and incorporated herein as Exhibit "2" is approved. The Interim Village Manager is authorized to sign the letter of Continuation of Services and expend budgeted funds on behalf of the Village.

Section 3. **Severability.** If any section, sentence, clause or phrase herein is held to be invalid by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Resolution.

Section 4. **Effective Date.** This Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED this 1st day of September, 2020.

The foregoing Resolution was offered by Commissioner Ross, who moved its adoption. The motion was seconded by Mayor O'Halpin, and upon being put to a votethe vote was as follows:

Virginia O'Halpin, Mayor	Yes
MacDonald Kennedy, Vice Mayor	Yes
Daniel Samaria, Commissioner	Yes
Roxanna Ross, Commissioner	Yes
William Tudor, Commissioner	Yes

VILLAGE OF BISCAYNE PARK

Virginia O'Halpin, Mayor

ATTEST:

Roseann Prado, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE VILLAGE OF BISCAYNE PARK ONLY:

Edward A. Dion, Village Attorney

AGREEMENT
BETWEEN
VILLAGE OF BISCAYNE PARK, FLORIDA
AND
WASTE PRO OF FLORIDA, INC.
FOR
SOLID WASTE AND RECYCLING COLLECTION SERVICES

This Agreement made and entered into this 2 day of June, 2014, by and between the VILLAGE OF BISCAYNE PARK, FLORIDA, a municipal corporation of the State of Florida (hereinafter "Village") and Waste Pro of Florida, Inc. (hereinafter "Contractor").

WHEREAS, Village issued competitive RFP No. 2014-01 (hereinafter the "RFP") for Solid Waste and Recycling Collection Services; and

WHEREAS, Contractor was awarded RFP by a selection committee as directed by the Village Commission; and

WHEREAS, pursuant to Section 4.03 of the Village Charter, on May 21, 2014 the Village Commission adopted Ordinance Number 2014-03 which authorized execution of this Franchise Agreement by both parties on terms substantially similar to those stated in the RFP;

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

ARTICLE I
INCORPORATION OF DOCUMENTS

The RFP, including Addenda #1 through #4, and the proposal submitted by the Contractor, (hereinafter, collectively, the "RFP Documents") are attached hereto and incorporated herein in their entirety as Exhibit "A". Except as otherwise provided in this Agreement, the parties shall comply with the terms and conditions set forth in the RFP Documents.

ARTICLE II
TERM

The term of this Agreement/Franchise for Solid Waste and Recycling Collection Services (the "Term") shall be for five (5) consecutive years, commencing on October 1, 2014 at 12:00 AM through October 1, 2019 at 11:59 PM. The term may be extended for up to two (2) additional five (5) year terms, subject to the execution of a written amendment to this Agreement signed by both parties unless the Contractor gives written notice to the Village Manager that the Contractor is not willing to renew this Agreement and such notice is delivered at least three hundred sixty (360) calendar days before the end of the then current term of the Agreement. With regard to the initial term and each renewal term (if any), the Village shall give written notice to the Contractor at least one hundred eighty (180) calendar days before the end of the then current term if the Village wishes to renew this Agreement.

ARTICLE III
FRANCHISE

For a period of five (5) years commencing on _____, 2014 (the "Effective Date"), and for any renewal terms, the Village hereby grants Contractor 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 as well as recycling collection systems for residential customers in and for the Village as specified in RFP NO. 2014-01, which is attached hereto as Exhibit "A", and incorporated herein. Contractor is authorized by Village to enter in, upon, over and across the present and future streets, alleys, bridges, easements and other public places of the Village for the purposes of collecting the garbage, trash, recyclables, and other refuse of the residents, inhabitants, businesses and other entities existing within the municipal corporate limits of the Village, Miami-Dade County, Florida, or as directed in conformance with the Charter and Ordinances of the Village and other applicable law. Further, Contractor may enter certain private property for the purpose of collection as described above provided the waiver of liability form is properly completed by the property owner.

ARTICLE IV
DUTIES OF CONTRACTOR

The Village shall provide all recycling receptacles to be used by serviced residential units. The Contractor shall maintain all recycling receptacles to be used by serviced residential units. The Contractor will replace up to 10% of missing receptacles Village-wide in any given year.

All services provided shall be consistent with "Exhibit C" Scope of Services, attached hereto and incorporated herein. All collection shall be consistent with all Village Ordinances, as amended from time to time.

The Contractor shall provide the Village with $5,000.00 in payment and in-kind services for special events and community outreach each year of this Term.

Contractor will strive to implement Compressed Natural Gas (CNG) recycling collection vehicles in the Village by October 1, 2017.

ARTICLE V
OFF-STREET RESIDENTIAL COLLECTION SERVICE

Contractor shall provide off-street collection of Residential Solid Waste from residential service units if a request for off-street service has been made to and approved by Village in the manner required by Village, including a waiver of liability form filled out by the property owner. Village shall notify Contractor in writing of any residents requiring off-street service. No additional monies shall be due to the Contractor for the provision of off-street service. The point of collection for off-street service shall be the back or side yard or such other location as is mutually agreeable to the Contractor and the resident. In the event the appropriate location cannot be agreed upon, the Village shall mediate the dispute and designate the location for collection. Contractor shall provide off-street service on the same scheduled collection day that residential curbside service would otherwise be provided to the residential service unit.

ARTICLE VI
PROPER COLLECTION PROCEDURES FOR CONTRACTOR

When providing collection services, Contractor shall thoroughly empty the customer's collection containers and return them in an upright position to the location where they were placed by the customer.

After the Contractor empties a collection container that has a lid, the Contractor shall place the lid back on top of the collection container and close it securely.

Contractor shall handle collection containers carefully and in a manner to prevent damage. Garbage cans, garbage carts, recycling containers and their lids shall not be tossed or thrown by the Contractor. Should the recyclable materials exceed the amount of space provided for by the recyclable container utilized by the resident, the Contractor shall make every effort to also collect the "excess" recyclable material during the scheduled pick-up.

The Contractor shall provide collection service with as little noise and disturbance as possible.

ARTICLE VII
PROCEDURES FOR MISSED COLLECTIONS

If the Village Manager or a customer notifies the Contractor about a missed collection, the Contractor shall promptly return to the customer's premises and collect all of the residential waste, or recyclable material (as the case may be) that has been set out for collection. If the Contractor is notified before noon, the collection shall be completed before the end of that day. If the Contractor is notified after noon, the collection shall be completed before noon on the next business day, or 24 hours, whichever is earlier.

ARTICLE VIII
SPILLAGE AND LITTER BY CONTRACTOR

Contractor shall not cause or allow any solid waste, liquid, or other material to be spilled, released or otherwise dispersed in the Village as a result of the Contractor's activities.

Contractor shall immediately pick up any spillage or litter from collection containers that is caused by the Contractor.

When hauling or transporting any material over public roads in the Village, the Contractor shall use a covered or enclosed vehicle or other device to prevent the material from falling, blowing or escaping from the vehicle. If solid waste or any other material escapes from or is scattered by Contractor's vehicle for any reason, Contractor shall immediately pick up such material.

Contractor's vehicles shall not release or cause litter in violation of the Florida Litter Law (Section 403.413, Florida Statutes) or the Village Code. If litter is released or falls from Contractor's vehicle for any reason, the Contractor shall immediately stop the vehicle and retrieve the litter.

The Contractor shall immediately clean up any oil, hydraulic fluid or other liquid that leaks or spills from Contractor's vehicles and the Contractor shall repair any associated damage.

If the Village Manager or a customer notifies the Contractor before noon that the Contractor has caused litter, or caused a leak or spill of solid waste, oil, hydraulic fluid or other liquids or materials, the Contractor shall clean up the liquids and materials before the end of the day. If the Village Manager or a customer notifies the Contractor after noon, the Contractor shall clean up the liquid or materials before noon on the next business day, or 24 hours, whichever is earlier.

ARTICLE IX
COLLECTION OF SOLID WASTE AFTER A DISASTER

Following a hurricane, tornado, or other natural or human event that is declared a federal disaster, the Contractor shall use its best efforts to immediately collect, by any means available, all of the solid waste that is set out by customers. This shall be the Contractor's primary responsibility until the Contractor is able to provide collection services on a routine basis, as determined by the Village Manager. The Contractor shall use its best efforts to resume its collection services on the scheduled collection days as soon as possible after the disaster.

This Agreement does not give the Contractor the right to collect disaster debris within the public rights-of-way. The Village will enter into a separate contract with the Contractor if the Village wishes to utilize the Contractor's services for the collection of disaster debris. Nothing herein shall require the Village to utilize the services of Contractor, or prevent the Village from hiring another person to collect disaster debris. Among other things, the Village may utilize a disaster debris contract in accordance with the Village's emergency management plan or the Village may utilize the Village personnel and equipment for the collection of disaster debris. The Contractor shall comply with the provisions of the Contractor's response to RFP 2014-01 relating to collection of solid waste after a disaster, the "Disaster Preparedness Plan Summary For the Village of Biscayne Park", section 3.12.

ARTICLE X
FRANCHISE FEE

Contractor agrees to pay eleven percent (11%) Franchise Fee to the Village in return for the use of the streets, alleys, bridges, easements and other public places of Village as reflected in the Rate Structure attached hereto as Exhibit "B", for Solid Waste, Recyclable Materials, and other refuse collection and removal accounts inclusive of single-family, multi-family and nonresidential accounts served within the Village's municipal corporate limits. The aforesaid payment shall be made to Village by:

(a) Village deducting the Franchise Fee from the amounts collected by Village from the accounts served by the Contractor, as provided herein, or

(b) Collection and payment of the Franchise Fee by Contractor where Contractor performs the billing and collection of payment, as provided by the direction of the Village under the terms and conditions of this Agreement.

The Village shall remit payment to the Contractor the sum of money equal to the Village's gross billing to resident per unit for solid waste collection services on a monthly basis, due on or before the 15th day of the following month.

ARTICLE XI
RATE ADJUSTMENT

Annual Service Fee Adjustment. The service fee shall be adjusted on October 1, 2016 and each subsequent year during the term of this Agreement (including any renewal of this Agreement). The service fee shall be adjusted based on a combined index consisting of ninety percent (90%) of the percentage change in the previous year's Consumer Price Index (CPI) plus ten percent (10%) of the percentage change in the previous year's Fuel Index, as described below. The total rate increase in a given year shall be capped at five percent (5%).

Any rate adjustment requested by the Contractor must be fully documented and received by the Village Manager by April 15th of every year.

Current Service Fee x (90% x CPI change + 10% Fuel Index change) = Change in subsequent year's Service Fee.

The CPI change shall be the percentage change in the average CPI for All Urban Consumers (not seasonally adjusted, south urban, all items) published by the United States Department of Labor Bureau of Labor Statistics, for the twelve (12) month period ending the most recent June 30, as compared to the twelve (12) month average of the preceding year ending June 30.

The Fuel Index change shall be the percentage change in the average fuel prices published by the United States Department of Energy, Energy Information Administration, for Lower Atlantic PADD 1C (No. 2 Diesel Low Sulfur Commercial Prices by All Sellers) for the twelve (12) month period ending the most recent June 30, as compared to the twelve (12) month average of the preceding year ending June 30.

Example:

Assumptions: CPI change= 2.95% - Fuel Index change = 11.4%

Combined Index= (90% x CPI change + (10% Fuel Index change) = 3.78%

Adjustment by Petition. The Contractor may petition the Village to adjust the rates listed based upon unusual and unanticipated increases in the cost of conducting business, including, but not limited to, changes in laws or regulations. Any such petition shall be supported by documentation establishing the increase in operating costs and the reasons therefor. The Village may, after examination, refuse to accept the adjusted costs if they are not properly documented, increases are considered to be excessive, or decreases are considered insufficient. In the event the Village does not wish to accept the adjusted costs and the matter cannot be resolved to the satisfaction of the Village, the Agreement may be cancelled by the Village upon thirty (30) days' written notice to the Contractor. If requested by the Village, the Contractor shall continue to provide collection services for up to one hundred eighty (180) days at the previous adjusted rate.

In the event a municipality within Miami-Dade County or Broward County negotiates a more favorable rate than the Village after the execution of this Agreement or for the provisions of the same or substantially the same services (residential only) provided in this Agreement with the Contractor of this Agreement, the Contractor shall be required to, upon execution of the agreement with the neighboring municipality, reduce the rates charged to the Village to be equal to or lower than the rates changed the neighboring municipality. Neighboring municipality shall mean all municipalities located within Miami-Dade County.

ARTICLE XII
DISPOSAL OBLIGATION AND PAYMENT

Contractor and Village acknowledge the contractual obligation between the Village and Miami-Dade County, Florida for the disposal of solid waste. All solid waste collected for the Village by the Contractor shall be delivered to a Miami-Dade County Solid Waste System facility.

Contractor agrees to accept Recyclable Waste for disposal from the Village and Village agrees to deliver such Acceptable Waste. Recyclable Waste shall be defined as Recyclable Material, Recovered Materials collected by residents within the Village of Biscayne Park, Florida. For greater certainty, Village

acknowledges that Recyclable Waste shall not contain any infectious waste or Hazardous Waste; "Hazardous Waste" means waste listed, characterized or designated as hazardous by the United States Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act, 42 USC 6901 et seq., as amended from time to time and its implementing regulations, and by analogous Florida statute, regulations, orders or rules and includes any substance which is deemed hazardous by any judicial or governmental entity, body or agency having jurisdiction to make such determination; "Recyclable Material" shall have the meaning assigned to such term under Chapter 62-701.200 (104) F.A.C., as the same may be amended from time to time during the term hereof; "Recovered Materials" shall have the meaning assigned to such term under Chapter 62-701.200 (102) F.A.C., as the same may be amended from time to time during the term hereof with minimum contamination; and "Designated Disposal Facility" means the Contractor's designated approved Recycling Facility.

The service fee shall be inclusive of the cost of disposal not to exceed 2,700 tons. Any amount above 2,700 tons shall be paid by the Village at Contractor's direct cost.

The Village maintains the right to audit the cost of disposal on an annual basis.

In the event of a change in law for disposal obligation or a significant change in the Village's Recycling program that has the potential to materially affect the cost of disposal as set forth in Exhibit "D", attached hereto and incorporated herein, the Village and the Contractor agree that a generation study will be performed at the request of the Village with the cooperation of the Contractor. The Contractor will fund the study. The Village reserves the sole right to select the Consultant to perform the study. The Contractor and Village shall work together to develop a methodology that will be used to perform the waste generation study, including the selection of representative routes, and the scope, timing and duration of the study. However, the Village shall have the sole right to approve or revise the methodology for the waste generation study. The generation study will be designed to establish an alternate monthly cost of disposal. The Contractor shall cooperate fully with the Village related to the performance and completion of the study.

If the waste generation study results in an annual disposal avoidance factor that is lower than the initial generation rate due to the services provided by Contractor, the Contractor shall receive thirty five percent (35%) of any excess disposal fees and shall reimburse the Village sixty five percent (65%) of the annual disposal avoidance rebate to the Village due and payable within thirty (30) days of each contractual year. The Village may audit participation on an annual basis and reserves the right to increase this minimum based on increased recycling participation.

The Contractor shall share all recycling rebates derived from the sale of recyclables with the Village. The rebate share shall be twenty percent (20%) Contractor/eighty percent (80%) Village.

ARTICLE XIII
WORKFORCE

The direction and supervision of solid waste and recycling collection and disposal shall be by competent, qualified, sober and drug-free personnel. The Contractor shall devote sufficient personnel, time and attention to the direction of operation to assure performance satisfactory to the Village. Any employee of the Contractor who does not conduct himself in a proper fashion, or is incompetent or negligent in the due and proper performance of his duty, or is disorderly, dishonest, intoxicated, obscene or grossly discourteous shall be discharged from duty in the Village upon receipt by the Contractor of a written request from the Village Manager that such action be taken. The Village shall specify reasons for the request.

The Contractor shall comply with all applicable state and federal laws relating to wages, hours, and all other applicable laws relating to the employment or protection of employees, now or hereafter in effect.

The Contractor agrees to pay all of its employees on duty in the Village no less than the Miami-Dade Living Wage and to abide by other requirements as established by the Congress of the United States in the Fair Labor Standards Act as amended and changed from time to time.

No person convicted of a crime(s) and/or repeated non-criminal violations of traffic laws which demonstrate a propensity to unfaithfully fulfill the duties of his employment such as, but not limited to, larcenous activity, aggravated battery or other violence, those relating to the operation of motor vehicles, and any crime for which civil rights have been removed within the last two (2) years shall be employed by the Contractor for duty in the Village.

Contractor agrees to hire and retain for the term of this Agreement, subject to the Contractor's job performance standards, a minimum of six (6) of the Village's current sanitation department employees. Such employment shall be on a full time basis provided the employee accepts the employment offer (consisting of at least thirty five (35) hours per week of employment and eligibility for all benefits generally available for full-time employees of the Contractor) and at a wage at least equal to Contractor's employees in a similar position.

Contractor shall maintain and update the Village with a list of all Contractor employees servicing the Village.

ARTICLE XIV
PHONE SERVICE

The Village may, at its discretion, forward a dedicated phone line for customer service purposes to the following number which shall be managed by Contractor: 305-651-7011.

ARTICLE XV
LIQUIDATED DAMAGES

In the event Contractor is in violation of any provision of this Agreement, the Village shall levy liquidated damages as outlined below:

1st event – written warning, with twenty four (24) hours to cure;
2nd event - $500 per day;
3rd event - $750 per day; and
4th event or more - $1000 per day.

ARTICLE XVI
TERMINATION FOR CAUSE

The Village may terminate this Agreement if the Contractor materially breaches this Agreement and does not cure said material breach within seven (7) days of receipt of written notice from the Village. If the breach cannot be reasonably cured within the applicable cure period, the Village may extend the time limit provided that the Contractor promptly undertakes and continues efforts to cure said material breach within a reasonable time. If the material breach is not cured, the Village may terminate this Agreement by providing written notice. Such termination will be effective on the date given in the notice.

ARTICLE XVII
CONTRACTOR'S OBLIGATIONS PRIOR TO TERMINATION OF AGREEMENT

Continuation of Contractor's Service. If the Village does not exercise its right to renew this Agreement or if there are no renewal options remaining, the Village will attempt to award a new agreement at least six (6) months prior to the expiration of this Agreement. In the event a new agreement has not been awarded within such time frame, the Contractor shall provide collection services to the Village for an additional ninety (90) calendar days after the expiration of this Agreement, at the then current rates, if the Village requests this service.

Sale or Lease of Contractor's Mechanical Containers. Upon request, the Contractor shall enter into good faith negotiations to allow the Village or the Village's newly selected franchise hauler to purchase, or rent for up to ninety (90) days, the mechanical containers (if any) used and owned by the Contractor in the service area. The purchase price and rental fee shall be negotiated, but shall not be greater than the fair market value.

Schedule for Termination of Contractor's Services. Prior to the termination of this Agreement, the Contractor shall work with the Village to ensure that there is no interruption or reduction of service when the Contractor ends its services to the Village. If a new franchise agreement is awarded to a franchise hauler other than the Contractor, the Contractor shall coordinate and cooperate with the newly selected franchise hauler, as well as the Village, to minimize any disruptions in the service provided to the public.

Village's Right to Procure New Services. At any time, the Village may issue a request for proposals, or commence negotiations with a hauler other than the Contractor, or take any other step deemed necessary by the Village to obtain the services of a hauler which will collect solid waste for the Village after this Agreement expires or is terminated.

ARTICLE XVIII
ASSIGNMENT OF AGREEMENT

No assignment of this Agreement or any right or responsibility occurring under this Agreement, shall be made in whole or in part by the Contractor without the express written consent of the Village Manager. The Village Manager shall have the right to approve or deny, with or without cause, any proposed or actual assignment by the Contractor. Any assignment of this Agreement made by the Contactor without the express written consent of the Village Manager shall be null and void and shall be grounds for the Village to declare a default of this Agreement. In such cases, the Village may terminate this Agreement by giving written notice to the Contractor, and this Agreement shall be deemed terminated on the date designated in the notice. Upon such termination, all liability of the Village under this Agreement to the Contractor shall cease, except for the amounts due and owing for collection services completed at that time. Thereafter, the Village shall have the right to call the performance bond and shall be free to negotiate with any hauler for the service which is the subject of this Agreement.

In the event that the Village Manager's consent to any proposed assignment is denied, Contractor shall continue to provide all of the services required herein for the remainder of the term.

If any assignment is approved by the Village Manager, the assignee shall fully assume all of the liabilities of the Contractor.

The requirements of this Article shall include, but not be limited to, cases where the Contractor hires a subcontractor to undertake any of the Contractor's obligations under this Agreement.

ARTICLE XIX
INDEMNIFICATION

The parties hereby agree that the following indemnification provision shall govern this Agreement:

Contractor agrees to indemnify and hold harmless the Village, its officers, agents and employees from and against any and all claims, suits, actions, damages and causes of action whatsoever, legal or administrative proceedings, liabilities, interest, attorney's fees, costs of any kind whether arising prior to the start of activities or following completion or acceptance and in any manner directly or indirectly caused, occasioned or contributed to in whole or in part by reason of any act, error or omission, fault or negligence whether active or passive by Contractor, or anyone acting under its control, direction, or on its behalf in connection with or incident to its performance of this Agreement and the RFP Documents. Nothing in this Agreement, or under the RFP Documents, shall be construed to affect in any way the Village's rights, privileges, and immunities under the doctrine of "sovereign immunity" and as set forth in Section 786.28, Florida Statutes.

ARTICLE XX
VILLAGE'S RIGHT TO INSPECT AND AUDIT CONTRACTOR'S RECORDS

Contractor shall cooperate with the Village Manager and provide every reasonable opportunity for the Village to ascertain whether the duties of the Contractor are being performed properly. Contractor shall promptly provide any information regarding the services provided by the Contractor under this Agreement, in addition to the information required explicitly by this Agreement, that the Village Manager or the Contractor deem relevant under the circumstances.

The Village shall have the right to inspect, copy and audit, at the Village's expense, all of the Contractor's records concerning the Contractor's services under this Agreement. The Contractor's records shall be made available for inspection in the Village during normal business hours, within five (5) business days after the Village requests the records.

The Contractor understands, acknowledges and agrees that it shall, pursuant to Section 119.0701, Florida Statutes, as amended from time to time, do the following:

(a) Keep and maintain public records that ordinarily and necessarily would be required by the Village in order to perform the same service being rendered within this Agreement;

(b) Provide the public with access to public records and at a cost that does not exceed the cost provided within Chapter 119, Florida Statutes, as amended from time to time, or as otherwise provided for by law;

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and

(d) Meet all requirements for retaining public records and transfer, at no cost, to the Village all public records in possession of Contractor upon termination of this Agreement. Further, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Village in a format that is compatible with the then current Village computer systems.

Contractor understands, acknowledges and agrees that the Village is required, pursuant to Section 119.0701, Florida Statutes, as amended from time to time, to ensure compliance with this Article by

enforcing the terms of this Agreement. As a result of the foregoing, any violation of this Article shall be a material breach and this Agreement may be terminated by the Village without any penalty.

Prior to termination, the Village shall give written notice to Contractor that it is in violation of this Article. Contractor shall have five (5) business days to cure a violation of this Article.

Notwithstanding any other provisions in this Agreement to the contrary, Contractor shall be liable for any and all damages, including but not limited to, consequential and incidental damages, that may arise out of breach of this Article of the Agreement.

ARTICLE XXI
QUARTERLY REPORT

The Contractor shall submit a quarterly report to the Village Manager no later than the fifteenth (15th) day of each calendar quarter (i.e., January 15, April 15, July 15, October 15). At a minimum, the quarterly report shall contain the following information for the previous quarter: (a) the total quantity of each type of residential waste (e.g., solid waste, bulk waste) delivered to each facility; (b) the total quantity of recyclable material delivered to a facility; (c) the number of missed collections; (d) a summary of each accident involving personal injuries or property damage; and (f) the total number of legitimate complaints.

Whenever the Contractor submits a quarterly report to the Village, the Contractor also shall submit a signed written statement from the District Manager or their designee, verifying that the quarterly report is accurate in all respects. The District Manager or their designee also shall: (a) verify each month that all of the residential waste collected by the Contractor has been delivered to a facility; (b) the Contractor has accurately informed each facility whether to bill the Village for each load delivered by the Contractor; and (c) the Contractor's quarterly report accurately accounts for all such deliveries.

Contractor shall comply with its "Customer Service Plan" as contained in Contractor's Response to RFP 2014-01, section 2.4.

ARTICLE XXII
CONSTRUCTION OF AGREEMENT

Both parties acknowledge that they are represented by legal counsel and they have had meaningful input into the terms and conditions contained in this Agreement. Therefore, any doubtful or ambiguous provisions contained herein shall not be construed against the party that physically prepared this Agreement. The rule sometimes referred to as "Fortius Contra Proferentum" shall not be applied to the interpretation of this Agreement.

ARTICLE XXIII
ENTIRETY OF CONTRACTUAL AGREEMENT

This Agreement, together with the attachments hereto, sets forth the entire Agreement between the parties, and there are no promises or understandings other than those stated herein. None of the provisions, terms or conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by both parties hereto.

ARTICLE XXIV
GOVERNING LAW AND VENUE

The laws of the State of Florida shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement. Any and all legal or equitable actions necessary to enforce this Agreement shall be held and maintained solely in the state courts in and for Miami-Dade County, Florida. Venue shall lie exclusively in Miami-Dade County.

ARTICLE XXV
INSOLVENCY

In the event that either party shall become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or its assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, or become subject to rehabilitation, then, at the option of the other party and immediately upon written notice, this Agreement shall terminate and be of no further force and effect.

ARTICLE XXVI
NOTICE

All notices required shall be sent by certified mail, return receipt requested. If sent to Village, such notices shall be mailed to:

Maria C. Camara, Village Clerk
Village of Biscayne Park
640 NE 114th Street
Biscayne Park, FL 33174

And if sent to Contractor, such notices will be mailed to:

Russell Mackie, Region Vice President
Waste Pro of Florida, Inc.
17302 Pines Boulevard
Pembroke Pines, FL 33029

ARTICLE XXVII
REMEDIES

This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce this Agreement will be held in Miami-Dade County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any part of any right, power or remedy hereunder shall preclude any other or further exercise hereof.

ARTICLE XXVIII
SEVERABILITY

If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

ARTICLE XXIX
MODIFICATIONS TO THE CONTRACT

The Village shall have the power to make changes in this Agreement as the result of changes in law, Village Code or both to impose new rules and regulations on the Contractor under this Agreement relative to the scope and methods of providing collection services as shall from time-to-time be necessary and desirable for the public welfare. The Village shall give the Contractor notice of any proposed change and an opportunity to be heard concerning those matters. The scope and method of providing collection services as referenced herein shall also be liberally construed to include, but is not limited to the manner, procedures, operations and obligations, financial or otherwise, of the Contractor.

ARTICLE XXX
THIRD PARTY RIGHTS

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than Village and Contractor.

ARTICLE XXXI
INSURANCE

For the entire term of this agreement, and any renewal terms, Contractor shall comply with the insurance provisions delineated at Article VII, as required by RFP 2014-01, and specifically, the Certificate of Liability Insurance provided by Contractor under its response to RFP 2014-01, section 5.20.

Exhibit B - Residential Curbside Service

Residential Garbage, Trash and Recycling Collection Services

Monthly charge per dwelling unit		8/1/2014
Collection:	Rate per Month	
Garbage	$	13.72
Trash	$	8.25
Recycling	$	3.00
TOTAL RATE	**$**	**24.97**

Residential Multifamily Garbage and Trash Collection Services (over 4 units)

	Rates Per Service	
Rolled Out Commercial 95 or 101 gallon container	$	27.96
Rolled Out Container (and return)	$	3.50
Opening or Closing Doors/Gates	$	3.50
Locks for Containers	$	14.00
Unlocking Containers	$	14.00
Supplying and retrofitting locking mechanism	$	10.00
Adding/Exchanging Wheels on Containers	$	14.00
Adding/Exchanging Lids on Containers	$	25.00
Moving Container Location per Customer Request	$	25.00
Changing out size of container more than 2x per year	$	25.00
Additional pickups for residential containerized Customers	$	14.34
Turnaround Compactors	$	50.00
	Service Per Month	
Additional Quarterly Special Trash Manual / Non-Mechanical pickup	Service Per Cubic Yard $	15.00

Exhibit C

Village of Biscayne Park
RFP No. 2014-01
Solid Waste Collection Services

Scope of Services
Solid Waste Collection Operations Plan

- This operation plan provides the same service that the Village currently receives but reducing the number of days to two.

- Twice a week manual pick-up of garbage on ***Tuesdays*** and ***Fridays*** for all residences, Multiple Unit Residences, Non-Residential Use sites, and Municipal owned buildings. Residences will provide their own containers, not to exceed forty (40) gallons in capacity. Residents will place their containers out on the curb unless they are registered with the Village for "Off-street Residential Collection Service", whereas Waste Pro will then enter their property and pick up their garbage from inside.

- Once a week manual pick-up of trash and yard waste (vegetative waste) on ***Tuesdays***. This will allow residents to do their yard work over the weekend and have fewer days of trash out visible in the community. Residents place either their container(s) not to exceed forty (40) gallons or a pile, not to exceed two (2) cubic yards (3ft x 3ft x 6ft), out on the curb for pick-up.

- Once a week pick-up of recyclable materials on ***Fridays***. Residents place their provided container out on the curb for pick-up unless they are registered with the Village for "Off-street Residential Collection Service" whereas Waste Pro will then enter their property and pick-up their recycling from inside.

- Special pick-up of items placed out on the wrong day; piles that exceed two (2) cubic yards; appliances (white goods) and other bulk pick-up such as mattresses and furniture shall be fined at the rates established by Village resolution.

- Hours of operation shall be limited to 7:00am – 5:30pm. This restriction does not apply to the first ninety (90) days of the contract.

- Four (4) quarterly Saturday pick-ups shall be scheduled with the Village.

EXHIBIT D

Disposal Avoidance Base Tons

To determine the amount of disposal avoidance, the base tons disposal factor is determined as the historical amount of tons as reported by the Village at the effective date of this Agreement. The Base Tons are as follows:

Annual Base Solid Waste Tons*= 2,437.76

Annual Base Recycling Tons**= 208

The Disposal Avoidance factor shall be determined by the following equation:

INITIAL PERIOD

(Annual Recycling Tons Reported – Annual Base Recycling Tons) = Annual Increased Recycling Tons
(Annual Base Solid Waste Tons – Annual Solid Waste Tons Reported) = Annual tons of Solid Waste reduced

SUBSEQUENT PERIOD

(Annual Recycling Tons Reported – Prior Year Recycling Tons) = Annual Increased Recycling Tons (Annual Prior Year Solid Waste Tons – Annual Solid Waste Tons Reported) = Annual tons of Solid Waste reduced

*Base Garbage and Trash tons established by two year average of annual tons as reported in Addendum 1 of RFP 2014-01

**Base recycling tons reported by Miami Shores as 4 tons per week.

Disaster Preparedness Plan Summary
For the Village of Biscayne Park

As a vendor that will provide service to your residents and business owners on a daily basis, we understand the importance of being there to provide the service that they are expecting. We all know we can not control these types of events, but Waste Pro can guarantee our ability to react after events have occurred. Our team of "Waste Professionals" is committed to communicating with the Village of Biscayne Park Staff and getting back to work as soon as possible. The following is a comprehensive storm preparedness plan illustrating a possible scenario and our commitments.

Disaster Preparedness Plan Concept

The most likely types of event to occur are a windstorm, tropical storm or hurricane. There are two (2) typical scenarios that would occur; one is a minor event with winds occurring in the range of less than a tropical storm. The other is a tropical storm or hurricane with winds occurring from tropical storm force to a class 5 hurricane. Each of these scenarios would call for a different set of actions due to the difference of the severity of each.

Experience

The management team of Waste Pro has had successful hands-on previous experience with storm debris cleanup. Our teams experience dates back over seventeen (17) years to Hurricane Andrew and forward to the hurricanes of 2004, 2005, 2006 and 2007. During 2004 Waste Pro provided hurricane cleanup, in varying degrees, to all of our major municipal accounts including Putnam County, St. Lucie County and the City of Longwood. 2005 again required hurricane cleanup in St. Lucie County where Waste Pro contracted directly with FEMA. During 2006, 2007 and 2008 other cities and counties hired storm debris contractor specialists but have used Waste Pro for additional assistance over the years.

Two (2) Types of Events

A. Winds less Than a Tropical Storm

This type of event will create an additional varying amount of yard and tree waste debris for Waste Pro to collect. This will necessitate the use of mostly additional conventional waste collection vehicles (rear loaders, front loaders, cherry pickers and roll off trucks) and possibly some larger equipment such as wheeled loaders with landscape rakes, dump trucks, flagmen and personnel with chainsaws. The additional conventional collection vehicles and personnel would be available from several reliable sources.

- Waste Pro of Florida
- Waste Pro of South Carolina
- Waste Pro of Georgia
- Wood Resource Recovery, LLC
- Trucks & Parts of Tampa (truck rental)
- Equipment Manufacturers
- Other Subcontractors

B. Tropical Storm or Hurricane

Tropical Storms and Hurricane event will create an additional varying amount of yard and tree waste debris. This will necessitate the use of additional conventional waste collection vehicles (rear loaders, front loaders, cherry pickers and roll off trucks) and possibly some larger equipment such as wheeled loaders with landscape rakes, dump trucks, flagmen and personnel with chainsaws.
The additional conventional collection vehicles and personnel would be available from several reliable sources.

- Waste Pro of Florida
- Waste Pro of South Carolina
- Waste Pro of Georgia
- Wood Resource Recovery, LLC
- Trucks & Parts of Tampa (truck rental)
- Equipment Manufacturers
- Other Subcontractors

As past history has shown any solid waste and recycling contractor, including the largest national companies, selected for a contract by any city or county will need to use a specialty sub-contractor for a massive storm debris cleanup effort. The more municipal contracts a company has, the more thinly spread their existing assets are to cover such an event, when all of their cities want to be cleaned up at the same time. Waste Pro's efforts would be concentrated on the cities and counties it serves.

Plan Overview

I. Emergency Contact Information

Name	Cell Phone
Russell Mackie	772-370-3509
Elliot Chevres	954-445-9256
Mike Allen	772-216-7216
Guerlin Escar	786-486-7554

II. Pre Storm

A. Triggering Events
- Thunderstorm
- Flooding
- High Wind
- Tropical Storm or Hurricane Watch or Warning

B. Coordination with Authorities: 72/ 48/ 24/ 12 Hour
- Establish and maintain contact with City/County designated personnel.
- Review situation with manager, supervisors, and department heads.
- Note plan updates for changes, vendors, etc.

C. Facilities
- Check drainage ways
- Secure vents
- Housekeeping, stowage
- Bottled water inventory
- Septic system capacity
- Back-up information systems
- Bring in Emergency Generators
- Check on current availability of backup locations to park trucks and extra equipment

D. Personnel
- Personal safety
- Family safety and security
- Storm assignments

E. Rolling Stock
- Top off fuel
- Top off oil
- Check/change tires

- Secure cab/windows

F. Containers – Secure Inventory
- Front/Rear load - confirm empty, open lids
- Roll off – confirm empty, doors secure, use as shielding as needed

G. Inventory
- Secure fuel tank lids and hatches
- Secure oil tanks, fill ports, secure reels and hoses
- Rack and secure tires

III. Storm

A. Tropical Storm Watch or Warning
- Continue operations
- Maintain communication with City/County designated personnel
- Cease operations if local wind velocity reaches 30 mph-sustained winds or local rainfall reaches three (3) inches.
  - Advise City/County designated personnel
  - Advise storm debris specialty sub-contractor
  - Secure facilities and rolling stock
  - Shut all systems down
  - Open all electrical switches
  - Send personnel home

B. Hurricane Watch or Warning
- Continue operations
- Maintain communication with City/County designated personnel
- Cease operations if local wind velocity reaches 30 mph-sustained winds or local rainfall reaches three (3) inches.
  - Advise City/County designated personnel
  - Advise storm debris specialty sub-contractor
  - Secure facilities and rolling stock
  - Shut all systems down
  - Open all electrical switches
  - Send personnel home

IV. Post Storm

Reestablish and maintain contact with designated City/County personnel immediately after the storm passes.

- Assess magnitude of damage
  - Personnel, families
  - Company

- Community
- Advise designated City/County personnel
- Coordinate with designated City/County Personnel – begin clearing public
- Reestablish or suspend service(s)
- Garbage (Residential and/or Commercial
- Yard Trash
- Recycling
- Establish level of post storm response
- Contact storm debris specialty contractor if needed
- Initiate post storm response depending upon severity of damage.

Law Offices of John J. Hearn, P.A.
1001 N.W. 119th Drive
Coral Springs, Florida 33071
Phone: (305) 360-2547
Facsimile: (954) 227-7321

August 11, 2014

Russell Mackie, Regional Vice President
Waste Pro of Florida
17302 Pines Boulevard
Pembroke Pines, Florida 33029

Re: Waiver

Dear Mr. Mackie:

As you are aware, I have been informed that some Biscayne Park residents are concerned with the language of the Waste Pro waiver. Further, many residents have already executed the waiver in order to allow side yard pickup. This letter will confirm that the intent of the waiver and the enforcement of the waiver shall be consistent with the following language:

Side/back yard (by selecting this option, the property owner waives Waste Pro of Florida from any liability from employees entering the property for the sole purpose of garbage collection; however, Waste Pro of Florida acknowledges that if any damage occurs to the property (other than normal wear and tear) resulting from its employees' negligence, Waste Pro of Florida will take reasonable means to fix/reimburse for such damage.

Please confirm by signing below that this is consistent with your agreement and interpretation of this waiver.

Very truly yours,

John J. Hearn
Village Attorney

By signing below, I hereby confirm that the above language is consistent with the intent of the waiver.

Russell Mackie, Regional Vice President
Waste Pro of Florida

(AGREEMENT BETWEEN THE VILLAGE OF BISCAYNE PARK, FLORIDA AND WASTE PRO OF FLORIDA, INC. FOR SOLID WASTE AND RECYCLING COLLECTION SERVICES)

IN WITNESS WHEREOF, the parties hereto have set their hands and official seals the day and year first above written.

VILLAGE OF BISCAYNE PARK, FLORIDA,
a municipal corporation of the State of Florida

By: _____

ATTEST:

Maria C. Camara, Village Clerk

APPROVED AS TO FORM & LEGALITY
For the use and reliance of the Village of Biscayne Park, Florida only.

John J. Hearn, Village Attorney

Waste Pro of Florida, Inc., a Florida corporation

By: _____
Russell Mackie, Region Vice President

WITNESSED:

Name typed, printed or stamped

Name typed, printed or stamped

Attachment(s)

- Waste Pro Agreement
- Waste Pro letters dated: 09/30/2019
  02/04/2020
  03/02/2020
- Waste Pro current invoice February/2020

Prepared by: Roseann Prado, Village Clerk

Date: 09/30/2019

RE: Continuation of Contractors Services

Manager Manners,

Pursuant to Article XVII of the Solid Waste and Recycling Services continuation of services, Waste Pro will continue to provide current services for an additional Ninety (90) Calendar days after the expiration date of the current agreement of 09/30/2019 to expire on 12/30/2019 and at the current rates effective 10/1/2019. During this time and to the extent that the Village of Biscayne Park is willing to accept, Waste Pro would like to negotiate an extension that is allowed under our current franchise agreement under Article II Terms a five (5) year extension and to that extent that it is possible and negotiate if possible an additional Five (5) year extension as allowed by the franchise agreement.

Thank you

Kenneth Rivera
Waste Pro of Florida, Inc.

CC: Russell Mackie Regional Vice President, Waste Pro of Florida Inc.
Shawn Erias Division Manager, Waste Pro of Florida Inc.

Continuation of Services

To: Village Manager Manners
From: Kenneth Rivera Waste Pro of Florida Inc.
Date: 02/04/2020

As a follow, up to the memorandum dated 09/30/2019 Continuation of Services, Waste Pro of Florida Inc. will extend and continue to provide service thru April 30th, 2020 at the current rate. During this time and to the extent the Village of Biscayne Park is willing to accept, Waste Pro would like to negotiate an extension that is allowed under our current franchised agreement under Article II a (5) five year extension and to that extent that it is possible and negotiate an additional five (5) year extension as allowed by the franchise agreement.

Thank you,

Kenneth Rivera
Waste Pro of Florida Inc.,

WASTE PRO
Caring For Our Communities

To: Village Manager Hernandez
From: Kenneth Rivera Waste Pro of Florida Inc.
Date: 03/02/2020

As a follow, up to the memorandum dated 09/30/2019 Continuation of Services, Waste Pro of Florida Inc. will extend and continue to provide service thru April 30th, 2020 at the current rate. Additionally, in our meeting held on February 21, 2020, the Village expressed a need for additional extension that would expire on September 30th, 2020 to provide the Village sometime to decide if RFP or a full contract extension would be possible. Should the City wish to extend our agreement up to such time, Waste Pro of Florida Inc. would agree to such an extension should the Village accept a Two dollar ($2.00) per home increase to be effective May 1st, 2020. During this time and to the extent the Village of Biscayne Park is willing to accept, Waste Pro would like to negotiate an extension that is allowed under our current franchised agreement under Article II a (5) five-year extension and to that extent that it is possible and negotiate an additional five (5) year extension as allowed by the franchise agreement.

Thank you,

Kenneth Rivera

Kenneth Rivera
Waste Pro of Florida Inc.,
CC: Russell Mackie RVP Waste Pro of Florida Inc.

WASTE PRO OF FLORIDA
17302 PINES BLVD, PEMBROKE PINES, FLORIDA 33029
954-967-4200

Exhibit 2

WASTE PRO
Caring For Our Communities

To: Village Manager, Paul Winkel john

From: Kenneth Rivera Waste Pro of Florida Inc.

Date: 07/22/2020

As a follow, up to email sent by your office to our RVP Russell Mackie dated 07/18/2020 Continuation of Services, Waste Pro of Florida Inc. will extend and continue to provide service thru April 30th, 2020 at the current rate. Additionally, in our meeting held on February 21, 2020, the Village expressed a need for additional extension that would expire on September 30th, 2020 to provide the Village sometime to decide if RFP or a full contract extension would be possible. During discussion with former Village Manager Hernandez, the Village of Biscayne expressed the need for Waste Pro of Florida Inc. to offer an additional extension through December 31st, 2020. Should the City wish to extend our agreement up to such time, Waste Pro of Florida Inc. would agree to such an extension should the Village accept a Two dollar ($2.00) per home increase to be effective October 1 st, 2020 bringing your rate to $31.70. During this time and to the extent the Village of Biscayne Park is willing to accept, Waste Pro would like to negotiate an extension that is allowed under our current franchised agreement under Article II a (5) five-year extension and to that extent that it is possible and negotiate an additional five (5) year extension as allowed by the franchise agreement.

Thank you,

Kenneth Rivera

Kenneth Rivera
Waste Pro of Florida Inc.,
CC: Russell Mackie RVP Waste Pro of Florida Inc.

WASTE PRO®
"THE WASTE PROFESSIONALS"

WastePro of Florida, Inc.

INVOICE

117 - Pembroke Pines
17302 Pines Blvd
Pembroke Pines, Fl 33029
Phone 954-967-4200 Fax 954-247-4489

DATE: 6/30/2020
INVOICE #: 0000907769
ACCT #: *075370*

Bill To:
Village of Biscayne Park
640 NE 114th St
Biscayne Park, FL 33161-6202

001.300.13100.40200 38,550.60
004.320.53800.34000 38,550.60
004.300 20700.10000 (38,550.60)

Site

Service Date	House Count	Rate	Description	Charge
06/01/2020 -06/30/2020	1,298	29.7	Residential Monthly Services	$38,550.60
			TOTAL	$38,550.60

Village of Biscayne Park
GL Acct. Number See above
Amount $ 38,550.60
Date 7/21/2020
Description
Dept. Head [signature] 7/15/2020
Finance Dir. [signature] 7/15/2020
Village Mgr. [signature]
Emergency Incident Commander

117 - Pembroke Pines
17302 Pines Blvd
Pembroke Pines, Fl 33029

DATE: 6/30/2020
INVOICE #: 0000907769
ACCT #: *075370*
Amount Due: $38,550.60

Be sure to write your account number on your check

Remit To:

Waste Pro
17302 Pines Blvd
Pembroke Pines, FL 33029

Bill To:
Village of Biscayne Park
640 NE 114th St
Biscayne Park, FL 33161-6202