

City of Palm Coast, Florida Agenda Item

Agenda Date : February 15, 2022

Department Item Key	CITIZEN ENGAGEMENT	Amount Account #
Subject	RESOLUTION 2022-XX APPROVING THE ADDENDUM TO THE RESIDENTIAL SOLID WASTE COLLECTION AND DISPOSAL SERVICES CONTRACT WITH WASTE PRO OF FLORIDA, INC	
Presenter : Cynthia Schweers, Director of Citizen Engagement		
Background : City staff and NewGen Strategies & Solutions, which is currently the City's solid waste consultant, will be presenting an update of the Residential Solid Waste Collection and Disposal Services. Attached is an addendum for a one year extension for Council's consideration.		
Recommended Action : ADOPT RESOLUTION 2022-XX APPROVING THE ADDENDUM TO THE RESIDENTIAL SOLID WASTE COLLECTION AND DISPOSAL SERVICES CONTRACT WITH WASTE PRO OF FLORIDA, INC.		



February 15, 2022

UPDATE ON RESIDENTIAL COLLECTION SERVICES



Cynthia Schweers,
Director of Citizen Engagement

**NewGen
Strategies & Solutions**

Allison Trulock
Managing Director – Solid Waste

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AGENDA

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- Overview of Efforts to Date

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- Overview and Results of Procurement Process

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- Challenges Facing the Solid Waste Industry

4

- Where We Are Today

5

- Extension Negotiations Update with Current Provider

6

- Next Steps

EFFORTS TO DATE

Customer Outreach

- Survey Conducted March 2021
- 11,965 completed surveys (32% response rate)
- Hosted Virtual Town Hall March 19, 2021 (406 views)
- Staff utilized results to create Request for Proposals (RFP) documents

Request For Proposals (RFP) Process

- RFP Developed with Council Input and Customer Survey Results In Mind
- RFP Released August 4, 2021
- Two Proposals Received September 16, 2021 (FCC and Waste Pro)

RESULTS OF PROCUREMENT PROCESS

Evaluation Process

- Selection Committee of 5 Personnel Convened
- Very Thorough Review with Emphasis on Past Performance of Proposers
- Both Proposers Invited to Present to Selection Committee
- Selection Committee Ranked FCC First

Protest Procedure

- Waste Pro Protested Results based on FCC Failure to Disclose Payments Withheld due to Performance Issues
- FCC Responded and Indicated Waste Pro Did Not Disclose Some Liquidated Damages due to Performance Issues
- Determined in City's Best Interest to Cancel the RFP

CURRENT CHALLENGES FACING THE SOLID WASTE INDUSTRY

Equipment

- Supply Chain
- Price of Steel



Haulers need 12 to 14 months for vehicle deliver

Staffing

- High Demand for CDL Drivers



CDL driver shortage nationwide

Inflation

- Fuel Volatility
- Safety Equipment Delays



Inflation impacting cost of everything

WHERE WE ARE TODAY

- Existing contract expires May 31, 2022
- Requires extension of current contract
 - Addendum to extend one year
- Want to ensure recruitment of as many proposers as possible when the RFP is re-released
 - Need at least 12 months from executing new contract for ordering vehicles



NEGOTIATIONS UPDATE FOR ONE YEAR EXTENSION

- Current Rate: \$20.36 FCC proposed rate \$33.84 Starting June 1st
- Negotiated rate for one year extension would become effective **June 1, 2022**
New Rate: \$29.97 (Includes an administrative fees)
- Emergency provisions in purchasing guidelines allows suspension of service
- Negotiations include the following service changes:
 - Suspension of recycling rewards program and household hazardous waste (HHW) curbside currently provided by Waste Pro
 - City will take over rewards program
 - Flagler County currently provides HHW drop-off facility
 - *In the next contract, City will manage rewards program, and coordinate HHW drop-off opportunities with Flagler County*
 - Limits on cubic yards allowed to be set out by residents for yard waste and bulky items
 - Current contract allows unlimited bulky items, will be limited to **3 cubic yards**
 - Current contract allows for 4 cubic yards of yard waste, will be **2 cubic yards.**

Service Level changes would start 30 days after the Addendum is signed.

NEXT STEPS

- Staff recommendation:
 - Council approve the addendum for emergency extension
 - Staff re-release Request for Proposal

Anticipated RFP Timing

Advertise the RFP	Wednesday, Feb 23, 2022
Release the RFP	Wednesday, Feb 23, 2022
Proposals Due	Thursday, April 7, 2022
Selection Committee Review	April 7 – April 25
Interviews (if necessary)	Week of May 2nd, 2022
Rank Proposers	Last Selection Committee Meeting or Day of Interviews
Negotiate Contract with 1 st Ranked Proposer	By week of May 27, 2022
Council Approval	Bring to Council in June

QUESTIONS?



Cynthia Schweers,
Director of Citizen Engagement



Allison Trulock
Managing Director – Solid Waste



RESOLUTION 2022-____
**ADDENDUM TO THE RESIDENTIAL SOLID WASTE
COLLECTION AND DISPOSAL SERVICES CONTRACT**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING AN ADDENDUM TO THE RESIDENTIAL SOLID WASTE COLLECTION AND DISPOSAL SERVICES CONTRACT WITH WASTE PRO OF FLORIDA, INC.; AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO EXECUTE THE ADDENDUM; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR IMPLEMENTING ACTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Palm Coast has an existing contract with Waste Pro of Florida, Inc., for residential solid waste collection and disposal services, which will expire on May 31, 2022, and

WHEREAS, City staff sent out a Request For Proposals (RFP) for the residential solid waste collection and disposal services contract and then completed the evaluation process, and

WHEREAS, staff determined the necessity to reject all bids received and re-bid the residential solid waste collection and disposal services RFP; and

WHEREAS, the City and Waste Pro of Florida, Inc., desire to extend the existing contract for one year for residential solid waste collection and disposal services to allow the City ample time to rebid for the Residential Solid Waste Collection and Disposal Services.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA:

SECTION 1. APPROVAL OF THE ADDENDUM. The City Council of the City of Palm Coast hereby approves the terms and conditions of the addendum with Waste Pro of Florida, Inc., for Residential Solid Waste Collection and Disposal Services, as attached hereto and incorporated herein by reference as Exhibit "A."

SECTION 2. AUTHORIZATION TO EXECUTE. The City Manager, or designee is hereby authorized to execute the addendum as depicted in Exhibit "A."

SECTION 3. SEVERABILITY. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

SECTION 4. CONFLICTS. All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

SECTION 5. IMPLEMENTING ACTIONS. The City Manager is hereby authorized to take any actions necessary to implement the action taken in this Resolution.

SECTION 6. EFFECTIVE DATE. This Resolution shall take effect immediately upon adoption by the City Council.

DULY PASSED AND ADOPTED by the City Council of the City of Palm Coast, Florida, on this 15th day of February 2022.

ATTEST:

CITY OF PALM COAST

VIRGINIA A. SMITH, CITY CLERK

DAVID ALFIN, MAYOR

APPROVED AS TO FORM AND LEGALITY:

NEYSA BORKERT, CITY ATTORNEY

Attachment: Addendum to the Waste Pro Residential Solid Waste Collection and Disposal Services Contract

**ADDENDUM TO THE CITY OF PALM COAST
RESIDENTIAL SOLID WASTE COLLECTION AND
DISPOSAL SERVICES CONTRACT**

This Addendum to the City of Palm Coast Residential Solid Waste Collection and Disposal Services Contract (“Addendum”) is made and entered into this ____ day of _____ 2022 between the City of Palm Coast, Florida, herein after referred to as “CITY”, located at 160 Lake Ave., Palm Coast, Florida 32164 and Waste Pro of Florida, Inc., a Florida corporation, hereinafter referred to as “CONTRACTOR”, whose principal place of business is 401 South Bay Street, Bunnell, Florida 32110.

WHEREAS, CITY and CONTRACTOR entered into the City of Palm Coast Residential Solid Waste Collection and Disposal Services Contract (“Contract”) on January 27th, 2017; and

WHEREAS, the term of the Contract is for a period of 5 years, terminating on May 31, 2022; and

WHEREAS, CITY and CONTRACTOR desire to extend the Contract for an additional 12 months while agreeing to certain revised provisions to facilitate the Contract extension; and

WHEREAS, CITY has the authority to enter into this addendum pursuant to Section 2-25 of the City of Palm Coast, Florida, Code of Ordinances; and

WHEREAS, this Addendum will ensure the continuation of residential solid waste collection and disposal services within the City of Palm Coast and is in the best interest of the health, safety and welfare of the public.

NOW, THEREFORE, in consideration of the mutual covenants, contracts, and considerations contained herein, the CITY and CONTRACTOR hereby agree to the following Contract revisions.

I. AMENDMENTS TO CONTRACT.

SECTION 5- TERM OF CONTRACT – The term of the contract is extended to May 31, 2023.

SECTION 6.5- CANCELLATION OR ANNULMENT OF CONTRACT- is replaced with the following:

The CONTRACTOR and CITY recognize that it is paramount importance that the Contract be performed and the individual customers receive service. Given the foregoing, the following circumstances are considered a “material breach” of this Contract: (a) CONTRACTOR’s failure to perform the work, as described in Section 2, with a sufficient number of workers and sufficient and adequate equipment to ensure proper and substantial performance of the work; (b) CONTRACTOR’s discontinuance of performance of the work or any portion thereof for any cause whatsoever, or (c) CONTRACTOR becomes insolvent or declares bankruptcy or commits any act

of bankruptcy or insolvency, or allows any final judgment for payment of money to stand against it unsatisfied for any period of time. In the event of an alleged material breach of this Contract by CONTRACTOR, CITY shall provide written notice of such breach to CONTRACTOR, to be delivered by certified mail, return receipt requested. If within 30 days from receipt of such notice, CONTRACTOR has either failed to correct the condition or reach an agreement with CITY on a mutually Satisfactory solution, or where the CONTRACTOR's lack of performance in meeting the terms of the Contract continue to reoccur, then CITY may require CONTRACTOR to appear before the City Council, at either a regular or special meeting, to show cause as to why the Contract should not be terminated. After such meeting, the City Council may elect to:

- A. Provide written notice to CONTRACTOR that the Contract will be terminated 30 days from receipt of such notice.
- B. Extend the time to allow CONTRACTOR to cure the material breach or persistent lack of performance.
- C. Impose sanctions or other remedies without terminating the Contract.

In the event of an alleged material breach of this Contract by CITY, CONTRACTOR shall provide written notice of such breach to CITY, to be delivered by certified mail, return receipt requested. If within 30 days from receipt of such notice, CITY has either failed to correct the condition or reach an agreement with CONTRACTOR on a mutually satisfactory solution, or where the CITY's alleged breach continues to reoccur, CONTRACTOR may provide written notice to the City that the Contract will be terminated 90 days from receipt of such notice.

SECTION 15- ADMINISTRATIVE CHARGES/LIQUIDATED DAMAGES- All per incident fees listed herein are reduced by 50%.

SECTION 21- FORCE MAJEURE- is replaced with the following:

Except for the obligation to pay for services rendered, neither party hereto shall be liable for failure to perform hereunder due to contingencies beyond its control affecting performance of this Contract, including, but not limited to riots, war, fire, acts of God (including without limitation flood, hurricane, tornado or pandemic), labor shortages beyond its control, change in law, compliance with any law, regulation or order, whether valid or invalid, of the United States of American or any other governmental body or instrumentality thereof, whether now existing or hereafter created (collectively referred to as "Force Majeure Event").

In addition, the performance required under this Contract does not include the collection or disposal of any increase in volume of solid waste by more than 20% of the prior year's average resulting from a Force Majeure Event. In the event of such Force Majeure Event, CONTRACTOR will vary routes and schedule as may be deemed necessary. In addition, CITY and CONTRACTOR shall negotiate to pay CONTRACTOR for additional services performed above the aforementioned increased volume resulting from a Force Majeure Event or any other event over which CONTRACTOR has no control.

EXHIBIT “A”, RFP-ADM-16-01- The following revisions are to Exhibit “A” of the Contract:

2.0 YARD WASTE PICK-UP AND DISPOSAL PROGRAM- Subsection 2.3(a) is amended to set the loose yard waste limit at two (2) cubic yards per household per set out effective one month after the Effective Date of this Addendum. (Page 11)

3.0 RECYCLING COLLECTION AND REWARDS PROGRAM- Suspended effective one month after the Effective Date of this Addendum. (Pages 12-13)

4.0 BULK TRASH AND WHITE GOODS PICK-UP AND DISPOSAL PROGRAM- Subsection 4.3. is amended to add the following: Bulk trash items are limited to three (3) cubic yards in size per household per set out effective one month after the Effective Date of this Addendum. (Page 14)

DOORSTEP HOUSEHOLD HAZARDOUS WASTE DISPOSAL PROGRAM- Suspended effective one month after the Effective Date of this Addendum. (Page 15)

PAYMENT, BILLING AND RATE ADJUSTMENT

-Section 2 is amended to set the Franchise Fee to 7% effective June 1, 2022. (Page 15)

- Section 3(b), Favored Nations Clause, is hereby deleted. (Page 16)

GENERAL DESCRIPTION OF WORK- Collection Equipment (a) is deleted and replaced with the following: Collection vehicles operating within the City of Palm Coast may operate on Compressed Natural Gas or diesel fuel. Further, there is no age limitation on collection vehicles. (Page 17)

ATTACHMENT L- The total monthly cost per resident shall be \$29.77 effective June 1, 2022. (Page 24) The following shall also be added:

EXTRAORDINARY RATE ADJUSTMENTS. On or after September 1, 2022, Contractor may petition the City Manager for a rate adjustment on the basis of extraordinary or unusual changes in the cost of its operations that could not reasonably be foreseen by a prudent person. Contractor’s petition shall contain a detailed justification for the rate adjustment. Among other things, the Contractor’s petition shall include an audited statement of Contractor’s historical and current expenses, demonstrating that Contractor has incurred an extraordinary increase in Contractor’s costs due to factors beyond the Contractor’s control, which have occurred through no fault or negligence of the Contractor. The audited statement shall be prepared by a certified public accountant that is licensed in the State of Florida and not an employee of the Contractor or its affiliates. At its expense, the City may audit the Contractor’s records to evaluate the Contractor’s request. The City Manager may request, and the Contractor shall provide, all of the information that is reasonably necessary for the City Manager to evaluate the Contractor’s petition. After receiving the requested information, the City Manager shall place the Contractor’s petition and the City Manager’s recommendations on a City Council agenda for discussion and review. The Contractor

shall be given a reasonable opportunity at the Council's meeting to explain the basis for its petition.

The City Council shall grant, grant in part, or deny the Contractor's request in a timely manner. The City Council may deny the Contractor's request for any reason the Council deems appropriate in its sole discretion. The Council's decision shall be final and non-appealable.

Should City reject the adjustment request, City will provide a justification and will attempt good faith negotiations for a more mutually acceptable adjustment. Should the parties not be able to come to agreement on the adjustment within 30 days of the initial request, Contractor may terminate the contract upon written notice. Such written Notice of Termination must provide for termination no earlier than 180 days from the Notice of Termination.

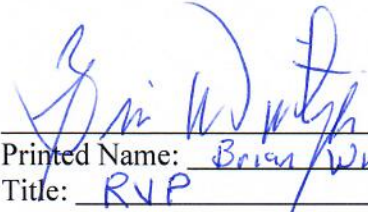
II. CONFLICT. Should there be a conflict between this Addendum and the Contract, the provisions in this Addendum shall prevail. Except for the revisions contained herein, the Contract shall remain in full force and effect.

III. EFFECTIVE DATE. The Effective Date of this Addendum is _____, 2022.

CITY OF PALM COAST

WASTE PRO OF FLORIDA, INC.

Denise Bevan, Interim City Manager



Printed Name: Brian Wintjen
Title: RVP

Date: _____

Date: 2/8/22

ATTEST:

Virginia Smith, City Clerk

Date: _____