

RESOLUTION NO. 17-03-07

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE A FRANCHISE AGREEMENT BETWEEN THE TOWN OF LAKE PARK AND WASTE MANAGEMENT FOR ROLL-OFF CONTAINER COLLECTION SERVICES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Lake Park (“Town”) is a municipal corporation of the State of Florida with such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the Town and Waste Management of Florida, Inc. (“Contractor”) have previously executed an Agreement whereby Contractor is providing Roll-Off Container Collection services (the “Agreement”), and;

WHEREAS, pursuant to paragraph 1.3 of the Agreement the initial term of the Agreement expires March 3, 2007; and

WHEREAS, pursuant to paragraph 1.4 of the Agreement, the term may be renewed at the option of the Town Commission; and

WHEREAS, the Town desires to renew the Agreement for an additional three year term; and

WHEREAS, the Town Commission has determined that it is in the best interest of the citizens of the Town to renew the Agreement with the Contractor.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK:

SECTION 1.

The Whereas clauses are hereby incorporated herein as true and correct.

SECTION 2.

The Mayor is hereby authorized and directed to execute the First Amendment to the Agreement with the Contractor.

SECTION 3.

This Resolution shall take effect immediately upon its adoption.

The foregoing Resolution was offered by Commissioner Balius, who moved its adoption. The motion was seconded by Vice-mayor Daly, and upon being put to a roll call vote, the vote was as follows:

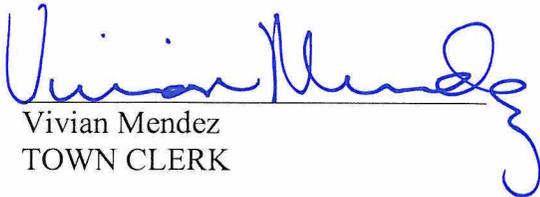
	AYE	NAY
MAYOR PAUL W. CASTRO	<u>X</u>	___
VICE-MAYOR ED DALY	<u>X</u>	___
COMMISSIONER CHUCK BALIUS	<u>X</u>	___
COMMISSIONER JEFF CAREY	<u>X</u>	___
COMMISSIONER PATRICIA OSTERMAN	<u>X</u>	___

The Town Commission thereupon declared the foregoing Resolution NO. 17-03-07 duly passed and adopted this 7 day of March, 2007.

TOWN OF LAKE PARK, FLORIDA

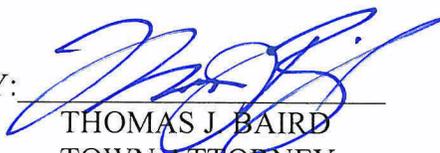
BY: 
PAUL W. CASTRO
MAYOR

ATTEST:


Vivian Mendez
TOWN CLERK



Approved as to form and legal sufficiency:

BY: 
THOMAS J. BAIRD
TOWN ATTORNEY

**FIRST AMENDMENT TO FRANCHISE AGREEMENT FOR ROLL-OFF
CONTAINER COLLECTION SERVICES WITHIN THE TOWN OF LAKE PARK**

THIS FIRST AMENDMENT is entered into this 7th day of March, 2007, effective March 4, 2007, by and between the Town of Lake Park, a municipal corporation organized and constituted in accordance with the laws of the State of Florida ("Town"), and Waste Management Inc. of Florida, a Florida corporation, with a business address at 651 Industrial Way, Boynton Beach, Florida 33426 ("Contractor").

WITNESSETH:

WHEREAS, the Town and Contractor entered into that certain Franchise Agreement for Roll-off Container Collection Services Within the Town of lake Park on or about March 3, 2004, (the "Agreement"); and

WHEREAS, paragraph 1-3 of the agreement provides for a three year term renewal; and

WHEREAS, paragraph 1.4 of the agreement authorizes the renewal of the agreement for an additional three year term; and

WHEREAS, the Town desires to renew for a three year term; and

NOW, THEREFORE, for and in consideration of the mutual promises and covenants hereinafter contained to be kept and performed by the parties hereto, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. Recitals: The foregoing recitals are true and correct.
2. Term: Section 1.3 is amended to provide that the term shall end on March 3, 2010.
3. Renewal: Section 1.4 is amended to provide that the at the Town's option the agreement may be renewed for terms upon mutual agreements of the parties.
4. Roll-off Collection Rates: Sections 3.2 is amended to provide that the initial rates all Collection services shall be set forth in new Exhibit A. The rates shall be adjusted as follows:
 - a) Disposal Costs: In the event disposal costs charged to the Contractor by the Solid Waste Authority for solid waste collected hereunder are increased, the charges

shall be passed through and reflected in Exhibit A when such increased costs become effective.

b) Consumer Price Index: Compensation payable to the Contractor for collection services shall be adjusted upward or downward annually to reflect changes in the consumer price index for all urban consumers for Miami-Fort Lauderdale area, all items, as published by the U.S. Department of Labor, Bureau of Labor Statistics ("CPI"). Beginning on March 1, 2008 and on each March 1 thereafter, the foregoing rates shall be adjusted to reflect the increase or decrease in the CPI for the immediately preceding twelve (12) month period of December to December. Such upward adjustments shall be limited to a rolling cap of five percent (5%) per annum. Any CPI upward adjustments in excess of five percent (5%) in one (1) year would roll forward cumulatively until a year when the CPI upward adjustment is under five percent (5%). The excess CPI upward adjustment that has rolled forward would then be applied to the extent possible, not to exceed five percent (5%) in any annual upward adjustment. In no case shall the CPI based upward adjustment exceed five percent (5%) in any given year. The Contractor shall notify the Town in writing of increases that are based on the CPI, as provided in this section prior to implementation. Should the CPI be discontinued or substantially modified, then an alternate index shall be chosen and utilized, with a comparable rolling cap, by mutual agreement of the Town and the Contractor.

c) Fuel Adjustment: Contractor shall, on a yearly basis, adjust the applicable rate charged to reflect any change in the cost of diesel fuel as determined by reference to the Energy Information Administration of the US Department of Energy ("EIA/DOE") website that reports average prices of diesel fuel for the "Lower Atlantic" United States. The link is as follows:
<http://tonto.eia.doe.gov/oog/info/wohdp/diesel.asp> . After determining the average price of diesel fuel from the aforesaid website ("EIA/DOE fuel cost"), the corresponding fuel cost modifier shall be calculated pursuant to the Table for fuel charge calculation shown below. Note that for adjustments not shown on the table for fuel surcharge calculation, the calculation shall be extrapolated from those set forth:

TABLE FOR FUEL SURCHARGE CALCULATION								
Average Price/ Gallon			Percent of Surcharge		Average Price/ Gallon		Percent of Surcharge	
\$ 1.448	to	\$ 1.538	-10.0%		\$ 2.858	to	\$ 2.957	3.0%
\$ 1.539	to	\$ 1.629	-9.0%		\$ 2.958	to	\$ 3.057	4.0%
\$ 1.630	to	\$ 1.720	-8.0%		\$ 3.058	to	\$ 3.157	5.0%
\$ 1.721	to	\$ 1.811	-7.0%		\$ 3.158	to	\$ 3.257	6.0%
\$ 1.812	to	\$ 1.902	-6.0%		\$ 3.258	to	\$ 3.357	7.0%
\$ 1.903	to	\$ 1.993	-5.0%		\$ 3.358	to	\$ 3.457	8.0%
\$ 1.994	to	\$ 2.084	-4.0%		\$ 3.458	to	\$ 3.557	9.0%
\$ 2.085	to	\$ 2.175	-3.0%		\$ 3.558	to	\$ 3.657	10.0%
\$ 2.176	to	\$ 2.266	-2.0%		\$ 3.658	to	\$ 3.757	11.0%
\$ 2.267	to	\$ 2.357	-1.0%		\$ 3.758	to	\$ 3.857	12.0%
\$ 2.358	to	\$ 2.457	0.0%		\$ 3.858	to	\$ 3.957	13.0%
\$ 2.458	to	\$ 2.557	0.0%		\$ 3.958	to	\$ 4.057	14.0%
\$ 2.558	to	\$ 2.657	0.0%		\$ 4.058	to	\$ 4.157	15.0%
\$ 2.658	to	\$ 2.757	1.0%		\$ 4.158	to	\$ 4.257	16.0%
\$ 2.758	to	\$ 2.857	2.0%		\$ 4.258	to	\$ 4.357	17.0%

<http://tonto.eia.doe.gov/oog/info/wohdp/diesel.asp>
 Weekly Retail On-Highway Diesel Prices
 Lower Atlantic - 1/8/07

d) Change in Law: On or before December 1st of each year during the term of this Agreement, and any renewal thereof, the Contractor shall have the right to negotiate with the Town for an increase due to change in law, regulations, permits, and unanticipated increases in costs, to be effective after March 1st of the calendar year following the renewal. Any increase in rates shall be based upon demonstrated good cause. No increase in rates shall be effective in writing approved by the Town. A "change in the law" shall include: (i) the adoption, promulgation, or modification or reauthorization after the date of this Agreement of any law, regulation, order, statute, ordinance, rule or binding judicial or administrative ruling that was not adopted, promulgated, modified or reissued on or before the date of this Agreement, or (ii) the imposition of any material conditions in connection with the issuance, renewal, or modification of any permit, license, registration, notice of intent or approval after the date of this Agreement, or (iii) any binding court decisions, excluding decisions of federal courts interpreting federal tax laws, and decisions of State courts interpreting State tax laws, that impact Contractor's ability to perform in accordance with the terms

of this Agreement if such decision is not also the result of the intentional or negligent action or inaction of the party relying thereon or of a third party for whom the party relying thereon is responsible; provided that neither the contesting in good faith of any such decision nor the failure to so contest shall constitute or be construed as a measure of intentional or negligent action or inaction of such party. In the event that a federal, state or local entity imposes a fee, charge or tax after the date of this Agreement that applies to a party's operations per se, such fee, charge or tax shall obligate the parties to negotiate the impact of such fee, charge or tax pursuant to this section.

5. Recycling Goal: Section 4.14 is amended by deleting the last sentence and substituting that the Contractor shall have as a goal the recycling of 50% of the C&D to the extent that same is reasonably attainable under then current market conditions.

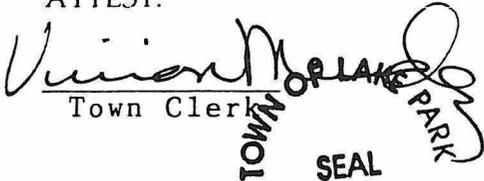
6. Contract Performance: The penultimate sentence in Section 5.1 is deleted. The Section is further amended to provide that the Contractor shall have 10 business days to contest in writing the imposition of administrative charges. The legitimacy of complaints shall be determined by a mutual inspection by the Town and Contractor of surrounding circumstances and the site of the alleged infraction. Infractions caused by Uncontrollable Forces shall be excused. Section 5.3 is amended to provide that nonperformance shall be excused to the extent caused by Uncontrollable Forces.

7. Termination: Section 6.11 is amended to provide that either the Town or Contractor may terminate this Contract without cause upon 60 days written notice.

8. Except as amended herein, the Contract shall remain in full force and effect.

IN WITNESS WHEREOF, the Town and the Contractor have executed this Agreement this 22nd day of March 2007.

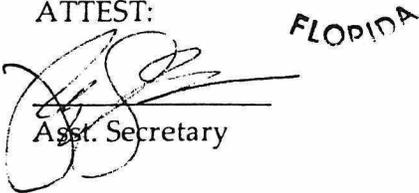
ATTEST:


Town Clerk
TOWN OF LAKE PARK
SEAL

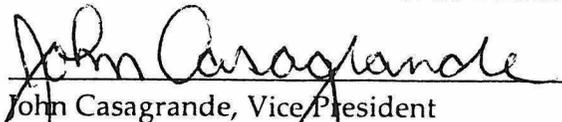
TOWN OF LAKE PARK, FLORIDA


Paul W. Castro - Mayor

ATTEST:


Asst. Secretary
FLORIDA

WASTE MANAGEMENT INC. OF FLORIDA


John Casagrande, Vice President

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TOWN OF LAKE PARK

EXHIBIT "A"

RATE SCHEDULE

The fee for collection of each open top and compactor roll-off container, not including tipping fee, shall be \$173.32 per pull.

DISPOSAL COST:

Construction Debris Disposal	or	\$10.00 per cubic yard
		\$45.00 per ton

Solid Waste Material/Garbage	*\$28.00 per ton
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*Cost of disposal will change in accordance with the Solid Waste Authority of Palm Beach County Tipping Fee Rate Schedule

A 10% Franchise Fee will be added to each pull charge.

Effective 3/4/07