

CITY OF TAMARAC, FLORIDA

RESOLUTION NO. R-2018- 120

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF TAMARAC, FLORIDA, APPROVING AMENDMENT NO. 1 TO THE AGREEMENT WITH WESTWIND CONTRACTING, INC. FOR BID NO. 16-25B, LIME SLUDGE REMOVAL, HAULING AND DISPOSAL PROJECT AUTHORIZING AN EXPENDITURE OF FUNDS FOR AN AMOUNT NOT TO EXCEED THE APPROVED ANNUAL BUDGET, AND AUTHORIZING CONTRACT ESCALATION / DE-ESCALATION AS PROVIDED UNDER THE AGREEMENT BEGINNING OCTOBER 1, 2018 THROUGH SEPTEMBER 30, 2020, TO EXERCISE THE FIRST TWO-YEAR RENEWAL OPTION; AUTHORIZING THE APPROPRIATE CITY OFFICIALS TO ACCEPT AND EXECUTE SAID AMENDMENT; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, lime sludge is a by-product of the water treatment process and must be removed, hauled and disposed of from the City's Water Treatment Plant; and

WHEREAS, the City Commission of the City of Tamarac awarded an agreement to Westwind Contracting, Inc., via Resolution #R-2016-99 on September 14, 2016 in response to a publicly advertised Bid #16-25B "Lime Sludge Removal, Hauling and Disposal", a copy of said resolution and original bid file are on file with the City Clerk; and

WHEREAS, the original agreement provides for the exercising of two (2) two-year renewal options based on receipt of satisfactory service and upon mutual agreement of the City of Tamarac and Westwind Contracting, Inc.; and

WHEREAS, the city and Westwind Contracting, Inc. wishes to exercise the first two-year renewal option, with one additional two-year renewal option remaining; and

WHEREAS, sufficient funds for this project are available from the Water Treatment Plant Operating accounts; and

WHEREAS, in the original Bid #16-25B, the contract provides for an escalation/de-escalation of prices, which allows for documented pass-through cost increases/decreases at six-month intervals, but does not allow for any increases to the vendor's profit margin; and

WHEREAS, although the Contractor is seeking additional capacity for disposal, the Agreement Amendment No. 1 includes a "Termination Due to Exhausted Capacity" Clause in the event the vendor is unable to obtain new capacity and must abandon the contract; and

WHEREAS, it is the recommendation of the Director of Public Services, Director of Financial Services, and the Purchasing & Contracts Manager that the City Commission approve Amendment No. 1 to the Agreement with Westwind Contracting, Inc. for a period beginning October 1, 2018 through September 30, 2020 with an additional two-year renewal option remaining, and that the appropriate City Officials be authorized to execute said Amendment, a copy of Amendment No. 1 is attached hereto as "Exhibit 1"; and

WHEREAS, the City Commission of the City of Tamarac, Florida deems it to be in the best interest of the citizens and residents of the City of Tamarac to approve and to authorize the appropriate City Officials to execute Amendment #1 to exercise the first two-year renewal option of the Agreement for "Lime Sludge Removal, Hauling and Disposal" with Westwind Contracting, Inc. for a period beginning October 1, 2018 through September 30, 2020, for an amount not to exceed the approved annual budget.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF TAMARAC, FLORIDA, THAT:

SECTION 1: The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this resolution. All exhibits referenced herein are incorporated within this resolution and made a specific part hereof.

SECTION 2: The City Commission HEREBY approves Amendment No. 1 to the Agreement between the City of Tamarac and Westwind Contracting and the appropriate City Officials are HEREBY authorized to execute said Amendment, attached hereto as "Exhibit 1".

SECTION 3: Expenditures for Lime Sludge Removal, Hauling and Disposal per Amendment No. 1 to the Agreement with Westwind Contracting, Inc. are hereby authorized and shall not exceed the approved budget including any approved budget amendments.

SECTION 4: The City Manager, or his designee, is hereby authorized to approve and execute any subsequent renewal options to this Agreement, initiate Change Orders in amounts not to exceed \$65,000 per Section 6-147 of the City Code, and close the contract award, which includes, but is not limited to, making final payment and releasing bonds per Section 6-149 of the City Code, when the work has been successfully completed within the terms, conditions and pricing of the agreement.

SECTION 5: All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 6: If any clause, section, other part or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

"The remainder of this page is intentionally left blank."

SECTION 7: This Resolution shall become effective immediately upon its passage and adoption.

PASSED, ADOPTED AND APPROVED this 26 day of September 2018.


HARRY DRESSLER
MAYOR

ATTEST:


PATRICIA TEUFEL, CMC
CITY CLERK

RECORD OF COMMISSION VOTE:

MAYOR DRESSLER

yes

DIST 1: COMM. BOLTON

yes

DIST 2: V/M GOMEZ

yes


DIST 3: COMM. FISHMAN

yes

DIST 4: COMM. PLACKO

yes

I HEREBY CERTIFY THAT I HAVE
APPROVED THIS RESOLUTION
AS TO FORM



for SAMUEL S. GOREN
CITY ATTORNEY

**AGREEMENT AMENDMENT #1
BETWEEN THE CITY OF TAMARAC
AND
WESTWIND CONTRACTING INC.**

The CITY OF TAMARAC (City) and Westwind Contracting, Inc., Hereinafter referred to as ("Contractor"), a Florida Corporation with principal offices located at 3799 W. Hallandale Beach Boulevard, Pembroke Park, Florida 33023 (the "Contractor"), agree to amend the original Agreement to provide for Lime Sludge Removal, Hauling and Disposal from the City Water Treatment Plant Lagoon located at 7803 NW 61st Street, Tamarac, Florida 33321 agree to amend the contract dated September 19, 2016 as follows:

1. Pursuant to the terms of Section 4, "*Contract Term*" of the original Agreement dated September 19, 2016, the City and Contractor agree to exercise the first two (2) year renewal option for the period effective October 1, 2018 through September 30, 2020.

2. Please add Paragraph 17.3 to Section 17, "*Termination*" to read as follows:

17.3 Termination Due to Exhausted Capacity: The Contractor shall be responsible for obtaining delivery locations for lime sludge collected from the City. In the event that the Contractor's existing capacity is exhausted during the term of this Agreement, Contractor shall make every effort to acquire additional capacity from a new location or locations. The Contractor will be eligible to receive a cost adjustment for hauling to a new location in accordance with the provisions of Section 5 "**Contract Sum and Contract Escalation/De-Escalation**" at the time that hauling to such location or locations will commence. In the event that the Contractor is unable to obtain any new capacity and must abandon the contract, Contractor shall indemnify the City against loss pertaining to this termination. This contract may also be terminated for convenience by Contractor upon ninety (90) business days of Contractor's written notice to the City.

3. Please delete the current language shown in Section 18, "*Public Records*", and replace it with the following amended language per Florida statute:

18) Public Records

18.1 *The City of Tamarac is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law. Specifically, CONTRACTOR shall:*

18.1.1 *Keep and maintain public records required by the City in order to perform the service;*

18.1.2 *Upon request from the City's custodian of public records, provide the public agency with a copy of the requested records or allow the*

records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

18.1.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if CONTRACTOR does not transfer the records to the City.

18.1.4 Upon completion of the contract, transfer, at no cost to the City, all public records in possession of CONTRACTOR, or keep and maintain public records required by the City to perform the service. If CONTRACTOR transfers all public records to the City upon completion of the contract, CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If CONTRACTOR keeps and maintains public records upon completion of the contract, CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records in a format that is compatible with the information technology systems of the City.

18.2 During the term of the contract, CONTRACTOR shall maintain all books, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this contract. The form of all records and reports shall be subject to the approval of the City's Auditor. CONTRACTOR agrees to make available to the City's Auditor, during normal business hours and in Broward, Dade or Palm Beach Counties, all books of account, reports and records relating to this contract.

4. Please Add to Section 28, titled "Scrutinized Companies F.S. 287.135 and 215.473" as required by Florida Statutes.

28) Scrutinized Companies -- 287.135 and 215.473

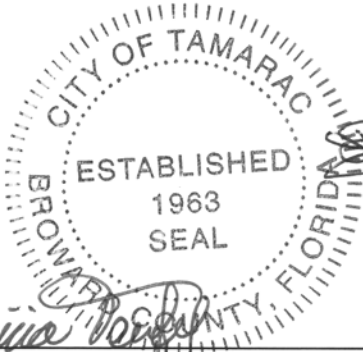
By execution of this Agreement, CONTRACTOR certifies that CONTRACTOR is not participating in a boycott of Israel. CONTRACTOR further certifies that CONTRACTOR is not on the Scrutinized Companies that Boycott Israel list, not on the Scrutinized Companies with Activities in Sudan List, and not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has CONTRACTOR been engaged in business operations in Syria. Subject to limited exceptions provided in state law, the City will not contract for the provision of goods or services with any scrutinized company referred to above. Submitting a false certification shall be deemed a material breach of contract. The City shall provide notice, in writing, to CONTRACTOR of the City's determination concerning the false certification. CONTRACTOR shall have five (5) days from receipt of notice to

refute the false certification allegation. If such false certification is discovered during the active contract term, CONTRACTOR shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If CONTRACTOR does not demonstrate that the City's determination of false certification was made in error then the City shall have the right to terminate the contract and seek civil remedies pursuant to Section 287.135, Florida Statutes, as amended from time to time.

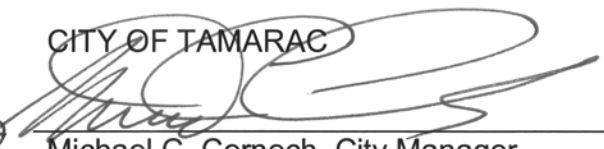
5. All other provisions of the original agreement remain in effect as written.

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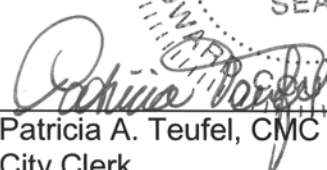
IN WITNESS WHEREOF, the parties hereby have made and executed this Amendment to Agreement on the respective dates under each signature, the City of Tamarac signing through its City Manager as authorized by the City Commission, and Contractor signing by and through its President duly authorized to execute same.



CITY OF TAMARAC


Michael C. Cernech, City Manager

9-27-18
Date


Patricia A. Teufel, CMC
City Clerk

10/1/18
Date

Approved as to form and legal sufficiency:


Samuel S. Goren, City Attorney

9/12/18
Date

ATTEST:

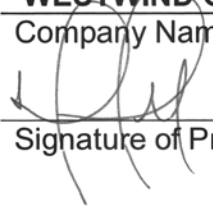

Signature of Corporate Secretary

Adair Hagar
Type/Print Name

(CORPORATE SEAL)

WESTWIND CONTRACTING, INC.

Company Name


Signature of President

Waldemar "Waldy" Polizzi
Name of President

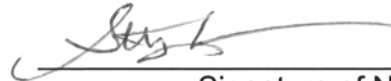
09/04/18
Date

CORPORATE ACKNOWLEDGEMENT

STATE OF FLORIDA :
:SS
COUNTY OF Broward :

I HEREBY CERTIFY that on this day, before me, an Officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared Waldemar "Waldy" Polizzi, President of Westwind Contracting, a Florida Corporation, to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged before me that he/she executed the same.

WITNESS my hand and official seal this 04 day of SEPT., 2018 .



Signature of Notary Public
State of _____ at Large

Print, Type or Stamp
Name of Notary Public

☒ Personally known to me or
☐ Produced Identification

Type of I.D. Produced

☐ DID take an oath, or
☒ DID NOT take an oath.

