

Meeting Date:

Agenda Item

January 13, 2015

30

REQUESTED COMMISSION ACTION:

<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
Consent	X Ordinance	Resolution	Consideration/ Discussion	Presentation

SHORT TITLE AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE ADDENDUM NO. 1 TO THE CONTRACT BETWEEN THE CITY OF POMPANO BEACH AND KESSLER CONSULTING, INC. FOR SOLID WASTE SERVICES CONSULTANT; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

Summary of Purpose and Why: In a previous Commission action, the ranking order for RFP #H-11-12 was approved to negotiate an agreement with the highest ranked firm, Kessler Consulting, Inc. for solid waste consultant services. This item amends and clarify the terms of the agreement by extending the term of the contract through January 1, 2016, or until the completion of the Scope of Services, whichever occurs first.

The not-to-exceed amount is \$100,000 for work actually performed and completed pursuant to the amended terms of the agreement.

- (1) Origin of request for this action: Staff
- (2) Primary staff contact: Robert McCaughan/Russell Ketchum Ext. 4097
- (3) Expiration of contract, if applicable: January 1, 2016
- (4) Fiscal impact and source of funding: No additional fiscal impact.

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Public Works	<u>11/19/14</u>	Approve	<u>[Signature]</u>
General Services	<u>11/21/14</u>	<u>APPROVE</u>	<u>[Signature]</u>
Finance	<u>11/21/14</u>	<u>approval</u>	<u>[Signature]</u>
Budget	<u>11-24-14</u>	<u>Approval</u>	<u>[Signature]</u>
City Attorney	<u>11/21/14</u>		<u>[Signature]</u>

X City Manager [Signature] [Signature]

ACTION TAKEN BY COMMISSION:

<u>Ordinance</u>	<u>Resolution</u>	<u>Consideration</u>
Workshop		
1 st Reading <u>12/9/14</u>	1 st Reading <u> </u>	Results: <u> </u>
<u>APPROVED</u>		Results: <u> </u>
2 nd Reading <u>1/13/15</u>	<u> </u>	<u> </u>

MEMORANDUM

To: Mary Chambers, City Clerk

Via: Dennis Beach, City Manager
Robert McCaughan, Director Public Works *RM*

From: Russell Ketchem, Solid Waste Manager 

Date: November 20, 2014

Subject: Addendum No.1 Solid Waste Consultant Services

Please find the attached an ordinance caption for advertisement in the Sun Sentinel to appear as an item agenda on December 9, 2014.

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE ADDENDUM NO. 1 TO THE CONTRACT BETWEEN THE CITY OF POMPANO BEACH AND KESSLER CONSULTING, INC. FOR SOLID WASTE CONSULTANT SERVICES; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

Please don't hesitate to contact me if you have further questions at x7011.

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE ADDENDUM NO. 1 TO THE CONTRACT BETWEEN THE CITY OF POMPANO BEACH AND KESSLER CONSULTING, INC. FOR SOLID WASTE CONSULTANT SERVICES; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to law, ten (10) days' notice has been given by publication in a paper of general circulation in the City, notifying the public of this proposed ordinance and of a public hearing in the City Commission Chambers of the City of Pompano Beach; and

WHEREAS, a public hearing before the City Commission was held pursuant to the published notice described above, at which hearing the parties in interest and all other citizens so desiring had an opportunity to be and were, in fact, heard; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That Addendum No. 1 to the Contract between the City of Pompano Beach and Kessler Consulting, Inc. for Solid Waste Consultant Services, a copy of which Agreement is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute said Agreement between the City of Pompano Beach and Kessler Consulting, Inc.

SECTION 3. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of

this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 4. This Ordinance shall become effective upon passage.

PASSED FIRST READING this _____ day of _____, 20__.

PASSED SECOND READING this _____ day of _____, 20__.

LAMAR FISHER, MAYOR

ATTEST:

MARY L. CHAMBERS, CITY CLERK

GBL/jrm
11/18/14
l:reso/2015-95

ADDENDUM NO. 1 TO CONTRACT FOR SOLID WASTE CONSULTANT SERVICES

THIS ADDENDUM is made and entered this ____ day of _____ 2014, by and between the CITY OF POMPANO BEACH, a municipal corporation of the State of Florida, hereinafter referred to as "CITY", and KESSLER CONSULTING, INC., hereinafter referred to as the "CONTRACTOR".

WHEREAS, that a contract between the parties commenced on October 15, 2012, providing for solid waste services consulting by CONTRACTOR; and

WHEREAS, CITY and CONTRACTOR have negotiated and are desirous of making certain changes to such Contract as amended to extend the term through January 1, 2016, or until the completion of the Scope of Services, whichever occurs first.

WITNESSETH:

NOW, THEREFORE, City and Contractor, for and in consideration of the mutual covenants and conditions set forth herein, in said Contract and the Addenda amending the Contract, do covenant and agree as follows:

1. Each "WHEREAS" clause set forth above is true and correct and herein incorporated by this reference.
2. The term of the Contract is amended so that it shall extend through January 1, 2016, or until the completion of the Scope of Services, whichever occurs first.
3. All terms, covenants and conditions contained in the Contract between CITY and CONTRACTOR, a copy of which is attached hereto as Exhibit "A" and made a part hereof, with the exception of the provisions above, shall remain unchanged, and the parties agree to keep, observe and perform all covenants and conditions contained therein.

4. The Contract shall bind the parties and their respective executors, administrators, successors and assign and shall be fully effective as though the extension had been originally included in the Contract.

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first above written.

"CITY"

Witnesses:

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER, MAYOR

By: _____
DENNIS W. BEACH, CITY MANAGER

Attest:

MARY L. CHAMBERS, CITY CLERK

(SEAL)

Approved by:

GORDON B. LINN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by LAMAR FISHER as Mayor, DENNIS W. BEACH as City Manager, and MARY L. CHAMBERS as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

"CONTRACTOR"

Witnesses:

KESSLER CONSULTING, INC.
a Florida corporation

Vianna Bendixson

By: [Signature]

Vianna Bendixson
Print Name

Mitch Kessler
Typed or Printed Name

[Signature]

Title: President

[Signature]
Print Name

(SEAL)

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 24th day of November, 2014, by Mitch Kessler as President of KESSLER CONSULTING, INC., a Florida corporation on behalf of the corporation. He/she is personally known to me or ~~who~~ has produced N/A (type of identification) as identification.

NOTARY'S SEAL:



Lisa Lampert
NOTARY PUBLIC, STATE OF FLORIDA

Lisa Lampert
(Name of Acknowledger Typed, Printed or Stamped)

EE 213985
Commission Number

original 1/1

ORDINANCE NO. 2013-02

**CITY OF POMPANO BEACH
Broward County, Florida**

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND KESSLER CONSULTING, INC. FOR SOLID WASTE SERVICES CONSULTANT; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to law, ten (10) days' notice has been given by publication in a paper of general circulation in the City, notifying the public of this proposed ordinance and of a public hearing in the City Commission Chambers of the City of Pompano Beach; and

WHEREAS, a public hearing before the City Commission was held pursuant to the published notice described above, at which hearing the parties in interest and all other citizens so desiring had an opportunity to be and were, in fact, heard; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That an Agreement between the City of Pompano Beach and Kessler Consulting, Inc., for solid waste services consultant, a copy of which Agreement is attached hereto and incorporated herein by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute said Agreement.

SECTION 3. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of

this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 4. This Ordinance shall become effective upon passage.

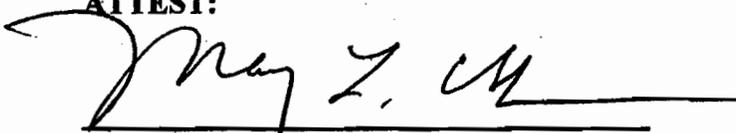
PASSED FIRST READING this 24th day of September, 2012.

PASSED SECOND READING this 9th day of October, 2012.



LAMAR FISHER, MAYOR

ATTEST:



MARY L. CHAMBERS, CITY CLERK

GBL/ds
8/28/12
L:ord/2012-414

07/19

AGREEMENT

Between

CITY OF POMPANO BEACH

and

KESSLER CONSULTING, INC.

For

Solid Waste Services Consultant

RFP# H-11-12

This is an Agreement, made and entered into by and between: CITY OF POMPANO BEACH, a municipal corporation of the State of Florida, hereinafter referred to as "CITY," AND

KESSLER CONSULTING, INC., a Florida corporation, hereinafter referred to as "CONSULTANT."

WHEREAS, City requires services which Contractor is capable of providing, under the terms and conditions hereinafter described or referenced; and

WHEREAS, Contractor is able and prepared to provide such services as City does hereinafter require, under those terms and conditions set forth.

NOW, THEREFORE, in consideration of those mutual promises and the terms and conditions set forth hereafter, the parties agree as follows:

ARTICLE 1

DEFINITIONS AND IDENTIFICATIONS

For purposes of this Agreement, reference to one gender shall include the other, use of the plural shall include the Singular, and use of the singular shall include the plural. The following definitions apply unless the context in which the word or phrase is used requires a different definition:

1.1 Agreement - means this document, Articles 1 through 8, inclusive. Other terms and conditions are Included in the exhibits and documents that are expressly incorporated by reference.

1.2 Contract Administrator - The employee designated by the Public Works Director. The primary responsibilities of the Contract Administrator are to coordinate and communicate

with the CONSULTANT and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely on the instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.

ARTICLE 2

SCOPE OF SERVICES

2.1 CONSULTANT shall perform all work identified in this Agreement and Exhibit A (Scope of Services). The parties agree that the scope of services is a description of CONSULTANT's obligations and responsibilities and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks which are such an inseparable part of the work described that exclusion would render performance by CONSULTANT impractical, illogical, or unconscionable.

2.2 CONSULTANT acknowledges and agrees that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement.

ARTICLE 3

TERM AND TIME OF PERFORMANCE

3.1 The term of this Agreement shall begin on the date it is fully executed by both parties and shall end on January 1, 2015 or until the completion of the Scope of Services. The CITY and CONSULTANT may agree to additional tasks, over and above those provided for in Exhibit A, together with pricing and a time period for said tasks; any such additional work must be approved by the City Commission and contained in a written amendment executed by the parties.

3.2 All duties, obligations, and responsibilities of CONSULTANT required by this Agreement shall be completed no later than January 1, 2015. Time shall be deemed to be of the essence in performing the duties, obligations and responsibilities required by this Agreement.

3.3 At the sole discretion of City, agreement may be renewed for three (3) additional one (1) year periods from the date of completion outlined in section 3.2. Terms and conditions for any renewal period will be mutually agreed in writing by both parties in advance.

ARTICLE 4

COMPENSATION

4.1 CITY agrees to pay CONSULTANT in the manner specified in Section 4.3, the not-to-exceed amount of \$100,000 for work actually performed and completed pursuant to this Agreement and agreed to in Section 4.2, which amounts shall be accepted by CONSULTANT as full compensation for all such work and expenses. It is acknowledged

and agreed by CONSULTANT that this amount is the maximum payable and constitutes a limitation upon CITY's obligation to compensate CONSULTANT for its services and expenses related to this Agreement. This maximum amount, however, does not constitute a limitation, of any sort, upon CONSULTANT's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services. City and Consultant may agree to additional tasks, over and above those provided for in Exhibit A, together with pricing and a time period for said tasks; any such additional work must be approved by the City Commission and contained in a written amendment executed by the parties.

4.2 COMPENSATION

4.2.1 The estimated level of compensation shall not exceed the total amount as described in 4.1 above and will be based on the estimated staff hours and rates as provided in Exhibit B. The approach to the Project will be divided into two phases as described below:

a) Phase I has three tasks associated at a total estimated cost of \$40,060:

Task 1 - System Review (estimated 74 staff hours)

Task 2 - Options for Solid Waste Hauling (estimated 108 staff hours)

Task 3 - Rate Analysis (estimated 244 staff hours)

b) Phase II has two tasks associated at a total estimated cost range of \$40,000 to \$60,000:

Task 4 - Request for Proposal (estimated 396 staff hours)

Task 5 - Transition and Implementation (estimated not to exceed 250 staff hours)

4.2.2 A detailed statement of expenses must accompany any request for reimbursement.

4.3 METHOD OF BILLING AND PAYMENT

4.3.1 CONSULTANT may submit invoices for compensation no more often than on a monthly basis, but only after the services for which the invoices are submitted have been completed. An original invoice plus one copy are due within fifteen (15) days of the end of the month except the final invoice which must be received no later than sixty (60) days after this Agreement expires.

4.3.2 CITY shall pay based on the invoices submitted for approval and payment will be issued within forty-five (45) days of submittal of CONSULTANT's proper invoice. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted pursuant to Instructions prescribed by the Contract Administrator. Payment may be withheld for failure of CONSULTANT to comply with a term, condition, or requirement of this Agreement.

4.4 Notwithstanding any provision of this Agreement to the contrary, CITY may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work which has not been remedied or from loss due to fraud or reasonable evidence indicating fraud by CONSULTANT or failure to comply with this

Agreement. When the above reasons for withholding payment are removed or resolved in a manner satisfactory to the Contract Administrator, payment may be made. The amount withheld shall not be subject to payment of interest by CITY.

4.5 Payment will be made to CONSULTANT at:

Kessler Consulting Inc
14620 N. Nebraska Avenue, Bldg D
Tampa, FL 33613

ARTICLE 5

INDEMNIFICATION

CONSULTANT shall at all times hereafter indemnify, hold harmless and, at the City Attorney's option, defend or pay for an attorney selected by the City Attorney to defend CITY, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by intentional or negligent act of, or omission of, CONSULTANT, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against CITY by reason of any such claim, cause of action or demand, CONSULTANT shall, upon written notice from CITY, resist and defend such lawsuit or proceeding by counsel satisfactory to CITY or, at CITY's option, pay for an attorney selected by City Attorney to defend CITY. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Contract Administrator and the City Attorney, any sums due CONSULTANT under this Agreement may be retained by CITY until all of CITY's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by CITY.

ARTICLE 6

INSURANCE

6.1 To ensure the indemnification obligation contained above, CONSULTANT shall, at a minimum, provide, pay for, and maintain in force at all times during the term of this Agreement (unless otherwise provided), the insurance coverage set forth in accordance with the terms and conditions required by this Article. Each insurance policy shall clearly identify the foregoing indemnification as insured.

6.2 Such policy or policies shall be without any deductible amount unless otherwise noted in this Agreement and shall be issued by approved companies authorized to do business in the State of Florida, and having agents upon whom service of process may be made in Broward County, Florida. CONSULTANT shall pay all deductible amounts, if any. CONSULTANT shall specifically protect CITY and the City of Pompano Beach Commission by naming CITY and the City of Pompano Beach City Commission as additional insured under the Commercial Liability Policy as well as on any Excess Liability Policy coverage.

6.3 Professional Liability Insurance. A Professional liability Insurance Policy shall be provided which shall contain minimum limits of one million dollars (\$1,000,000) for each claim. Any deductible amount shall not exceed Twenty five thousand dollars (\$25,000) for each occurrence. CONSULTANT shall notify CITY in writing within thirty (30) days of any claim filed or made against its Professional liability Insurance Policy.

6.4 Commercial Liability Insurance. A Commercial Liability Insurance Policy shall be provided which shall contain minimum limits of one million Dollars (\$1,000,000) per occurrence combined single limit for bodily injury liability and property damage liability and shall contain minimum limits of two million Dollars (\$2,000,000) per aggregate. Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include:

Premises and/or operations.

Independent contractors.

Products and/or Completed Operations for contracts.

Broad Form Contractual Coverage applicable to this specific Agreement, including any hold harmless and/or indemnification agreement.

Personal Injury Coverage with Employee and Contractual Exclusions removed, with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

6.5 Business Automobile Liability. Business Automobile Liability shall be provided with minimum limits of one million Dollars (\$1,000,000) per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

Owned Vehicles, if applicable.

Hired and Non-Owned Vehicles, if applicable.

Employers' Non-Ownership, if applicable.

6.6 Workers' Compensation Insurance. Workers' Compensation insurance to apply for all employees in compliance with Chapter 440, Florida Statutes, as may be amended from time to time, the "Workers' Compensation Law" of the State of Florida, and all applicable federal laws. In addition, the policy(ies) must include:

Employers' Liability with a limit of one million Dollars (\$1,000,000) each accident.

If any operations are to be undertaken on or about navigable waters, coverage must be Included for the U.S. Longshoremen & Harbor Workers Act and Jones Act.

6. 7 CONSULTANT shall furnish to CITY's Contract Administrator Certificate of Insurance or endorsements evidencing the insurance coverage specified by this Article within fifteen (15) calendar days after notification of award of the Agreement and attached hereto as Exhibit C. The required Certificates of Insurance shall name the types of policies provided, refer specifically to this Agreement, and state that such insurance is as required by this Agreement. The Certificate of Insurance shall be in a form acceptable to the CITY'S Risk Manager. CONSULTANT's failure to provide to CITY the Certificates of Insurance or endorsements evidencing the Insurance coverage within fifteen (15) calendar days shall provide the basis for the termination of the Agreement.

6.8 Coverage is not to cease and is to remain in force (subject to cancellation notice) until all performance required of CONSULTANT is completed. All policies must be endorsed to provide CITY with at least thirty (30) days notice of expiration, cancellation and/or restriction. If any of the insurance coverage will expire prior to the completion of the work, copies of renewal policies shall be furnished at least thirty (30) days prior to the date of their expiration.

6.9 CITY reserves the right to review and revise any insurance requirements at the time of renewal or amendment of this Agreement, including, but not limited to, deductibles, limits, coverage, and endorsements based on insurance market conditions affecting the availability or affordability of coverage, or changes in the scope of work or specifications that affect the applicability of coverage. If CONSULTANT uses a subcontractor, CONSULTANT shall ensure that subcontractor names CITY as an additional insured.

ARTICLE 7

TERMINATION

7.1 This Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within ten (10) days after written notice from the aggrieved party identifying the breach. This Agreement may also be terminated for convenience by the City of Pompano Beach Commission. Termination for convenience by the City of Pompano Beach Commission shall be effective on the termination date stated in written notice provided by CITY, which termination date shall be not less than thirty (30) days after the date of such written notice. This Agreement may also be terminated by the City Manager upon such notice as the City Manager deems appropriate under the circumstances in the event the City Manager determines that termination is necessary to protect the public health or safety. The parties agree that if CITY erroneously, improperly or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

7.2 This Agreement may be terminated for cause for reasons including, but not limited to, CONSULTANT's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to suitably perform the work; or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement.

7.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by the City Manager, which the City Manager deems necessary to protect the public health, safety, or welfare *may* be verbal notice that shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.

7.4 In the event this Agreement is terminated for convenience, CONSULTANT shall be paid for any services properly performed under the Agreement through the termination date specified in the written notice of termination. CONSULTANT acknowledges and agrees that it has received good, valuable and sufficient consideration from CITY, the receipt and adequacy of which are, hereby acknowledged by CONSULTANT, for CITY's right to terminate this Agreement for convenience.

7.5 In the event this Agreement is terminated for any reason, any amounts due CONSULTANT shall be withheld by CITY until all documents are provided to CITY pursuant to Section 8.1 of Article 8.

ARTICLE 8

MISCELLANEOUS

8.1 RIGHTS IN DOCUMENTS AND WORK

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of CITY; and, if a copyright is claimed, CONSULTANT grants to CITY a non-exclusive license to use the copyrighted item(s) indefinitely, to prepare derivative works, and to make and distribute copies to the public. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by CONSULTANT, whether finished or unfinished, shall become the property of CITY and shall be delivered by CONSULTANT to the Contract Administrator within seven (7) days of termination of this Agreement by either party. Any compensation due to CONSULTANT shall be withheld until all documents are received as provided herein.

8.2 AUDIT RIGHT AND RETENTION OF RECORDS

CITY shall have the right to audit the books, records, and accounts of CONSULTANT and its subcontractors that are related to this Project. CONSULTANT and its subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project. All books, records, and accounts of CONSULTANT and its subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, CONSULTANT or its subcontractor, as applicable, shall make same available at no cost to CITY.

CONSULTANT and its subcontractors shall preserve and make available, at reasonable times for examination and audit by CITY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by CITY to be applicable to CONSULTANT's and its subcontractors' records, CONSULTANT and its subcontractors shall comply with all requirements thereof; however, no confidentiality or nondisclosure requirement of either federal or state law shall be violated by CONSULTANT or its subcontractors. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for CITY's disallowance and recovery of any payment upon such entry.

CONSULTANT shall, by written contract, require its subcontractors to agree to the requirements and obligations of this Section 8.2.

8.3 PUBLIC ENTITY CRIME ACT

CONSULTANT represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, as may be amended from time to time, which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to CITY, may not submit a bid on a contract with CITY for the construction or repair of a public building or public work, may not submit bids on leases of real property to CITY, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with CITY, and may not transact any business with CITY in excess of the threshold amount provided in Section 287.017, Florida Statutes, as may be amended from time to time, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by CITY pursuant to this Agreement, and may result in debarment from CITY's competitive procurement activities.

In addition to the foregoing, CONSULTANT further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether CONSULTANT has been placed on the convicted vendor list.

8.4 INDEPENDENT CONTRACTOR

CONSULTANT is an Independent contractor under this Agreement. Services provided by CONSULTANT pursuant to this Agreement shall be subject to the supervision of CONSULTANT. In providing such services, neither CONSULTANT nor its agents shall act as officers, employees, or agents of CITY. No partnership, joint venture, or other joint relationship is created hereby. CITY does not extend to CONSULTANT or CONSULTANT's agents any authority of any kind to bind CITY in any respect whatsoever.

8.5 THIRD PARTY BENEFICIARIES

Neither CONSULTANT nor CITY intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

8.6 NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

FOR CITY:

Robert McCaughan, Director Public Works
1205 NE 5th Avenue
Pompano Beach, FL 33060

FOR CONSULTANT:

Mitch Kessler, President
Kessler Consulting Inc
14620 N. Nebraska Avenue, Bldg 0
Tampa, FL 33613

8.7 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other party. In addition, CONSULTANT shall not subcontract *any* portion of the work required *by* this Agreement. CITY may terminate this Agreement, effective immediately, if there is *any* assignment, or attempted assignment, transfer, or encumbrance, by CONSULTANT of this Agreement or *any* right or interest herein without CITY's written consent.

CONSULTANT represents that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

CONSULTANT shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of CONSULTANT's performance and all interim and final product(s) provided to or on behalf of CITY shall be comparable to the best local and national standards.

8.8 CONFLICTS

Neither CONSULTANT nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CONSULTANT's loyal and conscientious exercise of judgment and care related to its performance under this Agreement.

CONSULTANT further agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against CITY in any legal or administrative proceeding in which he, she, or CONSULTANT is not a party, unless compelled by court process. Further, CONSULTANT agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of CITY in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude CONSULTANT or any persons in anyway from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

In the event CONSULTANT is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, CONSULTANT agrees to require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as CONSULTANT.

8.9 MATERIALITY AND WAIVER OF BREACH

CITY and CONSULTANT agree that each requirement, duty, and obligation set forth herein was bargained for at arms-length and is agreed to by the parties in exchange for quid pro quo, that each is substantial and important to the formation of this Agreement and that each is, therefore, a material term hereof.

CITY's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

8.10 COMPLIANCE WITH LAWS

CONSULTANT shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

8.11 SEVERANCE

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be in effective unless CITY or CONSULTANT elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

8.12 JOINT PREPARATION

Each party and its counsel have participated fully in the review and revision of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

8.13 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of Articles 1 through 8 of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 8 shall prevail and be given effect.

8.14 JURISDICTION, VENUE, WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. All parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device, BY ENTERING INTO THIS AGREEMENT, CONSULTANT AND CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.

8.15 AMENDMENTS

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the City of Pompano Beach Commission and CONSULTANT or others delegated authority to or otherwise authorized to execute same on their behalf.

8.16 PRIOR AGREEMENTS

This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

8.17 INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth is acknowledged by the parties. The attached Exhibits A, B and C are incorporated into and made a part of this Agreement.

8.18 REPRESENTATION OF AUTHORITY

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

8.19 MULTIPLE ORIGINALS

Multiple copies of this Agreement may be executed by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

8.20 FORCE MAJEURE

CONTRACTOR shall not be held responsible for losses, delays, failure to perform or excess costs caused by events beyond the control of the Contractor. Such events may include, but are not restricted to the following: Acts of God; fire, epidemics, earthquake, flood or other natural disaster; acts of the government; riots, strikes, war or civil disorder; unavailability of fuel.

"CITY":

Witnesses:

CITY OF POMPANO BEACH

Betty J. Moses

By: [Signature]
LAMAR FISHER, MAYOR

Shelby R. Bartholomew

By: [Signature]
DENNIS W. BEACH, CITY MANAGER

Attest:

[Signature]
MARY L. CHAMBERS
CITY CLERK

(SEAL)

Approved As To Form:

[Signature]
GORDON B. LINN
CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

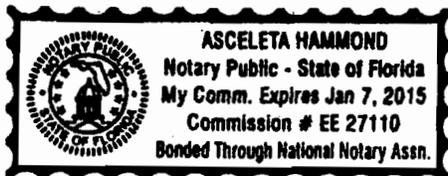
The foregoing instruments were acknowledged before me this 15th day of October, 2012 by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** as City Manager and **MARY L. CHAMBERS** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

[Signature]
NOTARY PUBLIC, STATE OF FLORIDA

Asceleta Hammond
(Name of Acknowledger Typed, Printed or Stamped)

Commission Number



"CONTRACTOR"

Kessler Consulting, Inc.
(Print name of company)

Witnesses:

Elizabeth Zelline
[Signature]

By: [Signature]

Print Name: Mitch Kessler

Title: President

Business License No. 22620.0000
Hillsborough County Occupational License

STATE OF FLORIDA

COUNTY OF Hillsborough

The foregoing instrument was acknowledged before me this 25th day of July, 2012, by Mitch Kessler as President of Kessler Consulting, Inc. A Florida corporation on behalf of the corporation. (He/she is personally known to me) or who has produced _____ (type of identification) as identification.

NOTARY'S SEAL:



Lisa Lampert
NOTARY PUBLIC, STATE OF FLORIDA

Lisa Lampert
(Name of Acknowledger Typed, Printed or Stamped)

#EE213985
Commission Number

EXHIBIT A
SCOPE OF SERVICES

PHASE I

Task 1 Solid Waste System Review (estimated duration: 30 days)

Conduct a system-wide review of the City's solid waste and recycling program. This review will include a project kick-off meeting with appropriate Cit staff to confirm the project objectives and to request and obtain relevant City information. A review of all available information including, but not limited to, collection and disposal contracts, budgetary information, disposal and recycling data. A project implementation schedule will be developed.

Task 2 Development and Evaluation of Options (estimated duration: 60 days)

Develop and evaluate options available to the City for its future solid waste program. Part of those options should be latest industry trends, new uses in technology, stakeholder preferences, and opportunities and barriers in the local environment. Structure a City operated collection system, including the development of a Capital Improvement Program, to illustrate and compare the costs and benefits to a contracted service. A detailed evaluation of these options will include a cost benefit analysis, and consider City goals and stakeholder satisfaction. Options should include various combinations from the following categories:

- Service levels and types - the frequency of collections needed (twice per week, once per week, every other week), and how collections are conducted (manual, semi-automated, automated) based on local needs and requirements.
- Collection provider - renegotiation with current provider, competitive procurement of services, and City-operated collection will be assessed.
- Operational benchmarks - community health and safety, performance levels, and integration of City expectations will be considered.

Task 3 Rate and Cost of Services Analysis (estimated duration: 60 days)

Develop a rate and cost of service analysis for the options developed and evaluated in previous tasks. The rate and cost of service analysis should include, but not limited to the following:

- Review of historical trends in collection rates and services for Broward County and surrounding areas.
- Assessment of collection rate trends and comparisons in Florida, and assistance in determining a rate design alternative that is competitive and represents a "good value" to the City.

- Determine revenue requirements for the City and subsequent breakeven point based on current effective rates.

Deliverables from Tasks 1, 2 and 3 - Presentation of Findings

- Prepare a draft report on findings and obtain comments from staff.
- Engage City staff to review and obtain comments on the draft report.
- Revise the draft report based on comments and prepare and submit a final report.
- Assist staff in presenting findings to City of Pompano Beach Commission.

PHASE II

Task 4 Request for Proposal and Contract Negotiation (estimated: 180 days)

Based on the results of Phase I and the direction received from the City Commission regarding the results of the tasks, the development of procurement documents or assist in renegotiations with the existing waste hauler. Should procurement of new services be chosen, a RFP and contract will be designed to meet the City's objectives and stakeholder service expectations. Task activities will include, but are not limited to the following:

- Develop technical specifications for RFP to meet City's needs and objectives, including minimum qualifications and pricing structure.
- Develop a draft contract for inclusion in the RFP that incorporates desired services, ensures efficient and reliable services, and provides a stable rate structure.
- Work with City staff to finalize RFP specifications and draft contract.
- Compile list of potential vendors.
- Provide technical support and assistance with responding to questions directed to the City during a pre-bid meeting.
- Review written questions or comments received regarding the RFP, and assist in drafting any necessary addenda in response to questions.
- Review and evaluate RFP responses, and provide recommendation of Award of Bid.
- Prepare a summary sheet of price proposals.

Deliverables for Task 4 include:

- Draft and final RFP specifications and draft contract.
- List of potential vendors.
- Draft language for RFP addenda.
- Summary of price proposals.

- Modifications to contract resulting from final negotiations.
- Participation in up to four meetings, including one City Commission meeting.

Task 5 Transition and Implementation Planning (estimated duration: 180 days)

This task is completely dependent upon changes to the level and types of service implemented as a result of previous tasks. Scope of task will be better defined prior to commencement.

Identifying ordinances that may need to be revised to be consistent with the new programs being implemented. Preparation of ordinance language for staff review, and development of an implementation plan for transition. Transition planning must consider stakeholders, defining roles, and assign responsibilities. Must also address resources required, timeline, and budget necessary to fully implement any new service.

Transition plan should include deployment schedules, resource estimates, identification of special resources and staffing requirements. Plan must define management controls and reporting procedures, as well as risks and contingencies. Operational risk must be minimized, as new vendors must be managed through the process to ensure expectations are met.

Notable activities that should be included in the transition plan are as follows:

- Researching, developing and drafting ordinance revisions.
- Assembling a transition team.
- Assisting with program communication, education and outreach.
- Establishing stakeholder involvement.
- Implementing staff and vendor training as appropriate.
- Facilitating transition meetings and manage ongoing communications.
- Provide assistance with capital equipment acquisition, planning and distribution.

Deliverables include:

- Draft ordinance revisions.
- Transition plan.
- Project implementation schedule.
- Assistance with education and outreach program materials.
- Facilitation of regularly scheduled transition meetings with staff and selected vendors.