

**TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT**

TO: Mayor and Councilmembers

FROM/PHONE: Susan Dean 797-1042

DOCUMENT PREPARED BY Susan Dean

SUBJECT: Resolution

AFFECTED DISTRICT: Town wide

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH EXPENSE REDUCTION CONSULTING, INC., TO PERFORM AN AUDIT OF THE TOWN'S SOLID WASTE HAULER

REPORT IN BRIEF: The objective of the audit is to analyze and examine the Town's hauler's historical franchise fee receipts and records pertaining to any agreements for recycling or solid waste services and to determine whether past monies are due the Town for the last two contract periods (approximately nine years).

Cities throughout Broward County have at one time or another had this type of audit completed. In every case, it has been determined that for various reasons, money has been owed to the city by the franchised hauler.

The Town has previously looked into using the Town's auditors to provide this service, however, this approach would require a multi-phase process. The first phase would consist of an inquiry into the way that the Town's waste hauler collects the franchise fees; the amount of money collected by the waste hauler; the amount that is remitted to the Town; and how the fee is calculated. If discrepancies are found within the first phase, a more detailed audit can be done during the next budget year. This method is projected to cost approximately \$7,000 for the first phase. The second phase cost would be based on the first phase results, and could cost significantly more than the first phase.

The Town is proposing to hire an independent Consultant with a unique expertise in expense reduction, in the field of solid waste. Expense Reduction Consultants (ERC) have worked with local cities such as the City of Plantation and the City of Lighthouse Point. They have been contracted by Discovery Cruise Lines, Rachlin Cohen and Holtz, Vitas Health Care and other area businesses. Their knowledge of the waste management industry, as well as the Interlocal Agreements with Broward County, will be very valuable in performing this service.

As compensation for these services, the Town will pay ERC an amount equal to 50% of any credits received from the hauler, 30 days following receipt by the Town. No fee is charged unless the Town saves money as a direct result of ERC's efforts. This contract will also include

future cost savings, from the commencement of the first payment made to the Town as a result of ERC's findings until the end of the current Franchise Agreement with Waste Management in 9/30/2004. If the Town stops receiving franchise fee payments from Waste Management before 9/30/2004, shared savings will cease.

PREVIOUS ACTIONS:

None

CONCURRENCES:

Not Applicable

FISCAL IMPACT:

Has request been budgeted? no

If yes, expected cost: \$0

Account Name:

If no, amount needed: N/A

What account will funds be appropriated from:

Additional Comments: As compensation for these services, the Town will pay ERC an amount equal to 50% of any credits received from the hauler, 30 days following receipt by the Town. No fee is charged unless the Town saves money as a direct result of ERC's efforts. This contract will also include future cost savings, from the commencement of the first payment made to the Town as a result of ERC's findings until the end of the current Franchise Agreement with Waste Management in 9/30/2004. If the Town stops receiving franchise fee payments from Waste Management before 9/30/2004, shared savings will cease.

RECOMMENDATION(S):

Motion to approve

Attachment(s):

ERC Contract

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH EXPENSE REDUCTION CONSULTING, INC. TO PERFORM AN AUDIT OF THE TOWN'S SOLID WASTE HAULER.

WHEREAS, the Town desires to perform an audit of the franchise agreement with Waste Management/Southern Sanitation; and

WHEREAS, the Town requires the services of consultants to carry out this audit; and

WHEREAS, Expense Reduction Consulting, Inc. (ERC) has unique expertise in this area and has successfully performed audits for other public entities in Broward County; and

WHEREAS, after review, the Town Council authorizes the Mayor to execute a contract with ERC.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council authorizes the Mayor to execute a contract with ERC to perform an audit of the franchise agreement with Waste Management/Southern Sanitation which is attached hereto and identified as Attachment "A".

SECTION 2. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2003

MAYOR/COUNCILMEMBER

Attest:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2003

EXPENSE REDUCTION CONSULTING AGREEMENT

This Expense Reduction Consulting Agreement (this "Agreement") is made by and between EXPENSE REDUCTION CONSULTING, INC., a Florida corporation ("ERC"), and the Town of Davie ("Client") as of the 2nd day of July, 2003. In consideration of the mutual covenants, agreements, representations, warranties, terms and conditions set forth in this Agreement, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereby agree as follows:

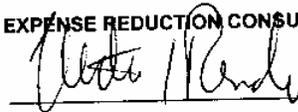
- 1. Expense Reduction Consulting Services.** ERC shall examine and analyze Client's historical/projected franchise fee receipts and haulers' records, related to waste and recycling agreements with Waste Management/Southern Sanitation ("Waste Management"). The objective of this review, is to determine whether past and/or future monies are due Client. If ERC determines that franchise fee payments are not correct and monies are due Client, ERC will negotiate and work with Waste Management to collect all past due monies and if required, document procedures that need to be taken in order to ensure proper payments in the future. Client will make final decision as to whether credit amounts ERC negotiates, satisfy Waste Management's contractual obligations. ERC shall provide Client written and oral updates throughout the project for the purpose of keeping Client fully informed about its' progress. Assuming that ERC is approved to commence this engagement on 7/2/03, it is our intention to begin on 7/7/03 and complete the project within 60 days. Our intention is to review the last 2 contract periods (approximately 9 years) and potentially other contract periods depending on the legal limitations and the quality and amount of information that is available to us.
- 2. Confidentiality of Client's Materials.** ERC acknowledges that, in the course of providing services to Client and analyzing the franchise fee payments, ERC and its agents and employees may be given access to or may become acquainted with, certain information, trade secrets or both relating to Client's business. ERC and its agents and employees shall not in any manner, divulge, disclose or communicate to any person or firm, except pursuant to its performance of this Agreement, any confidential information which ERC or its agents and employees may have acquired in the course of or as an incident to the provision of services by ERC.
- 3. Compensation Payable to ERC.** As compensation for ERC's services pursuant to this Agreement, Client shall pay ERC, an amount equal to fifty percent (50%) of any credits received and fifty percent (50%) of any future increase of franchise fee receipts realized by Client as a result of ERC's findings and recommendations. The applicable period relating to future shared savings shall commence upon Client's receipt of the first franchise fee payment from Waste Management which includes an increase in franchise fees reflecting the implementation of ERC's findings and recommendations and shall continue thru the period ending 9/30/2004. If Customer stops receiving franchise fee payments from Waste Management before 9/30/2004, shared savings will cease. If Customer fails to fully pay an invoice for amounts payable to ERC within 30 days of its receipt, then Customer shall be liable to ERC for (a) a late payment fee equal to 1½% per month of the unpaid balance and (b) all costs incurred by ERC in pursuing the collection of such invoice (including attorneys' fees).
- 4. Client's Cooperation.** Client shall execute and deliver such documents and do all matters and things which may be convenient or necessary to more effectively and completely enable ERC to carry out the intentions of this Agreement and determine the compensation payable to ERC, including (A) providing ERC access to Client's accounting records relating to this project, (B) authorizing Client's employees and representatives to discuss this project with ERC and (C) permitting ERC to meet with and contact Client's vendors and authorizing such vendors to discuss and provide ERC such vendors' records relating to this project. Client's obligations of cooperation in accordance with this Section shall apply both prior to ERC delivering its findings and recommendations and, for purposes of calculating the compensation payable to ERC pursuant to this Agreement, after ERC delivers its findings and recommendations.
- 5. Independent Contractor.** ERC and its agents and employees, including its executive officers, shall not be the agent of Client by reason of this Agreement, but shall be independent contractors performing contractual services for Client. Nothing in this Agreement shall constitute or be construed to create a partnership, joint venture, employer/employee, or agency relationship between Client and ERC. ERC may engage employees, agents and/or representatives to work under its supervision in connection with this Agreement.
- 6. No Liability of ERC.** In no event shall ERC be liable for any direct, indirect, consequential, or incidental damages (including damages for lost profits, business interruption and the like), related to the performance or nonperformance of any vendor working with ERC or the implementation of any of ERC's recommendations.
- 7. Governing Law, Jurisdiction and Venue.** This Agreement and all transactions contemplated by this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida. The parties acknowledge that a substantial portion of the negotiations and anticipated performance of this Agreement occurred or shall occur in Broward County, Florida. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought in the courts of record of the State of Florida in Broward County or the United States District Court, Southern District of Florida. Each party consents to the jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court. Service of any court paper may be effected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws, rules of procedure or local rules.
- 8. Enforcement Costs.** If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Agreement by either party, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, sales and use taxes, court costs and all expenses even if not taxable as court costs (including, without limitation, all such fees, taxes, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that civil action, arbitration or legal proceeding, in addition to any other relief to which prevailing party may be entitled. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administration costs, sales and use taxes and all other charges billed by prevailing party's attorney.
- 9. Entire Agreement.** This Agreement represents the entire understanding and agreement between the parties with respect to the subject matter hereof, and supersedes all other negotiations, understandings and representations (if any) made by and between such parties.

CLIENT: TOWN OF DAVIE

By: _____

Its: _____

EXPENSE REDUCTION CONSULTING, INC.



By: Victor J. Ronder

Its: President

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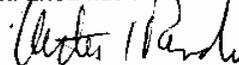
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Its: _____

EXPENSE REDUCTION CONSULTING, INC.



By: Victor J. Ronder

Its: President

