

TOWN OF LOXAHATCHEE GROVES

RESOLUTION NO. 2009-012

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, RELATING TO THE PROVISION OF RESIDENTIAL SOLID WASTE COLLECTION SERVICES AND FACILITIES AND PROGRAMS ("SOLID WASTE COLLECTION SERVICES") IN THE TOWN OF LOXAHATCHEE GROVES, FLORIDA; PROVIDING FOR PURPOSE AND DEFINITIONS; PROVIDING FOR LEGISLATIVE DETERMINATIONS; ESTABLISHING THE ESTIMATED RATE FOR THE SOLID WASTE COLLECTION SERVICES ASSESSMENT FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2009; DIRECTING THE PREPARATION OF AN ASSESSMENT ROLL; AUTHORIZING A PUBLIC HEARING AND DIRECTING THE PROVISION OF NOTICE THEREOF; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Town of Loxahatchee Groves Ordinance No. 2008-05, entitled "Special Assessments," adopted on July 1, 2008, provides for the home rule authority of the Town Council to levy and collect special assessments; and,

WHEREAS, Ordinance 2008-05, authorizes the Town to "create, install, improve, maintain and fund any and all costs associated with the Town establishing and operating a Town system of providing a solid waste collection services program (Solid Waste Collection Program) for residential and/or commercial service to the property owners, residents and citizens of the Town," and provides findings of special benefit to real property as a result of such services; and,

WHEREAS, the Town has in place a Franchise Agreement with Waste Pro of Florida, Inc. (hereinafter "Waste Pro"), pursuant to which the Town provides Solid Waste Collection Services to, among others, all residential properties that receive residential solid waste collection services within the Town; and,

WHEREAS, the Town believes it is in the best interests of the residents and residential properties owners to collect funds for the costs of the Town's Solid Waste Collection Services to all residential units that receive Solid Waste Collection Services by the Town, through its Franchise Agreement, through the levy and collection of a special assessment, as such, will permit the payment for the services on an annual basis along with properties taxes and other special assessments, reduce the costs of the Solid Waste Collection Program to the Town, and to ensure that all properties that receive residential Solid Waste Collection Services by the Town through the Franchise Agreement pay for such so that no property is over-charged by virtue of the failure of other properties to pay for such; and,

WHEREAS, the Town's Franchise Agreement with Waste Pro provides for the levy and collection of a Solid Waste Collection Services Special Assessment by the Town, and remittance of payment to Waste Pro; and,

WHEREAS, Solid Waste Collection Services provided by the Town through its Franchise Agreement as defined hereinafter provide the requisite special benefit to Assessed Property such that they may be funded through a special assessment; and,

WHEREAS, Town staff has reviewed the budget for Solid Waste Collection Services, for residential units that receive residential Solid Waste Collection Services by the Town through the Franchise Agreement to ensure that the Solid Waste Collection Services Special Assessment meets the legal requirements for special benefit and fair apportionment; and,

WHEREAS, the Town Council determines that it is fair and equitable to levy and collect a non-ad valorem special assessment to fund the Solid Waste Collection Services provided by the Town through its Franchise Agreement, consistent with the methodology and allocation as provided hereinafter.

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

SECTION 1. RECITALS. The foregoing "WHEREAS" clauses are hereby ratified and confirmed by the Town Council and incorporated herein by this reference.

SECTION 2. AUTHORITY . This Resolution is adopted pursuant to the provisions of Ordinance No. 2008-05 (the "Ordinance"), Sections 166.021 and 166.041, Florida Statutes, and other applicable provisions of law.

SECTION 3. PURPOSE. This Resolution constitutes the Preliminary Assessment Resolution as defined in the Ordinance which initiates the process for developing the annual Assessment Roll and directs the imposition of a Solid Waste Collection Services Assessment as described hereinafter, for the Fiscal Year beginning October 1, 2009. Its purpose is to provide procedures and standards for the imposition of a Solid Waste Collection Services Assessment for all residential units that receive solid waste collection services within the Town under the general home rule powers of a municipality to impose special assessments, and to authorize a procedure for the funding of Solid Waste Collection Services for these residential properties, facilities, or programs providing special benefits to Assessed Properties within the Town.

SECTION 4. DEFINITIONS. All capitalized words and terms not otherwise defined herein shall have the meanings set forth in the Ordinance. Unless the context indicates otherwise, words imparting the singular number, include the plural number, and vice versa. As used in this Resolution, the following terms shall have the following meanings unless the context hereof otherwise requires:

"Assessed Property" means all single family residential units that receive a special benefit from the delivery by the Town of the Solid Waste Collection Services, programs or facilities described herein.

"Assessment Coordinator" means the person designated by the Town to administer the Town's Solid Waste Collection Services, facility, or program, or such person's designee.

"Assessment Roll" means the special assessment roll relating to the residential Solid Waste Collection Services Assessment approved herein, or an Annual Rate Resolution pursuant to the Final Resolution.

"Cost Apportionment" means the apportionment of the residential Solid Waste Collection Services Assessed Cost among all single-family residential units that receive residential Solid Waste Collection Services pursuant to the apportionment methodology described in Section 8 of this Preliminary Assessment Resolution.

"Dwelling Unit" means a Building, or a portion thereof, available to be used for residential purposes, consisting of one or more rooms arranged, designed, used, or intended to be used as living quarters for one family only.

"Estimated Solid Waste Collection Services Assessment Rate Schedule" means that rate schedule attached hereto as Appendix "A" and hereby incorporated herein by reference, specifying the Solid Waste Collection Services Assessed Costs determined in Section 9 of this

Preliminary Assessment Resolution and the estimated Solid Waste Collection Services Assessments established in Section 9 of this Preliminary Assessment Resolution.

"Improvement Codes" mean the building use codes (also known as DOR codes) assigned by the Property Appraiser to Tax Parcels within the Town.

"Residential Property" means those Tax Parcels with a Code Description designated as Single-Family "Residential" within the Improvement Codes and those otherwise designated as "Residential" within the Improvement Codes that receive residential Solid Waste Collection Services by the Town through the Franchise Agreement.

"Solid Waste Collection Services" shall mean the collection of solid waste as defined in Section 109 of Town Ordinance 2008-005, and as provided pursuant to the Franchise Agreement with Waste Pro.

"Solid Waste Collection Services Assessment" means a special assessment lawfully imposed by the Town against Assessable Property to fund all or any portion of the cost for Town's Solid Waste Collection Services for residential properties, facilities, or programs providing a special benefit to property as a consequence of a logical relationship to the value, use, or characteristics of property. Solid Waste Collection Services funded by this Solid Waste Collection Services Assessment include those services provided pursuant to the Town's franchise ordinance and Franchise Agreement for residential Solid Waste Collection Services.

"Solid Waste Collection Services Cost" means the amount necessary in any Calendar Year to fund the provision of the Town's Solid Waste Collection Services for residential properties, facilities, or programs that provide a special benefit to Assessable Property, through the Franchise Agreement. In addition, Solid Waste Collection Services Cost shall include all costs associated with the structure, implementation, collection, and enforcement of the Solid

Waste Collection Services Assessment, including any service charges of the Tax Collector, or Property Appraiser, and amounts necessary to off-set discounts received for early payment of Solid Waste Collection Services Assessments pursuant to the Uniform Assessment Collection Act

"Tax Collector" shall mean the Palm Beach County Department of Finance and Administrative Services as described in Article IV of the Charter of Palm Beach County.

"Tax Parcel" means a parcel of property located within the Town to which the Property Appraiser has assigned a distinct ad valorem property tax identification number.

"Uniform Assessment Collection Act" means Sections 197.3632 and 197.3635, Florida Statutes, as amended, and any successor statutes authorizing the collection of non-ad valorem special assessments on the same bill as ad valorem taxes, and any regulations pertaining thereto.

SECTION 5. PROVISION AND FUNDING OF SOLID WASTE COLLECTION SERVICES.

(A) Upon the imposition of the Solid Waste Collection Services Assessment for Solid Waste Collection Services for residential properties, facilities, or programs against Assessed Property located within the Town, the Town shall provide Solid Waste Collection Services to such Assessed Property through the Franchise Agreement. The cost to provide such Solid Waste Collection Services, facilities, or programs to residential properties, as described herein, shall be funded from proceeds of the Solid Waste Collection Services Assessments.

(B) It is hereby ascertained, determined, and declared that each parcel of Assessed Property located within the Town will be benefited by the Town's provision of Solid Waste Collection Services for properties, facilities, and programs in an amount not less than the Solid Waste Collection Services Assessment imposed against such parcel, computed in the manner set forth in

this Preliminary Assessment Resolution.

SECTION 6. IMPOSITION AND COMPUTATION OF SOLID WASTE COLLECTION SERVICES ASSESSMENTS. Solid Waste Collection Services Assessments shall be imposed against all residential dwelling units that receive Solid Waste Collection Services, as provided herein. The Cost Apportionment described herein is approved and adopted as the methodology to impose and compute the Solid Waste Collection Services Assessment.

SECTION 7. LEGISLATIVE DETERMINATIONS OF AUTHORITY, SPECIAL BENEFIT AND FAIR APPORTIONMENT. The Town Council adopts the following legislative findings relating to the Solid Waste Collection Services special assessment:

AUTHORITY

7.1 Pursuant to Article VIII, Section 2(b) of the Florida Constitution, and Sections 166.021 and 166.041, Florida Statutes, the Town Council has all powers of local self-government to perform municipal functions and render municipal services except when prohibited by law and such power may be exercised by the enactment of Town ordinances or resolutions.

7.2 The Town Council may exercise any governmental, corporate, or proprietary power for a municipal purpose except when expressly prohibited by law, and the Town Council may legislate on any subject matter on which the Florida Legislature may act, except those subjects described in (a), (b), (c), and (d) of Section 166.021(3), Florida Statutes. The subject matter of paragraphs (a), (b), (c), and (d) of Section 166.021(3), Florida Statutes, are not relevant to the imposition of assessments related to Solid Waste Collection Services, facilities or programs.

7.3 Section 403.706(1), Florida Statutes, provides that the Town is responsible to collect and transport solid waste from within its boundaries to a solid waste disposal facility.

7.4 To fulfill its obligations, the Town entered into a Franchise Agreement with Waste Pro for the collection and transport of solid waste from, among others, single-family residential properties, and certain multi-family residential properties that receive residential solid waste collection services, within the Town.

SPECIAL BENEFIT

7.5 The Town provides Solid Waste Collection Services to the Assessed Properties through its Franchise Agreement. All Assessed Properties receive residential Solid Waste Collection Services, and therefore are required to receive the Town's Solid Waste Collection Services through the Town's Franchise Agreement.

7.6 The special benefit provided to the Assessed Properties as a result of the provision of Solid Waste Collection Services by the Town through its Franchise Agreement, and as a result of the Solid Waste Collection Services Assessment include by way of example and not limitation, the availability and use of Solid Waste Collection Services by the owners and occupants of the Assessed Properties, the enhancement of environmentally responsible use and enjoyment of developed residential properties in the Town, the protection of public health and safety, ensuring sanitary collection and disposal of solid waste from residential units in the Town, a potential increase in value to property, and better service to landowners and tenants.

7.7 The Town's provision of Solid Waste Collection Services through its Franchise Agreement possesses a logical relationship to the use and enjoyment of the Assessed Properties by:

7.7.1 protecting and potentially increasing the value of the residential units by providing solid waste services;

7.7.2 enhancing the environmentally responsible use of residential land in the Town;

7.7.3 protecting the health of intended occupants in the use and enjoyment of residential units by ensuring the proper collection and disposal of solid waste from the Assessed Properties;

7.8 Commercial properties, and multi-family residential properties in the Town that receive commercial solid waste collection services, are not specially benefited by the Town's Solid Waste Collection Services funded by the Solid Waste Collection Special Assessment in that those properties receive volume-based solid waste collection services. Commercial properties and multi-family residential properties in the Town that do not receive residential solid waste collection services are not benefited by the provision of the residential Solid Waste Collection Services by the Town through its Franchise Agreement. Moreover, given the fact that commercial properties, and residential properties that receive commercial solid waste services, receive Solid Waste Collection Services on a volume basis, it is impossible to determine the exact annual costs that can be apportioned to each property, thereby making it impossible to ensure that an assessment levied upon these properties can be fairly apportioned. Therefore, it is fair and reasonable not to levy a special assessment for the funding of residential solid waste collection services upon those properties. In addition, the cost of services provided to commercial properties shall not be paid by any funds collected pursuant to the Town's Solid Waste Collection Special Assessment.

IMPOSITION AND COLLECTION

7.9 The Solid Waste Collection Services Assessments to be imposed pursuant to this Resolution shall constitute non-ad valorem assessments within the meaning and intent of the Uniform Assessment Collection Act.

7.10 The Solid Waste Collection Services Assessment imposed pursuant to this Resolution is imposed by the Town of Loxahatchee Groves' Town Council, not the Palm Beach County Board of County Commissioners, Property Appraiser or Tax Collector. Any activity of the Property Appraiser or Tax Collector under the provisions of this Resolution shall be construed as ministerial.

7.11 So long as the Solid Waste Special Assessment is levied, the Assessed Properties will no longer be billed directly by the Town for the Solid Waste Collection Services they receive by the Town through the Franchise Agreement.

APPORTIONMENT

7.12 The size or the value of the Residential Property does not determine the scope of the required solid waste services. The potential demand for Solid Waste Collection Services is driven by the existence of a Dwelling Unit.

7.13 Apportioning the Solid Waste Assessed Costs for Solid Waste Collection Services attributable to Residential Property on a per Dwelling Unit basis is required to avoid cost inefficiency and unnecessary administration and is a fair and reasonable method.

7.14 Because commercial properties, and multi-family residential properties that receive commercial solid waste collection services, do not benefit from the provision of Solid Waste Collection Services by the Town through the Franchise Agreement, the Solid Waste Collection Services Assessed Costs are not apportioned to those properties.

**SECTION 8. COST APPORTIONMENT AND PARCEL APPORTIONMENT
METHODOLOGIES.**

Cost Apportionment: The Solid Waste Collections Services Assessed Costs are determined by the rates and charges set forth within the Franchise Agreement. The Franchise Agreement provides for an annual charge to the Assessed Properties for the Solid Waste Collection Services provided by the Town through its Franchise Agreement (Assessment Amount). The Assessment Amount is then multiplied by the number of dwelling units on such Tax Parcel. For fiscal year 2009, the annual charge per residential dwelling unit in the Town is \$372.73.

**SECTION 9. DETERMINATION OF SOLID WASTE COLLECTION ASSESSED
COSTS; ESTABLISHMENT OF ANNUAL SOLID WASTE COLLECTION
ASSESSMENT RATES.**

(A) The Solid Waste Collection Service Assessed Costs to be assessed and apportioned among Assessed Properties pursuant to the Cost Apportionment for the Fiscal Year commencing October 1, 2009, is the amount determined in the manner described in Section 8 above, and within in the Estimated Solid Waste Collection Services Assessment Rate Schedule, attached hereto as Appendix A. The approval of the Estimated Solid Waste Collection Services Assessment Rate Schedule by the adoption of this Preliminary Assessment Resolution determines the amount of the Solid Waste Collection Services Assessed Costs.

(B) The estimated Solid Waste Collection Services Assessments specified in the Estimated Solid Waste Collection Services Assessment Rate Schedule are hereby established to fund the specified Solid Waste Collection Services Assessed Costs determined to be assessed in the Fiscal Year commencing October 1, 2009.

(C) The estimated Solid Waste Collection Services Assessments established in this Preliminary Assessment Resolution shall be the estimated assessment rates applied by the Assessment Coordinator in the preparation of the updated Assessment Roll for the Calendar Year commencing October 1, 2009, as provided in Section 10 of this Preliminary Assessment Resolution.

SECTION 10. ANNUAL ASSESSMENT ROLL.

(A) The Assessment Coordinator is hereby directed to prepare, or cause to be prepared, an Assessment Roll for the Fiscal Year commencing October 1, 2009, in the manner provided in this Preliminary Assessment Resolution. The Assessment Coordinator shall apportion the estimated Solid Waste Collection Service Assessed Cost to be recovered through Solid Waste Collection Services Assessments in the manner set forth in this Preliminary Assessment Resolution. A copy of this Preliminary Assessment Resolution, the Ordinance, and the Assessment Roll shall be maintained on file in the office of the Town Clerk and open to public inspection. The foregoing shall not be construed to require that the Assessment Roll proposed for the Fiscal Year beginning October 1, 2009 be in printed form if the amount of the Solid Waste Collection Services Assessment for each parcel of property can be determined by the use of a computer terminal available to the public.

(B) It is hereby ascertained, determined, and declared that the method of determining the Solid Waste Collection Services Assessments for the Town's Solid Waste Collection Services as set forth in this Preliminary Assessment Resolution is a fair and reasonable method of apportioning the Solid Waste Collection Services Assessed Cost among parcels of Assessed Property located within the Town, as the methodology and apportionment assures that no property is assessed an amount greater than the benefit which it receives from the residential Solid Waste Collection Services provided by the Town through its Franchise Agreement; and,

SECTION 11. AUTHORIZATION OF PUBLIC HEARING. There is hereby established a public hearing to be held at 6:45 p.m., on September 14, 2009, at the Loxahatchee Groves Water Control District Headquarters, 101 West "D" Road, Town of Loxahatchee Groves, Florida, at which time the Town Council will receive and consider any comments on the residential Solid Waste Collection Services Assessment from the public and affected property owners and consider imposing the residential Solid Waste Collection Services Assessment and collecting such assessments on the same bill as ad valorem taxes.

SECTION 12. NOTICE BY PUBLICATION. The Town Manager, or his designee, shall publish notice of the public hearing authorized by Section 11 hereof, in the manner and time provided within the Ordinance. The notice shall be published no later than August 24, 2009, in substantially the form attached hereto as Appendix C.

SECTION 13. NOTICE BY MAIL. The Town Manager, or his designee, shall also ensure timely notice by use of the TRIM notice forwarded annually by the Property Appraiser's Office, or by U.S. Mail as may be required by law, to the Owner of each parcel of Assessed Property, at least twenty (20) days prior to the public hearing, as required by the Ordinance, and the Uniform Assessment Collection Act.

SECTION 14. PROOF OF NOTICE. The Town Manager, or his designee, may provide proof of such notice by affidavit, if any is required pursuant to the Ordinance or Resolution.

SECTION 15. APPLICATION OF ASSESSMENT PROCEEDS. Proceeds derived by the Town from the Solid Waste Collection Services Assessments will be utilized for the provision of Solid Waste Collection Services, facilities, and programs by the Town, through its Franchise Agreement, as described herein.

SECTION 16. CONFLICT. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 17. SEVERABILITY. 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.

SECTION 18. EFFECTIVE DATE. This Preliminary Assessment Resolution shall take effect immediately upon its passage and adoption.

ADOPTED by the Town Council of the **TOWN OF LOXAHATCHEE GROVES, FLORIDA**, this 7th day of July, 2009.

TOWN OF LOXAHATCHEE GROVES,
FLORIDA

ATTEST:

Matthew Lipman
TOWN CLERK

David Browning
Mayor David Browning

Dennis Lipp
Vice Mayor Dennis Lipp

APPROVED AS TO LEGAL FORM:

[Signature]
Office of the Town Attorney

[Signature]
Council Member

[Signature]
Council Member

Absent
Council Member (M)

APPENDIX A

**ESTIMATED SOLID WASTE COLLECTION SERVICES
ASSESSMENT RATE SCHEDULE**

SECTION A-1 DETERMINATION OF SOLID WASTE COLLECTION SERVICES ASSESSED COSTS. The estimated Solid Waste Collection Services Assessed Costs to be assessed for the Fiscal Year commencing October 1, 2009, is \$418,575.79.

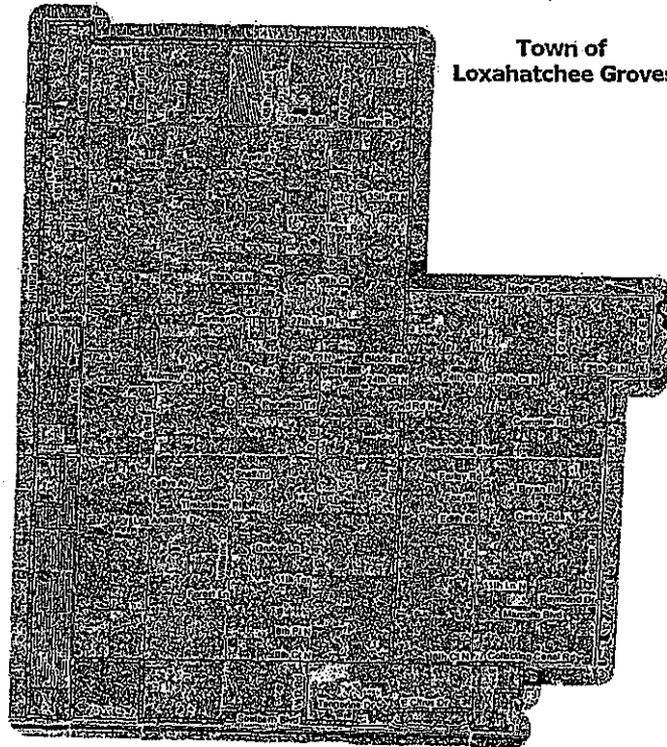
SECTION A-2 ESTIMATED SOLID WASTE COLLECTION SERVICES ASSESSMENTS. The estimated Solid Waste Collection Services Assessments to be assessed and apportioned among benefitted parcels pursuant to the Cost Apportionment and Parcel Apportionment to generate the estimated Solid Waste Collection Services Assessed Cost for the Fiscal Year commencing October 1, 2009, are hereby established as follows for the purpose of this Preliminary Assessment Resolution:

RESIDENTIAL UNITS: \$ 372.73 PER UNIT

APPENDIX B

FORM OF NOTICE TO BE PUBLISHED

To be published no later than August 24, 2009.



**Town of
Loxahatchee Groves**

**NOTICE OF HEARING TO IMPOSE AND
PROVIDE FOR COLLECTION OF SOLID WASTE COLLECTION SERVICES
SPECIAL ASSESSMENTS**

Notice is hereby given that the Town Council of the Town of Loxahatchee Groves will conduct a public hearing to consider imposing Solid Waste Collection Services Special Assessments upon residential dwellings that receive residential solid waste collection services, for the provision by the Town of Solid Waste Collection Services to such properties within the Town of Loxahatchee Groves.

The hearing will be held at 6:45 p.m., on September 14, 2009, at Loxahatchee Groves Water Control District Headquarters, 101 West "D" Road, Town of Loxahatchee Groves,

Florida, for the purpose of receiving public comment on the proposed assessments. All affected property owners have a right to appear at the hearing and to file written objections with the Town Council within 20 days of this notice. If a person decides to appeal any decision made by the Town Council with respect to any matter considered at the hearing, such person will need a record of the proceedings and may need to ensure that a verbatim record is made, including the testimony and evidence upon which the appeal is to be made. In accordance with the Americans with Disabilities Act, persons needing a special accommodation or an interpreter to participate in this proceeding should contact the Town Clerk's Office at (561) 793-2418, at least seven days prior to the date of the hearing.

The assessment for each parcel of property will be based upon each parcel's classification and the total number of billing units attributed to that parcel. The following table reflects the proposed Solid Waste Collection Services assessment schedule:

RESIDENTIAL UNITS FOR FISCAL YEAR 2009-2010: \$372.73 PER UNIT

Copies of the Assessment Ordinance, the Preliminary Assessment Resolution and the preliminary Assessment Roll are available for inspection at the Town Clerk's Office, 14579 Southern Blvd, Suite #2, Loxahatchee Groves, Florida 33470.

The assessments will be collected on the ad valorem tax bill to be mailed in November 2009, as authorized by section 197.3632, Florida Statutes. Failure to pay the assessments will cause a tax certificate to be issued against the property, which may result in a loss of title.

If you have any questions, please contact the Town Clerk at (561) 793-2418, Monday through Friday between 8:00 a.m. and 5:00 p.m.

TOWN CLERK TOWN OF LOXAHATCHEE GROVES.