

TOWN OF GOLDEN BEACH, FLORIDA

RESOLUTION NO. 2831.22

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF GOLDEN BEACH, FLORIDA APPROVING A WASTE DISPOSAL AGREEMENT WITH WHEELABRATOR SOUTH BROWARD, INC.; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Town Council of the Town of Golden Beach, Florida (the "Town") provides residential waste collection services for the Town residents and desires to deliver the waste to a waste management/disposal facility outside of the Town; and

WHEREAS, Wheelabrator South Broward, Inc. ("Wheelabrator") operates a waste disposal facility in Fort Lauderdale, Florida, where it accepts waste for a fee and generates energy from the waste; and

WHEREAS, the Town Council has determined that the Waste Disposal Agreement between the Town and Wheelabrator, attached hereto as Exhibit "A," (the "Agreement") is acceptable and will well serve the needs of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF GOLDEN BEACH, FLORIDA AS FOLLOWS:

Section 1. Recitals Adopted. Each of the above-stated recitals are hereby adopted and confirmed.

Section 2. Agreement Approved. The Town Council hereby approves the Waste Disposal Agreement.

Section 3. Implementation. The Town Mayor and Town Manager are directed to take all steps reasonably necessary to implement this Resolution.

Section 4. Authorization. The Town Manager is authorized to execute the Agreement in substantially the same form as Exhibit "A," subject to the approval of the Town Attorney as to form, content, and legality.

Section 5. Effective Date. This Resolution shall be effective immediately upon adoption.

The Motion to adopt the foregoing Resolution was offered by Vice Mayor Mendal, seconded by Councilmember Lusskin.

Mayor Glenn Singer	<u>Aye</u>
Vice Mayor Jaime Mendal	<u>Aye</u>
Councilmember Bernard Einstein	<u>Aye</u>
Councilmember Judy Lusskin	<u>Aye</u>
Councilmember Kenneth Bernstein	<u>Absent</u>

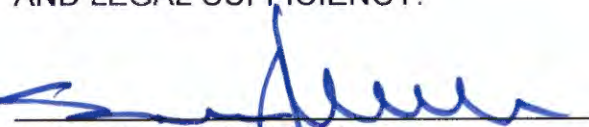
PASSED AND ADOPTED by the Town Council of the Town of Golden Beach, Florida this 30th day of August, 2022.



MAYOR, GLENN SINGER

ATTEST:


LISSETTE PEREZ
TOWN CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:


STEPHEN J. HELFMAN
TOWN ATTORNEY



TOWN OF GOLDEN BEACH

One Golden Beach Drive
Golden Beach, FL 33160

MEMORANDUM

Date: August 30, 2022

To: Honorable Mayor Glenn Singer &
Town Council Members

From: Alexander Diaz, *Alex B*
Town Manager

Subject: Resolution No. 2831.22 – Approving the Waste Disposal
Agreement with Wheelabrator South Broward, Inc.

Item Number:

10

Recommendation:

It is recommended that the Town Council adopt the attached Resolution No. 2831.22 as presented.

Background:

The Town's existing agreement with Wheelabrator has expired. Their close proximity to the Town and competitive tipping fees make them the right choice for our waste disposal. Wheelabrator is also a waste to energy plant, which is consistent with our "Going Green" approach to Town services.

The proposed increase in tipping fees is below the three year average Consumer Price Index (CPI) for the region.

Fiscal Impact:

As budgeted in the Fiscal Year.



WASTE-TO-ENERGY DISPOSAL AGREEMENT

THIS AGREEMENT (including all Attachments hereto, this "Agreement"), is dated as of October 1, 2022 (the "Effective Date"), by and between Wheelabrator South Broward, a Delaware corporation ("Company"), and The Town of Golden Beach, Florida, A Florida Municipal Corporation, ("Customer"), pursuant to which Customer may deliver Acceptable Waste (as defined below) to Company, in accordance with the following terms and conditions:

1. Delivery of Acceptable Waste. Customer shall only deliver Acceptable Waste to the facility operated by Company and located at 4400 South State Road 7 Fort Lauderdale Florida 333314 (the "Facility") subject to the terms and conditions herein. For purposes of this Agreement, "Acceptable Waste" means all household garbage, trash, rubbish, refuse, normally or which may be hereinafter, collected and disposed of by or on behalf of Customer, but excluding, without limitation (a) Hazardous Waste, explosives and ordnance materials, pathological wastes, radioactive materials, lead acid batteries, sludges, highly inflammable substances, cesspool or other human wastes, human and animal remains, motor vehicles, farm or other large machinery, nonburnable construction materials and demolition debris and hazardous refuse of any type or kind including those addressed by regulations adopted by the United States Environmental Protection Agency ("EPA") pursuant to the Resource Conservation and Recovery Act of 1976, as amended, or other federal or state statutes, such as, but not limited to, cleaning fluids, hazardous paints, acids, caustics, poisons, radioactive materials, fine powdery earth used to filter cleaning fluid, and refuse of similar nature; (b) any item of waste exceeding six feet in any one of its dimensions or being in whole or in part a solid mass, the solid mass portion of which has dimensions such that a sphere with a diameter of eight inches could be contained within such solid mass portion; (c) all large household appliances, commonly referred to as "white goods" including, without limitation, refrigerators, stoves, washing machines, drying machines, water heaters, and the like; (d) any controlled substances regulated under the Controlled Substances Act, 21 USC 801 et seq., or any equivalent state law; (e) small appliances containing chlorofluorocarbons (CFCs) including, without limitation, air conditioners, water coolers, and dehumidifiers; and (f) all other items of waste which Company reasonably believes would be likely to pose a threat to health or safety or the acceptance and disposal of which may cause damage to the Facility or be in violation of any judicial decision, order, action, permit, authorization, license, approval or registration of any federal, state or local government or any agency thereof, or any other regulatory authority or applicable law or regulations.

In addition, the parties recognize that some substances which are not, as of the date of this Agreement, considered harmful or of a toxic nature or dangerous, may be determined by the EPA or any other federal, state, or local agency subsequent to the date hereof to be hazardous, toxic, dangerous, or harmful, and at the time of such determination, such substances shall cease to be Acceptable Waste.

For purposes of this Agreement, (a) "Unacceptable Waste" means any waste other than Acceptable Waste and (b) "Hazardous Waste" means (i) any waste identified as a hazardous waste in 40 CFR Part 261 or in any applicable state or local hazardous waste regulatory program; (ii) any waste that is mixed with a listed Hazardous Waste as regulated in 40 CFR Part 261.3(a)(2)(iv) or any applicable state or local hazardous waste regulatory program; (iii) any waste containing polychlorinated biphenyls in concentrations that are subject to regulation under the federal Toxic Substances Control Act; (iv) any waste containing radioactivity at levels that are subject to regulation under federal, state, or local law; or (v) any other waste that is regulated as a hazardous waste by any applicable federal, state, or local statutory or common laws, regulations, rules, or ordinances.

2. Manner of Delivery. Customer shall deliver Acceptable Waste in a clean, orderly, and safe manner during scheduled delivery days and hours and in such manner that the Acceptable Waste will not be spilled or blown on the Facility site, or onto any adjacent roadways. Should any waste be so spilled or blown, Customer shall promptly, at its sole cost and expense, collect and remove such spilled or blown waste and, if Customer fails to do so, Customer shall be liable to Company for all costs of such clean-up by Company. Customer agrees to adhere to Company safety rules and regulations at all times while on the Facility premises. Customer shall cause the Customer's Declaration in the form attached hereto as Attachment B to be executed by its authorized representative prior to delivering any Acceptable Waste to the Facility. Title to Acceptable Waste, including all environmental and renewable attributes thereto, shall pass to Company upon Customer's delivery of Acceptable Waste to the Facility; provided, however, that title to, control of, and responsibility and liability for Unacceptable Waste shall never pass to Company or any of its affiliates, and Customer expressly agrees to defend, indemnify and hold harmless Company from and against any and all damages, penalties, costs, claims, liabilities, demands, suits, causes of action and expenses (including attorneys' fees) resulting from or arising out of such Unacceptable Waste.

3. Facility Access. Company shall have the right to designate certain routes to be used by Customer to deliver Acceptable Waste to the Facility. Customer agrees to utilize only those designated routes that Company determines constitute reasonable direct access to the Facility. Company may take whatever action is necessary to ensure Customer compliance with the above directives, including, without limitation, barring the offending truck from the Facility or termination of this Agreement.

4. Delivery Vehicles. Customer shall cause all vehicles used for deliveries of Acceptable Waste to the Facility to be self-emptying, in safe and clean condition, in good repair, and in compliance with all applicable requirements of the Department of Transportation. At Company's discretion, Customer shall use only vehicles with the capability of dumping directly into the Facility's refuse pit. Company may at its discretion install transponders in Customer's vehicles for the purpose of identifying vehicles entering the Facility. Following installation, Customer shall not remove or tamper with a transponder.

5. Weighing Procedures. Company may utilize and maintain motor truck scales to weigh all vehicles delivering Acceptable Waste to the Facility. Waste vehicles delivering Acceptable Waste to the Facility shall have the name of Customer and truck number permanently indicated and conspicuously displayed in a location approved by Company. Each incoming waste vehicle shall be weighed, indicating gross weight, time, and Customer and truck identification number on a weight record. Each vehicle will also be weighed after unloading or a tare weight will be used at the sole discretion of Company. The weight record for all Acceptable Waste delivered to the Facility shall be determined solely from the Facility's scale operations.

6. Refusal of Delivery; Removal of Waste. Company shall have the right, in its sole discretion, to refuse deliveries of:

- (a) Waste other than Acceptable Waste;
- (b) Any waste delivered at other than the then established receiving hours as posted by Company; or
- (c) Any other Acceptable Waste which Company is unable or unwilling to accept or process for any reason including without limitation, the existence of any past due balances owed by Customer to Company.

Company may inspect the contents of any vehicle delivering waste to the Facility and may require Customer, if it delivers Unacceptable Waste to the Facility, to separate all such Unacceptable Waste from Acceptable Waste. If such separation is impractical, Company may refuse the entire load, whether before or after Company has taken physical custody or otherwise accepted such Unacceptable Waste. Customer shall immediately and without delay remove from the Facility at its sole cost and expense and in compliance with all applicable laws any waste refused by Company in accordance with the terms of this Agreement. Customer shall, in the event Company is required to separate such refused waste, remove it from the Facility, dispose of such waste and pay Company immediately upon demand for any costs and expenses incurred by Company related to such separation, removal, and disposal.

7. Tip Fee and Volume Commitment.

Customer shall deliver, and Company shall accept, in each year during the Term (as defined below), 700 tons per year of Acceptable Waste (the "Annual Tons"). Customer agrees to pay Company \$76.00 per ton ("short ton" of 2000 pounds) of Acceptable Waste delivered to the Facility (the "Tip Fee"). A minimum charge for one ton of delivered waste shall be charged on each delivery weighing less than one ton. Once per year, beginning on the first anniversary of the Effective Date, the Tip Fee shall be adjusted by a percentage equal to the greater of (a) 5% and (b) the percentage change in the Consumer Price Index for All Urban Consumers: All Items in U.S. City Average (CUUR0000SA0) (the "CPI") as measured by a fraction, the numerator of which shall be the CPI for the month that is two months prior to the month during which the anniversary of the Effective Date occurs, and the denominator of which shall be the CPI for the same month in the prior year. If publication of the CPI is discontinued, comparable statistics on the purchasing power of the consumer dollar published by a responsible financial periodical selected by Company in its sole discretion shall be used for making such computations. Company shall be entitled to additional payment from Customer to account for (i) applicable taxes, (ii) any governmental action or change in law or regulation that increases any costs of Company, (iii) any other increased operating costs, including but not limited to, fuel costs, disposal costs, changes in the composition of Acceptable Waste, changes in commodity pricing or costs of environmental or other regulatory compliance. Company may reduce the amount of volume of Acceptable Waste accepted in the event of a scheduled or unscheduled plant outage.

Company will invoice Customer on a weekly basis. Payments shall be made using ACH through Company's electronic payment site at <https://consumer.ebppay.com/winc>. All payments shall be due and payable within ten (10) days after the date set forth on the invoice. All invoices shall be delivered to Customer electronically at the email address below. Customer shall provide immediate notice to Company updating the email address for invoicing as necessary.

Customer accounts payable email address for invoicing:
mcamacho@goldenbeach.us and Alexdiaz@goldenbeach.us

Company may assess a monthly late fee of 1.5% (18% annually) of any unpaid amount of an invoice accruing from the due date of the invoice, with a minimum monthly charge of \$5.00, or the maximum late fee allowable under applicable law or regulation. Customer must provide written notice to Company within ten (10) days following the date set forth on an invoice in order to validly dispute any amounts set forth therein. All invoiced amounts that are not identified as disputed in such notice are deemed accepted by Customer and shall be due and payable and incur any applicable late fees in accordance with the terms of this Agreement. Following receipt of notice of disputed terms, Company and Customer shall work in good faith for a period of thirty (30) days to agree upon such disputed amounts. At the end of such thirty (30) day period all disputed amounts shall be immediately due and payable as determined by Company in its sole discretion. Company may at its discretion assess a fee for correcting invoicing or ticketing errors determined by Company to result from Customer error.

Company may suspend service under this Agreement, choose to accept Acceptable Waste from Customer on a "cash-on-delivery" basis only or refuse any Acceptable Waste if any amounts owed by Customer are not received by Company as of the payment due date. Customer shall pay Company's reasonable investigation costs and attorney's fees associated with collection of amounts owed by Customer.

8. Term. Unless earlier terminated in accordance with terms of this Agreement, the term of this Agreement shall begin on the Effective Date and continue through September 30, 2025 (the "Term"). Company may at its sole discretion extend this Agreement for a period of [one (1)] additional year(s) upon written notification to Customer within sixty (60) days prior to the end of the Term.

9. Termination. Company may terminate this Agreement (a) upon 10 days' notice to Customer; or (b) immediately upon notice to Customer for failure by Customer to pay any amounts set forth in Section 7 or failure by Customer to comply with any of its other obligations hereunder. Customer's obligation to pay any sum of money due on or prior to the termination or expiration date of this Agreement, and the continuing accrual of any applicable late fees, shall survive the termination or expiration of this Agreement.

10. Indemnity. Customer hereby agrees, to the maximum extent allowable by law, to indemnify, hold harmless and defend Company, its affiliates, and their respective members, directors, employees, officers and agents, from and against any and all damages, penalties, costs, claims, liabilities, demands, suits, causes of action and expenses (including attorneys' fees) which may be imposed upon or incurred by Company as a result of (a) personal injury (including death) or property damage to any party, including to the person or property of employees of Customer or Company, arising out of, resulting from or in any way connected with Customer's use of the Facility or entrance upon the Facility premises, including those arising out of any negligent or willful act or omissions of Customer or its employees, agents or contractors; provided, however, the obligations of this Section 10 shall not extend to any such matters arising from the sole negligence of Company; (b) breach or violation by Customer of any of its obligations, covenants, or undertakings under this Agreement; (c) breach or violation by Customer of any federal, state, or local environmental laws or regulations in the performance of its obligations under this Agreement; or (d) any act or omission of Customer under this Agreement that may result in any liability for Company under any federal, state, or local environmental laws or regulations, including, without limitation, any liability arising from the federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, and any similar state laws. The obligations in this Section 10 shall survive the termination or expiration of this Agreement.

11. Damages. Unless otherwise provided in this Agreement, COMPANY SHALL NOT HAVE ANY LIABILITY TO CUSTOMER FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES FOR ANY BREACH OF THIS AGREEMENT, EACH OF WHICH IS EXPRESSLY WAIVED.

12. Insurance. Customer shall at all times during this Agreement maintain in full force and effect the insurance coverages set forth in Attachment A which is attached and made a part hereof, and all other insurance as may be required by applicable law. Customer agrees to comply with all terms and conditions set forth on Attachment A.

13. Surety Bond. If requested, Customer shall provide a corporate surety bond from a surety company acceptable to Company or establish an escrow fund with a financial institution acceptable to Company as security for the performance of services under this Agreement in an amount determined by Company.

14. Confidentiality. In its performance under this Agreement or otherwise, Customer may come into contact with or become aware of information, data or communications of a proprietary nature to the Company or a Facility ("Confidential Information"). Customer shall hold secret and protect the Confidential Information, not make copies of the written versions thereof and not discuss with, or disclose to, any third party the Confidential Information, without the prior written consent of the applicable Facility. Customer shall make its employees aware of Customer's obligations hereunder and secure their agreement to the terms hereof. Upon termination of this Agreement, Customer shall return to Company all Confidential

Information within Customer's possession. These obligations of confidentiality shall survive the termination of this Agreement. Notwithstanding the foregoing, the obligations in this Section 14 shall not apply to information that is:

- (a) already in the public domain;
- (b) disclosed to Customer by a third party (i) with the right to disclose it in good faith and (ii) who is not known by Customer to be prohibited from disclosing such information; or
- (c) specifically exempted in writing from the applicability of this Agreement.

15. Publicity/Marketing. Notwithstanding anything to the contrary herein, Customer shall not disclose any of the terms and conditions contained in this Agreement, including the existence of this Agreement itself and the relationship of the parties, without the prior written consent of Company. For the avoidance of doubt, Customer shall not use Company's name or refer, in any form, to the environmental, renewable or sustainable attributes of the Facility in any advertisement, press release, marketing materials or other publicity issued by Customer.

16. Applicable Law. The laws of the State of New Hampshire shall govern the validity, interpretation, construction, and performance of the terms and conditions of this Agreement without giving effect to any choice or conflict of law provision or rule (whether of the State of New Hampshire or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of New Hampshire.

17. Compliance with Laws. Customer shall comply with all federal, state and local laws, regulations and administrative positions. Customer has, and will renew, all permits, licenses or permissions of governmental authorities necessary in connection with the performance of its obligations hereunder.

18. Assignment and Subcontractors. Customer shall not assign this Agreement or any rights hereunder, nor shall Customer broker or subcontract any of its rights or obligations hereunder, without the prior written consent of Company. Any purported assignment by Customer contrary to this provision shall be null and void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their permitted successors and assigns, including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of Customer, partnerships, spouses, heirs, and personal and legal representatives. Any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all, substantially all, or a substantial part, of the business and/or assets of Customer, shall be required by written agreement in form and substance satisfactory to Company, to expressly assume and agree to perform this Agreement (including the payment of any and all liabilities accrued hereunder) in the same manner and to the same extent that Customer would be required to perform if no such succession had taken place.

19. Counterparts. This Agreement may be executed in one or more counterparts (including counterparts delivered by means of electronic mail or facsimile), each of which when so executed shall be deemed to be an original and all of which shall together constitute one and the same agreement.

20. Course of Dealing. No course of dealing between Customer and Company and no delay or omission by any party in exercising any right or remedy hereunder shall operate as a waiver thereof or of any other right or remedy, and no single or partial exercise thereof shall preclude any other or further exercise of any other right or remedy.

21. Relationship of the Parties. This Agreement shall not in any manner be construed so as to create the relationship of principal and agent or a partnership or joint venture or of any association between Customer and Company or any of either party's affiliates. The parties hereto agree to act as independent contractors and as such, except as otherwise specifically set forth in this Agreement.

22. Entire Agreement. This Agreement supersedes all earlier agreements, letters, conversations, purchase orders, proposals, memorandums, and other written and oral communications as of the date hereof, and it contains all the terms agreed to by the parties, with respect to the subject matter hereof and no changes in, additions to, or subtractions from, this Agreement will be binding on the parties unless in writing and signed by Customer and Company.

23. Severability. If any term or provision of this Agreement or the application thereof to any circumstance shall be invalid or unenforceable the remainder of this Agreement or the application thereof to any circumstance other than that to which it is invalid or unenforceable shall not be effected thereby.

24. Amendment. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by the parties. No waiver by any party of any provision of this Agreement or any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be valid unless the same shall be in writing and signed by the party making such waiver nor shall such waiver be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior

or subsequent such default, misrepresentation, or breach of warranty or covenant.

25. Notices. All notices hereunder shall be in writing with notice deemed to be given upon receipt, addressed as follows:

If to Customer: Town of Golden Beach
1 Golden Beach Drive
Golden Beach, FI 33160

Attn: Maria Camacho, Director of Finance & Alexander Diaz, Town Manager

If to Company: WIN Waste Innovations
100 Arboretum Drive
Suite 310
Portsmouth, NH 03801
Attn: General Counsel

With a copy to: WIN Waste Innovations
100 Arboretum Drive
Suite 310
Portsmouth, NH 03801
Attn: Vice President, Waste Disposal Services

Changes in the respective addresses to which such notices shall be sent may be made from time to time by either party by notice to the other party. Notice given otherwise than by mailing shall be effective when received.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers as of the date first above written.

WHEELABRATOR SOUTH BROWARD, a WIN Waste Innovations company

By: _____
Bruce Stanas
Vice President, Waste Disposal Services

TOWN OF GOLDEN BEACH
By: 
Alexander Diaz
Town Manager

**ATTACHMENT A
INSURANCE**

During the Term, Customer shall keep in force the following minimum insurance coverages on an occurrence basis with insurance companies rated "B+" or better by A.M. Best rating service:

<u>Coverages</u>	<u>Limits of Liability</u>	
Comprehensive General Liability Insurance, including contractual and products/completed operations	Per Occurrence	\$1,000,000
	General Aggregate	\$5,000,000
Comprehensive Automobile Liability Insurance, including non-owned and hired vehicle coverage	For bodily injury and property damage	
	Per Occurrence	\$1,000,000
Comprehensive Excess Umbrella	Per Occurrence	\$4,000,000
	General Aggregate	\$4,000,000
Workers' Compensation Insurance Employers' Liability Insurance	Statutory Limit	\$1,000,000

The comprehensive general liability insurance shall be specifically endorsed to provide coverage for the contractual liability accepted by Customer in this Agreement.

Prior to disposing of any Acceptable Waste, Customer shall furnish Company certificates of insurance on standard ACORD forms or other evidence satisfactory to Company to the effect that such insurance has been procured and is in force. At least thirty (30) days prior to the expiration of any of the insurance policies required herein, Customer shall furnish Company certificates of insurance on standard ACORD forms, in accordance with the terms hereof, evidencing the renewal of such insurance for a period equal to at least the earlier of (a) the expiration of the Term and (b) one year from the date of expiration of the then current insurance policies.

The insurance policies required herein shall be endorsed with, and the certificates of insurance shall contain, the following language:

"Wheelabrator South Broward and its affiliates are named as an additional insured with respect to the comprehensive general, excess umbrella, and automobile liability policies set forth herein. A waiver of the underwriter's rights of subrogation applies in favor of Wheelabrator South Broward and its affiliates as their interest may appear with respect to all policies described herein."

For the avoidance of doubt, Company shall be listed as the certificate holder (at its address listed in Section 25 of this Agreement or such other address as specified by Company to Customer).

**ATTACHMENT B
CUSTOMER'S DECLARATION**

As the duly authorized and designated representative of The Town of Golden Beach, I hereby certify for myself and for and on behalf of Customer that:

1. Customer has been advised and instructed concerning working conditions, including potential hazards and specified rules as described in.

FM-OPS-COR-410-1 Tipping Floor Rules and Procedures for Haulers and Drivers.

2. Customer acknowledges that it has read the above mentioned policy and has communicated this policy to all employees that will deliver to WIN Waste Innovations facilities.

3. List a contact person and phone number for the representative of Customer to whom additional safety and health information can be provided, if needed.

Name:
Telephone Number:

Customer Name:
Signature:
Printed Name:
Title:
Date:

Alexander Diaz Town of Golden Beach
Alexander Diaz
Jawh manager
9-13-2022