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MEMORANDUM

AUG 19 2008

TO: Honorable Mayor and City Council Members

FROM: John J. McCue, City Manager



BY: 11:30 AM RB

DATE: August 18, 2008

SUBJECT: Contract assignment for residential refuse and recycling services from Waste Management (WM) to Emerald Waste Services, LLC (EWS)

PURPOSE

Adopt Resolution No. 496-08 thereby authorizing the contract assignment for refuse and recycling services from Waste Management to Emerald Waste Services.

BACKGROUND

At the July 22, 2008 council meeting Council directed staff to prepare a resolution to formally authorize the contract assignment for refuse and recycling services from Waste Management to Emerald Waste Services. By adopting Resolution No. 496-08 Council authorizes the City Manager to execute a consent to the assignment.

RECOMMENDATION

It is recommended the City Council adopt Resolution No. 496-08 authorizing the contract assignment from Waste Management to Emerald Waste Services effective August 29, 2008 and authorize the City Manager to execute a consent to the assignment. The assignment is contingent upon Emerald Waste Services covering the cost of two (2) newspaper ads to be run in the Daytona Beach News Journal on August 24th and August 27th along with issuing door tags to all Orange City customers.

RESOLUTION NO. 496-08

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ORANGE CITY, FLORIDA, RELATING TO THE COLLECTION AND DISPOSAL OF SOLID WASTE IN THE INCORPORATED AREAS OF ORANGE CITY, FLORIDA; APPROVING THE ASSIGNMENT OF EXCLUSIVE FRANCHISE FOR THE COLLECTION AND DISPOSAL OF RESIDENTIAL SOLID WASTE, YARD WASTE, AND CURBSIDE RECYCLABLE MATERIALS ("FRANCHISE AGREEMENT"); AND AUTHORIZING THE CITY MANAGER OF THE CITY OF ORANGE CITY, TO EXECUTE A CONSENT TO ASSIGNMENT OF THE FRANCHISE AGREEMENT PURSUANT TO SECTION 6 OF THE FRANCHISE AGREEMENT; REPEALING ALL RESOLUTIONS IN CONFLICT HERewith, PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Orange City, awarded an exclusive Franchise for the Collection and Disposal of Residential Solid Waste, Yard Waste, and Curbside Recyclable Materials ("FRANCHISE AGREEMENT") for the collection and disposal of solid waste in the incorporated areas of Orange City on February 27, 2007; and

WHEREAS, Section 6 of the FRANCHISE AGREEMENT, the language of which is incorporated herein by reference, provides for the option of assignment of the Agreement, subject to the express approval of the City Council of Orange City; and

WHEREAS, the City's current Franchisee, WASTE MANAGEMENT INC. OF FLORIDA ("Waste Management") has sold assets to EWS CENTRAL FLORIDA HAULING, INC. ("EWS"), including those assets that provide waste collection services to Orange City, Florida; and

WHEREAS, Waste Management desires to exercise its option to assign the

FRANCHISE AGREEMENT to EWS, pursuant to Section 6 of the Agreement; and

WHEREAS, Section 6 of the FRANCHISE AGREEMENT further requires Waste Management to obtain an Agreement of Acceptance of assignment from assignee, EWS, acknowledging EWS's acceptance of assignment of the FRANCHISE AGREEMENT, subject to the terms and conditions thereof; and

WHEREAS, the City Council has determined that Waste Management has obtained and provided to the City a fully executed Agreement of Acceptance in a form acceptable to the City Council; and

WHEREAS, the City Council has determined that the Consent to Assignment and Assumption of Franchise Agreement, attached hereto as Exhibit A, is in a form acceptable to the City Council; and

WHEREAS, City Council has determined that assignment of the FRANCHISE AGREEMENT is in the best interest of the City of Orange City, and its citizens.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ORANGE CITY, FLORIDA:

SECTION 1. The City Council of the City of Orange City, Florida, hereby approves the assignment of the FRANCHISE AGREEMENT from Waste Management Inc. of Florida to EWS Central Florida Hauling, Inc.

SECTION 2. The City Council of the City of Orange City, Florida, hereby authorizes the City Manager to execute the Consent to Assignment and Assumption of Franchise Agreement concerning the assignment of the FRANCHISE AGREEMENT from Waste Management Inc. of Florida to EWS Central Florida Hauling, Inc.

SECTION 3. CONFLICTS. That all resolutions or parts of resolutions in conflict herewith be and the same are hereby repealed.

SECTION 4. SEVERABILITY. If any section, sentence, phrase, word, or portion of this Resolution is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase, word, or portion of this Resolution not otherwise determined to be invalid, unlawful, or unconstitutional.

SECTION 5. EFFECTIVE DATE. That this Resolution shall take effect immediately upon its adoption.

ROLL CALL VOTE AS FOLLOWS: (Resolution No. 496-08)

Jim Mahoney	_____	Donald Sherrill	_____
Donald Sandford	_____	Tom Abraham	_____
Tom Laputka	_____	Jeff Allebach, Vice Mayor	_____
Harley Strickland, Mayor	_____		

ATTEST:

Deborah J. Renner, CMC, City Clerk

AUTHENTICATED:

Harley Strickland, Mayor

Approved as to form and legal sufficiency:

William E. Reischmann, Jr., City Attorney

EXHIBIT A

CONSENT TO ASSIGNMENT AND ASSUMPTION OF FRANCHISE AGREEMENT

For good and valuable consideration, the City of Orange City, Florida, ("City") does hereby consent to the assignment and assumption of the Exclusive Franchise for the Collection and Disposal of Residential Solid Waste, Yard Waste, and Curbside Recyclable Materials ("Franchise Agreement"), dated February 27, 2007, between Waste Management Inc. of Florida ("Waste Management") and the City, to EWS Central Florida Hauling, LLC, a Florida limited liability corporation ("EWS"), pursuant to the Acceptance of Assignment and Assumption Agreement, incorporated by reference as if fully set forth herein, between Waste Management and EWS, that incorporates by reference the Asset Sale Agreement between Waste Management and EWS dated _____, 2008, also incorporated by reference as if fully set forth herein.

The foregoing consent of the City is given in consideration of said Assumption Agreement subject to the conditions precedent that such consent by the City: (1) shall in no way affect the liability or obligations of Waste Management under the Franchise Agreement, up to and including the date of assignment to EWS; (2) shall not constitute consent to any future assignment and assumption of the obligations of EWS under the Franchise Agreement to a third-party; (3) shall not affect the total contract Franchise price stated therein; (4) shall not affect the scope of work, performance or specifications of the Franchise Agreement; (5) shall not constitute or be construed as a waiver or the extinguishment of any right or claim of the City against Waste Management under the Franchise Agreement; and, (6) shall be predicated on Waste Management's and EWS's compliance with the conditions and representations articulated in the Acceptance of Assignment and Assumption Agreement, as incorporated herein.

Attest:

Deborah J. Renner, CMC, City Clerk

John McCue, City Manager