



VILLAGE OF KEY BISCAIYNE

Office of the Village Manager

MEMORANDUM

Village Council
Mayra P. Lindsay, *Mayor*
Franklin H. Caplan, *Vice Mayor*
Luis F de la Cruz
Theodore Holloway
Michael E. Kelly
Edward London
James S. Taintor

Village Manager
John C. Gilbert

DATE: December 1, 2015

TO: Honorable Mayor and Council Members

FROM: John C. Gilbert, Village Manager

RE: Assignment of the existing Solid Waste Agreement with Southern Waste Systems, LLC to Waste Management Inc. of Florida

RECOMMENDATION

It is recommended that the Village Council approve the attached Resolution approving and consenting to the Assignment of the existing Solid Waste Agreement with Southern Waste Systems, LLC. ("SWS") to Waste Management Inc. of Florida ("WMIF").

BACKGROUND

On September 11, 2015, the Village of Key Biscayne entered into an Agreement for collection, transportation and disposal of recycling services for residential areas with SWS.

On October 17, 2015, the Village received a letter from SWS notifying the Village of an Agreement with WMIF, whereby WMIF will purchase substantially all of the assets of SWS, including SWS's current Agreement with the Village of Key Biscayne, see attached Exhibit A.

From the year 2005 to 2010 WMIF under a Village Contract performed the collection, transportation and disposal of solid waste and recycling services for residential areas for the Village. WMIF were also a responsive bidder in our most recent Request for Proposals for Solid Waste and Recycling Services. However, the bid was not awarded to WMIF due to the higher proposed cost of services.

The existing Village solid waste and recycling services inclusive of cost, the scheduling of side-yard and curbside pick-up will remain the same as the original Agreement entered by the Village with SWS.

Solid waste and recycling collection services by WMIF if approved will commence on January 1, 2016.

Reviewed by Ms. Lillian Arango from Weiss Serota Helfman Cole & Bierman as to form and legal sufficiency.

RESOLUTION NO. 2015 - _____

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING AND CONSENTING TO THE ASSIGNMENT OF THE EXISTING SOLID WASTE AGREEMENT WITH SOUTHERN WASTE SYSTEMS, LLC TO WASTE MANAGEMENT INC. OF FLORIDA; PROVIDING FOR AUTHORIZATION AND IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on September 11, 2015, the Village of Key Biscayne (the “Village”) entered into an Agreement for Collection, Transportation and Disposal of Solid Waste and Recycling Services (“Agreement”) for the residential areas with Southern Waste Systems, LLC (“SWS”); and

WHEREAS, SWS has entered into an agreement with Waste Management Inc. of Florida (“WMIF”), a subsidiary of Waste Management, Inc., for the sale and transfer of assets, including the Agreement with the Village, with the result that the ongoing business and affairs of SWS will be owned and operated by WMIF; and

WHEREAS, SWS has requested that the Village consent to the assignment of the Agreement from SWS to WMIF; and

WHEREAS, the Agreement requires the express written consent of the Village to any assignment, sale or transfer of the Agreement by SWS; and

WHEREAS, the Village Council wishes to consent to the assignment of the existing Agreement from SWS to WMIF and finds that the assignment is in the best interest and welfare of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:

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

Section 2. Assignment Approved. The Village Council hereby approves and consents to the assignment of the Agreement from SWS to WMIF.

Section 3. Village Manager Authorized; Implementation. The Village Manager, on the behalf of the Village, is hereby authorized to execute the Consent to the Assignment of Agreement in substantially the form attached hereto as Exhibit "A", and is hereby authorized to take any and all action necessary to implement the purposes of this Resolution.

Section 4. Effective Date. This Resolution shall be effective immediately upon adoption.

PASSED AND ADOPTED this ____ day of December, 2015.

MAYRA PEÑA LINDSAY, MAYOR

ATTEST:

CONCHITA H. ALVAREZ, MMC
VILLAGE CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

VILLAGE ATTORNEY

ASSIGNMENT OF AGREEMENT

FOR COLLECTION, TRANSPORTATION AND DISPOSAL OF SOLID WASTE AND RECYCLING SERVICES FOR THE RESIDENTIAL AREAS OF KEY BISCAYNE, FLORIDA BETWEEN SOUTHERN WASTE SYSTEMS, LLC (“CONTRACTOR”) AND THE VILLAGE OF KEY BISCAYNE, A FLORIDA MUNICIPAL CORPORATION (“THE VILLAGE”)

This Assignment of Agreement for Collection, Transportation, and Disposal of Solid Waste and Recycling Services for the Residential Areas of Key Biscayne, Florida Between Southern Waste Systems, LLC, a Florida limited liability company and The Village of Key Biscayne, a Florida municipal corporation dated this ____ day of December 2015 and is made by and between Southern Waste Systems, LLC, a Florida limited liability company (“ASSIGNOR”) and Waste Management Inc. of Florida, a Florida corporation (“ASSIGNEE”).

PREAMBLE:

ASSIGNOR is the Contractor pursuant to the Agreement for the Collection, Transportation and Disposal of Solid Waste and Recycling Services for the Residential Areas of Key Biscayne, Florida between The Village of Key Biscayne, a Florida municipal corporation (“The Village”) and ASSIGNOR dated _____, 2015 (the “Agreement”); and

ASSIGNOR desires to assign its interest in the Agreement to ASSIGNEE and ASSIGNEE desires to accept such Assignment of the Agreement from ASSIGNOR.

NOW, THEREFORE, for Ten Dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The above recitals are true and correct.
2. ASSIGNOR hereby assigns to ASSIGNEE all of ASSIGNOR’s right, title and interest in and to the Agreement from and after the effective of this Assignment.
3. ASSIGNEE hereby accepts the Assignment of the Agreement from ASSIGNOR, and ASSIGNEE agrees to be bound by all of the contractual duties, responsibilities, obligations and liabilities of the Contractor under the Agreement from and after the effective date of this Assignment.
4. ASSIGNEE agrees to responsible for all obligations of ASSIGNOR to the Village under the Agreement that precede the date of the transfer of the Agreement to ASSIGNEE.

IN WITNESS WHEREOF, the parties have executed this Assignment on the date and year first written above.

ASSIGNOR:
SOUTHERN WASTE SYSTEMS, LLC, a
Florida limited liability company

Witness

By: _____
Name: _____
Title: _____

Witness

STATE OF FLORIDA)

) ss.:

COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015 by _____ by _____, as _____ of Southern Waste Systems, LLC, a Florida limited liability company. He/she is personally known to me or has produced _____ as identification.

Notary: _____

[NOTARIAL SEAL]

Print Name: _____

Notary Public, State of Florida

My commission expires: _____

Personally Known OR Produced Identification

Type of Identification Produced _____

ASSIGNEE:
WASTE MANAGEMENT INC. OF FLORIDA, a
Florida corporation

Witness

By: _____
Name: _____
Title: _____

Witness

STATE OF FLORIDA)

) ss.:

COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this ____ day of _____,
2015 by _____ by _____, as _____ of
Waste Management Inc. of Florida, a Florida corporation. He/she is personally known to me or has
produced _____ as identification.

[NOTARIAL SEAL]

Notary: _____

Print Name: _____

Notary Public, State of Florida

My commission expires: _____

Personally Known OR Produced Identification

Type of Identification Produced _____

CONSENT OF THE VILLAGE OF KEY BISCAYNE, FLORIDA

THE VILLAGE OF KEY BISCAYNE, FLORIDA (the "Village"), a municipal corporation organized and existing under the laws of the State of Florida, hereby consents to the foregoing, and consents to the substitution of Assignee for Assignor for all purposes under the Agreement, including for the purposes of receiving any and all payments thereunder.

VILLAGE:

THE VILLAGE OF KEY BISCAYNE, a
Florida municipal corporation

By: _____

John C. Gilbert, Village Manager

Date Executed: _____

ATTEST:

Conchita H. Alvarez, MMC, Village Clerk

Approved as to Form and Legal Sufficiency:

Village Attorney