

Meeting Date: 1/25/2011



Agenda Item #

7A

4d

CITY COUNCIL AGENDA ITEM

Contact Name: Christine Davis Department Director: *[Signature]*
Department/Contact # 775-5432 City Manager: Jamie Croteau

- Type of Item:
- | | | | |
|--------------------------|--------------------------|-------------------------------------|---------------------|
| <input type="checkbox"/> | Public Hearing | <input checked="" type="checkbox"/> | Resolution |
| <input type="checkbox"/> | Ordinance First Reading | <input type="checkbox"/> | Discussion & Action |
| <input type="checkbox"/> | Ordinance Second Reading | <input type="checkbox"/> | Council Approval |

Subject: Assignment of the Emerald Waste Service (EWS) franchise to Waste Corporation of America (WCA).

BACKGROUND:

The City received notification from EWS that it contracted to sell several of its corporate assets, including service contracts, to WCA. These assets and service contracts include Orange City, DeLand and portions of Volusia County. The EWS contract (Section 6 - Assignment) requires the assignment to be approved by City Council via Resolution and states that the assignment may not be unreasonably withheld.

City staff met with representatives from both EWS and WAC to discuss the request of assignment of the City's contract and to conduct the City's due diligence. City staff reviewed WCA's management team, board members, and financial statements. Staff notes that WCA is a publicly traded corporation (Nasdaq: WCAA). Based on staff's review and interview, it appears WCA management team is knowledgeable of the business aspects and the specifics of Orange City. Orange City's current contract is in effect until 12/31/2014, so if the assignment is approved, WCA would be Orange City's residential garbage hauler through 12/31/2014.

Further, staff discussed with both EWS and WAC representatives that the City's contract (Section 11 - Right of First Refusal) requires that the City be offered a "first right of refusal". Pursuant to Section 11, EWS did provide notice of the bonafide offer. The notice did provide the purchase price of the entire offer, but they did not provide the price for just the Orange City franchise. EWS contends that because WCA did not offer to purchase only EWS's rights and obligations under the Orange City Franchise Agreement, then EWS's obligations under Section 11 of the Franchise Agreement do not apply. Staff does not recommend pursuing the right to purchase this transaction.

RECOMMENDATIONS: Staff recommends Council approve Resolution No. 632-11, which will approve the contract assignment from EWS to WCA.

ATTACHMENTS: Resolution 632-11, Exhibit A (Consent to Assignment and Assumption of Franchise Agreement) and Exhibit B (Agreement of Acceptance).

FINANCIAL IMPACT: None

Reviewed by City Attorney ✓
Reviewed by Finance Dept. _____
Reviewed by: _____

RESOLUTION NO. 632-11

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, EMERALD WASTE SERVICES, LLC ("EWS") has sold assets to WASTE CORPORATION ("WCA"), including those assets that provide waste collection services to Orange City, Florida; and

WHEREAS, EWS desires to exercise its option to assign the FRANCHISE AGREEMENT to WCA, pursuant to Section 6 of the Agreement; and

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

WHEREAS, the City Council has determined that EWS 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 EWS to WCA.

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 EWS to WCA.

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.)

Tom Laputka	_____	Anthony Pupello	_____
Tom Abraham	_____	Gary Blair	_____
William Crippen, Vice Mayor	_____	Jeff Allebach	_____
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 August 24, 2010, between EMERALD WASTE SERVICES, LLC ("EWS") and the City, to WCA WASTE ("WCA"), 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 EWS and WCA dated _____, 2011, 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 EWS under the Franchise Agreement, up to and including the date of assignment to WCA; (2) shall not constitute consent to any future assignment and assumption of the obligations of WCA 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 EWS under the Franchise Agreement; and, (6) shall be predicated on EWS's and WCA'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

Jamie Croteau, City Manager

Exhibit B

Agreement of Acceptance

AGREEMENT OF ACCEPTANCE

WHEREAS, the City of Orange City, a municipal corporation of the State of Florida (“**City**”), awarded an exclusive franchise to Waste Management Inc. of Florida by Ordinance No. 286 and subsequently approved an assignment of the franchise to Emerald Waste Services, LLC (d/b/a EWS LLC) (“**EWS**”) by Resolution No. 496-08, for the collection and disposal of residential solid waste, yard waste and curbside recyclable materials within the City limits of the City of Orange City, Florida, for a period of five (5) years, beginning January 1, 2007 and ending on December 31, 2011, and extended for three (3) years, beginning January 1, 2011 and ending on December 31, 2014, as subsequently amended February 2007 by Ordinance 299, and as subsequently amended August 2010 by Ordinance No. 427;

WHEREAS, EWS proposes to assign the franchise to WCA Waste Systems, Inc., a Delaware corporation (“**WCA**”), as a result of the transactions contemplated by that certain Equity Interest Purchase Agreement, dated as of December 15, 2010 (the “**Purchase Agreement**”), by and among EWS, certain affiliates of EWS, WCA and certain affiliates of WCA, pursuant to which WCA shall acquire all of the equity interests of EWS; and

WHEREAS, as a condition to granting its consent to the transactions contemplated by the Purchase Agreement, the City has requested that WCA execute and deliver this Agreement of Acceptance to the City.

NOW THEREFORE, in consideration of the aforementioned consent by the City, WCA agrees as follows:

1. WCA accepts the franchise, as amended, subject to all of the terms, conditions and limitations imposed in the franchise document.
2. WCA agrees to fulfill all of the obligations contained in the franchise document, as amended.
3. It is further agreed and understood that WCA guarantees the performance of its duties pursuant to the franchise document, as amended.

Dated this ___ day of January, 2011.

CITY OF ORANGE CITY

WCA WASTE SYSTEMS, INC.

By: _____

By: _____

Name: Jamie Croteau

Name: _____

Title: City Manager

Title: _____

ATTEST:

Deborah J. Renner, CMC City Clerk