Regular Workshop – September 16, 2013
Agenda Item 5
Consent Item

Agenda Item:	Proposed Ordinance 2013-29, Temporary Extension of Collection Franchise Agreement
Presenter:	Town Manager and Staff
Summary:	The Town's current franchise agreement with Waste Management expires on December 13, 2013. The Town intends to put its solid waste franchise agreement through a competitive procurement process in September. In order to ensure adequate time to bid, go through the selection process, negotiate a contract, and present to the Town Commission a franchise ordinance for approval, staff recommends a temporary extension to the current franchise agreement of no longer than six (6) months.
Attachments:	8-20-13 Memo, Public Works Director to Town Manager; 7-9-13 Letter, Waste Management to Public Works Director; 7-3-13 Letter, Public Works Director to Waste Management; Ordinance 06-24, Solid Waste Franchise (current); Proposed Ordinance to extend Ordinance 06-24.
Recommended Action:	Approval of the Consent Agenda will forward Ordinance 2013-29 to the September 23, 2013 Special Meeting for first reading.

MEMORANDUM

Date: August 20, 2013

TO: Dave Bullock, Town Manager

FROM: Juan Florensa, Public Works Director

SUBJECT: Proposed Ordinance 2013-29, Temporary Extension of Collection Franchise Agreement

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The Town's current franchise agreement with Waste Management expires on December 13, 2013. The Town intends to put its waste collection franchise agreement through a competitive procurement process this summer. While it is possible that the Town could conclude the procurement process before the end of the calendar year, it would be prudent to plan for a short extension, no longer than six months, to our current agreement. This would allow for any unforeseen delays or negotiations with the selected vendor. It would also provide adequate time for staff to prepare and present to the Town Commission a new franchise ordinance, which will require two public hearings. Waste Management has agreed to the temporary extension in the attached 7-9-13 letter from Bill Gresham.

As the franchise agreement is in ordinance form, an ordinance is required to provide for the temporary, not to exceed six months, extension. Proposed Ordinance 2013-29 is attached for Commission workshop.

Attachments

WASTE MANAGEMENT

RECEIVED
JUL 10 2013
By

Waste Management Inc. of Florida
Bill Gresham
6120 21st East
Bradenton, FL 34203
(813) 622-2731
(813) 632-8966 Fax
Bgresham@wm.com

July 9, 2013

Juan J. Florensa
Public Works Director
Town of Longboat Key
Public Works Department
600 General Harris Street
Longboat Key, Florida 34228

Re: Temporary Extension of Collection Franchise Agreement

Dear Mr. Florensa:

In response to your July 3 letter, be assured that Waste Management is willing to execute a temporary extension of the Collection Franchise Agreement not to exceed six months. If the Town determines that it will terminate earlier than six months it will provide a 30-day written notice. If you require additional information, please contact me.

Sincerely,

Bill Gresham

Bill Gresham
Government Affairs

TOWN OF
Longboat Key
Incorporated November 14, 1955

Public Works Department
600 General Harris Street
Longboat Key FL 34228
(941) 316-1988
FAX (941) 316-1984
www.longboatkey.org

July 3, 2012

Mr. Bill Gresham
Government Affairs
Waste Management Inc. of Florida
6120 21st Street East
Bradenton FL 34203

Re: Temporary Extension of Collection Franchise Agreement

Dear Bill,

I appreciate the time you spent on the phone with me to discuss a temporary extension of the current collection franchise agreement between Waste Management and Longboat Key.

As you know, the current agreement expires on December 31, 2013 and the town intends to put this agreement out to bid through a competitive procurement process this summer. While it is possible that the town could conclude the procurement process before the end of the calendar year, it would be prudent to plan for a short extension, no longer than six months, to our current agreement. This would allow for any unforeseen delays or negotiations with the selected vendor. It would also provide plenty of time for staff to prepare and present to the Longboat Key Town Commission a franchise ordinance, which requires two separate public readings.

During our last phone conversation you indicated that Waste Management would extend the current agreement for a period not to exceed six months. To that end, if you could confirm our discussions as generally described above, I will start the process with the Town Manager and Town Attorney to move forward.

The town appreciates Waste Management's willingness to accommodate our request and hopes that the extension can be memorialized in the next few weeks.

Please contact me if you have any questions or need to further discuss this with me

Sincerely,

Juan J. Florensa
Public Works Director

xc. Dave Bullock, Town Manager (w/attachment)
Anne L Ross, P.E., Assistant Town Manager (w/attachment)
Susan Smith, Finance Director (w/attachment)

Z:\PWK\Franchise Agreements\Florensa To Gresham, Solid Waste Franchise Agreement Extension 7-2-13 Docx

WASTE MANAGEMENT

Waste Management Inc. of Florida
6120 21st East
Bradenton, FL 34203
(941) 751-7591
(941) 755-4854 Fax

RECEIVED
MAY 1 2013
By_____

April 29, 2013

Town of Longboat Key
Juan Florensa
Public Works Director
600 General Harris Street
Longboat Key, FL 34228

Re: Temporary Extension of Collection Franchise Agreement

Dear Juan,

As you know, the current Franchise Agreement expires on December 31, 2013. Waste Management desires to continue as the Town's service provider. To that end, we want to reassure you that we are willing to execute a temporary extension of our Agreement should the Town determine that it is needed. We have discovered that historically extensions of three to six months, while appearing to be adequate, almost always result in the need for additional time. Accordingly, we think that the best course is to institute a one year extension. That duration will give the Town ample time to determine how it wants to proceed. In the event we conclude a contract renewal, the new agreement could commence at the end of the extension term. Conversely, if the Town decides to let a solicitation for solid waste services it would provide more time to plan, and a January 1 start date would still be attainable.

If your schedule permits, let's sit down and discuss all scenarios and determine the best direction for the Town and its residents.

Sincerely,

Bill Gresham

Bill Gresham
Government Affairs

CCA COPY

ORDINANCE 06-24

AN ORDINANCE OF THE CODE OF ORDINANCES OF THE TOWN OF LONGBOAT KEY, FLORIDA, GRANTING AN EXCLUSIVE FRANCHISE TO WASTE MANAGEMENT, INC. OF FLORIDA FOR COLLECTION AND DISPOSAL OF SOLID WASTE, RECYCLABLE MATERIALS, AND YARD TRASH WITHIN THE CORPORATE LIMITS OF THE TOWN OF LONGBOAT KEY, FLORIDA, PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, The Town of Longboat Key (the "Town") and Waste Management, Inc. of Florida, by virtue of assignment from Cedar Hammock Disposal Corporation (the "Franchisee") entered into Ordinance 91-27 (the "Solid Waste Agreement") to provide Solid Waste Collection Services to the Town on an exclusive basis; and

WHEREAS, the Solid Waste Agreement was modified by Ordinances 96-20 and 02-11, which extended the term and made additional modifications; and

WHEREAS, the Town and the Franchisee entered into Ordinance 91-04 (the "Recycling Agreement") to provide Recycling Collection Services on an exclusive basis; and

WHEREAS, the Recycling Agreement was modified by Ordinances 91-22, 96-21, 02-10, and 03-10, which extended the term and made additional modifications; and

WHEREAS, after proper investigation and public meetings, the Town has determined that the extension of both the Solid Waste and Recycling Agreements is in the best interests of the Town; and

WHEREAS, to promote efficient understanding of the duties and responsibilities of the parties, the Town and the Franchisee enter into this Amended and Restated Exclusive Franchise Agreement ("Agreement") for the collection and disposal of solid waste, recyclable materials, and yard trash throughout the corporate limits of the Town.

NOW, THEREFORE, the Town and Franchisee do hereby agree as follows:

Section 1: Recitals. The recitals above, and any factual statements below, are ratified and confirmed as true and correct.

Section 2: Exclusive Franchise and Term of Agreement. The Town hereby grants to Franchisee an exclusive franchise, subject to the terms and conditions contained herein, for the collection and disposal of Solid Waste (as defined herein), Recyclable Materials (as defined herein), and Yard Trash (as defined herein), commencing with the execution of the last party to this Franchise Agreement and continuing until December 31, 2013, unless extended by the parties in writing. The Franchisee shall make periodic reports and pay such assessments as required by this Ordinance with the granting of the sole right to collect and dispose of Solid Waste, Recyclable Materials, and Yard Trash, conditioned upon the faithful performance of the conditions herein by the Franchisee to serve the inhabitants within the Town's corporate limits.

Section 3: Amendment and Repeal of Previous Ordinances. Upon execution by both parties to this Franchise Agreement, the terms and conditions as set forth herein shall form the basis of the franchise relationship between the parties and

Ordinances 91-04, 91-22, 91-27, 96-20, 96-21, 02-10, 02-11, and 03-10 are hereby superseded and the terms and conditions contained within this Ordinance, Franchise Agreement, and the Town Code shall govern.

Section 4: Reservation of Rights. The Town hereby expressly reserves the right to pass Ordinances and Resolutions which may be necessary or proper to secure and protect the health, safety, moral, general welfare and accommodation of the public, including but not limited to Ordinances and Resolutions related to rates and the rights to adopt and enforce regulations to protect the public from danger and inconvenience in the management and operation of the Solid Waste, Recyclable Materials, and Yard Trash collection business, and to provide such service as is contemplated by this franchise. Further, all Solid Waste, Recyclable Materials and Yard Trash produced in the Town shall be removed exclusively under the direction of the Town pursuant to the terms and provisions of this Ordinance and the Town Code, and such rules and regulations as the Town shall prescribe from time to time for the removal, transportation, and disposal of such Solid waste, Recyclable Materials and Yard Trash.

Section 5: Services Provided. Franchisee shall furnish the following services within the corporate limits of the Town on the terms and conditions as follows:

A. Solid Waste:

1. Definitions. For purposes of this Ordinance and Franchise Agreement, the following terms shall apply:

a) Garbage: Every refuse accumulation of animal, fruit, or vegetable matter that attends the preparation, use, cooking, and dealing in, or storage of, meats, fish, fowl, fruit, or vegetables, and any other matter of any nature whatsoever which is subject to decay, putrefaction, and the generation of noxious or offensive gases or odors, or which during or after decay, may serve as breeding or feeding materials for flies or other germ-carrying insects; and any bottles, cans, or other containers which, due to their ability to retain water, may serve as breeding places for mosquitoes or other waterbreeding insects.

b) Rubbish: Refuse accumulations of paper, excelsior, rags, wooden or paper boxes or containers, sweepings, and all other accumulations of a nature other than "garbage", as defined above, which are usual to housekeeping and to the operation of stores, offices, and other business places; and materials such as metals, mineral matter, glass, crockery, auto bodies or parts, including automobile tires or tubes, and other materials or refuse not usual to housekeeping or the operation of stores and offices.

c) Trash: Refuse accumulations of paper, excelsior, rags, wooden or paper boxes or containers, sweepings, and all other accumulations of a nature other than garbage, which are usual to housekeeping and to the operations of stores, offices, and other business places.

d) Solid waste: As defined by F.S. § 403.703(13), as may be amended, including garbage, rubbish, trash, and other discarded waste, including but not limited

to, discarded furniture, furnishings, fixtures and appliances of all kinds. Notwithstanding, Recyclable Materials (as defined herein), body waste, automobiles, dead animals, and large equipment are not covered by this Agreement.

2. Construction and Demolition Debris. Collection and disposal of construction and demolition debris (as defined by F.S. § 403.703(17), as may be amended) at all construction sites within the Town shall not be exclusive to the Franchisee. Each owner of a construction site may contract with Franchisee or an additional party, either directly or indirectly through the owner's general contractor and in conformance with the provisions of the Town Code.

3. Time of Collection. Franchisee shall collect, on a twice-weekly basis, all Solid Waste that has been placed in cans not to exceed 32 gallons (with the exception of those Customers participating in the Automatic Cart Program, defined herein, which will utilize either a 96, 64, or 30 gallon can). The overall quantity of material collected is unlimited, however, it must be placed in suitable garbage cans or plastic bags. Collection shall be made between 7:00 a.m. and 6:00 p.m.

4. Automated Cart Program. Franchisee shall offer an automated cart collection system ("Automated Cart Program") for single family, duplex, triplex, and quadplex residential customers for Solid Waste collection. The decision whether to proceed with the Automated Cart Program will be in the sole and absolute discretion, whether or not reasonable, of the Town Commission. Should the Town elect to proceed

with the Automated Cart Program, The Automated Cart Program will be offered pursuant to the following guidelines:

a) The Automated Cart Program for residential customers will be implemented within six (6) months following Town Commission approval. Residential customers will then be required to use, unless exempted, and Franchisee will then be required to service, approved carts for garbage and household rubbish collection or in the case of any overages, a plastic garbage bag of a size and nature that is approved by Franchisee. Yard trash will continue to be collected as provided herein.

b) Prior to the commencement of the Automated Cart Program, Franchisee will supply and deliver one sixty-four (64) gallon approved cart to each resident of the Town and to each new home built. Should a resident or new home wish to have a ninety-six (96) or thirty (30) gallon can in the alternative, such choice will be an option available upon notice to and approval by the Town Public Works Director prior to commencement of the Program. Franchisee will own all carts. Franchisee will supply an inventory to the Town of one hundred forty-five (145) carts (fifty 64 gallon, fifty 96 gallon, and forty-five 30 gallon) to be used at the discretion of the Town for the term of this Agreement. These carts will be stored at the Franchisee's facility. In the event the inventory is depleted prior to the end of the term of this Agreement, the charge for replacement carts will be the responsibility of the Town or the customer. The Town will determine who will receive replacement carts and will maintain records of same.

Franchisee will replace or repair carts for normal wear and tear or for any damage caused by the Franchisee. If a residential customer desires an additional cart, the request must be made in writing to the Public Works Director, and the rental cost of said cart will be at the rate of $2.00 per month and will be billed directly to the residential customer.

c) At the time the Automated Cart Program is completely implemented, the monthly rate for residential collection shall increase by $1.00 per month per residence over the then current rate.

5. Exemption from Automated Cart Program. Those single family, duplex, triplex and quadplex residences that are unable to accommodate an automated cart due to geographic limitations, placement restrictions, access restraints, or similar limitations may request from the Town an exemption from the requirement to utilize an automated cart. All requests for exemption available under this Section shall be made in writing to the Town Public Works Director, by the owner of the affected residence. The request shall contain a reasonable basis for the request. The Town shall notify the requester within ten (10) calendar days if the exemption has been granted. Any such exemption shall continue only as long as the reason therefore exists. Those granted an exemption shall (I) pay the rate for automated cart service; (II) utilize an appropriate garbage can or plastic bags for service; and (III) shall be subject to all set out requirements for automated cart service.

B. Recyclable Material:

1. Definitions. For purposes of this Ordinance and Franchise Agreement, the following terms shall apply:

a) Recyclable Material: Those materials which are capable of being recycled and which would otherwise be processed or disposed of as solid waste and includes the following list of materials, as defined, and which may be amended to add or delete materials by the Commission at any time:

(i) "ALUMINUM CANS." Any beverage container constructed entirely of aluminum.

(ii) "GLASS." Any food or beverage container constructed of glass of any color.

(iii) "NEWSPAPER." Dry newsprint including advertising inserts delivered in the newspaper, but excluding aged, yellowed or sunburned paper.

(iv) "RECYCLABLE CONSTRUCTION AND DEMOLITION DEBRIS." Construction and demolition debris from commercial users which is capable of being recycled, including wood pallets, wood construction materials, land-clearing debris such as branches, trees, scrap metal and concrete, brick, or asphalt which can be effectively processed for recycling;

(v) "RECYCLABLE PLASTICS." The following plastic bottles (as coded and labeled on the item by number placed inside a triangle and letters placed below the triangle pursuant to F.S. § 403.708(9)), as may be amended from time to time:

- High Density Polyethlene (coded and labeled HDPE, 2) bottles;
- Polyethlene Terephthalate (coded and labeled PET, 1) bottles.

(vi) "STEEL CANS." Food or beverage containers, which consist primarily of ferrous metals, commonly called tin cans.

b) Processing Center: A location offering purchase, sorting and preparation of Recyclable Materials for resale.

2. Recycling containers. The Town has purchased and Franchisee has distributed two (2) recycling containers, the design of which was mutually agreed upon by the parties, to each eligible residential curbside residence. The title to the residential curbside recycling containers shall remain with the Town. Franchisee shall have no responsibility for the replacement or retrieval of any of the recycling containers unless the Franchisee causes damage to the container necessitating its replacement.

The Franchisee shall provide containers (106 gal. recycling carts or front end load dumpsters as appropriate) for all other eligible locations other than residential curbside locations. The title to containers provided by Franchisee shall remain with the Franchisee and kept odor free, repaired, painted and clean at all times. Upon notice by the Town, damaged or destroyed containers must be replaced by Franchisee within ten (10) business days.

3. Time of Collection. Franchisee shall collect the Recyclable Material placed at the curbside for collection once each week. Recyclable Materials collected at other eligible locations shall be collected at times agreed to with the customer. To the

extent possible, collection of recyclables will be the same day of the week as Solid Waste collection service. Collection will not be made on days the Processing Center is not open and able to accept the Recyclable Materials. Collection, which would normally occur on such dates, shall be rescheduled as mutually agreed upon by the parties. Collection shall be made between 7:00 a.m. and 6:00 p.m.

C. Yard Trash:

1. Definition. For purposes of this Ordinance and Franchise Agreement, the following term shall apply:

a) Yard Trash: Vegetative matter resulting from landscaping maintenance or land clearing, including but not limited to seaweed, shrub trimmings, tree trimmings, grass clippings, and palm fronds.

2. Time and Manner of Collection. Franchisee shall collect all Yard Trash once weekly. Collection shall be made between 7:00 a.m. and 6:00 p.m. Yard Trash, Solid Waste, and Recyclable Material shall not be commingled. Yard Trash must be cut into a maximum length of four (4) feet, be bundled, and tied with a material strong enough to support the weight of the bundle. Notwithstanding, any yard service may collect and remove Yard Trash generated in connection with its services to a property located within the Town.

D. Location and Condition for Pick up.

In no event shall the containers and/or bundles for Solid Waste, Recyclable Material, or Yard Waste exceed forty (40) pounds in weight. All material shall be placed

within five (5) feet of the street curb and shall have unobstructed access from the street. Franchisee and the customer may mutually agree to other than curbside service (i.e., rear door, underground, driveway or other location) in which event the rates shall be as described in Exhibit "A". However, residential customers who are physically incapacitated and unable to transport materials to curbside may apply for and receive rear door service at the curbside rate. Applicants for such service shall present, either in person or by mail, medical proof of such physical disabilities to the Town and the Town shall notify Franchisee upon the granting of any such application.

Collection services shall be performed with minimal disruption of vehicular traffic in accordance with rules and regulations adopted by the Town. New types of collection vehicles shall not be utilized if disruption of vehicular traffic is substantially increased.

In case of a missed pick-up reported by the Town or a customer, Franchisee shall collect the materials within 24 hours of verbal notification.

Section 6: Rates. Franchisee is hereby authorized to charge the following maximum rates as set forth in Exhibit A on a monthly basis. Single family, duplex, triplex, and quadplex rates shall be collected by the Town and be paid to the Franchisee by the Town. All other fees and charges shall be collected and paid directly from the customer to the Franchisee.

Such rates are to be maximum rates until April 1, 2007. On that date and each year thereafter throughout the term of this Agreement, the maximum rates shall be adjusted for inflation by using: 1) the annual percentage change in the Consumer Price

Index ("CPI") applied to the base rate exclusive of the fuel portion, and 2) the diesel fuel annual percentage change from the US Department of Energy "EIA/DOE" website for average prices of diesel fuel for the "Lower Atlantic" United States, applied to the base rate fuel portion only. However, the CPI adjustment shall not exceed a percentage increase of four percent (4%) of the rates in effect prior to the adjustment.

The CPI, as used herein, shall be the revised Consumer Price Index for Urban Wage Earners and Clerical Workers, for all items – U.S. City Average, published by the Bureau of Labor statistics, U.S. Department of Labor. In determining the adjustment, the parties shall multiply the percentage change in the CPI for the twelve (12) month period ending December 31st, 2007 and each December 31st thereafter times the non-fuel rate base for the previous year. In the event the U.S. Department of Labor, Bureau of Labor Statistics, ceases to publish the CPI, the parties hereto agree to substitute another equally authoritative measure of change in the purchasing power of the U.S. Dollar as may be available so as to carry out the intent of this provision.

The Fuel Portion of the base rate is calculated by dividing the 2006 actual diesel fuel cost by the 2006 annual revenue for WM of Manatee County as audited by a Certified Public Accountant.

In determining the adjustment, the parties shall multiply the percentage change in the Price of Diesel Fuel for the twelve (12) month period ending December 31st, 2007, and each December 31st thereafter times the fuel base rate for the previous year.

The price of diesel comes from the "EIA/DOE" website of http://tonto.eia.doe.gov/oog/info/wohdp/diesel.asp. An example of the calculations for the fuel base rate, and the application of the Price of Diesel year-to-year change is provided in Exhibit B.

The specific methodology for the annual adjustment in rates is outlined as follows:

RESIDENTIAL RATE CALCULATION

There are four components included in residential billing rate (in the example this is $15.02) and annual rate changes are calculated differently for each:

1. Base Solid Waste Rate ($10.26 in the example)
2. Fuel Component ($1.11 in the example)
3. Solid Waste Tipping Fees ($2.58 in the example)
4. Yard Waste Tipping Fees ($1.07 in the example)

A. To calculate a cost-of-living adjustment on the base waste rate the other three components must be removed. This is accomplished in two steps.

Step 1. Solid Waste Tipping fees and Yard Waste Tipping Fees—To remove Tipping Fees look up their rates on the Solid Waste Rate Matrix and subtract them from the existing residential billing rate (to yield $11.37 in the example).

Step 2. Fuel Component—From the results of removing the tipping fees, above, the fuel component is removed. The fuel component is the ratio of the Waste Management's total fuel cost for the year ended 12/31/06 compared to 12/31/06 total

revenue. This percentage is established by Waste Management's independent auditors and remains constant through the term of this agreement (in the example 9.755% is used). Multiply this fuel percentage by the base solid waste rate ($11.37 in the example) to find the fuel component ($1.11 in the example). Subtract the fuel component from the base solid waste rate to obtain the portion of the solid waste portion subject to the CPI-U adjustment ($10.26).

To compute the base solid waste rate change consult the CPI-U index for the trailing 12 months ending each December 31st. (3.0% in the example) Applying this index to the base solid waste rate will yield the base solid waste rate adjustment ($.24 in the example).

B. Calculate a cost-of-living adjustment on the fuel component—The fuel component is subject to an annual adjustment based on the Department of Energy EIA/DOE fuel index.

Calculate the percentage increase of the trailing 12 months ended December 31st. (21.665% in the example). Apply this percentage to the fuel component to yield the fuel rate adjustment ($.31 in the example).

Thus, to determine the new billing rate start from the current billing rate ($15.02) and add the calculated fuel component rate increase ($.24) and the solid waste component rate increase of ($.31) to yield the new rate ($15.57 in the example).

COMMERCIAL RATE CALCULATION

From the existing Commercial Service Fee Rate found in the Solid Waste Rate Matrix ($4.65 in the example) compute the fuel component by applying the ratio defined earlier (9.755% in the example). This results to $.45. Calculate the fuel component adjustment in the same manner as defined earlier ($.45 times 21.667% to yield $.10 in the example).

Next, subtract the $.45 from the existing rate to yield the amount subject to the CPI adjustment ($4.20 in the example). Calculate the CPI adjustment as defined earlier ($.13 in the example).

Thus, to determine the new Commercial Service Fee Rate start from the current billing rate ($4.65) and add the calculated fuel component rate increase ($.13) and the solid waste component rate increase of ($.10) to yield the new rate ($4.88 in the example).

INDUSTRIAL RATE CALCULATION

From the existing Industrial Service Fee Rate found in the Solid Waste Rate Matrix ($8.03 in the example) compute the fuel component by applying the ratio defined earlier (9.755% in the example). This results to $.78. Calculate the fuel component adjustment in the same manner as defined earlier ($.78 times 21.667% to yield $.17 in the example).

Next, subtract the $.78 from the existing rate to yield the amount subject to the CPI adjustment ($7.25 in the example). Calculate the CPI adjustment as defined earlier ($.22 in the example).

Thus, to determine the new Industrial Service Fee Rate start from the current billing rate ($8.03) and add the calculated fuel component rate increase ($.17) and the solid waste component rate increase of ($.22) to yield the new rate ($8.42 in the example).

Fees and rates which the Town and customers are obligated to pay under the terms of this franchise are for an entire year regardless of the occupancy or lack thereof of any resident, except as set forth in the attached rate schedule.

The rate schedule attached hereto as Exhibit "A" may be amended by action of the Town Commission without any requirement that the text of this ordinance be amended.

Section 7: Pass-Through Charges. Any increase in any fee currently charged by Manatee County or Sarasota County as a result of Franchisee's use of their respective Landfills or imposed by any governmental authority on the Franchisee, which is a sum imposed solely upon the Town's Recyclable Materials, Yard Trash, or Solid Waste disposal, may be apportioned upon the customers under this Franchise Agreement without resort to the Town Commission's permission to increase the Franchisee's rates, provided, however, such fee must be ratably and proportionately assessed against all of Franchisee's customers within this franchise district.

The Franchisee shall provide the Town with prior written notice of any rate adjustment due to the "pass-through" with a detailed calculation of how the new rates were determined, together with documentation evidencing the adjustment.

Any dispute regarding the proposed "pass-through" which cannot be settled by the parties through negotiation shall be submitted to mediation. The Town shall choose the mediator, and each party shall bear their own attorney fees, but equally share the mediation costs. If the dispute is not settled after mediation, the respective parties may utilize all available remedies under the law.

Section 8: Notice of Interruption of Service. Whenever, for any reason, it appears to the Franchisee that interruption or stoppage of service is threatened or appears to be imminent, Franchisee shall immediately give written notice thereof concurrently to the Town Manager and the Town Public Works Director.

Section 9: Force Majeure. The performance of this Franchise Agreement may be suspended and the obligations of either party excused in the event of and during the period that such performance is prevented or delayed by a force majeure occurrence. "Force Majeure" shall mean:

a) An act of God, including hurricanes, lightning, earthquakes, fire, flood, explosion, sabotage or similar occurrence, acts of a public enemy, extortion, war, blockade or insurrection, riot, or civil disturbance;

b) The order or judgment of any federal, State, or local court, administrative agency or governmental body (excluding decisions of federal courts interpreting federal

tax laws, and decisions of State courts interpreting State tax laws) if it is not also the result of the willful misconduct or negligent action or inaction of the party relying thereon or of a third party for whom the party relying thereon is responsible; provided that neither the contesting in good faith of any such order or judgment nor the failure to so contest shall constitute or be construed as a measure of willful misconduct or negligent action or inaction of such party;

c) The failure to issue, suspension, termination, interruption, denial, or failure of renewal of any permit or approval essential to the operation of the Franchisee;

d) A Change in Law. "Change in Law" means (I) the adoption, promulgation, or modification or reauthorization after the date of this Agreement of any law, regulation, order, statute, ordinance, rule or binding judicial or administrative ruling that was not adopted, promulgated, modified or reissued on or before the date of this Agreement, or (II) the imposition of any material conditions in connection with the issuance, renewal, or modification of any permit, license, registration, notice of intent or approval after the date of this Agreement, which in the case of either (I) or (II) establishes requirements affecting a party's operation under this Agreement more burdensome than the requirements that are applicable to such party and in effect as of the date of this Agreement. A change in any federal, State, County, or other tax law or workers compensation law shall not be a Change of Law. However, in the event that a federal, State, or local entity imposes a fee, charge or tax after the date of this Agreement that applies to a party's operations per se, such fee, charge or tax, shall be

treated as a Change in Law.

d) The failure of any appropriate federal, State, County, or local public agency or private utility or similar entity having operational jurisdiction in the area in which the Landfill is located, to provide and maintain utilities, services, water and sewer lines, transportation or similar function and power transmission lines which are required for and essential to the operation of the Landfill; and

e) The condemnation, taking, seizure, involuntary conversion, or requisition of title to or use of the designated facility or any material portion or part thereof taken by the action of any federal, State or local government agency or authorities.

As a condition precedent to the right to claim excuse of performance because of Force Majeure, the party experiencing a Force Majeure event shall:

(i) Promptly notify the other party verbally; and

(ii) As soon as practical, but in no event more than ten (10) days thereafter, prepare and deliver to the other party a written notice with a written description of (1) the commencement of the Force Majeure event, and (2) its estimated duration impact on the party's obligations under this Agreement.

Whenever a Force Majeure event shall occur, the parties shall, as quickly as possible, to the extent reasonable, eliminate the cause and resume performance under this Agreement. Additionally, either party shall provide prompt written notice to the other of the cessation of a Force Majeure event.

Section 10: Inability to Perform due to Conditions other than Force Majeure. In the event that the Franchisee is unable to perform its duties and obligations hereunder for any reason other than Force Majeure (as defined above); said non-performance to be determined in the exercise of the sole and absolute discretion of the Town Commission, whether or not reasonable, the Commission shall notify the Franchisee in writing of such non-performance, and immediately thereafter, within a reasonable period not to exceed three (3) calendar days from the receipt of said notice of non-performance, Franchisee shall commence to cure said non-performance; if said non-performance is a result of any work stoppage, strike or slow down taken by or on behalf of any employees of Franchisee without its consent, the Town, at its option, may make available to Franchisee personnel to permit the continued operation of the collection and disposal of Solid Waste, Recyclable Materials, and Yard Trash within the Town. Any and all costs, expenses and disbursements incurred by the Town or any person, firm, association or corporation designated by the Town as a result of the foregoing shall be chargeable against Franchisee for the period of time required to effectuate the purposes of this paragraph.

Section 11: Termination of Agreement.

A. In the event the Franchisee shall violate any of the terms and conditions of this Ordinance and Franchise Agreement, the Town shall notify Franchisee in writing of the nature of such default. Within three (3) calendar days following such notice:

1. Franchisee shall correct the default; or

2. In the event of a default not capable of being corrected within the aforementioned three (3) days, Franchisee shall commence correcting the default within three (3) calendar days of the Town's notification thereof, and thereafter correct the default with due diligence, but in no event shall the default continue for a greater period than sixty (60) calendar days.

B. If Franchisee fails to correct the default as provided above, the Town, without further notice, shall have all of the following rights and remedies which the Town may exercise single or in combination:

(i) the right to declare that this Agreement together with all rights granted to Franchisee hereunder are terminated, effective upon such date as the Town shall design

(ii) the right to license others to perform services otherwise to be performed by Franchisee, or to perform the services otherwise to be performed by Franchisee, or to perform such services itself; and,

(iii) the right to proceed to collect damages against the bond held by the Town (referenced below) and, should the resultant amount be insufficient, the right to proceed against the Franchisee for any remaining amounts due. Damages shall include the Town's attorney fees and costs through appeal.

C. If the Franchisee abandons the operation of the business for a period of more than ninety (90) calendar days, then the Commission may, at its option, revoke, cancel and/or terminate this Franchise Agreement immediately and without notice.

Section 12: Performance Bond. Franchisee shall furnish a performance bond payable to the Town of Longboat Key in the amount of $250,000.00, satisfactory to the Town to insure continuity of collection and disposal service. Said bond shall be forfeited should the Franchisee:

a. Fail to comply with the terms of this Franchise; or

b. Take the benefit of any present or future insolvency status or make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement of reorganization or the readjustment of indebtedness under the Federal bankruptcy laws or under any law or statute of the United States or any state thereof, or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of Franchisee's property; or

c. By an order or decree of a court be adjudicated bankrupt; or

d. Have an order or decree of a court entered approving a petition filed by any of Franchisee's creditors seeking a reorganization or readjustment of Franchisee's indebtedness under the Federal Bankruptcy laws or any law or statute of the United States or any State thereof, provided however that if any such judgment or order is vacated within sixty (60) days after the entry thereof, any notice of cancellation shall be and become null, void and of no effect.

Section 13: Indemnification.

The Franchisee will defend, indemnify, save harmless, and exempt the Town, its officers, agents, servants, and employees from and against any and all suits, actions,

legal proceedings, claims, demands, damages, costs, expenses, and attorney's fees resulting from or based on (i) violation of applicable laws, ordinances, rules or regulations by the Franchisee, its agents or employees; (ii) injury to persons or damage to property arising out of the Franchisee's or its agents and/or employee's intentional, willful or negligent acts or omissions in the performance of this Franchise Agreement.

The indemnification contained in this Agreement shall survive expiration or early termination of this Agreement.

Section 14: Insurance. Franchisee shall at all times provide and keep in force, at its sole cost and expense, a comprehensive general public liability insurance policy and property damage insurance policy in a sum of at least $5,000,000.00 for each person with a total liability of at least $5,000,000.00 for each accident, indemnifying the Town and Franchisee as their interests may appear against public liability and property damage claims.

All insurance required to be maintained by Franchisee shall be effected by valid and enforceable policies issued by insurers licensed to do business in the State of Florida, countersigned by an agent licensed to do business in Florida and of recognized responsibility satisfactory to the Town. Within fifteen (15) calendar days after the effective date of this Ordinance, Franchisee shall promptly deliver to the Town copies of the policies as specified above, and within fifteen (15) calendar days after the premium of each such policy shall become due and payable, such premium shall be paid by Franchisee and the Town shall be furnished with satisfactory evidence of such

payment.

All policies of insurance required to be maintained by the Franchisee shall name the Franchisee and the Town as the insured as their respective interests may appear. All such policies shall, to the extent obtainable, contain an agreement by the

Franchisee that such policies shall not be canceled without at least ten (10)calendar days prior written notice to the Town.

At the request of the Town Commission or Town Manager, Franchisee shall furnish the Town Commission with an appropriate certificate or certificates from the insurance carrier(s) showing such insurance to be in full force at all times.

Section 15: Permits and Licenses. Franchisee, at its sole cost and expense, shall maintain throughout the term of this Agreement, all permits, licenses, and approvals necessary or required for Franchisee to perform the work and services described herein.

Section 16: Compliance with Laws and Regulation. Franchisee agrees that, in performance of the work and services under this Ordinance and Agreement, the Franchisee will qualify under and comply with any and all federal, state and local laws and regulations now in effect, or hereafter enacted during the term of this Agreement, which are applicable to Franchisee, its employees, agents or subcontractors, if any, with respect to the work and services described herein.

Section 17: Waste Collection Vehicles. Each vehicle used for collection and hauling of Solid Waste, Recyclable Materials, and Yard Trash shall:

a) Be constructed as watertight as possible to limit escape of water or other fluids from the vehicle; and

b) Be fully enclosed and covered so as to prevent the escape of any materials;

c) Be mechanically maintained so as not to leak oil or fluids or material of any type onto private property, or property of the Town.

Section 18: Independent Contractor. Franchisee shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the Town. Franchisee shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder and all persons performing the same, and nothing herein shall be construed as creating a partnership or joint venture between the Town and the Franchisee. No person performing any of the work or services described hereunder shall be considered an officer, agent, servant or employee of the Town, and no such person shall be entitled to any benefits available or granted to employees of the Town.

Section 19: Books and Records. The Franchisee shall make all of its books, files, records and other documents in connection with its operation pursuant to this Ordinance and Agreement available and open for inspection by the Town at reasonable times upon reasonable notice to assist the Town in determining from time to time

compliance by the Franchisee of the terms and conditions of this Ordinance and Agreement, and to assist the Town in making determinations as to reasonable rates and charges.

The Franchisee agrees to maintain accurate records of the business regarding the Franchisee in accordance with generally accepted accounting principles, including records of the actual cost of construction and investment in physical plants and equipment under the franchise, which records shall accurately reflect any and all contributions to the said assets whether such contributions are from the Franchisee or otherwise.

Section 20: Franchise Fee. The Franchisee agrees to pay the Town a two percent (2%) per year franchise fee on gross receipts collected. Such portion shall not be deemed a portion of Franchisee's operating expenses and shall be paid to the Town quarterly within twenty-five (25) calendar days after the end of each quarter. A late charge of 1.5% of the sums due for the franchise fee shall be calculated monthly until payment is received. The Franchisee shall provide annually a certification from its internal auditors certifying the accuracy of the gross receipts collected, the franchise fees paid, and the calculation of the franchise fees owed to the Town.

Section 21: Holidays. The legal holidays wherein Franchisee does not pick up Solid Waste, Recyclable Materials, and Yard Trash will comport with the schedule as followed by the Manatee County landfill, such that the only time Franchisee will not pick-up on its regular schedule is when the Manatee County landfill is closed. Although

not required to, Franchisee may pick up Solid Waste, Recyclable Materials, and Yard Trash on legal holidays if it so chooses. Franchisee shall provide a holiday pick up schedule sixty (60) calendar days in advance of any legal holiday.

Section 22: Transfer. This franchise granted by this ordinance may be transferred by the Franchisee only by ordinance duly adopted and approved by the Town Commission.

Section 23: Town's Representative. The Town's representative for purposes of this Agreement shall be the Director of Public Works.

Section 24: Notices. All notices required or contemplated by this Ordinance and Agreement shall be personally served, mailed, postage prepaid and return receipt requested, or faxed, addressed to the parties as follows:

To Town:	Bruce St. Denis, Town Manager Town of Longboat Key 501 Bay Isles Road Longboat Key, FL 34228
With a copy to:	David P. Persson, Esq. 1820 Ringling Blvd. Sarasota, FL 34236
	Juan J. Florensa Public Works Director 600 General Harris Longboat Key, FL 34228
To Franchisee:	Charles Dees, Vice President Waste Management Inc. of Florida 5221 State Road 776 Venice, FL 34293

With a copy to:

Ronald Kaplan, Esq.
Waste Management Inc. Of Florida
2700 NW 48th Street
Pompano Beach, FL 33073

Section 25: Waiver. A waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provisions.

Section 26: Successors and Assigns. This Agreement shall be binding upon the parties hereto, their successors and assigns.

Section 27: Enforcement. In the event the Town shall reasonably need to resort to litigation to enforce or construe the terms of this Agreement, including any action by the Town against the surety on the performance bond, then the Town shall be entitled to recover all costs thereof, including a reasonable attorney's fee at the trial and appellate level.

Section 28: Exclusivity. The Town shall be under no obligation to protect the exclusivity of the franchise granted to Franchisee, and same shall be the obligation of the Franchisee at its expense.

Section 29: Severability. If any section, subsection, sentence, clause or provision of this Ordinance is held invalid, the remainder of the Ordinance shall not be affected.

Section 30: Conflict. All ordinances or parts of ordinances in conflict herewith shall be and the same are hereby repealed.

Section 31: Change in Law Adjustment. The Franchisee may petition the Town to adjust Franchisee's rates based upon unusual and unanticipated increases in the cost of doing business, including but not limited to a change in law or regulation ("Change in Law") as defined in Section 9(d) of this Agreement. Any such request shall be supported by full documentation establishing the increase in operating costs and the reasons therefor. The Town shall be entitled to audit the Franchisee's financial and operational records directly related to the Franchisee's request in order to verify the increase in costs and the reasons therefor.

The Franchisee's request must be made within one hundred twenty (120) days of the occurrence of such unusual change or cost, and shall contain reasonable proof and justification to support the need for the rate adjustment. The Town may request from the Franchisee, and the Franchisee shall provide, such further information within its possession as may be reasonably necessary in making its determination. The Town shall approve or deny the request, in whole or in part, within sixty (60) days of receipt of the request and all other additional information required by the Town. The Town shall make a reasonable determination based upon the documentation provided in reaching its decision.

Section 32: Storm Debris. The Franchisee shall not be responsible for nor have an obligation to collect, transport or dispose of vegetative or construction/demolition

debris from a named hurricane unless the Town enters into a separate written agreement with Franchisee specifying the terms and compensation for such services arising out of the debris from the named hurricane. For compensation adjustments for events other than a named hurricane, Franchisee shall track the volume of waste Franchisee collects under normal, non-disaster event influenced conditions. Within 30 days of waste collection, the Franchisee shall provide the Town with the weekly waste volume totals collected within the Town. Should waste volume collected by the Franchisee in any quarter be greater by twenty percent (20%) than such volume collected by Franchisee in the same quarter of the previous year, and the increase in volume is attributable to a recent disaster event, Franchisee shall be entitled to additional compensation for the collection of waste in excess of twenty percent (20%) of the normal volumes for the same period. Such compensation shall be calculated at the average rate charged to Manatee County by its storm debris collection contractors during the period of time when the increased volumes were collected.

Section 33: Effective Date. This Franchise Agreement shall be created and shall become effective upon its adoption and approval as prescribed by law and upon the posting of the bond as provided herein. This Ordinance shall take effect upon second reading in accordance with Law and the Charter of the Town of Longboat Key.

Passed on the first reading this 9th day of October, 2006.

Adopted on the second reading and Public Hearing this 6th day of NOVEMBER, 2006.

IN WITNESS WHEREOF, the parties have set their hands and seals on the dates referred to below:

[SIGNATURE PAGE ATTACHED]

WASTE MANAGEMENT INC.
OF FLORIDA

Witness [Sign Name]
DIANA L. OSBORNE
[Print Name]

Witness [Sign Name]
Tammy L. Riddle
[Print Name]

By: _____
[Sign Name]
Charles D Dees III
[Print Name]
Its: Vice-President

DATE: 12/7/2006

TOWN OF LONGBOAT KEY, FLORIDA

ATTEST:
By: _____
Jane M. O'Connor, Town Clerk

BY: _____
Joan M. Webster, MAYOR

DATE: 11/6/2006

Approved as to form and
Correctness:

David P. Persson
Town Attorney
Attachments:
Exhibit "A"
Exhibit "B"

CONTRACT RENEWAL DOCUMENT- Curotto Can Service/Automated Collection

Exhibit A

Solid Waste Rate Matrix - Effective 10/01/2006

	Actual 04-2006		Effective 10/01/2006						
	Total	Service Fee	Lift Fee	CPI Increase	Tipping Fee Manatee	Tipping Fee Sarasota	Total Manatee	Total Sarasota	Blended Rate
Total Residential Rates	14.12						14.61	15.42	15.02
A. Residential Service/Month									
1. Solid Waste Pickup 2x weekly	10.82	8.86	8.86	0.00	2.30	2.88	11.16	11.74	11.45
2. Non Curbside Solid Waste (svc only)	4.24	4.24	4.24	0.00	0.00	0.00	4.24	4.24	4.24
3. Garden Trash Pickup 1x weekly	1.94	1.14	1.14	0.00	0.95	1.18	2.09	2.32	2.21
4. White Goods Pickup/pickup									
5. Curroto Can/Automated Collection	0.00	0.00	1.00	0.00	0.00	0.00	1.00	1.00	
6. Multi-Family									
7. Inground Can	14.14	14.14	14.14	0.00	0.00	0.00	14.14	14.14	14.14
B. Recycling/Month									
1. Curbside & Multi Family/unit	1.36	1.36	1.36	0.00	0.00	0.00	1.36	1.36	1.36
C. Refuse Bin roll-out fee/Month									
Short - Less 15 feet or open gate	15.18	15.18	15.18	0.00	0.00	0.00	15.18	15.18	
Long - More 15 feet	30.33	30.33	30.33	0.00	0.00	0.00	30.33	30.33	
D. Commercial Cans 2x weekly/month									
32 Gallon Can	9.10	7.88	7.88	0.00	1.44	1.80	9.32	9.68	
20 Gallon Can									
HAULING & DISPOSAL - CUBIC YARD RATES									
E. Residential/Commercial Bin									
1. Uncompacted/cubic yard	6.02	4.65	4.65	0.00	1.62	2.02	6.27	6.67	
2. Compacted/cubic yard	8.84	4.72	4.72	0.00	4.85	6.06	9.57	10.78	
3. Bulk/cubic yard									
F. Roll Off Containers									
1. Open top lift/cubic yard	8.03	8.03	8.03	0.00	0.00	0.00	8.03	8.03	
2. Compactor/cubic yard	9.32	9.32	9.32	0.00	0.00	0.00	9.32	9.32	
G. Refuse Bin Maintanance/Month									
1 Cubic Yard	35.51	35.51	35.51	0.00	0.00	0.00	35.51	35.51	
1.5 Cubic Yard									
2 Cubic Yard	35.51	35.51	35.51	0.00	0.00	0.00	35.51	35.51	
3 Cubic Yard	35.51	35.51	35.51	0.00	0.00	0.00	35.51	35.51	
4 Cubic Yard	35.51	35.51	35.51	0.00	0.00	0.00	35.51	35.51	
5 Cubic Yard	35.51	35.51	35.51	0.00	0.00	0.00	35.51	35.51	
6 Cubic Yard	35.51	35.51	35.51	0.00	0.00	0.00	35.51	35.51	
7 Cubic Yard									
8 Cubic Yard	35.51	35.51	35.51	0.00	0.00	0.00	35.51	35.51	
H. Roll Off Container Maintanance/Month									
20 Cubic Yard	75.85	75.85	75.85	0.00	0.00	0.00	75.85	75.85	
30 Cubic Yard	91.01	91.01	91.01	0.00	0.00	0.00	91.01	91.01	
2 Yard Compactor									
3 Yard Compactor									
4 Yard Compactor									
5 Yard Compactor									
6 Yard Compactor									
7 Yard Compactor									
8 Yard Compactor									
I. Cardboard Pull Charge/Cubic Yard									
J. Recycling Clean-Up Services									
K. Gate Service/Roll Out Fees									
Gate Service	15.28	15.28	15.28	0.00	0.00	0.00	15.28	15.28	
Roll Out Fees (Short)	15.28	15.28	15.28	0.00	0.00	0.00	15.28	15.28	
Roll Out Fees (Long)	30.51	30.51	30.51	0.00	0.00	0.00	30.51	30.51	

EXHIBIT B

Town of Longboat Key
Summary of Rate Increase Instructions

Residential			Total Rate
Existing Monthly Rate		$	15.02
Less MSW Tipping Fee		$	(2.58)
Less YW Tipping Fee		$	(1.07)
Monthly Rate Net of Tipping Fee		$	11.37
Fuel Component Ratio	9.755%	$	1.11
Fuel Surcharge Amount	21.665%		$0.24
CPI Rate Component			10.26
CPI Percentage	3.0%	$	0.31
New Monthly Rate*		$	15.57

* Does not include $1/mth for Curotto Cans

Commercial			
Existing Yardage Rate - Net of Disposal		$	4.65
Fuel Component Ratio	9.755%	$	0.45
Fuel Surcharge Amount	21.665%		$0.10
CPI Rate Component			4.20
CPI Percentage	3.0%		$0.13
New Yardage Rate		$	4.88

Industrial - Rolloff			
Existing Yardage Rate - Net of Disposal		$	8.03
Fuel Component Ratio	9.755%	$	0.78
Fuel Surcharge Amount	21.665%		$0.17
CPI Rate Component			7.25
CPI Percentage	3.0%		$0.22
New Yardage Rate		$	8.42

FUEL Surcharge Example- Town of Longboat Key
Residential, Commercial & Industrial

Dept of Energy (DOE) Web Site noted below for Fuel Base and Modifiers:
http://tonto.eia.doe.gov/oog/info/wohdp/diesel.asp
Index 1C, Lower Atlantic States (Includes Florida)

	% Fuel Base to Revenue Base (%FBRB)	=TBAFC / TBAR	9.759%
	2006 Annual Fuel Cost Adjustment % (%AFCA)	=FCM06 / FCMBASE	21.666%
	2006 Fuel Adj to Revenue Base (06FARB)	=%FBRB X %AFCA	2.113%
Residential	2006 Fuel Adj Chg in Monthly Revenue (06 FACMR)	=06FARB X RMRB	$0.24
Commercial	2006 Fuel Adj Chg in Monthly Revenue (06 FACMR)	=06FARB X CMRB	$0.10
Industrial	2006 Fuel Adj Chg in Monthly Revenue (06 FACMR)	=06FARB X IMRB	$0.17

AGREED FUEL ADJUSTMENT BASE/MODIFIERS:

DOE Web Site	Fuel Cost Modifier as of: 7/17/2006 (FCM06)	$2.864	
DOE Web Site	Fuel Cost BASE: 7/18/2005 (FCMBASE)	$2.354	BASE FUEL COST
Contract Rate	MONTHLY REVENUE BASE (RMRB)	$11.37	Residential: (Exhibit A Rate Matrix Svc)
Contract Rate	MONTHLY REVENUE BASE (CMRB)	$4.65	Commercial (Non-Comp): (Exhibit A Rate Matrix Svc)
Contract Rate	MONTHLY REVENUE BASE (IMRB)	$8.03	Industrial (Non-Comp): (Exhibit A Rate Matrix Svc)
W/S Fuel Cost	TOTAL BASE ANNUAL FUEL COST (TBAFC)	$1,013,542	
Manatee Net Revenue	TOTAL BASE ANNUAL REVENUE (TBAR)	$10,389,722	

Note: The base fuel cost is 9.76% of the total revenue base. Annual CPI is applied only to the NON-fuel revenue base, or the remaining 90.24% of each revenue base.

ORDINANCE 2013-29

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LONGBOAT KEY, FLORIDA, AMENDING ORDINANCE 06-24 AS CODIFIED IN THE CODE OF ORDINANCES OF THE TOWN OF LONGBOAT KEY, FLORIDA, EXTENDING FOR SIX MONTHS THE EXCLUSIVE FRANCHISE TO WASTE MANAGEMENT, INC., OF FLORIDA, FOR COLLECTION AND DISPOSAL OF SOLID WASTE, RECYCLABLE MATERIALS, AND YARD TRASH WITHIN THE CORPORATE LIMITS OF THE TOWN OF LONGBOAT KEY, FLORIDA; PROVIDING A PUBLIC RECORDS PROVISION IN ACCORDANCE WITH FLORIDA LAW; PROVIDING FOR A MODIFIED TERMINATION CLAUSE; PROVIDING FOR A MODIFIED NOTICES PROVISION; PROVIDING FOR A GOVERNING LAW PROVISION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, The Town of Longboat Key (the "Town") and Waste Management, Inc., of Florida (the "Franchisee"), by virtue of assignment from Cedar Hammock Disposal Corporation entered into Ordinance 91-27 (the "Solid Waste Agreement") to provide Solid Waste Collection Services to the Town on an exclusive basis; and

WHEREAS, the Town and Franchisee entered into Ordinance 91-04 (the "Recycling Agreement") to provide Recycling Collection Services on an exclusive basis; and

WHEREAS, to promote efficient understanding of the duties and responsibilities of the parties and to extend both the Solid Waste Agreement and Recycling Agreement, the Town and the Franchisee entered into Ordinance 06-24 (the "Amended and Restated Exclusive Franchise Agreement"); and

WHEREAS, after proper investigation and public hearing, the Town has determined that the extension of the Amended and Restated Exclusive Franchise Agreement for an additional six months is in the best interests of the Town, the Town and the Franchisee enter into this Amendment to the Amended and Restated Exclusive Franchise Agreement (the "Amendment").

NOW, THEREFORE, the Town and Franchisee do hereby agree as follows:

SECTION 1. Recitals. The recitals above, and any factual statements below, are ratified and confirmed as true and correct.

SECTION 2. Exclusive Franchise and Extension of Term of Agreement. The Town hereby grants to Franchisee an extension for a period not to exceed six (6) months of the exclusive franchise, subject to the terms and conditions contained herein and as set forth in the Amended and Restated Exclusive Franchise Agreement (attached hereto as Exhibit "A"), for the collection and disposal of Solid Waste, Recyclable Materials, and Yard Trash, as these terms are defined in the Amended and Restated Exclusive

Franchise Agreement. Accordingly, the exclusive franchise to Franchisee shall be extended until June 30, 2014, unless terminated prior to that date pursuant to Section 4 of this Amendment or extended by the Town and Franchisee in writing.

SECTION 3. Public Records. Pursuant to applicable Florida law, Franchisee's records associated with this Amendment to the Amended and Restated Exclusive Franchise Agreement may be subject to Florida's public records laws, Florida Statutes 119.01, *et seq.,* as amended from time to time. Franchisee shall comply with all public records obligations set forth in such laws, including those obligations to keep, maintain, provide access to, and maintain any applicable exemptions to public records, and transfer all such public records to the Town at the conclusion of this contract, as provided for in Section 119.0701, Florida Statutes (2013).

SECTION 4. Termination of Agreement. In the event the Franchisee violates any of the terms and conditions of this Ordinance, the Amended and Restated Exclusive Franchise Agreement, or Chapter 95 of the Town of Longboat Key, Florida, Code of Ordinances, this Amendment to the Amended and Restated Exclusive Franchise Agreement shall be subject to termination pursuant to the provisions set forth in Section 11 of the Amended and Restated Exclusive Franchise Agreement. In addition, the Town may terminate this Amendment to the Amended and Restated Exclusive Franchise Agreement at any time prior to the termination date of June 30, 2014, set forth in Section 2 of this Amendment, provided the Town gives written notice to the Franchisee of its intent to terminate this Amendment at least thirty (30) days prior to the actual date of termination.

SECTION 5. Notices. Notices shall no longer be required as provided for under Section 24 of the Amended and Restated Exclusive Franchise Agreement. All notices required or contemplated by this Ordinance and the Amended and Restated Exclusive Franchise Agreement shall be personally served, mailed, postage prepaid and return receipt requested, or faxed, addressed to the parties as follows:

To Town:
David R. Bullock, Town Manger
Town of Longboat Key
501 Bay Isles Road
Longboat Key, Florida 34228

With a copy to:
Maggie Mooney-Portale, Esq.
Persson & Cohen, P.A.
6853 Energy Court
Sarasota, Florida 34240

Juan J. Florensa, Public Works Director
Town of Longboat Key
600 General Harris Street
Longboat Key, Florida 34228

To Franchisee:
Charles Dees, Vice President
Waste Management, Inc., of Florida
5221 State Road 776
Venice, Florida 34293

With a copy to: Ronald Kaplan, Esq.
Waste Management, Inc., of Florida
2700 NW 48th Street
Pompano Beach, Florida 33073

SECTION 6. Governing Law. The laws of the State of Florida shall govern all provisions of this Amendment to the Amended and Restated Exclusive Franchise Agreement. Venue for any dispute shall be Sarasota County, Florida.

SECTION 7. Modification and Conflict. This Amendment shall supplement the Amended and Restated Exclusive Franchise Agreement to include and fully incorporate Sections 1 through 6, as set forth above within the Amended and Restated Exclusive Franchise Agreement. In the event of a conflict between the provisions set forth in Sections 1 through 6 of this Amendment and the Amended and Restated Exclusive Franchise Agreement, this Amendment shall prevail. In the event of a conflict between any other Sections of this Amendment and the Amended and Restated Exclusive Franchise Agreement, the Amended and Restated Exclusive Franchise Agreement shall prevail. Except to the extent herein amended, the Amended and Restated Exclusive Franchise Agreement between the Town and the Franchisee, adopted by the Town on November 6, 2006, shall remain binding and in full force and effect.

SECTION 8. Effective Date. This Amendment to the Amended and Restated Exclusive Franchise Agreement shall be created and shall become effective upon its adoption and approval as prescribed by law. This Ordinance shall take effect upon second reading in accordance with Law and the Charter of the Town of Longboat Key.

Passed on the first reading the ____ day of _____, 2013.

Adopted on the second reading and Public Hearing the ____ day of _____, 2013.

IN WITNESS WHEREOF, the parties have set their hands and seals on the dates referred to below:

WASTE MANAGEMENT, INC., OF FLORIDA

_____
Witness [Sign Name]

By:_____
[Sign Name]

_____
[Print Name]

_____
[Print Name]

_____
Witness [Sign Name]

Its:_____

DATE

_____
[Print Name]

_____

ATTEST:

By: _____
Trish Granger, Town Clerk

Approved as to form and correctness:

_____
Maggie Mooney-Portale
Town Attorney

TOWN OF LONGBOAT KEY, FLORIDA

By: _____
James L. Brown, Mayor

Date: _____

Attachment: Exhibit "A"

End of Agenda Item