

ORDINANCE 2021-04

AN ORDINANCE OF THE TOWN OF LONGBOAT KEY, FLORIDA, AMENDING ORDINANCE 2014-21 PROVIDING FOR A RENEWAL OF THE TERM OF THE FRANCHISE AGREEMENT; PROVIDING FOR AN AMENDMENT TO THE FRANCHISE AGREEMENT; PROVIDING THAT ALL OTHER TERMS AND CONDITIONS OF ORDINANCE 2014-21 SHALL REMAIN IN FULL FORCE AND EFFECT; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Longboat Key (the "Town") adopted Ordinance 2014-21 on June 30, 2014, granting an exclusive franchise to Waste Management, Inc. of Florida, (the "Franchisee") for collection and disposal of solid waste, yard trash, and residential recyclable materials within the corporate limits of the Town of Longboat Key; and

WHEREAS, the Town and Franchisee entered into a Franchise Agreement for Solid Waste Services effective as of July 1, 2014 (the "Franchise Agreement"), a copy of which is attached as Exhibit "A" to Ordinance 2014-21; and

WHEREAS, Article 1 of the Franchise Agreement specifies that the term of the Franchise Agreement may be renewed for up to two (2) additional terms of three (3) years each; and

WHEREAS, the Town desires to renew the Franchise Agreement with the Franchisee for an additional term commencing on August 1, 2021, and terminating on June 30, 2024; and

WHEREAS, the Town and Franchisee have agreed to a First Amendment to the Franchise Agreement, an executed copy of which is attached hereto as Exhibit "A," to address the renewal and to further modify certain other terms of the Franchise Agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN OF LONGBOAT KEY, FLORIDA THAT:

SECTION 1. The above recitals are true and correct and are hereby incorporated fully by reference.

SECTION 2. The Franchise Agreement between the Town and the Franchisee shall be renewed for an additional term commencing on August 1, 2021, and terminating on June 30, 2024.

SECTION 3. The Franchise Agreement, attached as Exhibit "A" to Ordinance 2014-21, shall be amended in accordance with the First Amendment to the Franchise Agreement, attached hereto as Exhibit "A."

SECTION 4. Except as specifically modified herein, the terms and conditions of Ordinance 2014-21 shall remain in full force and effect.

SECTION 5. If any section, subsection, sentence, clause or provision of this Ordinance is held invalid, the remainder of the Ordinance shall not be affected.

SECTION 6. All ordinances or parts of ordinances in conflict herewith shall be and the same are hereby repealed.

SECTION 7. This Ordinance shall be codified and made part of the official Code of Ordinances of the Town of Longboat Key.

SECTION 8. This Ordinance 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 7th day of June, 2021.

Adopted on the second reading and public hearing the 2nd day of July, 2021.

ATTEST:

/s/ Kenneth Schneier

Kenneth Schneier, Mayor

/s/ Trish Shinkle

Trish Shinkle, Town Clerk

Attachment:

Exhibit "A" – First Amendment to Franchise Agreement

**FIRST AMENDMENT TO
FRANCHISE AGREEMENT FOR SOLID WASTE SERVICES**

THIS FIRST AMENDMENT TO FRANCHISE AGREEMENT FOR SOLID WASTE SERVICES (hereinafter, the "Amendment") is hereby entered into as of the Amendment Effective Date defined below, between the **Town of Longboat Key, Florida** (hereinafter, the "Town"), and **Waste Management, Inc., of Florida** (hereinafter, the "Franchisee").

WHEREAS, the Town and Franchisee entered into a Franchise Agreement for Solid Waste Services effective as of July 1, 2014 (the "Franchise Agreement"), a copy of which is attached as Exhibit "A" to Ordinance 2014-21; and

WHEREAS, Article 1 of the Franchise Agreement specifies that the term of the Franchise Agreement may be renewed for up to two (2) additional terms of three (3) years each; and

WHEREAS, the Town desires to renew the Franchise Agreement with the Franchisee for an additional term of three (3) years commencing on August 1, 2021, and terminating on June 30, 2024; and

WHEREAS, Section 15.2.4 of the Franchise Agreement allows for the Franchisee to petition the Town for a rate adjustment resulting from a change in law; and

WHEREAS, the Franchisee has requested a modification to the single-family residential and multi-family commercial collection service rates for recyclables due to "uncontrollable circumstances" resulting "in the costs of providing processing, transportation and marketing services for Recyclable Materials to increase dramatically" including changes to recycling standards in the People's Republic of China and requirements regarding management of contaminated recyclables set forth by the Florida Legislature in CS/HB 73; and

WHEREAS, the Town and Franchisee mutually desire to amend the Franchise Agreement to address these matters and to further modify certain other terms of the Franchise Agreement as set forth herein.

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

1. The term of the Franchise Agreement is extended for an additional term of three (3) years commencing on August 1, 2021, and terminating on June 30, 2024, unless terminated sooner as provided for under the terms of the Franchise Agreement.
2. The following provision shall be added to the Franchise Agreement as Section 5.4.3:

HB 73 Initiatives. Franchisee shall use its reasonable efforts to reduce the amount of contaminated recyclables being collected. Contaminated recyclable materials is defined as a container holding recyclables that contains more than fifteen percent (15%) by weight or volume of solid waste; contains food, liquid or other non-conforming material; contains fiber materials that are wet; contains regulated or restricted waste, or other such material that renders the load unacceptable. Recycling carts or other containers for recyclable materials that are contaminated may be rejected, not collected, tagged or otherwise managed by the Franchisee. The Town and Franchisee shall cooperate to educate residents and other

customers as to the proper procedures for setting out recyclable materials to minimize contamination.

3. Section 13.1 shall be replaced in its entirety with the following:

The Franchisee agrees to comply with Florida's public records law by keeping and maintaining public records that ordinarily and necessarily would be required by the Town in order to perform the services under the Agreement by doing the following: upon the request of the Town's Custodian of Public Records, providing the Town with copies of or access to public records on the same terms and conditions that the Town would provide the records and at a cost that does not exceed the cost provided by Florida law; by ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the term of the Agreement and following completion of the Agreement if the Franchisee does not transfer the records to the Town; and upon completion of the Agreement by transferring, at no cost, to the Town all public records in possession of the Franchisee or by keeping and maintaining all public records required by the Town to perform the services. If the Franchisee transfers all public records to the Town upon completion of the Agreement, the Franchisee shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Franchisee keeps and maintains public records upon completion of the Agreement, the Franchisee shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Town, upon request from the Town's Custodian of Public Records, in a format that is compatible with the information technology systems of the Town.

IF THE FRANCHISEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE FRANCHISEE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT THE TOWN'S CUSTODIAN OF PUBLIC RECORDS TRISH SHINKLE, TOWN CLERK, AT 501 BAY ISLES ROAD, LONGBOAT KEY, FLORIDA 34228, (941) 316-1999, TSHINKLE@LONGBOATKEY.ORG.

4. The language under Section 23.2 Notice of the Franchise Agreement shall be replaced in its entirety with the following:

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

To Town: Thomas A. Harmer
Town Manager
Town of Longboat Key
501 Bay Isles Road
Longboat Key, FL 34228

With Copies to: Maggie Mooney
Town Attorney

Isaac Brownman
Public Works Director

Persson, Cohen & Mooney, P.A.
6853 Energy Court
Lakewood Ranch, FL 34240

Town of Longboat Key
600 General Harris St
Longboat Key, FL 34228

To Franchisee: David Myhan
President
Waste Management, Inc., of Florida
1800 N. Military Trail, Suite 201
Boca Raton, FL 33431

With Copies to: Legal Department
Waste Management, Inc., of Florida
1800 N. Military Trail, Suite 201
Boca Raton, FL 33431

5. The following provision shall be added to the Franchise Agreement as Section 24.17:

E-Verify. The Franchisee and its subcontractors (if any) warrant compliance with all federal immigration laws and regulations that relate to their employees including, but not limited to, registering with, and using the E-Verify system. The Franchisee agrees and acknowledges that the Town is a public employer that is subject to the E-Verify requirements as set forth in Section 448.095, Florida Statutes, and that the provisions of Section 448.095, F.S., apply to the Agreement. Notwithstanding, if the Town has a good faith belief that Franchisee has knowingly hired, recruited, or referred an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States for employment under the Agreement, the Town shall terminate the Agreement. If the Town has a good faith belief that a subcontractor performing work under the Agreement knowingly hired, recruited, or referred an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States for employment under this Agreement, the Town shall promptly notify Franchisee and order Franchisee to immediately terminate the contract with the subcontractor. Franchisee shall be liable for any additional costs incurred by the Town as a result of the termination of the Agreement based on Franchisee's failure to comply with the E-Verify requirements referenced herein.

6. Resolution 2020-09 adjusted the "Exhibit A Service Rates" to reflect the rates currently in effect. "Exhibit A Service Rates" of the Franchise Agreement, as adjusted by Resolution 2020-09, shall be amended as follows:

Residential Collection Service Rates - Recyclables 64 gal. carts

August 1, 2021 to June 30, 2022	\$3.06
July 1, 2022 to June 30, 2023	\$3.40
July 1, 2023 to June 30, 2024	\$3.75

Commercial Collection Service Rates – Multifamily Recycling Fee

August 1, 2021 to June 30, 2022	\$2.33
July 1, 2022 to June 30, 2023	\$2.67
July 1, 2023 to June 30, 2024	\$3.02

7. All other service rates provided for under "Exhibit A Service Rates" of the Franchise Agreement shall remain as set forth in Resolution 2020-09 of the Town of Longboat Key.
8. The Effective Date of this Amendment shall be August 1, 2021.
9. All other terms and conditions of the Franchise Agreement, except as amended by this Amendment, shall continue in full force and effect throughout the term of the Franchise Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this First Amendment to Franchise Agreement for Solid Waste Services as of the day and year last written below. The Town and the Franchisee have signed this Amendment in two originals in counterpart. One counterpart each has been delivered to the Town's Purchasing Manager and to the Franchisee.

Attest:

As to Franchisee

FRANCHISEE

Waste Management, Inc., of Florida

By: _____
Signature

By: _____
Signature (Authorized Representative)

Date: _____

Print Name: _____

Print Title: _____

Date: _____

Attest:

As to Town of Longboat Key, Florida

TOWN

Town of Longboat Key, Florida

Trish Shinkle, Town Clerk

By: _____
Thomas A. Harmer, Town Manager

Date _____

Date: _____

Seal:

Review of Amendment as to Form

By: _____
Maggie D. Mooney, Esq., Town Attorney