

RESOLUTION NO: 2020-369

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, CONDITIONS, PROVISIONS, AND REQUIREMENTS OF A CONSENT TO ADS/WM MERGER PURSUANT TO SECTION 21 OF THE AMENDED AND RESTATED FRANCHISE AGREEMENT BETWEEN ST. JOHNS COUNTY, FLORIDA AND ADVANCED DISPOSAL SERVICES OF JACKSONVILLE, LLC; AUTHORIZING THE CHAIR OF THE BOARD OF COUNTY COMMISSIONERS TO EXECUTE THE CONSENT ON BEHALF OF THE COUNTY; AND PROVIDING AN EFFECTIVE DATE.

RECITALS

WHEREAS, on or about June 4, 2014, St. Johns County ("County") and Advanced Disposal Service of Jacksonville, LLC ("Advanced") entered into an Amended and Restated Franchise Agreement for the Collection and Transportation of Residential Waste between St. Johns County, Florida and Advanced Disposal Service of Jacksonville, LLC, which has been amended on January 3, 2017 and September 19, 2019 ("Franchise Agreement"); and

WHEREAS, Advanced Disposal Services, Inc. ("ADS"), of which Advanced is an indirect subsidiary, and Waste Management, Inc. ("WM") have entered into that certain Agreement and Plan of Merger, dated as of April 14, 2019, as amended by Amendment No. 1, dated as of June 24, 2020, pursuant to which they propose that a wholly owned indirect subsidiary of WM merge with and into ADS, with ADS continuing as the surviving entity and becoming a wholly owned subsidiary of WM ("Transaction"); and

WHEREAS, Section 21 of the Franchise Agreement provides that neither party thereto may sell, assign, convey, or transfer its interest in the Agreement without the prior written consent of the other, and, further, that no sale, transfer, conveyance, or transfer of Advanced's interest in the Franchise Agreement shall be valid unless and until the Board of County Commissioners approves such transaction at a duly noticed public meeting; and

WHEREAS, Section 21 further provides that, among other things, a change in the ownership, operational, or managerial portion of Advanced shall be deemed a sale and transfer of the Franchise Agreement; and

WHEREAS, while Advanced and ADS will survive the closing of the Transaction, with no change in the immediate ownership of Advanced, and Advanced will continue to provide the services pursuant to the Franchise Agreement, Advanced has requested, out of an abundance of caution and pursuant to Section 21 of the Franchise Agreement, that the County consent to the Transaction; and

WHEREAS, the County wishes to provide its consent to the Transaction under the terms and conditions of the Consent to ADS/WM Merger attached hereto as Exhibit A; and

WHEREAS, the County finds that this Consent provides benefits to the County and thus is in the public interest.

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, as follows:

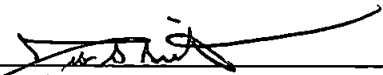
Section 1. The above Recitals are incorporated by reference into the body of this Resolution and such Recitals are adopted as findings of fact.

Section 2. The Board of County Commissioners of St. Johns County, Florida hereby approves the terms, provisions, conditions, and requirements of the Consent to ADS/WM Merger, and authorizes the Chair of the Board of County Commissioners to execute the Second Amendment on behalf of the County, in substantially the same form and format as attached.

Section 3. To the extent that there are typographical and/or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 6th day of October, 2020.

ST. JOHNS COUNTY, a political
subdivision of the State of Florida

By: 
Jeb S. Smith, Chair
Board of County Commissioners

ATTEST: Brandon Patty, Clerk & Comptroller

By: 
Deputy Clerk

RENDITION DATE 10/8/20



Board of County Commissioners
St. Johns County
500 San Sebastian View
St. Augustine, FL 32084

Consent to ADS / WM Merger

Reference is made to that certain Amended and Restated Franchise Agreement for the Collection and Transportation of Residential Waste, dated as of June 4, 2014, and amended on January 3, 2017 and September 19, 2019 (the "Franchise Agreement"), by and between St. Johns County (the "County") and Advanced Disposal Services of Jacksonville, LLC (the "ADS Contractor").

Reference is also made to that certain Agreement and Plan of Merger, dated as of April 14, 2019 (the "Original Agreement"), as amended by Amendment No. 1, dated as of June 24, 2020 (the "Amendment"), and together with the Original Agreement, the "Merger Agreement"), among Waste Management, Inc. ("WM"), Advanced Disposal Services, Inc. ("ADS") and Everglades Merger Sub Inc., pursuant to which and subject to the satisfaction or waiver of certain customary conditions, a wholly owned indirect subsidiary of WM will merge with and into ADS, with ADS continuing as the surviving entity and becoming a wholly owned subsidiary of WM (such merger, the "Transaction"). The parties to the Merger Agreement anticipate that the Transaction will close early in the fourth quarter of 2020, subject to approval by the U.S. Department of Justice and assuming all other conditions to the Transaction closing are satisfied or waived by WM and ADS.

ADS Contractor is currently a wholly owned subsidiary of Advanced Disposal Services South, LLC, which in turn, is a wholly owned subsidiary of ADS. As a result of the specific transaction structure (i.e., stock acquisition by merger of the ADS legal entity), upon closing of the Transaction, the ADS Contractor will remain the same and will continue to be an active, operating company and will remain a direct wholly owned subsidiary of Advanced Disposal Services South, LLC. At this time, WM does not anticipate any material change in the operations or management of ADS Contractor relating to the services provided pursuant to the Franchise Agreement, and the County's primary point of contact, including for purposes of notice as provided in Section 39 of the Franchise Agreement, will remain the same. Upon closing of the Transaction, from the County's perspective, the only change resulting from the acquisition is that the ADS Contractor will become an indirect subsidiary of WM. The scope of work under the Franchise Agreement is not being assigned to a different company at WM.

Notwithstanding the foregoing, including that there will be no change in the immediate ownership of ADS Contractor as a result of the Transaction, ADS Contractor has, out of an abundance of caution, requested that the County consent to the proposed indirect change in control pursuant to the terms of the Franchise Agreement, which provide, in part in Section 21 thereof, that

Neither Party may sell, assign, convey or transfer its interest in this Agreement without the prior written consent of the other. A sale of the assets of the Contractor, or a change in the ownership, operational, or managerial portion of the Company, shall be deemed a sale and transfer of this Agreement. No sale, transfer, conveyance or transfer of the Contractor's interest in this Agreement shall be valid unless and until the Board approves such transaction at a duly noticed public meeting.

The County hereby consents to the Transaction and agrees that the Transaction will not result in a breach of, or default under, the Agreement and that, notwithstanding the Transaction closing, the Franchise Agreement will survive and continue in full force and effect without any further action by the County or the ADS Contractor. In case of a perceived conflict between the terms of the Franchise Agreement and this consent, the terms of the Franchise Agreement shall govern.

This consent shall not be deemed to impose any additional obligations on the County or to operate or be construed as a waiver of any term, condition, right, or remedy of the County under the Franchise Agreement, including but not limited to any prohibition against assignment or transfer without the County's consent as provided in Section 21 of the Franchise Agreement. By entering into this consent, the County does not in any manner adopt, accept, or approve any of the terms or conditions of the Merger Agreement or any of the agreements between the parties to the Merger Agreement pertaining to the Transaction.

This consent will be effective as of the date set forth below, but will be contingent upon the Transaction closing, such that if the Transaction does not close within ninety (90) days of the effective date of this consent, or if the Franchise Agreement is terminated per its terms, this consent will not have any effect and will be void, provided that the parties may renew their request for consent again at any time, so long as the Franchise Agreement remains in effect.

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this consent as of the date first set forth under the signature below.

ST. JOHNS COUNTY, a political
subdivision of the State of Florida

By: _____
Jeb S. Smith, Chair
Board of County Commissioners

Date: _____

ATTEST: Brandon Patty, Clerk & Comptroller

By: _____
Deputy Clerk