

TOWN OF DAVIE

TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM: Monroe D. Kiar

SUBJECT: Resolution

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE TOWN COUNCIL TO EXECUTE AN INDEMNIFICATION AND REIMBURSEMENT AGREEMENT BETWEEN THE TOWN OF DAVIE (“Town”), AND WASTE MANAGEMENT, INC. OF FLORIDA (“WMIF”), AND PROVIDING FOR AN EFFECTIVE DATE.

REPORT IN BRIEF: The Town of Davie (“Town”) and Waste Management, Inc. of Florida (“WMIF”) have entered into an exclusive Franchise Agreement dated, October 1, 2004, to provide for the collection of solid waste and recycling materials within the Town. The Town and WMIF are contemplating litigation against third parties who are or have violated the exclusive construction and demolition debris franchise held by WMIF. The Indemnification and Reimbursement Agreement that is attached to the Resolution as Exhibit “A” will require Waste Management, Inc. of Florida to indemnify, hold harmless, defend and reimburse the Town for all costs and attorney’s fees expended in any such action in accordance with said agreement.

PREVIOUS ACTIONS: None

CONCURRENCES: N/A

FISCAL IMPACT: N/A

RECOMMENDATION(S): Motion to approve.

ATTACHMENTS: Resolution, Indemnification and Reimbursement Agreement

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE TOWN COUNCIL TO EXECUTE AN INDEMNIFICATION AND REIMBURSEMENT AGREEMENT BETWEEN THE TOWN OF DAVIE ("Town"), AND WASTE MANAGEMENT, INC. OF FLORIDA ("WMIF"), AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town and WMIF have entered into an exclusive Franchise Agreement dated, October 1, 2004, to provide for the collection of solid waste and recycling materials within the Town; and

WHEREAS, the Town and WMIF are contemplating litigation against third parties who are or have violated the exclusive construction and demolition debris franchise held by WMIF; and

WHEREAS, WMIF agrees to indemnify, hold harmless, defend and reimburse the Town regarding the contemplated litigation; and

WHEREAS, it is the belief of the Town and WMIF that the initiation of such litigation and the execution of the Indemnification and Reimbursement Agreement will be mutually beneficial to both the Town and WMIF.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

Section 1. The Town Council hereby authorizes the Mayor to execute the Indemnification and Reimbursement Agreement that is attached hereto as Exhibit "A", between the Town and WMIF.

Section 2. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2006

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2006

THIS INDEMNIFICATION AND REIMBURSEMENT AGREEMENT is made this ____ day of _____, 2006 by and between the **TOWN OF DAVIE** (the "Town") and **WASTE MANAGEMENT, INC. OF FLORIDA** ("WMIF").

W I T N E S S E T H:

WHEREAS, the Town and WMIF entered into a Franchise Agreement dated October 1, 2004, to provide for the collection of solid waste and recycling materials within the Town; and

WHEREAS, the Town and WMIF are contemplating litigation against third parties who are or have violated the exclusive construction and demolition debris franchise held by WMIF ; and

WHEREAS, as set forth herein, WMIF agrees to indemnify, hold harmless and defend the Town regarding the contemplated litigation; and

NOW, THEREFORE, in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The recitations set forth above are incorporated herein.
2. WMIF and the Town were defendants in that certain lawsuit in federal court captioned *Southern Waste Systems, LLC v. Town of Davie, Florida and Waste Management Inc. of Florida* , Case No. 05-60847-CIV Dimitrouleas. That litigation and similar litigation brought against WMIF by the same plaintiff in regards to construction and demolition debris franchises in the City of Delay Beach and the Town of Lake Park have been resolved in favor of the municipality and WMIF..
3. WMIF and the Town contemplate bringing litigation against certain third parties who are or have violated the exclusive construction and demolition debris franchise held by WMIF in the Town and when brought will seek injunctive relief, damages and attorney fees and costs.
4. In such litigation, WMIF shall reimburse the Town for its costs for the payment of attorney fees and costs at the trial and appellate levels. It is recognized that the Town employs outside counsel (Monroe Kiar, Esq.) as the Town Attorney. WMIF shall reimburse the Town for fees paid to the Town

Attorney at \$160.00 per hour incurred in providing assistance in this matter.

5. In the event that such litigation is unsuccessful and the defendants therein are deemed prevailing parties, WMIF agrees to indemnify and hold harmless the Town and its officials against compensatory damages (but not punitive, special or incidental damages) and attorney fees and costs that may be awarded to such defendants.

6. WMIF and the Town shall cooperate in the aforesaid litigation including, but not limited to, providing testimony, documents, affidavits and other assistance to vigorously defend this matter through trial and appellate levels. Internal costs incurred by the Town for its employees and officials in rendering assistance shall be for the Town's account.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first hereinabove written.

ATTEST:

TOWN OF DAVIE, FLORIDA

City Clerk

By: _____
, Mayor

Approved as to legal form
and sufficiency:

Town Attorney

WITNESSES:

WASTE MANAGEMENT, INC.
OF FLORIDA

By: _____

(Name printed or typed)

(Corporate Seal)

(Name printed or typed)

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 200__, by _____, as _____ (name of officer or agent, title of officer or agent), of _____ (name of corporation acknowledging), a _____ (state or place of incorporation) corporation, on behalf of the corporation. He/She is personally known to me or has produced _____ (type of identification) as identification.

Signature of Person Taking Acknowledgment

Name Typed, Printed or Stamped

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