



AGENDA ITEM REQUEST FORM

Item No. 15a

Town Manager's Office

Department Submitting Request

Bud Bentley

Assistant Town Manager 

REGULAR COMMISSION MTG of March 22, 2010

- | | | | |
|---------------------------------------|---|---------------------------------------|---|
| <input type="checkbox"/> Presentation | <input type="checkbox"/> Reports | <input type="checkbox"/> Consent | <input type="checkbox"/> Ordinance |
| <input type="checkbox"/> Resolution | <input type="checkbox"/> Quasi Judicial | <input type="checkbox"/> Old Business | <input checked="" type="checkbox"/> New Business |

SUBJECT TITLE: Acquisition of Choice Environmental Services, Inc. by Swisher Hygiene, Inc.

EXPLANATION: The Town's solid waste hauler, Choice Environmental Services of Broward, Inc., a subsidiary of Choice Environmental Services, Inc. ("Choice"), has notified the Town that Choice and all of its subsidiaries have been acquired by Swisher Hygiene. Choice has also provided the attached article (**Exhibit 1**) explaining the transaction.

We have consulted with the Town Attorney, who advised that the Town's agreement with Choice addresses assignments, mergers and other changes of control at Section 19 of the Solid Waste, Bulk Waste and Recycling Collection Services Agreement between the Town and Choice (the "Agreement"). See **Exhibit 2**. The applicable language, in Subsection 19.2, states that "In the event that . . . CONTRACTOR is purchased by, or merged with, another corporate entity, it shall provide written notice of such to the TOWN. The TOWN has the sole discretion to determine whether the CONTRACTOR'S ability to perform its obligations under this Agreement has been affected or impaired by such sale or disposition of assets."

Therefore, the Town has the right to written notice, which has been provided in Exhibit 1. The Town also has the right under Section 19.2 to determine whether this transaction affects or impairs Choice's ability to perform under the Agreement.

Town staff has not been notified of any intent to change, and has not observed any changes in the Town's solid waste operations following this transaction. The same contact persons are working with the Town, and the same procedures, equipment and activities are being used and taking place. If, at some point in the future, Choice changes its operations in the Town in a manner that violates the Agreement, the Town retains its rights to address such violations as a breach of the Agreement, as provided in Section 9.9 and elsewhere in the Agreement. See **Exhibit 2**.

RECOMMENDATION: We have no reason to believe that Choice's ability to perform its obligations under our agreement will be impaired by the sale/merger. In fact, the entrepreneur of Swisher, H. Wayne Hayne Huizenga has a long history in the solid waste business and we have been informed that the current management team is remaining in place.

We recommend the Town Commission find that this transaction will not affect or impair Choice's ability to perform under the Agreement.

- EXHIBITS:**
1. February 17, 2011 Letter from Grant J. Smith re acquisition, and attached news article
 2. Sections 9.9 and 19 of the Agreement between the Town and Choice

Reviewed by Town Attorney
 Yes No

Town Manager Initials CB



February 17, 2011

VIA E-MAIL

Ms. Connie Hoffman
Town Manager
Town of Lauderdale-By-The-Sea
4501 Ocean Drive
Lauderdale-By-The-Sea, FL 33301

Re: Sale of Choice Environmental Services, Inc. and its Subsidiaries ("Choice")
to Swisher Hygiene, Inc. ("Swisher")

Dear Connie:

As you may be aware, this week, Swisher entered into a definitive agreement to acquire Choice, and it is expected, subject to customary closing conditions, that the acquisition will be completed no later than March 31, 2011. Swisher is a publically traded company listed on the NASDAQ and the Toronto Stock Exchanges (NASDAQ: SWSH, TSX: SWI), controlled by waste industry legend, H. Wayne Huizenga and his partner Steve Berrard.

As this is a stock purchase/merger, Choice will be a wholly owned subsidiary of Swisher, with Swisher owning 100% of the stock of Choice. No assignment of the contract Choice has with Lauderdale-By-The-Sea ("Town") is taking place and Choice will continue to provide you with the same high level of service you have grown accustomed to over the life of the relationship. Choice plans to continue to comply with the terms and conditions of our agreement with the Town and now, with the public company behind us, has additional financial resources, expertise and other capabilities available to it to improve on our already great service. The management of Choice is remaining in place, thus you will continue to deal with the same great team of professionals going forward.

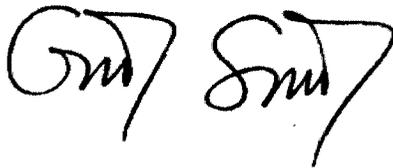
In accordance with Section 19 of our agreement with the Town, please accept this as written notice of the proposed transaction.

Please contact me at your earliest convenience to discuss what additional information you will need to grant the approval required under our agreement with the Town.

I have attached for your reference, a copy of the press release announcing the signing of the agreement.

I look forward to hearing from you soon.

Respectfully submitted,

Handwritten signature of Grant J. Smith, consisting of two stylized initials 'GJS' and 'SM' written in black ink.

Grant J. Smith, Esq.
General Counsel

cc: Susan Trevarthen, Town Attorney

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Swisher Hygiene to Acquire Choice Environmental Services, Inc.

Globe 

Press Release Source: Swisher International, Inc. On Monday February 14, 2011, 9:06 am EST

CHARLOTTE, N.C., Feb. 14, 2011 (GLOBE NEWSWIRE) -- Swisher Hygiene Inc. ("**Swisher Hygiene**") (Nasdaq:SWSH - News) (TSX:SWI - News), a leading provider of essential hygiene and sanitation products and services, today announced that it has entered into a definitive agreement to acquire Choice Environmental Services, Inc. ("Choice Environmental"), a Fort Lauderdale, Florida-based residential and commercial solid waste services company, by way of a statutory merger involving a wholly-owned subsidiary of Swisher Hygiene.

In the transaction, Swisher Hygiene will issue 9.2 million shares of its common stock to the former shareholders of Choice Environmental at the agreed upon value of US\$50.1 million. Swisher Hygiene will also assume approximately US\$41.5 million in debt, and expects to pay down a majority of this debt with proceeds from its previously announced subscription receipts offering. The agreement is subject to customary closing conditions, completion of the subscription receipts offering and receipt of all necessary regulatory approvals, including approval of the Toronto Stock Exchange with respect to the shares to be issued in the merger transaction and the subscription receipts offering. Upon satisfaction of all conditions, it is expected that the acquisition of Choice Environmental will be completed no later than March 31, 2011.

"We have been looking closely for strong companies that will complement our current hygiene and sanitary business and products, and the acquisition of Choice Environmental is a perfect fit for Swisher Hygiene as we transform our company into a true full-service provider," said Steven R. Berrard, Chief Executive Officer of Swisher Hygiene. "Choice Environmental has strong recurring revenue streams -- many of which are generated from exclusive municipal contracts -- at attractive operating margins, a good mix of services that will provide synergies and cross-selling opportunities for our commercial customers and broaden our hygiene and sanitation offering. Choice Environmental also brings to Swisher Hygiene a top-notch management team that has successfully grown the company over the last seven years. Further, the acquisition will enable us to greatly expand our involvement in Florida, a market in which we already have a significant presence."

Choice Environmental has been in business since 2004 and serves more than 150,000 residential and 7,500 commercial customers in the Southern and Central Florida regions through its 320 employees and over 150 collection vehicles by offering a complete range of solid waste and recycling collection, transportation, processing and disposal services. Choice Environmental operates six hauling operations, three transfer and materials recovery facilities and annually processes more than 150,000 tons of material. Choice Environmental has a strong management team, led by Chairman and CEO Glen Miller, with over a century of experience in the waste industry. The entire senior management team of Choice Environmental is expected to join Swisher Hygiene upon completion of the acquisition.

"We are excited at the abundant opportunities that will be present by becoming a part of Swisher Hygiene," said Mr. Miller. "We have had a fantastic run as a standalone company over the past seven years, consistently growing the business over that period with our employees providing the best waste services for our customers in Florida, while investing considerably in efficient equipment that is scalable, environmentally friendly and energy efficient. With the infrastructure already put into place by Wayne Huizenga and Steve Berrard, we foresee significant opportunities for organic and acquisition-related growth."

Cautionary Statement on Forward-Looking Information

All statements, other than statements of historical fact, contained in this news release, including any information as to the future financial or operating performance of Swisher Hygiene, constitute "forward-looking information" or "forward-looking statements" within the meaning of certain securities laws, including the provisions of the *Securities Act* (Ontario) and are based on the expectations, estimates and projections of management as of the date of this news release unless otherwise stated. Forward-looking statements include, but are not limited to, possible events and statements with respect to possible events. The words "plans," "expects," "is expected," "scheduled," "estimates," or "believes," or

similar words or variations of such words and phrases or statements that certain actions, events or results "may," "could," "would," "might," or "will be taken," "occur," and similar expressions identify forward-looking statements.

Forward-looking statements are necessarily based upon a number of estimates and assumptions that, while considered reasonable by Swisher Hygiene as of the date of such statements, are inherently subject to significant business, economic and competitive uncertainties and contingencies. The estimates and assumptions of Swisher Hygiene contained in this news release, which may prove to be incorrect, include but are not limited to, the various assumptions set forth herein as well as: (1) the accuracy of management's assessment of the effects of the successful completion of the transaction; (2) the trading price of Swisher Hygiene's common shares; and (3) there being no significant disruptions affecting Swisher Hygiene's operations, whether due to labour disruptions, supply disruptions, power disruptions, damage to equipment or otherwise. All of these assumptions have been derived from information currently available to Swisher Hygiene including information obtained by Swisher Hygiene from third-party sources. These assumptions may prove to be incorrect in whole or in part. All of the forward-looking statements made in this news release are qualified by the above cautionary statements and those made in the "Risk Factors" section of Swisher Hygiene's registration statement on Form 10 filed with the Securities and Exchange Commission, available on www.sec.gov, and with Canadian securities regulators available on Swisher Hygiene's SEDAR profile at www.sedar.com, and Swisher Hygiene's other filings with the Securities and Exchange Commission and with Canadian securities regulators. These factors are not intended to represent a complete list of the factors that could affect Swisher Hygiene.

The forward-looking information set forth in this news release is subject to various assumptions, risks, uncertainties and other factors that are difficult to predict and which could cause actual results to differ materially from those expressed or implied in the forward-looking information.

Swisher Hygiene disclaims any intention or obligation to update or revise any forward-looking statements, except to the extent required by applicable law.

About Swisher Hygiene Inc.

Swisher Hygiene Inc., formerly known as "CoolBrands International Inc.", is a NASDAQ and TSX listed company that provides hygiene solutions to customers throughout much of North America and internationally through its global network of 73 company-owned operations, 10 franchises and 10 master licensees covering the United Kingdom, Ireland, Portugal, the Netherlands, Singapore, the Philippines, Taiwan, Korea, Hong Kong/Macau/China, and Mexico. These solutions include products and services that are designed to promote superior cleanliness and sanitation in commercial environments, enhancing the safety, satisfaction and well-being of employees and patrons. Swisher Hygiene serves customers in a wide range of end-markets, with a particular emphasis on the foodservice, hospitality, retail, industrial and healthcare industries across North America.

Contact:

Swisher Hygiene Inc.
Investor Contact:
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Phone: (203) 682-8215
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Alecia Pulman, ICR
Phone: (203) 682-8332

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EXHIBIT 2



**Solid Waste, Bulk Waste, and Recycling
Collection Services Agreement**

Between

The Town of Lauderdale By-The-Sea, Florida

and

Choice Environmental Services of Broward, Inc.

(Effective) (July 1, 2009)

RFP #09-02-01

9.7 FACILITY INSPECTION RIGHTS

The TOWN may, at reasonable times during the term hereof, inspect the CONTRACTOR'S facilities and perform such inspections, as the TOWN deems reasonably necessary, to determine whether the services required to be provided by the CONTRACTOR under this Agreement conform to the terms hereof and/or the terms of the solicitation documents, if applicable. The CONTRACTOR shall make available to the TOWN all reasonable facilities and assistance to facilitate the performance of inspections by the TOWN'S representatives.

9.8 LIABILITY FOR DELAYS OR NON-PERFORMANCE DUE TO UNUSUAL CIRCUMSTANCES

It is expressly agreed that in no event shall the TOWN be liable or responsible to the CONTRACTOR, or to any other person, on account of any stoppage or delay in the work herein provided for, by injunction or other legal or equitable proceedings brought against the TOWN or the CONTRACTOR, or on account of any delay from any cause over which the TOWN has no control. The CONTRACTOR shall not be responsible for delays or non-performance of the terms and provisions of this Agreement where such delays or non-performance are caused by events or circumstances beyond the control of the CONTRACTOR. The CONTRACTOR shall not be entitled to compensation for such period of time as the delay or non-performance shall continue, but will be entitled to pro-rata compensation once said work has been completed. In the event of a strike of the employees of CONTRACTOR, or any other similar labor dispute which makes performance of this Agreement by the CONTRACTOR substantially impossible, CONTRACTOR agrees that the TOWN shall have the right to call the bond hereinafter described within one (1) week of such action and engage another person, firm, town attorney or corporation to provide necessary services with the bond proceeds applied to pay any difference between the Agreement price in effect and the costs charged by the successor company. In the event the bond is called, the TOWN will first call and use the cash/surety bond posted by the CONTRACTOR.

9.9 BREACH OF AGREEMENT

If, in the opinion of the Town Manager, or the designated TOWN representative, there has been a material breach of Agreement, the Town Manager, or designated TOWN representative, shall notify the CONTRACTOR, in writing, specifying the basis and reason in which there has been a breach of Agreement. If, within a period of ten (10) calendar days from the date of CONTRACTOR'S receipt of the notice, the CONTRACTOR has not eliminated or otherwise cured the conditions considered to be a breach of Agreement, the Town Manager shall so notify the Town Commission in writing, and a public hearing shall be set for a date within fifteen (15) calendar days of such notice to the Town Commission. On the date of the hearing, the Town Commission shall hear from the CONTRACTOR and the Town Commission shall make a final determination as to whether or not there has been a breach of Agreement and direct what further action shall be taken by the TOWN, as hereinafter provided. Pending resolution of the alleged breach, the provisions of Section 20 shall govern the CONTRACTOR.

9.10 TERMINATION

If the CONTRACTOR fails to begin work at the time specified, or discontinues the prosecution of the work, or any portion thereof, for any cause not excused as provided

any act, omission, default or negligence (whether active or passive) of the CONTRACTOR or its employees, agents or subcontractors (collectively referred to as "CONTRACTOR"), regardless of whether it is, or is alleged to be, caused in whole or in part (whether joint, concurrent or contributing) by any act, omission, default, or negligence (whether active or passive) of the Indemnities, or any of them or (ii) the failure of the CONTRACTOR to comply with any of the paragraphs herein or the failure of the CONTRACTOR to conform to statutes, ordinances, or other regulations or requirements of any governmental authority, Federal or State, in connection with the performance of this Agreement. The CONTRACTOR expressly agrees to indemnify and hold harmless the Indemnities, or any of them, from and against all liabilities which may be asserted by an employee or former employee of the CONTRACTOR, or any of its subcontractors, as provided above, for which the CONTRACTOR'S liability to such employee would otherwise be limited to payments under state Worker's Compensation or similar laws.

SECTION 19: ASSIGNMENT OF AGREEMENT; NON-TRANSFERABILITY

- 19.1** This Agreement, or any portion or interest herein, shall not, under any circumstances, be sublet, assigned, transferred, or otherwise encumbered by CONTRACTOR without the advance express, written consent of the TOWN, which may or may not be granted at the sole discretion of the TOWN.
- 19.2** In the event that the CONTRACTOR sells or otherwise disposes of any assets during the term of this Agreement, or CONTRACTOR is purchased by, or merged with, another corporate entity, it shall provide written notice of such to the TOWN. The TOWN has the sole discretion to determine whether the CONTRACTOR'S ability to perform its obligations under this Agreement has been affected or impaired by such sale or disposition of assets.

SECTION 20: OPERATIONS DURING DISPUTE

In the event that any dispute, arises between the TOWN and the CONTRACTOR relating to this Agreement performance or compensation hereunder, the CONTRACTOR shall continue to render service and receive compensation in full compliance with all terms and conditions of this Agreement as interpreted, in good faith, by the TOWN, regardless of such dispute.

The CONTRACTOR expressly recognizes the paramount right and duty of the TOWN to provide adequate Collection and disposal services to its residents and further agrees, in consideration of the execution of this Agreement, that in the event of such a dispute, if any, it will not seek injunctive relief in any court without first negotiating with the TOWN in good faith for an adjustment on the matter or matters in dispute and, upon failure of said negotiations to resolve the dispute may present the matter to a court of competent jurisdiction in Broward County, Florida in an appropriate suit therefore instituted by it or by the TOWN.

Notwithstanding the other provisions in this Section, the TOWN reserves the right to terminate this Agreement at any time whenever the service provided by the CONTRACTOR fails to meet reasonable standards of the trade, after TOWN provides written notice to the CONTRACTOR pursuant to Section 9 of this Agreement. Upon termination, the TOWN may call the bond and apply the cash and surety bond for the cost of service in excess of that charged to the TOWN by the firm engaged for the balance of the Agreement period.