

**Lee County Board of County Commissioners  
Agenda Item Summary**

Blue Sheet No. 20040328

**1. REQUESTED MOTION:**

**ACTION REQUESTED:** Approve and authorize Chairman's signature on a License Agreement with Mr. and Mrs. Don Gulnac, as Trustees, for use of a portion of the Gulnacs' property as part of the County's solid waste management operations at the Lee County Fisherman's Cooperative site.

**WHY ACTION IS NECESSARY:** Agreements involving the use and/or conveyance of interests in real property must be approved and executed by the Board of County Commissioners.

**WHAT ACTION ACCOMPLISHES:** Provides five (5) years of use of a portion of the Gulnac property by the County for its solid waste operations at the Fisherman's Cooperative Site.

**2. DEPARTMENTAL CATEGORY:**  
COMMISSION DISTRICT # 1

**A12A**

**3. MEETING DATE:**

**03-30-2004**

**4. AGENDA:**

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

**5. REQUIREMENT/PURPOSE:**  
(Specify)

- STATUTE
- ORDINANCE
- ADMIN. CODE
- OTHER Variance
- SEZ 2003-00029 Condition

**6. REQUESTOR OF INFORMATION:**

- A. COMMISSIONER
- B. DEPARTMENT County Attorney
- C. DIVISION General Services
- BY: David M. Owen  
Chief Assistant County Attorney

*(Signature)*

**7. BACKGROUND:**

A. Per Board of County Commissioners' direction, County staff has been working to secure suitable locations for the transfer of solid waste generated on the barrier islands of Lee County to the County's Solid Waste Facilities on the mainland. The issue of barrier island solid waste originated as a result of a private request (which was later withdrawn) to establish a solid waste transfer station at a Bokeelia marina. The request resulted in substantial community opposition to the requested use at the proposed location. This issue was later raised by the District Commissioner

**(BACKGROUND CONTINUED - NEXT PAGE)**

**8. MANAGEMENT RECOMMENDATIONS:**

**9. RECOMMENDED APPROVAL:**

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
N/A	N/A	N/A	N/A	3/17/04	OA 3/17/04	OM 3/17/04	RISK 3/17/04	GC 3/17/04	<i>(Signature)</i>

**10. COMMISSION ACTION:**

- APPROVED
- DENIED
- DEFERRED
- OTHER

CO. ATTY. 3/17/04  
FORWARDED  
TO CO. ADMIN.  
8:52 AM

RECEIVED BY  
COUNTY ADMIN: *(Signature)*  
3/17/04  
COUNTY ADMIN  
FORWARDED TO: *(Signature)*  
3/18/04  
4 PM

**BACKGROUND:** (Continued)

(Commissioner Janes) at the May 22, 2001 regular Board meeting. The Board discussed the importance of public input; the health, safety and welfare implications of allowing garbage to remain on the islands for prolonged periods of time; the need for a short-term solution to allow time to develop a long-term solution; the possibility of considering short-term alternatives at the next regular Board meeting; the need for quality controls to ensure that garbage is properly handled; and, the possible establishment of a Solid Waste Service Area for the barrier islands. Commissioner Janes suggested that representatives from the barrier islands and from Pine Island could assist in working out a solution. At the May 22, 2001 Board meeting, the Board directed staff to prepare an agenda item for the next Board meeting.

County staff brought forth the directed agenda item for the May 29, 2001 Board agenda. Staff proposed two options for the Board's consideration. The Board chose to endorse a modified option to allow the transportation of solid waste, on a short term, emergency basis, to Pineland Marina and the Fisherman's Cooperative. The Board's motion also directed staff to pursue a long term solution as well as suspended code enforcement activities related to solid waste transfers at the Fisherman's Cooperative site.

On August 28, 2001, the Board authorized and directed County staff "to take all actions necessary in order to implement a long-range solid waste transportation and disposal methodology for the County Barrier Islands". The Board directed staff to obtain leases with at least two (2) receiving sites on Pine Island. The Fisherman's Cooperative site was identified as an appropriate location to establish a "solid waste transfer station" to accommodate the landing of barrier island solid waste before transferring those materials to the County landfill or the resource recovery facility, as appropriate.

On July 9, 2002, the Board approved an amendment to Lee County Ordinance No. 00-20 adding the "Barrier Islands Service Area" to the Lee County Garbage and Solid Waste Collection and Disposal Program. This amendment was adopted through Ordinance No. 02-23. The Board also directed staff at this meeting to begin lease negotiations with the Fisherman's Cooperative. A lease agreement was subsequently negotiated between the Fisherman's Cooperative property owners and County staff. The Board subsequently reviewed the proposed lease at the June 24, 2003 Board meeting, and voted to enter into the lease.

On April 29, 2003, the Board initiated a County-sponsored Special Exception in the Port and AG-2 Zoning Districts to allow Essential Services Facilities - Group II for the Fisherman's Cooperative property located at 6001 Maria Drive, Pine Island. The Board also authorized the Division of Planning to act as the County's agent for the request with approval from the property owners. The property owners subsequently authorized staff to pursue a Special Exception and Variance to accommodate a solid waste transfer facility on the subject site.

- B. As part of the process in securing the Special Exception and Variances needed to conduct the County's Solid Waste Operations at the Fisherman's Cooperative site, a license was necessary from the adjoining landowners to the Fisherman's Cooperative site so as to facilitate those operations and provide certain protections to the property owner similar to those given to the Fisherman's Cooperative in June, 2003 under our lease.
- C. The salient points of the License are these:
1. The lease is for five (5) years, running concurrent with the Fisherman's Cooperative site.
  2. The cost for the five (5)-year License is \$5,000.00 to be paid in a single, lump sum following approval and execution of the License by the County.
  3. The License is for a 30' x 20' strip of land that projects into the working driveway area of the Fisherman's Cooperative and is necessary for the transfer of Outer Islands solid waste by the County.
  4. The balance of the terms are identical to those with the Fisherman's Cooperative relative to the County's operations across the subject property and the protections given to the owners.

## LICENSE AGREEMENT

This License Agreement is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2004, by and between **Don R. Gulnac, Trustee and Dorothy E. Gulnac, Trustee**, hereinafter, "Owners", and **Lee County**, a political subdivision and charter county of the State of Florida, its assigns, appointees and/or successors, hereinafter "County".

WITNESSETH:

The Owners, in consideration of the mutual covenants contained herein, hereby grants to the County, for the term and under the conditions hereinafter set out, those certain premises in Lee County, Florida, described in Exhibit "A", which is attached hereto and incorporated herein, hereinafter, the "Licensed Premises".

### **I TERM**

The term of this License shall extend continuously and uninterrupted from June 24, 2003, for five (5) consecutive years. If the County wishes to terminate this License for its convenience prior to the expiration of the License, the County may do so with no further obligations or penalties owed to the Owners.

### **II LICENSE PAYMENT**

The County shall pay to the Owners the total sum of \$5,000.00 for this License for the term of this License Agreement.

The County may designate one or more individuals or contract vendors to transport and transfer solid waste from the Barrier Islands Service Area to and across the Licensed Premises. The Owners shall not charge such party(ies) or contract vendors any fees, charges, or rent for access to, or use of, the Licensed Premises.

### **III ACCESS**

The Licensed Premises across the Owners' property may be traversed by the County's solid waste collection trucks and equipment for the sole purposes as set out further herein.

### **IV USE OF PREMISES**

A. The Licensed Premises will be used and occupied by the County, its

assigns, contract vendors, franchisees, appointees and/or successors in interest. The Licensed Premises will be used for the purpose of carrying out the transfer of solid waste as collected from the Lee County Barrier Islands Solid Waste Collection & Disposal Service Area, utilizing all necessary personnel, equipment and/or vehicles to accomplish same as efficiently as practicable.

- B. The County agrees to conduct its activities in a safe and proper manner and in compliance with all federal, state and local laws, ordinances, rules, regulations and other governmental requirements (collectively, "Laws"). The County shall, at its sole expense, comply with all Laws relating to its use and occupation of the Licensed Premises as well as all other activities of the County in and about the Licensed Premises and shall obtain any permits and licenses required in connection with its operations if applicable to the Licensed Premises. The County shall keep all areas of the Licensed Premises used by it in any manner in a neat and clean manner and in good order and repair and shall create no economic waste or nuisance on, in or about the Licensed Premises.
- C. The County acknowledges that the Licensed Premises are the only means of access to the Owners' adjacent residential property and as the result, agrees to conduct its activities in such a way as not to unreasonably interfere with the Owners' access to their private property. The Owners agree not to unreasonably interfere with the activities and utilization of the Licensed Premises by the County.

## **V INJURY OR DAMAGE TO PROPERTY ON PREMISES**

- A. Any County-owned property that may be placed on the Licensed Premises during the continuancy of this License will be at the sole risk of the County.
- B. The County will pay any insurance premiums required for the Licensed Premises as set forth elsewhere herein for all County-owned property, if applicable.
- C. The County hereby agrees to waive and release the Owners from any and all claims of any nature related to the theft of or damage or destruction to any County property on the Licensed Premises and also hereby agrees, pursuant to the limitations as set out in Section 768.28, Florida Statutes, to indemnify, defend and hold the Owners harmless from and against any loss, cost, damage or expense whatsoever related to any theft of or damage or destruction to any County property while on the Licensed Premises including without limitation while in transit, whether owned by the County or any third party. The County agrees to hold the Owners

harmless from and against any suits at law or administrative actions brought by third parties claiming bodily injury or damage to property as the result of the County's activities on the Licensed Premises pursuant to Florida law and the limitations of Section 768.28, F.S..

## **VI EXPIRATION OF TERM**

At the expiration of the original term as agreed upon by the Owners and the County, the County will peaceably yield the premises in as good a repair as existed at the commencement of the License.

## **VII WAIVER OF DEFAULTS**

The waiver by the Owners of a breach of any terms or conditions of this License by the County, will not be construed as a waiver of any subsequent breach(es) of any duty or covenant imposed by this License on the County.

## **VIII RIGHT TO INSPECT**

The Owners, at any reasonable times, may enter upon the Licensed Premises for the purpose of examining the Licensed Premises.

## **IX HOLDOVER BY THE COUNTY**

If the County remains in possession of the Licensed Premises with the consent of the Owners after the expiration of the License or any extension thereto, a new License from month to month will be created between the Parties. The new License will be subject to all of the terms and conditions of this License Agreement, but will be terminable on thirty (30) days written notice served by either Party on the non-terminating party.

## **X NOTICES**

All notices required to be served upon the County by the Owners will be served by Registered or Certified Mail, Return Receipt Requested, at Lee County Department of Solid Waste, Post Office Box 398, Fort Myers, Florida 33902-0398, and all notices required to be served upon the Owners by the County will be served by Registered or Certified Mail, Return Receipt Requested, at the address of the Owner at 6644 Maria Drive, St. James City, Florida 33956.

## **XI DEFINITION OF TERMS**

- A. The terms "License", "License Agreement", or "Agreement" will be inclusive of each other and will also include all renewals, extensions or

modifications of this License.

- B. The singular will include the plural and the plural will include the singular whenever the context so requires or permits.

## **XII INDEMNIFICATION**

The County, only to the extent permitted by Florida law, agrees to protect, indemnify and hold harmless, the Owners from and against any and all liabilities, losses, damages, costs, expenses (including reasonable attorney's fees and expenses of the Owners) from causes of action, suits, claims, demands or judgments of any nature whatsoever, arising from any injury to, or the death of, any person or any damage to property on the Licensed Premises resulting from the activities of the County related to this Agreement.

## **XIII HAZARDOUS MATERIALS**

The County represents to the Owners that the County shall at no time during the term of this Agreement use or permit the Leased Premises or any part thereof to be used in violation of any federal, state or local Environmental Regulations. If any governmental regulatory entity discovers any Hazardous Materials as defined by law on the Licensed Premises which in any manner arises out of the County's use of the Licensed Premises, the County, subject to the limitations as set out in Section 768.28, Florida Statutes, agrees to indemnify and hold Lessor harmless from any and all claims of liability under any Environmental Regulations imposed against the Owners resulting in any clean-up required in a manner reasonably acceptable to the Owners. This indemnity shall survive the termination or expiration of this Agreement.

## **XIV QUIET ENJOYMENT**

The Owners covenant that upon performing the covenants contained in this License Agreement, the County will peacefully and quietly have, hold and enjoy the Licensed Premises for the agreed term or any extension thereto.

## **XV WRITTEN AGREEMENT**

This License Agreement contains the entire Agreement between the Parties hereto. It may be modified by mutual consent of the Parties hereto.

## **XVI INTERPRETATION**

This License Agreement shall be interpreted and construed pursuant to the laws of the State of Florida, and the United States, when applicable.

IN WITNESS WHEREOF, the Owners and the County have caused this Lease Agreement to be executed by their respective and duly authorized officers on the day and year first written above.

ATTEST: CHARLIE GREEN  
CLERK OF COURTS

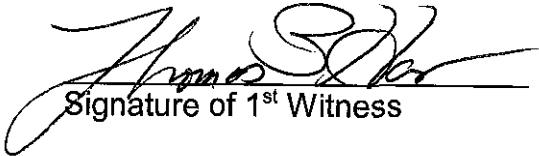
LEE COUNTY, BY ITS  
BOARD OF COUNTY COMMISSIONERS

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Chairman

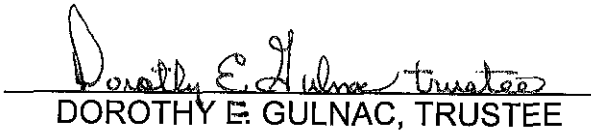
APPROVED AS TO LEGAL FORM:

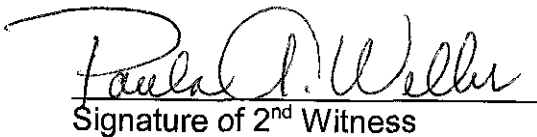
By: \_\_\_\_\_  
Office of the County Attorney

  
Signature of 1<sup>st</sup> Witness

  
DON R. GULNAC, TRUSTEE

Thomas B. Hact  
Printed Name of 1<sup>st</sup> Witness

  
DOROTHY E. GULNAC, TRUSTEE

  
Signature of 2<sup>nd</sup> Witness

Paula A. Weller  
Printed Name of 2<sup>nd</sup> Witness

# EXHIBIT A

## THE LICENSED PREMISES

A parcel of land 30' long by 20' wide which is part of that certain prolongation of owners' property projecting into the northwest quadrant of the Fisherman's Cooperative described in that certain survey prepared by Bean, Whitaker, Lutz & Kareh, Inc., dated as of August 26, 2003 (Project No. 34305), and which is incorporated herein by reference. The licensed premises consists of the southerly 30' of said prolongation beginning from the described telephone pole and Owner's gate in the said survey.

