

Lee County Board Of County Commissioners

Blue Sheet No. 20061406

Agenda Item Summary

1. ACTION REQUESTED/PURPOSE: Consider, approve and authorize the Chairman to sign Amendment No. 2 to the Amended and Restated Solid Waste Disposal Contract (Original Lee Contract No. C940234) and Amendment No. 2 to the Amended and Restated Solid Waste Disposal Extension Agreement (Lee Contract No. 2061). The 'Contract' and the 'Extension Agreement' are between Lee County, Fl. and Waste Management, Inc. of Florida (WMI).

2. WHAT ACTION ACCOMPLISHES: For the Gulf Coast Landfill: Removes the contractual limitation of construction debris (Class III) landfill activities for the WMI property and provides a host fee for Lee County. For the Lee/Hendry Landfill: Provides for early termination of WMI's operations of the Lee Hendry landfill.

3. MANAGEMENT RECOMMENDATION: Staff recommends approval of the motion.

4. Departmental Category: B ASA **5. Meeting Date:** October 31, 2006

6. Agenda:	<input type="checkbox"/> Consent	7. Requirement/Purpose: (specify)	<input type="checkbox"/> Statute	8. Request Initiated:	
	<input checked="" type="checkbox"/> Administrative		<input type="checkbox"/> Ordinance		
	<input type="checkbox"/> Appeals		<input type="checkbox"/> Admin. Code		
	<input type="checkbox"/> Public		<input checked="" type="checkbox"/> Other		Agmt Amdmt.
	<input type="checkbox"/> Walk-On				
			Commissioner		
			Department Public Works		
			Division Solid Waste		
			By: <u>Lindsey J. Sampson</u>		

9. Background: On February 2, 1994 the County and Waste Management, Inc. (WMI) approved two agreements establishing terms, conditions and responsibilities, etc. for landfill operations; one agreement for the operation of the Gulf Coast Landfill (GCLF) and one for the operation of the Lee/ Hendry Landfill (LHLF).

The GCLF Agreement limited WMI's landfill operation to parcel 3 only and to an elevation of 100 ft. NGVD in the parcel 3 area. Amendment No. 1 to this Contract, dated 2/7/02, removed the contractual limitation for landfilling in the parcel 2 area up to an elevation of 100 ft. NGVD and limited such landfill activity to Class III (C&D) materials only. Amendment No. 2 further reduces the contractual limitation for C&D disposal activity and allows the current active area (parcel 2) to continue to a height of 120 ft. NGVD. It also allows the Contractor to permit and operate an additional Class III area of approx. 57 acres and to a height of 120 ft. NGVD.

Amendment No. 1 to the LHLF Agreement removed the ash transfer option and specified May 31, 2002 as the termination date for WMI's operation of the Hendry Transfer Stations. Amendment No. 2 establishes an early termination of WMI's operation of the Lee/Hendry landfill contingent upon WMI receiving all approvals to construct the new, 57 acre C&D disposal area at Gulf Coast landfill.

Approval of these amendments will provide Lee County with C&D landfill capacity at a known location for the next 8 to 12 years. Cost for operating the Lee/Hendry Landfill is expected to be reduced by 20%.

Additional SW Division personnel will be required for the Lee/Hendry landfill for FY08 as the County takes over this operation. Required future budget impacts are not expected to exceed the current costs or negatively impact SW rates.

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
<u>J. Stander</u> 10-17-06	<u>CL by J.S.</u>	<u>N.A.</u>		<u>[Signature]</u> 10/17/06	<u>[Signature]</u> 10/18/06	<u>[Signature]</u> 10/19	<u>[Signature]</u> 10/19	<u>[Signature]</u> 10/19	<u>J. Stander</u> 10.17.06

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

10/17/06
CO. MGR. FORWARDED TO CO. ADMIN.

RECEIVED BY COUNTY ADMIN. 10/17/06 2:05 PM. COUNTY ADMIN FORWARDED TO...

**AMENDMENT NUMBER 2
TO THE AMENDED AND RESTATED SOLID WASTE DISPOSAL
CONTRACT**

This Amendment No. 2 to the Amended and Restated Solid Waste Disposal Contract (as amended, the "Contract") between LEE COUNTY, FLORIDA (the "County") and WASTE MANAGEMENT, INC. OF FLORIDA (the "Contractor") is made on this _____ day of _____ 2006.

WHEREAS, the Contractor has notified the County as to certain proposed changes to the Contract that may be to the advantage of both the County and the Contractor, and has provided the County with information regarding such proposed changes, and;

WHEREAS the County has reviewed the proposed changes to the Contract and considered the benefits of such changes to the County and the Contractor, and;

WHEREAS the County and the Contractor have established that the proposed changes as articulated by this Amendment No. 2 to the Contract are mutually beneficial, and;

WHEREAS, on the 7 day of February, 2002, the Board of County Commissioners approved Amendment No. 1 and authorized it's Chairman to execute said Amendment No. 1 on the County's behalf, and;

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND THE MUTUAL COVENANTS CONTAINED HEREIN, IT IS AGREED by and between the County and the Contractor that the following changes to the Contract are hereby made.

Part I – GENERAL

1. Any capitalized term used herein and not defined by this Amendment, but which is defined in the Contract shall have the meaning given such term in the Contract.
2. Any exhibits attached hereto are hereby incorporated into and made a part of this Amendment 2.
3. The Contract shall remain in full force and effect, unmodified except as expressly set forth in this Amendment.
4. In the event that any provision of this Amendment is determined to be void, invalid, illegal or unenforceable in any respect for any reason by a State court of competent

jurisdiction in Lee County, the Parties hereto shall negotiate in good faith and agree to such amendments, modifications or other supplements to this Amendment or to such other appropriate actions as shall, to the extent reasonable in light of such determination, implement and give effect to the intentions of the Parties as reflected herein, and the other terms of this Amendment, as may be so amended, modified, or supplemented, shall remain in full force and effect.

5. The Contractor hereby represents to the County that neither the Contractor nor the County is, or will be required to obtain or purchase, any licenses, patent rights and/or franchises from the Contractor in order to install, and provide maintenance to the landfill gas utilization system as defined herein.

PART II – CONTRACT CHANGES

Pursuant to SECTION NINETEEN of the Contract, the Parties agree to the following changes to the Contract by the adoption of this Amendment as executed below by both Parties through their respective duly authorized representatives.

A. SECTION TWO - CONSTRUCTION

Add the following words at the end of the second paragraph: “except as described below”

Insert the following language immediately before the last paragraph of this Section:

“The Parties agree that the Contractor may apply to the DEP and such other regulatory entities as may be required to receive a permit and approval to construct and operate a Class III landfill, at its own expense and risk, as a vertical expansion to the existing portion of Parcel 2 and the valley located between Parcels 2 and 3, currently at approximately 90 feet NGVD (hereinafter “Vertical Expansion”), and to fill these areas up to a final elevation of 120 feet NGVD including final cover. This area, consisting of approximately 44 base footprint acres, may receive exclusively Class III material as defined by Rule Chapter 62-291, FAC. The Contractor shall close this Parcel 2 area in accordance with DEP permit requirements once this area reaches 120 feet NGVD, at its sole expense. The Contractor may also accept and dispose of Class III material at the Parcel 2 area from solid waste generators outside of Lee County, with the exception of waste material generated as the result of a natural disaster. However, the Contractor shall accept waste material generated from within Lee County as a result of a natural disaster. Receipt of natural disaster debris from within Lee County (and as delivered or caused to be delivered by the County) shall be accepted at the landfill for a fee not to exceed \$24.94 per ton (subject to escalation in accordance with Section Seven). Natural disaster debris delivered by the County will not be subject to the host fee as set forth in Section Six but such waiver of this host fee shall not impact the total host fee as set forth in Section Six. Acceptance by the Contractor of natural disaster debris will be contingent upon a determination by Contractor that sufficient airspace exists to accept same given the operational requirements of the landfill (defined to mean at least three months

of remaining capacity based on the most current Remaining Capacity Report submitted to DEP). Further, the parties agree that any previous utilization of the Landfill for receipt and disposal of non-Lee County debris resulting from a natural disaster is for all purposes deemed cured as the result of the agreement to pay Host Fees set forth in Section Six. ”

“The Parties agree that the Contractor may apply to the DEP and such other regulatory entities as may be required to receive a permit and approval to construct and operate a lined Class III landfill, with a leachate collection system, at its own expense and risk, as a lateral expansion to the Gulf Coast Landfill consisting of approximately 57 acres immediately to the north and east of Parcels 2 and 3, and to fill this area up to a final elevation of 120 feet NGVD including final cover (hereinafter “Northeast Area”). This area, may receive exclusively Class III material as defined by Rule Chapter 62-701, FAC. The Contractor shall close this new disposal area in accordance with DEP permit requirements once this area reaches 120 feet NGVD, at its sole expense. The Contractor may also accept and dispose of Class III material at this new disposal from solid waste generators outside of Lee County including but not limited to waste material generated from outside of Lee County as a result of a natural disaster and shall accept waste material generated from within Lee County as a result of a natural disaster. Receipt of natural disaster debris from within Lee County (and as delivered or caused to be delivered by the County) shall be accepted at the landfill for a fee not to exceed \$25.94 per ton until December 31, 2011 (subject to escalation in accordance with Section Seven). Acceptance by the Contractor of natural disaster debris will be contingent upon a determination by Contractor that sufficient airspace exists to accept same given the operational requirements of the landfill (defined to mean at least three months of remaining capacity based on the most current Remaining Capacity Report submitted to DEP).”

“The Parties agree that the Contractor may apply to the DEP and such other regulatory entities as may be required to receive a permit and approval to construct and operate a lined Class III landfill, with a leachate collection system, at its own expense and risk, as an additional lateral or vertical expansion to the Gulf Coast Landfill, not otherwise described herein, and to fill this area up to a final elevation of 120 feet NGVD including final cover (hereinafter “Future Area”). This area, may receive exclusively Class III material as defined by Rule Chapter 62-701, FAC. The Contractor shall notify the County no later than two years prior to the closure of the “Northeast Area” of the Contractor’s intentions regarding the permitting and development of this ‘Future Area’. The Contractor shall close this Future disposal area in accordance with DEP permit requirements once this area reaches 120 feet NGVD, at its sole expense. The Contractor may also accept and dispose of Class III material at this new disposal area from solid waste generators outside of Lee County including but not limited to waste material generated from outside of Lee County as a result of a natural disaster and shall accept waste material generated from within Lee County as a result of a natural disaster. Receipt of natural disaster debris from within Lee County is contingent upon the negotiation of a mutually agreeable rate and upon a determination by Contractor that sufficient airspace exists to accept same given the operational requirements of the landfill (defined to mean at least three months of remaining capacity based on the most current Remaining Capacity Report submitted to DEP).”

“The County shall take no unreasonable action to delay, hinder, or restrict the Contractor in its efforts to obtain all permits, licenses and governmental approvals (“Approvals”) acceptable to Contractor in final and un-appealable form necessary for the construction and operation of the Northeast Area and the Future Area as a lined Class III landfill with a leachate collection system. Contractor shall diligently pursue all such Approvals at Contractor’s sole cost and expense.”

The parties agree that the Contractor will proceed diligently and use all reasonable efforts to obtain all Approvals in final and un-appealable form to construct and operate the Northeast Area as a lined Class III landfill by December 31, 2007. Provided Contractor continues to diligently pursue such Approvals, there shall be no adverse consequences to Contractor should the Approvals acceptable to Contractor in final and un-appealable form not be obtained by December 31, 2007. However, should Contractor abandon such efforts or should the Approvals be denied or refused by Contractor in final and un-appealable form, and further provided that Contractor has obtained the Approvals in final and un-appealable form for the Vertical Expansion, in that event, Contractor shall pay to County the sum of \$1,900,000 by way of a single payment. Contractor must accept the Approvals unless same (i) reduce or prevent the Contractor from utilizing the designed airspace capacity of the Class III landfill in the Northeast Area by more than 14.5% of such capacity set forth in Permit Application 0128933-015-SC/T3 (i.e the design capacity in cubic yards; any condition, restriction or limitation that reduces usable airspace to 85.5% or less of the DEP permitted volume pursuant to the application referenced above, allows Contractor to decline to accept such Approval); or (ii) reduce or restrict operating hours such that Contractor is unable to lawfully receive waste deliveries at least 90% of the total hours per operating week as set forth in Permit Application 0128933-015-SC/T3.

“Upon commencement of disposal activities in the Northeast Area, the Contractor shall also begin a C&D material recycling operation such that a minimum of 10% by weight of all C&D material received at the landfill shall be recycled (excluding debris received from off-site, DEP permitted, C&D recycling facilities). Recycled materials that will count toward the 10% minimum may include any C&D material that the Contractor decides to separate and recycle but shall not include vegetative waste. A credit or reduction of “Host Fees” for recycled C&D material shall not be applicable.”

SECTION SIX – FEES

Insert a new Subsection entitled “Host Fee” as follows:

“In consideration of the County interest in the Contractor’s development of Class III landfill area as specified in SECTION TWO of the Contract, the Contractor agrees to pay to the County on a monthly basis, beginning on the date of this Amendment No. 2, a “Host Fee” equal to \$1.35 per ton (as adjusted annually pursuant to Section Seven with first adjustment to be October 1, 2007) for all Class III materials received at the Gulf Coast Landfill, regardless of whether other disposal fees are collected or whether the accepted material is

actually placed in a disposal area, and including Contractor generated material) except for vegetative waste material that is not placed in a disposal area and as further described below.

- a. For the "Vertical Expansion", the total host fee shall be an amount of \$1,012,500.00 or the available airspace consumed in filling the Vertical Expansion to capacity expressed in tons times \$1.35, whichever is greater; the total host fee shall be paid in full to the County no later than the earlier of March 1, 2008 or the date on which the Vertical Expansion reaches capacity.
- b. For the "Future Area", \$1.35 per ton (as adjusted annually pursuant to Section Seven with first adjustment to be October 1, 2007) for all Class III materials received for disposal or recycling at the Gulf Coast Landfill, (regardless of whether other disposal fees are collected or whether the accepted material is actually placed in a disposal area, and including Contractor generated material) except for vegetative waste material that is not placed in the disposal area and material received in final form that is used for construction or maintenance of the Facility.
- c. For the "Northeast Area" there shall be no host fee.

C. SECTION TWENTY ONE – LANDFILL GAS

Add the following to the end of the second paragraph of this Section:

"The parties recognize that if and when the County determines to proceed with utilization of landfill gas as set forth in this Agreement there will be both legal and operating issues to be set forth in a further Amendment to this Agreement or in a separate contract. The parties agree to negotiate same in good faith. The parties also understand that any future amendment will be for the sole purpose of defining roles and responsibilities related to the inherent overlap of mechanical, operational, and regulatory activities due to the addition of landfill gas utilization equipment but that this will by no means alleviate or release the Contractor from its ongoing and future regulatory compliance requirements. Future contract amendments will reflect an appropriate and reasonable division of responsibility for costs related to the addition of landfill gas utilization equipment and related activities.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals on the date above written by their respective duly authorized representatives.

ATTEST: CHARLIE GREEN
CLERK OF COURTS

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairwoman

*SIGNED ORIGINALS
IN LEE CARES OFFICE.*

APPROVED AS TO FORM:

By: _____
County Attorney

ness: _____

WASTE MANAGEMENT, INC.
OF FLORIDA,

By: _____

Title: _____

(SEAL)