

LEE COUNTY BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

BLUE SHEET NO: 20031237

1. REQUESTED MOTION:

ACTION REQUESTED: Approve and authorize the Chairman to sign the Third Amended and Restated Interlocal Agreement for Solid Waste Disposal with the City of Ft. Myers. Authorize the Solid Waste Department to begin charging the City's requested surcharge on City generated solid waste on October 1, 2003.

WHY ACTION IS NECESSARY: Board approval required for Interlocal Agreement.

WHAT ACTION ACCOMPLISHES: Amends the current agreement such that the County may collect surcharges on City material and remit such surcharges to the City.

2. DEPARTMENTAL CATEGORY: SOLID WASTE
COMMISSION DISTRICT #: CW

A8A

3. MEETING DATE:

11-04-2003

4. AGENDA:

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

5. REQUIREMENT/PURPOSE:

- (Specify)
- STATUTE
 - ORDINANCE
 - ADMIN. CODE
 - OTHER

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER:
- B. DEPARTMENT: Lee County-Public Works
- C. DIVISION/SECTION: Solid Waste Division
- BY: Ludsey Sampson, Solid Waste Director
- DATE:

Ludsey Sampson

7. BACKGROUND: On July 24, 2001, the County and the City agreed to an Interlocal Agreement setting forth cooperation and responsibilities for the delivery, processing, and disposal of various waste materials. The City now desires to have the County collect surcharges on the City's material and remit such surcharges to the City. This provision is already included in the (Solid Waste) Interlocal Agreements with Cape Coral and Sanibel. Secondly, the City has requested that it be allowed to charge the County for the collection of (County Facility) recyclable material in the City. The City has indicated that it will not collect such charges during fiscal year 2004, but may in the future. Any such charge for recycling collection services, if instituted, will be charged in the same manner to all other commercial, institutional, or businesses using such services in the City.

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL

A DEPARTMENT DIRECTOR	B PURCH. OR CONTRACTS	C HUMAN RESOURCES	D OTHER	E COUNTY ATTORNEY	F BUDGET SERVICES				G COUNTY MANAGER
					OA	OM	Risk	GC	
<i>X</i> <i>10-20-03</i>	<i>fail</i> <i>10/20/03</i>	<i>N.A</i>		<i>10/20/03</i>	<i>10/21/03</i>	<i>10/21/03</i>	<i>10/20/03</i>	<i>10/21/03</i>	<i>10-20-03</i>

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by *CoAtty*
Date: *10/20/03*
Time: *3:45 PM*
Forwarded to:
City Admin
10-20-03

RECEIVED BY
COUNTY ADMIN: *PM*
10/20/03
4:35 pm SW
COUNTY ADMIN
FORWARDED TO:
10/20/03
10/20

THIRD
AMENDED AND RESTATED
INTERLOCAL AGREEMENT
FOR MUNICIPAL SOLID WASTE DISPOSAL

THIS THIRD AMENDED AND RESTATED INTERLOCAL AGREEMENT is made and entered into this _____ day of _____, 2003, by and between **LEE COUNTY**, a political subdivision of the State of Florida, acting by and through its Board of County Commissioners, the governing body thereof, hereinafter "County", and the **CITY OF FORT MYERS**, a municipal corporation of the State of Florida, acting by and through its City Council, the governing body thereof, hereinafter "CITY", and collectively, "The Parties" hereto.

WITNESSETH:

WHEREAS, the Board of County Commissioners is the governing body in and for Lee County; and the City Council is the governing body in and for the City of Fort Myers and,

WHEREAS, the County and City desire to cooperate with each other in the management of Municipal Solid Waste (MSW) within Lee County, and wish to enter into this Second Amended and Restated Interlocal Agreement for such purpose; and,

WHEREAS, both the County and City are duly empowered to enter into this Second Amended and Restated Interlocal Agreement for the management of MSW; and,

WHEREAS, the Board of County Commissioners has deemed the development and utilization of a Solid Waste Disposal and Resource Recovery System ("System") to be necessary for the public health and safety of Lee County, in that it will promote the

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sound management of solid waste, reduction of volume of solid waste to be disposed of in landfills, development of recycling programs and of more efficient and environmentally acceptable means of solid waste disposal;

NOW THEREFORE, in consideration of the foregoing, and of the mutual covenants and conditions hereinafter set forth, the City and the County, intending to be legally bound, hereby agree as follows:

SECTION I **PURPOSE**

It is the purpose and intent of this Second Amended and Restated Agreement to further revise and define the terms and conditions of the County's provision of solid waste disposal services to the City and the terms and conditions under which the City shall participate in said program. This Agreement is intended to:

- a) provide to the City environmentally responsible solid waste and horticultural waste processing & disposal services.
- b) provide to the County the flow of all Municipal Solid Waste (MSW) and horticultural waste (HW) generated within the City, excluding hazardous waste, and recovered materials, in order that the same shall be directed to the County's Solid Waste Disposal and Resource Recovery System ("System") for the term of this Agreement.

All terms and conditions of this Second Amended and Restated Agreement shall be interpreted in a manner consistent with, and in furtherance of, the purposes as set forth above.

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SECTION II **AUTHORITY FOR AGREEMENT**

The City represent to the County that the execution and delivery of this agreement has been duly authorized by all appropriate actions of the Governing Body of the City, has been executed and delivered by an authorized officer of the City, and constitutes a legal, valid and binding obligation of the City. The County represents to the City that the execution and delivery of this Agreement has been duly authorized by all appropriate actions of the Governing Body of the County, has been executed and delivered by an authorized officer of the County, and constitutes a legal, valid and binding obligation of the County.

SECTION III **DEFINITIONS**

Words of phrases used herein and not otherwise defined, shall have the meanings given thereto in Section 403.703, Florida Statutes. In addition, the following terms shall mean:

- A. "Governing Body of the City" shall mean the City Council for the City of Fort Myers.
- B. "Governing body of the County" shall mean the Board of County Commissioners of Lee County.
- C. "Municipal Solid Waste" shall mean solid waste as defined in Section 403.703 (13), Florida Statutes, excluding hazardous waste, recovered materials and horticultural materials.
- D. "Tipping Fees" shall mean the fees paid for disposal of solid waste, and horticultural waste based on the tonnage disposed of by the City

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into the County's Solid Waste Disposal and Resource Recovery System ("System").

SECTION IV **COUNTY SOLID WASTE RESPONSIBILITIES**

Pursuant to the terms of this Agreement between the Parties, the County is, and shall be responsible for the disposal of MSW collected by and from within the City. The County shall operate, maintain and administer the County's Solid Waste Disposal and Resource Recovery System ("System"), or shall cause the same to be so operated, maintained and administered so as to be capable of handling the MSW (as defined herein) from the City. The County shall be responsible for handling all residue generated by the Solid Waste Disposal and Resource Recovery System ("System") and for the handling and disposal of any bulk MSW delivered to the Solid Waste Disposal and Resource Recovery System ("System") during any period of the System's shutdown. The County shall be responsible for planning and developing additional solid waste disposal capacity and/or facilities that are environmentally sound and economically practical in order to provide disposal services for additional MSW generated by the City due to growth.

The County shall be responsible for the processing, storing and disposal of horticultural waste delivered by the City to the County in accordance with the requirements as set out in Section VII, herein.

The County shall not be liable to the City for any changes to the operation of the system as the result of events beyond the control of the County, i.e., Force Majeure or changes in federal or state law. However, the County shall use its best effort to provide

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for lawful alternate disposal methods for the City's MSW and horticultural waste, should such change or event occur. Any such changes shall be subject to the Parties' rights as outlined in Paragraph VIII., herein.

SECTION V **CITY'S SOLID WASTE RESPONSIBILITIES**

The City agrees, and to the extent that it may lawfully do so, to cause its MSW (as defined herein), to be delivered to the County's Solid Waste Disposal and Resource Recovery System ("System"), for the term of this Interlocal Agreement.

The City agrees, to the extent that it may lawfully do so, to cause its residential horticultural waste to be delivered to the County's horticultural waste processing facility for the term of this Agreement.

SECTION VI **DISPOSAL RATES AND COUNTY SURCHARGE(S)**

The Parties agree that pursuant to this Interlocal Agreement, the County will determine and set the disposal rates and take other necessary and lawful steps to establish funds for the use and operation of the system as further described herein. The System tipping fee for solid waste disposal shall be \$48.15 per ton for Fiscal Year 2002/03 and shall be adjusted annually based upon a not-to-exceed adjustment factor, of six percent (6%) per-year. Rates shall take effect at the start of a Fiscal year. The operations, recycling, right-of-way cleanup, and other surcharges, if collected, shall be collected by

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the County at the City's option and direction on all MSW generated by the City and delivered to the County; and 100% of the surcharges collected from the City's customers, to include residential, multi-family and commercial accounts, shall be transmitted to the City by the County for the City's solid waste programs on a monthly basis, if the City has directed the County to collect such surcharges on behalf of the City.

The City agrees that any existing or new solid waste collection franchise agreements entered into during the term of this Interlocal Agreement, shall contain provisions requiring payment by the franchised hauler or by the City directly to the County's Solid Waste Department of all sums representing the County's tipping fees for MSW and horticultural waste processing and disposal.

The County agrees that to the extent that it may lawfully do so, the tipping fee charged to the City shall be the same as the fee charged to similar users within the unincorporated areas of the County and other municipalities within the County. The County agrees that prior to final adoption of the rates for each year of this Agreement, the proposed annual rate shall be transmitted to the City's Mayor or Manager and, upon request, shall be formally presented to the City at a regular meeting of the City Council.

The County and the City agree that if the annual not-to-exceed tipping fees pursuant to this section are exceeded in any given year of this Agreement, except due to Force Majeure or Acts of God, then the City shall have the right to either:

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- a) approve any such increase to the rate pursuant to justification by the County, with such approval not to be unreasonably withheld, or
- b) renegotiate the terms of this Interlocal Agreement with respect to the proposed rates pursuant to justification by the County, or
- c) terminate this Inter-local Agreement, upon one hundred twenty (120) days written notification to the County.

SECTION VII RECYCLING AND HORTICULTURE PROCESSING

A) The City shall deliver, or cause to be delivered to the County's Material Recycling Facility (MRF), all designated recoverable materials excluding horticultural materials, from the City's residents as collected by the City, for the term of this Agreement.

The County will not charge the City any tipping fee for acceptable loads of recoverable materials delivered to the County MRF. However, the County, through the MRF Operator, retains the right to reject contaminated loads and/or charge the City for disposal or processing of the same, if delivered by the City.

The County will continue to pay to the City, its proportionate share of the State recycling grant funds based on the existing State formula, and as may be amended by the State from time to time. In addition, the City shall receive from the County, the same payment per ton from revenues of co-mingled recoverable materials as Lee County, based on net tonnages generated within the City and

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delivered to the County's MRF. The County will provide applicable solid waste and recycling information and fliers to the City for distribution to City businesses to encourage commercial recycling.

B. Beginning on or before August 1, 2003, the City will provide to the County and the County will process, the City's horticultural waste collected as part of the City's curbside collection program for the term of this Agreement. The County shall grind, shred, screen, etc. a portion of the City's horticultural waste and produce a mulch, graded material substantially free of plastics and other non organic contaminants and make available and load into City's vehicles, up to 15 tons per week of this mulch material for the City's use. The County shall load this mulch material into the City's designated trucks at the County's Horticultural Processing Facility as required. The County's facility shall be open for receiving and loading City designated trucks 58 hours per week/five days per week. The County retains the right to reject contaminated loads and/or charge the City for disposal or processing of the same, if delivered by the City or its franchised haulers.

The County may elect to discontinue processing the City's horticultural waste by providing a written notice to the City at least 180 days in advance of such discontinuance.

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The County shall provide records to the City in an acceptable digital format, on a monthly basis, of all horticultural waste delivered and mulch received by the City if the City so desires. Such records shall include truck numbers, weights, franchise area, etc.

The County will charge the City a fee of \$14.75 per ton of horticultural waste delivered to the County's facility through Sept. 30, 2004. Such fee may be escalated annually, beginning October 1, 2004, by an adjustment factor not-to-exceed 6% per year. The County's must demonstrate to the City, the reasonableness of any annual adjustment factor that exceeds the annual adjustment factor, utilized by the County in establishing the solid waste tipping fee.

C) The County and the City will work to develop an effective and economically preferred alternative method of processing and/or disposing of biosolids from their respective wastewater treatment plants in the event that sufficient land spreading is not available. Each Party will appoint knowledgeable employees to serve on a committee to investigate and recommend biosolid disposal alternatives. The committee will consider various methods and facilities that will provide long term, environmentally sound, and economic methods to dispose of the biosolids generated by the Parties' wastewater treatment facilities.

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D) The City may charge for all 90 gallon and/or 300 gallon recycling containers provided to all Lee County Governmental facilities within the city limits, at the contractor's rate of three dollars and forty-six cents (\$3.46) each, per month, for 90 gallon containers and ten dollars and thirty-eight cents (\$10.38) each, per month, for 300 gallon containers, through September 30, 2004. Such fee may begin on or after October 1, 2003, and may be adjusted annually, beginning October 1, 2004 by a factor-not-to-exceed 3% increase per year, as determined annually by the City. The City's charges, for recycling services at County Governmental facilities, as stated herein shall not exceed the fees charged by the City for any other commercial customers for this service.

SECTION VIII **TERM OF THE AGREEMENT**

This Second Amended and Restated Agreement shall commence upon its execution by the Parties, and shall terminate on September 30, 2010, with the option for the Parties to renew this Agreement for an additional five (5) year term, with the conditions for the additional five (5) year term to be negotiated by the Parties prior to any such renewal.

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SECTION IX **PRIOR AGREEMENTS**

This Second Amended and Restated Agreement shall supersede any other Agreements between the City and the County relating to MSW disposal to the extent that the terms and provisions of any such other Agreement conflicts with the terms and provisions of this Second Amended and Restated Agreement.

SECTION X **ASSIGNMENT**

No assignment, delegation, transfer, or novation of this Agreement or part hereof, shall be made, unless approved by the City and the County.

SECTION XI **NOTICES**

Any notices or other documents permitted or required to be delivered pursuant to this Agreement, shall be delivered to the County, at the Office of the County Manager, and to the City, at the Office of the Mayor.

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SECTION XII **AMENDMENT**

This Agreement may only be amended in writing, and duly executed by the City and the County.

SECTION XIII **CONSTRUCTION AND EFFECT**

This Agreement shall be governed by and construed in accordance with the laws and Administrative Rules of the State of Florida, and shall take effect upon the approval of, and execution by the Parties hereto.

SECTION XIV **DEFAULT**

If the City or the County shall fail to perform or observe any of the material terms and conditions of this Agreement applicable to it for a period of sixty (60) days after receipt of written notice of such default from the other party, the party giving the notice of default may be entitled to seek a termination of this Agreement or to enforce the specific performance of the Agreement. Failure of any party to exercise its rights in the event of any breach by another party shall not constitute a waiver of such rights. No party shall be deemed to have waived any failure to perform by another party unless such waiver is in writing and signed by the waiving party. Such waiver shall be limited to the

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terms specifically contained herein. Nothing in this Agreement shall be construed to create a cause of action for consequential damages for delay.

SECTION XV **BOOKS AND RECORDS**

It is understood and agreed to by the Parties, that any party shall have reasonable access to the books, records, and accounts of the agents, designees or contractors duly contracting with either party for the purpose of fulfilling any of their obligations under this Agreement.

SECTION XVI **FILING**

This Agreement and any subsequent amendments hereto shall be filed with the Lee County Clerk of the Circuit Court, Minutes Department, and the Clerk of the City.

SECTION XVII **HOLD HARMLESS - INDEMNIFICATION**

The County shall hold the City harmless from and against any and all liability, actions, claims and damages arising after the commencement of the term of this Agreement which may be imposed upon or incurred by or asserted against the City by

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reason of any claim of any person for any damage to persons or property occurring as the direct result of the County's operation of the County's Solid Waste Disposal and Resource Recovery System. The County shall have the right to contest the validity of any and all such claims and to defend, settle, and compromise any and all such claims of any kind or character and by whomsoever claimed, in the name of any City, as the County may deem necessary, provided that the expense thereof shall be paid by the County. Notwithstanding the above, the County shall not be liable to, in any manner, nor be required to hold the City harmless, for any of the City's own negligent acts. The City shall hold the County harmless, and indemnify the County from the City's negligent acts or omissions, to include the acts or omissions of the City's employees or agents, with respect to City's performance under this Interlocal Agreement. The parties agree that by execution of this Agreement, no party will be deemed to have waived its statutory defense of sovereign immunity, or increased its limits of liability as provided for in Section 768.28, Florida Statutes.

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SECTION XVIII **RESERVATION OF RIGHTS**

Nothing in this Agreement shall be deemed or interpreted to prohibit, preclude, or otherwise pre-empt the County's rights or ability to take any other lawfully available actions to provide funding for the System.

IN WITNESS WHEREOF, the City and the County have executed this Agreement on the day, month, and year first written above.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONER

By: _____
Deputy Clerk

By: _____
Chairman

APPROVED AS TO FORM:

By: _____
Office of County Attorney

ATTEST:

CITY OF FORT MYERS

By: Marie Adams
City Clerk Marie Adams, CMC

By: Jim Humphrey
Mayor Jim Humphrey

APPROVED AS TO FORM:

By: Grant W. Alley 9/18/05
City Attorney Grant W. Alley