

**1. Requested Motion:**

Approve the First Amended and Restated Solid Waste Facilities and Solid Waste Disposal Inter-Local Agreements with Lee County.

**Meeting Date: August 16, 2010**

**Why the action is necessary:**

To provide for continuation of an 8/8/2000 cooperative agreement between the Town and Lee County for residential and business solid waste pickup and disposal and to continue a MSW Facilities Assessment Agreement, and further to authorize amendments to those agreements.

**What the action accomplishes:**

Provides for solid waste disposal services and participation in the MSW Disposal Facilities Assessment program.

**3. Requirement/Purpose:**

**4. Submitter of Information:**

Consent  
 Administrative

Resolution  
 Ordinance  
 Other

Council  
 Town Staff  
 Town Attorney

**5. Background:**

The Town of Fort Myers Beach has traditionally participated with Lee County for solid waste pickup and disposal services through a cooperative Inter-local Agreement rather than having an agreement on its own with a provider. This enables the Town to enjoy the benefits of economies gained through larger bid packages and county program management.

**6. Alternative Action:**

None recommended.

**7. Management Recommendations:**

Approve the amended agreement

**8. Recommended Approval:**

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Cultural Resources Director	Town Clerk
						

**9. Council Action:**

Approved     Denied     Deferred     Other

FIRST AMENDED AND RESTATED  
INTERLOCAL AGREEMENT FOR A  
MUNICIPAL SOLID WASTE DISPOSAL FACILITIES  
ASSESSMENT OR TAXING PROGRAM

THIS INTERLOCAL AGREEMENT for a Municipal Solid Waste Disposal Facilities Assessment or Taxing Program is made and entered into this \_\_\_\_ day of \_\_\_\_\_ ~~2009~~2010, 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 TOWN OF FORT MYERS BEACH, a municipal corporation of the State of Florida, acting by and through its Town Council, the governing body thereof, hereinafter "Town", collectively, "the Parties", hereto.

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

WHEREAS, on August 8, 2000, the County and the Town entered into an Interlocal Agreement for a Municipal Solid Waste Disposal Facilities Assessment Program; and

WHEREAS, the County and the Town desire to cooperate with each other in the management of Municipal Solid Waste (MSW) within Lee County and in the continuation of (a) MSW Disposal Facilities Assessment or Taxing Program(s) within Lee County, to include the Town's incorporated areas, and wish to enter into an Interlocal Agreement for such purpose; and,

WHEREAS, pursuant to Chapters 125, 163 and 166, Florida Statutes, the County and the Town are duly empowered to enter into an Interlocal Agreement for such an assessment or taxing program;

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

SECTION I.            PURPOSE

It is the purpose and intent of this Agreement to define the terms and conditions for the Parties' administration of a County MSW Disposal Facilities Assessment or Taxing Program within the Town's incorporated areas, the selection of which to be at the Town's sole option, and the other terms and conditions under which the Town shall participate in said Program. This Agreement is intended to provide the County a cooperative mechanism with the Town for the levy of a MSW Disposal Facilities Special Assessment or Tax within the incorporated areas of the Town for payment of certain costs for the disposal of MSW through the County's Solid Waste and Resource Recovery System ("System"), for the term of this Interlocal Agreement. All terms and conditions of this Agreement shall be interpreted in a manner consistent with, and in furtherance of the purpose as set forth in this Section.

SECTION II.            ————AUTHORITY FOR AGREEMENT

The Town 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 Town, has been executed and delivered by an authorized officer of the Town, and constitutes a legal, valid and binding obligation of the Town. The County represents to the Town 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 or 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. "Town" shall mean the Town of Fort Myers Beach, a municipal corporation of the State of Florida, located within Lee County.
- B. "County" shall mean Lee County, Florida a political subdivision of the State of Florida.
- C. "Governing Body of the Town" shall mean the Town Council of the Town of Fort Myers Beach.
- D. "Governing Body of the County" shall mean the Board of County Commissioners of Lee County.
- E. "Municipal Solid Waste" shall mean solid waste as defined at Section 403.703(13), Florida Statutes, as it may be revised from time to time, excluding hazardous waste, recovered materials and horticulture materials.
- F. "Municipal Solid Waste Disposal Facilities Assessment or Taxing Program" shall mean a Municipal Service Benefit Unit (M.S.B.U) or Municipal Service Taxing Unit (M.S.T.U) created by the County at the election of the Town, pursuant to Chapter 125.01, Florida Statutes, with the express cooperation and consent of the Town as specifically outlined at Section 125.01(1)(q), Florida Statutes.

SECTION IV. DEVELOPMENT OF A MSW DISPOSAL FACILITIES  
SPECIAL ASSESSMENT OR TAXING PROGRAM

Pursuant to the requirements of Section 125.01(1)(q), Florida Statutes, the Parties have developed the MSW Disposal Facilities M.S.B.U (Special Assessment Program) or M.S.T.U. (Taxing Program). The Parties hereby recognize that the assessment and taxing program was

developed pursuant to a previous Interlocal Agreement between the Parties and that the Assessment and Taxing Program is as follows.

A. County Responsibilities

1. The County shall develop, articulate, justify and establish an assessment methodology for a M.S.B.U. based upon an Equivalent Residential Unit (“ERU”) concept, generation rate (weight per unit or unit area), or a millage amount for a M.S.T.U., based on total

solid waste generation and total valuation, for all improved properties within the Town. The same methodologies will be applied for unincorporated Lee County.

The special assessment methodology ~~if a~~ for a M.S.B.U. is selected, includes separating improved property into the following categories, based upon the Department of Revenue (D.O.R.) property improvement codes from the Lee County Property Appraiser, and the average solid was generation for the particular type of property.

- A. Single Family Residential
- B. Multi-family Residential (mobile homes, apartments, condominium with five (5+) units)
- ~~B. Commercial, Multi-family Residential (mobile homes, apartments, condominium with five plus (5+) units)~~
- C. Recreational Vehicle (RV) Parks and or communities
- D. Commercial Businesses with Low Generation Amounts
- E. Commercial Businesses with Low-Medium Generation amounts

- F. Commercial Businesses with Medium Generation Amounts
- G. Commercial Businesses with Medium-High Generation Amounts
- H. Commercial Businesses with High Generation Amounts

2. –An average annual solid waste generation amount will be established for each –category by the County’s Solid Waste Division, or its contracted an engineering consultant, based on solid waste generation data from representative improved properties in Lee County including, residential, multifamily, and commercial/business properties. The average generation amount will be established per dwelling unit for single-family and multi-family residential properties.

The average generation amount will be established per occupiable lot for recreational vehicle park properties.

The average generation amount will be established per square foot of building area for commercial-improved property, which is not residential.

All generation estimates will be compared to the average annual generation for a single-family resident to obtain the ERU values for each category and will be expressed in pounds or tons.

3. The total number of pounds or tons for each improved property will be established -by multiplying the weight value (pounds) for the appropriate category, times the number of units, or total building area (depending on the category), for a

specific property. The number of units or building area will be obtained from the Property Appraiser.

4. The annual Disposal Facility Assessment for each improved property will be established by multiplying the total number of tons for that property by the annual assessment amount per ton, as established by the County.

5. Based on the above methodology, the County shall establish the annual assessment per amount, ~~per ton~~ defined developed property.

~~6. The millage amount, if a M.S.T.U. is selected, will be based upon the total solid waste generation provided to the County by the Town (tons) in relation to its total ad-valorem valuation.~~

~~76.~~ The County, prior to the implementation of Steps 1. to ~~65.~~ above, shall transmit the proposed Disposal Facilities Assessment or Millage Rate to the Town's Manager and, upon request, shall formally present same to the Town at a regular Town Council meeting for Council approval, such approval not to be unreasonably withheld by the Town.

~~87.~~ The County agrees that to the extent that it may lawfully do so, the Annual Disposal Facilities Assessment/Tax shall not exceed \$40.00 per Equivalent Residential Unit (E.R.U.), or ton, for the Assessment, ~~or 0.50 mills, for the Tax, whichever method is selected by the Town.~~

98. The County and the Town agree that if the maximum levies as outlined at paragraph 87., above, are ~~is~~ exceeded in any given year of this Agreement by the amounts as outlined in paragraph 87. above, except for Forces Majeure or Acts of God, then the Town shall have the right to either:

- a) approve any such increase to the levy pursuant to justification(s) by the County, with such approval not to be unreasonably withheld,
- b) renegotiate the terms of this Interlocal Agreement with respect to the increased levies pursuant to justification(s) by the \_\_\_\_\_ County, or  
\_\_\_\_\_ e) \_\_\_\_\_
- c) terminate this Interlocal Agreement, upon one hundred twenty \_\_\_\_\_  
\_\_\_\_\_ (120) days written notification to the County.

409. Upon implementation of the Municipal Solid Waste (MSW) Disposal Facilities Special Assessment Program or Taxing Program pursuant to this Interlocal Agreement, the County will not levy any County-wide, general ad-valorem tax for MSW disposal or system maintenance, for so long as the MSW Disposal Facilities Assessment or Taxing Program for all incorporated Municipalities in Lee County is being implemented.

B. Town Responsibilities

1. ~~The Town shall advise the County in writing within ten (10) business days following adoption of this Interlocal Agreement, of their selection with respect to the choice of an M.S.B.U. or M.S.T.U. program, which selection shall be made at the sole option of the Town.~~The Town, once the M.S.B.U. methodology has been developed, shall enact Town Ordinances granting the Town's express consent to the County to levy the special assessments under the MSW Disposal Facilities Special Assessment Program pursuant to this Interlocal Agreement, and pursuant to Section 125.01(1)(q) FAC, for the term of the Agreement, as outlined further herein.

2. ~~The Town will use its best efforts and negotiate in good faith with the County in the development of the assessment methodology for the M.S.B.U. or millage for the M.S.T.U., as described in Section IV A.1. to A.8., above~~shall assist the County with the identification of those properties to be assessed or taxed under the MSW Special Assessment Program, and assist the County with the development of the Program Assessment Roll, as it relates to the Town.

3. ~~The Town, once the M.S.B.U. or M.S.T.U methodology has been developed, shall enact Town Ordinances granting the Town's express consent to the County to levy the special assessments or taxes under the MSW Disposal Facilities Special Assessment or Taxing Program pursuant to this Interlocal Agreement, and pursuant to Section 125.01(1)(q), for the term of the Agreement, as outlined further herein.~~

4.~~The Town shall assist the County with the identification of those properties to be assessed or taxed under the MSW Special Assessment or Taxing Program, and assist the~~

County with the development of the Program Assessment or Taxing Roll, as it relates to the Town.

3. The Town shall report to the County at the beginning of each month all newly constructed residential and commercial dwelling units, including mobile homes, that received a certificate of occupation or certificate of completion in the previous month and collect for the County a prorated Solid Waste Assessment from these residential units prior to receiving such certificate.

SECTION V. ——— ADDITIONAL REVENUES

Any additional or unanticipated revenues obtained by the County as the result of the operation of the MSW “System”, and shall be applied to reduce expenses of the System. Such additional revenues will be applied to the costs of disposal facilities operations, maintenance, and/or debt service depending on the nature of the additional or unanticipated revenues.

SECTION VI. TERM OF AGREEMENT

This Agreement shall commence upon its execution by the Parties, and shall terminate on September 30, ~~2010~~2020, with the option for the Parties to renew this Agreement for one 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.

SECTION VII. — PRIOR AGREEMENTS

This Agreement shall supersede all other Agreements between the Town 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 Agreement.

SECTION VIII. — ASSIGNMENT

No assignment, delegation, transfer, or novation of this Agreement or part hereof, shall be made, unless approved by all of the incorporated Municipalities in Lee County and the County.

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SECTION IX. — 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 Town, at the Office of the Mayor or Town Manager.

SECTION X. — AMENDMENT

This agreement may only be amended in writing, duly executed by the Town and the County.

SECTION XI. — CONSTRUCTION AND EFFECT

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

SECTION XII. ~~\_\_\_\_\_~~ 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 any party of the purpose of fulfilling any of the obligations under this Agreement.

SECTION XIII. ~~\_\_\_\_\_~~ 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 Town of Fort Myers Beach, as provided for by Section 163.01(11), Florida Statutes.

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SECTION XIV. ~~\_\_\_\_\_~~ RESERVATION OF RIGHTS

Except as specifically provided for in Section IV, at paragraph ~~109~~. of this Interlocal Agreement, 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 Town and the County have executed this Agreement on  
the day, month, and year first above written.

ATTEST:  
CHARLIE GREEN, CLERK

BOARD OF COUNTY  
COMMISSIONERS  
OF LEE COUNTY, FLORIDA

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

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

APPROVED AS TO FORM:

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

ATTEST:

TOWN OF FORT MYERS BEACH

By: \_\_\_\_\_  
Town Clerk

By: \_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Town Attorney

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AMENDED AND  
RESTATED INTERLOCAL AGREEMENT  
FOR MUNICIPAL SOLID WASTE COLLECTION, BILLING, AND DISPOSAL

THIS AMENDED AND RESTATED INTERLOCAL AGREEMENT—is made and entered into this \_\_\_day of \_\_\_\_\_, ~~2009~~2010, 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 TOWN OF FORT MYERS BEACH, a municipal corporation of the State of Florida, acting by and through its Town Council, the governing body thereof, hereinafter “TOWN”, and collectively, “the Parties” hereto.

WITNESSETH:

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

WHEREAS, the County and Town entered into an Interlocal Agreement for the Management of Municipal Solid Waste (MSW), MSW Collection, Billing and MSW Disposal Services on August 8, 2000; and

WHEREAS, the County and Town entered into an Amendment No. 1 to the Interlocal Agreement on January 7, 2008, providing for the assistance of the County for a debris management site in the event of a mutual State of Local Emergency for debris removal, excluding hazardous materials, through the County’s Solid Waste Division; and

WHEREAS, the County provides the Town of Fort Myers Beach solid waste collection, billing, and disposal services to newly constructed residential and multi-family units, including prefabricated units, and disposal for commercial buildings within the Town limit; and

WHEREAS, the County relies on certain administrative procedures that pertain to Lee County Solid Waste Ordinance No. 08-10, and requires the Town to provide certain information pertaining to the addition, modification, and/or deletion of residential, multi-family, and commercial structures, including prefabricated homes, issuance of a USE permit, and issuance of a local Business Tax Receipt within the Town limits in order to ensure the collection and disposal of MSW and payment for such services to the County; and

WHEREAS, the County and Town desire to continue to cooperate with each other in~~for~~  
the

Management of Municipal Solid Waste (MSW) within Lee County, and ~~wish~~desire to enter into an Amended and Restated Interlocal Agreement for such purpose; and,

WHEREAS, both the County and Town are duly empowered to enter into ~~an~~this  
Amended and Restated Interlocal

Agreement for the management of MSW Municipal Solid Waste Collection, Billing, and Disposal; 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 sound management of

solid waste, a reduction of the solid waste volume to be disposed of in landfills, development of recycling programs and ~~of more~~provides 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 Town and the County, intending to be legally bound, hereby agree as follows:

SECTION 4                      PURPOSE

It is the purpose and intent of this ~~Agreement~~ Amended and Restated Interlocal Agreement (Agreement) to define the terms and condition of the County's provision of solid waste collection, billing and disposal services, including those for newly constructed residential, multi-family, and commercial units, and the provisions for hurricane debris management and disposal to the Town, and the terms and conditions under which the Town shall participate in said program. This ~~Agreement~~ Agreement is intended to:

- \_\_\_\_\_a)            provide to the Town solid waste collection services, utilizing the County's \_\_\_\_\_contracted franchise collector (hauler) for MSW, vegetative waste, and \_\_\_\_\_recyclable materials during the term of this ~~Agreement~~ Agreement;
- \_\_\_\_\_b)            provide to the Town, solid waste billing and customer services utilizing the County's pre-existing Interlocal Agreement\_ with the Lee County Tax Collector for billing services and the Lee County Solid Waste Department \_\_\_\_\_for customer services for the term of this ~~Interlocal Agreement~~ Agreement;
- \_\_\_\_\_c)            provide the Town with environmentally responsible comprehensive solid waste disposal services,
- \_\_\_\_\_d)            provide for the Town such additional solid waste disposal capacity as may \_\_\_\_\_be necessary during the term of this ~~Agreement~~ Agreement, to dispose of additional \_\_\_\_\_MSW from the Town due to

\_\_\_\_growth, and,

\_\_\_\_\_e) provide to the County the delivery of all of the Municipal Solid Waste- (MSW), vegetative waste, and residential recycling material generated w\_\_\_\_\_ within the Town (excluding hazardous waste), in order\_ \_\_\_\_\_that the same shall be delivered to the County's Solid Waste Disposal and

\_\_\_\_\_Resource Recovery System ("System"), ~~annually,~~ for the term of this\_ \_\_\_\_\_Agreement Agreement., and

f) provide to the Town assistance for debris removal in the event of a State of Emergency declared by both the Town Council of Fort Myers Beach and the Board of County Commissioners of Lee County for damages received in both locations that require the activation of the County's disaster removal contractor.

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

## SECTION II                    AUTHORITY FOR AGREEMENT

The Town represents to the County that the execution and delivery of this Agreement Amended and Restated Interlocal Agreement for Municipal Solid Waste Collection, Billing, and Disposal (Agreement) has

been duly authorized by all appropriate actions of the Governing Body of the Town, has been executed and delivered by an authorized officer of the Town, and constitutes a legal, valid and binding obligation of the Town. The County represents to the Town that the execution and delivery of this Agreement 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 or 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 Town” shall mean the Town Council for the Town of Fort Myers Beach.
- B.     “Governing Body of the County” shall mean the Board of County Commissioners of Lee County.
- C.     “Municipal Solid Waste (MSW)” shall mean solid waste as defined at Section 403.703 (13), Florida Statutes, as it may be revised from time to time, excluding hazardous waste materials.
- D.     “Tipping Fee” shall mean the fee paid for disposal of solid waste, based on the tonnage disposed by the Town 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~~ Agreement between the Parties, the County is and shall be responsible for the collection, billing, customer service, and disposal of MSW, vegetative waste, and residential recyclables material from within the Town. 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 and disposing the MSW (as described herein), vegetative waste, and recyclable materials from the Town. 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 environmental sound and economically practical in order to provide disposal services for additional MSW generated by the Town due to growth.

The County shall not be liable to the Town for any changes to the operation of the System as the result of events beyond the reasonable control of the County, e.g., Force Majeure or changes in federal or state law. However, the County shall use its best efforts to provide for lawful alternate disposal methods for the Town’s MSW, should such change or event occur. Any such changes shall be subject to the Parties’ rights as outlined at paragraph VHXI, herein.

SECTION V                      TOWN’S SOLID WASTE RESPONSIBILITIES

The Town agrees, to the extent that it may lawfully do so, to cause its MSW (as defined herein), vegetative waste and recyclable materials to be directed to the County’s Solid Waste Disposal and Resource Recovery System (“System”), or other County designated facilities, for the term of this ~~Interlocal Agreement~~ Agreement.

SECTION VI                      COUNTY’S DISTASTER RECOVERY AND DEBRIS MONITORING  
SERVICES RESPONSIBILITIES

The County will provide the Town permission to contract with the service providers utilized by the County for Disaster Recovery Services and Debris Monitoring Services with the same terms and conditions as set forth in the County's contract(s) providing the contractor(s) agree, and provide the Town utilization of one or more of the County's designated Debris Management Sites, provided that the Town is contracted with the same disaster recovery contractor(s) as the County under the terms and conditions set forth by the County for such debris site. The County will provide, through the County's contractor, processing, transport, and final disposal of the Town's debris at the County's cost plus administrative charges of 5% of the total cost or \$1,000.00, whichever is greater. If requested, the Parties will share each others debris load ticket database for mutual use. The County is responsible for seeking reimbursement from FEMA and/or the State of Florida for County generated debris. The County will invoice the Town for payment based on the volume of processed or burned horticultural waste, volume of mulch disposed, volume of disposal of construction debris, and other similar and related services.

SECTION VII TOWN'S DISTASTER RECOVEY AND DEBRIS MONITORING  
SERVICES RESPONSIBLITIES

In the event of a mutual State of Local Emergency the Town agrees to provide the County with a copy of each load ticket for material brought to the County's Debris Management Site. These load tickets will determine the total number of cubic yards from the Town to the County's Debris Management Site and will be used to calculate the associated costs (i.e. site management, grinding, hauling of mulch, disposal of construction and demolition material, etc.) to be invoiced to the Town. The County and Town will use these load tickets to reconcile the volumes. The Town may share

with the County, if so requested, Debris Management Sites secured by the Town at the same terms and conditions that apply to the County's Debris Management Site. The Town is responsible for seeking reimbursement from FEMA and/or the State of Florida for Town generated debris. The Town agrees to make payment within forty-five (45) calendar days from receipt of County's invoice.

SECTION VIII COUNTY RESPONSIBILITY – SOLID WASTE COLLECTION,  
BILLING, AND DISPOSAL TO NEW CONSTRUCTION

The County provides solid waste collection, billing, and disposal to newly constructed residential and multi-family units, including prefabricated homes within the Town of Fort Myers Beach upon notification that a certificate of occupancy has been issued by the Town. The County provides prior to September 1 of each year to the Town its approved Solid Waste Assessment rates for the upcoming Fiscal Year. The County will seek reimbursement for solid waste collection and disposal services from the Town on a monthly basis for the number of residential units that received a certificate of occupancy during the previous month. The County will be responsible to make appropriate changes, additions, and deletions to the Lee County Solid Waste Assessment Roll to the Department of Revenue, the Lee County Tax Collector, and the Lee County Property Appraiser in accordance with the information provided by the Town and/or its designated service provider.

SECTION IX TOWN RESPONSIBILITY – NEW CONSTRUCTION

The Town will, prior to issuing a certificate of occupation for a residential dwelling unit, including that of a prefabricated home, collect from the permit holder the Solid Waste Assessment for each dwelling unit for the remainder of the fiscal year. The entire Solid Waste Assessment for

the coming fiscal year is collected from the permit holder for each dwelling unit when an application for a certificate of occupancy is received in September. The Town's Community Development Office or its contracted service provider will compile and electronically submit by the end of each month to the Lee County Property Appraiser and the County' Solid Waste Division a report of all permits and/or property owners that received a certificate of completion and/or a certificate of occupancy in the previous month (STRAP Number, Property Owner, Address, Number of Units, Buildings Square Footage, Permit Number, Type of Permit, and the amount of Solid Waste Assessment fee collected), see Attachment A. The Town will further provide the County on a weekly basis a copy of completed Garbage Verification Forms from applicants issued a Local Business Tax Receipt and USE permit (Attachment B).

SECTION ~~VXI~~

DISPOSAL RATES AND COUNTY SURCHARGE(S)

The Parties agree that pursuant to this ~~Interlocal Agreement Amended and Restated~~ 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 solid waste collection charges shall be those as set out in the current and future County solid waste and recyclables franchise collection agreement, which is incorporated (or will be incorporated, if a future agreement) herein in its entirety. The System tipping fee for solid waste disposal shall be ~~\$50.00~~54.00 per ton for Fiscal Year ~~2000~~2009/01-10 and shall be adjusted annually based upon a not-to-exceed escalator of six percent (6%) per year, for the term of this ~~Agreement~~ Agreement. The operations, recycling, right-of-way cleanup and other surcharges, if collected, shall be collected by the County on all MSW (as defined herein) generated in the Town and the County will continue to provide those services for the term of this ~~Interlocal Agreement~~ Agreement.

The County agrees that, to the extent that it may lawfully do so, the tipping fees and charges for services provided by the county within the Town's municipal limits shall be the same as those fees and charges provided for similar users within the unincorporated areas of the County. The County agrees that prior to final adoption of the rates for each year of this ~~Agreement~~ Agreement; the proposed annual rate shall be transmitted to the Town's Manager and, upon request, shall be formally presented to the Town at a regular meeting of the Town Council. The County and the Town agrees that if the annual not-to-exceed tipping fees pursuant to this section are exceeded in any given year of this ~~Agreement~~ Agreement, except due to Forces Majeure or Acts of God, then the Town shall have the right to either:

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

The County agrees to provide to the Town all of the solid waste collection franchise fees that the County collects from its contracted franchise hauler (~~currently~~ five and one-half percent (5.5%) for fiscal years 2001-2005~~10~~) for the term of this ~~Agreement~~ Amended and Restated Interlocal Agreement.

~~SECTION VXII~~ ~~\_\_\_\_\_~~ TERMS OF AGREEMENT THE AMENDED AND RESTATED INTERLOCAL AGREEMENT

This ~~Agreement~~ Agreement shall commence upon its execution by the Parties, and shall terminate on ~~September 30, September 30, 2010~~ September 30, 2020, with the option for the Parties to renew this ~~Agreement~~ Amended and Restated Interlocal 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.

SECTION ~~VXIII~~ PRIOR AGREEMENTS

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

SECTION XIII SEVERABILITY

If any provision of this Amended and Restated Interlocal Agreement is held invalid, the remainder of this Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

SECTION ~~IXIV~~ ASSIGNMENT

No assignment, delegation, transfer, or novation of this ~~Agreement~~ Amended and Restated Interlocal Agreement or part hereof, shall be made, unless approved by the Town and the County.

SECTION XV NOTICES

Any notices or other documents permitted or required to be delivered pursuant to this ~~Agreement~~ Amended and Restated Interlocal Agreement, shall be delivered to the County, at the Office of the County Manager and to the Town, at the Office of the ~~Mayor and/or~~ Town Manager.

SECTION XVI ——— AMENDMENT

This ~~Agreement~~ Amended and Restated Interlocal Agreement may only be amended by a in writing, duly executed by the Town and the County.

SECTION XVII ——— CONSTRUCTION

This ~~Agreement~~ Amended and Restated Interlocal Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

SECTION XVIII DEFAULT

If the Town or the County shall fail to perform or observe any of the material terms and conditions of this ~~Agreement~~ Amended and Restated Interlocal 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.

Failure of a Party to exercise its rights in the event of any breach by the other Party shall not constitute a waiver of such rights. No Party shall

be deemed to have waived any failure to perform by the other Party unless such waiver is in writing and signed by the waiving Party. Such waiver shall be limited to the term specifically contained herein. Nothing in this ~~Agreement~~ Amended and Restated Interlocal Agreement shall be construed to create a cause of action for consequential damages for delay.

SECTION ~~XIV~~ XIX BOOKS AND RECORDS

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

SECTION ~~XV~~ XX FILING

This Amended and Restated Interlocal Agreement 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 Town.

SECTION ~~XVI~~ XXI HOLD HARMLESS – INDEMNIFICATION

The County shall hold the Town harmless from and against any actions, claims and damages arising after the commencement of the term of this Agreement Amended and Restated Interlocal Agreement which may be imposed upon or incurred by or asserted against the Town by 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 and kind or character and by whomsoever claimed, in the name of the Town, 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 Town harmless, for any of the Town's own negligent acts. The Town shall hold the

County harmless, and indemnify the County from the Town's negligent acts or omissions, to include the acts or omissions of the Town's employees or agents, with respect to Town's performance under this ~~Interlocal Agreement~~Agreement. The Parties agree that by execution of this ~~Agreement~~ Amended and Restated Interlocal Agreement, neither Party will be deemed to have waived its statutory defense of sovereign immunity, nor increased its limits of liability as provided for at Section 768.28, Florida Statutes.

SECTION ~~XVHXXXII~~ RESERVATION OF RIGHTS

Nothing in this ~~Agreement~~ Amended and Restated Interlocal Agreement shall be deemed nor 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 Town and the County have executed this Agreement

Amended and Restated Interlocal Agreement of the day, month, and year ~~first~~ first written above.

ATTEST:  
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

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

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

APPROVED AS TO FORM:

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

ATTEST:

TOWN OF FORT MYERS BEACH

By: \_\_\_\_\_  
Town Clerk

By: \_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Town Attorney

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INTERLOCAL AGREEMENT FOR A  
MUNICIPAL SOLID WASTE DISPOSAL FACILITIES  
ASSESSMENT OR TAXING PROGRAM

THIS INTERLOCAL AGREEMENT for a Municipal Solid Waste Disposal Facilities Assessment or Taxing Program is made and entered into this 8th day of August, 2000, 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 TOWN OF FORT MYERS BEACH, a municipal corporation of the State of Florida, acting by and through its Town Council, the governing body thereof, hereinafter "Town", collectively, "the Parties", hereto.

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

WHEREAS, the County and the Town desire to cooperate with each other in the management of Municipal Solid Waste (MSW) within Lee County and in the continuation of (a) MSW Disposal Facilities Assessment or Taxing Program(s) within Lee County, to include the Town's incorporated areas, and wish to enter into an Interlocal Agreement for such purpose; and,

WHEREAS, pursuant to Chapters 125, 163 and 166, Florida Statutes, the County and the Town are duly empowered to enter into an Interlocal Agreement for such an assessment or taxing program;

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

SECTION I. PURPOSE

It is the purpose and intent of this Agreement to define the terms and conditions for the Parties' administration of a County MSW Disposal Facilities Assessment or Taxing Program within the Town's incorporated areas, the selection of which to be at the Town's sole option, and the other terms and conditions under which the Town shall participate in said Program. This Agreement is intended to provide the County a cooperative mechanism with the Town for the levy of a MSW Disposal Facilities Special Assessment or Tax within the incorporated areas of the Town for payment of certain costs for the disposal of MSW through the County's Solid Waste and Resource Recovery System ("System"), for the term of this Interlocal Agreement. All terms and conditions of this Agreement shall be interpreted in a manner consistent with, and in furtherance of the purpose as set forth in this Section.

SECTION II. AUTHORITY FOR AGREEMENT

The Town 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 Town, has been executed and delivered by an authorized officer of the Town, and constitutes a legal, valid and binding obligation of the Town. The County represents to the Town 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 or 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. "Town" shall mean the Town of Fort Myers Beach, a municipal corporation of the State of Florida, located within Lee County.
- B. "County" shall mean Lee County, Florida a political subdivision of the State of Florida.
- C. "Governing Body of the Town" shall mean the Town Council of the Town of Fort Myers Beach.
- D. "Governing Body of the County" shall mean the Board of County Commissioners of Lee County.
- E. "Municipal Solid Waste" shall mean solid waste as defined at Section 403.703(13), Florida Statutes, as it may be revised from time to time, excluding hazardous waste, recovered materials and horticulture materials.
- F. "Municipal Solid Waste Disposal Facilities Assessment or Taxing Program" shall mean a Municipal Service Benefit Unit (M.S.B.U.) or Municipal Service Taxing Unit (M.S.T.U.) created by the County at the election of the Town, pursuant to Chapter 125.01, Florida Statutes, with the express cooperation and consent of the Town as specifically outlined at Section 125.01(1)(q), Florida Statutes.

SECTION IV. DEVELOPMENT OF A MSW DISPOSAL FACILITIES  
SPECIAL ASSESSMENT OR TAXING PROGRAM

Pursuant to the requirements of Section 125.01(1)(q), Florida Statutes, the Parties have developed the MSW Disposal Facilities M.S.B.U. (Special Assessment Program) or M.S.T.U. (Taxing Program). The Parties hereby recognize that the assessment and taxing program was developed pursuant to a previous Interlocal Agreement between the Parties and that the Assessment and Taxing Program is as follows:

- A. County Responsibilities

1. The County shall develop, articulate, justify and establish an assessment methodology for a M.S.B.U. based upon an Equivalent Residential Unit (“ERU”) concept, generation rate (weight per unit or unit area), or a millage amount for a M.S.T.U., based on total solid waste generation and total valuation, for all improved properties within the Town. The same methodologies will be applied for unincorporated Lee County.

The special assessment methodology if a M.S.B.U. is selected, includes separating improved property into the following categories, based upon the Department of Revenue (D.O.R.) property improvement codes from the Lee County Property Appraiser, and the average solid waste generation for the particular type of property.

- A. Single Family Residential
  - B. Commercial, Multi-family Residential (mobile homes, apartments, condominium with five plus (5+) units)
  - C. Recreational Vehicle (RV) Parks and or communities
  - D. Commercial Businesses with Low Generation Amounts
  - E. Commercial Businesses with Low-Medium Generation amounts
  - F. Commercial Businesses with Medium Generation Amounts
  - G. Commercial Businesses with Medium-High Generation Amounts
  - H. Commercial Businesses with High Generation Amounts
2. An average annual solid waste generation amount will be established for each category by an engineering consultant, based on solid waste

generation data from representative improved properties in Lee County including, residential, multifamily, and commercial/ business properties.

The average generation amount will be established per dwelling unit for single-family and multi-family residential properties.

The average generation amount will be established per occupiable lot for recreational vehicle park properties.

The average generation amount will be established per square foot of building area for commercial-improved property, which is not residential.

All generation estimates will be compared to the average annual generation for a single-family residence to obtain the ERU values for each category and will be expressed in pounds or tons.

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3. The total number of pounds or tons for each improved property will be established by multiplying the weight value (pounds) for the appropriate category, times the number of units, or total building area (depending on the category), for a specific property. The number of units or building area will be obtained from the Property Appraiser.
4. The annual Disposal Facility Assessment for each improved property will be established by multiplying the total number of tons for that property by the annual assessment amount per ton, as established by the County.
5. Based on the above methodology, the County shall establish the annual assessment per amount, per ton.

6. The millage amount, if a M.S.T.U. is selected, will be based upon the total solid waste generation provided to the County by the Town (tons) in relation to its total ad-valorem valuation.
7. The County, prior to the implementation of Steps 1. to 6. above, shall transmit the proposed Disposal Facilities Assessment or Millage Rate to the Town's Manager and, upon request, shall formally present same to the Town at a regular Town Council meeting for Council approval, such approval not to be unreasonably withheld by the Town.
8. The County agrees that to the extent that it may lawfully do so, the Annual Disposal Facilities Assessment/Tax shall not exceed \$40.00 per Equivalent Residential Unit (E.R.U.), or ton, for the Assessment, or 0.50 mils, for the Tax, whichever method is selected by the Town.
9. The County and the Town agree that if the maximum levies as outlined at paragraph 8., above, are exceeded in any given year of this Agreement by the amounts as outlined in paragraph 8. above, except for Forces Majeure or Acts of God, then the Town shall have the right to either:
  - a) approve any such increase to the levy pursuant to justification(s) by the County, with such approval not to be unreasonably withheld,
  - b) renegotiate the terms of this Interlocal Agreement with respect to the increased levies pursuant to justification(s) by the County, or

- c) terminate this Interlocal Agreement, upon one hundred twenty (120) days written notification to the County.

10. Upon implementation of the MSW Disposal Facilities Special Assessment Program or Taxing Program pursuant to this Interlocal Agreement, the County will not levy any County-wide, general ad-valorem tax for MSW disposal or system maintenance, for so long as the MSW Disposal Facilities Assessment or Taxing Program for all incorporated Municipalities in Lee County is being implemented.

B. Town Responsibilities

1. The Town shall advise the County in writing within ten (10) business days following adoption of this Interlocal Agreement, of their selection with respect to the choice of an M.S.B.U. or M.S.T.U. program, which selection shall be made at the sole option of the Town.
2. The Town will use its best efforts and negotiate in good faith with the County in the development of the assessment methodology for the M.S.B.U. or millage for the M.S.T.U., as described in Section IV A.1. to A.8., above
3. The Town, once the M.S.B.U. or M.S.T.U. methodology has been developed, shall enact Town Ordinances granting the Town's express consent to the County to levy the special assessments or taxes under the MSW Disposal Facilities Special Assessment or Taxing Program pursuant to this Interlocal Agreement, and pursuant to Section 125.01(1)(q), for the term of the Agreement, as outlined further herein.

4. The Town shall assist the County with the identification of those properties to be assessed or taxed under the MSW Special Assessment or Taxing Program, and assist the County with the development of the Program Assessment or Taxing Roll, as it relates to the Town.

SECTION V. ADDITIONAL REVENUES

Any additional or unanticipated revenues obtained by the County as the result of the operation of the MSW "System" at any time during the term of this Interlocal Agreement, shall remain with the "System", and shall be applied to reduce expenses of the System. Such additional revenues will be applied to the costs of disposal facilities operations, maintenance, and/or debt service depending on the nature of the additional or unanticipated revenues.

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SECTION VI. TERM OF AGREEMENT

This 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 one 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.

SECTION VII. PRIOR AGREEMENTS

This Agreement shall supersede all other Agreements between the Town 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 Agreement.

SECTION VIII. ASSIGNMENT

No assignment, delegation, transfer, or novation of this Agreement or part hereof, shall be made, unless approved by all of the incorporated Municipalities in Lee County and the County.

SECTION IX. 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 Town, at the Office of the Mayor or Town Manager.

SECTION X. AMENDMENT

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

SECTION XI. CONSTRUCTION AND EFFECT

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

SECTION XII. 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 any party for the purpose of fulfilling any of the obligations under this Agreement.

SECTION XIII. FILING

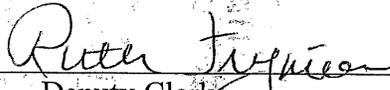
This Agreement and any subsequent amendments hereto shall be filed with the Lee County Clerk of the Circuit Court, Minutes Department, and the Clerk of the Town of Fort Myers Beach, as provided for by Section 163.01(11), Florida Statutes.

SECTION XIV. RESERVATION OF RIGHTS

Except as specifically provided for in Section IV, at paragraph 10. of this Interlocal Agreement, 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 Town and the County have executed this Agreement on  
the day, month, and year first above written.

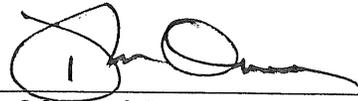
ATTEST:  
CHARLIE GREEN, CLERK

By:   
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

By:   
Chairman

APPROVED AS TO FORM:

By:   
Office of County Attorney

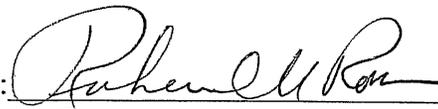
ATTEST:

By:   
Town Clerk

TOWN OF FORT MYERS BEACH

By:   
Mayor

APPROVED AS TO FORM:

By:   
Town Attorney

**AMENDMENT NO. 1  
TO THE  
INTERLOCAL AGREEMENT  
FOR MUNICIPAL SOLID WASTE COLLECTION, BILLING, AND  
DISPOSAL**

THIS AMENDMENT is made and entered into this 7th day of January, 2008, by and between the Town of Fort Myers Beach, a municipal corporation of the State of Florida, acting by and through its Town Council, the governing body thereof, hereinafter referred to as the "TOWN" and Lee County, a political subdivision and charter county of the State of Florida, acting by and through its Board of County Commissioners, the governing body thereof, hereinafter referred to as the "COUNTY"; collectively, "the Parties" hereto.

**RECITALS**

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

WHEREAS, both the TOWN and COUNTY are duly empowered pursuant to Florida Statutes, in particular, Section 163.01, Florida Statutes, to enter into Interlocal Agreements for the sharing of certain governmental powers and obligations; and may from time to time amend those Agreements; and

WHEREAS, hurricanes experienced in previous years have caused significant property damages requiring removal of debris throughout Fort Myers Beach; and

WHEREAS, the TOWN desires the assistance of the COUNTY in the form of a debris management site in the event of a mutual State of Local Emergency for debris removal, excluding hazardous materials, for the safety and welfare of the citizens of Fort Myers Beach through the County's Division of Solid Waste; and

WHEREAS, the TOWN finds it serves a public purpose and has determined it appropriate to compensate the COUNTY Division of Solid Waste for providing such services on behalf of the TOWN; and

WHEREAS, the Parties hereto find that entering into this Amendment No. 1 to the Interlocal Agreement serves a public purpose and is to the public's benefit.

NOW THEREFORE, the Parties agree to the following terms and conditions hereinafter set forth, the TOWN and the COUNTY intending to be legally bound, hereby agree as follows:

C9a

2-12-08

## **SECTION I - PURPOSE**

It is the purpose and intent of this Amendment No 1. to the Interlocal Agreement to define the terms and conditions under which the COUNTY will provide assistance for debris removal in the event of a State of an Emergency declared by both the Town Council of Fort Myers Beach and the Board of County Commissioners of Lee County and damages received in both locations require the activation of the COUNTY's disaster debris removal contractor.

All terms and conditions of this Amendment No. 1 to the Interlocal Agreement shall be interpreted in a manner consistent with, and in furtherance of, the purposes as set forth above.

## **SECTION II - AUTHORITY FOR AGREEMENT**

The TOWN represents to the COUNTY that the execution and delivery of this Amendment No. 1 to the Interlocal Agreement has been duly authorized by all appropriate actions of the governing body of the TOWN, has been executed and delivered by an authorized officer of the TOWN, and constitutes a legal, valid and binding obligation of the TOWN. The COUNTY represents to the TOWN that the execution and delivery of this Amendment No. 1 to the Interlocal 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 obligations of the COUNTY.

## **SECTION III - COUNTY RESPONSIBILITY**

- a) The COUNTY agrees to allow the TOWN to contract with the service providers utilized by the COUNTY for Disaster Recovery Services and Debris Monitoring Services with the same terms and conditions as set forth in the COUNTY's contract(s) providing the contractor(s) agree.
- b) The COUNTY will allow the Town to utilize one or more of the COUNTY designated Debris Management Sites, provided that the Town is contracted with the same disaster recovery contractor(s) as the COUNTY under the terms and conditions set forth by the COUNTY for such debris sites.
- c) The COUNTY will, through its contractor, provide for processing, transport, and final disposal of the TOWN's debris at the COUNTY's cost plus administrative charges of 5% of the total cost or \$ 1,000, whichever is greater.
- d) The PARTIES will share each other's debris load ticket database for mutual use, if requested.
- e) The COUNTY is responsible for seeking reimbursement from FEMA and/or the State of Florida for County generated debris.

#### **SECTION IV – TOWN RESPONSIBILITY**

- a) The TOWN will provide the COUNTY with a copy of each load ticket for material brought to the COUNTY's Debris Management Site. These load tickets will determine the total number of cubic yards from the TOWN to the COUNTY's debris management site and will be used to calculate the associated costs (i.e. site management, grinding, hauling of mulch, disposal of C&D, etc.) to be invoiced to the TOWN. The COUNTY and TOWN will use these load tickets to reconcile the volumes.
- b) Debris management sites secured by the TOWN may be shared with the COUNTY if so requested at the same terms and conditions that apply to the COUNTY's debris management site.
- c) The TOWN is responsible for seeking reimbursement from FEMA and/ or the State of Florida for Town generated debris.

#### **SECTION V - PAYMENT**

The COUNTY will invoice the TOWN for payment based on the volume of processed or burned horticultural waste, volume of mulch disposed, volume of disposal of construction debris, and other similar and related services. The TOWN agrees to make payment within forty-five (45) calendar days from receipt of invoice.

#### **SECTION VI - TERM OF AGREEMENT FOR SERVICES**

This Amendment No. 1 to the Interlocal Agreement shall commence upon its execution by the Parties and shall terminate on September 30, 2010, with the option of the Parties to renew the Interlocal Agreement and its subsequent Amendments for an additional five (5) year term, with the conditions for the additional five year term to be negotiated by the Parties prior to any such renewal.

#### **SECTION VII – INDEMNIFICATION**

The TOWN shall indemnify, defend, and hold the COUNTY harmless for any and all claims, suits, judgments or damages, losses or expenses, including court costs, expert witness and professional consultation services, and attorney's fees arising out of the TOWN's errors, omissions, and/or negligence. The TOWN shall not be liable to, nor be required to indemnify the COUNTY for any portions of damages arising out of any error, omission, and/or negligence of the COUNTY, its employees, agents, or representatives.

#### **SECTION VIII - NOTICES**

Any notices or other documents permitted or required to be delivered pursuant to this Amended Interlocal Agreement, shall be delivered to the COUNTY at the Office of the County Manager, and to the TOWN, at the Office of the TOWN Manager.

**SECTION IV - CONSTRUCTION**

This Amendment No. 1 to the Interlocal Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

**SECTION X - SEVERABILITY**

If any provision of this Amended to the Interlocal Agreement is held invalid, the remainder of the Amended Interlocal Agreement shall not be affected thereby and all other parts of this Amendment No. 1 to the Interlocal Agreement shall nevertheless be in full force and effect.

**SECTION XI - LIABILITY**

The Parties agree that by execution of this Amendment No. 1 to the Interlocal Agreement, no Party will be deemed to have waived its statutory defense of sovereign immunity, or increased its limits of liability as provided for by Section 768.28, Florida Statutes.

**SECTION XII - FILING**

This Amended No. 1 to the Interlocal 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 TOWN.

IN WITNESS WHEREOF, the TOWN and the COUNTY have executed this Amendment No 1. to the Interlocal Agreement on the day and year first above written.

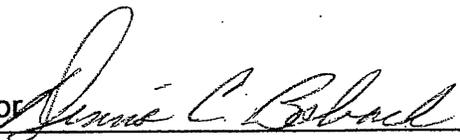
ATTEST: CLERK, TOWN OF  
FORT MYERS BEACH

BY:

Clerk  


**TOWN OF FORT MYERS BEACH**

BY:

Mayor 

APPROVED AS TO FORM:

BY:

  
TOWN Attorney

ATTEST: CHARLIE GREEN  
CLERK OF COURTS

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

BY: *Marcia Wilson*  
Deputy Clerk

BY: \_\_\_\_\_  
*Ray Judas*  
Chair

DATE: 2/12/08

APPROVED AS TO FORM:

BY: *Scott S. Powell*  
Office of the County Attorney



INTERLOCAL AGREEMENT  
FOR MUNICIPAL SOLID WASTE COLLECTION, BILLING, AND DISPOSAL

THIS INTERLOCAL AGREEMENT is made and entered into this 8th day of August, 2000, 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 TOWN OF FORT MYERS BEACH, a municipal corporation of the State of Florida, acting by and through its Town Council, the governing body thereof, hereinafter "TOWN", and collectively, "the Parties" hereto.

WITNESSETH:

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

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

WHEREAS, both the County and Town are duly empowered to enter into an 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 sound management of

solid waste, a reduction of the solid waste volume 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 Town and the County, intending to be legally bound, hereby agree as follows:

SECTION I            PURPOSE

It is the purpose and intent of this Agreement to define the terms and conditions of the County's provision of solid waste collection, billing, and disposal services to the Town and the terms and conditions under which the Town shall participate in said program. This Agreement is intended to:

- a) provide to the Town solid waste collection services, utilizing the County's contracted franchise collector (hauler) for MSW, vegetative waste, and recyclable materials during the term of this Agreement,
- b) provide to the Town, solid waste billing and customer services utilizing the County's pre-existing Interlocal Agreement with the Lee County Tax Collector for billing services and the Lee County Solid Waste Department for customer services for the term of this Interlocal Agreement,
- c) provide the Town with environmentally responsible comprehensive solid waste disposal services,
- d) provide for the Town such additional solid waste disposal capacity as may be necessary during the term of this Agreement, to dispose of additional MSW from the Town due to growth, and,
- e) provide to the County the delivery of all of the Municipal Solid Waste (MSW) generated within the Town (excluding hazardous waste), in order that the same shall be delivered to the County's Solid Waste Disposal and

Resource Recovery System (“System”), annually, for the term of this Agreement.

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

## SECTION II            AUTHORITY FOR AGREEMENT

The Town represents 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 Town, has been executed and delivered by an authorized officer of the Town, and constitutes a legal, valid and binding obligation of the Town. The County represents to the Town 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 or 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 Town” shall mean the Town Council for the Town of Fort Myers Beach.
- B. “Governing Body of the County” shall mean the Board of County Commissioners of Lee County.
- C. “Municipal Solid Waste (MSW)” shall mean solid waste as defined at Section 403.703 (13), Florida Statutes, as it may be revised from time to time, excluding hazardous waste materials.

- D. "Tipping Fee" shall mean the fee paid for disposal of solid waste, based on the tonnage disposed by the Town 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 collection, billing, customer service, and disposal of MSW, vegetative waste, and recyclables from within the Town. 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 and disposing the MSW (as described herein) from the Town. 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 Town due to growth.

The County shall not be liable to the Town for any changes to the operation of the System as the result of events beyond the reasonable control of the County, e.g., Force Majeure or changes in federal or state law. However, the County shall use its best efforts to provide for lawful alternate disposal methods for the Town's MSW, should such change or event occur. Any such changes shall be subject to the Parties' rights as outlined at paragraph VII, herein.

SECTION V                    TOWN'S SOLID WASTE RESPONSIBILITIES

The Town agrees, to the extent that it may lawfully do so, to cause its MSW (as defined herein), vegetative waste and recyclable materials to be directed to the County's Solid Waste Disposal and Resource Recovery System ("System"), or other County designated facilities, for the term of this Interlocal 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 solid waste collection charges shall be those as set out in the current and future County solid waste and recyclables franchise collection agreement, which is incorporated (or will be incorporated, if a future agreement) herein in its entirety. The System tipping fee for solid waste disposal shall be \$50.00 per ton for Fiscal Year 2000/01 and shall be adjusted annually based upon a not-to-exceed escalator of six percent (6%) per year, for the term of this Agreement. The operations, recycling, right-of-way cleanup and other surcharges, if collected, shall be collected by the County on all MSW (as defined herein) generated in the Town and the County will continue to provide those services for the term of this Interlocal Agreement.

The County agrees that, to the extent that it may lawfully do so, the tipping fees and charges for services provided by the County within the Town's municipal limits shall be the same as those fees and charges provided for similar users within the unincorporated areas of 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 Town's Manager and, upon

request, shall be formally presented to the Town at a regular meeting of the Town Council. The County and the Town agrees 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 Forces Majeure or Acts of God, then the Town shall have the right to either:

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

The County agrees to provide to the Town all of the solid waste collection franchise fees that the County collects from its contracted franchise hauler (five and one-half percent (5.5%) for fiscal years 2001-2005) for the term of this Agreement.

## SECTION VII            TERMS OF AGREEMENT

This 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.

## SECTION VIII            PRIOR AGREEMENTS

This Agreement shall supersede all other Agreements between the Town 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 Agreement.

SECTION IX            ASSIGNMENT

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

SECTION X            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 Town, at the Office of the Mayor and/or Town Manager.

SECTION XI           AMENDMENT

This Agreement may only be amended by a writing, duly executed by the Town and the County.

SECTION XII         CONSTRUCTION

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

SECTION XIII        DEFAULT

If the Town 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. Failure of a Party to exercise its rights in the event of any breach by the other Party shall not constitute a waiver of such rights. No Party shall

be deemed to have waived any failure to perform by the other Party unless such waiver is in writing and signed by the waiving Party. Such waiver shall be limited to the terms specifically contained herein. Nothing in this Agreement shall be construed to create a cause of action for consequential damages for delay.

SECTION XIV      BOOKS AND RECORDS

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

SECTION XV      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 Town.

SECTION XVI      HOLD HARMLESS – INDEMNIFICATION

The County shall hold the Town harmless from and against any 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 Town by 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 the Town, as the County may deem necessary, provided that the expense thereof shall be paid by the

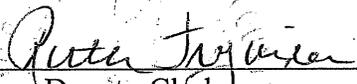
County Notwithstanding the above, the County shall not be liable to, in any manner, nor be required to hold the Town harmless, for any of the Town's own negligent acts. The Town shall hold the County harmless, and indemnify the County from the Town's negligent acts or omissions, to include the acts or omissions of the Town's employees or agents, with respect to Town's performance under this Interlocal Agreement. The Parties agree that by execution of this Agreement, neither Party will be deemed to have waived its statutory defense of sovereign immunity, nor increased its limits of liability as provided for at Section 768.28, Florida Statutes.

SECTION XVII      RESERVATION OF RIGHTS

Nothing in this Agreement shall be deemed nor 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 Town and the County have executed this Agreement on the day, month, and year first written above.

ATTEST:  
CHARLIE GREEN, CLERK

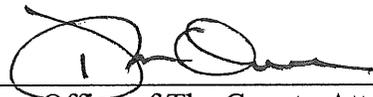
By:   
Deputy Clerk



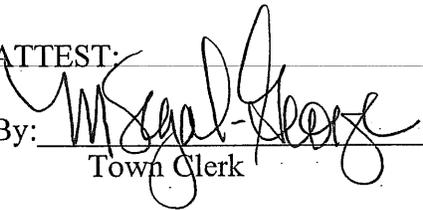
BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

By:   
Chairman

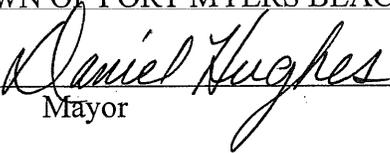
APPROVED AS TO FORM:

By:   
Office of The County Attorney

ATTEST:

By:   
Town Clerk

TOWN OF FORT MYERS BEACH

By:   
Mayor

APPROVED AS TO FORM:

By:   
Town Attorney



**LEE COUNTY**  
SOUTHWEST FLORIDA

**BOARD OF COUNTY COMMISSIONERS**

TOWN OF  
FT. MYERS BEACH

JUN 18 2010

RECEIVED BY

Bob Janes  
*District One*

June 17, 2010

A. Brian Bigelow  
*District Two*

Ray Judah  
*District Three*

Tammy Hall  
*District Four*

Frank Mann  
*District Five*

Karen B. Hawes  
*County Manager*

David M. Owen  
*County Attorney*

Diana M. Parker  
*County Hearing Examiner*

Mr. Terry Stewart, Town Manager  
Town of Ft. Myers Beach  
2523 Estero Blvd.  
Ft. Myers Beach, Fl. 33931

Re: Interlocal Agreements for Solid Waste Disposal and the Solid Waste  
Disposal Facilities Assessment

Dear Mr. Stewart:

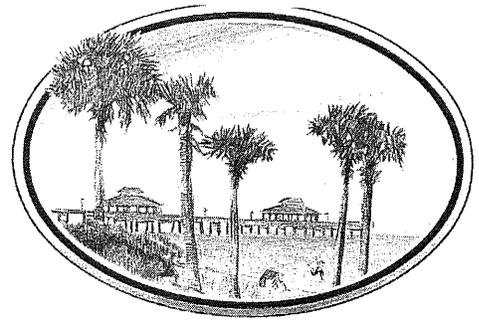
Attached please find a redline copy of the subject agreements. The redline version shows changes to our existing agreements. I have also included a copy of each of the existing agreements and a copy of the only change order that has been added to the "Disposal Agreement".

I would be pleased to review these agreements with you and other Town staff members at your convenience. Please call me at 533-8000 if you have any immediate questions

Sincerely,

Lindsey J. Sampson, Director  
Solid Waste Division

Cc: Jim Lavender, PW Director, w/o attachments  
Scott Covert, Assistant County Attorney, w/ attachments



# MEMO

DATE: June 28, 2010  
TO: Terry Stewart, Town Manager  
FROM: Cathie Lewis, Public Works Director *Cathie*  
SUBJECT: Interlocal Agreement – Solid Waste Disposal

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As requested I have reviewed the solid waste disposal ILAs, dated June 17, 2010 from Lee County and offer the following:

First Amended and Restated Interlocal Agreement for a Municipal Solid Waste Disposal Facilities Assessment

○ The “or Taxing Program” has been struck from the title; however reference to this provision is referenced throughout the document. I would assume that since the inception of the ILA it has been determined that the County will charge via an assessment instead of a taxing program. Because the original ILA is referenced as part of this new agreement, it is perhaps necessary to continue that association. In some references it adds confusion and others it’s just additional language. This is something that should be forwarded to Fowler, White for comment.

○ County Responsibilities – includes a provision that prior to implementation the County will provide the proposed disposal assessment. On June 10, 2010, I believe this notification was received. The question I have is, the June 10, 2010 notice only references the residential assessment. The ILA includes the possibility of 8 different assessment classifications of which I assume they are somehow based on a residential unit.

The notice states that assessments for classifications other than residential will experience an average of a 6% increase. From the information provided to me it seems that there is a piece missing concerning the assessment for the various classifications.

○ Town Responsibilities –

References the ordinances that will need to be placed pursuant to this ILA.

A new provision has been added that requires the Town to report, on a monthly basis, all certificates of occupancy issued and collect on the County’s behalf a prorated assessment from these properties.

Amended and Restated Interlocal Agreement for Municipal Solid Waste Collection,  
Billing and Disposal

o Section VIII states the County's responsibility associated with the provision regarding the collection of prorated assessments on new properties

o Section IX restates the same as a Town responsibility.

Reference is made to an attachment A & B, which are not attached, regarding the information that will be required to be supplied monthly and attachment B which is required to be sent weekly. (This may or may not be much work, but with limited staff this addition will have an impact. Changes will need to be made in the permitting procedures to accommodate this provision.)

The franchise percentage paid to the Town remains the same.

o From what I read, the amendment made in 2008 to this agreement, regarding debris management during an emergency, has been incorporated in its entirety.

Lastly, the issue of trash removal in Times Square has not been resolved. It is my understanding that the County is requesting that the Town discontinue the pick-up and that the County franchise hauler handle it. We have discussed the numerous concerns associated with this but to date no resolution has been reached that I am aware of. I have found correspondence back to the project commencement whereby the Town requested that the County address the refuse removal issues. Following the historical information available it appears that the County did not address this issue when the Times Square area was redeveloped, which required the Town to adopt the necessary policies associated with not only the maintenance but trash removal in the square.

Attachments – Town Manager Interlocal Agreement package

pc: file