

**RESOLUTION NUMBER 20-24**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT WITH LEE COUNTY FOR MUNICIPAL SOLID WASTE DISPOSAL, SOLID WASTE SYSTEM ASSESSMENT AND SUPPLEMENTAL SERVICES; AUTHORIZING THE EXECUTION OF THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, LEE COUNTY is a political subdivision and Charter County of the State of Florida, acting by and through its Board of County Commissioners, the governing body thereof (the “County”), and is vested with authority under Chapter 125 of the Florida Statutes to provide necessary public services to ensure the public health, welfare and safety within its boundaries; and

**WHEREAS**, the Town of FORT MYERS BEACH, is a municipal corporation of the State of Florida, acting by and through its Town Council, the governing body thereof (the “Town”), and is vested with authority under Chapter 166 of the Florida Statutes to provide municipal services within its boundaries; and

**WHEREAS**, Chapter 163 of the Florida Statutes, authorizes local governments to make the most efficient use of their powers by enabling them to cooperate with each other on a basis of mutual advantage and thereby to provide services and facilities that will harmonize geographic, economic, populations to meet the needs and the development and growth of all incorporated and unincorporated areas of the County; and

**WHEREAS**, the County and the Town have previously entered into an Interlocal Agreement for the Management of Municipal Solid Waste (MSW), MSW Collection, Billing and MSW Disposal Services; and

**WHEREAS**, the County and the Town desire to continue to cooperate with each other in the management of the System; and

**WHEREAS**, the Parties wish to enter into this Agreement for the continuation of the Town's use of the System for the collection and disposal of MSW, resource recovery and other solid waste services by the County and continuation of the existing funding mechanisms to pay for the provision of MSW collection and disposal, resource recovery services, and other services by the County, on an equitable basis.

**NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:**

Section 1. The above recitals are true and correct and are hereby incorporated by reference as though fully set forth herein.

Section 2. The Town Council hereby approves the Agreement attached hereto as Exhibit "A", between Lee County and the Town for the Interlocal Agreement for Municipal Solid Waste Disposal, Solid Waste System Assessment and Supplemental Services.

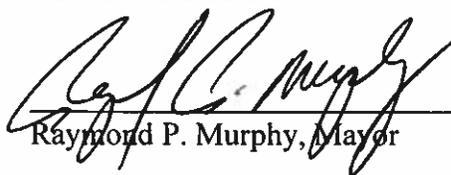
Section 3. This resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

The foregoing Resolution was adopted by the Town Council upon a motion by Mayor Murphy and seconded by Council Member Veach and upon being put to a vote, the result was as follows:

Raymond P. Murphy, Mayor	aye
Rexann Hosafros, Vice Mayor	aye
Dan Allers, Council Member	aye
Bill Veach, Council Member	aye
Jim Atterholt, Council Member	aye

ADOPTED this 3<sup>rd</sup> day of August, 2020 by the Town Council of the Town of Fort Myers Beach, Florida.

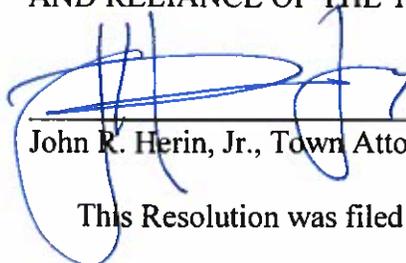
TOWN OF FORT MYERS BEACH

  
Raymond P. Murphy, Mayor

ATTEST:

  
Michelle D. Mayher, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE  
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH SOLELY:

  
John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 6<sup>th</sup> day of August 2020.

**INTERLOCAL AGREEMENT**  
**FOR MUNICIPAL SOLID WASTE DISPOSAL, SOLID WASTE SYSTEM**  
**ASSESSMENT AND SUPPLEMENTAL SERVICES**

**THIS INTERLOCAL AGREEMENT (Agreement) is made and entered into this 1st day of September, 2020, by and between Lee County and the Town of Fort Myers Beach, as set forth on the signature pages attached hereto for the use of Lee County's Integrated Solid Waste Disposal and Resource Recovery System ("System").**

**WITNESSETH:**

**WHEREAS, LEE COUNTY is a political subdivision and Charter County of the State of Florida, acting by and through its Board of County Commissioners, the governing body thereof (the "County"), and is vested with authority under Chapter 125 of the Florida Statutes to provide necessary public services to ensure the public health, welfare and safety within its boundaries; and**

**WHEREAS, the Town of FORT MYERS BEACH, is a municipal corporation of the State of Florida, acting by and through its Town Council, the governing body thereof (the "Town"), and is vested with authority under Chapter 166 of the Florida Statutes to provide municipal services within its boundaries; and**

**WHEREAS, Chapter 163 of the Florida Statutes, authorizes local governments to make the most efficient use of their powers by enabling them to cooperate with each other on a basis of mutual advantage and thereby to provide services and facilities that will harmonize geographic, economic, populations to meet the needs and the development and growth of all incorporated and unincorporated areas of the County; and**

**WHEREAS**, the County and the Town have previously entered into an Interlocal Agreement for the Management of Municipal Solid Waste (MSW), MSW Collection, Billing and MSW Disposal Services; and

**WHEREAS**, the County and the Town desire to continue to cooperate with each other in the management of the System; and

**WHEREAS**, the Parties wish to enter into this Agreement for the continuation of the Town's use of the System for the collection and disposal of MSW, resource recovery and other solid waste services by the County and continuation of the existing funding mechanisms to pay for the provision of MSW collection and disposal, resource recovery services, and other services by the County, on an equitable basis.

**NOW THEREFORE**, in consideration of the foregoing, and of the mutual covenant 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 further revise and define the terms and conditions of the County's provision of solid waste disposal and resource recovery 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 environmentally responsible solid waste, horticultural waste, and residential Program Recyclables Material disposal and processing services, and
- b) provide for the Town such additional solid waste disposal capacity as may be necessary during the term of this Agreement, and to dispose of additional Municipal Solid Waste (MSW) from the Town due to growth, and

- c) provide the County the delivery of all Municipal Solid Waste, horticultural waste, and residential and multi-family Program Recyclables Material generated from within the Town (excluding hazardous waste), in order that the same shall be delivered to the System, for the term of this Agreement, and
- d) provide the County a cooperative mechanism with the Town for the express permission to levy Special Assessments or Taxes, based on the funding mechanism, Rates, Fees and charges within the incorporated areas of the Town for the compensation of certain costs as outlined in Exhibit “*B – Supplemental Services*” and for the disposal of MSW through the System, for the term of this Interlocal Agreement, and
- e) provide to the Town supplemental services outlined in Exhibit “*B - Supplemental Service*”.

If any provision of this Agreement is deemed ambiguous, those applicable terms and conditions 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 for use of the System 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 to the County, 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 to the Town, 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 and charter county of the State of Florida.
- C. "Governing Body of the Municipality" 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. "Average Commodity Revenue" (ACR) shall mean a market index used to monthly adjust the revenue paid by the contractor to the County based on fluctuations in the commodity market. (See example provided in *Exhibit "F"*).
- F. "Billing Fee" represents a pass-through costs for the cost associated from the Lee County Property Appraiser to list, extend, prepare and submit the non-ad valorem assessment roll of the County and the cost of the Tax Collector for the collection and enforcement of ad valorem taxes and non-ad valorem assessments levied by Lee County Solid Waste.
- G. "Contaminated Load" shall mean County deemed unacceptable material(s) included in a load of Program Recyclables Material or Vegetative Waste. Such load, when delivered by the Town, or the franchise hauler, or Town's contracted vendor, to the County's designated recovery facility fails to meet County standard for the

intended processing, marketing and ultimate recycling of the received load and is rejected. As a result, it will be processed and charged as MSW.

- H. “Equivalent Residential Unit” or “ERU” shall mean a dwelling, unit, or development that is equal to a single-family residence in terms of the nature of its use or impact on an improvement to be provided in the assessment area.
- I. “Fiscal Year” means October 1st, of a year through September 30th, of the following year.
- J. “Hazardous Waste” shall mean materials or substances defined and characterized as hazardous or biohazardous waste by the United States Environmental Protection Agency and the Florida Department of Environmental Protection. These materials or substances exhibit one or more characteristics of being ignitable, corrosive, reactive or toxic, and as such making them dangerous or potentially harmful to human health or the environment.
- K. “Household Hazardous Waste” (HHW) or also referred to as “Household Chemical Waste” (HCW) is any unwanted household product labeled as flammable, toxic, corrosive, or reactive.
- L. “Integrated Solid Waste Disposal and Resource Recovery System” or “System” shall mean Lee County’s Solid Waste management system comprised of various components and processes that conserves landfill capacity, while recovering energy and material resources from the solid waste stream through a well-planned and operated system

using source reduction, recycling, composting, combustion, and landfill.

- M. “Market Changes” shall mean a long-term financial impact resulting from an unplanned change that has an adverse effect to the System’s financial position.
- N. “Municipal Solid Waste (MSW)” shall mean solid waste as defined at Section 403.703, Florida Statutes, as it may be revised from time to time, excluding hazardous waste materials.
- O. “Municipal Surcharge” shall mean a fee or charge imposed by the municipality and collected by the County as part of the Solid Waste System Assessment Program at the request of the Town.
- P. “Notice” means written notice from one Party of this Agreement to the other Party, all in accordance with the timeframes and other requirements of this Agreement.
- Q. “Program Recyclables Material” shall mean all recyclables accepted in the County’s single-stream recycling program contractually committed to be delivered to the Materials Recovery Facility (MRF).
- R. “Sharps” represent medical instruments that are sharp or may produce sharp pieces and should be disposed of in a biohazard Sharps Container. Sharps objects can be needles, syringes with needles, blades and other such items used to inject fluids or to administer drainage of bodily fluids.
- S. “Sharps Container” represents a puncture-resistant and leak-proof container with a one-way top to dispose of Sharps.

- T. “Solid Waste System Assessment”, formerly known as “Municipal Solid Waste Disposal Facilities Assessment”, shall mean a Municipal Service Benefit Unit (MSBU) or Municipal Service Taxing Unit (MSTU) created by the County at the election of the Town, pursuant to Chapter 125.01(1)(q), Florida Statutes.
  
- U. “Special Handling Fee” shall mean all costs associated with the act of processing operation, or cleanup of material delivered to County facilities or designated facilities. This includes cost of administrative and operational staff time, and/or the cost for resources used to perform the task.
  
- V. “Tipping Fee” or “Disposal Fee” shall mean the fees paid for processing and/or disposal of horticultural waste, Municipal Solid Waste, Program Recyclables Material, based on market value/commodity pricing and on the tonnage delivered by the Town to the System.
  
- W. “Unacceptable/Rejected Material” or “Rejected Material” aka Rejects shall mean those materials that are not converted to Recovered Materials. Rejects consist of Contaminants and Residuals. Standard is a 25% contamination rate.
  
- X. “Vegetative Waste” or “Horticultural Waste” shall mean an accumulation of lawn grass, shrubbery cuttings, clippings, leaf raking, palm fronds, tree branches, bushes or shrubs, green leaf cuttings, or other vegetative matter generally created as refuse in the care of lawns and yards.

**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 processing and disposal of MSW, Vegetative Waste, and Program Recyclables Material, collected by or on behalf of the Town, from within the Town as set

out in Section IX, herein. Additionally, the County shall be responsible for providing such supplemental services as elected by the Town where noted in Exhibit "B" hereto. The County shall operate, maintain and administer the County's System, or shall cause the same to be so operated, maintained and administered so as to be capable of handling and disposing the MSW, Vegetative Waste, and Program Recyclables Material from the Town. The County shall be responsible for handling all residues generated by the System and for the management and disposal of any bulk MSW delivered to the 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, Vegetative Waste, and Program Recyclables Material generated by the Town due to growth.

The County shall be responsible for the processing, storing and/or disposal of Vegetative Waste, and where noted in Exhibit "B" hereto elected to exercise disposal service of biosolids waste delivered by the Town to the County in accordance with the requirements as set out in Section IX, herein.

The County shall be responsible for the processing, storing and/or disposal of Program Recyclables Material delivered by the Town to the County in accordance with the requirements as set out in Section IX, herein.

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, changes in federal or state law, and Market Changes. However, the County shall use its best efforts to provide an economical and lawful alternate disposal method for the Town's MSW, Vegetative Waste, and where noted in Exhibit "B" hereto elected to exercise disposal service of biosolids waste, and Program Recyclables Material should such change or event occur. Any such changes shall be subject to the Parties' rights as outlined in Section IX, herein.

The County retains the right to reject Contaminated Loads of Vegetative Waste and Program Recyclables Material and/or charge the Town for disposal or processing of the same if delivered by the Town or its franchised haulers to the County. Additional cost incurred by the County, such as labor and equipment cost for the cleanup of Contaminated Loads, in form of a special handling fee, will be borne by the Town.

The County retains the right to reject loads containing material delivered to the wrong disposal or processing facility. For instance when MSW is delivered to the Vegetative Waste Processing area. In those instances, the County will perform the cleanup and the load/scale house ticket will be revised to reflect the correct material disposal price. The County further retains the right to charge the Town any cost incurred with the cleanup of the material and its delivery to the correct disposal or processing facility in form of a special handling fee.

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

The Town agrees, to the extent that it may lawfully do so, to ensure all of its MSW, Vegetative Waste and residential and multi-family Program Recyclables Material are directed and delivered to the County's System, or other County designated facilities as determined by the County, for the Term of this Agreement. From time to time, operational needs or an event may cause waste material to be diverted from the regular disposal facility. In such event, the County will formalize a diversion plan with an anticipated timeline for MSW, and/or Vegetative Waste, and/or Program Recyclables Material deliveries from the Town or its franchised haulers to be directed to alternate sites. This information will be communicated to the Town as soon as the County is aware of such an event. The Town or the contracted franchise hauler shall make provisions during the diversion period to separate tires from other curbside collected waste when delivering MSW to a landfill. Any additional cost incurred by the Town due to the diversion will be borne by the Town.

The Town shall have no rights to any proceeds or economic benefit derived from County's disposal of the Town's MSW and Vegetative Waste.

The Town shall timely pay, and direct its franchise hauler to pay the County the disposal fees, as established in Section VIII, for Municipal Solid Waste and Horticultural Waste delivered to the System on a monthly basis.

**SECTION VI      DISASTER DEBRIS MANAGEMENT**

In the event of a State of Local Emergency is declared in the county, the County and the Town may mutually agree to enlist a Cooperative Purchase Agreement for the service provider(s) utilized for disaster recovery services and debris monitoring services by executing a Debris Staging Agreement as shown in Exhibit E to be completed and executed

by the Lee County Manager or designee and the Town Manager. This Disaster Staging Agreement will include specific details; among others, the notification of and length of time for use from the enactment of a State of Emergency and any closure related requirements. A Declaration of Local State of Emergency authorizes the County to have immediate access to such debris management sites. The aforementioned provision to provide access to one or more temporary debris management sites, or portions thereof, is reciprocal for a mutual exchange of privileges to the other Party and will be administered by the requesting Party in the same fashion as described above.

**SECTION VII**      **FUNDING SOURCE – SOLID WASTE SYSTEM**  
**ASSESSMENT**

Pursuant to the uniform method to levy and enforce a Special Assessment Program, the Parties previously developed a Municipal Service Taxing Unit (MSTU – Special Taxing Program) or Municipal Service Benefit Unit (MSBU – Special Assessment Program) pursuant to the requirements of Section 125.01(1) (q), Florida Statutes and Florida Statute 197.363.

The Town shall expeditiously enact Ordinances and/or Resolutions and/or Ordinances as may be as necessary granting the Town’s express consent to the County to levy collection and disposal rates, fees, charges, and special taxes or special assessments under the Solid Waste System Assessment pursuant to this Interlocal Agreement, and pursuant to Section 125.01(1)(q) under the Town’s approved Funding Program for the compensation of and applicable state law to compensate the County for the services provided to the Town under this Interlocal Agreement.

The Town shall assist the County with the identification of those properties to be assessed or taxed under the Solid Waste System Assessment Taxing Program, and assist the County with the development of the program assessment roll, as it relates to the Town.

The Town shall report to the County at the beginning of each month all newly constructed residential and commercial dwelling units, including mobile homes, which received a certificate of occupancy or certificate of completion in the previous month (see example in Attachment “C”). The information will enable the County to monitor growth of

the waste stream and gauge approximate operating capacity of the System, develop programs to lengthen the life of existing facilities, and forecast the need for additional facilities.

#### A. COUNTY RESPONSIBILITY FOR THE MSBU PROGRAM

1. The County shall develop, articulate, justify and establish an assessment methodology for a Municipal Service Benefit Unit (MSBU) based upon an Equivalent Residential Unit (ERU) concept, generation rate (weight per unit or unit area), based on total solid waste generation, for all improved properties within the Town. The same methodologies will be applied for unincorporated Lee County. The special assessment methodology for an MSBU 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) Multi-family residential (mobile homes, apartments, condominium with five (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 Department, or its contracted 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.

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 Solid Waste System Assessment fee 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 defined developed property.

B. TRANSMITTAL TO THE TOWN

Prior to the implementation of steps laid out in A. and B., above, the County shall transmit the proposed Disposal Facilities Assessment or Millage Rate to the Town Mayor or Town Manager and, upon request, shall formally present same to the Town at a regular Town Council meeting for Council approval, such approval shall not be unreasonably withheld by the Town.

**SECTION VIII**      **RATES, FEES, AND SURCHARGES**

The Parties agree that pursuant to this Agreement, the County will calculate, determine and set the annual rates, fees, and charges and take other necessary and lawful steps to establish funds for the use and operation of the System pursuant to Exhibit “A – Rates, Fees, Annual Special Assessment Rates and Charges to the Town of Fort Myers Beach” as further described herein. Annual rates, fees, and charges billed by the County to the Town shall be the same as those fees and charges provided for similar users within the unincorporated areas of Lee County, for the term of this Agreement.

For the preparation of the Town’s budget for the upcoming fiscal year, the County shall submit its preliminary annual rates, fees, and charges to the Town’s Mayor or Town Manager by mid-March and Board of County Commissioner adopted annual rates, fees, and charges on or before the date formalized in Solid Waste Ordinance No. 96-09.

The Town shall recognize and adopt the annual rates and the level of service as it may be adjusted from time to time without the need for amendments to the Amended and Restated Interlocal Agreement.

Municipal Surcharges, if collected, shall be collected by the County at the Town’s option and direction on all MSW generated by the Town and delivered to the County’s System; and 100% of the surcharges collected from the Town’s customers, to include residential, multi-family, and commercial accounts, shall be transmitted to the Town by the County for the Town’s solid waste program on a quarterly basis, if the Town has directed the County to collect Municipal Surcharges on behalf of the Town. The Parties acknowledge and agree that the County shall have no billing or collection obligations relating to the Town’s customers and shall not be liable for any amounts owed by such customers.

**SECTION IX**            **HORTICULTURAL WASTE AND RECYCLABLE**  
**MATERIAL PROCESSING**

The Town shall deliver, or cause to be delivered to the County’s horticultural waste processing site, all horticultural waste collected from the Town’s residents, for the term of this Agreement. The negative impacts of single-use plastic bags on the environment have led the County to abandon its use as an acceptable “garbage container” for yard waste disposal. The County encourages the use of biodegradable paper lawn and leaf bags when bundling of the yard waste or disposal of it in a garbage can is not practical. Yard waste delivered to the

County's horticultural processing site shall essentially be free of polyethylene-based plastic bags since plastic contaminates the mulch or compost products made out of the yard waste. Yard waste presented at the curb in plastic bags shall be collected as MSW. The County will assist the Town in outreach efforts and supply appropriate literature to promote this endeavor. The County, through the horticultural waste processing operator, retains the right to reject contaminated loads and/or charge the Town the Tipping Fee for those unacceptable loads for MSW disposal or processing cost, if delivered by the Town or any of its contracted haulers. The County will perform the cleanup and the load/scale house ticket will be revised to reflect the correct material disposal price. The County further retains the right to charge the Town any cost incurred with the cleanup of the material and its delivery to the correct disposal or processing facility in form of a Special Handling Fee.

The Town shall deliver, or cause to be delivered to the County's Material Recovery Facility (MRF), all County designated recoverable materials, excluding horticultural materials, meeting the County's commodity types as Program Recyclables Material, collected from the Town's single-family and multi-family residents, for the term of this Agreement and will be assessed the recycling fee as shown in Exhibit "A – Rates, Fees, Annual Special Assessment Rates and Charges to the Town of Fort Myers Beach". The Town may elect to deliver to the County's Material Recovery Facility commercial loads of Program Recyclables Material, but will be assessed a recycling fee as shown on Exhibit "A – Rates, Fees, Annual Special Assessment Rates and Charges to the Town of Fort Myers Beach".

The County shall not charge a recycling fee greater than: i) the net cost of administration of the recycling program, which may include the cost of customer outreach, unless separately charged by the County, ii) plus the direct cost of processing operations, maintenance, major maintenance, capital or debt service associated with the Material Recovery Facility or recycling program, including maintenance and marketing services for the sale of recovered materials, iii) plus any cost of transportation of materials incurred by the County, and iv) less revenues derived from the sale of recovered materials. To the extent that the County collects a greater amount of revenue derived from the sale of recovered materials than the enumerated costs above, the County will remit a proportionate amount of any such net revenues annually following publication of the audited Comprehensive Annual Financial Report (CAFR) for the applicable fiscal year pursuant to the proportionate amount

of processed Program Recyclable Materials minus the proportionate share of residue, received by the County from the Town determined by the revenue received from the sale of recycling commodities. Supporting documentation will be provided by the County to the Town reflecting the net cost or net revenues of the recycling program as shown in Exhibit 'F' –Proportionate Share of Net Recyclable Revenues.

The County shall not limit the amount of recoverable Program Recyclables Material delivered to the County MRF. However, the County, through the MRF Operator, retains the right to reject, in accordance with the MRF contract, contaminated loads and/or charge the Town the Tipping Fee for those unacceptable loads for MSW disposal and/or a Special Handling Fee, if delivered by the Town or any of its contracted haulers. The County or its contracted MRF Operator shall immediately notify the Town or the Town's designee of any Contaminated Load delivered to the County MRF. This notification shall include photographic or video evidence of the Contaminated Load.

The County reserves the right to modify the residential and multi-family recycling program as necessary during the term of the Agreement including, but not limited to, the price charged for processing the material.

The County will provide a County-wide public outreach and education Program, applicable to solid waste and recycling information, regarding the services and facilities for solid waste management. The County will coordinate events and disseminate information on waste reduction, recycling, household hazardous waste, and composting activities. Such costs will be shared among all residential users of the System through the County's Solid Waste System Assessment Program.

The Town will be given no less than 90-day notice of any change to the County's recycling program.

## **SECTION X            HOUSEHOLD CHEMICAL WASTE PROGRAM**

The County will provide a quarterly household chemical waste collection program event within the corporate limits of the Town each fiscal year, including personnel and cost of contract disposal for the term of this agreement. In collaboration with the County, the Town will provide the County the location of the household chemical waste collection event within the Town and a mutually agreed upon event date. The Town will further provide the

advertisement of the event as well as any supplemental assistance in form of supplies and/or equipment required by the County. Unscheduled collection events cannot be accumulated nor carried over to the following fiscal year.

The County's household chemical waste costs may be included as part of the MSW Tipping Fee and/or separate fees to the Town's customers.

#### **SECTION XI      ADDITIONAL REVENUES**

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

#### **SECTION XII      TERM OF THIS INTERLOCAL AGREEMENT**

The date to implement new services begins October 1, 2020 and this Interlocal Agreement shall terminate on September 30, 2030, with the option of the Parties to renew this Agreement for two (2) additional five (5) year terms, with the conditions to be negotiated by the Parties prior to any such renewal. Notice by either Party of the desire to negotiate continued services must be made no later than 180 days prior to the termination date of this Agreement or the termination date of any subsequent renewal period.

#### **SECTION XIII      PRIOR AGREEMENTS**

This Interlocal Agreement is the entire Agreement between the Town and the County. It supersedes all previous oral and written presentations, understandings, and agreements as they relate to the use and contribution to the System.

#### **SECTION XIV      TERM DATE FOR IMPLEMENTING NEW SERVICES**

In the event the County adjusts its processes to meet business goals and/or new innovations, the County shall provide the Town a clear objective defining the process or service that is to be updated within 180 days prior to implementation. In the event the Town

seeks to enlist the County for services in addition to those outlined in Exhibit “B – *Supplemental Service*” the Town shall approach the County Manager, or designee, and request such service. The Board of County Commissioners has granted the County Manager, or designee, the authority to review and negotiate terms and conditions for such services. Changes derived from such negotiations shall be performed after 180 days, or at a later specified date, from the date both Parties agreed upon and signed finalized Addendum.

**SECTION XV**      **SEVERABILITY**

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

**SECTION XVI**      **ASSIGNMENT**

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

**SECTION XVII**      **NOTICES**

Any notices or other documents permitted or required to be delivered pursuant to this 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 XVIII**      **AMENDMENT**

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

**SECTION XIX**      **CONSTRUCTION**

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

**SECTION XX**      **DEFAULT**

If either Party breaches the terms of this Agreement, the non-breaching Party shall provide written notice of the default, in accordance with Section XVII Notices. If the breaching Party does not cure the default within sixty (60) days from the date the notice is sent, the non-breaching Party may terminate this Agreement and recover all costs and damages resulting from the breach of this Agreement. Any outstanding funds owed to the breaching Party may be used to offset the damages and costs incurred by the non-breaching Party. The right to offset is not intended to limit the non-breaching Party's right to any other remedy available in law or equity.

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 Interlocal Agreement shall be construed to create a cause of action for consequential damages for delay.

**SECTION XXI**      **BOOKS AND RECORDS**

The Parties 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 XXII**      **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 XXIII**      **HOLD HARMLESS – INDEMNIFICATION**

The Town and the County agree to indemnify and hold each other harmless from and against any and all claims, demands, losses, causes of action, damages, lawsuits, judgments, including attorney's fees and costs, to the extent caused by or arising out of or relating to the work, errors, omissions and/or operations of the other Party. 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 XXIV**    **RESERVATION OF RIGHTS**

Nothing in this 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.

**SECTION XXV**    **ATTORNEY'S FEES AND COSTS**

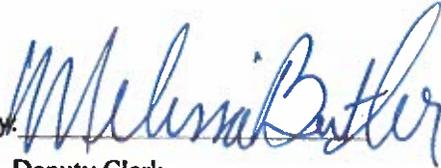
If either Party brings or commences legal action or proceeding to enforce the terms of this Agreement, the prevailing Party shall be entitled to recover the costs and expenses of litigation, including attorneys' fees.

The remainder of this page is intentionally left blank.

**IN WITNESS WHEREOF**, the Town and the County have executed this Amended and Restated Interlocal Agreement of the day, month, and year first written above.

**ATTEST:**  
**LINDA DOGGETT, CLERK**

**BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA**

By:   
Deputy Clerk

By:   
Brian Hamman, Chair

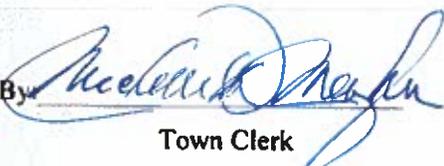
**APPROVED AS TO FORM  
FOR THE RELIANCE OF LEE COUNTY ONLY:**

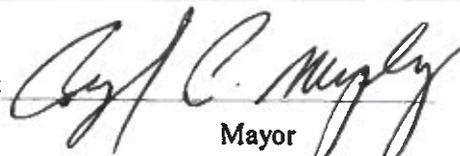
By:   
Office of the County Attorney



**ATTEST:**

**TOWN OF FORT MYERS BEACH**

By:   
Town Clerk

By:   
Mayor

**APPROVED AS TO FORM:**

By:   
Town Attorney

EXHIBIT A  
RATES, FEES, ANNUAL SPECIAL ASSESSMENT RATES AND CHARGES  
TOWN OF FORT MYERS BEACH

In consideration of the matters described in the AMENDED AND RESTATED INTERLOCAL AGREEMENT FOR MUNICIPAL SOLID WASTE DISPOSAL AND SOLID WASTE SYSTEM ASSESSMENT between Lee County and the Town of Fort Myers Beach, and of the mutual benefits and obligations set forth in this Supplemental Services Agreement, the receipt and sufficiency of which consideration is hereby acknowledged, the Town of Fort Myers Beach and Lee County agree as follows:

A. LEE COUNTY OBLIGATION:

Establish annual collection and disposal service rates, fees, facilities assessment, and other charges as they may apply:

The following rates are effective October 1, 2020:

Franchise Area # 1 Annual Solid Waste System Assessment:

\$225.82\* per Residential Unit

\$15.85\* per Multi-family Unit

\$4.71\* per Recreational Vehicle Lot

\*This includes an administrative billing charge of \$2.55 per account.

\$.00457 per Square Foot Commercial Category A

\$.01562 per Square Foot Commercial Category B

\$.02666 per Square Foot Commercial Category C

\$.09747 per Square Foot Commercial Category D

\$.19494 per Square Foot Commercial Category E

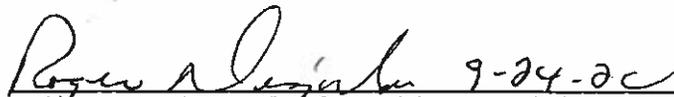
A. TOWN OF FORT MYERS BEACH OBLIGATION – NEW CONSTRUCTION:

Pursuant to SECTION VII of the Amended and Restated Interlocal Agreement, the Town of Fort Myers Beach 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 of Fort Myers Beach.

1. Accounting for new residential units and collection of a prorated Solid Waste Assessment:

- a) Prior to the issuance of a certificate of occupancy the Town of Fort Myers Beach will collect a prorated Solid Waste Assessment for each residential dwelling unit for the remainder of the fiscal from the permit holder.
- b) The entire Solid Waste Assessment must be collected for the coming fiscal year if an application for a certificate of occupancy is received during the month of September.
- c) The Town of Fort Myers Beach will submit any collected Solid Waste Assessments received for new dwelling units to Lee County Solid Waste in accordance with the Prompt Payment Act.
- d) By the end of each month the Town's Community Development Office, or its contracted service provider, will compile and electronically submit to the Lee County Property Appraiser and the Lee County Solid Waste Department a report detailing all permits and/or property owners that received a certificate of completion and/or certificate of occupancy in the previous month (STRAP Number, Property Owner, Address, Number of Units, Building Square Footage, Permit Number, Type of Permit, and the amount of Solid Waste Assessment fee collected – see Exhibit "C").
- e) On a weekly basis the Town of Fort Myers Beach will provide the County's Solid Waste Department a copy of all completed Garbage Verification Forms from applicants issued a Local Business Tax Receipt and USE permit (Exhibit "D".)

  
Signature and Date : Lee County Manager or designee

*Jeff C. Meyer* MAYOR 8/5/20  
Signature and Date: Ft. Myers Beach Town Manager or designee

EXHIBIT B  
SUPPLEMENTAL SERVICES AGREEMENT  
TOWN OF FORT MYERS BEACH

In consideration of the matters described in the INTERLOCAL AGREEMENT FOR MUNICIPAL SOLID WASTE DISPOSAL AND SOLID WASTE SYSTEM ASSESSMENT between Lee County and the Town of Fort Myers Beach, and of the mutual benefits and obligations set forth in this Supplemental Services Agreement, the receipt and sufficiency of which consideration is hereby acknowledged, the Town of Fort Myers Beach and Lee County agree as follows:

<b>Description of specific service provided by Lee County:</b>	
1	The Town of Fort Myers Beach contracts with Lee County for the sole collection of all residential, multi-family and commercial Municipal Solid Waste from improved properties within the boundaries of the Town of Fort Myers Beach through Lee County's contracted franchise hauler and the processing of the MSW using the County's System.
2	The Town of Fort Myers Beach contracts with Lee County for the sole collection of horticultural waste from improved residential properties within the boundaries of the Town of Fort Myers Beach through Lee County's contracted franchise hauler and the processing of said material using the County's System.
3	The Town of Fort Myers Beach contracts with Lee County for the sole collection of residential and multi-family generated Program Recyclables Material from improved properties within the boundaries of the Town of Fort Myers Beach through the County's contracted franchise hauler and the processing of said Program Recyclables Material using the County's System.
4	The Town of Fort Myers Beach seeks billing and customer service for the residents and businesses within the boundaries of the Town of Fort Myers Beach pertaining to solid waste, recycling, yard waste and special collection services. Lee County shall investigate and resolve customer complaints pertaining to service issues.

5	Lee County remits to the Town of Fort Myers Beach all franchise fees collected from the County's franchise hauler for the right to enter into a franchise agreement within the County's Franchise Area, per executed agreements and amendments, if any. The franchise fee is based on the total of all charges invoiced arising out of any service or operations conducted within the boundaries of the Town of Fort Myers Beach. This does not include residential and commercial disposal cost and Advanced Disposal Fees as defined in Ordinance 07-25 (compliance enforcement for mandatory business recycling).
6	Lee County assist the Town of Fort Myers Beach with public outreach and information as it pertains to solid waste, recycling, and yard waste services for the residents and businesses within the boundaries of the Town of Fort Myers Beach. Assistance is provided upon requests made by the Town of Fort Myers Beach, residents, Homeowner's Associations, or other civic associations.
7	Lee County provides the residents of the Town of Fort Myers Beach access and use of the County's permanent Household Chemical Waste Disposal facility at no additional cost to the resident.
8	Lee County provides the residents of the Town of Fort Myers Beach the use of the County's mobile Household Chemical Waste collection and disposal of Household Chemical Waste at no cost to the resident. Mobile collections are scheduled throughout the County at various locations. Dates and locations for these mobile collections are determined by agreement between the County and municipality. Dates and locations of all collection events will be published on the County's website.
9	<p>Lee County schedules frequent chemical waste disposal business collections to provide all businesses in Lee County the opportunity to dispose of small quantities of Hazardous Waste at Lee County's permanent disposal location(s). Applicable charges to the business will apply with payment of County negotiated prices due to the vendor at the time of service. Dates of the collection events are published on the County's website. In order for the County's vendor to come prepared to the collection event, businesses are encouraged to call the vendor to disclose the materials they need to dispose of and to get a time slot for that day.</p> <p>Note: local businesses may contract for their hazardous waste management with any reputable FDEP compliant vendor.</p>
10	Lee County currently issues one County owned recycling cart to residents and will in the future, if the County decides to move in that

	direction, supply one County owned garbage container to each dwelling unit identified by the Property Appraiser as either a single family home, duplex, triplex, 4-plex, or townhome within the boundaries of the Town of Fort Myers Beach. This includes the repair or replacement of damaged County owned containers.
11	Lee County supplies the fire stations within the Town of Fort Myers Beach with SHARPS containers and schedules safe disposal of used lancets and needles from the fire departments.
12	The Town of Fort Myers Beach may negotiate with the County's franchise hauler services that are not provided in this Agreement under a separate service agreement. Management of a separate service agreement and franchise hauler performance for those services will not be monitored by Lee County.

*Roger Desjardins* 9-24-20  
 Signature & Date Lee County Manager or designee

*Carl C. Murphy* MAYOR 8/5/20  
 Signature & Date Town of Fort Myers Beach Manager or designee

EXHIBIT C  
To the Amended and Restated Interlocal Agreement  
For Municipal Solid Waste Disposal and Disposal Facilities Assessment Taxing Program  
Town of Fort Myers Beach

Town of Fort Myers Beach Certificate of Completion and/or Certificate of Occupancy Report for the Month of \_\_\_\_\_

<u>STRAP Number</u>	<u>Property Owner</u>	<u>Address</u>	<u>No. of Units</u>	<u>Blk. SqFt</u>	<u>Permit No.</u>	<u>Permit Type</u>	<u>SW Amount Collected</u>
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Please note: Per Lee County Solid Waste Ordinance 11-27 Residential Units are defined as having four (4) or less dwelling units in a common structure, or are located on a single property. Five (5) units and up are categorized as Multi-Family.

# Town of Fort Myers Beach

## Garbage Collection Verification Form

### APPLICANT COMPLETE THIS SECTION

Name of Business: \_\_\_\_\_

Business Address: \_\_\_\_\_

Unit #: \_\_\_\_\_

ZIP Code: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

**USE 2020-**



**Check which one applies:**

Landlord provides service. List the name the account is under: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Share a Container /

Established New Service

**Approval Stamp From Franchised Hauler!**

**Franchised Hauler please e-mail to Lee County:  
SolidWaste@leegov.com**

**Fax this form to Advanced Disposal Services @ 239-433-2550**

For questions regarding garbage service call  
Advanced Disposal Services @ 239-334-1224

EXHIBIT E  
DEBRIS STAGING AGREEMENT BETWEEN  
LEE COUNTY AND THE TOWN OF FORT MYERS BEACH

THIS DEBRIS STAGING AGREEMENT (the "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between LEE COUNTY, FLORIDA, a political subdivision of the State of Florida (the "COUNTY"), whose address is c/o Solid Waste Department Director, P.O. Box 398, Fort Myers, FL, and the TOWN OF FORT MYERS BEACH (the "TOWN"), whose address is 2525 Estero Blvd, Fort Myers Beach, FL. The COUNTY and the TOWN are collectively referred to throughout the Agreement as the "Parties".

WHEREAS, the Lee County Board of COUNTY Commissioners has the authority to declare a State of Local Emergency pursuant to Section 252.38, Fla. Statute.

WHEREAS, during a declared State of Emergency, the COUNTY has the power and authority to waive the procedures and formalities otherwise required of political subdivisions by law in order to take whatever prudent actions are necessary to ensure the health, safety, and welfare of the community.

WHEREAS, the Parties acknowledge and agree that it is in the public interest for the COUNTY and TOWN to share a debris management site for debris collected in areas of the Town of Fort Myers Beach that fall upon the County's responsibility (example: County maintained road) as well as that debris collected by the TOWN.

WHEREAS, the Parties desire to be able to utilize the property identified as Insert site address for temporary debris staging purposes. Additional TOWN-owned Property or an expanded footprint of the identified Property may be added to this Agreement upon mutual agreement by the COUNTY and the TOWN.

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

1. The COUNTY and TOWN agree to share a Debris Management Site to be maintained and managed by the TOWN. The TOWN will assign to the COUNTY a portion of land for COUNTY use in order to segregate the debris collected and staged by each entity. The COUNTY will use its contractor to collect debris from the portions of Fort Myers Beach within its responsibility and transport it to the assigned shared site. The COUNTY contractor will be

allowed to process the debris using acceptable reduction techniques per the COUNTY's Debris Management Contract. The processed material will be loaded and transported from the assigned site for final disposal by the COUNTY's contractor. The COUNTY's debris monitoring vendor will also be allowed to set up equipment and have staff present for the purpose of verifying the quantity of material entering and exiting the assigned site.

2. The COUNTY will be responsible for the debris management of debris generated only from the COUNTY's area(s) of responsibility in accordance with Federal, State, and local laws. The TOWN will be responsible for the debris management of the debris generated from within the boundaries and areas of responsibility within the TOWN in accordance with Federal, State, and local laws. Each entity will generate, maintain, and retain separate records in order to qualify for Federal and/or State assistance.

3. The TOWN agrees that the COUNTY, its employees and assigns, may enter and access the Property with solid waste & debris management equipment, machinery, and vehicles.

4. The TOWN agrees that the COUNTY may use the Property as staging areas for grinding horticultural debris and as staging areas for construction and demolition debris created by a declared Local Emergency event. The TOWN authorizes the COUNTY to clear, grub, and add stabilizing material for ingress and egress, and staging pad, if necessary. Stabilizing material brought onto TOWN property must come from a State Certified facility, free of contaminants and/or hazardous material and documentation provided accordingly. Stabilizing material may remain on the Property.

5. The TOWN agrees there will be no cost for the use of the Property under this Agreement.

6. The COUNTY agrees to furnish the TOWN with a copy of the Authorization for Disaster Debris Management Site ("DDMS") for the portion of the Site assigned to the COUNTY for its use as provided by the Florida Department of Environmental Protection ("FDEP") prior to use of any of the Property by the COUNTY and will provide a copy of the FDEP DDMS Closure letter after the COUNTY vacates that portion of the DDMS. It is the COUNTY's intent that no hazardous material will be received at the Property.

7. To the extent allowed by law and subject to the provisions and limitations contained in §768.28, Florida Statutes, the COUNTY agrees to be liable for injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any

employee, or contractor of the COUNTY while acting within the scope of his office or employment under circumstances in which the COUNTY, if a private person, would be liable to the claimant, in accordance with the general laws of the State of Florida.

8. The COUNTY agrees to return the Property to the TOWN in a condition equal to, or better than the condition such Property existed prior to the COUNTY's use; less clearing, grubbing, and approved stabilizing material. Following operations, the TOWN will work with the COUNTY or its representative(s) to establish the reasonable remediation efforts required and in acceptable FEMA standards to return the Property to their existing condition prior to use.

9. Following completion of DDMS operations and remediation, the TOWN will inspect the property and provide a letter of release to the COUNTY stating that the remediation efforts were completed to the satisfaction of the TOWN.

10. The Parties agree to meet annually to review the use of the Property and to address any related issues.

11. The term of this Agreement shall be for a period of ten years, commencing upon the last Party's execution of said Agreement.

12. Either party may terminate the Agreement upon 120 days' written notice.

13. The COUNTY will notify the TOWN prior to use of the Property that the COUNTY intends to access the Property for the purposes outlined in this Agreement.

14. A Declaration of Local Emergency authorizes the COUNTY to have immediate access to the Property for the purposes described in this Agreement. The COUNTY will notify the TOWN of a Declared Local Emergency event and of the COUNTY's intent to utilize one or more of the Property by written, electronic and/or verbal communication.

15. The actual use of any of the Property, per event, is for a maximum period of six (6) months from the enactment of a State of Emergency unless extended by mutual consent of the Parties in writing.

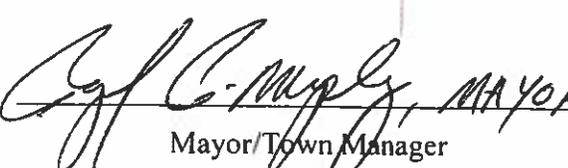
16. All notices required to be served upon the TOWN will be served by Registered or Certified Mail, Return Receipt Requested, at 2525 Estero Blvd, Fort Myers Beach, Florida 33931 and all notices required to be served upon the COUNTY will be served by Registered or Certified Mail, Return Receipt Requested, at the address of **The Department of Solid Waste, Attention: Department Director, 10500 Buckingham Road, Fort Myers, Florida 33905.**

IN WITNESS WHEREOF, the Parties have caused this document to be signed on the date and year first above written.

ATTEST:

THE TOWN OF FORT MYERS BEACH, FLORIDA

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

  
\_\_\_\_\_  
Mayor/Town Manager

APPROVED AS TO FORM:

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

BOARD OF COUNTY COMMISSIONERS  
LEE COUNTY, FLORIDA

BY: \_\_\_\_\_

COUNTY Manager/Designee

Under Authority of Resolution No. 07-03-28

ONLY:

APPROVED AS TO FORM FOR THE  
RELIANCE OF LEE COUNTY

\_\_\_\_\_

COUNTY ATTORNEY

EXHIBIT F

PROPORTIONATE SHARE OF NET RECYCLABLE REVENUES

TOWN OF FORT MYERS BEACH

**Recycling Expenses:**

i.	Administration	
	a. Administrative Costs	\$0.00
	b. Public Outreach	\$0.00
ii.	Operating Costs	
	a. Processing Operations	\$0.00
	b. Maintenance	\$0.00
	c. Major Maintenance	\$0.00
	d. Capital	\$0.00
	e. Debt Service	\$0.00
iii.	Transportation	
	a. Cost to Transport Recovered Materials	\$0.00

**Total Expenses:** **\$0.00**

**Recycling Revenues:**

iv.	Less Revenues	
	a. Sale of Recovered Materials	\$0.00
	b. Minus Proportionate Share of Residue	\$0.00

**Total Revenues:** **\$0.00**

**(Net Revenue)/Net Cost\*** **\$0.00**

\*Lee County Solid Waste will remit a proportionate amount of any such net revenues annually per Section IX of the Solid Waste Interlocal agreement.