

TOWN OF FORT MYERS BEACH
ORDINANCE NO. 96-07

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, TO BE KNOWN AS THE TOWN OF FORT MYERS BEACH SOLID WASTE FACILITIES ASSESSMENT PROGRAM, MSBU,; PROVIDING AUTHORITY; TITLE AND CITATION; CONSENT TO ESTABLISHMENT, INCLUSION OF TOWN PROPERTY; TERM OF CONSENT; SEVERABILITY; REPEALING CLAUSE; AND EFFECTIVE DATE.

WHEREAS, the Town and Lee County desire to jointly accomplish certain public health, welfare and safety objectives relating to the disposal of their respective solid waste; and,

WHEREAS, Chapter 125, Chapter 163 and Chapter 166, Florida Statutes, authorize municipalities and counties to enter into intergovernmental relationships for the purpose of providing municipal services, to include the creation by a county of special assessment units within the municipality with the municipality's specific consent; and,

WHEREAS, the Town and County have previously entered into two Solid Waste Disposal Agreements (Agreements Numbered 960409 and 960411) which contemplate the creation of an MSBU by the County within the Town for the payment of certain costs associated with the operation and maintenance of the County's Solid Waste Management System; and,

WHEREAS, the Town finds that the adoption of this Ordinance is consistent with the requirements, terms and conditions of the two Interlocal Agreements previously entered into with the County, serves a public purpose, and is to the Town's benefit;

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH, FLORIDA as follows:

SECTION ONE: Authority

This Ordinance is enacted pursuant to the provisions of Chapter 95-494, Laws of Florida, Chapter 166, Florida Statutes, and other applicable provisions of law.

SECTION TWO: Title and Citation

This ordinance shall be known and cited as the "Town of Fort Myers Beach Solid Waste Facilities Assessment Program, MSBU, Ordinance"

SECTION THREE: Consent to Establishment, Inclusion of Town Property

The Town Council of the Town of Fort Myers Beach hereby consents to the establishment, by Lee County, of a Municipal Service Benefit Unit to be known as the "Municipal Solid Waste Disposal Facilities Benefit Program, MSBU". The Town Council further consents to the inclusion in said MSBU of the following described properties located within the jurisdictional boundaries of the Town of Fort Myers Beach as described in Chapter 95-494, Laws of Florida, Article II (See Exhibit A attached hereto).

SECTION FOUR: Term of Consent

The term for which the foregoing consent is given shall not exceed the terms and conditions as set out in that certain Interlocal Agreement between the Town and the County (Agreement No, 960411), which is attached hereto and made a part hereof as Exhibit B.

SECTION FIVE: Severability

If any one of the provisions of this ordinance should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such provision shall be null and void and shall be deemed separate from the remaining provisions of this ordinance, and in no way affect the validity of all other provisions of this ordinance.

SECTION SIX: Repealing Clause

All ordinances or parts thereof in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

SECTION SEVEN: Effective Date

This ordinance shall become effective and the foregoing consent shall be effective immediately upon its adoption.

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member REYNOLDS and seconded by Council Member Murphy and, upon being put to a

vote, the result was as follows:

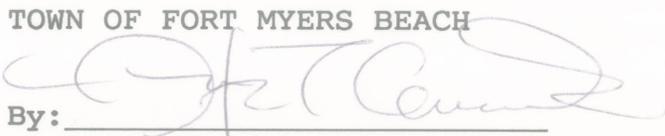
Anita T. Cereceda	<u>aye</u>
Ted FitzSimons	<u>aye</u>
William (Rusty) Isler	<u>aye</u>
Garr Reynolds	<u>aye</u>
Ray Murphy	<u>aye</u>

DULY PASSED AND ENACTED this 1st day of July , 1996.

ATTEST:

By: 
Marsha Segal-George, Town Clerk

TOWN OF FORT MYERS BEACH

By: 
Anita T. Cereceda, Mayor

Approved as to form by:


Richard V.S. Roosa, Town Attorney

A corporate limit line lying offshore from Estero Island, which line is described as follows: all that part of Lee County that is located and situated within Estero Island, including a corporate limit line offshore 1,000 feet in the Gulf of Mexico and 1,000 feet in the inland bays, and parallel with the shore line of said Estero Island, excluding all of San Carlos Island, Black Island and, structures exclusively attached thereto.



— EXHIBIT A —

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

THIS INTERLOCAL AGREEMENT is made and entered into this 24th day of APRIL, 1996, 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 development of a MSW Disposal Facilities Assessment or Taxing Program 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 the development of 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' development of a County MSW Disposal Facilities Assessment or Taxing Program within the Town's incorporated area, 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 with a cooperative mechanism with the Town for the levy of a MSW Disposal Facilities Special Assessment or Tax within the incorporated area 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 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. "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 unincorporated 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, excluding hazardous waste, recovered materials and horticultural 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 shall develop the MSW Disposal Facilities M.S.B.U. Special Assessment Program or M.S.T.U. Taxing Program 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, 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, will be modeled upon, and similar to, the assessment methodology used by Palm Beach County, Florida. The special assessment methodology 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, condominiums with five plus (5+) units)
 - C. Commercial Businesses with Low Generation Amounts
 - D. Commercial Businesses with Medium Generation Amounts
 - E. 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 data from other Florida communities, and confirmed by studies conducted in Lee County. 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 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.

3. The total number of ERUs for each improved property will be established by multiplying the ERU values 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 ERUs for that property by the annual assessment amount per ERU, as established by the County.
5. Based on the above methodology, the County shall establish the annual assessment amount per ERU.
6. The millage amount, if a M.S.T.U. is selected, will be based upon total solid waste generation for the Town in relation to its total ad-valorem valuation.
7. The County, prior to the implementation of Steps 1. to 6. above, 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 \$50.00 per Equivalent Residential Unit (E.R.U.), for the Assessment, or 0.50 mils, for the Tax, whichever method is selected by the Town.
9. The County and the Cities 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 by the County, with such approval not to be unreasonably withheld by the Town,
 - b) renegotiate the terms of this Interlocal Agreement with respect to the increased levies pursuant to justification 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 Cities within Lee County, to include the Town of Fort Myers Beach, is 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 its 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 (Exhibit "A").
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 selected, shall enact a Town Ordinance 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 and maintenance, 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, 2000, with the option for the Parties to renew this Agreement for one (1) additional five (5) year term, with the terms for the second five (5) year increment to be re-negotiated by the Parties prior to any such renewal. Termination of this Interlocal Agreement may coincide with any termination of the Interlocal Agreement between the County and the Town for Solid Waste Collection, Billing and Disposal, pursuant to its terms.

SECTION VII. PRIOR AGREEMENTS

This Agreement shall supersede any 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 the Town 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 Administrator 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 the Parties hereto.

SECTION XII. 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 contractors duly contracting with either 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: Lisa S. Pierce
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: [Signature]
Chairman

APPROVED AS TO FORM:

By: [Signature]
Office of County Attorney

ATTEST:

By: Maucha Segal-George
Town Clerk

TOWN OF FORT MYERS BEACH

By: [Signature]
Mayor

APPROVED AS TO FORM:

By: [Signature]
Town Attorney

State of Florida
County of Lee

I, Charlie Green, Clerk of the Circuit Court for Lee County, Florida, do hereby certify this document to be a true and correct copy of the original document filed in the Minutes Department.

Given under my hand and official seal at Fort Myers, Florida, this 24th day of April, A.D. 1996

CHARLIE GREEN, CLERK
By: Lisa S. Pierce
Deputy Clerk

0960409

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

THIS INTERLOCAL AGREEMENT is made and entered into this 24th day of April, 1996, 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 Cities 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 comprehensive 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, reduction of volume of solid waste to be disposed of in landfills, development of recycling programs and of more efficient and environmentally acceptable means of solid waste disposal;

NOW THEREFORE, in consideration of the foregoing, and of the mutual covenants and conditions hereinafter set forth, the 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 pre-existing franchise contract with Kimmins Recycling Corporation for MSW collection until such franchise expires (September 30, 2000),
- b) provide to the Town, solid waste billing services utilizing the County's pre-existing Interlocal Agreement with the Lee County Tax Collector for billing services for the term of this Interlocal Agreement,
- c) provide the Town with environmentally responsible comprehensive solid waste disposal services, and
- d) provide to the County the flow of all Municipal Solid Waste (MSW) generated within the Town, excluding hazardous waste, horticultural materials and recovered materials, in order that the same shall be directed to the County's Solid Waste Disposal and Resource Recovery System ("System"), for the term of this Agreement.

All terms and conditions of this 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" shall mean solid waste as defined at Section 403.703 (13), Florida Statutes, excluding hazardous waste, recovered materials and horticultural materials.
- D. "Tipping Fee" shall mean the fee paid for disposal of solid waste, based on the tonnage disposed of 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 and disposal of MSW 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 the MSW (as defined 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 not be liable to the Town for any changes to the operation of the System as the result of events beyond the control of the County, i.e., Force Majeure or changes in federal or state law. However, the County shall use its best efforts to provide for lawful alternate collection, billing and 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 VIII., 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), to be collected and billed by the County, and directed to the County's Solid Waste Disposal and Resource Recovery System ("System"), 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 collection and 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 County solid waste collection franchise (Lee County Contract No. C950438) with Kimmins Recycling Corporation which is incorporated herein in its entirety. The System tipping fee for solid waste disposal shall be \$47.70 per ton for Fiscal Year 1995/96 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, and right-of-way cleanup surcharges shall continue to 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 fullest extent that it may lawfully do so, the collection fees, tipping fees and all 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 and the other municipalities within Lee County. The County agrees that prior to final adoption of the disposal rates for each year of this Agreement, the proposed annual disposal rate shall be formally presented to the Town at a regular meeting of the Town Council. The County and the Town agree that if the annual not-to-exceed tipping fees pursuant to this section are exceeded in any given year of this Agreement, except due to Force Majeure or Acts of God, then the 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 justification by the County, or
 - c) terminate this Interlocal Agreement, upon one hundred twenty (120) days written notification to the County.

As part of the transition of MSW collection and billing services to the Town and as further consideration for this Interlocal Agreement, the County agrees to provide to the Town two percent (2%), and the County will retain three percent (3%), of the County's total five percent (5%) solid waste collection franchise fee, for Fiscal Year 1995/96.

For the balance of the term of this Agreement, and as further acknowledgement of the transition of the MSW collection franchise from the County to the Town, the County agrees to provide to the Town:

3%, and the County will retain 2%, of the County's total 5% franchise fee, for Fiscal Year 1996/97,

4%, and the County will retain 1%, of the County's total 5% franchise fee, for Fiscal Year 1997/98,

5%, and the County will retain 0%, of the County's total 5% franchise fee, for Fiscal Years 1998/99 and 1999/2000.

SECTION VII TERM OF AGREEMENT

This Agreement shall commence upon its execution by the Parties, and shall terminate on September 30, 2000, with the option for the Parties to renew this Agreement for one (1) additional five (5) year term, with the terms for the second five (5) year increment to be re-negotiated by the Parties prior to any such renewal.

SECTION VIII PRIOR AGREEMENTS

This Agreement shall supersede any 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 all of 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 Administrator and to the Town, at the Office of the Mayor or Town Manager.

SECTION XI AMENDMENT

This Agreement may only be amended by 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 any party to exercise its rights in the event of any breach by another party shall not constitute a waiver of such rights. No party shall be deemed to have waived any failure to perform by another party unless such waiver is in writing and signed by the waiving party. Such waiver shall be limited to the 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 any party shall have reasonable access to the books, records, and accounts of the agents, designees or contractors duly contracting with either party for the purpose of fulfilling any of their obligations under this Agreement.

SECTION 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 of Fort Myers Beach.

SECTION XVI HOLD HARMLESS - INDEMNIFICATION

The County shall hold the Town harmless from and against any and all liability, actions,

claims and damages arising after the commencement of the term of this Agreement which may be imposed upon or incurred by or asserted against the 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, no party will be deemed to have waived its statutory defense of sovereign immunity, or increased its limits of liability as provided for at Section 768.28, Florida Statutes.

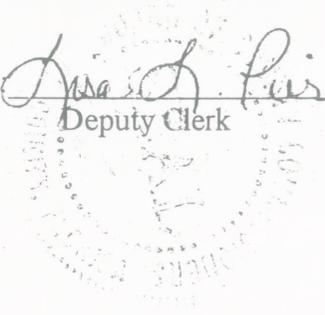
SECTION XVII RESERVATION OF RIGHTS

Nothing in this Agreement shall be deemed 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 written above.

ATTEST:
CHARLIE GREEN, CLERK

By: *Dwa D. Perice*
Deputy Clerk



BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: *[Signature]*
Chairman

APPROVED AS TO FORM:

By: *[Signature]*
Office of County Attorney

ATTEST:

By: *Martha Segal-George*
Town Clerk

TOWN OF FORT MYERS BEACH

By: *[Signature]*
Mayor

State of Florida
County of Lee

I Charlie Green, Clerk of the Circuit Court for Lee County, Florida, do hereby certify this document to be a true and correct copy of the original document filed in the Minutes Department.

Given under my hand and official seal at Fort Myers, Florida, this 21st day of April, A.D. 1996

CHARLIE GREEN, CLERK
By: *Dwa D. Perice*
Deputy Clerk

APPROVED AS TO FORM:

By: *[Signature]*
Town Attorney