



Item No. 11e

LAUDERDALE • BY • THE • SEA

Agenda Item Memorandum

Municipal Services

Don Prince

Department

Department Director

COMMISSION MEETING DATE - 7:00 PM	Deadline to Town Clerk
<input checked="" type="checkbox"/> Sept 11 - Regular Meeting 7:00 PM	Sept 7

**Subject to Change*

Consent Quasi-Judicial Old Business New Business

SUBJECT TITLE: Authorizing Town Participation in the Broward County Temporary Debris Sites Interlocal Agreement

EXPLANATION: Broward County has designated Temporary Debris Management Sites (TDMS) to handle debris processing and disposal services in the aftermath of a debris-producing event or disaster. Currently, these sites include: the Southwest Regional Landfill; a portion of the South Resource Recovery site; and the former Pompano Incinerator site. These sites have served as locations for processing and disposal of debris collected by contractors on behalf of Broward municipalities and other governmental entities. Following Hurricane Wilma in 2005, for example, 13 municipalities and the School Board sent debris to the County’s sites for processing, disposal, and related services. Since many Broward municipalities have debris collection contracts in place, but may rely on the County to provide processing and disposal services, a cooperative approach is needed.

The County Interlocal Agreement describes the responsibilities of each party for use of the County’s sites and services. Having this agreement in place will allow for immediate use by governmental entities following a debris-producing event. Governmental entities desiring to use the County’s TDMS are required to conform to the County regulations for their use, and to handle their own reimbursement claims to FEMA for services received. The County provides these services in accordance with the Countywide Disaster Debris Management Plan.

RECOMMENDATION: We recommend the Town participation in the County Temporary Debris Sites by authorizing the Mayor to execute the Broward County TDMS Interlocal Agreement.

Exhibit 1: Interlocal Agreement

On Town Attorney approved Form

Town Manager Initials CA

Yes No

INTERLOCAL AGREEMENT

BETWEEN

BROWARD COUNTY

AND

FOR

**USE OF TEMPORARY DEBRIS MANAGEMENT SITES
AND OTHER RELATED SERVICES**

This INTERLOCAL AGREEMENT ("Agreement") is made and entered into by and between: BROWARD COUNTY, a political subdivision of the state of Florida, acting by and through its Board of County Commissioners, hereinafter referred to as "COUNTY,"

AND

_____, hereinafter referred to as "GOVERNMENT ENTITY."

WHEREAS, COUNTY may offer the use of Temporary Debris Management Sites ("TDMS") owned by the COUNTY and other related services (the use of TDMS and other services shall hereinafter collectively be referred to as, "Services") to GOVERNMENT ENTITY for debris generated in Broward County in the aftermath of a natural or man-made disaster; and

WHEREAS, GOVERNMENT ENTITY desires to use the TDMS and Services in the aftermath of a natural or man-made disaster; and

WHEREAS, this Agreement is entered into pursuant to Section 163.01, Florida Statutes, as may be amended from time to time, and prior to its effectiveness shall be filed as provided by Section 163.01(11), Florida Statutes ; NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, covenants and payments contained herein, the parties agree as follows:

ARTICLE 1
DEFINITIONS AND IDENTIFICATIONS

For purposes of this Agreement, reference to one gender shall include the other, use of the plural shall include the singular, and use of the singular shall include the plural. The following definitions apply unless the context in which the word or phrase is used requires a different definition:

- 1.1 **Agreement** - means this document, Articles 1 through 7, inclusive. Other terms and conditions are included in the exhibits and documents that are expressly incorporated by reference.
- 1.2 **Board** - The Broward County Board of County Commissioners.
- 1.3 **Government Entity Contract Administrator** - _____. The primary responsibilities of the Government Entity Contract Administrator are to coordinate and communicate with COUNTY and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely on the instructions or determinations made by the Government Entity Contract Administrator.
- 1.4 **County Contract Administrator** - The Director of the Broward County Solid Waste and Recycling Services. The primary responsibilities of the County Contract Administrator are to coordinate and communicate with GOVERNMENT ENTITY and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely on the instructions or determinations made by the County Contract Administrator.
- 1.5 **County Administrator** - The administrative head of COUNTY pursuant to Sections 3.02 and 3.03 of the Broward County Charter.
- 1.6 **County Attorney** - The chief legal counsel for COUNTY who directs and supervises the Office of the County Attorney pursuant to Section 2.10 of the Broward County Charter.

ARTICLE 2
SCOPE OF SERVICES, PARTY RESPONSIBILITIES,
FUNDING, AND METHOD OF PAYMENT

2.1 **COUNTY Responsibilities**

2.1.1 COUNTY agrees to provide the Services to the GOVERNMENT ENTITY, subject to COUNTY's sole discretion and availability, pursuant to the terms and conditions set forth in this Agreement and Appendix I, attached hereto and made a part hereof. The judgment of the COUNTY, acting through the County Contract Administrator, shall be final as to availability. All TDMS offered to the GOVERNMENT ENTITY by the COUNTY shall be at sites that have been previously approved or are currently in the approval process by all applicable local, state and federal agencies.

2.1.2 The COUNTY, through the County Contract Administrator, retains the right to withdraw any and all Services upon fourteen (14) days advance written notice.

2.1.3 The purpose of these recitals is to ensure that the COUNTY is reimbursed for all costs and Services provided, and there are no additional liabilities as a result of this Agreement. COUNTY shall not be liable, for its failure or refusal to render or provide Services pursuant to this Agreement. The County Contract Administrator shall, in his/her sole discretion, determine the manner in which any and all such Services shall be provided.

2.1.4 The COUNTY shall create and maintain procedures for implementing this Agreement, and shall distribute such procedures to the GOVERNMENT ENTITY annually during the term of this Agreement.

2.2 GOVERNMENT ENTITY Responsibilities, Funding and Method of Payment

2.2.1 The GOVERNMENT ENTITY acknowledges and agrees that COUNTY has entered into an agreement with multiple contractors for disaster debris management services and the compensation under each agreement varies depending upon the particular contractor. Pursuant to the terms and conditions of these agreements, COUNTY has the right to assign work to any of the contractors, at its sole discretion. GOVERNMENTAL ENTITY agrees to compensate COUNTY in accordance with the prices of whichever contractor COUNTY has assigned work to, in COUNTY's sole discretion. Costs may be assessed based on the proportional use by the GOVERNMENTAL ENTITY.

2.2.2 GOVERNMENT ENTITY acknowledges its responsibility in seeking reimbursement from state and federal agencies for payments submitted to the COUNTY as provided in this Agreement, and acknowledges that all costs may not be deemed reimbursable by such agencies. Regardless of whether such costs are deemed reimbursable by such agencies, GOVERNMENT ENTITY is responsible for making all payments to COUNTY as provided in this Agreement.

2.2.3 The GOVERNMENT ENTITY shall submit payment to COUNTY for use of the TDMS and/or Services within thirty (30) calendar days of receipt of invoice from the COUNTY. The payment shall be made to COUNTY at:

**Broward County Solid Waste and Recycling Services
1 North University Drive, Suite 400
Plantation, Florida 33324**

2.2.4 The GOVERNMENTAL ENTITY shall abide by the terms and conditions set forth in this Agreement and Appendix I.

ARTICLE 3
TERM AND TIME OF PERFORMANCE

- 3.1 This Agreement shall commence on the date it is fully executed by both parties, and shall terminate on November 30, 2017, unless sooner terminated as provided herein.
- 3.2 This Agreement may be unilaterally terminated by either party, with or without cause, provided that fourteen (14) days written notice of such termination is given to the other party pursuant to Article 7.5 of this Agreement.

ARTICLE 4
GOVERNMENTAL IMMUNITY

- 4.1 GOVERNMENT ENTITY and COUNTY are state agencies or political subdivisions as defined in Chapter 768.28, Florida Statutes, and agree to be fully responsible for the acts and omissions of their respective agents or employees to the extent permitted by law. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity may be applicable nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract.

ARTICLE 5
INSURANCE

- 5.1 The parties hereto acknowledge that GOVERNMENT ENTITY and COUNTY are self-insured governmental entities subject to the limitations of Section 768.28, Florida Statutes. GOVERNMENT ENTITY and COUNTY shall institute and maintain a fiscally sound and prudent risk management program with regard to its respective obligations under this Agreement in accordance with the provisions of Section 768.28, Florida Statutes.

ARTICLE 6
EEO COMPLIANCE

- 6.1 Parties shall not unlawfully discriminate on the basis of race, color, national origin, sex, religion, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, or gender identity and expression in its respective performance of this Agreement, the solicitation for or purchase of goods or Services relating to this Agreement, or in subcontracting work in the performance of this Agreement and shall not otherwise unlawfully discriminate in violation of the Broward County Code, Chapter 16½, as may be amended from time to time. The parties shall include the foregoing or similar language in its contracts with any subcontractors or subconsultants, except that any project assisted by the U.S. Department of Transportation funds shall comply with the

non-discrimination requirements in 49 C.F.R. Parts 23 and 26, as amended. Failure to comply with the foregoing requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the other party deems appropriate.

The parties shall not unlawfully discriminate against any person in its respective operations and activities or in its respective use or expenditure of funds in fulfilling its obligations under this Agreement. The parties shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any Services, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, the parties shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

By execution of this Agreement, each party represents that it has not been placed on the discriminatory vendor list (as provided in Section 287.134, Florida Statutes, as may be amended from time to time). Each party hereby materially relies on such representation by the other party in entering into this Agreement. An untrue representation of the foregoing shall entitle the aggrieved party to terminate this Agreement and such other remedy as the aggrieved party deems appropriate.

ARTICLE 7 MISCELLANEOUS

7.1 RIGHTS IN DOCUMENTS AND WORK

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the party that created same and will be available to the other party for inspection or use at no cost; provided that nothing herein shall prevent or restrict the owner of the documents from lawfully destroying or lawfully disposing of any such documents.

7.2 AUDIT RIGHT AND RETENTION OF RECORDS

Each party shall have the right to audit the books, records, and accounts of the other party that are related to this Agreement. GOVERNMENT ENTITY and COUNTY shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement. GOVERNMENT ENTITY and COUNTY shall preserve and, upon request, make available, at reasonable times for examination and audit by the other party, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, as may be amended

from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after the document or record came into existence. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings.

7.3 INDEPENDENT CONTRACTOR

GOVERNMENT ENTITY and COUNTY are independent contractors under this Agreement. Services provided by GOVERNMENT ENTITY pursuant to this Agreement shall be subject to the supervision of GOVERNMENT ENTITY and Services provided by COUNTY, pursuant to this Agreement, shall be subject to the supervision of COUNTY. In providing such Services, GOVERNMENT ENTITY, its officers, employees, or agents are not authorized to and shall not act as officers, employees, or agents of COUNTY, and COUNTY, its officers, employees, or agents are not authorized to and shall not act as officers, employees, or agents of GOVERNMENT ENTITY. No partnership, joint venture, or other joint relationship is created hereby. COUNTY does not extend to GOVERNMENT ENTITY or GOVERNMENT ENTITY's agents any authority of any kind to bind COUNTY in any respect whatsoever. GOVERNMENT ENTITY does not extend to COUNTY or COUNTY's agents, any authority of any kind to bind GOVERNMENT ENTITY in any respect whatsoever.

7.4 THIRD PARTY BENEFICIARIES

Neither GOVERNMENT ENTITY nor COUNTY intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

7.5 NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

FOR COUNTY:

County Administrator
Governmental Center, Suite 409
115 South Andrews Avenue
Fort Lauderdale, Florida 33301

With a copy to:

Director, Solid Waste and Recycling Services
One North University Drive, Suite 400
Plantation, FL 33324

FOR GOVERNMENT ENTITY:

7.6 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of Contract Administrator of the other party.

7.7 CONFLICTS

Neither party nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with that party's loyal and conscientious exercise of judgment and care related to its performance under this Agreement.

Neither party nor its officers or employees shall, during the term of this Agreement, serve as an expert witness against the other party in any legal or administrative proceeding unless they are a party in such proceeding or compelled by court process. Further, the parties agree that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of the other party in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude either party from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

In the event GOVERNMENT ENTITY is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, GOVERNMENT ENTITY agrees to require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as GOVERNMENT ENTITY.

7.8 MATERIALITY AND WAIVER OF BREACH

COUNTY and GOVERNMENT ENTITY agree that each requirement, duty, and obligation set forth herein was bargained for at arms-length and is agreed to by the parties in exchange for quid pro quo, that each is substantial and important to the formation of this Agreement and that each is, therefore, a material term hereof.

Neither GOVERNMENT ENTITY's nor COUNTY's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

7.9 COMPLIANCE WITH LAWS

GOVERNMENT ENTITY shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement. Likewise, COUNTY shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

7.10 SEVERANCE

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless COUNTY or GOVERNMENT ENTITY elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

7.11 JOINT PREPARATION

Each party and its counsel have participated fully in the review and revision of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

7.12 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of Articles 1 through 7 of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 7 shall prevail and be given effect.

7.13 JURISDICTION, VENUE, WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. **BY ENTERING INTO THIS AGREEMENT, GOVERNMENT ENTITY AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

7.14 AMENDMENTS

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the County Contract Administrator and GOVERNMENT ENTITY.

7.15 PRIOR AGREEMENTS

This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

7.16 PAYABLE INTEREST

7.16.1. **Payment of Interest.** Except as required by the Broward County Prompt Payment Ordinance, COUNTY shall not be liable for interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof GOVERNMENT ENTITY waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim based on or related to this Agreement.

7.16.2. **Rate of Interest.** In any instance where the prohibition or limitations of Section 7.18.1 are determined to be invalid or unenforceable, the annual rate of interest payable by COUNTY under this Agreement, whether as prejudgment interest or for any other purpose, shall be .025 percent simple interest (uncompounded).

7.17 INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. The attached Appendix I is incorporated into and made a part of this Agreement.

7.18 REPRESENTATION OF AUTHORITY

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

7.19 MULTIPLE ORIGINALS

Multiple copies of this Agreement may be executed by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

[THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement: BROWARD COUNTY through its County Administrator authorized to execute same, by Board action, on the ___ day of _____, 20___, and _____, signing by and through its authorized signatory, duly authorized to execute same.

COUNTY

WITNESSES:

By: _____

_____, County Administrator

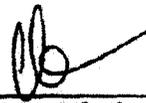
Approved as to form by
Office of the County Attorney
for Broward County, Florida
Joni Armstrong Coffey, County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-6968

Insurance requirements
approved by Broward County
Risk Management Division

By  6/19/10
(Date)

**Risk Management Division
Perez Alexander, SPC III**

By  6/19/10
Puri A. Bhogaita (Date)
Assistant County Attorney

By  6/19/10
Noel M. Pfeffer (Date)
Deputy County Attorney

**INTERLOCAL AGREEMENT BETWEEN BROWARD COUNTY AND
FOR USE OF BROWARD COUNTY TEMPORARY DEBRIS
MANAGEMENT SITES AND RELATED SERVICES**

ATTEST:

City Clerk or Authority

By: _____
Mayor or Authority

Dated: _____ day of _____, 20__

APPROVED AS TO LEGAL FORM:

Governmental Entity Attorney

Dated: _____

PAB:dmv
06/19/12
06/18/12
06/06/12
02/29/12
04/20/11
03/22/11
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**INTERLOCAL AGREEMENT FOR USE OF BROWARD COUNTY
TEMPORARY DEBRIS MANAGEMENT SITES AND RELATED SERVICES**

APPENDIX I

COUNTY Responsibilities

- COUNTY will allow GOVERNMENT ENTITY-authorized Contractors to utilize the designated Temporary Debris Management Sites (TDMS) for disposal of material collected from the GOVERNMENT ENTITY.
- COUNTY shall be responsible for TDMS traffic control, TDMS site management, material processing/reduction, haul-out, and final disposal (in accordance with state and federal law).
- COUNTY's Consultant will be the sole site monitor of the TDMS operations to ensure that Load Tickets are processed and initialed at the time of load discharge.
- COUNTY site monitors will retain two copies of the load tickets and return one copy with the statement/invoice (biweekly or a period mutually agreeable). COUNTY will retain one copy for their records.
- COUNTY's Consultant will provide periodic user reports consistent with COUNTY Debris Monitoring Agreement.
- COUNTY will invoice the GOVERNMENT ENTITY for the proportionate share of the costs including fair and reasonable site operating (processing and disposal) and monitoring costs, as applicable to the services rendered. Proportionate share shall be calculated based on the volume of debris delivered by or on behalf of the GOVERNMENT ENTITY into the TDMS.

GOVERNMENT ENTITY Responsibilities

- Ensure all trucks are pre-measured and that placards are fixed noting prime contractor and truck yardage in accordance with Debris Management Plan protocols. (COUNTY shall have right to verify cubic yardage capacity for any recorded volumes that appear questionable and/or for any vehicles that may have been altered after the initial measurement by governmental entity.)
- Provide truck certification sheets for any vehicles bringing debris to COUNTY Temporary Debris Management Sites.

- **Order a sufficient supply of five (5) part load tickets in a form agreed to by the COUNTY and COUNTY's Contractors, and ensure that trucks arrive with these tickets, initialed in the field (pick-up location) by the GOVERNMENT ENTITY field monitor, or follow other load recordation process as approved in writing by the County Contract Administrator in the future.**
- **Assume responsibility for any debris that does not conform to the requirements stipulated in the COUNTY's contract for TDMS operation.**
- **Pay in full any invoices received from the COUNTY within thirty (30) days if receipt pursuant to the terms of the Agreement.**