



# AGENDA ITEM MEMORADUM

**Town Manager's Office**

**Constance Hoffmann**

Department

Town Manager

<b>COMMISSION MEETING DATE - 7:00 PM</b>	<b>Deadline to Town Clerk</b>
<b>May 22, 2012</b>	

<input type="checkbox"/> Presentation	<input checked="" type="checkbox"/> Reports	<input type="checkbox"/> Consent	<input type="checkbox"/> Ordinance
<input type="checkbox"/> Resolution	<input type="checkbox"/> Quasi-Judicial	<input type="checkbox"/> <b>Old Business</b>	<input type="checkbox"/> New Business

FY2011 DESIGNATED HIGH PRIORITY ITEM - PRIORITY TOPIC

**SUBJECT TITLE: TOWN MANAGER REPORT: STATUS REPORT ON MULTIPLE EFFORTS TO REDUCE THE COST OF SOLID WASTE DISPOSAL IN BROWARD COUNTY**

**EXPLANATION:** As the Commission is aware, the November 25, 1986 Resource Recovery System Interlocal Agreement that governs the Broward Solid Waste District to which the Town is a party expires on July 2, 2013. That Agreement has set the formula for the costs charged cities for disposal of solid waste over the past 26 years and also established the Resource Recovery Board (**RRB**) and allowed them to add to the tipping fees in order to run recycling programs, landfills, hazardous waste disposal, and to fund their administrative costs, etc. When that Agreement was originally executed, there were two operators of solid waste disposal facilities in the County – Wheelabrator and Waste Management. Those companies have long-since merged and now control the two disposal sites in Broward.

As you know, the Town, along with other cities, refused to sign a new Interlocal Agreement in 2010 that the RRB was promoting because we felt the disposal fees proposed by Wheelabrator and the RRB in that agreement were excessive. The RRB did not get enough cities to agree to sign up, and the Agreement was never executed.

The Town was very leery of any further agreements with the RRB (as are many other cities) and we decided to monitor the efforts of the City of Miramar to develop an alternative contract for disposal that other cities could utilize.

Since Miramar issued their RFQ, we reported to you that the County's agreement with Wheelabrator for use of the southern waste to energy plant site expired and that the County extended the lease to match the July 2, 2013 date on the North Broward site in exchange for some concessions from Wheelabrator.

The following are developments that have occurred since we last reported to you on the matter.

**1. Disposal Options After July 3, 2013.**

**A. City of Miramar Request For Qualifications (RFQ)**

The City of Miramar ranked Sun-Bergeron first and Wheelabrator second and are negotiating an agreement with Sun-Bergeron.



B. Broward County Board of Commissioners:

On March 27, 2012 the County Commission directed staff to negotiate separately with Wheelabrator and with Sun-Bergeron Solid Waste Services for a new agreement for the disposal of solid waste effective in July 2013.

The staff reported (**Exhibit 1**) to the County Commission on May 8, 2012 (Agenda Item 30). The main features of the results of their negotiations are contained on page 3 of the attached report for Wheelabrator and on pages 7 and 8 of the report for Sun Bergeron. These negotiations did result in a lower tipping fee than the County's earlier negotiations with Wheelabrator alone.

The County Commission had a long discussion about whether they should put the matter out for an RFQ because two new companies appeared and professed they now wanted to be added to the negotiations. After much debate, the County Commission decided they did not have enough time to go through an RFQ process, negotiate a contract, and get an Interlocal Agreement with participating cities executed by July 2013. There were a few issues in the two proposals they had concerns about, so they directed staff to continue to negotiate disposal agreements with both Wheelabrator and with Sun-Bergeron and present them for County Commission approval at their June 5, 2012 meeting.

In addition, at the May 8, 2012 County Commission meeting (Agenda Item 31), the Board directed the County Administrator to coordinate with municipalities for the development of an Interlocal agreement so municipalities may utilize solid waste disposal agreements approved by the County Commission in the future. As we understand the direction, cities would have the choice to utilize either the Wheelabrator agreement or the Sun-Bergeron agreement.

We assume the County will add on some administrative fees and clarify how recycling will be handled.

2. **RRB/Broward Solid Waste Disposal District.**

The Resource Recovery Board (RRB) will sunset when the Interlocal Agreements expire in July 2013. Of key interest to all cities is the disposition of the Solid Waste Disposal District's considerable assets after the expiration of the Interlocal Agreement on July 2, 2013. The RRB generated a considerable surplus and acquired assets utilizing a portion of the tipping fees that all the cities (or residents) have paid for the many years

**Exhibit 2** (pages 11 & 12) is a copy of a handout from the May 10, 2012 meeting of the Broward City County Management Association (**BCMMA**) meeting. The first page identifies some of the assets of the Solid Waste District and some background of the recent discussions.

A key point of interest is the RRB's Technical Advisory Committee's proposal for an audit that would provide financial and legal opinions about the ownership and funding of the various District assets.

Page 12 is a list of five motions approved at the RRB's March 15, 2012 meeting. In summary, the motions state that the District's assets that are not being used for the ongoing disposal of public solid waste should be distributed to the current Contract Communities upon termination of the Interlocal Agreement.

There are some very complex issues involved and we understand that there is no consensus with the County on this proposal.



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**SUMMARY:** We will continue to monitor the developments in these areas as they have a significant impact on the cost of solid waste disposal for our Town.

**EXHIBITS:**

1. Broward County Staff Analysis of Proposal Solid Waste Disposal Agreements
2. May 10, 2012 Broward City County Management Association handout

Item Reviewed with Town Attorney

Yes  No

Town Manager Initials CT

## Exhibit 1: Staff Analysis of Proposed Solid Waste Disposal Agreements

### A. Background

On June 28, 2011 (Item No.111), the County Commission approved an agreement with Wheelabrator South Broward, Inc. and Wheelabrator North Broward, Inc. to provide disposal of solid waste from the Broward Solid Waste Disposal District at Wheelabrator's two waste-to-energy plants ("Interim Service Agreement"). This agreement expires on July 2, 2013, concurrent with the termination of the Interlocal Agreement that governs the District.

On March 27, 2012 (Item No. 39), the County Commission directed staff to negotiate separately with Wheelabrator Technologies, Inc. and with Sun-Bergeron Solid Waste Services, JV, over a 30 day period, for a new agreement for the disposal of municipal solid waste. The Board waived the Broward County Procurement Code with respect to these negotiations. In the event that these negotiations failed to produce a result satisfactory to the County Commission, staff was also directed staff to begin preparation of a Request for Proposals (RFP) for municipal solid waste disposal.

Pursuant to the Board's instructions, staff negotiated with Wheelabrator and Sun-Bergeron, regarding municipal solid waste disposal for unincorporated Broward County and any municipalities that may opt to participate.

The County/City negotiating team consisted of:

Tom Hutka, Director, Broward County Public Works Department  
Lee Feldman, City Manager, City of Fort Lauderdale  
David Rivera, City Manager, City of Coconut Creek  
Elliot Auerhahn, Director, Broward County Solid Waste and Recycling Services

Assistance to the team was provided by:

Noel Pfeffer, Deputy County Attorney  
Purvi Bhogaita, Assistant County Attorney  
Ron Greenstein, Executive Director, Resource Recovery Board  
Troy Gies, Chair, Technical Advisory Committee to the Resource Recovery Board

All negotiation meetings were advertised, open to the public, and recorded. A joint session (with both firms) was held on April 4, 2012 to outline the process and to provide each firm with a list of questions, with responses due by April 13. Submittal of price proposals was required by April 16. Negotiation sessions were held on April 16, 19, 24, 25, and 30, and May 1, 2012.

The County/City negotiating team stated at the onset of the negotiations, and reiterated throughout the process, that the negotiating team was not selecting, ranking or rating the two firms; would not be making a recommendation to the County Commission as to

which firm, if any, should be selected for municipal solid waste disposal services; and was aiming to present a form agreement that could serve the needs of both the unincorporated area and the municipalities, as the unincorporated area generates only a minor portion of the overall waste stream.

The negotiations resulted in a proposed agreement with each company, which the Board may approve in concept. Final versions of the agreements would require, at a minimum: (1) completion of procedures for payment and delivery of said waste that will be the subject of a future form interlocal agreement between municipalities and the County; and (2) execution by the company. Staff believes that final, executed agreements could be ready for Board consideration on or prior to June 5, 2012.

The two agreements have been drafted in a manner that municipalities may participate by entering into an interlocal agreement with the County. Direction for the County Administrator to coordinate with municipalities for the development of the terms of such an interlocal agreement is contained as a separate agenda item following this item.

Should the Board decline to approve in concept either of the agreements under consideration, Motion C directs staff to complete preparation of a Request for Proposals for Solid Waste Disposal Services. This effort is well underway, and staff believes it can be ready for consideration by the Board no later than June 5, 2012.

B. Wheelabrator Proposed Agreement

In these negotiations, Wheelabrator presented four options for municipalities to select from. Option 1 proposes to amend the current Interim Disposal Agreement by extending the term five years, adding a CPI adjustment, and reducing the fee to \$43.00 per ton. The remaining three options use the attached agreement (Exhibit 2) as a framework, and are described below. See Table A for a comparison of these options.

**Table A: Summary of Wheelabrator's Pricing Options**

	Option 1	Option 2	Option 3	Option 4
Basis	Extend Interim Disposal Agreement	[new agreement] Includes 10% discount available to County under Miramar proposal	[new agreement]	[new agreement]
Term	5 years	5 years	5 years + 1 five-year extension (County option) + 2 five-year extensions (mutual)	5 years + 1 five-year extension (County option) + 2 five-year extensions (mutual)
Revenue Share – Energy	N/A	25% above \$88 per megawatt hour with \$0.75/ton floor	25% above \$25 per megawatt hour	N/A
Revenue Share – Metals	N/A	25% above \$50 per ton for ferrous metals pricing, with \$0.50 per ton floor	N/A	N/A
Base Price	\$43.00 per ton	\$52.50 per ton less 10% discount and revenue share floor less \$1.00 per ton admin fee = \$45.00 per ton	\$43.00 per ton	\$42.00 per ton
CPI Adjustment	Yes	Yes	Yes	Yes
Discriminatory tax adjustment	Yes	Yes	Yes	Yes

Pricing for optional yard waste, bulk trash, and construction and demolition debris services are the same as above.

Contractor: This service agreement would be with Wheelabrator Technologies, Inc., a Delaware Corporation. Its parent company is Waste Management, Inc.

Term: Service under this agreement would begin on July 3, 2013, immediately following the termination of the existing service agreement. The initial term would be for five years. Option 2 provides for no term extensions. Options 3 and 4 provide for one five-year extension (under the same terms) at the County's option, and two additional five-year extensions upon mutual agreement by the parties.

Services Provided: Wheelabrator would dispose of all residential and commercial waste delivered (from properties within participating local governments) which can be processed at its waste processing facilities. The materials that are excluded include: construction and demolition debris; tropical storm or hurricane related debris; source-separated recyclable material; large household appliances and other bulky materials exceeding specified dimensions; hazardous waste; radioactive materials; controlled substances; appliances containing chlorofluorocarbons (CFCs); and other items of waste likely to pose a threat to health or safety or to cause damage to the facility.

Wheelabrator is expanding their current services by providing the option to each participating local government to select from additional services: the processing and disposal of yard waste, bulk trash, and construction and demolition debris.

Facilities: Wheelabrator proposes that the primary facilities for disposal be its two existing waste-to-energy plants within Broward County, one located east of State Road 7 and south of I-595, and the other located east of the Florida Turnpike and north of Sample Road. Together, the two plants have sufficient capacity to process the waste stream from all of Broward County. Ash generated from the South Plant would be disposed of in the adjacent Ash Monofill, and the North Plant's ash would be disposed of in the adjacent landfill (Monarch Hill) owned by Waste Management, Inc.

In the event that one of the primary facilities is not operational, Wheelabrator would designate the other waste-to-energy plant as the alternate facility. If both primary facilities were to be non-operational, Wheelabrator would designate the Monarch Hill Landfill and the Okeechobee Landfill (both owned by Waste Management, Wheelabrator's parent company) as backup facilities. The same primary facilities would be designated for the yard waste, bulk trash, and construction and demolition debris services described above.

Approach to Disposal: The two waste-to-energy plants in Broward County have been in operation since 1991. Wheelabrator provided a list of 11 additional waste-to-energy facilities that they operate in the U.S., each of which has a capacity of at least 250,000 tons per year. The startup dates for these plants range from 1975 to 1994. Wheelabrator also operates four smaller waste-to-energy plants.

Recycling Commitment: Wheelabrator commits to maintaining a minimum rate of 500 kilowatt hours of electricity generated per ton processed at the waste-to-energy plants.

Under current State regulations, this is equivalent to recycling 50% of that tonnage. Failure to achieve this in any year would result in a payment to the County by Wheelabrator of \$250,000 or \$0.25 per ton of waste processed during that year, whichever is greater.

Insurance: Wheelabrator agrees to maintain the insurance coverage recommended by the County's Risk Management Division for this agreement.

Surety/Guaranty: Wheelabrator agreed to obtain a guaranty from its parent company, Waste Management, Inc., for performance of the terms of this agreement.

Fees: Wheelabrator offers the following pricing with Options 2,3, and 4:

Option 2: Base price of \$46.25 per ton. Under this option, participating local governments would receive revenue sharing allotments for energy and scrap metals sales, with a guaranteed minimum of \$1.25 per ton combined. These would produce a net price of \$45.00 per ton of waste processed, with the potential for additional revenue sharing.

Option 3: Base price of \$43.00 per ton, with provisions for potential energy revenue sharing, but no guaranteed minimum for that purpose.

Option 4: Base price of \$42.00 per ton, with no revenue sharing.

CPI Adjustment: Wheelabrator would annually adjust the fee based on the consumer price index for all urban consumers (published by the U.S. Bureau of Labor Statistics).

Discriminatory Tax Adjustment: Similarly to the current Interim Service Agreement, the proposed agreement would allow Wheelabrator to increase the service fee if the State or County enacts a tax or fee applicable only to municipal solid waste, or specifically targeting Contractor as the owner or operator of one or both of the Disposal Facilities.

Most Favored Pricing Adjustment: The Contractor agrees that if it enters into an agreement for a term of more than 12 months for disposal of solid waste generated anywhere within Broward, Miami-Dade or Palm Beach counties, and the County determines that said contract includes a disposal fee (accounting for terms such as credits, revenue sharing, and bonuses) that is less than that being charged to the County, then the County's fees shall be reduced to the net disposal fee in the other agreement.

Payment Procedure: The Contractor would invoice each participating City on a monthly basis for its residential waste, and would invoice haulers directly for commercial waste. Commercial waste haulers would be required to provide a performance bond in favor of Wheelabrator in a specified amount (to be required as part of the hauler's license agreement with the City).

Each participating City would have the option of paying a fee to use the County for billing and payment (similar to the current arrangement), in which case Wheelabrator would invoice the County for both residential and commercial waste, negating the need for the above-mentioned performance bonds.

Ten Percent Discount: Currently, the County is entitled to a 10% discount below prices that Wheelabrator offers in contracts with other jurisdictions. This right extends to the end of the leasehold for the South Plant (up to 29 more years), and for 11 more years for the North Plant.

Wheelabrator is asking that the County waive, via a side agreement, its rights to this 10% discount during the term of this agreement (up to ten years), in exchange for annual payments to the County of \$1 million. Execution of a satisfactory side agreement is a condition of Wheelabrator executing the form service agreement (see Exhibit 3).

Risk Factors:

Below are the key risk elements remaining in the proposal from Wheelabrator:

- The annual CPI adjustment does not have a cap.
- The discriminatory tax adjustment allows an action of the State and County to increase the fees.

### C. Sun-Bergeron Proposed Agreement

Contractor: This service agreement would be with Sun-Bergeron Solid Waste Services, JV, a Florida Joint Venture between Sun Recycling, LLC and Bergeron Environmental and Recycling, LLC.

**Table B: Summary of Sun-Bergeron's Price Proposal**

Base price	\$45.25 per ton
Revenue share	\$2.00 per ton
Term	5 years with 3 five-year extensions (mutual)
CPI Adjustment	Yes
Energy Adjustment	Yes
Discriminatory Tax Adjustment	Yes

Bulk waste at \$52.00 per ton, with a \$0.50 per ton revenue share.

Construction and demolition debris at \$8.75 per cubic yard, with a \$0.25 per cubic yard revenue share.

Yard trash at \$6.00 per cubic yard, with a \$0.25 per cubic yard revenue share.

Term: Service under this agreement would begin on July 3, 2013, immediately following the expiration of the County's existing service agreement with Wheelabrator. The initial term would be for five years, and three five-year extensions are allowed (under the same terms) upon mutual agreement by the parties.

Services Provided: Sun-Bergeron would dispose of all residential and commercial waste delivered (from properties within participating local governments) which can be processed at its waste processing facilities. The materials that are excluded include: construction and demolition debris; tropical storm or hurricane related debris; source-separated recyclable material; large household appliances; hazardous waste; radioactive materials; controlled substances; appliances containing chlorofluorocarbons (CFCs); and other items of waste likely to pose a threat to health or safety or to cause damage to the facility.

Sun-Bergeron would provide the option to each participating local government to select from additional services: the processing and disposal of yard waste, bulk trash, and construction and demolition debris.

Facilities:

Sun-Bergeron proposes three potential primary waste processing facilities:

- Sun 12 (2380 College Avenue, Davie), which is currently permitted and constructed but is not yet operational;
- Sun 11 (1750 SW 43 Terrace, Deerfield Beach), which has permits pending; and
- Bergeron Park of Commerce & Industry, North Facility (594 SW 202 Avenue, Pembroke Pines), which has permits pending.

Sun-Bergeron proposes five Materials Recovery Facilities for the optional services:

- Sun 1 (2241 NW 15 Court, Dania Beach), which is currently permitted and operational for construction and demolition debris, but is in the process of converting to a dedicated metal processing facility;
- Sun 2 (2281 NW 16 Street, Pompano Beach), which is currently permitted and operational for construction and demolition debris;
- Sun 3 (3251 SW 26 Terrace, Dania Beach), which is currently permitted and operational for construction and demolition debris and yard trash;
- Sun 7 (1850 S. Powerline Road, Deerfield Beach), which is currently permitted and operational for yard trash and bulk waste; and
- Bergeron Park of Commerce, South Facility (19820 Sylvan Pass, Pembroke Pines), which is currently permitted and operational for yard trash.

Sun-Bergeron proposes that they will select from the following list of disposal facilities:

- Monarch Hill Landfill in northern Broward County (owner: Waste Management, Inc. of Florida)
- Okeechobee Landfill in Okeechobee County (owner: Okeechobee Landfill, Inc.)
- Landfill and waste-to-energy facilities of the Solid Waste Authority of Palm Beach County (owner: Solid Waste Authority)
- J.E.D. Landfill in St. Cloud (owner: Omni Waste of Osceola County, LLC)
- Resource Recovery Facility in Doral (waste-to-energy) (owner: Miami-Dade County)
- Wheelabrator North (owner: Wheelabrator North Broward)
- Wheelabrator South (owner: Wheelabrator South Broward)
- Glades County Landfill (owner: unspecified)

During the term of the agreement, Sun-Bergeron would have the option of adding any other legally permitted solid waste disposal facility to this list, with the County's consent.

Disposal Approach: The proposed agreement contemplates a system of transfer stations and processing sites. Sun-Bergeron will not commit to any particular technology. They have discussed the processing of mixed waste in a way that may yield significant recycling, and have provided three examples of such processing sites in California, operated by other firms.

Payment Procedure: The Contractor would invoice each participating City on a monthly basis for its residential waste, and would invoice haulers directly for commercial waste. Commercial waste haulers would be required to provide a performance bond in favor of Sun-Bergeron in a specified amount (to be required as part of the hauler's license agreement with the City).

Each participating City would have the option of paying a fee to use the County for billing and payment (similar to the current arrangement under the County's agreement with Wheelabrator), in which case Sun-Bergeron would invoice the County for both residential and commercial waste, negating the need for the above-mentioned performance bonds.

Conditions Precedent

Sun-Bergeron would have to deliver the following to the County, on or before December 31, 2012, or the County may terminate the agreement:

- The Project Guarantee Agreement from the parent companies;
- The Irrevocable Letter of Credit; and
- Acceptable evidence that all rights and approvals are in place necessary for the operation for the Sun 12 facility (College Avenue in Davie) for the receipt of 750 tons of municipal solid waste.

Risk Factors:

Below are the key risk elements remaining in the proposals from Sun-Bergeron:

- The annual CPI adjustment does not have a cap.
- The discriminatory tax adjustment allows an action of the State, County or a municipality to increase the fees.
- There is no facility currently ready to accept municipal solid waste, and one may not be ready when needed.
- Sun-Bergeron has supplied only three examples of the application of the technology that was discussed in connection with this agreement.
- The proposed fuel adjustment could result in significant variations, up or down, in the cost of service.
- The Conditions Precedent may not be delivered.

## RESOURCE RECOVERY SYSTEM ASSETS & LIABILITIES

5/10/12 BCCMA DISCUSSION

### CONCEPT

TAC has asked the RRB to support the concept of an independent financial audit of the District/Resource Recovery System going back to inception of the ILA. The purpose of the audit would be to provide financial AND legal opinions about both the ownership and the funding of the various System assets, and to develop an equitable distribution of those assets to the contract communities based upon the contributions made by each since 1987. System liabilities would also be addressed.

### ASSETS (\$150+ MILLION COMBINED ASSESSED VALUE)

- Current reserve balance estimated at \$40 million, funded entirely by tipping fee payments from the contract communities
- Southwest Regional Landfill, funded primarily by the RRS with some revenue coming from tipping fees charged to users of the landfill; the County has not incurred any capital or O&M expenses (\$31.4 million BCPA 2012 assessed value)
- South resource recovery site, including the ash monofil (\$63.9 million BCPA 2012 assessed value)
- Alpha 250 North, a 25-acre vacant parcel in an industrial area with potential use as a future waste processing site (\$4.5 million BCPA 2012 assessed value)
- Alpha 250 South, a 22-acre permanent natural resource area with market value for wetlands mitigation (\$4.7 million BCPA 2012 assessed value)
- 3 Trash Transfer Stations used for drop-off of HHW, electronics and yard waste (\$6.6 million combined BCPA 2012 assessed value, including additional County property within the North parcel)

### CURRENT ACTIVITIES

The RRB has asked TAC to develop a scope of work and plan for a financial audit. TAC has created an "Assets & Liabilities Subcommittee" to address this issue, and there has been one meeting of this group since the RRB gave its direction. The next meeting is scheduled for March 15, 2012.

### CHALLENGE

The RRB is waiting for a revised recommendation from TAC on the scope of work for this project. In part, the difficulty for the City representatives on TAC is that they are generally not familiar with the process of developing a scope of work for financial audits and legal services. There is also considerable concern about the mechanism for issuing the RFP/RFQ and managing the resultant contract, since we do not want the County to handle this process because the auditor/legal counsel would then work for the entity with whom we will ultimately be negotiating.

**BROWARD SOLID WASTE DISPOSAL DISTRICT  
MOTIONS APPROVED AT THE MARCH 15, 2012 RRB MEETING**

**Motion No. 1**

It is the position of the Contract Communities that all reserve funds of the Broward Solid Waste Disposal District (District)/Resource Recovery System that remain unexpended by the District at the expiration of the Interlocal Agreement in July 2013 are the property of the current Contract Communities.

**Motion No. 2**

After termination of the ILA, all real property that has been purchased or improved with Broward Solid Waste Disposal District (District)/Resource Recovery System assets should be used for placement of publicly-owned solid waste or recycling facilities that would be developed for the beneficial use of all Broward residents and businesses.

**Motion No. 3**

After the expiration in July 2013 of the Interlocal Agreement between the County and the Contract Communities, if any real property that was operated or held as a District/Resource Recovery System asset prior to that expiration is thereafter sold or used for a purpose other than placement of a publicly-owned solid waste or recycling facility, then the current Contract Communities should be equitably compensated for the value of the real property.

**Motion No. 4**

At expiration of the ILA, the current Contract Communities should be made whole for their investment in any assets purchased or improved by the District/Resource Recovery System, based in part on the remaining life of such assets.

**Motion No. 5**

Landfill and ash monofill closure costs have historically and appropriately been funded annually through tipping fees. A pay-as-you-go cost recovery methodology should continue to be the case over the remaining lives of the assets, rather than being pre-funded using assets of the District/Resource Recovery System and the current Contract Communities.

**Exhibit 2**

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