



AGENDA ITEM REQUEST FORM

Town Manager's Office

Bud Bentley

Department Submitting Request

Assistant Town Manager 

REG COMMISSION **DEADLINE TO**
Meeting Dates 7:00PM **Town Clerk**

- | | |
|--|------------------|
| <input checked="" type="checkbox"/> Dec 7, 2010 | Nov 23 (5:00 pm) |
| <input type="checkbox"/> Jan 11, 2011 | Dec 31 (5:00 pm) |
| <input type="checkbox"/> Feb 8, 2011 | Jan 28 (5:00 pm) |
| <input type="checkbox"/> Mar 8, 2011 | Feb 25 (5:00 pm) |

ROUNDTABLE **DEADLINE TO**
Meeting Dates 7:00PM **Town Clerk**

- | | |
|---------------------------------------|------------------|
| <input type="checkbox"/> Dec 14, 2010 | Nov 30 (5:00 pm) |
| <input type="checkbox"/> Jan 25, 2011 | Jan 14 (5:00 pm) |
| <input type="checkbox"/> Feb 22, 2011 | Feb 11 (5:00 pm) |
| <input type="checkbox"/> Mar 22, 2011 | Mar 11 (5:00 pm) |

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

SUBJECT TITLE: Proposed Interlocal Agreement for Resource Recovery System in Broward County

EXPLANATION: The Town is a party to the November 26, 1986 Interlocal Agreement (ILA) for solid waste disposal with the Broward Solid Waste Disposal District (**District**), twenty-three (23) Broward County municipalities (**Contract Communities**) and Broward County. There are current twenty-five (25) Contract Communities.

The Commission discussed this matter at its November 22, 2010 Roundtable meeting. As noted in Exhibit 5 of the November 22nd staff report, there were 10 cities that have decided to execute the new ILA, seven were deciding prior to December 7, 2010 and Fort Lauderdale, Deerfield Beach and Hillsboro Beach have meetings on December 7th. We will provide an updated list of signers and non-signers at the Tuesday meeting. We do know that the Miramar City Commission met on November 29th and decided (3-2) not to sign the ILA prior to end of year. They are forfeiting their signing bonus of \$725,000 and are proceeding to explore alternative disposal options.

The City of Oakland Park has been very active in their evaluation of their options and we have been sharing information. The Oakland Park City Manager has shared their December 1, 2010 agenda report (**Exhibit 1**), which provides a detailed and excellent analysis of the policy issues before you.

Oakland Park points out that Florida Statutes make the County the responsible authority for providing solid waste disposal sites and indicate that "The fees charged municipalities at a solid waste management facility specified by the County *shall not be greater than the fees charged other users of the facility*". That provision in the ILA that municipalities that are not signatories to the ILA shall be charged more to dispose at the facility seems to be inconsistent with that statutory provision. This is an issue that the Commission may wish the Town Attorney to explore and provide an opinion.

RECOMMENDATION: We continue to believe there are disposal options available that are less expensive and provide more predictability and control over future price increases than what is being offered by the Resource Recovery District. We do not recommend signing the ILA at this time with the knowledge that this will likely result in LBTS giving up the chance to receive the \$72,858 signing bonus.

EXHIBITS: City of Oakland Park's December 1, 2010 Commission Report
City of Oakland Park's Summary of the Proposed Interlocal Agreement

City of Oakland Park's Major Provisions and Summary of the Adopted Service Agreement with Wheelabrator

FISCAL IMPACT AND APPROPRIATION OF FUNDS: N/A

Reviewed by Town Attorney

Yes No

Town Manager Initials CH

File: <https://e5qbyp.docs.live.net/65d14c39bc46d4a2/Agenda/1207 AC Resource Recovery District Membership.doc>

CITY OF OAKLAND PARK, FLORIDA
CITY COMMISSION AGENDA ITEM REPORT

AGENDA ITEM NO. 11

MEETING DATE: 12/1/2010

PREPARED BY: David C. Womacks, Public Works Director Kenneth Lee Resor, Assistant Director of Public Works	DEPARTMENT HEAD APPROVAL:	PUBLIC WORKS
	CITY MANAGER APPROVAL:	FINANCIAL SERVICES

SUBJECT: Resource Recovery System - Interlocal Agreement (ILA) - Consideration of Options

1. BACKGROUND/HISTORY

Current Problem/Issue: The City of Oakland Park is a member of the current Resource Recovery System through an Interlocal Agreement (ILA) which expires July 2, 2013. The City must decide whether or not to enter into a proposed amended ILA, recommended by the Resource Recovery Board (RRB), on or before December 31, 2010 in order to be eligible for a signing bonus of \$420,070 offered by Wheelabrator, in order to entice contract communities to join with the County. Furthermore, in approving the proposed ILA, it is assumed the contract communities will be executing the revised service agreement for the South Facility effective August 2011 and for the North Facility effective March 2012.

Recommended Solution: This agenda item report is for informational purposes and discussion. A final recommendation will be made for City Commission consideration at the regularly scheduled City Commission meeting of December 15, 2010.

In 1987, the City entered into an Interlocal Agreement with Broward County and 26 other cities within the County to provide for waste disposal through the eventual establishment of two Waste-To-Energy (WTE) plants for refuse incineration, and to provide for recovery of recyclable materials; thereby reducing dependence on landfills and providing volume-based pricing for both refuse disposal and recycling of commodities. Over the past 22 years, the Resource Recovery Board (RRB), composed of elected officials appointed by contract communities, the Broward League of Cities and a County Commissioner, has ventured into many new programs and has expanded its administrative resources. **The current ILA expires July 2, 2013.**

The Resource Recovery System (RRS), which provides contracted incineration facilities,

transfer stations, a contingency landfill, a material recovery facility, and other collection programs, is funded through incinerator tipping fees paid by the entities utilizing the WTE plants. **The existing Service Agreements between ILA contract communities and Wheelabrator for the operation of the incineration facilities are expiring on August 4, 2011 for the South Plant and on March 22, 2012 for the North Plant (see attached RRS Timeline).**

Under the current ILA, the District is responsible for ensuring Wheelabrator's revenues from the sale of electricity and the incineration of solid waste. Since both electricity sales and the volume of solid waste have been depressed in the current economy, the District is currently obligated to pay approximately \$1 million a month to Wheelabrator for lost electrical revenue at the South Facility and approximately \$8.3 million a year due to reduced solid waste tonnage. The electrical subsidy will be greater when the North Plant loses its current contract with FPL, which will result in an estimated additional subsidy of approximately \$1.5 million per month. There is no electrical sales or solid waste volume subsidy in the amended ILA. The current incineration gross tipping fee charged the contract communities in the ILA is through automatic built-in escalators \$99.20 per ton, the highest in the State of Florida.

The amended ILA and revised Service Agreement (see attached contract documents and summaries of both documents) were approved by the Resource Recovery Board at their regular meeting on September 16, 2010. It should be noted the services reflected in the revised multi-billion dollar Service Agreement were not procured through a competitively bid process but were developed through contract negotiations. In addition, the amended ILA which recommends the formation of an independent district has not been approved by the Broward County Commission.

The City Commission authorized staff to pursue alternative means for the City's solid waste disposal at the July 21, 2010 City Commission meeting. Staff has monitored the Hallandale Beach Request for Information (RFI) process and has participated in the recent City of Miramar RFI process. The Hallandale Beach RFI process has resulted in negotiations between the City and Choice Environmental for a short term contract for the disposal of solid waste at \$62.50 per ton. The City of Hallandale Beach provides their own collection of solid waste and would deliver waste to the Choice transfer facility in Pembroke Park. The contract has not been formally adopted by the City Commission, at this time. Hallandale is not a member of the current ILA and chose not to join the amended ILA.

The Choice Environmental rate of \$62.50 per ton does not include services provided by the RRS; the disposal of used tires, enforcement of flow control, household hazardous waste disposal, used electronics disposal, bulk trash disposal and transfer station usage. If the City approves the proposed amended ILA, the estimated gross tipping fee the City would pay in August 2011 would be \$66.00 per ton, and would include the RRS services listed above.

As a follow-up to the Miramar RFI, Value Added Consulting, a consulting firm hired

by the City of Miramar is conducting a comprehensive risk assessment of the revised Service Agreement and will provide a comparison to other solid waste disposal options provided through the Miramar RFI process (see Miramar's attachments). The consultant's assessment will be completed for the Miramar City Commission meeting on November 29, 2010, and copies of the assessment will be forwarded to the City Commission upon its availability.

NOTE: For purposes of this agenda item report and attachments, the term:

"Gross Tipping Fee" - is used to reflect the total cost per ton paid by a contract city to the RRS to utilize the system. This is different from the term "Tipping Fee" utilized in the proposed Wheelabrator service agreement. The Wheelabrator "Service Fee", plus the fee for additional RRS services not provided by Wheelabrator, results in the **"Gross Tipping Fee"** referred to above and throughout the Alternative Disposal Options attachment, which is currently \$99.20 per ton under the current ILA.

"Tipping Fee" - In the service agreement, the **"Tipping Fee"** is a component of the total **"Service Fee"** Wheelabrator is paid for its services.

"Service Fee" - The **"Service Fee"** is determined by adding to the "Tipping Fee" the following: all taxes other than income taxes paid by Wheelabrator, the cost of any new South Facility landfill cells, the off-site removal and treatment of South Facility leachate, the capping and closure of the South Facility landfill, the cost of removal and disposal of unacceptable waste caused by the District, and services provided by Wheelabrator outside of normal operating hours.

"Compensable Events" - Additionally, **"Compensable Events"** will result in additional District fees and includes changes in law (regulations, rules or court rulings) and faults that are a direct result of the District's actions which result in higher operational or capital cost, or result in a loss in revenue.

2. CURRENT ACTIVITY

The following solid waste disposal and recycling options are provided for informational purposes and future consideration by the City Commission:

Option I - The City takes no action to approve the proposed amended ILA by December 31, 2010; and therefore, does not receive the signing bonus offered by Wheelabrator of approximately \$420,070. The proposed amendment is either approved by the requisite number of ILA cities or not. If it is approved then Oakland Park is governed by the amended ILA until July 2, 2013 and if no allowable alternative is found, Oakland Park will continue to deliver solid waste to a county facility as provided by the law after that date at a fee not greater than charged other users of the facility.

Florida Statute 403.706 (1) (see attached Florida Statute) "The

governing body of a County has the responsibility and power to provide for the operation of solid waste disposal facilities to meet the needs of all incorporated and unincorporated areas of the county. Unless otherwise approved by an interlocal agreement or special act, municipalities may not operate solid waste disposal facilities unless a municipality demonstrates by preponderance of the evidence that the use of a county designated facility, when compared to alternatives proposed by the municipality, places a significantly higher and disproportionate financial burden on the citizens of the municipality when compared to the financial burden placed on persons residing within the county but outside of the municipality".

"In accordance with this section, municipalities are responsible for collecting and transporting solid waste from their jurisdiction to a solid waste disposal facility operated by the County or operated under a contract with a County. Counties may charge reasonable fees for the handling and disposal of solid waste at their facilities. The fees charged municipalities at a solid waste management facility specified by the County shall not be greater than the fees charged other users of the facility".

It would appear based on the above Florida Statute, if the City takes no action on the amended ILA, thereby losing the ability to potentially receive the signing bonus, the County remains responsible to provide the City with a location to dispose of municipal solid waste which has no greater fees than the fees charged to other users of the facility. Since the City may not desire to receive additional County services for the disposal of used tires, enforcement of flow control, household hazardous waste disposal, used electronics disposal, bulk trash disposal and transfer station usage, the City may only be charged to use the County contracted disposal facilities at the cost of providing solid waste disposal services. Alternatively, less expensive options (see attached Alternative Disposal Options) may be available to the City by July 2, 2013.

It is requested staff's interpretation of the Florida Statute be reviewed by the City Attorney to insure staff's analysis is correct.

Option II - The City passes a Resolution joining other contract communities in approving the proposed amended ILA, as presented by the RRB.

The City, to no avail, has requested the RRB to consider extending the deadline for the approval of the amended ILA to March 1, 2011 and to reserve the amount of municipal solid waste in excess of the 80% of the 2009 gross tonnage required for approval of the amended ILA. The excess amount would have been reserved for disposal through

emerging green technologies; thereby, creating a future alternative for the disposal of solid waste which would be in contrast to the current lack of options provided through the incineration of solid waste through a singular contractor. The City also requested at the September 16, 2010 RRB meeting the Board of County Commissioners approved the amended ILA which created an Independent District prior to approval of the contract communities. To date, we understand that the ILA item will be placed on the December 7th or December 14th, County Commission agenda for consideration.

We would have the following concerns should the proposed amendment be adopted:

1. The city would be locked in for ten years through July 2, 2021 (even if less expensive alternatives became available);
2. The legality of accepting the signing bonus offered by Wheelabrator;
3. Whether or not the recently adopted Broward County Ethics law applies to the attorney, staff, and board members of the newly created independent district.

Given the concerns outlined above, Staff recommends the city seek legal advice from the City Attorney on items 2 and 3.

3. ATTACHMENTS

Attachments Table of Contents

Florida Statute 403.706

Amended Interlocal Agreement ILA

Summary of Proposed ILA

Major Provisions of ILA

Wheelabrator Service Agreement

Summary Proposed Service Agreement with Wheelabrator

Major Provisions of Service Agreement

Resource Recovery System Timeline

Signing Bonus Estimate and Potential Negotiated Savings

Sample Resolution

Miramar's RFI Summary Chart

Miramar's RFI Summary Report

Miramar's RFI Summary - Attachment II

Alternative Disposal Options

September 16, 2010 RRB Minutes

4. FINANCIAL IMPACT

As the Commission may recall, the current fee to the BCSWD for solid waste disposal is **\$99.20 per ton**. The current cost per ton is the result of a Service Agreement with Wheelabrator that does not provide sufficient oversight of the fee and its relationship to the actual cost of the service provided to the citizens of the County. The current fee level is a function of a predefined formula that incorporates automatic escalators rather than an analysis of cost.

As previously distributed, the City had the 2008 financial data from Wheelabrator North and South (WNSB) analyzed and found that WNSB earned approximately \$185,000,000 revenue from disposal fees and electrical generation. The North and South plants generated from operations a fee of \$62.69 and \$67.61 per ton respectively for waste disposal as well as collectively an approximate additional \$55.00 per ton in electricity sales. The operations provided to WNSB a combined **Return on Equity of 59.4%** for the year 2008.

We analyzed the operation with the focus on the **Return on Equity** due to a recent approval by the Public Service Commission of a Florida Power and Light **rate increase** issue that approved an increase in the consumer rate to accommodate a **10% Return on Equity**.

In that analysis it was discovered that the rate needed in 2008 to generate this level of return on equity to WNSB was **\$13.50 per ton** or \$36.25 per ton more than what would be expected assuming a 10% return on equity. As one can understand, no direct oversight or relationship existed between the cost of the operation and the amount of fee received.

Regardless of the current or future economic environment in which both inflation and deflation are possible, the newly proposed Service Agreement continues to not address the rise in the fee as it relates to cost. To the contrary, if the economy enters into an era of deflation, the agreement calls for **no less than a 1% fee increase**. In fact, no direct relationship exists regarding the fee paid Wheelabrator for solid waste disposal services or electrical generation. Neither the current Service Agreement nor the proposed Service Agreement provides for a review of associated financial information in order to make an informed decision on the fee structure which is vital to the ILA members due to the overwhelming market advantage Wheelabrator and its parent company, Waste Management, has over the almost exclusive disposal of solid waste within Broward County. Other than the Broward County Contingency Landfill located in extreme western Broward County, there are no locally permitted waste disposal facilities in existence at this time other than those owned by Waste Management.

Several key questions raised by the City in relation to approving the amended ILA remain unanswered or inadequately answered at this time. A definitive gross tipping fee per ton to be effective in August of 2011 has yet to be established. No written legal opinion has been provided by the RRB's Legal Counsel concerning the legality of the signing bonus offered by Wheelabrator; therefore, whether the contract communities actually receive the signing bonus after the deadline has passed is in question.

Estimated August 2011 Gross Tipping Fee:

The current proposed Wheelabrator base tipping fee of \$47.75 per ton, and pass-through costs of approximately \$4 per ton, plus the automatic inflationary increase from October 1, 2009 and April 1, 2011 would provide an estimated service fee of \$54.00 per ton, effective August 2011. The service fee plus an estimated additional County program

fee of \$12.00 per ton, would result in a **gross tipping fee of \$66.00 per ton, effective August 4, 2011.** (The gross tipping fee estimate of \$66.00 per ton was provided by the City of Miramar's consultant.)

Other Financial Concerns:

In 2011 and 2012 due to the difference between the proposed service fee and the current service fee paid at the North WTE facility, which expires March 22, 2012, an estimated \$8.8 million would be owed to Wheelabrator. This amount is in addition to the subsidy required for the reduction in electrical revenue and the solid waste shortfall. It is not known at this time where the extensive costs will be paid from the reserves of the Resource Recovery System in FY11 and FY12, which is funded by the contract communities, or funded through an increase in the gross tipping fee. There is also an automatic tipping fee increase of 1% to 5% per year, plus a possible change-in-law increase of 10% per year, with a not-to-exceed maximum of 140% over the initial ten-year term of the Service Agreement.

Savings of the Proposed Amended ILA:

Assuming the City produces 40,000 tons of refuse a year, and the final gross tipping fee paid in August 2011 is estimated at \$66.00 per ton, the City would save \$1.3 million in the first year of the amended ILA when compared to the current gross tipping fee of \$99.20 per ton, and would receive the signing bonus of approximately \$420,070 if the signing bonus is determined to be legally offered. Our current solid waste rates were reduced in anticipation of a reduction in gross tipping fee and may result in a lower rate to the residents in the future. However, city staff is concerned that residents will be overpaying as there is no relationship between cost and profit which could potentially be lowered in a more competitive solid waste market.

5. RECOMMENDATION

Following the City Commission discussion, input from the City Attorney's office, review of the City of Miramar's consultant analysis and observation of the Broward County Board of County Commissioner's deliberation considering approval of the proposed amended ILA on either December 7th or December 14th regularly scheduled meeting, City staff will provide a recommendation at the December 15, 2010, City Commission meeting.

SUMMARY OF THE PROPOSED INTERLOCAL AGREEMENT

1. The proposed Interlocal Agreement (Proposed ILA) provides for the creation of the Broward Solid Waste Disposal District as an independent special district (District), which shall be responsible for the operation of the Resource Recovery System (System) that will be used to transfer, recycle, and/or dispose of the solid waste generated in the District.

2. The District shall have the authority to provide programs for the reduction, recycling and disposal of solid waste, including programs for educational and public informational purposes, e-waste recycling, yard waste processing, household hazardous waste management, research and development, and the management of hurricane and emergency debris.

3. The governing body of the District shall have the authority to:

a. Establish rates and fees sufficient to fund the System; b. Establish a Plan of Operations for the System; c. Enforce the District's flow control program; d. Hire the District's Executive Director, employees and contractors; e. Enter into contracts for services; and

f. Otherwise conduct the affairs of the District.

g. Develop, approve and manage the budget of the District.

h. Issue any bonds if deemed necessary for the Resource Recovery System.

4. The governing body of the District shall be composed of both the full Resource Recovery Board and its Executive Board.

(a) The full Resource Recovery Board shall be composed of one elected official appointed by each of the Communities which has joined the District. The full Resource Recovery Board shall meet twice annually and shall: approve the annual budget and the annual tipping fee; adopt the annual Plan of Operations; approve any amendments to the Service Agreement; approve the Executive Director and District Counsel; and approve any bonds or contractual services for \$100,000 or more, or services in excess of 12 months. All decisions of the full Resource Recovery Board must be approved by: (1) A majority of all of the members physically present; and (2) a majority of the tonnage contributed in the last year to the waste to energy plants of the members of the full board who are physically present.

(b) There shall be an Executive Board composed of 11 members: 1 member chosen by the County Commission and 10 members chosen by the full Resource Recovery Board as follows: 5 members from among members of the largest communities by population;

3 members from among members of medium-sized communities by population; and 2 members from among members of communities with the smallest populations. The Executive Board shall have all powers to govern the District except for those reserved to the full Resource Recovery Board.

5. A Technical Advisory Committee shall be created and it shall advise the governing body of the District.

6. All solid waste collected within the District shall be disposed of in accordance with the District's Plan of Operations, except for (a) waste destined for disposal outside the State of Florida and (b) source-separated recyclable materials. All processable waste shall be delivered to Wheelabrator's Waste-to-Energy Plants pursuant to a separate Service Agreement.

7. Each Contract Community and the County shall enact a solid waste "flow control" ordinance.

8. Each Contract Community and the County shall enact an ordinance that requires haulers to submit certain reports about the solid waste they collect in the District.

9. Each Contract Community and the County shall conform their franchise agreements to the requirements in the Proposed ILA.

10. Each Contract Community and the County shall allow the District to implement a district-wide program for the enforcement of the solid waste flow control and reporting ordinances. The code enforcement program shall be operated by Broward County pursuant to an agreement with the District, and the program shall be funded by the District. The program shall include the appointment of inspectors and Special Magistrates.

11. An external audit of the System shall be conducted each year by a qualified CPA.

12. The term of the Proposed ILA shall be 10 years, beginning on August 4, 2011. The Proposed ILA may be renewed for an additional 10 years; however, each Contract Community and the County shall have the option to not renew.

13. The Proposed ILA shall become effective only if it is ratified by December 31, 2010 by (a) Contract Communities representing 51% of the population of the present District and (b) Contract Communities representing 80% of the processable waste delivered to the Wheelabrator Waste-to-Energy Plants in 2009.

Major Provisions of the Adopted Service Agreement

The following are the major provisions of the Service Agreement which has been adopted by the RRB but will not become effective until August 4, 2011. (The service agreement is not up for consideration of revision by the contract communities)

1. The service agreement will not be approved unless the amended ILA is approved. (Page 10, Section 2.03(a))
 2. The service agreement allows a one time bonus payment of \$12 million to the District. The funds will be equally divided among the current contract communities which approve the amended ILA by the December 31, 2010 deadline. The payment to the contract communities is based on the processable tonnage delivered the twelve months prior to July 2011 divided by the tonnage delivered during 2010 for all contract communities under the prior ILA. The payment will be made on August 2, 2011. Any funds remaining which were not paid to the contract communities will be paid to the District. (Page 34, Section 5.08(a) (b))
 3. The service agreement runs consecutively with the amended ILA; and therefore, has the same terms as the amended ILA. One major difference is if the 10 year renewal is later approved, the service agreement does not allow for a modification of the service fee. (Page 10, Section 2.02)
 4. All processable waste from the contract communities must be delivered to the waste-to-energy plants for incineration. There is no put or pay provision included in the revised service agreement. (Page 12, Section 3.01)
 5. The District shall pay a base tipping fee of \$47.75 per ton. The tipping fee will be increased by the cost escalators in the service agreement between October 2009 and August 4, 2011, which will serve as the adjusted tipping fee for fourteen months, through September 30, 2012. (Page 2, definition and Page 24, Section 5.02)
 6. The tipping fee will be adjusted each year and will be effective October 1 of each year. The increase will be based on the previous twelve month's inflation factor from April to April and will be based on an agreed upon Bureau of Labor Statistics (BLS) series adjustment for the period. The annual adjustment will be no less than 1%, nor more than 5% per year but excludes compensable events, which are either changes in law or a failure of the District to meet its obligations. (Page 24, Section 5.02(a)(ii))
-

7. The service fee will be adjusted if a change in law, change in tax law, or the District's negligence or other failures to abide by the terms of the agreement causes Wheelabrator to incur additional operational or capital costs, or results in a loss of revenue. (Page 23, Article 5)

8. When a change in law occurs, the District can indicate an unwillingness to pay Wheelabrator the resultant increase if it results in a 10% increase over the prior year's service fee, or when combined with the impact of prior changes in law, exceeds 140% of the service fee on the original contract date. Wheelabrator can either adjust the increase downwards to not exceed these limits or cancel the contract. (Page Page 36, Section 6.05)

9. The District is guaranteed Wheelabrator will not charge a non-ILA city an amount which is equal to or less than the tipping fee or service fee ILA cities are charged through the service agreement. This does not include waste brought to the facilities from outside Broward County. (Page 19, Section 3.12)

10. The District is responsible for costs incurred by Wheelabrator in the construction, operation and closure of the ash monofil (landfill) at the South Facility and all non-income taxes, special tax assessments, and sales taxes associated with both plants. (Page 28, Section 5.03)

11. Wheelabrator will pay the District \$1 million a year for the use of the County's ash monofil and for land on which the South Plant is located. The rent payment is subject to an annual increase which is restricted to between 1% and 5% per year and based on the same index as the service fee increase. (See Attachment - Final Lease Agreement, Page 2, Section 3(a))

12. If electrical and ferrous metal sale revenues exceed a predetermined dollar amount per ton or dollars per MWH, the District will share in 25% of the excess revenues, net of expenses related to the sale of electricity and ferrous metals. (Page 31, Section 5.06 (c))

13. Even though the new service fee under this agreement goes into effect as of August 4, 2011 the District will continue to pay the "old" service fee for the North Plant between August 4, 2011 and March 22, 2012, which is the date the current service agreement ends. (Page 34, Section 5.08(b))

14. The District must use its best efforts to enforce flow control, cities must adopt flow control ordinances, and there will be a District-wide enforcement program. (Page 11, Section 2.03(b)(ii))

15. Waste Management Incorporated shall guarantee the operation and performance of Wheelabrator. (Page 47, Section 11.06)

SUMMARY OF THE PROPOSED SERVICE AGREEMENT WITH WHEELABRATOR

The proposed Service Agreement (Proposed Agreement) is a contract between the Broward Solid Waste Disposal District (District), Wheelabrator North Broward Inc., and Wheelabrator South Broward Inc. (collectively, Wheelabrator) for processing the District's solid waste at Wheelabrator's Waste-to-Energy Plants (Plants).

1. The Proposed Agreement will not take effect unless the proposed Interlocal Agreement is executed on or before December 31, 2010 by the Contract Communities representing 80% of the District's solid waste deliveries to the Wheelabrator Plants in 2009.
2. If the Proposed Agreement takes effect, Wheelabrator will pay a bonus of \$12,000,000, which will be divided between the existing Contract Communities that executed the Proposed ILA by December 31, 2010.
3. The Proposed Agreement will have a term of 10 years, beginning August 4, 2011. The Proposed Agreement may be extended for an additional 10 years with the mutual consent of the District and Wheelabrator.
4. Under the Proposed Agreement, the District and the Contract Communities must deliver all of their "processable waste" to the Wheelabrator Plants. However, this requirement does not apply to source-separated recyclable materials or solid waste that is destined for disposal at a location outside of Florida. There is no put or pay requirement or minimum guarantee.
5. The District will pay a service fee of \$47.75 for each ton of solid waste the District delivers to the Wheelabrator Plants.
6. The service fee will be adjusted each year, beginning on October 1, 2012, based on the annual change in the agreed-upon BLS (Bureau of Labor Statistics) Series Adjustment. The service fee also shall be adjusted on August 4, 2011, to reflect the inflation from October 2009. The adjustments shall not be less than 1% or more than 5% per annum.
7. The service fee will be adjusted if a change in law or the District's negligence causes Wheelabrator to incur new capital costs, or increased costs for operating and maintaining the Plants, or a loss of revenue. However, the District is not obligated to pay an increase of more than 10% in any one year or more than 40% over the term of the contract, as a result of such adjustments.
8. The District will pay a lower service fee than any non-ILA municipality in Broward County that uses the Wheelabrator Plants.

9. The District will pay certain costs incurred by Wheelabrator, including costs associated with constructing, operating, and closing the County's ash monofill at the South Broward Plant, and various taxes associated with Wheelabrator's Plants.
10. Wheelabrator shall pay rent to the District for the use of the County's ash monofill. The rent shall be increased to \$1,000,000 per year pursuant to an amended site lease. The rent shall be increased each year, based on changes in the agreed-upon BLS (Bureau of Labor Statistics) Series Adjustment, by using the formula described in paragraph 6, above.
11. The District will share in the revenues received by Wheelabrator from the sale of electricity and ferrous metals if the prices received by Wheelabrator for electricity and ferrous metals exceed specified levels.
12. The District shall pay Wheelabrator the difference between (a) the service fee it receives pursuant to the Proposed Agreement between August 4, 2011 and March 22, 2012 and (b) the service fee Wheelabrator would have received pursuant to the existing Service Agreement during the same period.
13. The District shall use its best efforts to enforce the solid waste "flow control" provisions in the proposed ILA. The Contract Communities and County must adopt flow control ordinances, revise their solid waste franchise agreements, and provide for District-wide code enforcement programs, as provided in the proposed ILA.
14. Waste Management Inc. shall guarantee the operations and performance of Wheelabrator under the Service Agreement.