



Village of Biscayne Park Commission Agenda Report

Village Commission Meeting Date:	July 7, 2015
Subject:	Discussion of Garbage Disposal Options
Prepared By:	Heidi Siegel, AICP, Village Manager
Sponsored By:	Staff

BACKGROUND

The Village entered into a twenty-year Interlocal Agreement with the County for use of the County Solid Waste Management System (dumping of trash and garbage) on September 26, 1995. This agreement obligated the Village to the County dumping system, even when the collection of solid waste was handled by a contract provider. There was an additional amendment clarifying the use of another facility as it affected some other municipalities.

If the Village wishes to renew their Interlocal Agreement with the County, it must do so on, or before, October 1, 2015. The Second Amendment to the Interlocal Agreement is for twenty additional years. Discussions with County staff have found that the Amendment could be for a minimum of ten years.

Additionally, the Village's third party contract provider, WastePro, has indicated that if the Village did not renew its Interlocal Agreement, they would be willing seek alternative disposal options as part of an amendment to their franchise agreement which currently specifies that WastePro must use the County facility.

The Village's franchise agreement with WastePro stipulates that WastePro is responsible for all disposal fees. The Interlocal Agreement with the County began at a fee of \$45.00 per ton in 1995 and is currently \$66.34 per ton due to Consumer Price Index (CPI) increases. The proposed Second Amendment would begin at \$66.34 plus CPI per ton and may be increased or decreased per the CPI.

Staff has invited both the County and WastePro to the Village Commission meeting to allow the Commission to explore all available options prior to making a final decision at the September 2015 Commission meeting.

ATTACHMENTS

- Interlocal Agreement between Metropolitan Dade County and Contract Cities for City use of the County Solid Waste Management System dated September 26, 1995
- First Amended and Restated Interlocal Agreement between the County and Contract Cities for Use of the County Solid Waste Management System dated June 18, 1996
- Proposed Second Amended and Restated Interlocal Agreement between Miami-Dade County and Contract Cities for Use of the County Solid Waste Management System to be effective October 1, 2015.

Interlocal Agreement between Metropolitan Dade County
and Contract Cities for City use of the County Solid Waste
Management System dated September 26, 1995

**INTERLOCAL AGREEMENT BETWEEN METROPOLITAN DADE COUNTY AND
CONTRACT CITIES FOR CITY USE OF THE COUNTY SOLID WASTE
MANAGEMENT SYSTEM**

This Interlocal Agreement ("Agreement") is made and entered into this 16 day of Sept, 1995, by and between Metropolitan Dade County by and through its Board of County Commissioners ("County") and those municipalities whose names appear in Exhibit "A", attached hereto and made part hereof, their successors and assigns, hereinafter referred to as **Contract Cities**, to provide for use of the County Solid Waste Management System by **Contract Cities** for their Solid Waste disposal and transfer needs.

BACKGROUND RECITALS

Whereas, the Metropolitan Dade County Board of County Commissioners (the "Board") hereby finds and declares that it is necessary to the health, safety and welfare of the citizens of Dade County to provide for Solid Waste disposal and management facilities and services; and

Whereas, the County desires to maximize the use of its Resources Recovery facility processes and to extend the life of its landfills; and

Whereas, the **Contract Cities** desire to use the County Solid Waste Management System for their Solid Waste disposal needs (and transfer needs, as applicable), at an agreed-upon Disposal Fee rate (and Transfer Fee rate as applicable); and

Whereas, the **Contract Cities** desire to reestablish or continue their reliance on the County Solid Waste Management System to satisfy Concurrency requirements of the Local Government Comprehensive Planning and Land Development Regulation Act (Chapter 163, Part II, F.S.) only as it applies to Solid Waste disposal capacity for the Solid Waste which each **Contract City** collects for disposal, or that which is collected for it by third parties under contract with the **Contract City** for disposal, and which is committed to the County for disposal in the County Solid Waste Management System in accordance with this **Agreement**, and actually disposed of therein; and

Whereas, the County and the **Contract Cities** desire to formalize their relationship regarding Solid Waste disposal responsibilities consistent with the provisions of Section 403.706, Florida Statutes.

NOW THEREFORE, in consideration of the foregoing premises, and the mutual considerations contained herein, the parties hereto, intending to be legally bound, do hereby agree as follows:

DEFINITIONS

For the purposes of this Agreement, the following capitalized words and phrases shall be given the following respective meanings:

Board - the Metropolitan Dade County Board of County Commissioners.

Change in Law - after the date of execution of this Agreement, (a) the adoption, promulgation, issuance, modification, or change in interpretation of any federal, state or local law, regulation, rule, requirement, ruling or ordinance, of the United States or any state or territory thereof, unless (i) such law, regulation, rule, requirement, ruling or ordinance was on or prior to such date duly adopted, promulgated, issued or otherwise officially modified or changed in interpretation, in each case in final form, to become effective without any further action by any governmental entity or official having jurisdiction, (provided, that it shall not constitute a Change in Law if an administrative regulation existed on the date of execution of this Agreement in temporary or proposed form and was treated as generally applicable to transactions of the type contemplated hereby), or (ii) compliance with such law, regulation, rule requirement, ruling or ordinance was provided for in the Agreement; (b) the issuance of an order and/or judgment of any governmental entity or official having jurisdiction, to the extent such order and/or judgment constitutes a reversal of a prior applicable order and/or judgment, or an overturning of prior administrative policy or judicial precedent; or (c) the suspension, termination, interruption or failure of renewal of any permit, license, consent, authorization or approval essential to the acquisition, design, construction, equipping, start-up, operation, ownership or possession of the County Solid Waste Management System facilities or the facilities sites, to the extent such suspension, termination, interruption or failure of renewal is not caused by any action or inaction of the County or its contractors (provided that, for the purposes of determining whether a suspension, termination, interruption or failure of renewal was so caused, any reason or finding set forth in writing by the agency responsible for issuance of such permit, license, consent, authorization or approval shall be accorded the rebuttal presumption of accuracy), provided that no change in tax law, change to the Internal Revenue Code of 1954 effected by the Tax Reform Act of 1986 (to the extent applicable on the date of this Agreement), change in foreign law, Change In Law which adversely affects the County's legal rights as a licensee, grantee, owner, or user of any patent or other "know-how" in respect of proprietary technology intended to be utilized by it in performing its obligations under this Agreement shall constitute a change in law for any purposes of this Agreement.

Concurrency - provision of certain public facilities specified in the State of Florida Local Government Comprehensive Planning and Land Development Regulation Act ("the Act") (specifically, Chapter 163, Part II, Section 163.3180 F.S.) by (a) county (ies), or (a) municipality (ies) or a combination thereof, at a specified level-of-service stated in the Capital Improvements Element of the comprehensive plan for the applicable jurisdiction(s), adopted pursuant to the Act.

Contract City (ies) - the municipal corporation or corporations existing under the laws of the State of Florida, that enter into this Agreement with the County and whose names appear in Exhibit "A" to this Agreement. For the purpose of this Agreement, the unincorporated areas of Dade County, as delineated in Exhibit "D", shall be considered a Contract City.

County - Metropolitan Dade County, Florida by and through its Board of County Commissioners.

County Disposal Fee - the fee charged to dispose of Solid Waste at County-owned Solid Waste disposal facilities or facilities operated under contract with the County for Solid Waste disposal.

County Solid Waste Management System - The aggregate of those Solid Waste management facilities owned by or operated under contract with Dade County, which shall include the North Dade Landfill, South Dade Landfill, Resources Recovery Facility, Waste Management of Florida, Inc. Landfill in the City of Medley, Florida, Northeast Transfer Station, Central Transfer Station, West Transfer Station, and other such facilities as may be added to or deleted from this listing from time to time, by the County Manager at his sole discretion. Such additions or deletions may be made by use of an attachment hereto without need for formal amendment to this Agreement.

Director - the Director of the Department of Solid Waste Management or his/her designee.

Exclusive Franchise or License - (a) contract(s) between a Contract City and a (limited number of) third party contractor(s) for the right and privilege to collect Solid Waste from either residential units or commercial establishments, or both residential units and commercial establishments, within (a) designated service area(s) under the terms of which the contractor(s) pay(s) the Contract City a fee.

Fiscal Year - the period beginning October 1 of each year and ending September 30 of the subsequent year.

Force Majeure - an act of God, epidemic, lightning, earthquake, fire, explosion, storm, hurricane, flood or similar occurrence, strike, and act of a public enemy, or blockade, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, which has had or may reasonably be expected to have a material adverse effect on the rights or obligations under this Agreement, which by the exercise of due diligence the party relying thereon as justification for not performing any obligation under this Agreement shall not have been able to avoid, and which is not the result of a willful or negligent action or omission of such party.

Municipal Solid Waste (MSW) or Solid Waste or Waste - all discarded materials or substances, exclusive of Source-Separated Recyclable Materials, which each Contract City collects for disposal, or that which is collected for it by third parties under contract with the Contract City for disposal, including, but not limited to, garbage, trash, litter, refuse, rubbish, ashes, incinerator residue, recycling process residue, or other materials allowed by the State Department of Environmental Protection for disposal in a Class I landfill which result from domestic, commercial, industrial, mining, agricultural or governmental activities, but not including sewage or other highly-diluted, water-carried materials or substances, or those in gaseous form.

Non-Exclusive Franchise or License - a regulatory program under which an unlimited number of Solid Waste haulers are given the right and privilege to collect Waste from either residential units or commercial establishments, or both residential units and commercial establishments, under the terms of which each hauler pays the Contract City a fee.

Short-Term Disposal - delivery of Solid Waste to the County Solid Waste Management System for disposal without having a minimum ten (10) year Waste disposal agreement with the County.

Short-Term Disposal Fee(s) - the fee(s) paid by private haulers or municipalities for Short-Term Disposal of Solid Waste in the County Solid Waste Management System.

Source-Separated Recyclable Materials - materials separated from MSW at their source of generation which are set-out for collection at their source of generation. Such materials shall be limited to: clean yard trash, newspapers, telephone books, household batteries, glass containers, plastic containers, steel cans, aluminum cans, and other Source-Separated Recyclable Materials as may be added to this listing from time to time by the County Manager, at his sole discretion; such additions may be made by use of an attachment hereto without need for formal amendment to this Agreement.

Transfer Fee - the fee charged to transfer Solid Waste from County Solid Waste Management System transfer stations to County Solid Waste Management System disposal facilities.

ARTICLE 1

CONSTRUCTION OF INTERLOCAL AGREEMENT

The word "shall" as used in this Agreement shall in all cases be construed to be mandatory and to require the action so modified by the word "shall" to be taken without regard to the exercise of discretion.

ARTICLE 2

RESPONSIBILITIES OF THE COUNTY

A. **Provision of Disposal Capacity.** The County shall provide MSW disposal capacity (and transfer, as applicable) for the Solid Waste which each Contract City collects for disposal, or that which is collected for it by third parties under contract with the Contract City for disposal, and which is committed to the County for disposal in the County Solid Waste Management System in accordance with this Agreement. The provision of Solid Waste disposal services under this Agreement shall comply with all applicable state and federal laws.

B. **Disposal Capacity for Concurrency.** The County shall maintain sufficient MSW disposal capacity in the County Solid Waste Management System to comply with Concurrency requirements of the Local Government Comprehensive Planning and Land Development Regulation Act (Chapter 163, Part II, F.S.) only as it applies to Solid Waste disposal capacity for the Solid Waste which each Contract City collects for disposal, or that which is collected for it by third parties under contract with the Contract City for disposal, and which is committed to the County for disposal in the County Solid Waste Management System in accordance with this Agreement, and actually disposed of therein.

C. **Standardization of Agreement.** The terms of this Agreement shall be substantially the same for all Contract Cities.

ARTICLE 3
RESPONSIBILITIES OF THE CONTRACT CITIES

A. **Delivery of MSW to County.** Each Contract City shall deliver all the MSW it collects for disposal, or cause delivery of that MSW which is collected for it by third parties under contract with the Contract City for disposal, excluding Source-Separated Recyclable Materials, to (a) County Solid Waste Management System facility(ies), at Disposal Fee rates as specified herein.

Contract Cities which have entered into Solid Waste disposal agreements with third party contractors prior to July 28, 1995, the terms of which extend into the term of this Agreement for a portion of Fiscal Year 1995-96, are not obligated to deliver Solid Waste to the County for that portion of Fiscal Year 1995-96 covered by the third party agreements, copies of which are incorporated herein as Exhibit "C". Such Contract Cities shall otherwise adhere to all terms of this Agreement. Area(s) of unincorporated Dade County, as delineated in Exhibit "D", which incorporate subsequent to the date of this Agreement shall comply with all terms of this Agreement, unless expressly relieved from doing so by resolution of the Board.

The Director may identify particular facilities to which each Contract City shall deliver its Waste. Any Contract City may deliver its Waste to a County transfer facility if the applicable Transfer Fee is paid to the County. At no time during the term of this Agreement shall any Contract City be required to deliver MSW to a County transfer facility unless the County Disposal Fee is the same at all County Solid Waste Management System facilities. No Contract City shall be directed to deliver its Waste to a disposal facility which is farther from that Contract City's boundaries than the closest county-owned disposal facility. No Contract City shall be directed to deliver its Waste to a transfer facility which is farther from that Contract City's boundaries than the closest county-owned transfer facility. In no case shall a Contract City be required to deliver its Waste to a County Solid Waste Management System facility which is farther than twenty (20) miles from that Contract City's nearest boundary in order to take full advantage of its rights under this Agreement.

B. **Use of Other Facilities Prohibited.** Each Contract City shall not deliver any MSW it collects for disposal, or cause or suffer delivery of that MSW which is collected for it by third parties under contract with the Contract City for disposal, excluding Source-Separated Recyclable Materials, to a Solid Waste disposal or transfer facility other than a County Solid Waste Management System facility for the term of this Agreement. No Contract City shall deliver any MSW it collects, or cause or suffer delivery of that MSW which is collected for it by third parties under contract with the Contract City for disposal, other than Source-Separated Recyclable Materials, to a materials recovery or recycling facility for the term of this Agreement.

C. **Hauler Contracts.** Each Contract City shall include in any contracts with Solid Waste haulers, or amendments to such contracts, which it executes, renews or extends after the date of this Agreement, a provision that all Solid Waste collected for the Contract City shall be delivered to a specified County Solid Waste Management System facility for disposal. This provision shall apply to Exclusive Franchise or License agreements with Solid Waste haulers. This provision shall not apply to a Non-Exclusive Franchise or License to haul Solid Waste.

D. Disposal and Transfer Fees. Each Contract City shall pay a Disposal Fee (and a Transfer Fee, as applicable) for each ton of MSW delivered to the County Solid Waste Management System for disposal. Each Contract City shall pay a maximum Disposal Fee of forty-five dollars (\$45.00) per ton to the County for disposal of MSW delivered to County Solid Waste Management System facilities for Fiscal Years 1995-96, 1996-97, and 1997-98. This Disposal Fee shall be established by separate administrative order, which shall not become effective until approved by the Board. As applicable, each Contract City shall pay a maximum Transfer Fee of nine dollars (\$9.00) per ton to the County for transfer of MSW delivered to County Solid Waste Management System transfer facilities for Fiscal Years 1995-96, 1996-97, and 1997-98. This Transfer Fee shall be established by separate administrative order, which shall not become effective until approved by the Board. The Disposal Fee and Transfer Fee may be increased or decreased for inflation or deflation beginning on October 1, 1998, and on the first day of each Fiscal Year thereafter, relative to increases or decreases in the U.S. Government Consumer Price Index for All Urban Consumers for the Southeast Region of the United States (CPI) for the prior period of July 1 through June 30. Such CPI increases or decreases shall be capped at five percent (5%) per year for the term of this Agreement. In the event that the actual CPI increase or decrease exceeds the five percent (5%) cap in a given Fiscal Year, the amount of CPI increase or decrease above or below the five percent (5%) cap shall be applied to CPI increases or decreases in future years when the CPI increase or decrease is less than five percent (5%). The Disposal Fee and Transfer Fee shall not otherwise increase, unless as required by Change in Law, as defined herein, which may occur at any time during the term of this Agreement. The County shall notify each Contract City of proposed Disposal Fee and Transfer Fee adjustments on the basis of Change in Law. The Disposal Fee or Transfer Fee increase based on Change in Law shall fully compensate the County for its increased costs. Each Contract City shall pay prevailing disposal fees for Waste materials for which the County charges other than the County Disposal Fee for the entire term of this Agreement, including, without limitation, tires, asbestos, construction and demolition debris, and clean yard trash, if provided to the County for disposal.

E. Terms of Payment. The County shall invoice the Contract Cities for Disposal Fees, based on County weighing records, by means of First Class U.S. Mail, within five (5) days of the last day of each month, commencing in the first month after the effective date of this Agreement, and continuing monthly thereafter for the term of this Agreement. In accordance with Section 218.74(2), Florida Statutes, as amended from time to time, payment of Disposal Fees owed to the County shall be due from, and payment shall be made by, each Contract City forty-five (45) days from the date of receipt of the County's monthly invoice.

F. Dispute On Invoicing. In the event of a dispute on invoicing, the Contract City shall first pay the full amount of the disputed charges when due and shall, within thirty (30) days from the date of receipt of the disputed invoice, give written notice of the disputed invoice to the County. The notice of dispute shall identify the disputed invoice, state the amount in dispute and set forth a full statement of grounds on which such dispute is based. The County Manager or his designee shall confer with the Contract City and the County Manager or his designee shall resolve the dispute not later than sixty (60) days after the date upon which the disputed invoice was received. Should a Contract City disagree with the determination of the County Manager or his designee, it may pursue any remedy at law except withholding payment.

ARTICLE 4
WEIGHING RECORDS

The County shall cause all County Solid Waste Management System facilities to operate and maintain motor truck scales calibrated to the accuracy required by Florida law and to weigh all vehicles delivering MSW. Each vehicle delivering MSW from a Contract City, or its contract hauler, shall have its tare weight and cubic yard capacity permanently and conspicuously displayed on the exterior of the vehicle. The County or its contractor may, from time to time, require revalidation of the tare weight of any vehicle. Each Contract City shall provide the County with information about each private hauler delivering MSW on its behalf to include: name and address, make, body type and motor vehicle registration number of each vehicle used for such purpose. All such haulers shall have and maintain a valid County Solid Waste hauler permit in accordance with Section 15-17 of the Code of Metropolitan Dade County, as amended from time to time.

The County will supply each Contract City with monthly weighing records as may be reasonably required by the Contract City to administer its Waste collection program. Copies of all transaction tickets will be maintained by the County for at least two (2) years. If weighing scales are inoperable or are being tested, the facility operator shall estimate the quantity of MSW delivered using a schedule of estimated Waste material weights in accordance with Section 15-25, Subsections (b) and (d) of the Metropolitan Dade County Code, as amended from time to time. The estimates shall take the place of actual weighing records, when the scales are not operational. The County shall use reasonable efforts to maintain the scales in an operable condition.

ARTICLE 5
SHORT-TERM DISPOSAL

The Contract Cities agree that the County Solid Waste Management System may accept MSW on a Short-Term Disposal basis from private or municipal haulers, so long as the capacity to receive Solid Waste delivered on behalf of any Contract City is not impaired, and provided that such haulers shall pay (a) Short-Term Disposal Fee(s) of at least ten percent (10%) above that charged to Contract Cities. The (a) Short-Term Disposal Fee(s) shall be established by separate administrative order, which shall not become effective until approved by the Board. All Disposal Fee revenues generated pursuant to this Agreement shall be used to pay County Solid Waste Management System costs. This provision shall not inhibit the County from entering into agreements with private haulers for delivery of Waste to County disposal facilities (with the exception of agreements for delivery of Waste collected by (a) private hauler(s) under contract with any municipality that is not a party to this Agreement, which shall be prohibited), the minimum duration of which shall be ten (10) years, provided that the County shall not offer (a) Disposal Fee(s) less than that agreed to herein by the Contract Cities to any private hauler for the term of this Agreement.

ARTICLE 6
RELATIONSHIPS OF THE PARTIES

Nothing in this Agreement shall be deemed to constitute any party a partner, agent or local representative of the other party or to create any type of fiduciary responsibility of any kind whatsoever between the parties. The obligations to this Agreement are not joint; the obligations are separate and several between each of the Contract Cities and County.

ARTICLE 7
HEADINGS

Captions and headings in this Agreement are for ease of reference only and do not constitute a part of this Agreement and shall not affect the meaning or interpretation of any provisions herein.

ARTICLE 8
DURATION OF AGREEMENT

The term of MSW deliveries by each Contract City to the County under this Agreement shall commence with the date of execution and shall remain in effect up to and including October 1, 2015. The Agreement shall be executed and approved by resolution of each Contract City's governing body on or before September 30, 1995, unless a standard letter of intent to enter into this Agreement is received by the County before October 1, 1995, in which case, the Agreement shall be executed and approved by resolution of each Contract City's governing body on or before December 1, 1995, and shall become effective upon execution by the County. A copy of the resolution of approval shall be transmitted to the County Manager within five (5) days following the date of each Contract City's approval.

ARTICLE 9
AGREEMENT GOVERNS; ENTIRE AGREEMENT

This Agreement shall govern and supersede any other Interlocal agreement between the Contract Cities and the County with regard to use of the County Solid Waste Management System. This writing embodies the entire Agreement and understanding between the parties hereto, and there are no other agreements or understandings, oral or written with reference to the subject matter hereof that are not merged herein and superseded hereby.

ARTICLE 10
REPRESENTATIONS OF THE COUNTY

The County represents that (A) this Agreement has been duly authorized, executed and delivered by the Board of County Commissioners as the governing body of the County, and (B) it has the required power and authority to perform this Agreement.

ARTICLE 11
REPRESENTATIONS OF THE CONTRACT CITIES

Each Contract City represents that (A) this Agreement has been duly authorized, executed and delivered by the Governing Body of the Contract City, and (B) it has the required power and authority to perform this Agreement.

ARTICLE 12
APPROVALS AND NOTICES

All notices, consents and other communications required, permitted or otherwise delivered under this Agreement shall be in writing and be delivered either by hand with proof of delivery or mailed by first class United States certified or registered mail, with return receipt requested, postage prepaid, and in any case shall be addressed as provided in Exhibit "B", attached hereto and made part hereof.

Changes in the respective addresses of Contract Cities provided in Exhibit "B" and of County provided on the signature page may be made from time to time by either party by notice to the other party. Notices and consents given by mail in accordance with this section shall be deemed to have been given five (5) business days after the day of dispatch, notices and consents given by any other means shall be deemed to have been given when received.

ARTICLE 13
AMENDMENT TO AGREEMENT

This Agreement may be modified, altered or amended only by a written amendment duly executed by the parties hereto, and approved by the governing body of each party. Any oral representations or modifications concerning this Agreement shall be of no force or effect.

ARTICLE 14
NON-ASSIGNMENT

In no case shall a Contract City assign, transfer, convey or otherwise hypothecate any interest, rights, duties, or obligations hereunder, or any part thereof. In the event a Contract City attempts to assign, transfer, convey or otherwise hypothecate this Agreement or the Contract City's rights, duties or obligations hereunder, or any part thereof, the County may at its option, terminate this Agreement with respect to that Contract City.

ARTICLE 15
RIGHTS OF OTHERS

Nothing in this Agreement, either express or implied, is intended to confer upon any person other than the parties hereto any rights or remedies under or by reason of this Agreement.

ARTICLE 16
WAIVER

There shall be no waiver of any right related to this Agreement unless that such waiver is in writing signed by the party waiving such right. No delay or failure to exercise a right under this Agreement shall impair such right or shall be construed to be a waiver thereof. Any waiver shall be limited to the particular rights waived and shall not be deemed a waiver of the same right at a later time, or of any other right under this Agreement.

ARTICLE 17
FORCE MAJEURE

Neither party hereto shall be liable for its failure to carry out its obligations under this Agreement during any period when such party is rendered unable, in whole or in part, by Force Majeure to carry out such obligations, but the obligations of the party relying on such Force Majeure shall be suspended only during the continuance of any inability so caused and for no longer period, and such cause shall, so far as possible, be remedied with all reasonable dispatch. It is further agreed and stipulated that the right of any party hereto to excuse its failure to perform by reason of Force Majeure shall be conditioned upon such party giving, to the other party, written notice of its assertion that a Force Majeure delay has commenced within five (5) working days after such commencement. If there exists good cause for failure to give such notice, such failure shall not prejudice any party's right to justify any non-performance as caused by Force Majeure, unless the failure to give timely notice causes material prejudice to the other party.

ARTICLE 18
COUNTY EVENT OF DEFAULT

The failure by the County to substantially fulfill any of its material obligations in accordance with this Agreement, unless excuses are justified by Force Majeure, shall constitute a "County event of default". If a County event of default should occur, the affected Contract City(ies) shall have all of the following rights and remedies which each may exercise singly or in combination: 1. the right to declare that this Agreement as it applies to the Contract City(ies) together with all rights granted to the County hereunder are terminated, effective upon such date as is designated by the Contract City(ies); 2. any and all other rights provided under federal laws and the laws of the State of Florida. 3. in any event, the County shall maintain responsibility for any debts owed to each Contract City for services provided under the terms of this Agreement. Notwithstanding any other provision of this article, the Contract City(ies) shall not terminate this Agreement for a "County event of default" unless the Contract City(ies) first give(s) the County written notice of intent to terminate specifying the alleged default, and providing the County a period of sixty (60) days from receipt of notice within which to cure such default.

ARTICLE 19
CONTRACT CITY EVENT OF DEFAULT

Without limitation, the failure by a **Contract City** to substantially fulfill any of its material obligations in accordance with this **Agreement**, unless excuses are justified by Force Majeure, shall constitute a "**Contract City event of default**". If a **Contract City** event of default should occur, the **County** shall have all of the following rights and remedies which it may exercise singly or in combination: 1. the right to declare that all rights granted to the **Contract City** hereunder are terminated, effective upon such date as is designated by the **County**; 2. any and all rights provided under federal laws and the laws of the State of Florida. 3. in any event, the **Contract City** shall maintain responsibility for any debts owed to the **County** for services provided under the terms of this **Agreement**. Notwithstanding any other provision of this article, the **County** shall not terminate this **Agreement** for a "**City event of default**" unless the **County** first gives the **Contract City** written notice of intent to terminate specifying the alleged default, and providing the **Contract City** a period of sixty (60) days from receipt of notice within which to cure such default.

ARTICLE 20
FLORIDA LAW GOVERNS; VENUE IN DADE COUNTY, FLORIDA

This **Agreement**, regardless of where executed, shall be governed by and construed according to the laws of the State of Florida, and venue shall be in Dade County, Florida.

ARTICLE 21
TERMINATION

This **Agreement** may be terminated upon mutual consent, in writing, between any **Contract City** and the **County**.

ARTICLE 22
COUNTERPARTS

This **Agreement** may be executed in one or more counterpart(s), each of which shall be deemed an original.

ARTICLE 23
INVALIDITY OF PROVISIONS

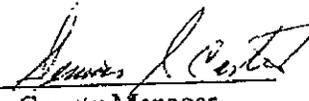
Should any provision, paragraph, sentence, word or phrase contained in this **Agreement** be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, and this **Agreement** shall remain in full force and effect.

IN WITNESS WHEREOF, Metropolitan Dade County, Florida, has caused this Agreement to be executed in its name by the County Manager or his designee, attested by the Clerk of the Board of County Commissioners and has caused the seal of the Board of County Commissioners to be hereto attached; and the Contract Cities named in Exhibit "A", have caused this Agreement to be executed in their names by the Manager of each Contract City or his designee, attested by the Clerk of each Contract City's governing body and has caused the seal of each Contract City's governing body to be hereto attached, all on the day and year first written above.

Attest:
Harvey Ruvin,
Clerk of the Board

By: _____
Deputy Clerk

METROPOLITAN DADE COUNTY,
FLORIDA, BY ITS BOARD OF
COUNTY COMMISSIONERS

By: 
for County Manager
Metropolitan Dade County Florida
111 N.W. 1st Street, 29th Floor
Miami, FL 33128

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY BY:
Dade County Attorney's Office
Mr. Henry N. Gillman, Assistant County Attorney
111 N.W. 1st Street, 27th Floor
Miami, FL 33128

Assistant County Attorney

CONTRACT CITY

WITNESS:

Mayor Dennis E. Fink
Name of Contract City

Michael L. Anchem

By: [Signature]
Mayor-Commissioner

ATTEST:

By: _____
Contract City Manager

Jean Water
Contract City Clerk

26 day of September, 1995.

[corporate seal]

APPROVED AS TO FORM:

Assistant Contract City Attorney

MEMORANDUM

Agenda Item No. 6(A)(5)

O: Honorable Chairperson and Members
Board of County Commissioners

FROM: 
Armando Vidal, P.E.
County Manager

DATE: June 18, 1996

SUBJECT: First Amended and Restated
Interlocal Agreement Between
the County and Contract Cities
for City Use of the County Solid
Waste Management System

Recommendation

It is recommended that the Board of County Commissioners approve the attached resolution authorizing execution of a standard form of the First Amended and Restated Interlocal Agreement between Metropolitan Dade County and Contract Cities for City Use of the County Solid Waste Management System (System), in substantially the form attached hereto.

Background

On September 14, 1995, the Board approved a standard form of interlocal agreement between the County and Contract Cities for city use of the System. To date seventeen (17) Dade municipalities have entered into this agreement. The agreement was developed as a key component of Phase I of the Strategic Plan for Dade County Solid Waste Management, approved by the Board on April 4, 1995, which serves as a guidance document in the ongoing effort to stabilize the financial situation of the Department of Solid Waste Management.

The attached revised interlocal agreement clarifies the conditions under which Contract Cities may use the Waste Management Inc. of Florida (WMIF) landfill in the City of Medley, Florida. The existing interlocal agreement allows for Contract Cities to use the Medley Landfill, which is included in the definition of the County Solid Waste Management System, unless directed elsewhere by the Director. The proposed change explicitly states the criteria that will be used by the Director to determine whether or not a Contract City will be allowed to use the facility. Specifically, the County's contract with WMIF must be in effect, the facility must be accepting waste, and the Contract City's waste must not be needed at the Resources Recovery facility, as determined by the Director in his/her sole discretion.

The agreement also modifies the definition of Source Separated Recyclable Materials by adding specific materials and increasing flexibility with regard to the further addition of materials. Changes to the definition make it consistent with the County's Second Amended and Restated Agreement with Browning-Ferris Industries of Florida, Inc. for curbside recycling. Construction and demolition debris is included as a source separated recyclable material to encourage Contract Cities that currently dispose of this material to source separate and recycle it. A definition of construction and demolition debris is also included.

The amended agreement is available to all municipalities.

RESOLUTION NO. R-711-96

RESOLUTION AUTHORIZING EXECUTION OF A
STANDARD FORM OF THE FIRST AMENDED AND
RESTATED INTERLOCAL AGREEMENT BETWEEN
METROPOLITAN DADE COUNTY AND CONTRACT CITIES
FOR CITY USE OF THE COUNTY SOLID WASTE
MANAGEMENT SYSTEM

WHEREAS, This Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DADE COUNTY, FLORIDA, that this Board finds that it is in the best interest of Dade County to approve a standard form of the First Amended and Restated Interlocal Agreement between Metropolitan Dade County and Contract Cities for city use of the county solid waste management system, in substantially the form attached hereto and made part hereof; and authorizes the County Manager to execute the same, for and on behalf of Dade County, following proper execution by Contract Cities.

The foregoing Resolution was offered by Commissioner Natacha S. Millan ,
who moved its adoption. The motion was seconded by Commissioner Arthur E. Teele Jr.,
and upon being put to a vote, the vote was as follows:

James Burke	aye	Miguel Diaz de la Portilla	absent
Betty T. Ferguson	aye	Maurice A. Ferre	aye
Bruce Kaplan	aye	Gwen Margolis	aye
Natacha S. Millan	aye	Dennis C. Moss	aye
Alexander Penelas	aye	Pedro Reboredo	aye
Katy Sorenson	aye	Javier D. Souto	aye
	Arthur E. Teele, Jr.	aye	

The Chairperson thereupon declared the Resolution duly passed and adopted this
18th day of June, 1996.



Approved by County Attorney as
to form and legal sufficiency. *[Signature]*

DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

HARVEY RUVIN, CLERK

By: **KAY SULLIVAN**
Deputy Clerk

**FIRST AMENDED AND RESTATED INTERLOCAL AGREEMENT BETWEEN
METROPOLITAN DADE COUNTY AND CONTRACT CITIES FOR CITY USE OF
THE COUNTY SOLID WASTE MANAGEMENT SYSTEM**

This First Amended and Restated Interlocal Agreement ("Agreement") is made and entered into this ____ day of _____, 1996, by and between Metropolitan Dade County by and through its Board of County Commissioners ("County") and those municipalities whose names appear in Exhibit "A", attached hereto and made part hereof, their successors and assigns, hereinafter referred to as Contract Cities, to provide for use of the County Solid Waste Management System by Contract Cities for their Solid Waste disposal and transfer needs.

BACKGROUND RECITALS

Whereas, the Metropolitan Dade County Board of County Commissioners (the "Board") hereby finds and declares that it is necessary to the health, safety and welfare of the citizens of Dade County to provide for Solid Waste disposal and management facilities and services; and

Whereas, the County desires to maximize the use of its Resources Recovery facility processes and to extend the life of its landfills; and

Whereas, the Contract Cities desire to use the County Solid Waste Management System for their Solid Waste disposal needs (and transfer needs, as applicable), at an agreed-upon Disposal Fee rate (and Transfer Fee rate as applicable); and

Whereas, the Contract Cities desire to reestablish or continue their reliance on the County Solid Waste Management System to satisfy Concurrence requirements of the Local Government Comprehensive Planning and Land Development Regulation Act (Chapter 163, Part II, F.S.) only as it applies to Solid Waste disposal capacity for the Solid Waste which each Contract City collects for disposal, or that which is collected for it by third parties under contract with the Contract City for disposal, and which is committed to the County for disposal in the County Solid Waste Management System in accordance with this Agreement, and actually disposed of therein; and

Whereas, the County and the Contract Cities desire to formalize their relationship regarding Solid Waste disposal responsibilities consistent with the provisions of Section 403.706, Florida Statutes; and

Whereas, by this first amended and restated agreement, the County desires to clarify the conditions under which Contract Cities may use the Waste Management Inc. of Florida landfill in Medley, Florida; modify the definition of Source Separated Recyclable Materials by adding specific materials and increasing flexibility with regard to the further addition of materials; and add a definition of construction and demolition debris; and

Whereas, the amended agreement as stated herein shall be available to all municipalities.

NOW THEREFORE, in consideration of the foregoing premises, and the mutual considerations contained herein, the parties hereto, intending to be legally bound, do hereby agree as follows:

DEFINITIONS

For the purposes of this Agreement, the following capitalized words and phrases shall be given the following respective meanings:

Board - the Metropolitan Dade County Board of County Commissioners.

Change in Law - after the date of execution of this Agreement, (a) the adoption, promulgation, issuance, modification, or change in interpretation of any federal, state or local law, regulation, rule, requirement, ruling or ordinance, of the United States or any state or territory thereof, unless (i) such law, regulation, rule, requirement, ruling or ordinance was on or prior to such date duly adopted, promulgated, issued or otherwise officially modified or changed in interpretation, in each case in final form, to become effective without any further action by any governmental entity or official having jurisdiction, (provided, that it shall not constitute a Change in Law if an administrative regulation existed on the date of execution of this Agreement in temporary or proposed form and was treated as generally applicable to transactions of the type contemplated hereby), or (ii) compliance with such law, regulation, rule requirement, ruling or ordinance was provided for in the Agreement; (b) the issuance of an order and/or judgment of any governmental entity or official having jurisdiction, to the extent such order and/or judgment constitutes a reversal of a prior applicable order and/or judgment, or an overturning of prior administrative policy or judicial precedent; or (c) the suspension, termination, interruption or failure of renewal of any permit, license, consent, authorization or approval essential to the acquisition, design, construction, equipping, start-up, operation, ownership or possession of the County Solid Waste Management System facilities or the facilities sites, to the extent such suspension, termination, interruption or failure of renewal is not caused by any action or inaction of the County or its contractors (provided that, for the purposes of determining whether a suspension, termination, interruption or failure of renewal was so caused, any reason or finding set forth in writing by the agency responsible for issuance of such permit, license, consent, authorization or approval shall be accorded the rebuttal presumption of accuracy), provided that no change in tax law, change to the Internal Revenue Code of 1954 effected by the Tax Reform Act of 1986 (to the extent applicable on the date of this Agreement), change in foreign law, Change In Law which adversely affects the County's legal rights as a licensee, grantee, owner, or user of any patent or other "know-how" in respect of proprietary technology intended to be utilized by it in performing its obligations under this Agreement shall constitute a change in law for any purposes of this Agreement.

Concurrency - provision of certain public facilities specified in the State of Florida Local Government Comprehensive Planning and Land Development Regulation Act ("the Act") (specifically, Chapter 163, Part II, Section 163.3180 F.S.) by (a) county (ies), or (a) municipality (ies) or a combination thereof, at a specified level-of-service stated in the Capital Improvements Element of the comprehensive plan for the applicable jurisdiction(s), adopted pursuant to the Act.

Construction and Demolition Debris - discarded materials generally considered not to be water-soluble or hazardous, including, without limitation, steel, concrete, glass, brick, roofing material, lumber, and gypsum wallboard which are generated from building repair, renovation, construction or demolition projects. Commingling construction and demolition debris with solid waste generated from other than building repair, renovation, construction or demolition projects will cause such waste to be classified as Municipal Solid Waste.

Contract City (ies) - the municipal corporation or corporations existing under the laws of the State of Florida, that enter into this Agreement with the County and whose names appear in Exhibit "A" to this Agreement. For the purpose of this Agreement, the unincorporated areas of Dade County, as delineated in Exhibit "D", shall be considered a Contract City.

County - Metropolitan Dade County, Florida by and through its Board of County Commissioners.

County Disposal Fee - the fee charged to dispose of Solid Waste at County-owned Solid Waste disposal facilities or facilities operated under contract with the County for Solid Waste disposal.

County Solid Waste Management System - The aggregate of those Solid Waste management facilities owned by or operated under contract with Dade County, which shall include the North Dade Landfill, South Dade Landfill, Resources Recovery Facility, Waste Management of Florida, Inc. Landfill in the City of Medley, Florida, Northeast Transfer Station, Central Transfer Station, West Transfer Station, and other such facilities as may be added to or deleted from this listing from time to time, by the County Manager at his sole discretion. Such additions or deletions may be made by use of an attachment hereto without need for formal amendment to this Agreement.

Director - the Director of the Department of Solid Waste Management or his/her designee.

Exclusive Franchise or License - (a) contract(s) between a Contract City and a (limited number of) third party contractor(s) for the right and privilege to collect Solid Waste from either residential units or commercial establishments, or both residential units and commercial establishments, within (a) designated service area(s) under the terms of which the contractor(s) pay(s) the Contract City a fee.

Fiscal Year - the period beginning October 1 of each year and ending September 30 of the subsequent year.

Force Majeure - an act of God, epidemic, lightning, earthquake, fire, explosion, storm, hurricane, flood or similar occurrence, strike, and act of a public enemy, or blockade, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, which has had or may reasonably be expected to have a material adverse effect on the rights or obligations under this Agreement, which by the exercise of due diligence the party relying thereon as justification for not performing any obligation under this Agreement shall not have been able to avoid, and which is not the result of a willful or negligent action or omission of such party.

Municipal Solid Waste (MSW) or Solid Waste or Waste - all discarded materials or substances, exclusive of Source-Separated Recyclable Materials, which each **Contract City** collects for disposal, or that which is collected for it by third parties under contract with the **Contract City** for disposal, including, but not limited to, garbage, trash, litter, refuse, rubbish, ashes, incinerator residue, recycling process residue, or other materials allowed by the State Department of Environmental Protection for disposal in a Class I landfill which result from domestic, commercial, industrial, mining, agricultural or governmental activities, but not including sewage or other highly-diluted, water-carried materials or substances, or those in gaseous form.

Non-Exclusive Franchise or License - a regulatory program under which an unlimited number of Solid Waste haulers are given the right and privilege to collect Waste from either residential units or commercial establishments, or both residential units and commercial establishments, under the terms of which each hauler pays the **Contract City** a fee.

Short-Term Disposal - delivery of Solid Waste to the County Solid Waste Management System for disposal without having a minimum ten (10) year Waste disposal agreement with the County.

Short-Term Disposal Fee(s) - the fee(s) paid by private haulers or municipalities for Short-Term Disposal of Solid Waste in the County Solid Waste Management System.

Source-Separated Recyclable Materials - materials separated from MSW at their source of generation which are set-out for collection at their source of generation. Such materials shall be limited to: clean yard trash, construction and demolition debris, aseptic and gable-top containers, corrugated cardboard, magazines, mixed waste paper, newspapers, telephone books, household batteries, glass containers, plastic containers, steel cans, aluminum cans, and other Source-Separated Recyclable Materials as may be added approved for addition to this listing from time to time by the County Manager, which approval shall not be unreasonably withheld at his sole discretion; such additions may be made by use of an attachment hereto without need for formal amendment to this Agreement.

Transfer Fee - the fee charged to transfer Solid Waste from County Solid Waste Management System transfer stations to County Solid Waste Management System disposal facilities.

ARTICLE 1

CONSTRUCTION OF INTERLOCAL AGREEMENT

The word "shall" as used in this Agreement shall in all cases be construed to be mandatory and to require the action so modified by the word "shall" to be taken without regard to the exercise of discretion.

ARTICLE 2

RESPONSIBILITIES OF THE COUNTY

A. **Provision of Disposal Capacity**. The County shall provide MSW disposal capacity (and transfer, as applicable) for the Solid Waste which each **Contract City** collects for disposal, or that which is collected for it by third parties under contract with the **Contract City** for disposal,

and which is committed to the County for disposal in the County Solid Waste Management System in accordance with this Agreement. The provision of Solid Waste disposal services under this Agreement shall comply with all applicable state and federal laws.

B. Disposal Capacity for Concurrency. The County shall maintain sufficient MSW disposal capacity in the County Solid Waste Management System to comply with Concurrency requirements of the Local Government Comprehensive Planning and Land Development Regulation Act (Chapter 163, Part II, F.S.) only as it applies to Solid Waste disposal capacity for the Solid Waste which each Contract City collects for disposal, or that which is collected for it by third parties under contract with the Contract City for disposal, and which is committed to the County for disposal in the County Solid Waste Management System in accordance with this Agreement, and actually disposed of therein.

C. Standardization of Agreement. The terms of this Agreement shall be substantially the same for all Contract Cities.

ARTICLE 3 RESPONSIBILITIES OF THE CONTRACT CITIES

A. Delivery of MSW to County. Each Contract City shall deliver all the MSW it collects for disposal, or cause delivery of that MSW which is collected for it by third parties under contract with the Contract City for disposal, excluding Source-Separated Recyclable Materials, to (a) County Solid Waste Management System facility(ies), at Disposal Fee rates as specified herein. Delivery of Waste by Contract Cities to the Waste Management Inc. of Florida landfill in Medley, Florida, shall be permitted for the term of this agreement; provided that, (1) the County's agreement with Waste Management Inc. of Florida, dated October 27, 1995, is in effect, (2) the landfill is accepting waste for disposal, and (3) waste from (a) Contract City(ies) is not needed at the Resources Recovery facility, as determined by the Director, in his/ her sole discretion.

Contract Cities which have entered into Solid Waste disposal agreements with third party contractors prior to July 28, 1995, the terms of which extend into the term of this Agreement for a portion of Fiscal Year 1995-96, are not obligated to deliver Solid Waste to the County for that portion of Fiscal Year 1995-96 covered by the third party agreements, copies of which are incorporated herein as Exhibit "C". Such Contract Cities shall otherwise adhere to all terms of this Agreement. Area(s) of unincorporated Dade County, as delineated in Exhibit "D", which incorporate subsequent to the date of this Agreement shall comply with all terms of this Agreement, unless expressly relieved from doing so by resolution of the Board.

The Director may identify particular facilities to which each Contract City shall deliver its Waste. Any Contract City may deliver its Waste to a County transfer facility if the applicable Transfer Fee is paid to the County. At no time during the term of this Agreement shall any Contract City be required to deliver MSW to a County transfer facility unless the County Disposal Fee is the same at all County Solid Waste Management System facilities. No Contract City shall be directed to deliver its Waste to a disposal facility which is farther from that Contract City's boundaries than the closest county-owned disposal facility. No Contract City shall be directed to deliver its Waste to a transfer facility which is farther from that

Contract City's boundaries than the closest county-owned transfer facility. In no case shall a Contract City be required to deliver its Waste to a County Solid Waste Management System facility which is farther than twenty (20) miles from that Contract City's nearest boundary in order to take full advantage of its rights under this Agreement.

B. Use of Other Facilities Prohibited. Each Contract City shall not deliver any MSW it collects for disposal, or cause or suffer delivery of that MSW which is collected for it by third parties under contract with the Contract City for disposal, excluding Source-Separated Recyclable Materials, to a Solid Waste disposal or transfer facility other than a County Solid Waste Management System facility for the term of this Agreement. No Contract City shall deliver any MSW it collects, or cause or suffer delivery of that MSW which is collected for it by third parties under contract with the Contract City for disposal, other than Source-Separated Recyclable Materials, to a materials recovery or recycling facility for the term of this Agreement.

C. Hauler Contracts. Each Contract City shall include in any contracts with Solid Waste haulers, or amendments to such contracts, which it executes, renews or extends after the date of this Agreement, a provision that all Solid Waste collected for the Contract City shall be delivered to a specified County Solid Waste Management System facility for disposal. This provision shall apply to Exclusive Franchise or License agreements with Solid Waste haulers. This provision shall not apply to a Non-Exclusive Franchise or License to haul Solid Waste.

D. Disposal and Transfer Fees. Each Contract City shall pay a Disposal Fee (and a Transfer Fee, as applicable) for each ton of MSW delivered to the County Solid Waste Management System for disposal. Each Contract City shall pay a maximum Disposal Fee of forty-five dollars (\$45.00) per ton to the County for disposal of MSW delivered to County Solid Waste Management System facilities for Fiscal Years 1995-96, 1996-97, and 1997-98. This Disposal Fee shall be established by separate administrative order, which shall not become effective until approved by the Board. As applicable, each Contract City shall pay a maximum Transfer Fee of nine dollars (\$9.00) per ton to the County for transfer of MSW delivered to County Solid Waste Management System transfer facilities for Fiscal Years 1995-96, 1996-97, and 1997-98. This Transfer Fee shall be established by separate administrative order, which shall not become effective until approved by the Board. The Disposal Fee and Transfer Fee may be increased or decreased for inflation or deflation beginning on October 1, 1998, and on the first day of each Fiscal Year thereafter, relative to increases or decreases in the U.S. Government Consumer Price Index for All Urban Consumers for the Southeast Region of the United States (CPI) for the prior period of July 1 through June 30. Such CPI increases or decreases shall be capped at five percent (5%) per year for the term of this Agreement. In the event that the actual CPI increase or decrease exceeds the five percent (5%) cap in a given Fiscal Year, the amount of CPI increase or decrease above or below the five percent (5%) cap shall be applied to CPI increases or decreases in future years when the CPI increase or decrease is less than five percent (5%). The Disposal Fee and Transfer Fee shall not otherwise increase, unless as required by Change in Law, as defined herein, which may occur at any time during the term of this Agreement. The County shall notify each Contract City of proposed Disposal Fee and Transfer Fee adjustments on the basis of Change In Law. The Disposal Fee or Transfer Fee increase based on Change in Law shall fully compensate the County for its increased costs. Each Contract City shall pay prevailing disposal fees for Waste materials for which the County charges other than the County

Disposal Fee for the entire term of this Agreement, including, without limitation, tires, asbestos, construction and demolition debris, and clean yard trash, if provided to the County for disposal.

E. Terms of Payment. The County shall invoice the Contract Cities for Disposal Fees, based on County weighing records, by means of First Class U.S. Mail, within five (5) days of the last day of each month, commencing in the first month after the effective date of this Agreement, and continuing monthly thereafter for the term of this Agreement. In accordance with Section 218.74(2), Florida Statutes, as amended from time to time, payment of Disposal Fees owed to the County shall be due from, and payment shall be made by, each Contract City forty-five (45) days from the date of receipt of the County's monthly invoice.

F. Dispute On Invoicing. In the event of a dispute on invoicing, the Contract City shall first pay the full amount of the disputed charges when due and shall, within thirty (30) days from the date of receipt of the disputed invoice, give written notice of the disputed invoice to the County. The notice of dispute shall identify the disputed invoice, state the amount in dispute and set forth a full statement of grounds on which such dispute is based. The County Manager or his designee shall confer with the Contract City and the County Manager or his designee shall resolve the dispute not later than sixty (60) days after the date upon which the disputed invoice was received. Should a Contract City disagree with the determination of the County Manager or his designee, it may pursue any remedy at law except withholding payment.

ARTICLE 4 WEIGHING RECORDS

The County shall cause all County Solid Waste Management System facilities to operate and maintain motor truck scales calibrated to the accuracy required by Florida law and to weigh all vehicles delivering MSW. Each vehicle delivering MSW from a Contract City, or its contract hauler, shall have its tare weight and cubic yard capacity permanently and conspicuously displayed on the exterior of the vehicle. The County or its contractor may, from time to time, require revalidation of the tare weight of any vehicle. Each Contract City shall provide the County with information about each private hauler delivering MSW on its behalf to include: name and address, make, body type and motor vehicle registration number of each vehicle used for such purpose. All such haulers shall have and maintain a valid County Solid Waste hauler permit in accordance with Section 15-17 of the Code of Metropolitan Dade County, as amended from time to time.

The County will supply each Contract City with monthly weighing records as may be reasonably required by the Contract City to administer its Waste collection program. Copies of all transaction tickets will be maintained by the County for at least two (2) years. If weighing scales are inoperable or are being tested, the facility operator shall estimate the quantity of MSW delivered using a schedule of estimated Waste material weights in accordance with Section 15-25, Subsections (b) and (d) of the Metropolitan Dade County Code, as amended from time to time. The estimates shall take the place of actual weighing records, when the scales are not operational. The County shall use reasonable efforts to maintain the scales in an operable condition.

ARTICLE 5
SHORT-TERM DISPOSAL

The Contract Cities agree that the County Solid Waste Management System may accept MSW on a Short-Term Disposal basis from private or municipal haulers, so long as the capacity to receive Solid Waste delivered on behalf of any Contract City is not impaired, and provided that such haulers shall pay (a) Short-Term Disposal Fee(s) of at least ten percent (10%) above that charged to Contract Cities. The (a) Short-Term Disposal Fee(s) shall be established by separate administrative order, which shall not become effective until approved by the Board. All Disposal Fee revenues generated pursuant to this Agreement shall be used to pay County Solid Waste Management System costs. This provision shall not inhibit the County from entering into agreements with private haulers for delivery of Waste to County disposal facilities (with the exception of agreements for delivery of Waste collected by (a) private hauler(s) under contract with any municipality that is not a party to this Agreement, which shall be prohibited), the minimum duration of which shall be ten (10) years, provided that the County shall not offer (a) Disposal Fee(s) less than that agreed to herein by the Contract Cities to any private hauler for the term of this Agreement.

ARTICLE 6
RELATIONSHIPS OF THE PARTIES

Nothing in this Agreement shall be deemed to constitute any party a partner, agent or local representative of the other party or to create any type of fiduciary responsibility of any kind whatsoever between the parties. The obligations to this Agreement are not joint; the obligations are separate and several between each of the Contract Cities and County.

ARTICLE 7
HEADINGS

Captions and headings in this Agreement are for ease of reference only and do not constitute a part of this Agreement and shall not affect the meaning or interpretation of any provisions herein.

ARTICLE 8
DURATION OF AGREEMENT

The term of MSW deliveries by each Contract City to the County under this Agreement shall commence with the date of execution and shall remain in effect up to and including October 1, 2015. The Agreement shall be executed and approved by resolution of each Contract City's governing body on or before September 30, 1995, unless a standard letter of intent to enter into this Agreement is received by the County before October 1, 1995, in which case, the Agreement shall be executed and approved by resolution of each Contract City's governing body on or before December 1, 1995, and shall become effective upon execution by the County. A copy of the resolution of approval shall be transmitted to the County Manager within five (5) days following the date of each Contract City's approval.

ARTICLE 9
AGREEMENT GOVERNS; ENTIRE AGREEMENT

This Agreement shall govern and supersede any other Interlocal agreement between the Contract Cities and the County with regard to use of the County Solid Waste Management System. This writing embodies the entire Agreement and understanding between the parties hereto, and there are no other agreements or understandings, oral or written with reference to the subject matter hereof that are not merged herein and superseded hereby.

ARTICLE 10
REPRESENTATIONS OF THE COUNTY

The County represents that (A) this Agreement has been duly authorized, executed and delivered by the Board of County Commissioners as the governing body of the County, and (B) it has the required power and authority to perform this Agreement.

ARTICLE 11
REPRESENTATIONS OF THE CONTRACT CITIES

Each Contract City represents that (A) this Agreement has been duly authorized, executed and delivered by the Governing Body of the Contract City, and (B) it has the required power and authority to perform this Agreement.

ARTICLE 12
APPROVALS AND NOTICES

All notices, consents and other communications required, permitted or otherwise delivered under this Agreement shall be in writing and be delivered either by hand with proof of delivery or mailed by first class United States certified or registered mail, with return receipt requested, postage prepaid, and in any case shall be addressed as provided in Exhibit "B", attached hereto and made part hereof.

Changes in the respective addresses of Contract Cities provided in Exhibit "B" and of County provided on the signature page may be made from time to time by either party by notice to the other party. Notices and consents given by mail in accordance with this section shall be deemed to have been given five (5) business days after the day of dispatch, notices and consents given by any other means shall be deemed to have been given when received.

ARTICLE 13
AMENDMENT TO AGREEMENT

This Agreement may be modified, altered or amended only by a written amendment duly executed by the parties hereto, and approved by the governing body of each party. Any oral representations or modifications concerning this Agreement shall be of no force or effect.

ARTICLE 14
NON-ASSIGNMENT

In no case shall a **Contract City** assign, transfer, convey or otherwise hypothecate any interest, rights, duties, or obligations hereunder, or any part thereof. In the event a **Contract City** attempts to assign, transfer, convey or otherwise hypothecate this **Agreement** or the **Contract City's** rights, duties or obligations hereunder, or any part thereof, the **County** may at its option, terminate this **Agreement** with respect to that **Contract City**.

ARTICLE 15
RIGHTS OF OTHERS

Nothing in this **Agreement**, either express or implied, is intended to confer upon any person other than the parties hereto any rights or remedies under or by reason of this **Agreement**.

ARTICLE 16
WAIVER

There shall be no waiver of any right related to this **Agreement** unless that such waiver is in writing signed by the party waiving such right. No delay or failure to exercise a right under this **Agreement** shall impair such right or shall be construed to be a waiver thereof. Any waiver shall be limited to the particular rights waived and shall not be deemed a waiver of the same right at a later time, or of any other right under this **Agreement**.

ARTICLE 17
FORCE MAJEURE

Neither party hereto shall be liable for its failure to carry out its obligations under this **Agreement** during any period when such party is rendered unable, in whole or in part, by Force Majeure to carry out such obligations, but the obligations of the party relying on such Force Majeure shall be suspended only during the continuance of any inability so caused and for no longer period, and such cause shall, so far as possible, be remedied with all reasonable dispatch.

It is further agreed and stipulated that the right of any party hereto to excuse its failure to perform by reason of Force Majeure shall be conditioned upon such party giving, to the other party, written notice of its assertion that a Force Majeure delay has commenced within five (5) working days after such commencement. If there exists good cause for failure to give such notice, such failure shall not prejudice any party's right to justify any non-performance as caused by Force Majeure, unless the failure to give timely notice causes material prejudice to the other party.

ARTICLE 18
COUNTY EVENT OF DEFAULT

The failure by the **County** to substantially fulfill any of its material obligations in accordance with this **Agreement**, unless excuses are justified by Force Majeure, shall constitute a "**County** event of default". If a **County** event of default should occur, the affected **Contract City(ies)** shall have all of the following rights and remedies which each may exercise singly or in

combination: 1. the right to declare that this Agreement as it applies to the Contract City(ies) together with all rights granted to the County hereunder are terminated, effective upon such date as is designated by the Contract City(ies); 2. any and all other rights provided under federal laws and the laws of the State of Florida. 3. in any event, the County shall maintain responsibility for any debts owed to each Contract City for services provided under the terms of this Agreement. Notwithstanding any other provision of this article, the Contract City(ies) shall not terminate this Agreement for a "County event of default" unless the Contract City(ies) first give(s) the County written notice of intent to terminate specifying the alleged default, and providing the County a period of sixty (60) days from receipt of notice within which to cure such default.

ARTICLE 19
CONTRACT CITY EVENT OF DEFAULT

Without limitation, the failure by a Contract City to substantially fulfill any of its material obligations in accordance with this Agreement, unless excuses are justified by Force Majeure, shall constitute a "Contract City event of default". If a Contract City event of default should occur, the County shall have all of the following rights and remedies which it may exercise singly or in combination: 1. the right to declare that all rights granted to the Contract City hereunder are terminated, effective upon such date as is designated by the County; 2. any and all rights provided under federal laws and the laws of the State of Florida. 3. in any event, the Contract City shall maintain responsibility for any debts owed to the County for services provided under the terms of this Agreement. Notwithstanding any other provision of this article, the County shall not terminate this Agreement for a "City event of default" unless the County first gives the Contract City written notice of intent to terminate specifying the alleged default, and providing the Contract City a period of sixty (60) days from receipt of notice within which to cure such default.

ARTICLE 20
FLORIDA LAW GOVERNS; VENUE IN DADE COUNTY, FLORIDA

This Agreement, regardless of where executed, shall be governed by and construed according to the laws of the State of Florida, and venue shall be in Dade County, Florida.

ARTICLE 21
TERMINATION

This Agreement may be terminated upon mutual consent, in writing, between any Contract City and the County .

ARTICLE 22
COUNTERPARTS

This Agreement may be executed in one or more counterpart(s), each of which shall be deemed an original.

ARTICLE 23
INVALIDITY OF PROVISIONS

Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, and this Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, Metropolitan Dade County, Florida, has caused this Agreement to be executed in its name by the County Manager or his designee, attested by the Clerk of the Board of County Commissioners and has caused the seal of the Board of County Commissioners to be hereto attached; and the Contract Cities named in Exhibit "A", have caused this Agreement to be executed in their names by the Manager of each Contract City or his designee, attested by the Clerk of each Contract City's governing body and has caused the seal of each Contract City's governing body to be hereto attached, all on the day and year first written above.

METROPOLITAN DADE COUNTY,
FLORIDA, BY ITS BOARD OF
COUNTY COMMISSIONERS

Attest:
Harvey Ruvin,
Clerk of the Board

By: _____
County Manager
Metropolitan Dade County Florida
111 N.W. 1st Street, 29th Floor
Miami, FL 33128

By: _____
Deputy Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY BY:
Dade County Attorney's Office
Mr. Henry N. Gillman, Assistant County Attorney
111 N.W. 1st Street, 27th Floor
Miami, FL 33128

Assistant County Attorney

CONTRACT CITY

WITNESS:

Name of Contract City

ATTEST:

By: _____
Contract City Manager

Contract City Clerk
[corporate seal]

_____ day of _____, 199__.

APPROVED AS TO FORM:

Contract City Attorney

EXHIBIT A
Names of Contract Cities

1. Bal Harbour Village
2. Town of Bay Harbor Islands
3. Village of Biscayne Park
4. City of Coral Gables
5. City of Homestead
6. City of Miami
7. City of Miami Beach
8. Village of Miami Shores
9. City of Miami Springs
10. City of North Bay Village
11. City of North Miami
12. City of North Miami Beach
13. City of Opa-Locka
14. City of South Miami
15. Town of Surfside
16. City of Sweetwater
17. City of West Miami
18. Unincorporated Dade County

**EXHIBIT B
CONTRACT CITIES
ADDRESSES**

**1. Mayor
Bal Harbour Village
655-96th Street
Bal Harbour, FL 33154**

**2. Mayor
Town of Bay Harbor Islands
P.O. Box 546667
Bay Harbor Island, FL 33154**

**3. Mayor
Village of Biscayne
640 N.E. 114th Street
Biscayne Park, FL 33108**

**4. Mayor
City of Coral Gables
P.O. Box 141549
Coral Gables, FL 33114**

**5. Mayor
City of Homestead
790 N. Homestead Blvd.
Homestead, FL 33030**

**6. Mayor
City of Miami
3500 Pan American
Miami, FL 33133**

**7. Mayor
City of Miami Beach
1700 Convention Ctr. Dr.
Miami Beach, FL 33139**

**8. Mayor
Village of Miami Shores
10050 N.E. 2nd Avenue
Miami Shores, FL 33138**

**9. Mayor
City of Miami Springs
201 Westward Drive
Miami Springs, FL 33129**

**10. Mayor
City of North Bay Village
7903 East Drive
North Bay Village, FL 33141**

**11. Mayor
City of North Miami
776 N.E. 125th Street
North Miami, FL 33161**

**12. Mayor
City of North Miami
17011 N.E. 19th Avenue
North Miami Beach, FL 33162**

**13. Mayor
City of Opa-Locka
777 Sharazad Blvd.
Opa-Locka, FL 33054**

**14. Mayor
City of South Miami
6130 Sunset Drive
South Miami, FL 33143**

**15. Mayor
Town of Surfside
9293 Harding Avenue
Surfside, FL 33154**

**16. Mayor
City of Sweetwater
500 S.W. 109th Avenue
Sweetwater, FL 33174**

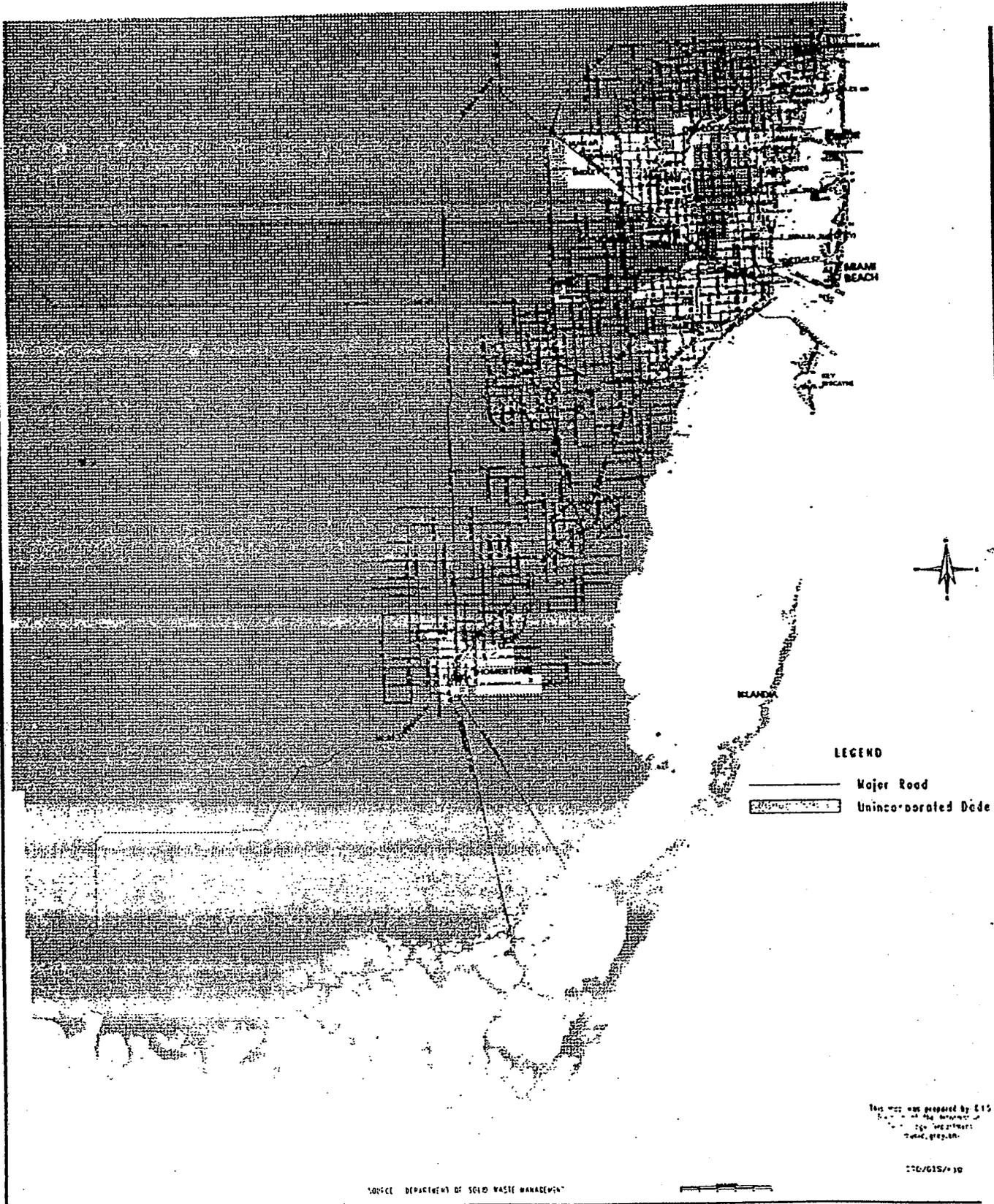
**17. Mayor
City of West Miami
901 S.W. 62nd Avenue
West Miami, FL 33144**

**18. Manager
Dade County
111 N.W. 1st Street
Miami, FL 33128**

EXHIBIT C

Disposal Contracts Executed Prior to July 28, 1995

UNINCORPORATED DADE COUNTY
Exhibit D



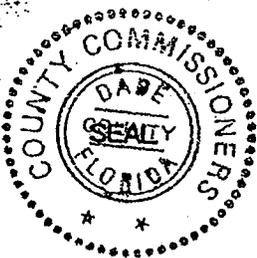
STATE OF FLORIDA)
) SS:
COUNTY OF DADE)

I, HARVEY RUVIN, Clerk of the Circuit Court In and for Dade County, Florida, and Ex-Officio Clerk of the Board of County Commissioners of said County, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of Resolution No. R-711-96, adopted by the said board of County Commissioners at its meeting held on June 18 19 96.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on this 25th day of June, A.D. 19 96.

HARVEY RUVIN, Clerk
Board of County Commissioners
Dade County, Florida

By *Elizabeth J. Hart*
Deputy Clerk



Board of County Commissioners
Dade County, Florida

**SECOND AMENDED AND RESTATED INTERLOCAL AGREEMENT BETWEEN
MIAMI-DADE COUNTY AND CONTRACT CITIES FOR USE OF THE COUNTY
SOLID WASTE MANAGEMENT SYSTEM**

This Interlocal Agreement ("**Agreement**") is made and entered into this ____ day of _____, 20____, by and between Miami-Dade County by and through its Board of County Commissioners ("**County**") and _____ by and through its _____ hereinafter referred to as **Contract City**, to provide for use of the County Solid Waste Management System by the **Contract City** for its municipal solid waste disposal and transfer needs.

BACKGROUND RECITALS

Whereas, the Miami-Dade County Board of **County** Commissioners (the "Board") hereby finds and declares that it is necessary to the health, safety and welfare of the citizens of Miami-Dade County to provide for municipal solid waste disposal and management facilities and services; and

Whereas, the **County** desires to maximize the use of its Resources Recovery facility processes and to extend the life of its landfills; and

Whereas, the **Contract City** desires to use the County Solid Waste Management System for its municipal solid waste disposal needs (and transfer needs, as applicable), at an agreed-upon disposal fee rate (and transfer fee rate as applicable); and

Whereas, the **Contract City** desires to use the County Solid Waste Management System to satisfy Concurrency requirements of the Local Government Comprehensive Planning and Land Development Regulation Act (Chapter 163, Part II, F.S.) only as it applies to disposal capacity for municipal solid waste the **Contract City** collects for disposal and which is committed to the **County** for disposal in the County Solid Waste Management System in accordance with this **Agreement**, and actually disposed of therein; and

Whereas, the **County** and the **Contract City** desire to formalize their relationship regarding municipal solid waste disposal responsibilities consistent with the provisions of Section 403.706, Florida Statutes.

Whereas, the amended agreement as stated herein shall be available to all municipalities.

NOW THEREFORE, in consideration of the foregoing premises, and the mutual considerations contained herein, the parties hereto, intending to be legally bound, do hereby agree as follows:

County Resolution No. R-167-13
Contract City Resolution No. _____

DEFINITIONS

For the purposes of this **Agreement**, the following capitalized words and phrases shall be given the following respective meanings:

Board - the Miami-Dade County Board of County Commissioners.

Change in Law - after the date of execution of this **Agreement**, (a) the adoption, promulgation, issuance, modification, or change in interpretation of any federal, state or local law, regulation, rule, requirement, ruling or ordinance, of the United States or any state or territory thereof, unless (i) such law, regulation, rule, requirement, ruling or ordinance was on or prior to such date duly adopted, promulgated, issued or otherwise officially modified or changed in interpretation, in each case in final form, to become effective without any further action by any governmental entity or official having jurisdiction, (provided, that it shall not constitute a Change in Law if an administrative regulation existed on the date of execution of this **Agreement** in temporary or proposed form and was treated as generally applicable to transactions of the type contemplated hereby), or (ii) compliance with such law, regulation, rule requirement, ruling or ordinance was provided for in the **Agreement**; (b) the issuance of an order and/or judgment of any governmental entity or official having jurisdiction, to the extent such order and/or judgment constitutes a reversal of a prior applicable order and/or judgment, or an overturning of prior administrative policy or judicial precedent; or (c) the suspension, termination, interruption or failure of renewal of any permit, license, consent, authorization or approval essential to the acquisition, design, construction, equipping, start-up, operation, ownership or possession of the County Solid Waste Management System facilities or the facilities sites, to the extent such suspension, termination, interruption or failure of renewal is not caused by any action or inaction of the **County** or its contractors (provided that, for the purposes of determining whether a suspension, termination, interruption or failure of renewal was so caused, any reason or finding set forth in writing by the agency responsible for issuance of such permit, license, consent, authorization or approval shall be accorded the rebuttal presumption of accuracy), provided that no change in tax law, change to the Internal Revenue Code of 1954 effected by the Tax Reform Act of 1986 (to the extent applicable on the date of this **Agreement**), change in foreign law, change in law which adversely affects the **County's** legal rights as a licensee, grantee, owner, or user of any patent or other "know-how" in respect of proprietary technology intended to be utilized by it in performing its obligations under this **Agreement** shall constitute a change in law for any purposes of this **Agreement**.

Concurrency - provision of certain public facilities specified in the State of Florida Local Government Comprehensive Planning and Land Development Regulation Act ("the Act") (specifically, Chapter 163, Part II, Section 163.3180 F.S.) by (a) county (ies), or (a) municipality (ies) or a combination thereof, at a specified level-of-service stated in the Capital Improvements Element of the comprehensive plan for the applicable jurisdiction(s), adopted pursuant to the Act.

County Resolution No. R-167-13
Contract City Resolution No. _____

Contract Cities – a municipal corporation or corporations existing under the laws of the State of Florida, that enter into this **Agreement** with the **County**. For the purpose of this **Agreement**, the unincorporated areas of Miami-Dade County as geographically configured on February 16, 1996 shall be considered a **Contract City**.

County – Miami-Dade County, Florida by and through its Board of County Commissioners.

County Disposal Fee - the fee charged to dispose of municipal solid waste or solid waste at County-owned disposal facilities or facilities operated under contract with the **County** for municipal solid waste or solid waste disposal.

County Solid Waste Management System - The aggregate of those solid waste management facilities owned by or operated under contract with Miami-Dade County, which shall include the North Dade Landfill (21500 NW 47th Avenue), South Dade Landfill (23707 SW 97th Avenue), Resources Recovery Facility (6990 NW 97th Avenue), Waste Management of Florida, Inc. Landfill in the City of Medley, Florida (9350 NW 89th Avenue), Northeast Transfer Station (18701 NE 6th Avenue), Central Transfer Station (1150 NW 20th Street) and West Transfer Station (2900 SW 72nd Avenue), and other such facilities as may be added to or deleted from this listing from time to time, by the County Mayor at his/her sole discretion. Such additions or deletions may be made by use of an attachment hereto without need for formal amendment to this **Agreement**.

Director - the Director of the Public Works and Waste Management Department or his/her designee.

Exclusive Franchise or License - (a) contract(s) between a **Contract City** and a (limited number of) third party contractor(s) for the right and privilege to collect municipal solid waste or solid waste from either residential units or commercial establishments, or both residential units and commercial establishments, within (a) designated service area(s) under the terms of which the contractor(s) pay(s) the **Contract City** a fee.

Fiscal Year - the period beginning October 1 of each year and ending September 30 of the subsequent year.

Force Majeure - an act of God, epidemic, lightning, earthquake, fire, explosion, storm, tornado, hurricane, flood or similar occurrence, strike, and act of a public enemy, or blockade, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, which has had or may reasonably be expected to have a material adverse effect on the rights or obligations under this **Agreement**, which by the exercise of due diligence the party relying thereon as justification for not performing any obligation under this **Agreement** shall not have been able to avoid, and which is not the result of a willful or negligent action or omission of such party.

Municipal Solid Waste (MSW) – all discarded materials or substances, exclusive of source-separated recyclable materials, which the **Contract City** collects for disposal or is collected for it by third parties under contract with the **Contract City** for disposal including, but not limited to, garbage, trash, litter, refuse, rubbish, ashes, incinerator residue, recycling process residue, or other materials allowed by the State Department of Environmental Protection for disposal in a Class I landfill which result from domestic, commercial, industrial, mining, agricultural or governmental activities, but not including sewage or other highly-diluted, water-carried materials or substances, or those in gaseous form. **This definition is not intended to include any waste collected by any entity whose sole relationship with the Contract City is a franchise or license and which entity does not collect any waste on behalf of the Contract City. In addition, this definition is not intended to include waste collected at any city owned facility.**

Non-Exclusive Franchise or License - a regulatory program under which an unlimited number of solid waste haulers are given the right and privilege to collect solid waste from either residential units or commercial establishments, or both residential units and commercial establishments, under the terms of which each hauler pays the **Contract City** a fee.

Short -Term Disposal - delivery of solid waste to the County Solid Waste Management System for disposal without having a minimum ten (10) year waste disposal agreement with the **County**.

Short -Term Disposal Fee(s) - the higher fee(s) paid by private haulers or municipalities for Short-Term disposal of solid waste in the County Solid Waste Management System.

Solid Waste – all discarded materials or substances, exclusive of source-separated recyclable materials, including, but not limited to, garbage, trash, litter, refuse, rubbish, ashes, incinerator residue, recycling process residue, or other materials allowed by the State Department of Environmental Protection for disposal in a Class I landfill which result from domestic, commercial, industrial, mining, agricultural or governmental activities, but not including sewage or other highly-diluted, water-carried materials or substances, or those in gaseous form, which materials or substances are not collected by or on behalf of a **Contract City**.

Source-Separated Recyclable Materials - materials separated from municipal solid waste or solid waste at their source of generation which are set-out for collection at their source of generation. Such materials shall be limited to: clean yard trash, aseptic and gable-top containers, corrugated cardboard, magazines, mixed waste paper, newspapers, telephone books, household batteries, glass containers, plastic containers, steel cans and aluminum cans, and other source-separated recyclable materials as may be approved for addition to this listing from time to time by the County Mayor or his/her designee, which approval shall not

be unreasonably withheld; such additions may be made by use of an attachment hereto without need for formal amendment to this **Agreement**.

Transfer Fee - the fee charged to transfer municipal solid waste or solid waste from County Solid Waste Management System transfer stations to County Solid Waste Management System disposal facilities.

ARTICLE 1

CONSTRUCTION OF INTERLOCAL AGREEMENT

The word "shall" as used in this **Agreement** shall in all cases be construed to be mandatory and to require the action so modified by the word "shall" to be taken without regard to the exercise of discretion.

ARTICLE 2

RESPONSIBILITIES OF THE COUNTY

A. **Provision of Disposal Capacity.** The **County** shall provide MSW disposal capacity (and transfer, as applicable) for the MSW which each **Contract City** collects or is collected for it for disposal and which is committed to the **County** for disposal in the County Solid Waste Management System in accordance with this **Agreement**. The provision of MSW disposal services under this **Agreement** shall comply with all applicable state and federal laws.

B. **Disposal Capacity for Concurrency.** The **County** shall maintain sufficient MSW disposal capacity in the County Solid Waste Management System to comply with Concurrency requirements of the Local Government Comprehensive Planning and Land Development Regulation Act (Chapter 163, Part II, F.S.) only as it applies to MSW disposal capacity for the MSW which the **Contract City** collects or is collected for it for disposal and which is committed to the **County** for disposal in the County Solid Waste Management System in accordance with this **Agreement**, and actually disposed of therein.

C. **Standardization of Agreement.** The terms of this **Agreement** shall be substantially the same for all Contract Cities.

ARTICLE 3

RESPONSIBILITIES OF THE CONTRACT CITY

A. **Delivery of MSW to County.** The **Contract City** shall deliver all the MSW it collects or is collected for it for disposal, to a County Solid Waste Management System facility(ies) at Disposal Fee rates as specified herein. Delivery of MSW by **Contract City** to the Waste Management Inc. of Florida landfill in Medley, Florida shall be permitted for the term of this agreement; provided that, (1) the **County's** agreement with Waste Management Inc. of Florida, dated July 31, 1998, is in effect, (2) the landfill is accepting MSW for disposal, and (3) MSW from (a) **Contract City(ies)** is not needed at the Resources Recovery facility, as determined by the Director, in his/her sole discretion.

The Director may identify particular facilities to which the **Contract City** shall deliver its MSW subject to the following:

- (i) The **Contract City** may deliver its MSW to a **County** transfer facility(ies) if the applicable transfer fee is paid to the **County**.
- (ii) At no time during the term of this **Agreement** shall a **Contract City** be required to deliver MSW to a **County** transfer facility unless the County Disposal Fee is the same at all County Solid Waste Management System facilities.
- (iii) The **Contract City** shall not be directed to deliver its MSW to a disposal facility which is farther from the **Contract City's** boundaries than the closest county-owned disposal facility.
- (iv) The **Contract City** shall not be directed to deliver its MSW to a transfer facility which is farther from the **Contract City's** boundaries than the closest county-owned transfer facility. In no case shall the **Contract City** be required to deliver its MSW to a County Solid Waste Management System facility which is farther than twenty (20) miles from the **Contract City's** nearest boundary in order to take full advantage of it rights under this **Agreement**.
- (v) **Regardless of the operating status of the County's Resources Recovery Facility, the Contract City shall be entitled to dispose of MSW at the Facility and to pay the regular disposal rate that applies to Contract Cities, which shall be the County's lowest rate for MSW disposal, for the term of this Agreement.**

B. Use of Other Facilities Prohibited. The **Contract City** shall not deliver any MSW it collects or is collected for it for disposal to a solid waste disposal or transfer facility other than a County Solid Waste Management System facility for the term of this **Agreement**. The **Contract City** shall not deliver any MSW it collects or is collected for it, to a materials recovery or recycling facility for the term of this **Agreement**.

Notwithstanding the foregoing, in the event that the County approves an operating permit for a solid waste disposal or transfer facility located within Miami-Dade County:

Other than:

- (i) **A facility that is a part of the County Solid Waste Management System;**
- (ii) **A facility that is used exclusively to facilitate the delivery of MSW to County Solid Waste Management System facilities; or**

- (iii) A facility that is subject to a solid waste disposal agreement with the County, which agreement shall not allow acceptance of third party waste either by agreement or regulation;

Then in that case:

the **Contract City** shall have the option to either pursue a permit for operation of a solid waste disposal or transfer facility for all or a portion of its MSW disposal needs or deliver all or a portion of its MSW to the permitted solid waste disposal or transfer facility(ies) that meets the criteria established herein, provided however that any portion of the **Contract City's** MSW that is not so disposed must continue to be delivered to the **County** pursuant to the terms of this **Agreement**.

C. **Hauler Contracts.** The **Contract City** shall include in any MSW collection contracts with Solid Waste haulers, or amendments to such contracts, which it executes, renews or extends after the date of this **Agreement**, a provision that all MSW collected for the **Contract City** shall be delivered to a County Solid Waste Management System facility for disposal. This provision shall apply to exclusive franchise or license agreements with Solid Waste haulers to collect MSW on the **Contract City's** behalf. This provision shall not apply to a non-exclusive franchise or license to haul Solid Waste that is not collected on the **Contract City's** behalf.

D. **Disposal and Transfer Fees.** The **Contract City** shall pay a Disposal Fee (and a Transfer Fee, as applicable) for each ton of MSW delivered to the County Solid Waste Management System for disposal. As of October 1, 2012, the **Contract City** shall pay a Disposal Fee of sixty-three dollars and sixty-five cents (\$63.65) per ton to the **County** for disposal of MSW delivered to County Solid Waste Management System facilities. This Disposal Fee shall be established by separate administrative order, which shall not become effective until approved by the Board. As applicable, as of October 1, 2012 the **Contract City** shall pay a Transfer Fee of twelve dollars and fifty-two cents (\$12.52) per ton to the **County** for transfer of MSW delivered to County Solid Waste Management System transfer facilities. This Transfer Fee shall be established by separate administrative order, which shall not become effective until approved by the Board. The Disposal Fee and Transfer Fee may be increased or decreased for inflation or deflation beginning on October 1, 2013, and on the first day of each Fiscal Year thereafter, relative to increases or decreases in the U.S. Government Consumer Price Index for All Urban Consumers for the Southeast Region of the United States (CPI) for the prior period of July 1 through June 30. Such CPI increases or decreases shall be capped at four percent (4%) per year for the term of this **Agreement**. In the event that the actual CPI increase or decrease exceeds the four percent (4%) cap in a given Fiscal Year, the amount of CPI increase or decrease above or below the four percent (4%) cap shall be applied to CPI increases or decreases in future years when the CPI increase or decrease is less than four percent (4%). The Disposal Fee and Transfer Fee shall not otherwise increase, unless as required by Change in Law, as defined herein, which may occur at any time during the term of this **Agreement**. The **County** shall notify the **Contract**

City of proposed Disposal Fee and Transfer Fee adjustments on the basis of change in law. The disposal fee or Transfer Fee increase based on Change in Law shall fully compensate the **County** for its increased costs. Each **Contract City** shall pay prevailing disposal fees for waste materials for which the **County** charges other than the **County** Disposal Fee for the entire term of this **Agreement**, including, without limitation, tires and asbestos, if provided to the **County** for disposal.

E. **Terms of Payment.** The **County** shall invoice the **Contract City** for Disposal Fees, based on **County** weighing records, by means of First Class U.S. Mail, within five (5) days of the last day of each month, commencing in the first month after the effective date of this **Agreement**, and continuing monthly thereafter for the term of this **Agreement**. In accordance with Section 218.74(2), Florida Statutes, as amended from time to time, payment of Disposal Fees owed to the **County** shall be due from, and payment shall be made by, the **Contract City** forty-five (45) days from the date of receipt of the **County's** monthly invoice.

F. **Dispute on Invoicing.** In the event of a dispute on invoicing, the **Contract City** shall first pay the full amount of the disputed charges when due and shall, within thirty (30) days from the date of receipt of the disputed invoice, give written notice of the disputed invoice to the **County**. The notice of dispute shall identify the disputed invoice, state the amount in dispute and set forth a full statement of grounds on which such dispute is based. The **County** Mayor or his/her designee shall confer with the **Contract City** and the **County** Mayor or his/her designee shall resolve the dispute not later than sixty (60) days after the date upon which the disputed invoice was received. Should the **Contract City** disagree with the determination of the **County** Mayor or his/her designee, it may pursue any remedy at law except withholding payment.

ARTICLE 4

WEIGHING RECORDS

The **County** shall cause all **County** Solid Waste Management System facilities to operate and maintain motor truck scales calibrated to the accuracy required by Florida law and to weigh all vehicles delivering MSW. Each vehicle delivering MSW from the **Contract City**, or its contract hauler, shall have its tare weight and cubic yard capacity permanently and conspicuously displayed on the exterior of the vehicle. The **County** or its contractor may, from time to time, require revalidation of the tare weight of any vehicle. The **Contract City** shall provide the **County** with information about each private hauler delivering MSW on its behalf to include: name and address, make, body type and motor vehicle registration number of each vehicle used for such purpose. All such haulers shall have and maintain a valid **County** solid waste hauler permit in accordance with Section 15-17 of the Code of Miami-Dade County, as amended from time to time.

The **County** will supply the **Contract City** with monthly weighing records as may be reasonably required by the **Contract City** to administer its waste collection program. Copies

of all transaction tickets will be maintained by the **County** for at least two (2) years. If weighing scales are inoperable or are being tested, the facility operator shall estimate the quantity of MSW delivered using a schedule of estimated waste material weights in accordance with Section 15-25, Subsections (b) and (d) of the Miami-Dade County Code, as amended from time to time. The estimates shall take the place of actual weighing records, when the scales are not operational. The **County** shall use reasonable efforts to maintain the scales in an operable and accurate weighing condition.

ARTICLE 5

SHORT-TERM DISPOSAL

The **Contract City** agrees that the County Solid Waste Management System may accept Solid Waste on a Short-Term Disposal basis from private or municipal haulers, so long as the capacity to receive MSW delivered on behalf of the **Contract City** is not impaired, and provided that such haulers shall pay (a) Short-Term Disposal Fee(s) of at least ten percent (10%) above that charged to **Contract Cities**. The (a) Short-Term Disposal Fee(s) shall be established by separate administrative order, which shall not become effective until approved by the Board. All Disposal Fee revenues generated pursuant to this **Agreement** shall be used to pay County Solid Waste Management System costs. This provision shall not inhibit the **County** from entering into agreements with private haulers for delivery of Solid Waste to **County** disposal facilities (with the exception of agreements for delivery of Solid Waste collected by (a) private hauler(s) under contract with any municipality that is not a party to this **Agreement**, which shall be prohibited), the minimum duration of which shall be ten (10) years, provided that the **County** shall not offer (a) Disposal Fee(s) less than that agreed to herein by the **Contract City** to any private hauler for the term of this **Agreement**.

ARTICLE 6

RELATIONSHIPS OF THE PARTIES

Nothing in this **Agreement** shall be deemed to constitute any party a partner, agent or local representative of the other party or to create any type of fiduciary responsibility of any kind whatsoever between the parties. The obligations to this **Agreement** are not joint; the obligations are separate and several between the **Contract City** and **County**.

ARTICLE 7

HEADINGS

Captions and headings in this **Agreement** are for ease of reference only and do not constitute a part of this **Agreement** and shall not affect the meaning or interpretation of any provisions herein.

ARTICLE 8

DURATION OF AGREEMENT

The term of MSW deliveries by the **Contract City** to the **County** under this **Agreement** shall commence with the date of execution and shall remain in effect up to and including October 1, 20___. The **Agreement** shall be executed and approved by resolution of the **Contract City's** governing body and shall become effective upon execution by the **County**. A copy of the resolution of approval shall be transmitted to the County Mayor within five (5) days following the date of each **Contract City's** approval.

ARTICLE 9

AGREEMENT GOVERNS; ENTIRE AGREEMENT

This **Agreement** shall govern and supersede any other Interlocal agreement between the **Contract City** and the **County** with regard to use of the County Solid Waste Management System. This writing embodies the entire **Agreement** and understanding between the parties hereto, and there are no other agreements or understandings, oral or written with reference to the subject matter hereof that are not merged herein and superseded hereby.

ARTICLE 10

REPRESENTATIONS OF THE COUNTY

The **County** represents that (A) this **Agreement** has been duly authorized, executed and delivered by the Board of County Commissioners as the governing body of the **County**, and (B) it has the required power and authority to perform this **Agreement**.

ARTICLE 11

REPRESENTATIONS OF THE CONTRACT CITY

The **Contract City** represents that (A) this **Agreement** has been duly authorized, executed and delivered by the Governing Body of the **Contract City**, and (B) it has the required power and authority to perform this **Agreement**.

ARTICLE 12

APPROVALS AND NOTICES

All notices, consents and other communications required, permitted or otherwise delivered under this **Agreement** shall be in writing and be delivered either by hand with proof of delivery or mailed by first class United States certified or registered mail, with return receipt requested, postage prepaid, and in any case shall be addressed as follows:

To County -
Miami-Dade County
Office of the Mayor
Stephen P. Clark Center
111 NW 1st Street
Miami, Florida 33128

To Contract City -

Changes in the respective addresses above may be made from time to time by either party by notice to the other party. Notices and consents given by mail in accordance with this section shall be deemed to have been given five (5) business days after the day of dispatch, notices and consents given by any other means shall be deemed to have been given when received.

ARTICLE 13

AMENDMENT TO AGREEMENT

This **Agreement** may be modified, altered or amended only by a written amendment duly executed by the parties hereto, and approved by the governing body of each party. Any oral representations or modifications concerning this **Agreement** shall be of no force or effect.

ARTICLE 14

NON-ASSIGNMENT

In no case shall the **Contract City** assign, transfer, convey or otherwise hypothecate any interest, rights, duties, or obligations hereunder, or any part thereof. In the event the **Contract City** attempts to assign, transfer, convey or otherwise hypothecate this **Agreement** or the **Contract City's** rights, duties or obligations hereunder, or any part thereof, the **County** may at its option, terminate this **Agreement** with respect to the **Contract City**.

ARTICLE 15

RIGHTS OF OTHERS

Nothing in this **Agreement**, either express or implied is intended to confer upon any person other than the parties hereto any rights or remedies under or by reason of this **Agreement**.

ARTICLE 16

WAIVER

There shall be no waiver of any right related to this **Agreement** unless that such waiver is in writing signed by the party waiving such right. No delay or failure to exercise a right under this **Agreement** shall impair such right or shall be construed to be a waiver thereof. Any waiver shall be limited to the particular rights waived and shall not be deemed a waiver of the same right at a later time of any other right under this **Agreement**.

ARTICLE 17
FORCE MAJEURE

Neither party hereto shall be liable for its failure to carry out its obligations under this **Agreement** during any period when such party is rendered unable, in whole or in part, by Force Majeure to carry out such obligations, but the obligations of the party relying on such Force Majeure shall be suspended only during the continuance of any inability so caused and for no longer period, and such cause shall, so far as possible, be remedied with all reasonable dispatch. It is further agreed and stipulated that the right of any party hereto to excuse its failure to perform by reason of Force Majeure shall be conditioned upon such party giving, to the other party, written notice of its assertion that a Force Majeure delay has commenced within five (5) working days after such commencement. If there exists good cause for failure to give such notice, such failure shall not prejudice any party's right to justify any non-performance as caused by Force Majeure, unless the failure to give timely notice causes material prejudice to the other party.

ARTICLE 18
COUNTY EVENT OF DEFAULT

The failure by the **County** to substantially fulfill any of its material obligations in accordance with this **Agreement**, unless excuses are justified by Force Majeure, shall constitute a "**County** event of default". If a **County** event of default should occur, the **Contract City** shall have all of the following rights and remedies which each may exercise singly or in combination: 1. the right to declare that this **Agreement**, together with all rights granted to the **County**, hereunder are terminated, effective upon such date as is designated by the **Contract City**; 2. any and all other rights provided under federal laws and the laws of the State of Florida. 3. in any event, the **County** shall maintain responsibility for any debts owed to the **Contract City** for services provided under the terms of this **Agreement**. Notwithstanding any other provision of this article, the **Contract City** shall not terminate this **Agreement** for a "**County** event of default" unless the **Contract City** first give(s) the **County** written notice of intent to terminate specifying the alleged default, and providing the **County** a period of sixty (60) days from receipt of notice within which to cure such default.

ARTICLE 19
CONTRACT CITY EVENT OF DEFAULT

Without limitation, the failure by the **Contract City** to substantially fulfill any of its material obligations in accordance with this **Agreement**, unless excuses are justified by Force Majeure, shall constitute a "**Contract City** event of default". If a **Contract City** event of default should occur, the **County** shall have all of the following rights and remedies which it may exercise singly or in combination: 1. the right to declare that all rights granted to the **Contract City** hereunder are terminated, effective upon such date as is designated by the **County**; 2. any and all rights provided under federal laws and the laws of the State of Florida. 3. in any event, the **Contract City** shall maintain responsibility for any debts owed to the **County** for services provided under the terms of this **Agreement**. Notwithstanding any other provision of this article, the **County** shall not terminate this **Agreement** for a

"City event of default" unless the **County** first gives the **Contract City** written notice of intent to terminate specifying the alleged default, and providing the **Contract City** a period of sixty (60) days from receipt of notice within which to cure such default.

ARTICLE 20

FLORIDA LAW GOVERNS; VENUE IN MIAMI-DADE COUNTY, FLORIDA
This **Agreement**, regardless of where executed, shall be governed by and construed according to the laws of the State of Florida, and venue shall be in Miami-Dade County, Florida.

ARTICLE 21
TERMINATION

This **Agreement** may be terminated upon mutual consent, in writing, between the **Contract City** and the **County**.

ARTICLE 22
COUNTERPARTS

This **Agreement** may be executed in one or more counterpart(s), each of which shall be deemed an original.

ARTICLE 23
INVALIDITY OF PROVISIONS

Should any provision, paragraph, sentence, word or phrase contained in this **Agreement** be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, and this **Agreement** shall remain in full force and effect.

IN WITNESS WHEREOF, Miami-Dade County, Florida, has caused this **Agreement** to be executed in its name by the County Mayor or his/her designee, attested by the Clerk of the Board of County Commissioners and has caused the seal of the Board of County Commissioners to be hereto attached; and the **Contract City** has caused this **Agreement** to be executed in its name by the Manager/Mayor of the **Contract City** or his/her designee, attested by the Clerk of the **Contract City's** governing body and has caused the seal of the **Contract City's** governing body to be hereto attached, all on the day and year first written above.

Attest: HARVEY RUVIN,
Clerk of the Board

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

By: _____
Deputy Clerk

By: _____
County Mayor
Miami-Dade County Florida
111 N.W. 1st Street, 29th Floor
Miami, FL 33128

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY BY:
Miami-Dade County Attorney's Office
111 N.W. 1st Street
Miami, FL 33128

Assistant County Attorney

County Resolution No. R-167-13
Contract City Resolution No. _____

CONTRACT CITY

a Florida Municipal Corporation

ATTEST:

By:

This day of _____, 20__

[corporate seal]

APPROVED AS TO INSURANCE
REQUIREMENTS:

APPROVED AS TO FORM AND
CORRECTNESS:
