

MEMORANDUM

January 27, 2009

TO: Honorable Mayor and City Commissioners

VIA: Anthony G. Otte, City Manager^{AGO}

FROM: Dorothy Pendergrass, Finance Director

SUBJECT: Interlocal agreement for disposal of solid waste between the Polk County BoCC and the City of Lake Wales Franchise Agreement Addendum: Republic Services of Florida L.P. Florida Refuse

SYNOPSIS: Approve an interlocal agreement with Polk County BOCC for 10 year landfill service and receive a discount on "Class 1" disposal fees. Add an addendum to Republic Services of Florida L. P. Florida Refuse contract for the pass-through of the rebate to the City on a monthly basis, the City agrees to pass the rebate on to solid waste customers on a monthly bases, based on actual rebate received in the prior month.

STAFF RECOMMENDATION

It is recommended that the City Commission take the following actions:

1. Approve the Interlocal agreement for the disposal for solid waste between the Polk County Board of County Commissioners (BoCC) and the City of Lakes Wales.
2. Approve the Addendum to Franchise Agreement for Provision of Solid Waste Services: Republic Services of Florida L.P. Florida Refuse.
3. Approve the pass through of solid waste rebates to solid waste customers based on actual rebates received.

BACKGROUND

Concerns about strategic threats from the private sector in terms of competition for solid waste disposal have prompted the Polk County Board of County Commissioners to try to direct as much tonnage as possible in Polk County to go to the North Central Landfill.

This proposal allows the City to receive disposal discounts that could be available immediately. Based on the City of Lake Wales current tonnage, the current discount rate would be 5%, which would result in an estimated annual discount of \$20,000 based on current tonnage.

Per the attached letter, dated January 22, 2006, from Mark Talbot, Florida Refuse has indicated that they would work with the City to pass through the disposal savings in the form of a monthly rebate back to the City. The rebate would be paid within 30 days of the close of each month.

FISCAL IMPACT

With the recommended changes, the city anticipates an annual estimated rebate of \$20,000 at current tonnage levels. Staff recommends passing this solid waste rebate back to the customers charged for solid waste (trash) service through a rebate credit provided on solid waste customer service billings each month based on the actual rebate received for the prior month. Estimated solid waste rebates are anticipated at .32 cents per month ($\$20,000 \text{ rebate} / (5,215 \text{ solid waste customers} \times 12 \text{ months})$).

ATTACHMENT

Interlocal agreement for disposal of solid waste between the Polk County BoCC and the City of Lake Wales

Franchise Agreement Addendum: Republic Services of Florida L.P. Florida Refuse

**INTERLOCAL AGREEMENT FOR DISPOSAL OF SOLID WASTE BETWEEN
POLK COUNTY BOARD OF COUNTY COMMISSIONERS AND CITY OF LAKE WALES,
A MUNICIPAL CORPORATION**

THIS AGREEMENT is made and entered into this _____ day of _____, 2008, by and between Polk County, Florida, a political subdivision of the State of Florida (hereinafter "County"), by its Board of County Commissioners, and the _____, Florida, a municipal corporation of the State of Florida, by and through its City/Town Commission (hereinafter "City/Town"), who agree as follows:

WHEREAS, both the City/Town and the County have the power to regulate the collection and disposal of waste; and

WHEREAS, the City/Town collects or contracts for the disposal of waste collected within its boundaries; and

WHEREAS, the County owns and operates the North Central Landfill (hereinafter "Landfill") to serve the disposal needs of the residents of Polk County, Florida and its Landfill has sufficient capacity to dispose of the City/Town's Solid Waste; and

WHEREAS, the City/Town seeks a long-term method for disposal of the Solid Waste it collects and manages; and

WHEREAS, this Agreement is for the benefit of the general public so that, via cooperative effort, the parties may make the most efficient use of their resources and is authorized by and entered into pursuant to Chapter 163, Florida Statutes, and other applicable law.

NOW THEREFORE, it is agreed by and between the parties hereto that each party agrees to assist the other party pursuant to the following stipulations, provisions, and conditions:

SECTION 1: Purpose and Intent

The purpose of this Interlocal Agreement is to establish a mutually-beneficial relationship between the County and the City/Town for the disposal of all of the City/Town's Eligible Solid Waste and to provide the County with steady usage of its Landfill. Accordingly, the County shall accept all Eligible Solid Waste from the City/Town and the City/Town shall dispose of its Eligible Solid Waste in accordance with this Agreement.

This Interlocal Agreement is intended to bind the City/Town to deliver all Eligible Solid Waste to the Landfill and the County is required to accept such waste. This Agreement shall not apply to waste that the County is prohibited by state and federal law and regulations from accepting, and shall apply to waste that is generated within the City/Town's boundaries which the City/Town collects or has collected on its behalf or to which the City/Town has title but not waste to which the City/Town does not have title in accordance with the City/Town's ordinances in effect on the Effective Date of this Agreement.

SECTION 2: Types of Waste; Definitions

- A. The City/Town may dispose of any type of Eligible Solid Waste as allowed by the County and in accordance with state and federal laws and regulations that govern the County's operation of a sanitary landfill. The final determination as to whether waste is acceptable shall rest solely with the County since it is obligated not to violate the terms of its permits for the Landfill.
- B. Definitions:
1. Board: means the Polk County Board of County Commissioners.
 2. Contracted Disposal Rate(s): refers to the fee(s) to be charged to the City/Town for the disposal of waste where the Disposal Rate is discounted by a specific percentage in accordance with Section 4 and which is indexed for inflation using the Consumer Pricing Index All Urban Consumers, US City/Town Average, All Items as published by the Bureau of Labor Statistics, United States Department of Labor (CPI-U). This may be several rates but the discount will be applied to each rate established by the Rate Resolution adopted by the Board.
 3. Disposal Rate: refers to the rates established in the Rate Resolution, which is adopted by the Board of County Commissioners, and establishes the fees for the general public to dispose of certain types of wastes. May also be referred to as "Gate Rate."
 4. Eligible Solid Waste: refers to wastes deemed acceptable by the County, which are classified as "Class I" by the State of Florida that are collected by the City/Town or on behalf of the City/Town or the waste to which the City/Town has title or can convey title. May also be referred to as eligible waste.
 5. Landfill: shall refer to the North Central Landfill owned by Polk County.
 6. Law: shall refer to laws, statutes, codes, ordinances, regulations and any other form of legislation that regulates the actions of the parties.
 7. Solid Waste: shall refer to the definition utilized by the Florida Department of Environmental Protection; may also be referred to as "waste."

Section 3: Rights and Duties

- A. City/Town shall dispose of all Eligible Solid Waste, as defined in the sole discretion of the County, at the Landfill. In the event the County refuses waste, then the City/Town may seek alternative means to dispose of that waste.
- B. The fee the City/Town shall pay shall be discounted in accordance with the terms of this Interlocal Agreement.

- C. The City/Town shall pay for the cost of disposal within 30 days of the submission of an Invoice by the County.
1. In the event the City/Town disputes the tonnage or fee as represented in an Invoice, City/Town must provide County with written notice disputing the fee or calculation of Eligible Solid Waste within the 30-day period for payment. Failure to notify County within the 30-day period shall act as a waiver of City/Town's right to dispute the calculation of tonnage. If City/Town disputes the amounts due and payable in the Invoice or the tonnage received by County, then it must provide documentation supporting its position within 7 days of delivering the notice of dispute to County. The parties shall work together to resolve the dispute.
 2. In the event of a delinquency or late payment, County shall have the right to collect delinquent amounts, charge interest, refuse to apply the Contracted Disposal Rate and accept waste at the Disposal Rate, and/or refuse to accept Eligible Solid Waste until City/Town's account is brought current.
- D. County shall receive and dispose of all Eligible Solid Waste, as defined solely by the County, at the Landfill. County has the right to refuse to accept certain types of waste in accordance with or to maintain compliance with applicable laws and permits.
- E. In the event of an emergency as determined by the County or to address safety or regulatory concerns, the County may require disposal of waste at an alternate location upon giving reasonable notice. The City/Town will not be entitled to a refund or any associated costs, fees or damages arising from a temporary delay. The County shall immediately attempt to remedy any incidents or situations which cause the County to refuse to accept waste from the City/Town. In the event that the County cannot remedy the situation causing the County to refuse waste within 60 days, then the City/Town may terminate this Agreement.
- F. The County shall provide a written Invoice to the City/Town within 10 days of the end of a calendar month. At a minimum, that Invoice shall note the amount of waste disposed of by the City/Town within the previous calendar month and provide for the total fee to be charged for the disposal. The County's failure to accurately bill shall not be considered a waiver of its right to collect additional fees, nor shall it act to prevent the County from collecting the delinquent amounts.
- G. The County may increase the Contracted Disposal Rate to the Disposal Rate set by Rate Resolution in the event City/Town is more than 30 days late making its payment pursuant to this Agreement. If such event occurs, City/Town shall not be entitled to a refund of the additional funds upon bringing its account current. If City/Town fails to pay its outstanding balance within 90 days from the date of an Invoice, the County may elect to terminate this Agreement upon delivery of written notice.

H. County agrees to receive and dispose all Eligible Solid Waste which is the property of the City/Town at a discount. The parties have projected reasonable increases in Eligible Solid Waste due to increases in population, annexation, and similar events and this Agreement is expected to meet those increases and still benefit both parties. To avoid potential harm to County, City/Town agrees not to take any actions to acquire title to additional Eligible Solid Waste through any means (from a third party, by passage of any ordinance, de facto arrangement, etc.) without the written consent of the County, which may be withheld at the County's discretion. In addition, if, after the Effective Date of this Agreement, City/Town takes action that would increase (as solely defined by the County) its Eligible Solid Waste under this Agreement, then County may elect not to treat such waste as Eligible Solid Waste and may refuse to accept such waste at the Contracted Disposal Rate. The County may require City/Town to modify this Agreement for the disposal of such waste. City/Town, however, may not seek alternative means of disposal until five months after the event which caused the increase in Eligible Solid Waste.

Section 4: Term and Disposal Rates

A. Term & Renewal. The term for this Agreement shall be for ten years; however, Contracted Disposal Rates shall be set for a Five-year rate cycle except as provided in Subsection D of this Section. Upon written consent of both parties, this Agreement may be renewed for one additional 10-year term in accordance with the same terms and conditions of this Agreement.

B. Contracted Disposal Rate.

1. Contracted Disposal Rate shall be charged on a graduated basis in accordance with this Section of this Agreement and Attachment A, which reflects a tiered discount based upon the amount (in tons) of Eligible Solid Waste accepted by County on behalf of City/Town. It is the intent of the parties that such rate remains in effect for an entire five-year rate cycle provided City/Town disposes of a sufficient amount of Eligible Solid Waste in order to continue qualifying for the discount. (See, Attachment A.) Thirty (30) days prior to the beginning of the second five-year rate cycle of this Agreement and each five-year rate cycle thereafter, the parties shall calculate the percentage change in the Consumer Price Index All Urban Consumers, US City/Town Average, All Items as published by the Bureau of Labor Statistics, United States Department of Labor (CPI-U) over the prior five-year period by adding together the CPI-U for each year. The Contracted Disposal Rate shall be calculated by increasing the current Contracted Disposal Rate by a percentage equal to the percentage of change in the CPI-U when each year is added together. Notwithstanding the foregoing, the CPI-U will never adjust less than 2% annually or greater than 4% annually. The second and subsequent five-year Contracted Disposal Rate shall be the lesser of the Contracted Disposal Rate as determined by the CPI-U percentage change and the Disposal Rate in effect at the beginning of the new five-year rate cycle, less the Discount Percentage as listed in Attachment A.

2. The parties agree that the Contracted Disposal Rate to be in effect for the first year of this Agreement shall be \$____ which reflects a __% discount off of the Disposal Rate in effect on the Effective Date of this Agreement.
- C. Accounting at the End of the Year. Once set, the Contracted Discounted Rate shall remain in effect for the entire year and on the Invoice for the final month of a year, the County will provide an accounting showing the amount of tonnage City/Town disposed of during the year. County will determine whether City/Town is still entitled to the Contracted Disposal Rate in accordance with Attachment A. If County determines City/Town is entitled to a refund, then County will reimburse City/Town within 30 days of the Invoice. If City/Town is determined to owe additional funds as a result of receiving a higher discounted rate due to not delivering the anticipated tonnage, then City/Town shall pay the difference within 30 days of the Invoice.
- D. Special Exceptions.
1. An exception shall be made only for the first five-year rate cycle beginning on the Effective Date of this Agreement. The parties agree that after the second year of the first five-year rate cycle, the County may make a one-time increase to the Contracted Disposal Rate. County anticipates increasing the Disposal Rate and may increase the Contracted Disposal Rate by a percentage equivalent to the percentage to which the Disposal Rate was increased but not more than 10%.
 2. The parties specifically agree that the first year under this Agreement shall run from the Effective Date of this Agreement until September 30, 2009. The intent is to coordinate this Agreement with the beginning of a fiscal year for the parties. This definition shall only apply to the period specifically mentioned. Otherwise, a year is to be given its normal meaning of 12 calendar months.

Section 5: Liabilities of Parties; Sovereign Immunity

- A. Nothing herein shall be construed as a waiver of sovereign immunity on the part of either party to this Agreement.
- B. No party hereto or its respective officers or employees shall assume any liability for the acts, omissions, or negligence of the other party or its respective officers or employees. The parties agree to indemnify each other to the extent permitted by law in the event one party is held liable for the actions of the other party including its officers, employees, and agents.

Section 6: Termination

- A. Except as otherwise provided, this Agreement may be terminated in the event that fulfilling the terms of this Agreement shall require a party to violate a law that specifically regulates the collection and disposal of Solid Waste or the

operation of a landfill, then that party may terminate this Agreement by giving written notice. Such termination shall be effective upon the receipt of the written notice if the circumstances require immediate action or upon the passage of a specific date provided in the notice. The parties agree to take all necessary steps to avoid creating a situation that would violate applicable law. Termination of this agreement shall be the last resort and in good faith.

- B. In the event ownership of the Landfill changes, City/Town has the option to terminate this Agreement by giving written notice at least 6 months prior to the effective date of the termination.
- C. In the event City/Town seeks to contract with a third party for the collection of its Eligible Solid Waste, then such agreement must provide that disposal of Eligible Solid Waste be made in a manner consistent with the terms and conditions of this Interlocal Agreement.
- D. The parties may mutually agree in writing to terminate this Agreement.

Section 7: Notice

Any notice or correspondence required under this Agreement shall be provided in writing to the other party at the address recorded herein. This address, or any other contact information contained herein, may be changed at any time by either party with written notification, which shall be provided to the other party. Such changes will become effective upon receipt of the change by the other party. Notices shall be directed to:

Board of County Commissioners
P.O. Box 9005, Drawer
Bartow, FL 33831-9005
ATTENTION: Brooks Stayer
(863) 284-4319

City/Town _____

_____, FL 33801
ATTENTION: _____
() _____

Section 8: Resolution of Disputes; Venue

In the event of a dispute or disagreement with regard to the terms of the Agreement that goes unresolved between the respective parties, each party agrees to bear its own attorney's fees and costs incurred in connection with any and all administrative or judicial proceedings that may occur. Venue for any dispute shall be in the Tenth Judicial Circuit in Polk County, Florida or the Middle District Court, located in Tampa, Florida.

Section 9: Severability

If any term, covenant, or condition of this Agreement or the application thereof to any person or circumstances shall to any extent, be deemed lawfully invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, and condition of this Agreement

shall be valid and enforced to the fullest extent permitted by law. The County and City/Town further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent the entire Agreement from being void should a provision, which is of the essence of the Agreement, be determined void.

Section 10: Modification

This Agreement may not be modified in any way, unless such modification is in the form of a written amendment properly executed by the governing body of each party. In the event that a modification to this Agreement are attempted and both parties subsequently act in accordance with the modification but such modification is not approved or ratified by the governing bodies of the parties, then that failed modification shall be of no legal effect on this Agreement. Neither party may complain as to the other's failure to continue performing this Agreement in accordance with such modification as such failure to continue performance of a failed modification shall not constitute a breach of this Agreement. Furthermore, neither party may seek to enforce such modification.

Neither party may assign their rights or duties under this Agreement without the written consent of the other party.

Section 11: Captions/Headings

The captions or headings in this Agreement are for convenience of reference only and shall not define or limit any the terms or provisions hereof.

Section 12: Interaction with Other Laws

This Agreement shall be applied and interpreted to be consistent with all other applicable laws, codes, and ordinances. Nothing herein shall act as a waiver of any local ordinance or regulation.

If any provision of this Agreement is held to be illegal, invalid or unenforceable, such provision shall be fully severable. This Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement.

Section 13: Effective Date

The Effective Date of this Agreement is to be _____, 2008, which is also the beginning of the Initial Year within the first five-year rate cycle. Realizing this Agreement is to apply retroactively, the parties agree that the Invoicing procedures used by the parties is sufficient under this Agreement and there is no dispute as to the tonnage received or amounts paid prior to the signing of this Agreement.

Section 14: Entire Agreement

Except as noted in this Agreement and Attachments A and B hereto, this Agreement contains the entire agreement between the parties and there are no other terms, conditions, promises, undertakings, statements or representations, either written or oral, express or implied, concerning the arrangement contemplated by this Agreement

IN WITNESS WHEREOF, the parties have set their hands and seal on this _____ day of _____, 2008.

Attest:

POLK COUNTY, FLORIDA

Deputy Clerk

Sam Johnson, Chairman

Date

Approved as to form

County Attorney's Office

Date

Attest:

_____, FLORIDA

Deputy Clerk

Chairman/Mayor

Date

Attachment A

**Municipal Discount Rate Structure
(Based upon 2007-2008 Gate Rate)**

Class I Tons/Yr	Discount Percentage	Gate Rate	Discount Amount	Discount Rate
Over 100,000	20.00%	\$34.50	\$6.90	\$27.60
99,999 50,000-	15.00%	\$34.50	\$5.18	\$29.33
49,999 25,000-	10.00%	\$34.50	\$3.45	\$31.05
24,999 7,500-	5.00%	\$34.50	\$1.73	\$32.78
7,499 2,500-	2.50%	\$34.50	\$0.86	\$33.64
2,499 and Under	1.25%	\$34.50	\$0.43	\$34.07

FRANCHISE AGREEMENT ADDENDUM

The *City of Lake Wales*, a municipal corporation created and existing pursuant to the laws of the State of Florida, its successors and assigns, does hereby amend the franchise agreement granted to *Republic Services of Florida, L.P. Florida Refuse* as described by Ordinance 2008-25 to include this addendum.

Republic Services of Florida L.P. Florida Refuse agrees to pass through all disposal savings in the form of rebates to the City of Lake Wales resulting from discounts offered through inter-local agreements for disposal of solid waste between the Polk County BoCC and the City of Lake Wales. The rebate will be paid within 30 days of the close of each month.

IN WITNESS THEREOF the parties hereto have executed this Addendum to Ordinance 2008-25 on the date below.

THE CITY OF LAKE WALES, FLORIDA:

By: _____
Lee A Wheeler, III, Mayor/Commissioner

Date

ATTEST:

Clara VanBlargan, City Clerk

APPROVED AS TO FORM:

Albert C. Galloway, Jr., City Attorney

REPUBLIC SERVICES OF FLORIDA L.P. FLORIDA REFUSE:

By: _____

Date

ATTEST:

Witness

Witness

(SEAL)