

8. Public Hearing

- 9:15 A.M. e. Approval of an Interlocal Agreement between the City of Sanibel and Lee County for the establishment of a Municipal Solid Waste Disposal Assessment Facilities Assessment Program within the City for a period of 10 years and authorize the Mayor to execute same (this agreement would provide a mechanism to charge customers within an area by establishing a Municipal Service Benefit Unit Program (MSBU) or a Municipal Service Taxing Unit Program (MTSU))

Memorandum

DATE: July 20, 2010

TO: City Council

THROUGH: City Manager Judie Zimomra

FROM: Public Works Director Gates Castle *MBC*

RE: Interlocal Agreement for a Municipal Solid Waste Disposal Facilities Assessment or Taxing Program

RECOMMENDATION: Approve Interlocal Agreement with Lee County regarding establishment of Municipal Solid Waste Disposal Facilities Assessment Program within the City for a ten year period.

The County, as the City's solid waste processor, needs a mechanism to charge customers within the corporate areas. This is done by either establishing a Municipal Service Benefit Unit (M.S.B.U.) program or a Municipal Service Taxing Unit (M.S.T.U.) program. The proposed Interlocal Agreement (copy attached) sets fourth the terms and conditions for establishment of a M.S.B.U. or M.S.T.U. program with the City.

Two important conditions set forth in the proposed agreement are:

1. The City makes the determination of whether to use a M.S.B.U. or M.S.T.U. program.
2. The City enacts ordinances granting consent for the County to levy the special assessments or taxes.

Staff recommends approval of the proposed Interlocal Agreement for a Municipal Solid Waste Disposal Facilities Assessment or Taxing Program for a ten year term.

C: City Attorney Ken Cuyler
Finance Director Sylvia Edwards

**AMENDED AND RESTATED
INTERLOCAL AGREEMENT FOR A
MUNICIPAL SOLID WASTE DISPOSAL FACILITIES
ASSESSMENT PROGRAM**

THIS INTERLOCAL AGREEMENT for a Municipal Solid Waste Disposal Facilities Assessment or Taxing Program is made and entered into this ____ day of _____, 2010 by and between **LEE COUNTY**, a political subdivision of the State of Florida, acting by and through its Board of County Commissioners, the governing body thereof, hereinafter "County", and the **CITY OF SANIBEL**, a municipal corporation of the State of Florida, acting by and through its City Council, the governing body thereof, hereinafter "City", collectively, "the Parties", hereto.

WHEREAS, the Board of County Commissioners is the governing body in and for Lee County, and the City Council is the governing body in and for the City of Sanibel; and,

WHEREAS, on August 8, 2000 the County and the City entered into an Interlocal Agreement for a Municipal Solid Waste Disposal Facilities Assessment or Taxing Program; and,

WHEREAS, the County and the City desire to continue to cooperate with each other in the management of Municipal Solid Waste (MSW) within Lee County and in the continuation of a MSW Disposal Assessment or Taxing Program(s) within Lee County, to include the City's incorporated areas, and wish to enter into an Amended and Restated Interlocal Agreement for such purpose; and,

WHEREAS, pursuant to Chapters 125, 163, and 166, Florida Statutes, the County and the City are duly empowered to enter into an Interlocal Agreement for the development of such an assessment or taxing program;

NOW THEREFORE, in consideration of the foregoing, and of the mutual covenants and conditions hereinafter set forth, the City and the County, intending to be legally bound, hereby agree as follows:

SECTION I **PURPOSE**

It is the purpose and intent of this Agreement to define the terms and conditions for the Parties' administration of a County MSW Assessment Program within the City's incorporated areas, and the other terms and conditions under which the City shall participate in said Program. This Agreement is intended to provide to the County a cooperative mechanism with the City for the levy of a MSW Disposal Facilities Special Assessment within the incorporated areas of the City for payment of certain costs for the disposal of MSW through the County's Solid Waste and Resource Recovery System ("System"), for the term of this Interlocal Agreement. All terms and conditions of this Agreement shall be interpreted in a manner consistent with, and in furtherance of, the purpose as set forth in this Section.

SECTION II **AUTHORITY FOR AGREEMENT**

The City represents to the County that the execution and delivery of this Agreement has been duly authorized by all appropriate actions of the Governing Body of the City, has been executed and delivered by an authorized officer of the City, and constitutes a legal, valid and binding obligation of the City. The County represents to the City that the execution and delivery of this Agreement has been duly authorized by all appropriate actions of the Governing Body of the County, has been executed and delivered by an authorized officer of the County, and constitutes a legal, valid and binding obligation of the County.

SECTION III **DEFINITIONS**

Words or phrases used herein and not otherwise defined, shall have the meanings given thereto in Section 403.703, Florida Statutes. In addition, the following terms shall mean:

- A. "City" shall mean the City of Sanibel, a municipal corporation of the State of Florida, located within Lee County.

- B. "County" shall mean unincorporated Lee County, Florida, a political subdivision and charter county of the State of Florida.

- C. "Governing Body of the City" shall mean the City Council of the City of Sanibel.
- D. "Governing Body of the County" shall mean the Board of County Commissioners of Lee County.
- E. "Municipal Solid Waste" shall mean solid waste as defined at Section 403.703(13), Florida Statutes, as it may be revised from time to time, excluding hazardous waste, recovered materials and horticultural materials.
- F. "Municipal Solid Waste Disposal Assessment or Taxing Program" shall mean the Municipal Service Benefit Unit (M.S.B.U.) or Municipal Service Taxing Unit (M.S.T.U.) created by the County at the election of the City, pursuant to Chapter 125.01, Florida Statutes, with the express cooperation and consent of the City as specifically outlined at Section 125.01(q), Florida Statutes.

SECTION IV **DEVELOPMENT OF THE MSW DISPOSAL SPECIAL ASSESSMENT PROGRAM**

Pursuant to the requirements of Section 125.01(q), Florida Statutes, the Parties shall develop the MSW Disposal Facilities M.S.B.U. (Special Assessment Program) . The Parties hereby recognize that the assessment and taxing program was developed pursuant to a previous Interlocal Agreement between the Parties and that the Assessment and Taxing Program is as follows:

- A. County Responsibilities:

1. The County shall develop, articulate, justify and establish an assessment methodology for a M.S.B.U. based upon an Equivalent Residential Unit ("ERU") concept, generation rate (weight per unit or unit area), for all improved properties within the City and County. The same methodology will be applied for unincorporated Lee County.

The special assessment methodology includes separating improved property into the following categories, based upon the Department of Revenue (D.O.R.) property improvement codes from the Lee County Property Appraiser, and the average solid waste generation for the particular type of property.

- A. Single Family Residential which shall include four (4) or less units in a common structure, or located on a single property.
- B. Multi-family Residential (mobile homes, Apartments, Condominium with five plus (5+) units)
- C. Recreational Vehicle (RV) Parks and or communities
- D. Commercial Businesses with Low Generation Amounts
- E. Commercial Businesses with Low-Medium Generation Amounts
- F. Commercial Businesses with Medium Generation Amounts
- G. Commercial Businesses with Medium-High Generation Amounts

H. Commercial Businesses with High Generation Amounts

2. An average annual solid waste generation amount will be established for each category by an engineering consultant and/or the County, based on solid waste generation data from representative improved properties in Lee County, including residential, multi-family, and commercial/business properties. The average generation amount will be established per dwelling unit for single-family and multi-family residential properties. The average generation amount will be established per occupiable lot for recreational vehicle park properties. The average generation amount will be established per square foot of building area for commercial-improved property which is not residential. All generation estimates will be compared to the average annual generation for a single-family residence to obtain the ERU values for each category.
3. The total number of pounds or tons for each improved property will be established by multiplying the weight value (pounds) for the appropriate category, times the number of units, or total building area (depending on the category), for a specific property. The number of units or building area will be obtained from the Property Appraiser.
4. The annual Disposal Facility Assessment for each improved property will be established by multiplying the total number of tons for that property by the annual assessment amount per ton, as established by the County.
5. Based on the above methodology, the County shall establish the annual assessment per defined developed property.
6. The County, prior to the implementation of Steps 1. to 5. above, shall transmit the proposed Disposal Facilities Assessment or Millage Rate to the City's Manager and, upon request, shall formally present same to the City at

a regular City Council meeting for Council approval, such approval not to be unreasonably withheld by the City

7. The County agrees that to the extent that it may lawfully do so, the Annual Facilities Assessment/Tax shall not exceed \$40.00 per Equivalent Residential Unit (E.R.U.), or ton, for the assessment.
8. The County and the City agree that if the maximum levies as outlined at paragraph 7., above, are exceeded in any given year of this Agreement by the amounts as outlined in paragraph 7., above, except for Force Majeure or Acts of God, then the City shall have the right to either:
 - a). approve any such increase to the levy pursuant to justification(s) by the County, with such approval not to be unreasonably withheld,
 - b) renegotiate the terms of this Interlocal Agreement with respect to the increased levies pursuant to justification(s) by the County, or
 - c) terminate this Interlocal Agreement, upon one hundred twenty (120) days written notification to the County
9. Upon implementation of the MSW Disposal Facilities Special Assessment Program pursuant to this Interlocal Agreement, the County will not levy any County-wide, general ad-valorem tax for MSW disposal or system maintenance, for so long as the MSW Disposal Facilities Assessment or Taxing Program for all incorporated Municipalities in Lee County is being implemented.

B. City Responsibilities:

1. The City, will use its best efforts and negotiate in good faith with the County in the development of the assessment methodology for the M.S.B.U., as described in Section IV A.1. to A.7., above.
2. The City, once the M.S.B.U. methodology has been developed, shall enact

City Ordinances granting the City's express consent to the County to levy the special assessments or taxes under the MSW Disposal Special Assessment or Taxing Program pursuant to this Interlocal Agreement, and pursuant to Section 125.01(1)(q), for the term of the Agreement, as outlined further herein.

3. The City shall assist the County with the identification of those properties to be assessed or taxed under the MSW Special Assessment or Taxing Program, and assist the County with the development of the Program Assessment or Taxing Roll, as it relates to each City.

SECTION V **ADDITIONAL REVENUES**

Any additional or unanticipated revenues obtained by the County as the result of the operation of the MSW "System" at any time during the term of this Interlocal Agreement, shall remain with the System, and shall be applied to reduce expenses of the System. Such additional revenues will be applied to the costs of disposal facilities operations, capital, maintenance, and/or debt service depending on the nature of the additional or unanticipated revenues.

SECTION VI **TERM OF AGREEMENT**

This Agreement shall commence upon its execution by the Parties, and shall terminate on September 30th, 2020 with the option for the Parties to renew this Agreement for one additional five (5) year term, with the conditions for the additional five (5) year term to be negotiated by the Parties prior to any such renewal.

SECTION VII **PRIOR AGREEMENTS**

This Agreement shall supersede any other Agreements between the City and the County relating to MSW disposal to the extent that the terms and provisions of any such other Agreement conflicts with the terms and provisions of this Agreement.

SECTION VIII ASSIGNMENT

No assignment, delegation, transfer, or novation of this Agreement or part hereof, shall be made, unless approved by the City and the County.

SECTION IX NOTICES

Any notices or other documents permitted or required to be delivered pursuant to this Agreement, shall be delivered to the County, at the Office of the County Administrator and to the City, at the Office of the Mayor or City Manager.

SECTION X AMENDMENT

This Agreement may only be amended in writing, duly executed by the City and the County.

SECTION XI CONSTRUCTION AND EFFECT

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. This Agreement shall take effect only upon the approval of, and execution by all Parties hereto.

SECTION XII BOOKS AND RECORDS

It is understood and agreed to by the Parties, that any party shall have reasonable access to the books, records and accounts of the agents, designees or contractors duly contracting with any party for the purpose of fulfilling any of the obligations under this Agreement.

SECTION XIII FILING

This Agreement and any subsequent amendments hereto shall be filed with the Lee County Clerk of the Circuit Court, Minutes Department, and the Clerk of the City of Sanibel, as provided for by Section 163.01(11), Florida Statutes.

SECTION XIV RESERVATION OF RIGHTS

Except as specifically provided for in Section IV, at paragraph 9., of this Interlocal Agreement, nothing in this Agreement shall be deemed or interpreted to prohibit, preclude or otherwise pre-empt the County's rights or ability to take any other lawfully available actions to provide funding for the System.

IN WITNESS WHEREOF, the City and the County have executed this Agreement on the day, month and year first above written.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chair

APPROVED AS TO FORM:

By: _____
Office of County Attorney

ATTEST:

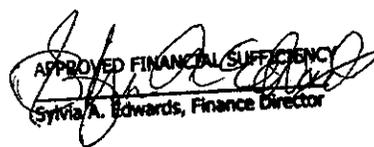
CITY OF SANIBEL

By: _____
City Clerk

By: _____
Mayor

APPROVED AS TO FORM:

By: 
City Attorney


APPROVED FINANCIAL SUFFICIENCY
Sylvia A. Edwards, Finance Director