

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: May 18, 2010 (X) Consent () Regular
() Ordinance () Public Hearing

Department
Submitted By: Environmental Resources Management
Submitted For: Environmental Resources Management

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: Amendment – 1 to the Amended and Restated Interlocal Agreement with the Solid Waste Authority (SWA) of Palm Beach County for the Supply of Fill Material from a portion of the Cypress Creek Natural Area known as the Hatcher Property.

Summary: The County and SWA entered into an Amended and Restated Interlocal Agreement (AR Agreement) on April 7, 2009 (R-2009-0575), whereby the County is to provide approximately 2.2 million cubic yards of Acceptable Fill material from the Hatcher Property to SWA, the cost of such fill material has been prepaid by SWA. The County and SWA (the Parties) have also entered into an Interlocal Agreement for the sale and delivery of fill material from the County’s Winding Waters Project (R-2008-1373) which provides that the County is to supply SWA with approximately 1.4 million cubic yards (2.1 million tons) of fill material. The County’s production of fill material from the Winding Waters Project will exceed the contract quantity and the Parties agree that SWA will accept an excess quantity of fill material as a credit against the Hatcher quantity owed by County to SWA under the AR Agreement. District 1. (SF)

Background and Justification Issues: The SWA contributed \$5.5 million towards the purchase of the Hatcher Property in exchange for the right to harvest and remove up to 2.2 million cubic yards of acceptable fill material for current and future landfill projects. An AR Agreement (R-2009-0575) modified the partnership arrangement between the County and SWA so that the County, and not the SWA, shall be responsible for the excavation and delivery of approximately 2.2 million cubic yards of fill material. In exchange, the SWA shall reimburse the County for all excavation and delivery costs as defined by the AR Agreement.

The County and SWA have also entered into an Interlocal Agreement for the sale and delivery of approximately 1.4 million cubic yards (2.1 million tons) of fill material from the Winding Waters Project (R-2008-1373). The County’s production of fill material from the Winding Waters Project will exceed the contract quantity by an estimated 120,000 cubic yards. The Parties agree that the SWA will accept all of the fill material generated by the Winding Waters Project as a credit against, and shall reduce, the Hatcher quantity obligation of the County to the SWA. Pursuant to the terms of the AR Agreement, the price paid by SWA for the excess Winding Waters fill has been adjusted to reflect the cost of the excavation and delivery from Winding Waters to SWA.

- Attachments:**
1. Amendment – 1 to Amended and Restated Interlocal Agreement

Recommended by: Richard E. Weibely 4/29/10
Department Director Date

Approved by: [Signature] 5/13/10
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	_____	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No X
 Budget Account No.: Fund _____ Department _____ Unit _____ Object _____
 Budget Account No.: Fund _____ Department _____ Unit _____ Object _____

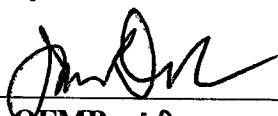
B. Recommended Sources of Funds/Summary of Fiscal Impact
 No fiscal impact at this time – agreement allows for re-location of fill harvest area.

C. Department Fiscal Review: 

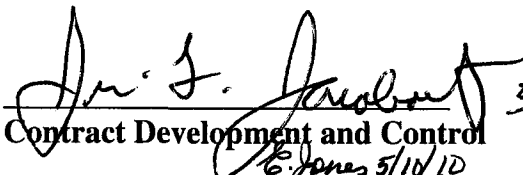
III. REVIEW COMMENTS

A. OFMB Fiscal and /or Contract Dev. and Control Comments:


Fiscal impact not determinable at this time



 OFMB SB 5/14/10
 5/13/10



 Contract Development and Control
 5/10/10
 B. Jones 5/18/10

B. Legal Sufficiency:


 Assistant County Attorney

This amendment complies with our review requirements.

C. Other Department Review:

 Department Director

**AMENDMENT -1
TO
AMENDED AND RESTATED
INTERLOCAL AGREEMENT
BETWEEN
PALM BEACH COUNTY
AND
THE SOLID WASTE AUTHORITY OF PALM BEACH COUNTY
FOR
THE SUPPLY OF FILL MATERIAL FROM HATCHER PROPERTY**

THIS AMENDMENT-1 to the AMENDED AND RESTATED INTERLOCAL AGREEMENT (hereafter "AR Amendment-1") is made and entered into on the _____ day of 2010, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida (the "County") and the SOLID WASTE AUTHORITY OF PALM BEACH COUNTY, a special district created by Chapter 75-473, Laws of Florida, as codified, reenacted and amended by Chapter 2001-331, Laws of Florida, Special Acts of 2001 (the "SWA"), each one constituting a public agency as defined in Part I of Chapter 163, Florida Statutes (hereinafter collectively referred to as the "Parties").

WITNESSETH

WHEREAS, the County and SWA entered into an AMENDED AND RESTATED INTERLOCAL AGREEMENT dated April 7, 2009 (hereafter "AR Agreement") whereby County is to provide approximately 2.2 million cubic yards (cu. yds.) of Acceptable Fill material (the "Hatcher Quantity") to SWA, the cost of such fill material has been prepaid by SWA with \$5,500,000; and

WHEREAS, the cost of excavation and delivery of such fill material is to be determined when the Property is developed in the future; and

WHEREAS, County and SWA have also entered into an Interlocal Agreement for the sale and delivery of fill material from the County's Winding Waters Project ("WW") which provides that County is to supply SWA with approximately 1.4 million cu. yds. or 2.1 million Tons of fill material (the "WW Contract Quantity") delivered to the SWA site; and

WHEREAS, County's production of fill material from the WW development will exceed the WW Contract Quantity and the Parties agree that SWA will accept an excess quantity of fill material over and above the WW Contract Quantity (the "Excess WW Fill") as a credit against the Hatcher Quantity owed by County to SWA under the AR Agreement; and

WHEREAS, the Parties have agreed upon a cost for the excavation and delivery of the Excess WW Fill; and

WHEREAS, the Parties desire to amend the AR Agreement to provide for this modification.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations herein, the Parties agree as follows:

1. The Parties hereto acknowledge and agree that the recitals set forth above are true and correct, and are fully incorporated into this AR Amendment.

2. Terms defined in the AR Agreement shall have the same meaning in this AR Amendment, and references herein to Exhibits are a reference to the Exhibits of the AR Agreement.

3. The AR Agreement is amended and modified in accordance with the provisions set forth herein with respect to the Hatcher Quantity of Acceptable Fill material.

4. County shall deliver and SWA shall accept all of the Acceptable Fill material (as defined in Exhibit "B") of Excess WW Fill at the SWA Designated Fill Site. It is estimated that the excess WW fill will yield approximately 120,000 cu. yds. or 180,000 tons of Acceptable Fill material.

5. The quantities of Excess WW Fill delivered to, and accepted by, SWA shall be a credit against, and shall reduce, the Hatcher Quantity obligation of the County to the SWA.

6. The Parties agree that SWA will pay County \$2.13 per Ton of Acceptable Fill delivered to the SWA Designated Fill Site as the cost for excavation and delivery of the Excess WW Fill.

7. The provisions of Exhibit "B" for determining costs of excavation and delivery of fill or any other related costs shall not apply to the Excess WW Fill. The only cost to SWA for the Excess WW Fill shall be the \$2.13 per Ton and a credit to the County against the Hatcher Quantity for each cu. yd. of Excess WW Fill delivered and accepted by SWA.

8. This Amendment provides no changes or modifications to the AR Agreement other than to provide a credit against the Hatcher Quantity obligation of the County to SWA for the Excess WW Fill delivered to SWA.

9. Nothing in this AR Amendment is to be construed or deemed to trigger the start of, or modify, any time period or commitment under the AR Agreement, nor to modify any requirements, obligations or rights of the Parties other than the credit as set forth herein.

10. In all other respects the AR Agreement remains unchanged and in effect without modification.

11. In the event that any section, paragraph, sentence, clause, or provision hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of

this AR Amendment and the same shall remain in full force and effect.

12. Any costs or expenses (including attorney's fees) associated with the enforcement of the terms and/or conditions of this AR Amendment shall be borne by the respective Parties; provided, however, that this clause pertains only to the Parties to this AR Amendment.

WHEREFORE, the Parties hereto have set their hands and seals on the day set forth next to their signatures.

ATTEST:

Sharon R. Bock, Clerk & Comptroller

BY: _____
Deputy Clerk

DATE: _____


(SEAL)

PALM BEACH COUNTY, a political
subdivision of the State of Florida

BY: _____
Burt Aaronson, Chairperson

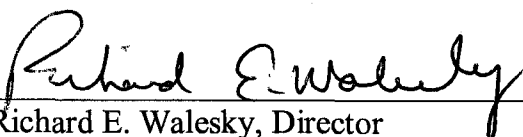
DATE: _____

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

BY: 
Assistant County Attorney

DATE: May 12, 2000

APPROVED AS TO TERMS AND
CONDITIONS:


Richard E. Walesky, Director
Palm Beach County Dept. of
Environmental Resources Management

Witnesses:

SOLID WASTE AUTHORITY OF PALM
BEACH COUNTY

By: _____
Mark Hammond, Executive Director

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

By: _____
Solid Waste Authority, Special Counsel