



**AMENDED AND RESTATED INTERLOCAL AGREEMENT
BETWEEN CHARLOTTE COUNTY AND LEE COUNTY
FOR SOLID WASTE COLLECTION AND DISPOSAL
FROM GASPARILLA ISLAND, FLORIDA, AND GENERAL DISPOSAL OPTIONS**

This Amended and Restated Interlocal Agreement is made and entered into this 2nd day of June, 2020, (the "Effective Date"), by and between Lee County, a political subdivision of the State of Florida, and Charlotte County, also a political subdivision of the State of Florida.

WITNESSETH:

WHEREAS, because Gasparilla Island, Florida, lies partially within Lee County and partially within Charlotte County, the collection and disposal of solid waste, yard waste and recyclable materials collected from the Lee County portion of the Island poses unique issues; and

WHEREAS, Lee and Charlotte Counties have previously recognized the issues associated with the collection and disposal of solid waste, yard waste, and recyclable materials from the Lee County portion of Gasparilla Island by prior resolutions and interlocal agreements; and

WHEREAS Lee and Charlotte Counties find that it is more efficient and cost effective to allow the routine collection, processing, and disposal of municipal solid waste, yard waste, and recyclable materials from the Lee County portion of Gasparilla Island to be conducted in the same manner as the Charlotte County portion of Gasparilla Island; and

WHEREAS, it is the intent of Lee County to allow Charlotte County the receipt of the value for all recycled materials collected by Charlotte County's franchise hauler from the Lee County portion of Gasparilla Island; and

WHEREAS, Lee and Charlotte Counties may find that it is more efficient and cost effective to allow collection, processing and disposal of disaster debris or other excess waste that may be generated on Gasparilla Island from time to time to be managed by Charlotte County, upon mutual agreement by both Counties; and

WHEREAS, Lee and Charlotte Counties, upon mutual agreement of both parties, may also find mutual benefit in diverting municipal solid waste, yard waste, disaster debris, and excess

mm
14

waste generated in Lee County to a Charlotte County solid waste facility during waste-to-energy facility outages or incidents that impact Lee County to an extent that an additional disposal facility is warranted; and

WHEREAS, it is the intent of Charlotte County to accept solid waste at the Charlotte County municipal solid waste facilities from Lee County on the terms and conditions set forth herein; and

WHEREAS, the parties previously entered into an Interlocal Agreement dated June 27, 1990, an Amended Interlocal Agreement dated December 13, 1994, with additional amendments in 1999, 2003, 2007, 2009, and 2015, and now wish to enter into this Amended and Restated Interlocal Agreement; and

WHEREAS, this Amended and Restated Interlocal Agreement is authorized by the provisions of Chapters 125, Section 163.01 (The Florida Interlocal Cooperation Act of 1969), and 403, Florida statutes; Lee County Solid Waste Management Act; Chapter 85- 447, Laws of Florida; Lee County Ordinance 86-14, as amended; and the Charlotte County Code Chapter 4-4, as amended.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, Lee County and Charlotte County hereby agree as follows:

1. Charlotte County shall allow solid waste and yard waste from the Lee County portion of Gasparilla Island to be deposited into designated Charlotte County solid waste disposal facilities, except as otherwise stated herein.

2. In addition, Lee County residents of Gasparilla Island shall be permitted to use Charlotte County's Mini-Transfer & Recycling facilities operated by Charlotte County's Solid Waste Management Division and designed and operated for specific residential materials generated by residential units. Such access shall be under the same conditions and restrictions currently established by Charlotte County for Charlotte County residents, or as may be modified from time to time at the sole discretion of Charlotte County, including (but not limited to) the types of material or

quantities of materials accepted, hours of operation, proof of residency, or other conditions identified by Charlotte County that are necessary to operate its Mini-Transfer & Recycling facilities. Lee County shall seek prior approval for and coordinate with Charlotte County's Solid Waste Management Division concerning any communications or promotional materials disseminated to Lee County's Gasparilla Island residents regarding the use of the Mini-Transfer & Recycling facilities.

3. Charlotte County residents of Gasparilla Island shall have access to Lee County's solid waste events and use of services provided by Lee County's Solid Waste Department, including, but not limited to, community clean up events, household hazardous waste collection events and similar solid waste services offered to residents on Gasparilla Island. Such access shall be under the same conditions and restrictions currently established by Lee County for Lee County residents, or as may be modified from time to time at the sole discretion of Lee County, including (but not limited to) the types of material or quantities of materials accepted, hours of operation, proof of residency, or other conditions identified by Lee County as necessary in the delivery of these solid waste services.

4. Beginning on October 1, 2020, Charlotte County, by and through its solid waste collection franchisee or other means for routine collection on Gasparilla Island, shall have the right and obligation to routinely collect municipal solid waste, recyclable materials, and yard waste from the Lee County portion of Gasparilla Island in the same manner as Charlotte County provides routine solid waste collection services on the Charlotte County portion of Gasparilla Island.

5. Lee County shall pay, each month, directly to Charlotte County, the applicable Charlotte County residential solid waste collection, processing and disposal fees and surcharges for Lee County residents, as those fees and charges may be amended from time to time by Charlotte County, for the collection and processing or disposal of solid waste, yard waste, and recyclable materials from residential property located in the Lee County portion of Gasparilla Island at a Charlotte County facility. Exhibit A, attached hereto and incorporated herein, specifies the applicable collection, processing, and disposal rates, fees and surcharges associated with routine collection

services provided to residential property on Gasparilla Island, which may be amended from time to time. For commercial property on the Lee County portion of Gasparilla Island, Charlotte County's franchise solid waste hauler shall contract directly with commercial customers and customers shall pay the combined collection and disposal fee directly to the franchise solid waste hauler. Charlotte County will send an invoice, on a monthly basis, directly to Charlotte County's franchise solid waste hauler for the disposal fee for the commercial customers. Upon request, Charlotte County will require the franchise solid waste hauler to provide a monthly report to Lee County detailing the amount of commercial solid waste collected from the Lee County portion of Gasparilla Island that was deposited in the Charlotte County landfill. Charlotte County shall provide Lee County updated rates, fees and charges annually by updating Exhibit A and providing notice of the updated Exhibit A in accordance with Section 19 herein by no later than July 1st of each year. The solid waste collection, processing and disposal tipping fees with applicable surcharges shall be paid by Lee County to Charlotte County on a monthly basis, with payment due in accordance with the Prompt Payment Act.

6. Lee County, for its citizens residing in the Lee County portion of Gasparilla Island, shall recognize and adopt the adjustments to the solid waste collection, processing and disposal rates and the level of service as set and adjusted by Charlotte County from time to time without need for amendments to this Amended and Restated Interlocal Agreement.

7. Lee County agrees that Charlotte County shall receive the value for all residential recyclable materials collected by Charlotte County's franchisee from the Lee County portion of Gasparilla Island, whether such recycling program be in the form of a mandatory or a voluntary type of program. (Recyclable materials generated and collected from commercial establishments shall not be controlled by either county per Florida Statute Chapter 403.7046(3).)

8. Disaster Recovery and Debris Management and Other Excess Waste Services for the Lee County portion of Gasparilla Island: In the event of a natural or manmade occurrence that causes disaster debris or other excess waste, Charlotte County agrees to provide Lee County with

supplemental services assistance, which may include collection, delivery to debris management sites, processing, transport, and/or final disposal of disaster debris or other excess waste from the Lee County portion of Gasparilla Island, utilizing Charlotte County's franchisee or contractor(s). If such an event occurs, a supplemental services assistance agreement, on the form provided in attached Exhibit B, may be authorized, completed and executed by the Lee County Manager or designee and the Charlotte County Administrator or designee, and will include specific details regarding collection, transfer, processing, disposal, anticipated schedule, and payment details, as mutually agreed between both parties. The rates and fees charged by Charlotte County to Lee County shall not exceed the Charlotte County franchisee or contractor(s) actual contract rates plus an administrative fee, and such rates shall be included in the supplemental services assistance agreement.

9. General Disposal Options: Beginning on the Effective Date, upon mutual agreement by both Counties, Lee County may request that Charlotte County accept municipal solid waste, yard waste, debris resulting from a disaster, or other excess waste generated anywhere in Lee County, for disposal in the Charlotte County Landfill. If such request is determined by Charlotte County, in its sole discretion, to be operationally feasible, the parties shall mutually agree upon specific terms and conditions for such service, including, but not limited to, the amount and type of waste to be accepted, the applicable time period, the tipping fees to be charged by Charlotte County for waste processed or disposed of at a Charlotte County facility (as amended from time to time and provided in Exhibit A), and the payment terms for the disposal or processing of such waste. If such a request is made by Lee County and approved by Charlotte County, a supplemental services assistance agreement, on the form provided in attached Exhibit B, will be completed and the Lee County Solid Waste Director and the Charlotte County Solid Waste Operations Manager are hereby delegated the authority to execute the supplemental services assistance agreement on behalf of their respective county.

10. Each party hereto agrees to indemnify and hold the other harmless, to the extent allowed under Section 768.29 of the Florida Statutes, from all claims, loss, damage and expense, including attorney fees and costs and attorney fees and costs on appeal, arising from the negligent acts or omissions of the indemnifying party's officers, employees and agents related to its performance under this agreement. This provision does not constitute a waiver of either party's sovereign immunity under Section 768.28 of the Florida Statutes, or extend either party's liability beyond the limits established in Section 768.28 of the Florida Statutes.

11. The initial term of this Agreement shall commence on the Effective Date and shall continue for a period of five (5) years. Thereafter, this Agreement shall automatically renew for successive five (5) year terms unless either County provides written notice to the other County, not less than six (6) months prior to the expiration of any five (5) year term, of the intent not to have this Agreement renew.

12. This Agreement may be terminated by either party, for its convenience, by giving the non-terminating party at least one hundred eighty (180) days' written notice prior to September 30th of any year. This agreement may be amended upon mutual agreement of the parties. Such amendments shall be incorporated into an "Amended and Restated Interlocal Agreement," which Agreement shall be approved by the Boards of both parties.

13. This agreement shall be controlled and interpreted according to the laws, rules and regulations of the state of Florida, Lee and Charlotte Counties. To the extent Lee and Charlotte Counties' laws, rules or regulations have inconsistencies, the laws, rules and regulations of Charlotte County shall control.

14. This agreement, including any incorporated exhibits or amendments, constitutes the entire agreement between the parties and shall supersede and replace any and all prior agreements or understandings, either written or oral, relating to the matters herein.

Lee County Code of Ordinances, Chapter 17 as amended, and Charlotte County Code of Ordinances, Chapters 1-12 and 4-4, as amended, are hereby incorporated by reference into this Interlocal Agreement, in their entirety.

15. This agreement shall become effective upon the signing of the agreement by both counties and with the appropriate filing with the Clerk of each county.

16. The County Attorneys of Lee and Charlotte are hereby authorized and directed, after approval of this Amended and Restated Interlocal Agreement by the respective governing bodies of the County and the District, and the execution thereof by the duly qualified and authorized officers of each of the parties hereto, to cause this Amended and Restated Interlocal Agreement to be filed with the Clerk of the Circuit Court of Charlotte County, Florida, in accordance with the requirements of Section 163.01(11) of the Cooperation Act.

17. Dispute Resolution.

(A) The parties agree to resolve any dispute related to the interpretation or performance of this Amended and Restated Interlocal Agreement in the manner described in this Section 9 prior to filing suit against the other party. Any party may initiate the dispute resolution process by providing written notice to the other party. This Section 18 is intended to provide a dispute resolution process in lieu of the process provided in Chapter 164, Florida Statutes.

(B) After transmittal and receipt of a notice specifying the area or areas of disagreement, the parties agree to meet at reasonable times and places, as mutually agreed upon, to discuss the issues.

(C) If discussions between the parties fail to resolve the dispute within 60 days of the notice described in subsection (A) above, the parties shall appoint a mutually acceptable neutral third party to act as a mediator. If the parties are unable to agree upon a mediator, the County will jointly request appointment of a mediator by the American Arbitration Association. The mediation contemplated by this subsection (C) is intended to be an informal and non-adversarial process with the objective of helping the parties reach a mutually acceptable and voluntary agreement. The

decision-making shall rest solely with the parties. The mediator shall assist the parties in identifying issues, fostering joint problem-solving, and exploring settlement alternatives.

(D) If the parties are unable to reach a mediated settlement within 120 days of the mediator's appointment, any party may terminate the settlement discussions by written notice to the other party. In such event, any party may initiate litigation within 120 days of the notice terminating the settlement discussions. Failure by the party initiating the dispute resolution procedure to commence litigation within the 120 day period shall be deemed to constitute an acceptance of the interpretation or performance of the other party.

(E) In any dispute, each party shall pay the fees, charges and expenses of its own counsel, experts and witnesses.

(F) The terms of this Section 18 shall survive any termination or expiration of this Agreement.

18. The failure of either party to insist upon the other party's compliance with its obligations under this Amended and Restated Interlocal Agreement in any one or more instances shall not operate to release such other party from its duties to comply with such obligations in all other instances.

19. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given on the date such notice is delivered by courier, or emailed with a read receipt notice, or facsimile transmission or three days after the date mailed by registered or certified mail, postage prepaid, to the parties at the following addresses:

Charlotte County: Charlotte County Solid Waste Division
ATTN: Solid Waste Operations Manager
25550 Harbor View Road, Suite 2
Port Charlotte, FL 33980

Lee County: Lee County Solid Waste Department
ATTN: Solid Waste Director
10500 Buckingham Road
Fort Myers, FL 33905

20. If any part of this Amended and Restated Interlocal Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable, such invalid, illegal or unenforceable part shall be deemed severable and the remaining parts of this Amended and Restated Interlocal Agreement shall continue in full force and effect, provided that the rights and obligations of the parties are not materially prejudiced, and the intentions of the parties can continue to be effected. This agreement may be executed in counterparts, with each agreement constituting a binding agreement between Lee County and Charlotte County, upon the acceptance and execution by the respective Board of County Commissioners of each county, as signified below.

- Remainder of Page Intentionally Left Blank -

BOARD OF COUNTY COMMISSIONERS
OF CHARLOTTE COUNTY, FLORIDA

By:

William G. Tripp
William G. Tripp, Chair



ATTEST:

Roger Eaton, Clerk of Circuit
Court and Ex-Officio Clerk to the
Board of County Commissioners

By: Michelle DiBernardino
Deputy Clerk AGR94-262
990760AO

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

Janette S. Knowlton
Janette S. Knowlton, County Attorney
LR 2019-0475

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By:

Brian Hamman
Brian Hamman, Chairman

ATTEST:

Linda Doggett, Clerk of Courts

By: Michelle Butler
Deputy Clerk

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

By:

Richard M. Upchurch
County Attorney

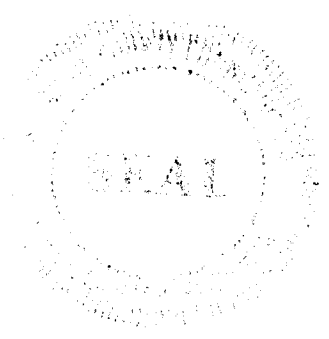


EXHIBIT A
AMENDED AND RESTATED INTERLOCAL AGREEMENT FOR SOLID WASTE COLLECTION AND DISPOSAL
FROM GASPARILLA ISLAND, FLORIDA, AND GENERAL DISPOSAL OPTIONS

Collection Service Rates, Fees, Surcharges for Gasparilla Island

Effective Date: October 1, 2020

[Insert applicable residential rates once available. Will be updated each year.]

General Disposal Service Rates, Fees, Surcharges for use of Charlotte County Disposal Facilities

Effective Date: _____

[Insert applicable tipping fees effective upon signing of the Interlocal Agreement. Will be updated as
tipping fees change.]

EXHIBIT B
AMENDED AND RESTATED INTERLOCAL AGREEMENT FOR SOLID WASTE COLLECTION AND DISPOSAL
FROM GASPARILLA ISLAND, FLORIDA, AND GENERAL DISPOSAL OPTIONS

Supplemental Services Assistance Agreement

In consideration of the matters described in the AMENDED AND RESTATED INTERLOCAL AGREEMENT FOR SOLID WASTE COLLECTION AND DISPOSAL FROM GASPARILLA ISLAND, FLORIDA, AND GENERAL DISPOSAL OPTIONS, and of the mutual benefits and obligations set forth in this this Supplemental Services Assistance Agreement, the receipt and sufficiency of which consideration is hereby acknowledged, Lee County and Charlotte County agree as follows.

1. Description of the need for assistance (e.g. Facility outage; hurricane):

2. Description of specific services to be provided (e.g. collection, transfer, and/or disposal):

3. Description of types (municipal solid waste, yard waste, disaster debris, and/or excess waste) and amounts (cubic yards or tons) of waste(s):

4. Term of this Agreement (anticipated start and end date): _____
5. Compensation description and amount of service rates, fees, charges, and unit of measure:

6. Compensation schedule (anticipated timing of invoices received, and payments received):

Lee County

Charlotte County

By: _____
[County Manager or Designee]

By: _____
[County Administrator or Designee]

John E. Manning
District One

Cecil L. Pendergrass
District Two

Ray Sandelli
District Three

Brian Hamman
District Four

Frank Mann
District Five

Roger Desjarlais
County Manager

Richard Wesch
County Attorney

Donna Marie Collins
County Hearing Examiner

April 1, 2020

Via Electronic and US Post Office Mail

Mr. Hector Flores
County Administrator
Charlotte County
3740 Tamiami Trail
Port Charlotte, FL 33952
bcc.administration@charlottecountyfl.gov

RE: Interlocal Agreements between Lee County and Charlotte County for Gasparilla Island Solid Waste Services

Dear Mr. Flores:

Lee County values the partnership with Charlotte County for solid waste, recycling, and yard waste collection to the residents and businesses from Lee County's portion of Gasparilla Island (Island) through a long-standing Interlocal Agreement. Our partnership has provided a cost-effective approach to solid waste management that benefits the residents of Boca Grande.

Travel time from Lee County to Boca Grande represents a unique situation for the efficient collection and disposal of solid waste for Lee County. In order to provide residents and businesses on the Lee County side of the Island economical, efficient and effective garbage service, Lee County has benefited for over 10 years from Interlocal Agreements with Charlotte County.

We appreciate the most recent negotiation efforts with your Solid Waste Department. We initially met with you and your Solid Waste team on May 21, 2018. For the past two years, Lee County has expressed its interest in drafting a new Amended and Restated Interlocal Agreement with Charlotte County to streamline the administrative efforts associated with collection on the Island. The current Interlocal Agreement with Charlotte County for the collection, processing and disposal of solid waste, recycling, and yard waste for the Lee County portion of Gasparilla Island expires at midnight September 30, 2020.

An Amended and Restated Interlocal Agreement will ensure the continuance of regular solid waste, recycling, and yard waste collection and disposal services for Boca Grande residents and businesses. The cost for the collection and disposal of solid waste is the same as that charged to Charlotte County residents and businesses on Gasparilla Island.

The main items discussed in our negotiations were:

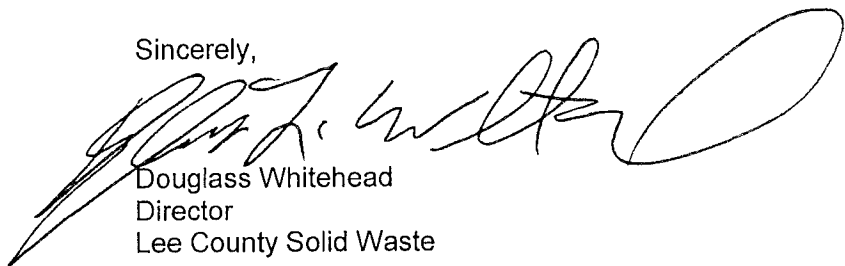
- Continuation of solid waste services to the Lee County portion of Gasparilla Island, with streamlined administrative efforts;
- Disaster recovery and debris management services for the Lee County portion of Gasparilla Island by Charlotte County's franchisee or contractor(s), as mutually agreed upon.

- Disposal of other excess waste generated in Lee County;
- Authorization of the Lee County County Manager or designee and the Charlotte County County Administrator to complete and execute a Supplemental Services Assistance Agreement should the need arise as mutually agreed upon.
- Term of five (5) years with automatic 5-year renewals, unless either County provides written notice of the intent not to have this Agreement renewed.

Although not specified in the current Agreement, Lee County is providing 180 days notice, by means of this letter, that it is Lee County's preference to continue negotiating a new Interlocal Agreement, which I have attached the latest draft copy of the progress made to date in the current negotiations, including a draft Interlocal Agreement with exhibits.

Please feel free to give me a call at 239-533-8917 should you have any questions regarding the above.

Sincerely,



Douglass Whitehead
Director
Lee County Solid Waste

cc: Glen Salyer, Assistant County Manager
Amanda Swindle, Assistant County Attorney
Tracey Lodato, Public Utilities Business Manager
Paul Flores, Public Utilities Operations Manager

Attachments: Draft Base Solid Waste Interlocal Agreement
Exhibit A – Collection Service Rates, Fees, Surcharges, for Gasparilla Island
Exhibit B – General Disposal Options