

Item # 58

Amended Item

ADDITIONAL MATERIAL

10:00 a.m. Regular Meeting

FEBRUARY 27, 2018

SUBMITTED AT THE REQUEST OF

MAYOR BEAM FURR

BROWARD COUNTY
BOARD OF COUNTY COMMISSIONERS



Meeting Date
02/27/18

AGENDA ITEM

Requested Action	(Identify appropriate Action or Motion, Authority or Requirement for Item and identify the outcome and/or purpose of item.)
<p>A. MOTION TO ACCEPT the County Administrator's recommendation not to <u>seek renewal</u> of the June 26, 2012, Agreement Between Sun-Bergeron Solid Waste Disposal Services JV ("Sun-Bergeron") and Broward County for Solid Waste Disposal Services (the "Sun-Bergeron Agreement"); and</p> <p>B. MOTION TO DIRECT the County Administrator to send Participating Communities to the Interlocal Agreement between the County and Participating Communities for Solid Waste Disposal Support Services dated September 1, 2012 (the "ILA") a proposed first amendment to the ILA in substantially the same form as attached, to authorize the Office of the County Attorney to make non-substantive changes to the same, and to authorize the County Administrator to execute the first amendment on behalf of the County with each willing Participating Community.</p> <p>Why Action is Necessary: Board approval is needed to renew or amend agreements.</p> <p>What Action Accomplishes: Identifies and ensures solid waste disposal options for Broward municipalities and the unincorporated portion of the County.</p> <p>Is this Action Commission Goal Related? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	

Summary Explanation/Background	(The first sentence includes the Agency recommendation. Provide an executive summary of the action that gives an overview of the relevant details for the item. Identify how item meets Commission Challenge Goal.)
<p>In June 2012, the County entered into two solid waste disposal services agreements: (a) the Sun-Bergeron Agreement (Exhibit 1) and (b) an agreement between Wheelabrator Environmental Services, Inc. ("Wheelabrator") and the County to provide for the disposal of solid waste generated in Broward County (the "Wheelabrator Agreement") (Exhibit 2) (collectively, the "Solid Waste Disposal Agreements"). The Solid Waste Disposal Agreements require Wheelabrator and Sun-Bergeron to accept waste from Participating Communities (municipalities within Broward County that have entered into interlocal agreements with the County). In August 2012, the County approved a form Interlocal</p>	

Authorized Signature		Scheduling
(Signature confirms that required approvals from other agencies have been received – e.g., Purchasing, Budget, Risk Mgmt., Attorney)		County Admin initials
Signature:	Date:	
	Type: Name, Title, Agency, and Phone	
	Beam Furr Mayor 954-357-7006	
Source of additional information: Type Name, Agency, and Phone		
Bertha Henry, County Administrator, 954-357-7362		

Agreement through which Participating Communities could receive services from Wheelabrator and/or Sun-Bergeron. (See Exhibit 3, example of ILA between the County and the City of Oakland Park). Under the ILA, a Participating Community selected the contractor to handle each type of waste stream, and if choosing Wheelabrator also selected one of three pricing options. The Solid Waste Disposal Agreements both had initial terms of five years ending on July 2, 2018. Under the Wheelabrator Agreement, the County had the unilateral right to renew for an additional five year term through July 2, 2023, with two additional contract renewals requiring mutual agreement. The Sun-Bergeron Agreement, on the other hand, requires mutual consent to renew beyond the initial term. Sixteen municipalities executed the ILA. The ILA's term runs concurrently with the term of the Solid Waste Disposal Agreements.

In May 2015, Wheelabrator and the County amended the Wheelabrator Agreement in a "Global Amendment" that, among other things, modified the County's future right to renew (Exhibit 4). Instead of the second renewal term requiring mutual consent, the Global Amendment grants the County a second unilateral right to renew (starting in July 2023) (the "Second Renewal Term") provided two conditions are met. First, during the first renewal term that commences July 3, 2018, a minimum of 425,000 tons of contracted processable waste must be delivered each year to Wheelabrator pursuant to written contractual commitments in effect for the entire first renewal term (July 3, 2018 to July 2, 2023). Second, there must be binding written commitments for the entire Second Renewal Term from governmental entities within the County whose residents and businesses have annually generated at least 500,000 tons of waste that such entities will deliver all of their contracted processable waste to a specified Wheelabrator facility.

At the Board's April 25, 2017, meeting, the County authorized the County Administrator to extend the Wheelabrator Agreement through July 2, 2023.

Sun-Bergeron is a joint venture between Sun Recycling, LLC ("Sun") and Bergeron Environmental and Recycling, LLC ("Bergeron"). In September 2015, Sun advised the County Administrator that Waste Management Inc. of Florida was in the process of acquiring certain assets of Sun, many of which would impact the Sun-Bergeron Agreement: with Broward County. The asset acquisition subsequently occurred. ~~Since that time, Sun and Bergeron have been embroiled in pending litigation.~~ County staff has attempted to negotiate proposed terms that would enable the County to consider renewing the Sun-Bergeron Agreement. ~~For a variety of reasons, including but not limited to the ongoing litigation,~~ County staff has significant concerns about the continuing viability of Sun-Bergeron to provide these services. Because municipalities throughout the County are attempting to determine their solid waste disposal plans going forward, the County Administrator has recommended that County staff no longer attempt to negotiate a renewal with Sun-Bergeron, and allow the Sun-Bergeron Agreement to expire on July 2, 2018. Part A of this item would formally accept the County Administrator's recommendation not to seek renewal of the Sun-Bergeron Agreement. Importantly, if any municipality believes that Sun-Bergeron remains a viable option, that municipality would have the option to directly contract with Sun-Bergeron.

Part B of this item allows municipalities to formally renew the ILA should they wish to select Wheelabrator as their service provider for the renewal term starting in July 2018. Part B would also direct the County Administrator to send the municipalities a proposed first amendment to the ILA in substantially the form as attached (the "Proposed First Amendment") (Exhibit 5).

The Proposed First Amendment allows each Participating Community to choose Wheelabrator for disposal of specific waste streams (residential and commercial waste, yard waste, bulk waste, and/or

construction and demolition debris) and, to the extent a Participating Community selects Wheelabrator to dispose of its residential and commercial waste, the pricing option for that waste. Under the Proposed First Amendment, each Participating Community commits to disposing of its Residential and Commercial Waste (a/k/a contracted processable waste) with Wheelabrator for the entire first renewal term (July 3, 2018 through July 2, 2023). In addition, the Proposed First Amendment includes a process that, provided enough solid waste tonnage were committed, would enable the County to efficiently exercise its option to renew for the Second Renewal Term (July 3, 2023 through July 2, 2028).

The item also proposes allowing the Office of the County Attorney to make non-substantive changes to the Proposed First Amendment, and authorizes the County Administrator to execute the amendments as same may be modified.

Fiscal Impact/Cost Summary

(Include projected cost, approved budget amount and account number, source of funds, and any future funding requirements.)

There is no fiscal impact to the County.

Exhibits Attached (copies of original agreements)

(Please number exhibits consecutively.)

- Exhibit 1 -June 2012 Agreement Between Sun-Bergeron Solid Waste Services JV and the County for Solid Waste Disposal Services
- Exhibit 2 -June 2012 Agreement Between Wheelabrator Environmental Services Inc. and the County for Solid Waste Disposal Services
- Exhibit 3 -September 1, 2012 Interlocal Agreement between the County and Participating Communities for Solid Waste Disposal Support Services
- Exhibit 4 -May 2015 Global Amendment to the June 2012 Agreement Between Wheelabrator Environmental Services and the County for Solid Waste Disposal Services
- Exhibit 5 -Proposed First Amendment to the 2012 Interlocal Agreement with Participating Communities

Document Control

Commission Action

____ Executed original(s) for permanent record
(Number)

APPROVED DENIED

____ Executed copies return to:
(Number)
Other instructions (Include name, agency, and phone)

DEFERRED

From: _____

To: _____