

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: 3/21/07

Division: Public Works

Bulk Item: Yes ___ No X

Department: Solid Waste Management

Staff Contact Person/Phone #: Carol A. Cobb/
305.292.4432 (x4432)

AGENDA ITEM WORDING: Presentation and discussion of an extraordinary rate adjustment requested by Waste Management for the operation of the three (3) solid waste transfer stations, and the haul-out and disposal of municipal solid waste.

ITEM BACKGROUND: The County entered into a Term Extension Agreement with Waste Management on 10/18/2001. In exchange for a fifteen year contract (refer to page 5, Section 6.01, Term), rates would remain the same for the initial five year period, through fiscal year 2006. Thereafter, increases would be capped at 4% per year (refer to page 3, Section 3.01, Operations and Disposal Fee). The attached letter has been received requesting the County now make up for the years of no rate increase by providing increases for housing allowances to Waste Management employees, and a permanent fuel adjustment, in addition to an annual fuel adjustment.

The annual adjustment has been made for Fiscal Year 2007 at 3.82%, and the current rate per ton is \$75.79.

PREVIOUS RELEVANT BOCC ACTION: 7/20/1990 - approval of the Monroe County Transfer Stations Design and Construction Agreement, and Monroe County Transfer Stations Operations and Maintenance Agreement; 11/9/1993 - approval of Restated Monroe County Transfer Stations Operations and Maintenance Agreement; 10/18/2001 approval of Term Extension Agreement

CONTRACT/AGREEMENT CHANGES: N/A - Presentation and discussion only

STAFF RECOMMENDATIONS: Denial of extraordinary rate increase

TOTAL COST: \$5,040,000.00 (approximately) **BUDGETED:** Yes ___ No X

COST TO COUNTY: \$5,040,000.00 (approximately) **SOURCE OF FUNDS:** RESERVES

REVENUE PRODUCING: Yes ___ No X **AMOUNT PER MONTH** ___ **Year** ___

APPROVED BY: County Atty N/A OMB/Purchasing N/A Risk Management N/A

DOCUMENTATION: Included X Not Required _____

DISPOSITION: _____ **AGENDA ITEM #** _____

IMPACTS OF WASTE MANAGEMENT'S EXTRAORDINARY RATE INCREASE REQUEST

The Waste Management contract allows an annual CPI increase, with a cap of 4%. The rate was increased effective 10/1/06 by 3.82% to \$75.79/ton. At current tonnage levels, the County will pay an additional \$290,473.30 for reduced service (the mulch program has been eliminated).

Waste Management requests consideration of additional increases as follows:

- \$0.80 per ton employee housing allowance

The tonnage transferred for fiscal year 2006 is 104,112.30. At \$73.00 per ton, the County paid \$7,600,197.90. \$0.80 per ton would increase County expenditures by an approximate \$83,289.84.

The requested \$6000.00 per year, per employee allowance, or \$72,000.00 per year total, leaves Waste Management with an additional \$11,289.84 profit. This profit would increase as tonnage transferred increases. **Proof of payment to employees of this benefit must be required.**

We do not currently provide any other vendor with employee housing allowances.
- \$3.60 per ton permanent fuel adjustment

This would increase County expenditures by an approximate \$374,804.28.

There is no sound basis for the fuel adjustment (see e-mail response from John Albert), as fluctuations in gas prices are already a major component of CPI calculations; and, as such, greatly responsible for the increase in that index.
- Annual fuel surcharge

An annual adjustment in the per ton rate based on the attached chart supplied by Waste Management. No immediate impact.

Annual fuel price fluctuations are already considered in CPI calculations.
- Additional 6% extraordinary rate adjustment

Total approximate rate adjustment impact the first year of \$458,094.12 and a new per ton rate of \$80.34. Waste Management will receive \$8,364,382.18 if tonnage does not increase.

Brings the Fiscal Year 2007 rate increase to 9.82%, almost twice the contract allowance.

The approximate impact for the remaining ten years of the contract is \$5,000,000.00.

Prior to approval of this request, a third party audit should be performed to determine the necessity of such an increase.

The current tipping fee is \$92.00 per ton. The increased rate will leave only 13% of the revenue stream for operating expenses, and is not sufficient to support the budget and allow for required fund reserves. An increase in the tipping fee of 10% is recommended should the Board approve the rate adjustment to Waste Management.

A 10% increase would result in a tipping fee of \$101.00 (rounded to the nearest dollar).

The residential Solid Waste Assessment would increase to \$305.00 per dwelling unit. This is an increase of \$13.00 per year.

By law, residents must be advised of any increase in the Solid Waste Assessment. It will cost the County approximately \$40,000.00 to provide first class notices, and the required newspaper ads.

Fuel Adjustment.

Further, SWA shall, on an annual basis, adjust the applicable rate charged to reflect any change in the cost of diesel fuel as determined by reference to the Energy Information Administration of the US Department of Energy ("EIA/DOE") website that reports average prices of diesel fuel for the "Lower Atlantic" United States on a weekly basis. The link is as follows: <http://tonto.eia.doe.gov/oog/info/wohdp/diesel.asp> . After determining the price of diesel fuel from the aforesaid website ("EIA/DOE fuel cost") and computing an average from the month of _____ through the month of _____, the corresponding fuel cost modifier will be calculated pursuant to the following table:

Fuel Surcharge Table

TABLE FOR FUEL SURCHARGE CALCULATION							
Average Price/ Gallon			Percent of Surcharge	Average Price/ Gallon			Percent of Surcharge
\$ 1.448	to	\$ 1.538	-10.0%	\$ 2.858	to	\$ 2.957	3.0%
\$ 1.539	to	\$ 1.629	-9.0%	\$ 2.958	to	\$ 3.057	4.0%
\$ 1.630	to	\$ 1.720	-8.0%	\$ 3.058	to	\$ 3.157	5.0%
\$ 1.721	to	\$ 1.811	-7.0%	\$ 3.158	to	\$ 3.257	6.0%
\$ 1.812	to	\$ 1.902	-6.0%	\$ 3.258	to	\$ 3.357	7.0%
\$ 1.903	to	\$ 1.993	-5.0%	\$ 3.358	to	\$ 3.457	8.0%
\$ 1.994	to	\$ 2.084	-4.0%	\$ 3.458	to	\$ 3.557	9.0%
\$ 2.085	to	\$ 2.175	-3.0%	\$ 3.558	to	\$ 3.657	10.0%
\$ 2.176	to	\$ 2.266	-2.0%	\$ 3.658	to	\$ 3.757	11.0%
\$ 2.267	to	\$ 2.357	-1.0%	\$ 3.758	to	\$ 3.857	12.0%
\$ 2.358	to	\$ 2.457	0.0%	\$ 3.858	to	\$ 3.957	13.0%
\$ 2.458	to	\$ 2.557	0.0%	\$ 3.958	to	\$ 4.057	14.0%
\$ 2.558	to	\$ 2.657	0.0%	\$ 4.058	to	\$ 4.157	15.0%
\$ 2.658	to	\$ 2.757	1.0%	\$ 4.158	to	\$ 4.257	16.0%
\$ 2.758	to	\$ 2.857	2.0%	\$ 4.258	to	\$ 4.357	17.0%

<http://tonto.eia.doe.gov/oog/info/wohdp/diesel.asp>
 Weekly Retail On-Highway Diesel Prices
 Lower Atlantic - 1/8/07



RECEIVED

JAN 10 2007

COUNTY ADMINISTRATOR

JOHN ALBERT
GOVERNMENT AFFAIRS

WASTE MANAGEMENT
2700 NW 48TH STREET
POMPANO BEACH, FL 33073
954.984.2067
954.984.2058 FAX

cc: Dent
Sent mtg.
- staff -
What is total
cost of requested
increased?
(resident) comment rate
increase?
JW

January 8, 2007

Mr. John Willi
County Administrator
Monroe County
1100 Simonton St.
Key west FL 33040

Dear Mr. Willi:

Waste Management is requesting an increase in the haul-out rate for solid waste for Monroe County in addition to the CPI which the agreement allows.

Waste Management is seeking an additional \$0.80 per ton to allow the company to give its employees a monthly housing allowance of \$500.00 There are 12 employees that this would affect. As everyone knows, the cost of living has risen tremendously in the last six (6) years. The increase in housing cost has been especially dramatic and has made it difficult to attract new employees. In addition to this, the recent rise in insurance rates has made it difficult for existing employees to stay in Monroe County. To provide the level of service that the County is accustomed to receiving, we feel this is a step that can be taken to help the burden that is affecting the residents of the County.

In addition to the above increase, we are also asking for an additional increase of \$3.60 per ton as a fuel adjustment. Waste Management has had only one rate increase in the last six years. We all know what fuel has done in that time period. The increase in petroleum price has not only affected the price of fuel but also tires and lubricants.

If Monroe County would approve this rate adjustment, the new rate would still be less than if they had received a CPI for the past 6 years. If the rate had been subject to a CPI the past six (6) years, the rate would be \$85.16 as of October 1, 2007 at 2.42% (average of last 5 years CPI). The new rate would be \$82.02 or \$3.14 less per ton.

We would also suggest that we add a clause to this agreement which would be a fuel surcharge clause. This would mean if the price of fuel went up a certain amount, Waste Management would get an increase, if the price went down a certain amount, the rate would be lowered.

Mr. Tom Willis
Page -2 -
1/8/07

The Company would supply sample language that we have used in other similar agreement for the County to look at.

The County presently has approximately 93,000 tons of waste a year that is haul out under this agreement.

We appreciate the business we have with Monroe County and value our relationship with the County. Waste Management has been a good corporate city during the time we have been doing business with Monroe County. We have donated to local charities, provided neighborhood cleanups and have given very favorable disposal rates for storm debris.

We ask that the County look favorably on this request.

Sincerely,


John M. Albert
Government Affairs Manager

JA/

Cobb-Carol

From: Albert, John [jalbert@wm.com]
Sent: Thursday, February 22, 2007 2:13 PM
To: Cobb-Carol
Subject: RE: Fuel adjustment

Carol, Sorry I took so long getting back to you I just started back after the surgery. We figured the average round trip for the three stations is 300 miles. These trucks get about 4 miles per gal. This calculates to 75 gal. per trip. We used \$1.00 per gal. for the amount fuel has increased. At times it was more but it hasn't dropped below that. This is \$75.00 for each average load. Each truck can carry 20 tons. The \$75.00 divided by 20 tons is \$3.75. I reduced it to \$3.60.

-----Original Message-----

From: Cobb-Carol [mailto:Cobb-Carol@MonroeCounty-FL.Gov]
Sent: Thursday, January 25, 2007 9:48 AM
To: Albert, John
Cc: Pierce-Dent
Subject:

Please provide us with a copy of the calculations used to arrive at the \$3.60 per ton figure used for the permanent fuel adjustment.

Carol A. Cobb, CPM, Sr. Administrator
Solid Waste Management
1100 Simonton Street, Room 2-231
Key West, FL 33040
Phone: 305 292-4432
Fax : 305 292-4555
e-mail: cobb-carol@monroecounty-fl.gov

2/26/2007

TERM EXTENSION AGREEMENT
Waste Management, Inc. of Florida

THIS EXTENSION AGREEMENT by and between Monroe County, a political subdivision of the State of Florida, hereafter County, and Waste Management, Inc. of Florida, hereafter Operator, is effective as of October 1, 2001.

WHEREAS, on October 1, 1993, the parties entered into an agreement (the original agreement) for the delivery of waste to Facilities located in the County and the transportation of that waste to out-of-County disposal sites by the Operator;

WHEREAS, the parties have determined that it is to their mutual benefit and interest that the initial term of the original agreement be extended for an additional ten years, that the put or pay provision of the original agreement be eliminated, and that the Operator assume responsibility for the Facilities and certain equipment in exchange for various payments to the County; now, therefore

IN CONSIDERATION of the mutual promises and covenants set forth below, the parties agree as follows:

1. Sec. 2.04 of the original agreement is modified to read as follows:

Sec. 2.04 Facility Services, Maintenance, Etc.

(a) Safety of Persons and Property.

At all times the Operator in conjunction with the County shall establish and maintain safety procedures for the Facility in a manner consistent with applicable law and good safety practice.

(b) Facility Lease, Repair and Maintenance.

The County agrees to lease the Facility to the Operator during the term of the original agreement as extended by this extension agreement. The Operator shall be responsible for all Facility repair and maintenance and any necessary Facility upgrades that may be needed for the Operator to perform its duties and obligations under the original agreement and this extension agreement. The responsibility for repair and

maintenance means that the Operator, at its expense, must: (i) keep the Facility in good repair and maintenance and keep on hand an adequate supply of any and all spare and replacement parts to assure that the Facility will be operated in accordance with the original agreement and this extension agreement; (ii) promptly repair any serious damage to the Facility without regard to cause; and (iii) perform the County's reasonable requests regarding special housekeeping efforts in and around the Facilities and Facilities' sites. At all times the Operator must: (i) operate the Facility in compliance with all applicable federal, state and local laws, rules, regulations, and permits; (ii) promptly notify the County if the Facility should be seriously damaged, without regard to cause.

(c) Equipment, Purchase, Repair and Maintenance.

The parties acknowledge and agree that the equipment listed in Exhibit A of this extension agreement is dedicated to the performance of the services described in the original agreement and this extension agreement. Exhibit A is attached to, and made a part of, this extension agreement. The County agrees to transfer ownership of, and title to, the equipment listed in Exhibit A to the Operator and the Operator agrees to accept ownership, and title to, such equipment. The Operator must utilize the Exhibit A equipment, or similar equipment, in the performance of the services required of the Operator by the original agreement and this extension agreement. The Operator, at its expense, is responsible for the purchase or lease of any replacement equipment or additional equipment necessary for the Operator to perform the services required by the original agreement and this extension agreement.

(d) Facility Equipment Warranties.

The Operator shall use such means as it deems reasonable to pursue recovery against equipment or services for the Facility which are defective. Provided, however, if the County or replacement operator should be the operator then any recovery shall be payable to the County.

(e) The County shall receive prompt notice of any permit violation or the receipt, by the Operator, of any warning notice or notice of violation from any regulatory agency which relates to the Facilities or the mainland Disposal Site. Copies of reports required by any regulatory agency shall be furnished to the County.

2. Sec. 3.01 of the original agreement is modified to read as follows:

Sec. 3.01. Operations and Disposal Fee.

Effective October 1, 2001, the County shall pay to the Operator an operations and disposal fee of \$73 per ton of waste delivered to the Facility. The \$73 per ton fee will remain in effect through September 30, 2006. On October 1, 2006, and each October 1 thereafter throughout the remaining term(s) of the original agreement as modified by this extension agreement, the operations and disposal fee shall be adjusted based on the Refuse Rate Index depicted in Exhibit B of the original agreement, or the consumer price index (CPI), US City Average - All Department of Labor, Department of Labor Statistics, whichever is lower. However, in no event may a yearly per ton increase in the operations and disposal fee be greater than 4% of the prior year's per ton fee. The County shall calculate the adjustment of the Operations and Disposal Fee and notify the Operator of the change prior to October 1 of 2006 and each year prior to October 1 thereafter. The Operator shall have the right to review and agree to the calculation of the adjustment. The Operator shall be responsible for the operation and maintenance of the Facility during the term of this agreement including all labor, material, equipment and all other costs of operation and maintenance as may be required to assure that the Facility is accepting and Processing Acceptable Waste as required by the Operating Plan and by the original and extension agreements and in compliance with all applicable federal, state and local law, and rules. Any fee paid the Operator pursuant to the original agreement and this extension agreement may only be made from service charges, special assessments or non ad valorem assessments. In no event shall the fee be payable from revenue collected from ad valorem taxation. The Operator must provide disposal capacity for tonnage delivered to the Facility at an Operator owned disposal site located on

mainland Florida that is in compliance with all applicable federal, state, and local laws and regulations during the term of the original Agreement as extended by this extension agreement. If necessary to comply with the foregoing, the Operator shall reserve disposal capacity for the County at one of its mainland Florida disposal sites for the entire term of this agreement.

3. Sec. 3.02 of the original Agreement is modified to read as follows:

Sec. 3.02. Fixed Capital.

Cost Component Fee, Facility Payment Fee, and Equipment Payment Fees.

The County shall pay to the Operator a fixed capital cost component fee of \$21,599.27 each month as set forth in Schedule D of the original Agreement through September, 2001. Beginning October, 2001, the County shall no longer be obligated to the Operator for the payment of the capital cost component fee. The County shall, as of October 1, 2001 owe the Operator the sum of \$1,117,270.15 (the sum of payments number 97 through 156 of Schedule D of the original Agreement), hereafter capital cost component fee balance.

On October 1, 2001, and on every October 1 thereafter, in consideration of and payment for the lease of the Facility, the Operator shall credit the County with a \$50,000 reduction of the capital cost component fee balance. If this Agreement as extended by this extension agreement continues through September 30, 2021, then the Operator shall forgive any remaining capital cost component fee balance. If this agreement as extended by this extension agreement is not renewed in 2016, then the County shall pay the Operator the amount of the capital cost component fee balance outstanding as of September 30, 2016. A schedule of the \$50,000 annual credits and outstanding capital cost component fee balances is attached as Exhibit B of this extension agreement and made a part of it. The Operator also agrees to pay the County by November 15, 2001, for the equipment listed in Exhibit A of this extension agreement at the price listed in Exhibit A. At the time of payment the County will transfer title or other appropriate documents to all the Exhibit A equipment to the Operator.

4. Sec. 3.04 of the original agreement is modified to read as follows:

Sec. 3.04. Royalty Payments.

If during the course of a fiscal year (October 1 through September 30), an excess of 67,000 tons is delivered to the Facility, then the Operator shall pay the County a royalty fee of \$3 per ton for each ton in excess of 67,000 tons until the end of the fiscal year.

5. Sec. 6.01 of the original Agreement is hereby modified to read as follows:

Sec. 6.01 Term.

Unless sooner terminated in accordance with the terms hereof, this Agreement as extended by this extension agreement shall commence on October 1, 1993 and continue until September 30, 2016. Either party may request renewal of this Agreement for one additional period of five years on the terms and conditions set forth herein unless either party shall give notice of non-renewal to the other no sooner than 180 days, and no later than 90 days, prior to September 30, 2016.

6. The original Agreement is hereby modified by the addition of the following:

Sec. 6:23 Miscellaneous.

- a) The Operator agrees to remove, at its expense, the incinerators and old scales located at the Facilities when directed to do so by the County. The removal of the incinerators and scales does not involve the removal of soil or material other than the incinerators and scales themselves.
- b) The Operator will, at the direction of the County and, within 120 days after notification by the County that the incinerator at the Key Largo Facility has been removed and, if needed, the soil decontaminated, terminate its Magnolia Street, Key Largo lease and move its recycling operation to the Key Largo Facility site to an area designated by the County that is sufficient in size to accommodate the recycling operation.

7. Except as provided in this extension agreement, in all other respects the terms and conditions of the original Agreement remain in full force and effect.

8. This extension agreement may not be construed as a County waiver of any breach of the terms of the original agreement by the Operator, or as a County waiver of any fraudulent act(s) committed by the Operator, that occurred prior to the effective date of this extension agreement. Further, this extension agreement does not operate to estop or prevent the County from terminating the original agreement and this extension agreement for any breach of the terms of the original agreement by the Operator, or fraudulent act(s) committed by the Operator. that occurred prior to the effective date of this extension agreement, or from seeking damages on account of any such breach or fraudulent act(s).



IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and date above written.

WITNESSED BY: DANNY L. KOLHAGE, CLERK
By Jamely Hancock
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA
By George R. Neugart
Mayor/Chairperson

(SEAL)
ATTEST:

By John M. Albert
Title Mgr. of Government Affairs
jdconwasteman

WASTE MANAGEMENT, INC. OF FLORIDA

By [Signature]
Title DIV. VICE PRESIDENT



APPROVED AS TO FORM
AND LEGAL SUFFICIENCY.
BY [Signature]
ROBERT N. WOLFE
DATE 10-17-01