

WALK ON #2

1. REQUESTED MOTION:

ACTION REQUESTED: Approve and authorize the Chairman to sign a disposal agreement with Waste Management of Florida, Inc. for the disposal of construction/demolition debris resulting from hurricane Charley.

WHY ACTION IS NECESSARY: Value of Agreement will exceed \$50,000.

WHAT ACTION ACCOMPLISHES: Provides a disposal site for construction debris. Also provides an alternative for Class I material at Class I disposal facilities owned by WMI

2. DEPARTMENTAL CATEGORY: SOLID WASTE
 COMMISSION DISTRICT #: CW

3. MEETING DATE: 08-31-2004

4. AGENDA:

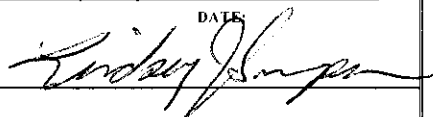
- CONSENT
 - ADMINISTRATIVE
 - APPEALS
 - PUBLIC
 - WALK ON
- TIME REQUIRED:

5. REQUIREMENT/PURPOSE:

- (Specify)
- STATUTE
 - ORDINANCE
 - ADMIN. CODE
 - OTHER

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER:
- B. DEPARTMENT: Lee County-Public Works
- C. DIVISION/SECTION: Solid Waste Division
- BY: Lindsey Sampson, Solid Waste Director

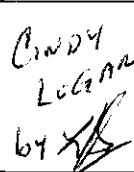
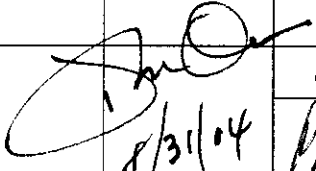
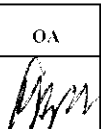
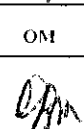
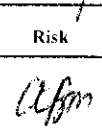
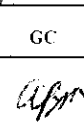
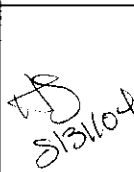
DATE: 

7. BACKGROUND:

Waste Management, Inc. owns and operates the Gulf Coast Landfill in Lee County. WMI is offering a competitive disposal rate to the County for the C&D material resulting from Hurricane Charley. The Agreement has conditions related to insurance and indemnification to which the County Attorney's office has no objection, *AS REVISED.*

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL


A DEPARTMENT DIRECTOR	B PURCH. OR CONTRACTS	C HUMAN RESOURCES	D OTHER	E COUNTY ATTORNEY	F BUDGET SERVICES				G COUNTY MANAGER
					OA	OM	Risk	GC	
	CINDY LOGAN by 	NA		 8/31/04					 8/31/04

10. COMMISSION ACTION:


- APPROVED
- DENIED
- DEFERRED
- OTHER

8/31/04
 CO. ATTY.

8:45am
 CO. ATTY.

8:45am
 RECEIVED BY
 COUNTY ADMIN. 

8/31/04
 8:45am

8/31/04
 COUNTY ADMIN.
 FORWARDED TO: 

8/31/04
 9am



Lee County
SOUTHWEST FLORIDA

**INTEROFFICE MEMORANDUM
FROM
SOLID WASTE DIVISION
Phone: (239) 338-3302 Fax: (239) 338-3304**

Date: August 30, 2004

TO: Kathy Geren
Lee Cares

From: Lindsey J. Sampson, P.E.
Director

SUBJECT: Walk-On Blue Sheets for August 31, 2004

The attached bluesheets, one for Crowder Gulf to perform debris removal at Upper Captiva and one for disposal services at the Gulf Coast (WMI) landfill are time critical for clean-up operations related to Hurricane Charley.

Cc: J. Lavender
D. Owen
J. Wilson

DISASTER EVENT DISPOSAL AGREEMENT

This Agreement is made as of the Effective Date as defined below, by and between WASTE MANAGEMENT INC. OF FLORIDA, 2700 NW 48th Street, Pompano Beach, FL 33073 ("WMIF") and LEE COUNTY, FLORIDA, ("County").

WITNESSETH

WHEREAS, WMIF operates disposal facilities throughout the State of Florida, including Central Disposal in Pompano Beach, Okeechobee Landfill in Okeechobee, Gulf Coast Landfill in Ft. Meyers, and others (each a "Disposal Facility"); and

WHEREAS, County has been subject to a Hurricane Charley, a disaster event, that has caused the accumulation of disaster caused debris which requires disposal; and

WHEREAS, the parties desire to enter into this Disaster Event Disposal Agreement.

NOW, THEREFORE, in consideration of the material covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Term – The term of this Agreement shall commence on the Effective Date, and continue until the date which the parties determine that the disaster event debris from Hurricane Charley has been collected and disposed; provided , however, that in any event this Agreement shall terminate no later than 6 months from the Effective Date.
2. Definitions –
 - a) "Acceptable Waste" means debris generated as the result of Hurricane Charley which is classified as Class I, Construction and Demolition Debris, Class III waste, Processed Horticultural Debris or mixed loads of same that may be disposed at the Disposal Facility pursuant to any and all applicable laws, regulations, rules, administrative orders, agreements and Authorizations. Acceptable Waste shall not contain any regulated quantity of (i) infectious waste; (ii) Hazardous Waste, or other waste which is required by governmental authority or by its general nature to be handled or disposed of other than in accordance with the Disposal Facility's normal operating procedures; or (iii) waste that does not strictly conform to the descriptions of waste materials that the Disposal Facility is authorized to accept under its Authorizations. WMIF, in its sole but reasonable discretion, shall have the right to reject any load or part thereof which WMIF reasonably believes does not conform to the definition of Acceptable Waste set forth herein. .
 - b) "Hazardous Waste" means wasted listed, characterized, or designated as hazardous by the United States Environmental Protection Agency, pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq. as amended from time to time, and its implementing regulations, as well as by any analogous Florida statute or rules.
 - c) "Solid Waste" means non-hazardous and non-special municipal solid waste as further defined under the laws, rules and regulations of the State of Florida and other applicable federal or local laws, rules and regulations.

d) "Class III solid waste" means Solid Waste that is composed of carpet, cardboard, paper, glass, plastic, furniture other than appliances, and other bulky materials as further defined under the laws, rules and regulations of the State of Florida and other applicable federal or local laws, rules and regulations..

e) "Class I solid waste" means Solid Waste that contains substantial amounts or is primarily composed of putrescible household and commercial, non-industrial waste generated in the ordinary course of business by office, retail and similar establishments.

f) "Change in Law" means (i) the adoption, promulgation, or modification or reauthorization after the date of this Agreement of any law, regulation, order, statute, ordinance, rule or binding judicial or administrative ruling that was not adopted, promulgated, modified or reissued on or before the date of this Agreement, or (ii) the imposition of any material conditions in connection with the issuance, renewal, or modification of any permit, license, registration, notice of intent or approval after the date of this Agreement, which in the case of either (a) or (b) establishes requirements affecting a party's operation under this Agreement more burdensome than the requirements that are applicable to such party and in effect as of the date of this Agreement. A change in any federal, State, County, or other tax law or workers compensation law shall not be a Change in Law. However, in the event that a federal, state or local entity imposes a fee, charge or tax after the date of this Agreement that applies to a party's operations per se, such fee, charge or tax shall be treated as a Change in Law.

g) "Disposal Facility" means the facility to which material is delivered or caused to be delivered by County.

h) "WMIF" means Waste Management Inc. of Florida and any of its subsidiaries or affiliates.

i) "Construction and Demolition Debris" or "C & D" means construction and demolition debris which meets the definition of same in 62-701.200 F.A.C. and all applicable permits, laws, statutes and ordinances, including without limitation, its Authorizations. Construction and Demolition Debris or C & D refers to unprocessed material.

j) "Authorizations" means those permits, licenses, registrations, approvals, certificates, contracts, credentials, warrants and authorizations issued by any applicable federal, state, and local governmental agency, body, jurisdiction or unit.

k) "Effective Date" means the date that this Disaster Event Disposal Agreement is signed by the parties and becomes effective.

l) "Processed Horticultural Debris" means vegetative waste generated by Hurricane Charley that has been collected, ought to a reduction facility and chipped or mulched.

3. Estimated Volume. The parties estimate that _____ tons of disaster debris will be disposed at WMIF's Disposal Facilities.

4. Schedules and Processing – Except as otherwise provided herein, WMIF shall accept and process all Acceptable Waste during those times that its Disposal Facility is open for acceptance of such waste. All deliveries shall be made by self-powered, mechanical unloading vehicles. Vehicles may be weighed at the Disposal Facility should such facility have operational

weighing apparatus. Vehicles may be reweighed after unloading to validate the true weight of the vehicles. In the event that weighing apparatus at a Disposal Facility is inoperable or otherwise unavailable, at WMIF's option and in its sole discretion, WMIF may utilize the listed capacity of the vehicle and the estimated quantity and density of the material to determine the quantity of materials delivered. Haulers delivering waste under this Agreement shall comply with all applicable federal, state and local safety and administrative rules and regulations as well as those promulgated by WMIF at its facilities.

5. Transportation. County shall provide loading and transportation of waste materials to WMIF's facilities. Waste may be transported in transfer trailers.

6. Billing and Payment – WMIF shall tender County a statement of the compensation due WMIF on a weekly basis. County shall pay the statement monthly as it receives monies from FEMA or such other agencies. It is understood, however, that failure to receive monies from FEMA or other agencies shall not abrogate County's obligation to pay WMIF for services rendered hereunder. In any event, all monies due WMIF hereunder shall be paid in full within thirty days after the invoice date for disposal activities by WMIF. County shall pay interest on the unpaid balance at a rate of 1 % per month not to exceed the highest lawful rate. In the event that WMIF engages in collection activities due to County's non-payment and WMIF is the prevailing party, County shall pay WMIF's reasonable attorneys' fees and costs relating to any collection activities. Failure of County to make timely payment shall permit WMIF to suspend acceptance of material from County and/or terminate this Agreement, in addition to all other rights and remedies WMIF may have at law or in equity.

7. Rate – County shall pay WMIF the following rates for disposal services:

\$23.50 per ton of C&D or Processed Horticultural Debris delivered to Gulf Coast Landfill

\$26.00 per ton of Class I or mixed loads of Acceptable Waste delivered to any of WMIF's Class I Disposal Facilities. Class III waste may be included herein and delivered to a Class I Disposal Facility.

Contamination by other materials may require additional fees. Contamination is determined by WMIF in its reasonable discretion and to the extent it renders the Solid Waste not Acceptable Waste, shall be subject to the provisions of Section 23 of this Agreement.

Such rates are inclusive of all Fees. "Fees" means all federal, state, local or other similar charges related to the handling or disposal of Solid Waste, recyclable materials or other materials governed by this Agreement which are imposed by law, ordinance, regulation or other agreement.

8. Adjustment to Rates. WMIF may, at any time during the term hereof, (i) increase its rates on the basis of the imposition of a tax, assessment, surcharge or other Fee imposed by government regulation on the services described herein; and (ii) may increase its rates due to unusual or unanticipated changes in the costs of operation of its facilities caused by a Change in Law; provided, however, that if the imposition of such tax, assessment, surcharge or other governmentally imposed Fee or increase in rate shall exceed 5% of the then current rate charged by WMIF herein, County may terminate this Agreement upon ten (10) days' written notice. WMIF shall notify County thirty (30) days in advance of any price increase under this section with a description of the Change in Law, ordinance or regulation or other cause and its impact on WMIF's cost.

9. Force Majeure. -The performance of this Agreement may be suspended and the obligations of either party excused in the event of and during the period that such performance is prevented or delayed by a force majeure occurrence. "Force Majeure" shall mean:

(a) An act of God, including hurricanes, tornadoes, landslides, lightning, earthquakes, fire, flood, explosion, sabotage or similar occurrence, acts of a public enemy, extortion, war, blockade or insurrection, riot, or civil disturbance;

(b) The order or judgment of any federal, State, or local court, administrative agency or governmental body (excluding decisions of federal courts interpreting federal tax laws, and decisions of State courts interpreting State tax laws) if it is not also the result of the willful misconduct or negligent action or inaction of the party relying thereon or of a third party for whom the party relying thereon is responsible; provided that neither the contesting in good faith of any such order or judgment nor the failure to so contest shall constitute or be construed as a measure of willful misconduct or negligent action or inaction of such party;

(c) The failure to issue, suspension, termination, interruption, denial, or failure of renewal of any Authorization or approval essential to the operation of the Disposal Facility;

(d) A Change in Law;

(e) The failure of any appropriate federal, State, County, or local public agency or private utility or similar entity having operational jurisdiction in the area in which the Landfill is located, to provide and maintain utilities, services, water and sewer lines, transportation or similar function and power transmission lines which are required for and essential to the operation of the Disposal Facility;

(f) The condemnation, taking, seizure, involuntary conversion, or requisition of title to or use of the Designated Facility or any material portion or part thereof taken by the action of any federal, State or local governmental agency or authorities.

As a condition precedent to the right to claim excuse of performance, the party experiencing a Force Majeure event shall:

(a) Promptly notify the other party verbally; and

(b) As soon as practical, but in no event more than ten (10) days thereafter, prepare and deliver to the other party a Notice with a written description of (1) the commencement of the Force Majeure event, (2) its estimated duration impact on the party's obligations, under this Agreement.

Whenever a Force Majeure event shall occur, the parties shall, as quickly as possible, to the extent reasonable, eliminate the cause and resume performance under this Agreement. Additionally, either party shall provide prompt Notice to the other of the cessation of a Force Majeure event.

10. Termination for Default. If either party defaults in the performance of this Disposal Agreement for ten (10) days after the other party has given the defaulting party written notice thereof, the non-defaulting party may elect to terminate this Agreement and/or pursue any other remedies at law or in equity with respect to such default. The rights of the non-defaulting party

hereunder shall be in addition to, and not in substitution of, any rights it may have at law or in equity.

11. Notice. Notices shall be given hereunder by certified mail, return receipt requested, with postage prepaid thereon, or by private courier service requesting evidence of receipt as a part of its service, addressed to the parties at their respective addresses appearing below (or at such other address as may be designated in a notice pursuant hereto).

12. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida applicable to contracts made and to be performed in that state. In the event of any litigation related to this Agreement, the prevailing party shall be entitled to recover reasonable attorneys fees and costs related to the action.

13. Assignment. This Agreement may not be assigned by either party without the prior written consent of the other party which may be withheld in its sole discretion except that either party may assign this Agreement to any Affiliate without the consent of the other party. (The term "Affiliate" of any party means an entity controlling, controlled by or under common control with such party.) An allowed assignment shall not relieve the assignor of liability hereunder. An assignment that is made or attempted without consent of the other party hereto is void and of no effect.

14. Successors. This Agreement shall inure to the benefit of and be binding upon the respective successors and allowed assigns of the parties.

15. Entire Agreement. This Agreement embodies the entire agreement of the parties as to the subject matter hereof. It may not be modified, varied, altered or discharged except by written agreement, signed by the parties hereto.

16. Waiver. Failure to enforce any provision hereof shall not constitute a waiver by either party and any such provision shall remain in full force and effect and may be asserted by either party at anytime during the period of this Agreement.

17. Severability. If any clause, provision or part of this Agreement is declared unenforceable or void, it shall not effect the enforceability of the balance of such clause, provision or part thereof, or the Agreement as a whole.

18. Captions. The captions herein are solely for the convenience of the parties and shall not be used to modify, amplify, decrease or otherwise interpret the provisions herein.

19. Insurance. (i) Each of WMIF and County shall procure and maintain for the term of this Agreement and any extension thereof, the following insurance coverages, provided, however, if the County is self-insured, it shall provide a written statement of such self-insurance:

Worker's Compensation	Coverage A - Statutory
	Coverage B - \$1,000,000
Automobile Liability	Bodily Injury - \$1,000,000 each person
	- \$1,000,000 each accident

	Property Damage - \$1,000,000 each accident
Com. Gen. Liability	Bodily Injury - \$1,000,000 each occur. - \$1,000,000 aggregate
	Property Damage - \$1,000,000 each occur. - \$1,000,000 aggregate

(ii) WMIF shall procure and maintain for the term of this Agreement and any extension thereof, the following insurance coverage:

Environmental Impairment - \$1,000,000 aggregate

21. Representations and Warranties.

(a) County represents that the Solid Waste or other materials delivered or to be delivered to the WMIF's facility is Acceptable Waste. If at any time County discovers any non-conforming waste or other materials, it shall promptly notify WMIF of any information it obtains or has obtained indicating that non-conforming waste or other materials was delivered. County's activities hereunder shall be in compliance with all applicable federal, state and local governmental laws, regulations, ordinances, licenses, permits, orders, directives and rules relating to the collection and transportation of Solid Waste.

(b) WMIF represents that the equipment and facilities provided by it to perform services are suitable to perform such services and that all personnel are trained in accordance with applicable laws and rules. WMIF shall perform all services in full compliance with all applicable federal, state and local governmental laws, regulations, ordinances, licenses, permits, orders, directives, and rules relating to collection, transportation and disposal of Solid Waste. WMIF shall not divert any Solid Waste delivered by County to any site not authorized by County without prior written consent.

22. Indemnity.

(a) To the extent permitted by applicable law, County shall indemnify and hold harmless WMIF and its affiliates, respective officers, directors and employees, from and against all liabilities, including, without limitation, those relating to the environment, expenses (including but not limited to reasonable attorneys' fees and expenses of investigation and litigation), claims, damages, fines and penalties which any person or entity may at any time suffer or sustain or become liable for by reason of the delivery of any material that fails to conform to the definition of Acceptable Waste, including without limitation, violations of any applicable laws and rules, contamination or impacts upon the environment that violate applicable laws, rules, directives, orders or Authorizations, property damage, injuries resulting in death or injury to either persons or property, real or personal or both, of WMIF, its affiliates or the employees of any such party or to any other persons in any manner caused by or resulting from the acts, omissions or willful misconduct of County, any designee or any entity engaged by County, including its contractors, or any employees or agents of such entities or resulting from the breach of, misrepresentation in, untruth in, or known inaccuracy in any representation, warranty or covenant of County set forth in this Agreement.

(b) WMIF shall indemnify and hold harmless County and its affiliates, respective officers, directors and employees, from and against all liabilities, including, without limitation,

those relating to the environment, expenses (including but not limited to reasonable attorneys' fees and expenses of investigation and litigation), claims, damages, fines and penalties which any person or entity may at any time suffer or sustain or become liable for by reason of the negligent or wanton improper disposal of any Solid Waste accepted by WMIF at the Designated Facility, including, without limitation, violations of any applicable laws and rules, contamination impacts upon the environment that violate applicable laws, rules, directives, orders or Authorizations, property damage, injuries resulting in death or injury to either persons or property, real or personal or both, of County and its affiliates or the employees of any such party or to any other persons in any manner caused by or resulting from the negligent acts, omissions, or willful misconduct of WMIF, any designee or any entity engaged by WMIF, including WMIF's contractors, or any employees or agents of such entities or resulting from the breach of, misrepresentation in, untruth in, or known inaccuracy in any representation, warranty or covenant of WMIF set forth in this Agreement.

(c) Neither County nor WMIF as the case may be shall be liable for consequential, incidental or punitive damages. The indemnification obligations herein shall survive termination of this Agreement.

23. Title/Acceptance of Solid Waste.

(a) Title and risk of loss and responsibility to Acceptable Waste delivered to facility by County or its designee shall pass to WMIF at the time the waste material is removed from the delivery vehicle at the facility, except that title to Acceptable Waste that is transported by WMIF shall pass to WMIF upon placement in WMIF's vehicle. Title to waste material which does not conform to the definition of Acceptable Waste shall remain with County and shall not be deemed to pass to WMIF.

(b) Acceptable Waste shall be considered accepted at the time the material is removed from County's vehicle at the Disposal Facility. Acceptance of Solid Waste shall not impair, or operate as a waiver of any remedy available to WMIF, including revocation of acceptance in the event that the Solid Waste is later discovered to be nonconforming. WMIF may inspect, sample, analyze and test any Solid Waste; however, exercise or a failure to exercise such right shall not relieve the County of its indemnity or other obligations under this Agreement to deliver only Acceptable Waste.

(c) If County or any designee delivers to the Designated Facility any material failing to conform to the definition of Acceptable Waste in this Agreement or to the requirements of any authorization or applicable government law, regulation, rule, directive or order, and if WMIF notifies County of the delivery of, and requests removal of such non-conforming materials, County shall make available to the Designated Facility, or cause to be made available to the Designated Facility, within ten (10) days of such notice, containers and vehicles suitable for transporting such non-conforming material and County shall thereafter remove, or cause to be removed, within fifteen (15) days of such notice, such non-conforming material from the Designated Facility in accordance with applicable laws and regulations.

(d) If at any time County shall learn that Solid Waste it delivered to the Designated Facility was not Acceptable Waste, it shall promptly notify WMIF and provide the basis for its understanding.

24. Facility Operations.

(a) Subject to its operational requirements and other business needs, WMIF shall use reasonable discretion during the term of this Agreement to cause the Designated Facility, its transferees, contractors, and affiliates to be open for operation during the Designated Facility's regular business hours. If the operating hours are restricted by a third party, then WMIF shall use its reasonable discretion to cause the Designated Facility to be open for operation during such reduced hours. WMIF shall give County prompt notice of any attempt to restrict business hours. County acknowledges the right of WMIF to make and enforce reasonable rules and regulations as are necessary regarding the Designated Facility and County, its designees, transporters, contractors, and affiliates will abide by such rules as established from time to time. WMIF shall furnish a copy of such rules and regulations upon request and notify County of any changes as they occur.

(b) WMIF shall cause to be furnished and reasonably maintained during the term of this Agreement internal access roads to the facility so as not to cause damage to vehicles of County or its designees, transporters, contractors and/or affiliates beyond normal wear and tear customary to accepted industry standards. If any vehicles of County or its designees, transporters, contractors and/or affiliates, entering the Designated Facility become incapacitated or unable to move on the Designated Facility premises for causes other than those attributable to the condition of the access roads, WMIF may, but shall have no obligation to, provide assistance in moving the vehicle, all at the sole cost and expense of County. In such circumstances, County agrees that WMIF shall have no liability for damage to any incapacitated vehicle or property resulting from rendering such assistance.

IN WITNESS WHEREOF, the parties, intending to be bound, have executed this Agreement as of the date first above written.

ATTEST

Isl: Harold Carter
Name: Harold Carter

WASTE MANAGEMENT INC. OF FLORIDA
2700 NW 48 Street
Pompano Beach, FL 33073

By: Eric A. Barr
Name: Eric A. Barr
Title: MANUFACTURING MGR

LEE COUNTY, FLORIDA

By: _____
Chair
Board of County Commissioners

ATTEST:

/s/ _____

Name: _____

APPROVED AS TO FORM

County Attorney