

**Item #39-A**

**ADDITIONAL MATERIAL**

**REGULAR MEETING**

**MAY 12, 2026**

**SUBMITTED AT THE REQUEST OF**

**COUNTY ATTORNEY'S OFFICE**



**ANDREW J. MEYERS**, County Attorney

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## **MEMORANDUM**

**TO:** Board of County Commissioners

**FROM:** Nathaniel J. Klitsberg, Deputy County Attorney */s/ Nathaniel J. Klitsberg*  
 Matthew S. Haber, Senior Assistant County Attorney */s/ Matthew S. Haber*

**DATE:** May 5, 2026

**RE:** **Agenda Item 39 on the May 12, 2026, County Commission Agenda: Facilities Amendment to the Solid Waste Interlocal Agreement**

This memorandum highlights key legal and policy considerations associated with the First Amendment (“Facilities Amendment”) to the Interlocal Agreement for Solid Waste Disposal and Recyclable Materials Processing Authority of Broward County, Florida (“ILA”). For ease of review, the memorandum presents information more generally while more detailed information is provided in the three attached appendices.

The proposed Facilities Amendment is a required condition for the continued existence of the Solid Waste Disposal and Recyclable Materials Processing Authority (“Authority”). At least 80% (by population) of the 28 participating municipalities plus the County must approve the Facilities Amendment by August 14, 2026, for it to become effective. Failure to do so results in the automatic termination of the ILA and the Authority. Approval would commit the parties to the ILA (including the County) to a regional solid waste system (“System”) **through 2063**.

Remaining in the Authority by approving the Facilities Amendment provides several potential advantages. By aggregating waste from 28 municipalities (assuming all municipal parties remain part of the Authority) and the County, the Authority can create **economies of scale** that may improve pricing, contracting leverage, and long-term planning. This regional structure also creates a platform for future infrastructure investment, including the potential to develop **public or Authority-controlled facilities**. This may strengthen long-term public control over solid waste infrastructure. (See Appendix C, Section I.)

Notwithstanding these opportunities, participation in the Authority comes with important limitations on the County’s autonomy and some operational risks. The Authority is an independent regional entity over which the County does not have direct operational control. This point is easily illustrated by referencing the County’s existing disposal agreement, which currently provides access to disposal capacity to the BMSD and 20 municipalities and runs through July 2028. Absent approval of the Facilities Amendment, the disposal agreement could be extended to July 2033 and likely beyond. However, if the Facilities Amendment is approved, the Authority would have flow control over all parties’ waste and it, not the County, would determine whether to extend the County’s existing disposal agreement or whether to contract for other disposal

capacity. Thus, while the County may believe extension is beneficial, including because of the competitive pricing structure and multiple contingency disposal options, the Authority would control the renewal decision. (See Appendix C, Section IV.)

Importantly, Authority operation of the System would not change the County's statutory responsibility for ensuring the adequacy of countywide solid waste disposal capacity. As a result, if the Authority fails to perform (whether due to operational, financial, or contractual issues), and such failure creates risks in connection with the County's statutory responsibility, the County will remain responsible for ensuring such disposal capacity. (See Appendix C, Section III.)

At the same time, there are limitations to what the County can achieve on its own without the Authority. The County does not currently have the legal ability to require municipalities to direct waste to a single system. Any coordination would rely on individual agreements or the voluntary adoption of consistent recycling practices. This makes it more difficult to guarantee the amount of waste tonnage needed to justify investment in new public infrastructure and enforce regional recycling standards through regulation. (See Appendix C, Section I.)

Under the ILA, the Authority would have the power to direct waste for decades and to establish uniform minimum recycling standards that all participating jurisdictions must meet. By using the latter power to expand the types of waste that must be treated as recyclable, the Authority could influence how those materials are managed and shift a larger share of waste from disposal to recycling streams. This should increase the recycling rate, which is one of the Authority's goals. (See Appendix C, Section I.) However, recycling is typically more expensive than disposal and expanded recycling requirements could increase overall System costs. If those cost increases occur through changes in how waste is processed (e.g., landfilled versus recycled, etc.), instead of through direct increases in service charges, they may not be subject to the Facilities Amendment's guardrails against sudden rate increases. In that circumstance, residents of municipalities participating in the Authority (including residents of the BMSD) may experience higher overall direct costs. (See Appendix A, Section IV.)

Finally, the Facilities Amendment and the underlying ILA do not include strong enforcement mechanisms for flow control compliance, which could affect the reliability and effectiveness of the System over time. (See Appendix B.) The Authority's funding model depends on capturing sufficient waste tonnage within the System to support contracts, infrastructure planning, and tonnage-based surcharges. If participating jurisdictions or haulers do not consistently deliver waste into the System, the Authority may have fewer tons over which to spread fixed costs. That could reduce expected revenues, weaken procurement leverage, and place upward pressure on future rates, surcharges, or assessments. While these issues might materially impact the Authority's effectiveness, they would not appear to present a major risk in terms of the County's ability to meet its statutory responsibility to ensure solid waste disposal capacity. Nor would these issues impose a higher level of risk on the County (as municipal service provider to the BMSD) than it does on the other participating municipalities.

**SUMMARY**

The table below summarizes the likely outcomes of a decision to approve or not to approve the Facilities Amendment.

APPROVE	DO NOT APPROVE	RISKS & IMPACTS
<p>Commits County as a member of a <b>regional system through 2063</b></p>	<p>Authority likely <b>cannot continue as structured</b></p>	<ul style="list-style-type: none"> <li>• <b>Approve:</b> Limits County's independent control over BMSD waste</li> <li>• <b>Do Not Approve:</b> Limited current ability to establish countywide flow control, which is the lynchpin of regional solid waste disposal efforts</li> </ul>
<p><b>Costs within BMSD likely increase</b> due to new services and Authority overhead</p>	<p>County maintains control over BMSD solid waste service costs</p>	<ul style="list-style-type: none"> <li>• <b>Approve:</b> Potentially higher costs (offset by asserted environmental benefits)</li> <li>• <b>Do Not Approve:</b> Loss of economies of scale may itself result in increased costs and limit future recycling efforts</li> </ul>
<p>County <b>retains statutory responsibility</b> to contract or provide for access to disposal capacity <b>if the System fails</b></p>	<p>County retains statutory responsibility (<b>status quo</b>)</p>	<ul style="list-style-type: none"> <li>• <b>Approve:</b> County responsible without full operational control</li> <li>• <b>Do Not Approve:</b> County remains responsible without enhanced regional collaboration</li> </ul>
<p><b>Long-term infrastructure planning</b> becomes more feasible, but dependent on Authority performance</p>	<p><b>More difficult to finance or justify large-scale infrastructure</b> due to lack of flow control</p>	<ul style="list-style-type: none"> <li>• <b>Approve:</b> Reliance on Authority performance</li> <li>• <b>Do Not Approve:</b> Risk of underinvestment or delayed infrastructure development</li> </ul>

APPROVE	DO NOT APPROVE	RISKS & IMPACTS
<p><b>More unified System</b> with potential for standardization</p>	<p><b>Continued fragmentation in services and policies</b> countywide, including:</p> <ul style="list-style-type: none"> <li>• Harder to establish uniform recycling standards</li> <li>• Limited ability to mandate curbside collection services</li> <li>• Limited ability to enforce commercial/multifamily recycling</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Approve:</b> Standardization may be slow or incomplete due to governance constraints or cost pressures</li> <li>• <b>Do Not Approve:</b> Inconsistency across jurisdictions</li> </ul>
<p><b>Strong collective negotiating leverage</b></p>	<p><b>Potentially weaker negotiating position</b> in contracts due to lack of scale</p>	<ul style="list-style-type: none"> <li>• <b>Approve:</b> Opportunity for lower pricing, depending on Authority performance</li> <li>• <b>Do Not Approve:</b> Potentially higher long-term costs due to fragmented procurement</li> </ul>
<p><b>Renewal of existing disposal agreement</b> depends on Authority</p>	<p>Renewal of existing disposal agreement depends on <b>decisions of the County and a sufficient number of individual municipalities</b></p>	<ul style="list-style-type: none"> <li>• <b>Approve:</b> Authority has not provided a position on whether the existing disposal agreement should be renewed but has indicated it will issue a solicitation for its own disposal contract</li> <li>• <b>Do Not Approve:</b> Highly likely the existing disposal agreement will be renewed through 2033</li> </ul>

## CONCLUSION

The Facilities Amendment is a **legally sufficient** document that would enable continuation of an independent entity (the Authority) expected to prioritize regional coordination, increased market leverage, and long-term System development.

Approval by the County Commission, however, requires accepting:

- Reduced direct County control over BMSD solid waste decisions;
- Reduced likelihood of future development of a County-led regional solid waste system;
- Detailed governance processes and Authority overhead costs paid by System users within the participating municipalities and the BMSD; and
- Residual financial and operational risks if the System underperforms.

Those risks are not insignificant because the Authority's financial model depends on future procurement results, reliable capture of waste tonnage, and improved recycling performance despite existing contamination in the recycling stream.

We will be discussing these matters further during individual briefings. In the interim, please contact either Nathaniel Klitsberg (954-357-7622 or [NKlitsberg@broward.org](mailto:NKlitsberg@broward.org)), Matthew Haber (954-357-7615 or [MHaber@broward.org](mailto:MHaber@broward.org)), or the County Attorney with any questions or concerns.

MSH/gf

Attachments:

Appendix A: Overview of the Facilities Amendment

Appendix B: County Requests Not Included in the Facilities Amendment

Appendix C: Analysis

iManage # 1228912

c: Monica Cepero, County Administrator  
Kevin Kelleher, Deputy County Administrator  
Isami Ayala-Collazo, Assistant County Administrator  
Bob Melton, County Auditor  
Andrew J. Meyers, County Attorney  
Notosha Austin, Director, Solid Waste and Recycling Services

## **APPENDIX A: OVERVIEW OF THE FACILITIES AMENDMENT**

**This detailed and sometimes technical information is provided primarily to preserve institutional information, given the long potential duration of the Authority. County staff (administrative or legal, as applicable) can answer questions regarding any aspect of this appendix.**

Approval of the Facilities Amendment satisfies one of the ILA’s two formation conditions and allows the Authority to exercise powers that are currently limited pending satisfaction of those conditions. Once the formation conditions are met, the Authority may exercise its powers to establish rates, fees, and charges; provide for processing of Recyclable Materials and Recovered Materials; develop and operate approved facilities and programs; offer optional collection and transportation services; potentially issue bonds; and require flow control.

### *I. Authority-Owned Facilities*

The Facilities Amendment permits the Authority to own and operate certain categories of facilities:

<b>APPROVED FACILITY TYPES</b> (Article 20)	<ul style="list-style-type: none"><li>• Transfer stations</li><li>• Permanent drop-off centers</li><li>• Recycling facilities<ul style="list-style-type: none"><li>○ Broadly defined to include materials recovery facilities, organics and yard waste processing, composting, etc.</li><li>○ This broad definition allows operational flexibility while maintaining limits on disposal.</li></ul></li></ul>
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The Facilities Amendment also dictates that facilities owned by the Authority are public assets and includes provisions that are intended to protect these facilities from creditor claims and to preserve them for public use.

<b>PROHIBITED FACILITY TYPES</b> (ILA Section 8.1.8 & Article 20)	<ul style="list-style-type: none"><li>• The Authority cannot own or operate any “solid waste disposal facility” (e.g., landfill, waste-to-energy facility, etc.) unless:<ul style="list-style-type: none"><li>○ The ILA is amended; and</li><li>○ The amendment is approved by the County Commission and municipalities representing 80% of the municipal population of Authority members.</li></ul></li></ul>
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	<ul style="list-style-type: none"> <li>• This restriction on ownership:                     <ul style="list-style-type: none"> <li>○ Helps preserve the County’s statutory responsibility to ensure disposal capacity; and</li> <li>○ Avoids operational conflicts between the Authority and County disposal functions.</li> </ul> </li> </ul>
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This prohibition on owning any “solid waste disposal facility” also means that the County cannot assign, or transfer ownership of, certain site-specific interests to the Authority (like the Wheelabrator South Broward site lease because that property includes an ash monofill, which is a type of landfill).

## *II. Wind Down and Asset Distribution*

If the Authority must be dissolved, the Facilities Amendment establishes a time-bound Wind Down process to facilitate continuity of service, allocate assets and liabilities, and limit the potential for disputes among the Parties.

<b>PROCESS</b> (Article 21)	<ul style="list-style-type: none"> <li>• Deadlines begin after Formal Notice of Wind Down is issued by the Executive Director.</li> <li>• Defined timelines for transfer of services and assets.</li> <li>• Executive Committee acts as transition committee.</li> </ul>
<b>SATISFACTION OF AUTHORITY DEBT</b> (Section 21.5)	<ul style="list-style-type: none"> <li>• <b><u>Authority debts are not the parties’ debt.</u></b></li> <li>• Any debt must first be satisfied from existing Authority funds. Only then may the Authority sell off assets to pay its debt.</li> </ul>
<b>TRANSFER OF SERVICES</b> (Section 21.6)	<ul style="list-style-type: none"> <li>• The Authority has 3 options to transfer services, with the final decision made by the parties:                     <ul style="list-style-type: none"> <li>○ <b>Standard Procedure:</b> Each party resumes responsibility within its jurisdiction.</li> <li>○ <b>County Option:</b> County offers Systemwide services and assumes regional responsibility if sufficient municipalities accept.</li> <li>○ <b>Successor Entity:</b> A new regional entity assumes operations if designated by enough parties.</li> </ul> </li> </ul>
<b>ASSET DISTRIBUTION; COUNTY RIGHTS</b> (Section 21.7)	<ul style="list-style-type: none"> <li>• Authority assets (including facilities) must be distributed to serve the public, respect how the assets were funded/used, and align with who will operate the services going forward.</li> <li>• The Authority must allow due diligence and complete legal transfers with each receiving party.</li> <li>• Under the <b>Standard Procedure</b> for the transfer of services:</li> </ul>

	<ul style="list-style-type: none"> <li>○ Assets are offered through a structured process: parties can request assets, then receive formal offers and must accept or decline within set deadlines.</li> <li>○ “Regional Assets” like transfer stations are offered to the County first, while local assets (such as drop-off centers) generally are offered to the jurisdiction where they are located or are shared if spanning multiple jurisdictions, and then are offered to the County if not accepted by the municipality.</li> <li>○ If assets are not accepted, they are sold and proceeds are used to first pay debts, with any remaining funds distributed among the parties (based on population).</li> <li>○ Certain assets are returned to their original owner, and reserve funds tied to specific assets follow those assets if transferred to a party.</li> <li>● Under the alternative options for the transfer of services, all Authority assets go to the County or the successor entity.</li> </ul>
<p><b>OBLIGATIONS UPON ACCEPTING ASSETS</b> (Article 22)</p>	<ul style="list-style-type: none"> <li>● If any party elects to take an Authority asset or facility:           <ul style="list-style-type: none"> <li>○ It must operate the asset for a public solid waste purpose for a defined transition period (generally up to five years),</li> <li>○ It must provide fair financial benefits to contributing parties (e.g., rate credits where appropriate); and</li> <li>○ It must either:               <ul style="list-style-type: none"> <li>▪ Continue public use; or</li> <li>▪ Pay fair market value or sell the asset and distribute proceeds.</li> </ul> </li> </ul> </li> <li>● This provision is intended to ensure that publicly funded infrastructure continues to serve regional interests.</li> </ul>

*III. Oversight and Technical Audits*

Section 8.1.8 of the ILA provides very generally that the Authority will not have the power to “interfere with County’s ability to fulfill its statutory obligations, including under Section 403.706(1), Florida Statutes.” The Facilities Amendment includes specific mechanisms intended to prevent such interference.

<p><b>SYSTEM FACILITY REPORTS</b></p>	<ul style="list-style-type: none"> <li>● The Facilities Amendment requires periodic “System Facility Reports” evaluating:</li> </ul>
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(Article 23)	<ul style="list-style-type: none"> <li>○ Capacity versus projected waste tonnage;</li> <li>○ Facility condition and remaining useful life;</li> <li>○ Contracted disposal and processing capacity; and</li> <li>○ Contingency planning for emergencies.</li> <li>● These reports are:             <ul style="list-style-type: none"> <li>○ Required at specific milestones (including prior to Wind Down); and</li> <li>○ Used to inform planning, asset transfers, and potential amendments.</li> </ul> </li> </ul>
<p><b>COUNTY TECHNICAL REVIEW RIGHTS</b> (Article 23)</p>	<ul style="list-style-type: none"> <li>● The County is granted independent authority to:             <ul style="list-style-type: none"> <li>○ Conduct audits and technical evaluations,</li> <li>○ Review System capacity, vendor performance, and planning assumptions, and</li> <li>○ Present recommendations to the Governing Board.</li> </ul> </li> <li>● If County recommendations are rejected and affect the County's statutory obligations, the County may pursue dispute resolution, including binding arbitration.</li> </ul>

System Facility Reports are not required on a fixed schedule but may be completed at any time. If a System Facility Report identifies any concerns, it could signal to the County a technical review is warranted.

The County's technical review right is significant because it:

- Provides an independent review mechanism with a pathway to binding arbitration for Authority performance issues that impact County's statutory obligations;
- Protects the County's ability to meet its statutory obligations; and
- Ensures long-term System reliability given the decades-long duration of the ILA.

#### *IV. Maximum Service Charges*

The Facilities Amendment constrains the Authority's ability to increase service charges.

<p><b>MAXIMUM SERVICE CHARGES</b> (Article 24)</p>	<ul style="list-style-type: none"> <li>● The Facilities Amendment establishes caps on certain service charges:             <ul style="list-style-type: none"> <li>○ Initial services cannot exceed maximum amounts set in the Master Plan, and</li> <li>○ Adjustments are limited to defined indices or specified circumstances.</li> </ul> </li> <li>● Importantly:</li> </ul>
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	<ul style="list-style-type: none"><li>○ These caps do not restrict broader market changes or new services outside the defined scope, and</li><li>○ Any increase beyond the caps requires a structured approval process.</li></ul>
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Extraordinary adjustments to Maximum Service Charges in the Master Plan require two steps: approval by the Executive Committee; then approval by a supermajority of the Governing Board, with a 45-day gap between votes. This provides an opportunity for each party to review decisions and, if necessary, replace their representatives to ensure alignment with the policy direction of the appointing entity.

However, these caps on charges do **not** apply to certain obligations the Authority has indicated it will likely seek to impose on the parties, like costs for providing curbside residential recycling collection, commercial and multifamily recycling requirements, and mandatory curbside yard waste collection, along with the related hauling contracts and enforcement duties. As a result, the Authority could adopt, without the affirmative vote of any County representative, policies that pressure the County and municipalities to expand or modify their collection services, with the resulting costs likely falling outside the Maximum Service Charges procedures.

In that context, although the Authority is expected to adopt uniform recycling standards, its ability to link those standards to collection requirements remains limited under the ILA. The Authority may establish minimum source-separation requirements that shape what materials must be collected and how they are handled, thereby influencing collection services in practice. However, the ILA does not expressly grant the Authority control over collection or hauling. In short, the Authority can standardize what must be recycled and how it is separated (and can require that separated recyclables be delivered to a designated facility). But it cannot mandate how those materials are collected. Collection remains a local decision, even if the parties choose to implement such programs voluntarily to align with regional goals.

*[End of Appendix A]*

## APPENDIX B: COUNTY REQUESTS NOT INCLUDED IN THE FACILITIES AMENDMENT

During negotiations, County Administration and the County Attorney’s Office advocated for alternative approaches to address matters we felt were appropriate for inclusion in the Facilities Amendment. The current framework partially addresses these concerns but relies on the decisions of the Authority’s future leadership and, if necessary, subsequent amendments to the Master Plan or ILA. Proposals from County staff included:

<b>Stronger enforcement of flow control</b>	<ul style="list-style-type: none"> <li>The Facilities Amendment lacks meaningful penalties for parties that fail to comply with flow control requirements, creating enforceability concerns.</li> </ul>
<b>Independent, regular facility oversight</b>	<ul style="list-style-type: none"> <li>County technical audit recommendations are not binding unless directly related to County statutory obligations, and then only through arbitration.</li> <li>System Facility Reports are not required on a regular cycle (e.g., every 5-10 years) and are not conducted by an independent expert, reducing accountability.</li> </ul>
<b>Mandatory cost benchmarking</b>	<ul style="list-style-type: none"> <li>The Facilities Amendment does not require periodic comparisons of Authority fees to other markets.</li> </ul>
<b>Protections to ensure Authority assets remain in public hands</b>	<ul style="list-style-type: none"> <li>The Facilities Amendment reflects a compromise that preserves public-use protections for a transition period after Wind Down but allows the possibility that public infrastructure could ultimately be sold to private entities after the Authority dissolves if no government purchases them (i.e., local governments may need to “buy back” assets the public has already funded).</li> </ul>
<b>Flexibility in transfer of services on Wind Down</b>	<ul style="list-style-type: none"> <li>The Facilities Amendment does not allow flexibility in a Wind Down scenario where municipalities agree the County will take on a regional role but only assumes some of the Authority’s services rather than all its services, limiting practical transition options.</li> </ul>
<b>Clear assignment of responsibility for capital expansion costs</b>	<ul style="list-style-type: none"> <li>The Facilities Amendment does not clearly require municipalities to share in the cost of expanding County-owned solid waste disposal facilities when additional capacity is needed due to a Wind Down, although state law supports County reimbursement when municipal actions are the cause of the need for a capital expansion.</li> </ul>

*[End of Appendix B]*

## APPENDIX C: ANALYSIS

### *I. Key Benefits of Participation in the Authority*

Without an independent regional body such as the Authority, the County could likely address issues associated with regional solid waste disposal and recycling through voluntary agreements with municipalities (like the current interlocal agreements that enable the municipalities to participate in the County's disposal agreement). However, it would be more difficult to achieve:

- Uniform recycling standards<sup>1</sup>,
- Widespread implementation of comparable collection services (for example, similar curbside recycling collection or yard waste collection programs), and
- Consistent commercial or multifamily recycling practices.<sup>2</sup>

Additionally, the Authority's flow control powers (which the County does not independently have) are expected to:

- Increase aggregate waste tonnage under unified direction, and
- Improve market leverage for pricing and long-term infrastructure planning.

The Authority's primary advantage is intended to be **regional coordination through a single structure**. While some similar policies could be pursued through interlocal agreements with individual municipalities, the County currently cannot require municipalities to commit waste flow through ordinance or other regulatory means. This limits the County's ability to ensure sufficient, reliable waste tonnage over a sufficiently long timespan to support a County-operated regional system or justify major infrastructure investments by the County.

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<sup>1</sup> The effectiveness of any recycling program will also depend on the quality of the materials recycled. The County's waste characterization data indicates that approximately one-third of material placed in recycling containers is contamination or non-divertible material. That means a significant share of material collected as "recycling" may still need to be sorted, processed, and ultimately landfilled. **This creates a financial risk** because contaminated recycling can become a dual-cost stream: the System pays to process the material and then may also pay to dispose of the residue. Unless contamination is reduced, expanded recycling requirements could **increase overall costs** even if they improve reported diversion rates.

<sup>2</sup> **The Master Plan does not presently include uniform recycling requirements**, mandates for curbside collection programs, or commercial recycling requirements. In part, this reflects that the Authority has not yet completed procurement of key service providers, including a recycling vendor, whose capabilities and contractual terms may inform the development of future System standards. While the Authority may establish minimum recycling and source-separation standards, the ILA does not expressly empower it to mandate specific collection services or require local governments to implement particular service models, such as curbside or commercial recycling.

In the **short term**, because the Authority could include 28 municipalities and the County, it offers **greater market power**, primarily by aggregating waste tonnage under a unified System. This could improve pricing and lead to better disposal and service rates. In the **long term**, the Authority's "flow control" commitments, if fully effectuated, could provide a reliable waste stream that might support **public capital investment in infrastructure**. This creates an opportunity to dedicate long-term waste flow to develop County- or Authority-owned facilities that serve the System, strengthening public control over critical infrastructure.

## *II. Analysis of Targeted Provisions of the Facilities Amendment*

The ILA is explicit that "no municipal or County powers or functions are being transferred," and that each Party "retains ultimate responsibility within its jurisdiction for supervising waste and recycling," while also describing the Authority as an "independent and separate legal entity." (ILA §1.3, PDF p.1). The practical consequence is that the County is expected to rely on procedural governance mechanisms, not direct operational controls, to ensure the Authority's actions do not impair the County's duties, especially the County's statutory duty to ensure the adequacy of solid waste disposal capacity.

Compared to the current ILA, the Facilities Amendment materially strengthens County oversight by adding a **County Technical Review** process<sup>3</sup> (with a pathway to binding arbitration if County recommendations are not adopted). However, **it is not a direct County veto** over operational decisions. The Facilities Amendment frames the arbitration standard in terms of whether the Authority has "reasonably fulfilled" its obligations and has not "materially impaired" the County's statutory duties. This standard introduces a qualitative, rather than objective, compliance threshold. As a result, the provision does not guarantee that the County will obtain its preferred outcome in scenarios requiring rapid, binary determinations tied to statutory compliance (e.g., loss of permitted capacity, service interruption, or failure to maintain required disposal throughput, etc.).

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<sup>3</sup> The County Technical Review allows the County, in its sole discretion and at its own expense, to retain an expert to evaluate System performance, capacity, compliance, planning, and related needs. The review is limited to: Authority-Owned Facilities and associated operations, plan adequacy, vendor performance, contract administration, cost controls, and matters materially affecting the County's statutory disposal-capacity obligation. The Authority must provide reasonable access to relevant records, contracts, data, facilities, and personnel. The County may present resulting recommendations to the Governing Board, which must hear them within 60 days and vote within 30 days thereafter. If recommendations tied to the County's obligations under § 403.706(1), Fla. Stat., are not approved, or if the Board fails to act timely, the County may pursue, first, informal dispute resolution and, then, binding arbitration. Arbitration is limited to determining whether the Authority has "reasonably fulfilled" its obligations consistent with the Master Plan and maintained service levels that do not "materially impair" the County's statutory duties. Available remedies are limited to performance and equitable relief, and may not impose new obligations, require services beyond the Master Plan, or mandate planning, financing, or construction of new Authority-Owned Facilities.

The Facilities Amendment also provides certain structural protections for the County. Notably, on Wind Down, the County has the first right to take ownership of (and eventually purchase) the Authority's key "Regional Assets," including transfer stations (or, if later approved by a further amendment to the ILA, solid waste disposal infrastructure and facilities). These provisions improve the County's ability to reconstitute a compliant disposal system if the Authority is dissolved or expires. However, it does not mitigate operational risks in the interim, like a failure by the Authority to maintain System Facilities.

Moreover, the Facilities Amendment introduces new governance constraints. These constraints are intended to avoid snap decisions that impose significant increased costs on residents and businesses without the parties' elected bodies having an opportunity to discuss the issues with their representative on the Authority Governing Board. The trade-off is that key decisions, like increasing fees and service charges, must go through a multi-step process (i.e., Executive Committee recommendation, Governing Board approval, and a delay period). While this structure improves transparency and accountability, it can also limit the Authority's ability to respond quickly to changing operational needs and creates some risk of decision-making gridlock.

### *III. Statutory Analysis*

Florida Statutes require counties to ensure the availability of solid waste disposal capacity for all incorporated and unincorporated areas. This is a non-delegable public responsibility. Even where operations are carried out by another entity, the County remains statutorily responsible for ensuring access to disposal capacity. If Authority disposal capacity fails (whether due to operational, financial, or regulatory issues), the County is the entity that must step in to ensure continuity of access to disposal capacity. The County's exposure is driven not by who operates the System, but by who is legally responsible if the System fails, and that remains the County.

Nevertheless, the Florida Statutes allow shared or delegated implementation:

- § 403.706(12) permits counties and municipalities to designate, via interlocal agreement, which entity administers the System.
- § 403.706(19) provides that duties and penalties may shift to that entity "to the extent of the grant."

At the same time:

- The ILA states that each party retains its powers and responsibilities within its jurisdiction.

- The Authority is a separate legal entity, with independent operations and control over key System elements.

Consequently, the Authority exercises operational control (e.g., facilities, flow control, System planning, etc.) while the County retains statutory accountability for ultimately ensuring access to disposal capacity countywide. The Facilities Amendment does not fully resolve this tension and there remains an ongoing need for coordination and oversight mechanisms.<sup>4</sup>

The principal risks of participation in the Authority are financial and operational, including reliance on projected waste flow, phased system implementation, and the governance structure described above. However, these risks are mitigated by the County's significant role in Authority governance, its contractual protections, and the procedural safeguards built into the Facilities Amendment and ILA.

#### *IV. Impact on Existing Agreements*

Nothing in the Facilities Amendment or ILA:

- Requires the County or any other party to breach the County's current disposal agreement; or
- Prevents the County from continuing or assigning that agreement.

In fact, the County's disposal agreement with Wheelabrator (in place through July 2028) is specifically preserved (See ILA § 11.8). This agreement includes favorable pricing, stable fee structures, and, importantly, guaranteed emergency and contingency services. **These contingency provisions are critical because they ensure continued capacity and predictable pricing in the event of a facility shutdown or wider system failure.**

However, extending the disposal agreement to July 2033 would likely require Authority participation due to its flow control powers. While the disposal agreement can be assigned to the Authority or allow the Authority to join in the agreement as a participating government, the Authority may instead push for a new contract that includes a tipping fee surcharge to fund Authority operations.

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<sup>4</sup> There is a financial component to this analysis as well. Authority debts are the sole obligations of the Authority under the ILA's Article 12. Under § 163.01(7)(b), Florida Statutes, those debts are not County debts. However, this separation does not eliminate risk. The County's obligation under § 403.706(1) is a public duty, not a financial debt. If the Authority fails (e.g., due to a revenue shortfall, facility outage, or financing gap, etc.) the County must still ensure disposal capacity. This may require unplanned public intervention or funding. Thus, the County is insulated from creditors, but not from System failure.