

DRAFT

(May 18, 2011)

FRANCHISE AGREEMENT

BETWEEN

COUNTY OF PLUMAS

AND

DISPOSAL, INC.

FOR

COLLECTION SERVICES OF

SOLID WASTE AND

RECYCLABLE MATERIALS

**IMD 6-17-2011 COMMENTS ON THE 5-18-2011
DRAFT REPLACEMENT FRANCHISE CONTRACT**

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

From: Ricky Ross [mailto:rickyross@intermountaindisposal.com]

Sent: Friday, June 17, 2011 10:31 AM

To: Bob Perreault

Cc: John Kolb

Subject: Franchise Commits

Bob - As you know, our attorney has provided some suggested changes to the agreement. As discussed yesterday, here are just a couple of thoughts that I have at this time. I will spend more time over the weekend going over this agreement preparing for the BOS meeting on Tuesday.

4.02 LIMITATIONS ON SCOPE

A. Does this change the current County Ordinance on Mandatory Commercial Collection?

D. We currently do not except these types of material in the waste stream.

H. Would not these agencies fall under the mandatory Commercial collection Ordinance, and if so, why have a separate agreement.

I. This provision would result in lost revenue. Our concern would not be with Landscaping, gardening etc. but with Construction, remodeling, or demolition. Portola has this provision in their agreement, and we see this material leaving the County, resulting in lost revenue.

5.02 SOLID WASTE COLLECTION

Enclosures will cause friction with Commercial Customers.

Centralized bin or cart service - What would be the distance between shared containers? For instance, would all of Graeagle be eligible for such a service, again resulting in lost revenue. we have experienced shared containers in the past, resulting in arguments as to any extra garbage and who would be responsible, it didn't work out very well.

8.02 COLLECTION STANDARDS

D. Would this prevent us from doing a blue-bag system?

G. We currently have a form that allows our customers to choose the service that they want, for example, take extra, take no extra, or they will call if they are going to have extra. This form has worked well over the years. By allowing customers to have extra solid waste collected free of charge will most likely result in higher fees. I don't think WM will allow us to dump (free of charge) once or twice a year to help make up this difference.

FRANCHISE FEES AND OTHER FEES

10.02 Franchise Fee

You already know how I feel about this increase, and how it will effect the rates.

CONTRACTOR'S COMPENSATION, PASS-THROUGH COSTS, AND RATES

I can see that CEO salary has been reduced in my case. The County BOS approved an increase in the CEO salary back in 2006 to it's current salary, I prefer not to go back-ward.

2. Targeted Profit - When R-3 consulting gave a presentation to the Task Force last year, the question was asked what the average rate of return was for Solid Waste handling firms. R-3 said that the average rate of return was 11.5% in our Industry. I don't think that 10% allowable rate of return is unjustifiable.

13.02 INSURANCE

2. Comprehensive General Liability

\$10,000,000 per occurrence is over the top. Please review letter from our Insurance provider that we have forwarded to your office.

13.03 Faithful Performance Bond

This seem excessive given the years of service we have given to Plumas County.

Bob, these are just a few of the Items that have caught my eye, I will most likely have more for the BOS meeting on Tuesday.

Ricky

ARTICLE 13

INDEMNITY, INSURANCE, BOND, GUARANTY

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ARTICLE 13

INDEMNITY, INSURANCE, BOND, GUARANTY

13.01: INDEMNIFICATION

Contractor shall indemnify, defend and hold harmless County, its officers, employees and agents (collectively, the "indemnitees"), from and against (i) any and all liability, penalty, claim, demand, action, proceeding or suit, of any and every kind and description, whether judicial, quasi-judicial or administrative in nature, (ii) any and all loss including, but not limited to, injury to and death of any person and damage to property, and (iii) contribution or indemnity demanded by third parties (collectively, the "claims"), arising out of or occasioned in any way by, directly or indirectly, Contractor's performance of, or its failure to perform, its obligations under this Agreement. The foregoing indemnity shall not apply to the extent that a claim is caused solely by the active negligence or intentional misconduct of the Indemnitees, but shall apply if the claim is caused by the joint negligence of Contractor and other Persons, including an indemnitee. Upon the occurrence of any Claim, Contractor shall defend (with attorneys reasonably acceptable to County) the Indemnitees. Contractor's duty to defend and indemnify shall survive the expiration or earlier termination of this Agreement.

13.02: INSURANCE

A. Types and amounts of coverage. Contractor shall procure from an insurance company or companies admitted to do business in the State of California, and shall maintain in force at all times during the term, the following types and amounts of insurance:

1. Workers' Compensation and Employer's Liability. Contractor shall maintain Workers' Compensation insurance covering its employees in statutory amounts and otherwise in compliance with the laws of the State of California. Contractor shall maintain employer's liability insurance in an amount not less than one million dollars (\$1,000,000) per accident or disease. Contractor shall not be obligated to carry Workers Compensation insurance if

- a. It qualifies under California law and continuously complies with all statutory obligations to self-insure against such risks;
- b. It furnishes a certificate of permission to self-insure issued by the Department of Industrial Relations; and

c. It furnishes updated certificates of permission to self-insure periodically to evidence continuous self-insurance.

2. Comprehensive General Liability. Contractor shall maintain comprehensive general liability insurance with a combined single limit of not less than ten million dollars (\$10,000,000) per occurrence covering all claims and all legal liability for personal injury, bodily injury, death, and property damage, including the loss of use thereof, arising out of, or occasioned in any way by, directly or indirectly, Contractor's performance of, or its failure to perform, services under this Agreement. The insurance required by this subsection shall include:

- a. Premises operations (including use of owned and non-owned equipment);
- b. Personal injury liability with employment exclusion deleted;
- c. Broad form blanket contractual with no exclusions for bodily injury, personal injury or property damage (including coverage for the indemnity obligations contained herein);
- d. Owned, non-owned, and hired motor vehicles;
- e. Broad form property damage.

The comprehensive general liability insurance shall be written on an "occurrence" basis (rather than a "claims made" basis) in a form at least as broad as the most current version of the Insurance Service Office commercial general liability occurrence policy form (CG0001). If occurrence coverage is not obtainable, Contractor must arrange for "tail coverage" on a claims made policy to protect County from claims filed within four (4) years after the expiration or earlier termination of this Agreement relating to incidents that occurred prior to such expiration or termination.

3. Automobile Liability. Contractor shall maintain automobile liability insurance covering all vehicles used in performing service under this Agreement with a combined single limit of not less than ten million dollars (\$10,000,000) per occurrence for bodily injury and property damage.

4. Pollution (Environmental Impairment) Liability. Contractor shall maintain pollution liability insurance coverage of not less than ten million dollars (\$10,000,000) per occurrence covering claims for on-site, under-site, or off-site bodily injury and property damage as a result of pollution conditions arising out of its operations under this Agreement.

B. Acceptability of insureds. The insurance policies required by this section shall be issued by an insurance company or companies admitted to do business in the State of California, subject to the jurisdiction of the California Insurance Commissioner, and with a rating in the most recent edition of Best's Insurance Reports of size category XV or larger and a rating classification of A+ or better.

C. Required endorsements. Without limiting the generality of Sections 13.02.A and B, the policies shall contain endorsements in substantially the following form:

1. Workers' Compensation and Employers' Liability Policy.

a. "Thirty (30) Days prior written notice shall be given to the County of Plumas in the event of cancellation or non-renewal of this policy." Such notice shall be sent to:

b. "Insurer waives all right of subrogation against County of Plumas and its officers and employees for injuries or illnesses arising from work performed for County of Plumas."

2. Comprehensive General Liability Policy; Automobile Liability Policy; Pollution Liability Policy; and Hazardous Materials Policy.

a. "Thirty (30) Days prior written notice shall be given to the County of Plumas in the event of cancellation, reduction of coverage, or non-renewal of this policy." Such notice shall be sent to:

b. "The County of Plumas, its officers, employees, and agents are additional insureds on this policy."

c. "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by the County of Plumas, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."

d. "Inclusion of the County of Plumas as an insured shall not affect the County of Plumas' rights as respects any claim, demand, suit or judgment brought or recovered against the Contractor. This policy shall protect Contractor and the County of Plumas in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the company's liability as set forth in the policy beyond the amount shown or to which the company would have been liable if only one party had been named as an insured."

D. Deductibles and self-insured retentions. The liability policies described in Sections 13.02.A(2) and (3) may contain a deductible or self-insured retention not to exceed \$500,000 per occurrence. This amount may not be increased without County's prior written consent. Contractor remains responsible for the payment of all losses and investigation, claim administration and defense expenses, including those of County.

E. Delivery of proof of coverage. No later than ninety (90) Days before the effective date, Contractor shall furnish County one or more certificates of insurance on a standard ACORD form substantiating that each of the coverages required hereunder is in force, in form and substance satisfactory to County. Such certificates shall show the type and amount of coverage, effective dates and dates of expiration of policies and shall be accompanied by all required endorsements. If County requests, copies of each policy, together with all endorsements, shall also be promptly delivered to County. Contractor shall furnish renewal certificates to County to demonstrate maintenance of the required coverages throughout the term.

F. Other insurance requirements.

1. In the event performance of any services is delegated to a subcontractor, Contractor shall require such subcontractor to provide statutory workers' compensation insurance and employer's liability insurance for all of the subcontractor's employees engaged in the work. The liability insurance required by Subsection A.2 and the automobile liability policy required by subsection A.3 shall cover all subcontractors or the subcontractor must furnish evidence of insurance provided by it meeting all of the requirements of this Section 13.02.

2. Contractor shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve Contractor from any obligation under this Agreement, including those imposed by Section 13.01. If any claim is made by any third person against Contractor or any subcontractor on account of any occurrence related to this Agreement, other than claims by

employees for work-related incidents, Contractor shall promptly report the facts in writing to the insurance carrier and to County.

3. If Contractor fails to procure and maintain any insurance required by this Agreement, County may take out and maintain such insurance as it may deem proper and may require Contractor to reimburse it for the cost incurred within thirty (30) Days and/or deduct the cost from any monies due Contractor. County may also treat the failure as a Contractor default.

4. County is not responsible for payment of premiums for or deductibles under any required insurance coverages.

5. Any excess or umbrella policies shall be written on a “following form” basis.

13.03: FAITHFUL PERFORMANCE BOND

On or before the effective date, Contractor shall file with County a bond securing the Contractor’s faithful performance of its obligations under this Agreement. The principal sum of the bond shall be no less than ten percent (10%) of the amount of the 2010 annual revenue Requirement for County. The form of the bond shall be approved as to form by the Plumas County Counsel. The bond shall be executed as surety by a corporation admitted to issue surety bonds in the State of California, regulated by the California Insurance Commissioner, and with a financial condition and record of service satisfactory to County. The term of the bond shall be twenty-four (24) months. The bond shall be extended, or replaced by a new bond in the same principal sum (adjusted by the percentage change in the Consumer Price Index), for the same term (i.e., twenty-four (24) months) and in the same form, bi-annually thereafter. Not less than ninety (90) Days before the expiration of the initial, or any subsequent, bond, Contractor shall furnish either a replacement bond or a continuation certificate substantially in a form approved by County Counsel, executed by the surety. It is the intention of this section that there be in full force and effect at all times a bond securing Contractor’s faithful performance of the Agreement, throughout its term. Contractor’s cost of the bond shall constitute an operating cost to be included in the determination of Contractor’s compensation.

13.04: ALTERNATIVE SECURITY

County may, in its sole discretion, allow Contractor to provide alternative security in the amount set forth in Section 13.03, in the form of (a) a prepaid irrevocable standby letter of credit in form and substance satisfactory to County, approved by the County Counsel and issued by a financial institution acceptable to County, or (b) a certificate of deposit in the name of County and in a form and with a term satisfactory to County, accompanied by an agreement giving County the right to draw on the funds deposited satisfactory to County and with a financial institution acceptable to County. Interest on the certificate of deposit will be payable to Contractor.

13.05 HAZARDOUS WASTE INDEMNIFICATION

Contractor shall indemnify, defend and hold harmless the Indemnitees against all claims, of any kind whatsoever paid, incurred or suffered by, or asserted against Indemnitees arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous wastes released, spilled or disposed of by Contractor pursuant to this Agreement. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, (“CERCLA”), 42 U.S.C. Section 9607(e), and California Health and Safety Code Section 25364, to defend, protect, hold harmless and indemnify

Indemnitees from liability and shall survive the expiration or earlier termination of this Agreement. Notwithstanding the foregoing, Contractor is not required to indemnify the

Indemnitees against claims arising from Contractor's delivery of solid waste and/or recyclable materials to the Designated Transfer and Processing Facility, or their subsequent delivery to other processing locations or the ultimate disposal site, unless such claims are due to Contractor's negligence or willful misconduct.

13.06: CALIFORNIA INTEGRATED WASTE MANAGEMENT ACT INDEMNIFICATION
Contractor agrees to indemnify and hold harmless the Indemnitees against all fines and/or penalties imposed by CalRecycle or the Local Enforcement County (LEA) based on Contractor's failure to comply with laws, regulations or permits issued or enforced by CalRecycle or the LEA or caused or contributed to by Contractor's failure to perform obligations under this Agreement. This indemnity obligation is subject to the limitations and conditions in Public Resource Code Section 40059.1 (excluding subsection (d) thereof) but is enforceable to the maximum extent allowable by that Section. This indemnity shall survive the termination or earlier expiration of this Agreement.

13.07: Intentionally blank.