



WASHOE COUNTY

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STAFF REPORT

BOARD MEETING DATE: June 13, 2017

DATE: May 19, 2017
TO: Board of County Commissioners
FROM: Dwayne Smith, P.E., Division Director, Engineering and Capital Projects
Community Services Department, 328-2043, desmith@washoecounty.us
THROUGH: Dave Solaro, Arch., P.E., Director
Community Services Department, 328-3600, dsolaro@washoecounty.us
SUBJECT: Approve a Bio-Solids Waste Landfill Disposal Agreement for Waste Disposal between Washoe County and Refuse, Inc., for an initial 36-month term, with an annual estimated cost of \$120,000. (All Commission Districts.)

SUMMARY

The Washoe County Community Services Department's Utility generates various bio-wastes from its three waste water reclamation facilities which require disposal at a landfill that permits acceptance of this type of waste. The waste includes Class A, B, and C bio-solids including all headworks grit, sand and bagged bio-solids waste produced at the Cold Springs Water Reclamation Facility, Lemmon Valley Water Reclamation Facility, and at the South Truckee Meadows Water Reclamation Facility (STMWRF). The term of the agreement is for 36 months and provides for up to 10 one-year renewals. Based on the current waste water flows and the associated waste that is generated, it is anticipated the annual value of this agreement will be approximately \$120,000 and will increase proportionately on an annual basis as treated flows increase.

Until now, the Utility has disposed of various bio-waste on a pay-as-you-go basis, subject to cost fluctuations and higher overall costs. This agreement provides a known cost for bio-waste disposal which is beneficial for planning and budgeting purposes.

Strategic Objective supported by this item: Stewardship of Our Community.

PREVIOUS ACTION

There has been no previous action.

BACKGROUND

Historically, the Washoe County Utility has disposed of bio-waste generated at its various treatment plants at the Lockwood Solid Waste disposal facility located in Storey County, Nevada. The disposal fees the Utility has paid to dispose of bio-waste have been those fees that were in place at the time of disposal. Until recently, this approach has

AGENDA ITEM # 5.F.2.

been generally acceptable, but with the completion of a new bio-solids treatment process at the STMWRF, the volume of bio-waste for the Utility has increased significantly and now a long term agreement is in order. This agreement allows for the Utility to dispose of all bio-waste at the Lockwood Solid Waste facility at an agreed upon price and under a known term which allows for future planning.

FISCAL IMPACT

Funds for the disposal of bio-waste are generated from user fees and sufficient budget exists within Fund 566, Cost Center 664900, located in Account 711011 Waste Removal.

RECOMMENDATION

It is recommended the Board of County Commissioners approve a Bio-Solids Waste Landfill Disposal Agreement for Waste Disposal between Washoe County and Refuse, Inc., for an initial 36-month term, with an annual estimated cost of \$120,000.

POSSIBLE MOTION

Should the Board agree with staff's recommendation, a possible motion would be:
"Move to approve a Bio-Solids Waste Landfill Disposal Agreement for Waste Disposal between Washoe County and Refuse, Inc., for an initial 36-month term, with an annual estimated cost of \$120,000."

Bio-Solids Waste Landfill Disposal Agreement

This Bio-Solid Waste Disposal Agreement ("Agreement") is dated as of June 13, 2017 and is made and entered into by and between Refuse, Inc. ("Company") d/b/a Lockwood Regional Landfill, located in Lockwood, Nevada, (the "Landfill") and Washoe County (the "Customer") for the disposal of approximately 4,000 tons of Acceptable Waste annually from: Cold Springs Wastewater reclamation facility located at 1805 Mud Springs Road, Reno, NV 89508; Lemmon Valley wastewater reclamation facility located at 11000 Lemmon Drive, Reno NV 89506; and the South Truckee Meadows wastewater reclamation facility located at 8500 Alexander Lake Road, Reno NV 89502 (collectively, the "WWTPs").

1. Definitions.

1.1 "Acceptable Waste" shall mean Class A, B and C bio-solids and including all headworks grit, sand and bagged bio-solid waste, as contemplated in the Landfill's Operating Plan; provided, however, Acceptable Waste shall not include "Excluded Waste" or "Special Waste" as defined below. Customer shall submit for Company's approval the Waste Management (WM) Waste Profile issued by the WM Manufacturing & Industrial Waste Technical Service Center and any other necessary special waste applications required by law or by the Company's permit and shall accurately manifest the amount of special waste to be disposed. A WM Waste Profile Approval Form (WAM) must accompany every delivery of the permitted waste to the Landfill. Waste approval forms are checked at the gate.

1.2 "Affiliates" shall mean with respect to any party, any individual, partnership, firm, corporation, limited liability company, association, trust, unincorporated organization or other entity that direct, or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such party.

1.3 "Rate" shall mean the initial per ton disposal fee to be paid by Customer to Company as compensation for disposal of Acceptable Waste as set forth in and adjusted in accordance with Section 4.3 of this Agreement.

1.4 "Excluded Waste" shall mean waste that: (a) is prohibited from receipt at the Landfill by state, federal or local law, regulation, rule, code, ordinance, order, license, permit or permit condition; (b) is or contains Hazardous Waste as defined below; (c) Company reasonably believes would, as a result of or upon disposal, be a violation of local, state or federal law, regulation or ordinance, including land use restrictions or conditions applicable to the Landfill; or (d) in Company's opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Company or Customer to potential liability.

1.5 "Hazardous Waste" shall mean waste that is required to be accompanied by a written manifest or shipping document describing the waste as "hazardous waste" or "dangerous waste," pursuant to any state or federal law and waste containing any substance or material defined, regulated or listed (directly or by reference) as "hazardous substances,"

“hazardous materials,” “hazardous wastes,” “toxic waste,” pollutants or “toxic substances” or similarly identified as hazardous to human health or the environment, in or pursuant to federal, state or local laws.

2. Acceptable Waste. During the term of this Agreement, Customer shall deliver to the Landfill for disposal, and Company agrees to accept, all Acceptable Waste generated or coming to exist at the WWTPs, which is estimated to be approximately 4,000 tons per year.

3. Term of Agreement. The initial term of this Agreement is thirty-six (36) months, commencing on June 13, 2017 (the “Initial Term”). This Agreement shall automatically renew thereafter for additional 12-month periods, each (a “Renewal Term”), unless either party gives to the other party written notice of termination at least ninety (90) days prior to the termination of the then-existing term. This Agreement provides for a total of ten (10) Renewal Terms. Upon transmitting written notice of termination as provided herein, Customer shall pay to Company all monies due under this Agreement for the duration of the then-existing Term. Customer grants the Company a right of first refusal to match any offer relating to services similar to those provided hereunder which Customer receives (or intends to make) upon termination of this Agreement for any reason and Customer shall give Company prompt written notice of any such offer and a reasonable opportunity to respond to it.

4. Base Rate for Disposal.

4.1 Rates. The Company agrees to accept for disposal all of Customer’s Acceptable Waste at a rate of \$26.81 per ton, plus annual CPI increases as stated herein (the “Rate”).

4.2 Payment Terms. Company shall invoice Customer on a monthly basis based on actual volume of Acceptable Waste delivered to the Landfill. In the event the Customer fails to make any payments due hereunder within thirty (30) days of the date of Company’s invoice, Company may, at its option: (i) charge Customer a late fee equal to the greater of 1.5% per month of the unpaid amount or maximum amount allowed by law, (ii) suspend acceptance of Acceptable Waste at the Landfill, (iii) adjust the Rate, and (iv) terminate this Agreement if Customer fails to make the past-due payment within five (5) business days of receipt of Company’s default notice.

4.3 Disposal Rate Increases.

- (a) Commencing on May 9, 2018 and annually thereafter the then existing Rate may be adjusted by an amount equal to the average percentage change for the previous twelve-month period in the Consumer Price Index for Water & Sewer & Trash Collection Services, as published by the U.S. Department of Labor, with the amount of the change based on the most current information available from the U.S. Department of Labor 30 days prior to the date of the change, unless the parties have otherwise agreed to a different CPI. Increases in charges for reasons other than as provided above require the consent of Customer that shall be evidenced in writing. All rate adjustments as provided above shall take effect

upon notification from Company to Customer. Customer shall pay the rates in full within thirty (30) days of the invoice date.

- (b) In addition, Company may increase the Rate to account for any material increase in landfill costs, or as may be necessary to reflect other increased operating costs resulting from other circumstances beyond Company's reasonable control, including, without limitation, changes in any Applicable Laws, imposition of taxes, fees, surcharges or other governmental charges, changes in the scope of Services and acts of God such as floods, fires, etc. Company shall submit documentation supporting any rate adjustment at the same time written notice of same is provided to Customer.

5. Compliance with Laws. Customer shall, in all matters relating to the collection, transportation and disposal of the Acceptable Waste hereunder, comply with all applicable federal, state and local laws, regulations rules and orders relating to such activities. Customer represents and warrants that the waste it transports to the Landfill will only be Acceptable Waste, and will not contain any Excluded Waste.

6. Operating Rules.

6.1 Company reserves the right to make and enforce reasonable rules and regulations concerning Landfill operations, the conduct of the drivers and others on Company premises, quantities and sources of waste, and any other matters necessary or desirable for the safe, legal and efficient operation of the Landfill. Customer agrees to conform to such rules and regulations as they may be established and amended from time to time.

6.2 Company shall have the right to refuse to allow disposal of any waste that does not conform to the requirements of this Agreement, that does not pass a paint filter test at the Landfill, or any waste which is not acceptable at the Landfill due to any applicable law, regulation, rule or order, even if only a part of the waste load is nonconforming. Customer shall inspect all waste at the place of collection, and shall remove any Excluded Waste before transporting it to the Landfill. Excluded Waste includes waste tires, radioactive, volatile, corrosive, flammable, explosive, biomedical, infectious, biohazardous, regulated medical or hazardous waste, toxic substance or material, as defined by, characterized or listed under applicable federal, state, or local laws or regulations. Company shall have the right to inspect all Customer deliveries in order to determine whether the waste is conforming or nonconforming. It is understood, however, that the failure of Company to perform any such inspection, or the failure of Company to detect Excluded Waste despite such inspections, shall in no way relieve Customer of its obligations to dispose of only Acceptable Waste. Customer shall be responsible for and bear all reasonable expenses incurred by Company for the removal and proper disposal of Excluded Waste delivered by Customer.

6.3 All of the Acceptable Waste shall be weighed at the Landfill by the Company, and such weight or measurement shall be conclusive on the parties.

6.4 In the event that Customer's vehicle should become incapacitated or unable to move while on the Landfill premises, the Company may, but shall not be obligated to,

provide assistance in moving the vehicle. In such circumstances, Customer's driver or agent shall make any necessary connections to Customer's vehicle and Customer expressly agrees that the Company shall have no liability for damage to Customer's vehicle or property while providing such assistance.

7. Right of Disposal. This Agreement does not grant any rights to dispose of waste other than in accordance herewith. Company reserves the right immediately to terminate access to the Landfill to Customer in the event of breach or violation by Customer of any of the terms of this Agreement, Company's operating rules or payment policies, or any applicable laws.

8. Indemnification. Each party ("Indemnitor") shall defend and indemnify the other party, its Affiliates, and their respective employees, officers, directors, owners, agents and subcontractors (collectively, "Indemnitees"), from and against any and all liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, judgments and costs and expenses incidental thereto, including reasonable attorneys' fees (collectively, "Damages"), which any or all of the Indemnitees may hereafter suffer, incur, be responsible for or pay out as a result of personal injuries, property damage, or contamination of or adverse effects on the environment, to the extent directly or indirectly caused by, or arising from or in connection with its breach of this Agreement, or any negligent actions or omissions of Indemnitor, its Affiliates, employees, officers, owners, directors, agents or subcontractors, in the performance of this Agreement. Such indemnity shall be limited to exclude Damages to the extent they arise as a result of any negligent actions or omissions of any of the Indemnitees. Notwithstanding the foregoing or anything else in this Agreement to the contrary, Customer shall be liable and shall defend, indemnify and hold harmless Company for Damages (including, but not limited to, reasonable investigation and legal expenses) arising from, related to or caused by the presence, handling or disposal of Excluded Waste that is generated, received, handled, processed at, or transported or originating from Customer, its Affiliates, its agents or subcontractors.

9. Insurance. Customer shall maintain in full force and effect throughout the term of this Agreement the following types of insurance in at least the limits specified below:

Coverages	Minimum Limits of Liability
Worker's Compensation	Statutory
General Liability	\$1,000,000 combined single limit
Automobile Liability	\$1,000,000 combined single limit

All insurance will be by insurers authorized to do business in the state in which the Landfill is located. Prior to Customer being allowed on Landfill premises, Customer shall provide the Company with certificates of insurance or other satisfactory evidence that such insurance has been procured and is in force, naming the Company as an additional insured. Said policies shall not thereafter be cancelled, be permitted to expire, or be changed without thirty (30) days advance written notice to the Company.

10. Failure to Perform. Provided that the requirements of this Section 10 are met, neither party shall be considered in default in the performance of its obligations under this Agreement (not including the obligation to make payments) to the extent that such performance

is prevented or impaired by the occurrence of Uncontrollable Circumstances. If, as a result of an event of Uncontrollable Circumstances, either party is wholly or partially unable to meet its obligations under this Agreement, then it shall give the other party prompt written notice of such event, describing it in reasonable detail. The obligations under this Agreement of the affected party shall be suspended, other than for payment of monies due, but only with respect to the particular component of obligations affected by the event and only for the period during which the event of Uncontrollable Circumstances exists; provided, however, that Company shall have a reasonable time during which to assess the impacts caused by an event of Uncontrollable Circumstances and sole discretion to determine whether it will make repairs and resume all or part of the operations or whether it will terminate all operations at the Landfill.

10.1 “Uncontrollable Circumstances” shall mean Acts of God including landslides, lightning, storms, floods, freezing, and earthquakes; forest fires; civil disturbances; strikes; lockouts or other industrial disturbances; acts of the public enemy; wars; blockades; public riots; breakage; explosions; accident to machinery, pipelines or materials; power failure; governmental restraint; damage to or destruction of the Landfill as a result of events such as those described herein; or other causes, whether of the kind enumerated or otherwise, which are not reasonably within the control of the party whose ability to perform under this Agreement is impaired or prevented by the Uncontrollable Circumstances event.

11. TERMINATION; DEFAULT. Either party shall have the right to terminate this Agreement upon giving the other party written notice if the other party (i) fails to make any payment required hereunder, not disputed in good faith, within thirty (30) days after receiving notice of nonpayment from the non-defaulting party, or (ii) materially fails to comply with any federal, state or local laws, rules, orders or ordinances, or regulations that pertain to the disposal of the waste hereunder, or (iii) defaults in the performance of any other material obligation of the defaulting party under this Agreement and fails to cure such default within thirty (30) days after receiving written notice thereof from the non-defaulting party, provided, that, with regard to defaults identified in clauses (ii) or (iii) above, in the event the defaulting party shows good cause why it should be entitled to reasonable additional time to cure the default, the non-defaulting party shall allow such reasonable additional time. In addition, Company shall have the right to terminate this Agreement upon ninety (90) days' written notice to Customer if the laws, regulations or orders of any governmental body having jurisdiction over Company prohibit Company from operating the Landfill as contemplated in this Agreement.

12. Miscellaneous.

12.1 This Agreement shall be governed by the laws of the state in which the Landfill is located.

12.2 No waiver of a breach of any of the covenants contained in this Agreement shall be construed to be a waiver of any prior or succeeding breach of the same covenant or of any other covenant of this Agreement.

12.3 No modification, release, discharge or waiver of any provision hereof shall be of any force or effect, unless in writing, signed by all parties to this Agreement.

12.4 Pursuant to Chapter 239 of NRS, Company and Customer shall treat as confidential and not disclose to others during or subsequent to the term of this Agreement, except as is necessary to perform this Agreement, any information (including any technical information, experience or data) regarding the other party's plans, programs, plants, processes, products, costs, equipment, operations or customers which may come within the knowledge of the parties or their employees in the performance of this Agreement, without in each instance securing the prior written consent of the other party.

12.5 If any term, covenant or provision of this Agreement shall be held to be invalid, illegal or unenforceable in any respect, this Agreement shall remain in effect and be construed without regard to such provision.

12.6 This Agreement constitutes the entire understanding between the parties regarding the subject matter hereof, replacing and amending any prior agreements between the parties, and shall be binding upon all parties hereto, their successors, heirs, representatives and assigns. Any provision, term or condition in any acknowledgment, purchase order or other response by Customer which is addition to or different from the provisions of this Agreement shall be deemed objected to by the Company and shall be of no effect.

12.7 Notices. All notices required under this Agreement may be made by documented personal delivery, mailed by certified U.S. mail, postage prepaid, return receipt requested, sent by overnight carrier, or transmitted by confirmed facsimile to the parties' addresses on the signature page hereto, or to such other address as either party shall specify by written notice so given. Any notice sent by U.S. mail in the manner set forth above must also be sent by confirmed facsimile to be effective and shall be deemed given and received three (3) business days after the date deposited in the United States mail. Any notice or communication given by personal delivery or sent by overnight carrier or confirmed facsimile in the manner set forth above shall be deemed given upon documented receipt.

12.8 Funding Out. In light of the provisions of NRS 244.320 and 354.626, if the County's governing body does not appropriate or budget funds for the purposes specified in this Agreement, or the County's governing body has, in its sole discretion, determined to amend previous appropriated or budgeted amounts to eliminate or reduce funding for the purposes of this Agreement, this Agreement shall be terminated without penalty charge or sanction.

12.9 COMPANY AND CUSTOMER IN CONSIDERATION OF THE MUTUAL OBLIGATIONS CONTAINED HEREIN, AGREE THIS IS A LEGALLY BINDING AGREEMENT.

Customer:
WASHOE COUNTY

By: _____
Name: Bob Lucey
Title: Chair, Washoe County Commission
Date: _____

Address for Notice Purposes:

1001 East Ninth St.
Reno, NV 89512
Fax: 775-328-3699
Attn. Dwayne Smith

Company:
REFUSE, INC. DBA LOCKWOOD REGIONAL LANDFILL

By: _____
Name: _____
Title: _____
Date: _____

Address for Notice Purposes:

100 Vassar Street
Reno, NV 89502
Fax: _____
Attn. _____