



STAFF REPORT

Report To: Board of Supervisors

Meeting Date: March 3, 2016

Staff Contact: Laura Tadman and Darren Schulz

Agenda Title: For Possible Action: To approve contract number 1516-076, Landfill Tipper, with South Tahoe Refuse & Recycling / Douglas Disposal & Recycling Services for disposal of solid waste at the Carson City Landfill (Laura Tadman; LTadman@carson.org and Darren Schulz (DSchulz@carson.org).

Staff Summary: South Tahoe Refuse & Recycling / Douglas Disposal & Recycling Services (STR/DDI) is proposing to purchase equipment and to bring solid waste to the Carson City Landfill in exchange for a reduced rate and repayment for equipment financing.

Agenda Action: Formal Action/Motion

Time Requested: 10 minutes

Proposed Motion

I move to approve contract number 1516-076, Landfill Tipper, with South Tahoe Refuse & Recycling / Douglas Disposal & Recycling Services for disposal of solid waste at the Carson City Landfill.

Board's Strategic Goal

Sustainable Infrastructure

Previous Action

None

Background/Issues & Analysis

The Carson City Landfill has been in operation since 1970 and was operated by a contractor until 2000, when Carson City Public Works took over the operations. It is the third largest landfill in the State and receives approximately 480 tons of waste daily from commercial waste haulers and private individuals. The majority of the waste originates from Carson City. It is located on approximately 212 acres of land and utilizes 83 of the acres for waste placement. Using an airspace analysis, it has an estimated remaining life of 48 years. It generates about \$3,800,000 in revenues and \$1,800,000 in expenses, which provides a net income to the general fund of approximately \$2,000,000 annually. The income to the general fund was expanded during the economic downturn to help the overall City budget, but was done knowing there would be significant impacts to the long-term operation of the Landfill such as investing in capital improvements and replacement of equipment. The deferred improvements have increased operation costs as well.

The proposed contract is estimated to increase both the Construction and Demolition (C&D) and Municipal Solid Waste (MSW) waste streams entering the Landfill. C&D would increase from approximately 81,000 tons to 82,250 annually (1.5% increase) and MSW from approximately 70,000 tons to 91,500 tons annually (30.7%). A landfill trailer tipper will be required to unload the STR/DDI haul trailers. STR/DDI will finance the tipper trailer using an equipment loan and will be allowed a credit on its bill each month equal to the amount of the loan payment during the 60-month loan term. The approximate cost of the trailer tipper is \$450,000. Once the equipment loan has been paid in full, the tipper will become the property of Carson City and the credit to

STR/DDI will stop. The City will charge DDI/STR a fixed rate equal to the in-county rate of \$24.00 / ton of MSW for 5 years. At the end of 5 years, the rate will be indexed to the annual percentage change in the CPI for Garbage and Trash. For C&D waste, the rate will be equal to the in-county C&D rate. Carson City will also accept alternative daily cover material at no cost. The initial contract term is for 10 years with automatic annual renewals thereafter. After the initial period, either entity may terminate the contract with a 1-year written notice.

Applicable Statute, Code, Policy, Rule or Regulation

NRS 332.115(1)(b) and NRS 625.530.

Financial Information

Is there a fiscal impact? Yes No

If yes, account name/number: General Fund, Department 6804

Is it currently budgeted? Yes No

Explanation of Fiscal Impact: This agreement will generate approximately \$500,000 in gross revenue annually and create approximately \$370,000 in additional annual operating expenses. These increased operating costs include tipper operating and supporting costs, refuse handling costs, adding an additional landfill worker cost, and adding additional equipment costs. For the first five years, there will be an approximate credit of \$90,000 annually to pay for the tipper. Net revenue will be approximately \$40,000 annually for the first 5 years and then \$130,000 annually thereafter. The net revenue will remain in the Landfill Department of the General Fund to provide additional financial support for equipment replacement and capital improvements at the Landfill.

Alternatives

Not award contract and provide other direction.

Board Action Taken:

Motion: _____

1) _____

2) _____

Aye/Nay

(Vote Recorded By)

INDEPENDENT SUBSCRIBER AGREEMENT

Contract No.1516-076

Title: Landfill Tipper

THIS CONTRACT made and entered into this 3rd day of March, 2016, by and between Carson City, a consolidated municipality, a political subdivision of the State of Nevada, hereinafter referred to as “**CITY**”, and South Tahoe Refuse & Recycling Services/Douglas Disposal & Recycling Services, hereinafter referred to as “**SUBSCRIBER**”.

WITNESSETH:

WHEREAS, CITY possesses certain property in Carson City, State of Nevada, including land located in Sections 1 and 12 of T. 15 N., R. 20 E. and Section 6 of T. 15 N., R 21 E., consisting of approximately 212 acres, which, together with certain improvements, is used for a sanitary landfill (the “**Facility**”); and

WHEREAS, the Facility is used and maintained by **CITY** for disposal of municipal solid waste and construction and demolition debris; and

WHEREAS, CITY desires to offer **SUBSCRIBER** access to dispose of municipal solid waste, cover material, and construction and demolition waste at **CITY’S** Facility; and

WHEREAS, CITY has determined it has the capacity to accept waste from **SUBSCRIBER**; and

WHEREAS, SUBSCRIBER has need for specialized equipment for disposal of its waste at the **CITY** Facility and will provide resources to provide the specialized equipment; and

WHEREAS, CITY and **SUBSCRIBER** by working together can mutually benefit their respective residents and clients; and

WHEREAS, the Purchasing and Contracts Administrator for **CITY** is authorized pursuant to Nevada Revised Statutes (hereinafter referred to as “**NRS**”) 332 and Carson City Purchasing Resolution #1990-R71, to approve and accept this Contract as set forth in and by the following provisions; and

WHEREAS, SUBSCRIBER’S compensation under this agreement (does) (does not X) utilize in whole or in part money derived from one or more federal grant funding source(s); and

WHEREAS, it is deemed necessary that the services of **SUBSCRIBER** for **CONTRACT No.1516-076** (hereinafter referred to as “**Contract**”) are both necessary and in the best interest of **CITY**; and

NOW, THEREFORE, in consideration of the aforesaid premises, and the following terms, conditions and other valuable consideration, the parties mutually agree as follows:

1. REQUIRED APPROVAL:

This Contract shall not become effective until and unless approved by the Carson City Board of Supervisors.

For P&C Use Only
CCBL expires _____
NVCL expires _____
GL expires _____
AL expires _____
WC expires _____

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2. SCOPE OF WORK (Incorporated Contract Documents):

2.1 **SUBSCRIBER** shall provide and perform the services set forth in Exhibit A, which shall all be attached hereto and incorporated herein by reference for and on behalf of **CITY** and hereinafter referred to as the "SERVICES".

2.2 **SUBSCRIBER** represents that it is duly licensed by **CITY** for the purposes of performing the SERVICES.

2.3 **SUBSCRIBER** represents that it is duly qualified and licensed in the State of Nevada for the purposes of performing the SERVICES.

2.4 **SUBSCRIBER** represents that it and/or the persons it may employ possess all skills and training necessary to perform the SERVICES described herein and required hereunder. **SUBSCRIBER** shall perform the SERVICES faithfully, diligently, in a timely and professional manner, to the best of its ability, and in such a manner as is customarily performed by a person who is in the business of providing such services in similar circumstances. **SUBSCRIBER** shall be responsible for the professional quality and technical accuracy of all SERVICES furnished by **SUBSCRIBER** to **CITY**.

2.5 **SUBSCRIBER** represents that neither the execution of this Contract nor the rendering of services by **SUBSCRIBER** hereunder will violate the provisions of or constitute a default under any other contract or agreement to which **SUBSCRIBER** is a party or by which **SUBSCRIBER** is bound, or which would preclude **SUBSCRIBER** from performing the SERVICES required of **SUBSCRIBER** hereunder, or which would impose any liability or obligation upon **CITY** for accepting such SERVICES.

2.6 Before commencing with the performance of any SERVICES under this Contract, **SUBSCRIBER** shall obtain all necessary permits and licenses as may be necessary. Before and during the progress of work under this Contract, **SUBSCRIBER** shall give all notice and comply with all the laws, ordinances, rules and regulations of every kind and nature now or hereafter in effect promulgated by any Federal, State, County, or other Governmental Authority, relating to the performance of work under this Contract. If **SUBSCRIBER** performs any work that is contrary to any such law, ordinance, rule or regulation, it shall bear all the costs arising therefrom.

2.7 It is expressly understood and agreed that all SERVICES done by **SUBSCRIBER** shall be subject to inspection and acceptance by **CITY** and approval of SERVICES shall not forfeit the right of **CITY** to require correction, and nothing contained herein shall relieve **SUBSCRIBER** of the responsibility of the SERVICES required under the terms of this Contract until all SERVICES have been completed and accepted by **CITY**.

3. CONTRACT TERM:

3.1 This Contract shall be effective from March 3, 2016 subject to Carson City Board of Supervisors' approval to March 3, 2026, unless sooner terminated by either party as specified in Section 7 (CONTRACT TERMINATION). Accordingly, the term of this Contract shall be for an initial ten (10) years. After this initial period, either **CITY** or **SUBSCRIBER** may terminate the Contract with one year written notice to the other. The Contract will automatically renew annually for an indefinite term unless either **CITY** or **SUBSCRIBER** provides written notice to the other that it does not intend to renew the Contract at least one year prior to the termination.

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4. NOTICE:

4.1 Except any applicable bid and award process where notices may be limited to postings by **CITY** on its Finance Department/Bid Opportunities website (www.carson.org), all notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by e-mail, by regular mail, by telephonic facsimile with simultaneous regular mail, or by certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified below.

4.2 Notice to **SUBSCRIBER** shall be addressed to:

Jeff Tillman, President
South Tahoe Refuse & Recycling Services/Douglas Disposal & Recycling Services
2140 Ruth Avenue
South Lake Tahoe, CA 96150
530-541-5105
jeff@southtahoerefuse.com

4.3 Notice to **CITY** shall be addressed to:

Carson City Purchasing and Contracts Department
Laura Tadman, Purchasing & Contracts Administrator
201 North Carson Street, Suite 3
Carson City, NV 89701
775-283-7137 / FAX 775-887-2107
LTadman@carson.org

5. COMPENSATION:

5.1 The parties agree that **SUBSCRIBER** will provide the SERVICES specified in **Section 2** (SCOPE OF WORK).

5.2 **CITY** does not agree to reimburse **SUBSCRIBER** for expenses unless otherwise specified.

6. TIMELINESS OF BILLING SUBMISSION:

6.1 The parties agree that timeliness of billing is of the essence to this Contract and recognize that **CITY** is on a fiscal year which is defined as the period beginning July 1 and ending June 30 of the following year. All billings for dates of service prior to July 1 must be submitted to **CITY** no later than the first Friday in August of the same year. A billing submitted after the first Friday in August will subject **SUBSCRIBER** to an administrative fee not to exceed \$100.00. The parties hereby agree this is a reasonable estimate of the additional costs to **CITY** of processing the billing as a stale claim and that this amount will be deducted from the stale claim payment due to **SUBSCRIBER**.

7. CONTRACT TERMINATION:

7.1 Termination Without Cause:

7.1.1 This Contract deals with solid waste disposal services and the investment of significant resources. As such, the public interest is not served by the termination of this Contract by one of

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the parties to this Contract absent an opportunity to resolve the alleged breach or have its position on the claimed breach heard before a qualified mediator in accordance with this Contract. All discretionary or vested right of renewal notwithstanding, this Contract may be terminated upon 6 months written notice by mutual consent of both parties or unilaterally by either party without cause.

7.1.2 **CITY** reserves the right to terminate this Contract for convenience whenever it considers termination, in its sole and unfettered discretion, to be in the public interest. In the event that the Contract is terminated in this manner, payment will be made for SERVICES actually completed. If termination occurs under this provision, in no event shall **SUBSCRIBER** be entitled to anticipated profits on items of SERVICES not performed as of the effective date of the termination or compensation for any other item, including but not limited to, unabsorbed overhead. **SUBSCRIBER** shall require that all subcontracts which it enters related to this Contract likewise contain a termination for convenience clause which precludes the ability of any subsubscriber to make claims against **SUBSCRIBER** for damages due to breach of contract, lost profit on items of SERVICES not performed, or unabsorbed overhead, in the event of a convenience termination.

7.2 Termination for Nonappropriation:

7.2.1 All payments and SERVICES provided under this Contract are contingent upon the availability of the necessary public funding, which may include various internal and external sources. In the event that Carson City does not acquire and appropriate the funding necessary to perform in accordance with the terms of the Contract, the Contract shall automatically terminate upon **CITY'S** notice to **SUBSCRIBER** of such nonappropriation, and no claim or cause of action may be based upon any such nonappropriation.

7.3 Cause Termination for Default or Breach:

7.3.1 A default or breach may be declared with or without termination.

7.3.2 This Contract may be terminated by either party upon written notice of default or breach to the other party as follows:

7.3.2.1 If **SUBSCRIBER** fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or any SERVICES called for by this Contract within the time requirements specified in this Contract or within any granted extension of those time requirements; or

7.3.2.2 If any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by **SUBSCRIBER** to provide the goods or SERVICES or any services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or

7.3.2.3 If **SUBSCRIBER** becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or

7.3.2.4 If **CITY** materially breaches any material duty under this Contract and any such breach impairs **SUBSCRIBER'S** ability to perform; or

7.3.2.5 If it is found by **CITY** that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by **SUBSCRIBER**, or any agent or representative of **SUBSCRIBER**, to any officer or employee of **CITY** with a

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view toward securing a contract or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such contract; or

7.3.2.6 If it is found by **CITY** that **SUBSCRIBER** has failed to disclose any material conflict of interest relative to the performance of this Contract.

7.4 Time to Correct (Declared Default or Breach):

7.4.1 Termination upon a declared default or breach may be exercised only after providing 7 (seven) calendar days written notice of default or breach, and the subsequent failure of the defaulting or breaching party, within thirty (30) calendar days of providing that default or breach notice, to provide evidence satisfactory to the aggrieved party demonstrating that the declared default or breach has been corrected. Time to correct shall run concurrently with any notice of default or breach and such time to correct is not subject to any stay with respect to the nonexistence of any Notice of Termination. Untimely correction shall not void the right to termination otherwise properly noticed unless waiver of the noticed default or breach is expressly provided in writing by the aggrieved party. There shall be no time to correct with respect to any notice of termination without cause or termination for nonappropriation.

7.5 Winding Up Affairs Upon Termination:

7.5.1 In the event of termination of this Contract for any reason, the parties agree that the provisions of this **Subsection 7.5** survive termination:

7.5.1.1 The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this Contract. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination; and

7.5.1.2 **SUBSCRIBER** shall satisfactorily complete SERVICES in progress at the agreed rate (or a pro rata basis if necessary) if so requested by **CITY**; and

7.5.1.3 **SUBSCRIBER** shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by **CITY**; and

7.5.1.4 **SUBSCRIBER** shall preserve, protect, and promptly deliver into **CITY** possession all proprietary information in accordance with "**Section 19**".

7.6 Notice of Termination:

7.6.1 Unless otherwise specified in this Contract, termination shall not be effective until seven (7) calendar days after a party has provided written notice of default or breach, or notice of without cause termination. Notice of Termination may be given at the time of notice of default or breach, or notice of without cause termination. Notice of Termination may be provided separately at any time after the running of the 7-day notice period, and such termination shall be effective on the date the Notice of Termination is provided to the party unless a specific effective date is otherwise set forth therein. Any delay in providing a Notice of Termination after the 7-day notice period has run without a timely correction by the defaulting or breaching party shall not constitute any waiver of the right to terminate under the existing notice(s).

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8. REMEDIES:

Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorney's fees and costs. The parties agree that, in the event a lawsuit is filed and a party is awarded attorney's fees by the court, for any reason, the amount of recoverable attorney's fees shall not exceed the rate of \$125 per hour. **CITY** may set off consideration against any unpaid obligation of **SUBSCRIBER** to **CITY**.

9. LIMITED LIABILITY:

CITY will not waive and intends to assert available NRS Chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise expressly provided for elsewhere in this Contract. Damages for any **CITY** breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to **SUBSCRIBER**, for the fiscal year budget in existence at the time of the breach. **SUBSCRIBER'S** tort liability shall not be limited.

10. FORCE MAJEURE:

Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of this Contract after the intervening cause ceases.

11. INDEMNIFICATION:

11.1 To the extent permitted by law, including, but not limited to, the provisions of NRS Chapter 41, each party shall indemnify, hold harmless and defend, not excluding the other's right to participate, the other party from and against all liability, claims, actions, damages, losses, and expenses, including but not limited to reasonable attorney's fees and costs, arising out of any alleged negligent or willful acts or omissions of the indemnifying party, its officers, employees and agents. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of the indemnity which would otherwise exist as to any party or person described in this Section.

11.2 Except as otherwise provided in **Subsection 11.4** below, the indemnifying party shall not be obligated to provide a legal defense to the indemnified party, nor reimburse the indemnified party for the same, for any period occurring before the indemnified party provides written notice of the pending claim(s) or cause(s) of action to the indemnifying party, along with:

11.2.1 a written request for a legal defense for such pending claim(s) or cause(s) of action; and

11.2.2 a detailed explanation of the basis upon which the indemnified party believes that the claim or cause of action asserted against the indemnified party implicates the culpable conduct of the indemnifying party, its officers, employees, and/or agents.

11.3 After the indemnifying party has begun to provide a legal defense for the indemnified party, the indemnifying party shall not be obligated to fund or reimburse any fees or costs provided by any additional counsel for the indemnified party, including counsel through which the indemnified party might voluntarily choose to participate in its defense of the same matter.

11.4 After the indemnifying party has begun to provide a legal defense for the indemnified party, the indemnifying party shall be obligated to reimburse the reasonable attorney's fees and costs incurred by the indemnified party during the initial thirty (30) day period of the claim or cause of action, if any, incurred by separate counsel.

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11.5 For additional indemnification provisions, see Exhibit A – Services, paragraph 10.

12. **SUBSCRIBER:**

12.1 **SUBSCRIBER** is a natural person, firm or corporation who agrees to perform SERVICES for a fixed price according to his or its own methods and without subjection to the supervision or control of the **CITY**, except as to the results of the SERVICES, and not as to the means by which the SERVICES are accomplished.

12.2 It is mutually agreed that **SUBSCRIBER** is associated with **CITY** only for the purposes and to the extent specified in this Contract, and in respect to performance of the contracted SERVICES pursuant to this Contract. **SUBSCRIBER**, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract.

12.3 Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for **CITY** whatsoever with respect to the indebtedness, liabilities, and obligations of **SUBSCRIBER** or any other party.

12.4 **SUBSCRIBER**, in addition to Section 11 (INDEMNIFICATION), shall indemnify and hold **CITY** harmless from, and defend **CITY** against, any and all losses, damages, claims, costs, penalties, liabilities, expenses arising out of or incurred in any way because of, but not limited to, **SUBSCRIBER'S** obligations or legal duties regarding any taxes, fees, assessments, benefits, entitlements, notice of benefits, employee's eligibility to work, to any third party, subscriber, employee, state, local or federal governmental entity.

12.5 Neither **SUBSCRIBER** nor its employees, agents, or representatives shall be considered employees, agents, or representatives of **CITY**.

13. **INSURANCE REQUIREMENTS (GENERAL):**

13.1 **NOTICE: The following general insurance requirements shall apply unless these general requirements are altered by any specific requirements set forth in CITY'S solicitation for bid document, the adopted bid or other document incorporated into this Contract by the parties.**

13.2 **SUBSCRIBER**, is not an employee of **CITY**, must carry policies of insurance in amounts specified and pay all taxes and fees incident hereunto. **CITY** shall have no liability except as specifically provided in this Contract.

13.3 **SUBSCRIBER** shall not commence work before: (1) **SUBSCRIBER** has provided the required evidence of insurance to **CITY** Purchasing and Contracts, and (2) **CITY** has approved the insurance policies provided by **SUBSCRIBER**.

13.4 Prior approval of the insurance policies by **CITY** shall be a condition precedent to any payment of consideration under this Contract and **CITY'S** approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent this Contract. Any failure of **CITY** to timely approve shall not constitute a waiver of the condition.

13.5 *Insurance Coverage (13.6 through 13.23):*

13.6 **SUBSCRIBER** shall, at **SUBSCRIBER'S** sole expense, procure, maintain and keep in force for the duration of this Contract the following insurance conforming to the minimum requirements specified below. Unless specifically specified herein or otherwise agreed to by **CITY**, the required insurance shall be in effect prior to the commencement of work by **SUBSCRIBER** and shall continue in force as appropriate until the later of:

13.6.1 Final acceptance by **CITY** of the completion of this Contract; or

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13.6.2 Such time as the insurance is no longer required by **CITY** under the terms of this Contract.

13.6.3 Any insurance or self-insurance available to **CITY** under its coverage(s) shall be in excess of and non-contributing with any insurance required from **SUBSCRIBER**.

SUBSCRIBER'S insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by **CITY**, **SUBSCRIBER** shall provide **CITY** with renewal or replacement evidence of insurance no less than thirty (30) calendar days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by this Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as **SUBSCRIBER** has knowledge of any such failure, **SUBSCRIBER** shall immediately notify **CITY** and immediately replace such insurance or bond with an insurer meeting the requirements.

13.7 *General Insurance Requirements (13.8 through 13.23):*

13.8 **Certificate Holder:** Each liability insurance policy shall list Carson City c/o Carson City Purchasing and Contracts, 201 N. Carson Street, Suite 3, Carson City, NV 89701 as a certificate holder.

13.9 **Additional Insured:** By endorsement to the general liability insurance policy evidenced by **SUBSCRIBER**, The City and County of Carson City, Nevada, its officers, employees and immune subscribers shall be named as additional insureds for all liability arising from this Contract.

13.10 **Waiver of Subrogation:** Each liability insurance policy shall provide for a waiver of subrogation as to additional insureds.

13.11 **Cross-Liability:** All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.

13.12 **Deductibles and Self-Insured Retentions:** Insurance maintained by **SUBSCRIBER** shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by **CITY**. Such approval shall not relieve **SUBSCRIBER** from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed \$5,000.00 per occurrence, unless otherwise approved by **CITY**.

13.13 **Policy Cancellation:** Except for ten (10) calendar days notice for non-payment of premium, each insurance policy shall be endorsed to state that; without thirty (30) calendar days prior written notice to Carson City Purchasing and Contracts, the policy shall not be canceled, non-renewed or coverage and /or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by mail to Carson City Purchasing and Contracts, 201 N. Carson Street, Suite 3, Carson City, NV 89701.

13.14 **Approved Insurer:** Each insurance policy shall be issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made, and currently rated by A.M. Best as "A-VII" or better.

13.15 **Evidence of Insurance:** Prior to commencement of work, **SUBSCRIBER** must provide the following documents to Carson City Purchasing and Contracts, 201 North Carson Street, Suite 3, Carson City, NV 89701:

13.16 **Certificate of Insurance:** The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to Carson City Purchasing and Contracts to evidence the insurance policies and coverages required of **SUBSCRIBER**.

13.17 **Additional Insured Endorsement:** An Additional Insured Endorsement (CG20 10 or C20 26), signed by an authorized insurance company representative, must be submitted to Carson City Purchasing and Contracts to evidence the endorsement of **CITY** as an additional insured per **Section 13.9** (Additional Insured).

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13.18 **Schedule of Underlying Insurance Policies:** If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the Underlyer Schedule from the Umbrella or Excess insurance policy may be required.

13.19 **Review and Approval:** Documents specified above must be submitted for review and approval by **CITY** Purchasing and Contracts prior to the commencement of work by **SUBSCRIBER**. Neither approval by **CITY** nor failure to disapprove the insurance furnished by **SUBSCRIBER** shall relieve **SUBSCRIBER** of **SUBSCRIBER'S** full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit the liability of **SUBSCRIBER** or its sub-subscribers, employees or agents to **CITY** or others, and shall be in addition to and not in lieu of any other remedy available to **CITY** under this Contract or otherwise. **CITY** reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements.

13.20 **COMMERCIAL GENERAL LIABILITY INSURANCE:**

13.20.1 *Minimum Limits required:*

13.20.2 Two Million Dollars (\$2,000,000.00) - General Aggregate.

13.20.3 Two Million Dollars (\$2,000,000.00) - Products & Completed Operations Aggregate.

13.20.4 One Million Dollars (\$1,000,000.00) - Each Occurrence.

13.20.5 Coverage shall be on an occurrence basis and shall be at least as broad as ISO 1996 form CG 00 01 (or a substitute form providing equivalent coverage); and shall cover liability arising from premises, operations, independent subscribers, completed operations, personal injury, products, civil lawsuits, Title VII actions and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

13.21 **BUSINESS AUTOMOBILE LIABILITY INSURANCE:**

13.21.1 *Minimum Limit required:*

13.21.2 One Million Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage.

13.21.3 Coverage shall be for "any auto", including owned, non-owned and hired vehicles. The policy shall be written on ISO form CA 00 01 or a substitute providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

13.22 **PROFESSIONAL LIABILITY INSURANCE (Architects, Engineers and Land Surveyors)**

13.22.1 *Minimum Limit required:*

13.22.2 One Million Dollars (\$1,000,000.00).

13.22.3 Retroactive date: Prior to commencement of the performance of this Contract.

13.22.4 Discovery period: Three (3) years after termination date of this Contract.

13.22.5 A certified copy of this policy may be required.

13.23 **WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE:**

13.23.1 **SUBSCRIBER** shall provide workers' compensation insurance as required by NRS Chapters 616A through 616D inclusive and Employer's Liability insurance with a minimum limit of \$500,000.00 each employee per accident for bodily injury by accident or disease.

13.23.2 **SUBSCRIBER** may, in lieu of furnishing a certificate of an insurer, provide an affidavit

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indicating that **SUBSCRIBER** is a sole proprietor; that **SUBSCRIBER** will not use the services of any employees in the performance of this Contract; that **SUBSCRIBER** has elected to not be included in the terms, conditions, and provisions of NRS Chapters 616A-616D, inclusive; and that **SUBSCRIBER** is otherwise in compliance with the terms, conditions, and provisions of NRS Chapters 616A-616D, inclusive.

14. **BUSINESS LICENSE:**

14.1 **SUBSCRIBER** shall not commence work before **SUBSCRIBER** has provided a copy of his Carson City business license to Carson City Purchasing and Contracts.

14.2 The Carson City business license shall continue in force until the later of: (1) final acceptance by **CITY** of the completion of this Contract; or (2) such time as the Carson City business license is no longer required by **CITY** under the terms of this Contract.

15. **COMPLIANCE WITH LEGAL OBLIGATIONS:**

SUBSCRIBER shall procure and maintain for the duration of this Contract any state, county, city, or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by **SUBSCRIBER** to provide the goods or SERVICES or any services of this Contract. **SUBSCRIBER** will be responsible to pay all government obligations, including, but not limited to, all taxes, assessments, fees, fines, judgments, premiums, permits, and licenses required or imposed by law or a court. Real property and personal property taxes are the responsibility of **SUBSCRIBER** in accordance with NRS Chapter 361 generally and NRS 361.157 and 361.159, specifically regarding for profit activity. **SUBSCRIBER** agrees to be responsible for payment of any such government obligations not paid by its subscribers during performance of this Contract. **CITY** may set-off against consideration due any delinquent government obligation.

16. **WAIVER OF BREACH:**

Failure to declare a breach or the actual waiver of any particular breach of this Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

17. **SEVERABILITY:**

If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the nonenforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

18. **ASSIGNMENT / DELEGATION:**

To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by **CITY**, such offending portion of the assignment shall be void, and shall be a breach of this Contract. **SUBSCRIBER** shall neither assign, transfer nor delegate any rights, obligations or duties under this Contract without the prior written approval of **CITY**. The parties do not intend to benefit any third party beneficiary regarding their respective performance under this Contract.

19. **CITY OWNERSHIP OF PROPRIETARY INFORMATION:**

Any files, reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer programs, computer codes, and computer records (which are intended to be consideration under this Contract), or any other documents or drawings, prepared or in the course of preparation by **SUBSCRIBER** (or its subscribers) in performance of its obligations under this Contract shall be the exclusive property of **CITY** and all such materials shall be delivered into **CITY** possession by **SUBSCRIBER** upon completion, termination, or cancellation of this Contract. **SUBSCRIBER** shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of **SUBSCRIBER'S** obligations under this Contract without the prior written consent of **CITY**. Notwithstanding the foregoing, **CITY** shall have no

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proprietary interest in any materials licensed for use by **CITY** that are subject to patent, trademark or copyright protection.

20. PUBLIC RECORDS:

Pursuant to NRS 239.010, information or documents received from **SUBSCRIBER** may be open to public inspection and copying. **CITY** will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests. **SUBSCRIBER** may clearly label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 332.061, provided that **SUBSCRIBER** thereby agrees to indemnify and defend **CITY** for honoring such a designation. The failure to so label any document that is released by **CITY** shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

21. CONFIDENTIALITY:

SUBSCRIBER shall keep confidential all information, in whatever form, produced, prepared, observed or received by **SUBSCRIBER** to the extent that such information is confidential by law or otherwise required by this Contract.

22. LOBBYING:

23.1 The parties agree, whether expressly prohibited by federal law, or otherwise, that no funding associated with this Contract will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:

23.1.1 Any federal, state, county or local agency, legislature, commission, council or board;

23.1.2 Any federal, state, county or local legislator, commission member, council member, board member, or other elected official; or

23.1.3 Any officer or employee of any federal, state, county or local agency; legislature, commission, council or board.

23. GENERAL WARRANTY:

SUBSCRIBER warrants that it will perform all SERVICES required hereunder in accordance with the prevailing standard of care by exercising the skill and care normally required of individuals performing the same or similar SERVICES, under the same or similar circumstances, in the State of Nevada.

24. PROPER AUTHORITY:

The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. **SUBSCRIBER** acknowledges that this Contract is effective only after approval by the Carson City Board of Supervisors and only for the period of time specified in this Contract. Any SERVICES performed by **SUBSCRIBER** before this Contract is effective or after it ceases to be effective is performed at the sole risk of **SUBSCRIBER**.

25. GOVERNING LAW / JURISDICTION:

This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. **SUBSCRIBER** consents and agrees to the jurisdiction of the courts of the State of Nevada located in Carson City, Nevada for enforcement of this Contract.

26. DISPUTE RESOLUTION:

Dispute or Claim. Any cause of action, claim or dispute which either Party may have against the other arising out of or relating to this Contract, including, but not limited to, the interpretation of the terms hereof or any Laws or regulations that affect this Contract ("Dispute") shall be submitted in writing to the other Party. The written submission of any Dispute shall include a concise

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statement of the question or issue in dispute together with a statement listing the relevant facts and appropriate supporting documentation.

Good Faith Resolution. The Parties agree to cooperate in good faith to expedite the resolution of any Dispute. Pending resolution of a Dispute, the Parties shall proceed diligently with the performance of their obligations under this Contract.

Informal Negotiation. The Parties shall first attempt in good faith to resolve any Dispute through informal negotiations between the designated representatives of each Party.

Mediation Equitable Remedies. In the event the Parties are unable to resolve any Dispute through the informal negotiations within thirty (30) days of a Party's receipt of written notice of such Dispute, then either Party may submit the Dispute for resolution by mediation, or non-binding arbitration, or any other method chosen by the Parties, subject to the express prior written agreement of the Parties. Such written agreement shall include all guidelines to be followed by the Parties in such dispute resolution prior to the commencement of such process. Neither Party shall be required to pursue arbitration over any other method of dispute resolution.

Litigation Rights. In the event the Parties are unable to satisfactorily resolve the Dispute within thirty (30) days of the receipt of notice of the Dispute, subject to any extensions of time mutually agreed upon in writing, either Party may initiate litigation in a court of law located in Carson City, Nevada, which shall be the exclusive venue to litigate disputes.

Recovery Costs. In the event any action is brought at law or in equity in court to enforce any provision of this Contract, or for damages by reason of any alleged breach of this Contract, then the prevailing Party will be entitled to recover from the other Party all costs of the suit, including, court costs and the prevailing Party's reasonable attorney's fees and related costs and expenses.

27. ENTIRE CONTRACT AND MODIFICATION:

This Contract and its integrated attachment(s) constitute the entire Contract of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other Contracts that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto and approved by the Carson City Board of Supervisors. Conflicts in language between this Contract and any other agreement between **CITY** and **SUBSCRIBER** on this same matter shall be construed consistent with the terms of this Contract. The parties agree that each has had their respective counsel review this Contract which shall be construed as if it was jointly drafted.

INDEPENDENT SUBSCRIBER AGREEMENT

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28. ACKNOWLEDGMENT AND EXECUTION:

This Contract may be executed in counterparts. The parties hereto have caused this Contract to be signed and intend to be legally bound thereby as follows:

CITY

Chief Financial Officer
Attn: Laura Tadman, Purchasing & Contracts Administrator
Purchasing and Contracts Department
201 North Carson Street, Suite 3
Carson City, Nevada 89701
Telephone: 775-283-7137
Fax: 775-887-2107
LTadman@carson.org

CITY'S LEGAL COUNSEL

Carson City District Attorney

I have reviewed this Contract and approve as to its legal form.

By: _____
Nancy Paulson, Chief Financial Officer

By: _____
Deputy District Attorney

Dated _____

Dated _____

CITY'S ORIGINATING DEPARTMENT
SUBSCRIBER will not be given authorization to begin work until this Contract has been signed by Purchasing and Contracts

BY: Darren Schulz
Public Works Director
3505 Butti Way
Carson City, NV 89701
775-887-2355
DSchulz@carson.org

Account #510-3205-434.70-40

By: _____

Dated _____

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Undersigned deposes and says under penalty of perjury: That he/she is **SUBSCRIBER** or authorized agent of **SUBSCRIBER**; that he/she has read the foregoing Contract; and that he/she understands the terms, conditions and requirements thereof.

SUBSCRIBER

BY: Jeff Tillman

TITLE: President

FIRM: South Tahoe Refuse & Recycling Services/Douglas Disposal & Recycling Services

Address: 2140 Ruth Avenue

City: South Lake Tahoe **State:** CA **Zip Code:** 96150

Telephone: 530-541-5105

E-mail Address: jeff@southtahoerefuse.com

(Signature of Subscriber)

DATED _____

STATE OF _____)

)**ss**

County of _____)

Signed and sworn (or affirmed before me on this _____ day of _____, 20__.

(Signature of Notary)

(Notary Stamp)

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CONTRACT ACCEPTANCE AND EXECUTION:

The Board of Supervisors for Carson City, Nevada at their publicly noticed meeting of March 3, 2016 approved the acceptance of the attached Contract hereinbefore identified as **CONTRACT No. 1516-076**. Further, the Board of Supervisors authorizes the Mayor of Carson City, Nevada to set his hand to this document and record his signature for the execution of this Contract in accordance with the action taken.

CARSON CITY, NEVADA

ROBERT L. CROWELL, MAYOR

DATED this 3rd day of March, 2016.

ATTEST:

SUSAN MERRIWETHER, CLERK-RECORDER

DATED this 3rd day of March, 2016.



February 5, 2016

Re: Carson City Landfill Tipper Agreement

Dear Mr. Marano,

We appreciate the opportunity to bring a proposal to you regarding modifications to operations at the Carson City landfill. We believe it will be beneficial to both Carson City and to our solid waste operations.

Our companies include South Tahoe Refuse Co. and Douglas Disposal, Inc., both of whose service areas lie adjacent to Carson City. As services and operations continue to evolve in the regional solid waste industry, we are always looking to establish additional options for our companies. One of those includes access to the Carson City landfill for our municipal solid waste (MSW) and construction and demolition waste (C&D). The Carson City landfill is not only the closest landfill to our companies, but its current hours of operation would provide us with additional flexibility to direct our MSW and C&D as needed due to volume, weather, road conditions, labor, and equipment resources.

Our proposal is to install a trailer tipper at the Carson City landfill. As you may be aware, many trucks that transport garbage are comprised of a truck cab and a 40 to 48 foot, lightweight, metal trailer. This equipment maximizes weight that can be transported with each load. The trailers are designed to be uncoupled from the cab and lifted from the front by a hydraulic tipper so that the garbage empties out the back by gravity. This equipment will allow us, as well as other authorized solid waste disposal companies, to utilize your landfill.

Our proposal is to have Douglas Disposal Inc. pay for the up front cost of the tipper equipment to be used at the Carson City landfill and amortize a credit back on our monthly landfill bill over the course of five years, which would be the length of the equipment loan. After the tipper equipment loan is paid off, Carson City would take ownership of the tipper equipment. Our Equipment Shop Manager, who has been in the business for over 40 years, has investigated equipment costs and availability and located a favorable acquisition.

We estimate this will generate additional annual revenues to Carson City. We look forward to moving forward with this mutually beneficial regional project.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jeffery R. Tillman', is written over a series of horizontal lines.

Jeffery R. Tillman
President

These Services are incorporated into the agreement between Carson City, a consolidated municipality (CARSON CITY) and South Tahoe Refuse Co. and Douglas Disposal Inc. (SUBSCRIBER).

EXHIBIT A SERVICES

1. **SUBSCRIBER** commits to disposing of municipal solid waste (MSW) at the Carson City Landfill. In return, **CARSON CITY** agrees to charge fees to the **SUBSCRIBER** for all MSW materials based on the MSW Compacted & Uncompacted, In-County rates.
2. **SUBSCRIBER** commits to disposing of construction and demolition waste (C&D) at the Carson City Landfill. In return, **CARSON CITY** agrees to charge fees to the **SUBSCRIBER** for all C&D materials based on the Class III (Inert), In-County rates.
3. Subscription Period. The subscription period for this program is based on Carson City's fiscal year (July 1 – June 30).
4. Minimum Quantity (MSW). **SUBSCRIBER** is required to dispose of a minimum of 21,500 tons of MSW at the Carson City Landfill within the subscription period. At the end of the subscription period, if the **SUBSCRIBER** has not met the minimum quantity, the **SUBSCRIBER** shall pay the difference between In-County Rates and Out-of-County Rates for all MSW loads. This difference shall be paid in full by July 31 of the corresponding year. During the first year of operations, the minimum quantity requirements shall be prorated based on the date the tipper is first used.
5. Minimum Quantity (C&D). **SUBSCRIBER** is required to dispose of a minimum of 1,250 tons of C&D material at the Carson City Landfill within the subscription period. At the end of the subscription period, if the **SUBSCRIBER** has not met the minimum quantity, the **SUBSCRIBER** shall pay the difference between In-County Rates and Out-of-County Rates for all C&D loads. This difference shall be paid in full by July 31 of the corresponding year. During the first year of operations, the minimum quantity requirements shall be prorated based on the date the tipper is first used.
6. Equipment Purchase. **SUBSCRIBER** shall purchase a trailer tipper that will be used for tipping trailers at the Carson City Landfill. **SUBSCRIBER** will be responsible for installation, operation of the tipper to unload the trailers and physical damage insurance costs. **CARSON CITY** will be responsible for maintenance and repair costs. **SUBSCRIBER** will finance this equipment using an equipment loan and will be allowed a credit on its landfill bill each month equal to the amount of the loan payment during the 60 month loan term. Once the equipment loan has been paid in full at the end of the 60 months, the equipment will become the property of **CARSON CITY** and the monthly landfill bill credit to

SUBSCRIBER for the loan payment will stop. The SUBSCRIBER shall be competent and qualified to operate the trailer tipper equipment. While on-site, SUBSCRIBER'S employees and/or representatives, will wear as their outermost item of clothing, a high visibility, safety shirt, jacket, coat or vest.

7. Alternate Daily Cover. SUBSCRIBER agrees to provide Alternative Daily Cover (ADC) material. CARSON CITY agrees to accept ADC at no charge.
8. Rates and Charges. SUBSCRIBER agrees to pay the following rates or charges:
 - a. SUBSCRIBER will pay CARSON CITY \$24.00 per ton of MSW disposed of at the CARSON CITY landfill.
 - b. SUBSCRIBER will pay CARSON CITY in-county rates for C&D disposed of at the CARSON CITY landfill
 - c. For the first five (5) years, during the term of the equipment loan, there will be no change in the MSW rate of \$24.00 per ton.
 - d. At the end of the five (5) year loan period, the \$24.00 MSW rate will be indexed to the annual percentage change in the U.S. City Average, Garbage and Trash Collection, Consumer Price Index (CPI).
9. High Winds. In the event of sustained winds of 50 mph or more, as determined by CARSON CITY, SUBSCRIBER agrees to suspend use of the trailer tipper equipment.
10. Hold Harmless and Indemnification relating to Operation, Maintenance or Environmental Liability. CARSON CITY, its successors and assigns agrees to hold harmless and indemnify SUBSCRIBER, its successors and assigns from any and all claims, costs or damages, including reasonable attorney's fees and costs associated with the operation or maintenance of the Landfill or any environmental damage, environmental liability, water quality or ground water contamination problem or any environmental monitoring requirements and any other related claim unless the specific environmental damage, environmental liability, water or ground water contamination problem is the direct result of SUBSCRIBER disposing of waste at Landfill, in which event SUBSCRIBER shall hold harmless and indemnify CARSON CITY from said particular liability. If the source or cause of the environmental problem cannot be traced then it is the responsibility of CARSON CITY to correct or solve.
11. Solid Waste Acceptance. As defined in the Carson City Landfill Solid Waste Permit (SW001REV02), MSW, C&D and ADC shall meet the criteria specified in sections 4.1 and 4.2 of the permit.
12. CARSON CITY Landfill Operating Permit. CARSON CITY will apply for a new Class III landfill operating permit and modify their existing Class I permit. If NDEP is unable to issue a new Class III permit, that will result in a \$60,000 additional permit renewal fee for CARSON CITY. In order to offset this cost, SUBSCRIBER agrees to pay \$60,000 in June of each fiscal year, for the term of this agreement, to reimburse CARSON CITY for the additional permit renewal cost.