

**AGREEMENT AND FIRST AMENDMENT TO
AGREEMENT BETWEEN THE COUNTY OF MONO AND
D&S WASTE REMOVAL, INC. FOR FRANCHISE SOLID WASTE SERVICES**

This Agreement and First Amendment is entered into _____, 2022 by and between the County of Mono (hereinafter, "County"), a political subdivision of the State of California, and D&S Waste Removal, Inc. of Yerington, Nevada (hereinafter, "Contractor"), for the purposes of amending the Primary Franchise Agreement Between County of Mono and D&S Waste Removal, Inc. for Collection of Solid Waste from Residential and Commercial Customers in Unincorporated Mono County, entered into on or about December 2018 (the "Agreement"). The County and Contractor are sometimes referred to herein collectively as "the Parties."

WHEREAS, the parties entered into the Agreement for the purpose of Contractor providing franchise solid waste services; and

WHEREAS, subsequently, County has undergone a significant transition in the nature of its solid waste systems since the parties entered into the Agreement; and

WHEREAS, accordingly, there is a need to extend the term and fee terms of the Agreement for a period of time to allow parties to reach agreement on a new franchise agreement;

NOW, THEREFORE, the parties agree as follows:

1. Article 3, Section 3.01(a), "Term", is hereby amended to read as follows:

"The Term of the Agreement commences on the Commencement Date and expires on June 30, 2023, unless terminated earlier in accordance with Section 14.02(a)(1)"

2. Article 3, Section 3.01(b), "Optional County Extension Right", is hereby amended to read as follows:

"County may, in its sole discretion, extend the Term for up to three (3) additional months commencing on the expiration date provided in Subsection (a) by Notice to Franchisee no later than (i) May 30, 2023 or (ii) another date agreed to by the Parties."

3. Article 7, Section 7.01(b), "Exceptions", is hereby amended in its entirety to read as follows:

"Notwithstanding Subsection (a), Franchisee is *not* obligated to deliver Solid Waste to the Designated Disposal Facility under emergency or unforeseen circumstances if Franchisee fully and timely satisfies the following conditions:

1. **Notice.** Prior to diverting Solid Waste from the Designated Disposal Facility, Franchisee gives the Director (or if the Director is unavailable, another person in the Department of Public Works administrative office) oral notice, followed by Notice, of highway or road closure and Franchisee's inability to deliver Solid Waste to the Designated Disposal Facility."
2. **Records.** Franchisee keeps accurate Records with respect to Solid Waste that Franchisee diverts from the Designated Disposal Facility, including
 - (i) the amount and type of Solid Waste, documented by a weight ticket from a certified weighmaster from a California or Nevada state-certified truck scale approved by the Director, or a gate receipt from the facility to which Franchisee transported and delivered that diverted Solid Waste;

- (ii) the type of Vehicle or Container in which Franchisee transported that Solid Waste; and
- (iii) the County staff person to whom Franchisee gave oral notice.

3. **Reporting.** Included in its Quarterly Report submitted to County in accordance with Section 10.02, Franchisee submits a report satisfactory to County with supporting receipts or weight tickets as described above for that Solid Waste diverted during that quarter.

4. Article 7, Section 7.03 "Disposal Fees" is hereby amended to read as follows:

"Franchisee will timely pay gate and any other fees charged by the transfer station or ultimate Disposal Facility to which the waste is delivered."

5. Article 13, Section 13.02, "Fees Payable by Franchisee", is hereby amended to read as follows:

a. Surcharge.

1. **Amount.** In consideration for County's costs in managing the solid waste franchise program, Franchisee will pay County a flat Surcharge of \$28.00 on each ton of waste collected in unincorporated Mono County that is not delivered to and subject to a tipping fee at a County-owned Satellite Transfer Station (i.e., the Benton, Paradise, Chalfant, Walker, Bridgeport or Pumice Valley Satellite Transfer Stations). For each ton of waste that has been subject to a tipping fee at a County-owned Satellite Transfer Station, this surcharge shall not apply.

2. **Adjustment to Surcharge.** By the end of the first Quarter of each year, County will determine whether County requires modification to the Surcharge to account for increases or decreases in management costs. County shall Notify Franchisee of the new Surcharge, which will take effect July 1 of that year.

3. **Payment.** Franchisee will pay the Franchise Fee sum of the Surcharge for all eligible tonnage collected in unincorporated Mono County quarterly, no later than the first day of the second month immediately following the Quarter in which Franchisee rendered Franchise Services, as required by Section 12.10.022 of the Mono County Code (for example, for the quarter ending on March 31, payment is due no later than May 1). With payment, Franchisee will additionally provide:

(1) documentation in form and detail satisfactory to the Director showing the basis for calculating the Surcharge, together with additional information to calculate or verify the Surcharge that the Director may determine necessary; and

(2) a representation and warranty as follows: "I represent and warrant, under penalty of perjury of the laws of the State of California, that I am familiar with the operations of D & S Waste Removal, Inc. and am responsible for keeping and maintaining its records, tonnage collected by location, and I have reviewed the [INSERT DATE AND DESCRIPTION OF ACCOMPANYING SURCHARGE ACCOUNTING]. To the best of my knowledge and belief, the statement is true, correct and complete."

Documentation and representations and warranties filed by Franchisee are not deemed conclusive as to the information presented or statements made therein. Franchisee's submission of documentation and representations and warranties does not preclude County from taking additional measures and actions to collect Surcharge actually due and payable.

6. Article 13, Section 13.02(a)(5) "Annual Review by CPA; Actual Payments", is hereby struck in its entirety.
7. Exhibit R-1 is hereby struck in its entirety.
8. Recital 3 is hereby amended to read as follows:

"To recover costs associated with County's management of the franchise, it is necessary to require Franchisee to pay certain sums, embodied in a Surcharge per ton of waste collected in unincorporated Mono County that is not otherwise subject to a Gate Fee."

9. Exhibit 1.01: Definitions is hereby amended to strike the definition of "Capacity Fee(s)".
10. Exhibit 1.01: Definitions is hereby amended to include the following:

" 'Surcharge' means the fee described in Section 13.02(a)."

11. Exhibit 7.01b: CAPACITY FEES is hereby struck in its entirety.
12. All remaining references to "Franchise Fee" or "Capacity Fee" throughout the Agreement are hereby amended to read as "Surcharge."
13. All other provisions of the Contract not modified herein shall remain in full force and effect.

IN WITNESS THEREOF, THE PARTIES HERETO HAVE SET THEIR HANDS AND SEALS AS SET FORTH BELOW.

COUNTY OF MONO:




Robert C. Lawton, County
Administrative Officer

Dec 9, 2022

Date

CONTRACTOR:



Darrol Brown
D&S Waste, Inc.

12/7/22

Date

Approved as to Form:



County Counsel