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March 31, 2010

Norma Santiago  
Supervisor, District 5  
330 Fair Lane  
Placerville, CA 95667

2010 APR -2 AM 10:55  
FILED  
BOARD OF SUPERVISORS  
EL DORADO COUNTY

Dear Supervisor Santiago,

At our request, El Dorado Environmental Management is placing an item on the April 6<sup>th</sup> Board agenda requesting a hearing to consider extending the South Tahoe Refuse franchise agreement. We are forwarding some background information to you in connection with that agenda item.

The attached letter from Jeff Rahbeck outlines chronological background information that supports our request. We think that the opportunity to review this material prior to your April 6<sup>th</sup> Board meeting may help expedite the process.

If you have any specific questions or comments on this item, please feel free to contact me directly at 530.542.8300.

Your time and attention to this matter are much appreciated.

Truly yours,

Jeff Tillman  
President

Encl.

COPY SENT TO BOARD MEMBERS  
FOR THEIR INFORMATION

DATE 4-2-10

cc: EM  
Cindy Johnson - Agenda Clerk

**JEFFREY K. RAHBECK**  
A PROFESSIONAL LAW CORPORATION  
ROUND HILL PROFESSIONAL BUILDING  
P.O. BOX 436  
ZEPHYR COVE, NEVADA 89448  
**(775) 588-5602 OFFICE**  
**(775) 588-8548 FAX**  
**JKRAHBECK@CS.COM**

October 21, 2009

VIA FACSIMILE: (530) 621-2937 (w/out attachments)

El Dorado County Counsel  
Attn: Mike Ciccozzi, Esq.  
County Government Center  
330 Fair Lane  
Placerville, CA 95667

**(Hard Copy to Follow By Mail)**

Re: Franchise Extension

Dear Mike:

The purpose of this letter is to request that the proposed Solid Waste Services Agreement (Agreement) between South Tahoe Refuse Company (STR) and El Dorado County (County) be placed on the County Board of Supervisors' Agenda in the next 30 to 60 days for approval.

In that regard, the JPA approved the basic Agreement on January 5, 2006, with Norma Santiago seconding the Motion for approval and voting in favor thereof. Douglas County approved the Agreement in October of 2006. The City of South Lake Tahoe approved the Agreement on August 21, 2007.

It's my understanding that the Agreement, as drafted, has been approved by your office and the Department of Environmental Planning as well as Tom Bruen, Esq., who acted as special counsel to the JPA and/or the County in negotiating the terms of the Agreement.

I believe that STR has been extremely patient in waiting for the County to fulfill its previous commitments and approve the Agreement. The following background information may assist you or the current Board of Supervisors in approving the Agreement:

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On April 23, 2001, the El Dorado County Board of Supervisors authorized the release of a Request for Qualifications (RFQ) to over 100 potential vendors throughout the world to build a facility to meet the 50% diversion requirement of California's Assembly bill 939. On June 29, 2001, El Dorado County received a total of seven RFQ responses from 1) South Tahoe Refuse 2) Waste Management 3) BLT Enterprises 4) Comporec S&W Services 5) Norcal Waste Systems 6) Herhof Umwelttechnik GmbH of Solms, Germany and 7) CWR Industries. On September 11, 2001, the El Dorado County Board of Supervisors authorized the release of the Request for Proposal (RFP) to the seven companies that responded to the RFQ. On October 3, 2001, all seven firms that made responses to the RFQ were invited and encouraged to tour a number of Herhof composting and waste diversion facilities in Frankfurt and Dresden, Germany; representatives from STR, CWR Industries and Waste Management attended.

In the Request for Qualifications (see attached "RFQ 2001-06-29"), the County indicated what the expected term would be. See *Section 4 - Contract Term and Financing* for the El Dorado County RFQ, which states: "In the event that private ownership and/or operation is chose by the COUNTY, a 15 to 20 year term is currently envisioned however the actual term will be determined during negotiations with the selected entity." This is the first El Dorado County document that references a 20 year term.

In the Request for Proposal (see attached "RFP 2001-10-24") at *Appendix A-13 and A-14, Cost Proposal*, the template specifies that the cost be spread over a 20 year term.

When STR prepared and submitted its proposal, it was based upon a 20 year financing term and corresponding franchise extension.

STR's proposal in response to the RFP is a critical document since it outlines STR's plan to accomplish El Dorado County's goals as outlined in the RFP. In Section 4.11 (see attached STR Proposal for Mixed Solid Waste Facility 2002-03-01), STR identified four items that were required for the project:

1. STR and El Dorado County enter into a specific written contractual arrangement upon terms and conditions acceptable to both STR and County for the services contemplated by the RFP.

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2. Each of the franchising jurisdictions adopting the rate structure contained in the RFP for the proposed services or, alternatively, County providing another form of financing acceptable to STR for the proposed services.

3. STR being able to acquire/lease the real property where the services are to be provided upon the terms and conditions acceptable to STR.

4. Approval and permitting by all applicable regulatory agencies.

A franchise extension requirement is listed three different times on Page 19 as part of STR's Financial Plan of the RFP (see attached RFP 2002-03-01):

1. Item 4.6.5, "The proposed principal maturity is 15-20 years" (in accordance with the terms of the County's RFQ).

2. Item 4.6.10, "A franchise extension, from all franchise areas currently served by STR, equal to the term of the proposed financing will be necessary."

3. Last bullet point: "A franchise extension is necessary for all franchise areas, equal to the length of the financing period and/or depreciation and amortization periods, whichever is longer, inherent in the proposal. Inability to obtain the necessary franchise extensions for all or any of the franchise areas will materially impact the proposal."

On May 21, 2002, the El Dorado County Board of Supervisors determined that STR's proposal was "responsive to the County's primary need to meet the state mandate of 50% diversion while demonstrating a high level of sustainability and promoting the growth of conversion technology" (see attached Environmental Management Staff report dated May 21, 2002), and was the only proposal that adequately responded to the RFP. STR was selected as the preferred vendor on the East Slope. The Board of Supervisors directed Environmental Management to proceed with discussions and negotiations with STR to develop a facility consistent with the Phase III component of the proposal for a mixed solid waste processing facility.

On March 10, 2004, Jon Morgan, Director of Environmental Management, submitted an extensive staff report to the Board of Supervisors (see attached EDC Staff Report 3-10-2004). That staff report provides, in pertinent part:

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"STR proposes a twenty (20) year bond repayment schedule and amortization/depreciation of the project costs. In addition, STR is requesting an extension of their franchise agreement, which is equal to or close to the financing of the permanent facility. Please note Attachment C - *Proposal for a Mixed Solid Waste Processing Facility for the Eastern Slope Waste Shed of El Dorado County, California* - letter from STR."

The staff report contained a staff recommendation as follows:

"That your Board authorize the Environmental Management Department to begin negotiations with STR regarding a new Franchise Agreement that will incorporate the new Mixed Solid Waste Facility. A recommendation will be brought back to the Board by May 25, 2004." El Dorado County Board of Supervisors Agenda Item Transmittal, Meeting of March 23, 2004, Agenda Title: *South Tahoe Refuse Co., Inc. (STR) Mixed Solid Waste Processing Expansion Project Update.*"

The recommended action was approved by the Board of Supervisors.

Subsequent to the March 23, 2004, Board of Supervisors' meeting, the Franchise Agreement extension was calendared for May 25, 2004 and continued to September 28, 2004, when it was taken off calendar. On January 6, 2005, Jon Morgan requested that STR present a project information binder summarizing the project, permits and financing. In that green binder, submitted to El Dorado County Environmental Management on February 14, 2005, the STR rate calculation information is shown based on the 20-year franchise extension.

The issues of rate increases and franchise extensions were brought to the JPA for coordination. JPA counsel undertook the task of drafting a model franchise agreement that each jurisdiction would take back and consider. All of the draft Agreements always contained a (twenty) year term. The discussion of the draft franchise agreement continued through November 18, 2005. On November 28, 2005, Counsel released a draft STR franchise agreement to the City and El Dorado County for review and comment.

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On January 5, 2006, the JPA Board approved the template for the model franchise agreement, which included the 20-year term. (See attached JPA Minutes 1-5-2006, Page 3). The discussion of the franchise extensions continued on April 19, 2006, where it was indicated that only minor adjustments were needed before the franchise extension agreements would be ready for the entities to sign. On September 13, 2006, JPA counsel discussed the new STR franchise agreement, noting, in part:

"The reason there needs to be a new franchise agreement is because STR wants to go to their bank and get 20-year bond financing. In order to do that, they need at least a 20 year franchise agreement in order to show the bank that they can pay off this bond...". JPA Minutes, September 13, 2006, Page 4 (See attached JPA Minutes 9-13-2006).

Counsel then went on to discuss terms of the agreement that protect the agencies should STR not follow through with the facility expansion.

STR has always considered this to be the contract negotiations authorized by the El Dorado County Board of Supervisors for the RFP. The subsequent discussions reflected in the JPA Minutes and in correspondence among attorneys representing the various parties never indicated otherwise.

Also attached is a draft 2007 El Dorado County staff report that was provided to STR for comment (you can see some of STR's notes on the attached document "El Dorado County new franchise staff report draft 2007"). On the last page of the staff report, there is an excellent explanation regarding the franchise extension:

- "Financing for the project is expected to be amortized over a 20-year period, which is the same period of time that that project will be depreciated.
- In November 2005, the Authority (JPA) recommended that the three governing bodies of El Dorado County, the City of South Lake Tahoe and Douglas County, Nevada, approve a new Franchise Agreement for STR which would add an additional 14 years to the agreement extending it to December 31, 2028.

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- The purpose of the new Solid Waste Service Agreement is to give STR an adequate term so that they may secure financing for the Resource Recovery Facility. The Phase I project cannot proceed without a secured commitment from the governing bodies of the STR franchise areas. This commitment will be satisfied through the execution of the new Solid Waste Services Agreement by all three members of the Authority.
- This Agreement has been approved by County Counsel and Risk Management."

The three-tiered rate increases that were passed in 2005 to fund the project were based on a 20-year period to recover project costs. As can be seen from Appendix A-13 and A-14 of the RFP (see attached RFP 2001-10-24), the RFP required costs to be presented for "Year 1" and "Year 20", indicating to STR that El Dorado County had determined that a 20-year term was appropriate before the RFP was issued. In that regard, El Dorado County approved the rate increases on March 15, 2005. See Resolution #062-2006 submitted herewith. Please note said Resolution references the execution of a new franchise agreement by the three jurisdictions. As previously indicated, the City and Douglas County have entered into new 20-year franchise agreements with STR.

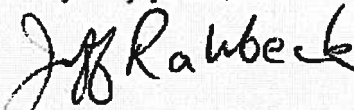
STR has always considered the new Solid Waste Services Agreement developed by JPA counsel, in conjunction with counsel from all parties, to be the contract contemplated by the RFP, which is integral to the entire project.

I believe this letter establishes that the construction and financing of the modified and expanded resource recovery facility was based upon the County's commitment to extend the franchise term for 20 years from 2008 and STR's reliance thereon in proceeding to commit to a 20-year tax exempt bond financing transaction and the construction of the new facility in reliance thereon. The construction of the facility, as of the date hereof, is almost complete. It's anticipated that the facility will become operational within the next thirty (30) days.

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Should you have any questions or need any additional information, please contact me.

Very truly yours,

  
JEFFREY K. RAHBECK

JKR/eh  
cc: Client