



**Agreement for Services No. 001E-A-12/13-BOS  
Between the County of El Dorado  
and NewPoint Group, Inc.**

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**THIS AGREEMENT** made and entered by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County"), acting by and through County Service Area No. 10, a lawfully established County Service Area as defined by Government Code Section 25210 et seq., and NewPoint Group, Inc., a corporation duly qualified to conduct business in the State of California, whose principal place of business is 2555 Third Street, Suite 215, Sacramento, CA 95818 (hereinafter referred to as "Consultant").

**RECITALS**

**WHEREAS**, County has determined that it is necessary to obtain a Consultant to provide assistance with the negotiations for potential new franchise agreement terms and conditions with the County's current franchise haulers for the Environmental Management Department; and

**WHEREAS**, Consultant has represented to County that it is specially trained, experienced, expert and competent to perform the special services required hereunder and County has determined to rely upon such representations; and

**WHEREAS**, it is the intent of the parties hereto that such services be in conformity with all applicable federal, state and local laws; and

**WHEREAS**, County has determined that the provision of these services provided by Consultant is in the public's best interest, and that these services are more economically and feasibly performed by outside independent Consultants as well as authorized by El Dorado County Charter, Section 210 (b) (6) and/or Government Code 31000;

**NOW, THEREFORE**, County and Consultant mutually agree as follows:

**ARTICLE I**

**Scope of Services:** Consultant shall perform all professional and technical services required to assist County with negotiations for potential new franchise agreement terms and conditions with the County's current franchise haulers for the Department of Environmental Management. Consultant shall provide and make available Consultant's

own personnel, subconsultants, materials, vehicles, communication devices, and other equipment necessary as determined by County to perform the services, work, and tasks designated (referred to hereinafter as the "Work"). Work shall be as outlined below.

1. Conduct Comparative Rate Survey – Conduct a comparative survey of current residential and commercial rates of neighboring jurisdictions. The survey of up to fourteen (14) jurisdictions will examine the range of services provided (i.e., recycling, yard waste) and other parameters to characterize the comparisons.
2. Conduct Comparative Franchise Survey – Assemble data on franchise extensions recently provided by California jurisdictions that have franchises with small to medium sized local garbage companies. This survey will examine the length of new franchise terms, history of franchise extensions, and new agreed-upon franchise terms and conditions. This will include an update of the survey of operating ratios (OR) used by other Northern California jurisdictions provided in Table 6-2 of the 2008 Solid Waste Rate and Service Study).
3. Conduct Customer Satisfaction Surveys – Consultant will conduct a survey of customer satisfaction of residential and commercial customers for each of the five service areas (approximately 5 to 10 multiple choice questions per survey). Consultant will survey 30 residential (may include multi-family customers) and 30 commercial customers for each service area. Survey results will be compiled from other jurisdictions to determine how other jurisdictions measure and rate customer satisfaction. The small survey customer satisfaction results will be compared with those observed in the other comparative jurisdictions.
4. Assess Use of Separate Collection and MRF Operations Agreements – Consultant will assist the County in assessing whether to use a single combined franchise agreement for collection and MRF operations), or separate agreements, for the West Slope services (currently served by Waste Connections). Consultant will provide pros and cons for these alternative contracting methods and make a recommendation to the County for a preferred contracting method.
5. Develop Recommendations for Potential New Franchise Terms – Consultant will review existing baseline services/benefits provided by the current haulers to the County in an effort to reveal the potential types of additional terms and conditions the County may want to consider in a new franchise agreement. Consultant will develop a "strawman," or unrefined, list of potential new terms and conditions to use in negotiations with the franchise haulers. For example, the County has expressed interest to add a standard rate setting process and methodology to its franchise agreements. The County also may want to include new programs and services identified in the Solid Waste Management Plan (e.g., pay as you throw (PAYT) and MRF modernization). Consultant will identify terms and conditions that have either a ratepayer benefit, community benefit, or a hauler benefit.
6. Provide Franchise Agreement Recommendations – Once Consultant has identified a list of potentially agreed upon terms and conditions, Consultant will develop more refined written recommendations for each franchise term and condition. Consultant will develop a thorough description of each new franchise term and condition that the

County can then use, in conjunction with County Counsel, to develop franchise agreement language for its new franchise agreement(s). Consultant will include these written recommendations in a letter report to the County.

7. Attend Negotiation Meetings – Consultant will assist the County in its negotiation meetings with its haulers. By attending up to twelve (12) total negotiation meetings with the County and representatives of the franchise haulers at County's request, Consultant will develop issue/negotiation documents, as needed, to assist with these meetings.
8. Prepare Letter Reports – Consultant will prepare five (5) letter reports, with each one summarizing the results of the franchise agreement negotiation outcomes related to that hauler.
9. Present Results to Board of Supervisors – Consultant will assist the County with a presentation to the Board of Supervisors, at such date and time as directed by County staff.

**ARTICLE II**

**Standards for Work:** Consultant shall perform services in a manner consistent with that level of care and skill ordinarily exercised by other members of the Consultant's profession currently practicing in the same locality and under similar conditions.

**ARTICLE III**

**Term:** This Agreement shall become effective upon final execution by both parties hereto and shall expire three years from the date of execution. No work under this Agreement shall begin until a written "Notice to Proceed" is issued by the County.

**ARTICLE IV**

**Compensation for Services:**

- A. For satisfactory services provided herein, County agrees to pay Consultant monthly upon receipt of itemized invoice(s) detailing a description of work performed (identifying number of hours worked, individuals' name, and position) on a time basis. Payment shall be made within forty-five (45) days following County's receipt and approval of invoices.

Hourly rates for Work performed shall be specified as follows:

Director .....	\$175.00 per hour
Principal .....	\$150.00 per hour
Associate .....	\$115.00 per hour

In addition to the above, the County shall also reimburse Consultant for reasonable costs without markup of mailing, photocopying, and long distance telephone calls.

B. The total payment under this Agreement to Consultant **SHALL NOT EXCEED Seventy Nine Thousand Dollars and 00/100 (\$79,000).**

#### **ARTICLE V**

**Consultant Reporting:** Reports on Services rendered by Consultant shall be submitted to the County in the format, and under the conditions, outlined in Article I.

#### **ARTICLE VI**

**Deliverables:** Deliverables shall coincide with Article I. Failure to submit requested deliverables shall be grounds for termination of the Agreement, as provided in Article XIII. This shall not preclude the County from pursuing damages in the event of a breach of this Article, or any other remedy available to County.

#### **ARTICLE VII**

**Ownership of Data:** Upon completion or earlier termination of all Work under this Agreement, ownership and title to all reports, documents, plans (including digitized plans), specifications, and estimates produced as part of this Agreement will automatically be vested in the County and no further Agreement will be necessary to transfer ownership to the County. The Consultant shall furnish the County all necessary copies of data needed to complete the review and approval process, and Consultant shall not be entitled to use any information provided to County without the County's written consent.

#### **ARTICLE VIII**

**Changes to Agreement:** This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto. There shall be no change in the Consultant's Administrator or subconsultants without prior written approval by the County's administrator.

#### **ARTICLE IX**

**Consultant to County:** It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further agreed that in all matters pertaining to this Agreement, Consultant shall act as Consultant only to County and shall not act as Consultant to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Consultant's responsibilities to County during term hereof.

#### **ARTICLE X**

**Assignment and Delegation:** Consultant is engaged by County for its unique qualifications and skills as well as those of its personnel. Consultant shall not subcontract,

delegate or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County.

#### **ARTICLE XI**

**Independent Consultant/Liability:** Consultant is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. Consultant exclusively assumes responsibility for acts of its employees, associates, and subconsultants, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Consultant shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees and subconsultants. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Consultant or its employees or subconsultants.

#### **ARTICLE XII**

**Fiscal Considerations:** The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, the County of El Dorado is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget, which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

## **ARTICLE XIII**

### **Default, Termination, and Cancellation:**

- A. **Default:** Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date on which the extension of time to cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired. In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means.

- B. **Bankruptcy:** This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Consultant.
- C. **Ceasing Performance:** County may terminate this Agreement in the event Consultant ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. **Termination or Cancellation without Cause:** County may terminate this Agreement in whole or in part upon seven (7) calendar days written notice by County without cause. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to Consultant, and for such other services, which County may agree to in writing as necessary for Agreement resolution. In no event, however, shall County be obligated to pay more than the total amount of the Agreement. Upon receipt of a Notice of Termination, Consultant shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise.

## **ARTICLE XIV**

**Notice to Parties:** All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and shall be addressed as follows:

COUNTY OF EL DORADO  
Environmental Management Department  
2850 Fairlane Court, Building "C"  
Placerville, CA 95667  
ATTN: Gerri Silva, Director

or to such other location as the County directs.

with a carbon copy to

COUNTY OF EL DORADO  
CHIEF ADMINISTRATIVE OFFICE  
PROCUREMENT AND CONTRACTS DIVISION  
360 FAIR LANE, BUILDING "B"  
PLACERVILLE, CA 95667  
ATTN: TERRI DALY, PURCHASING AGENT

Notices to Consultant shall be addressed as follows:

NewPoint Group, Inc.  
2555 Third Street, Suite 215  
Sacramento, CA 95818  
ATTN: James A. Gibson, Director

or to such other location as the Consultant directs.

#### **ARTICLE XV**

**Indemnity:** With respect to the services provided pursuant to this Agreement, to the fullest extent allowed by law, the Consultant shall defend, indemnify, and hold the County harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including litigation costs and reasonable attorney's fees incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the Consultant's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the County, the Consultant, subconsultant(s) and employee(s) of any of these, except for the sole, or active negligence of the County, its officers and employees, or as expressly prescribed by statute. This duty of Consultant to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement.

## ARTICLE XVI

**Insurance:** Consultant shall provide proof of a policy of insurance satisfactory to the El Dorado County Risk Manager and documentation evidencing that Consultant maintains insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Consultant as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage.
- C. Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by the Consultant in the performance of the Agreement.
- D. In the event Consultant is a licensed professional, and is performing professional services under this Agreement, professional liability (for example, malpractice insurance) is required with a limit of liability of not less than \$1,000,000.00 per occurrence.
- E. Consultant shall furnish a certificate of insurance satisfactory to the El Dorado County Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.
- G. Consultant agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Consultant agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and Consultant agrees that no work or services shall be performed prior to the giving of such approval. In the event the Consultant fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- H. The certificate of insurance must include the following provisions stating that:
  1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to County, and;



2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.

- I. The Consultant's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees, and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Consultant's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- N. In the event Consultant cannot provide an occurrence policy, Consultant shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with Risk Management, as essential for the protection of the County.

## **ARTICLE XVII**

**Interest of Public Official:** No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Consultant under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

## **ARTICLE XVIII**

**Interest of Consultant:** Consultant covenants that Consultant presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Consultant further covenants that in the performance of this Agreement no person having any such interest shall be employed by Consultant.

## **ARTICLE XIX**

**Conflict of Interest:** The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and Section 87100 relating to conflict of interest of public officers and employees. Consultant attests that it has no current business or financial relationship with any County employee(s) that would constitute a conflict of interest with provision of services under this contract and will not enter into any such business or financial relationship with any such employee(s) during the term of this Agreement. County represents that it is unaware of any financial or economic interest of any public officer or employee of Consultant relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement either party may immediately terminate this Agreement by giving written notice as detailed in Article XIII, "Default, Termination and Cancellation."

## **ARTICLE XX**

**Withholding (Form 730):** In accordance with changes in Internal Revenue Law, OASDI (Old Age, Survivors, & Disability Insurance) and income taxes may be withheld from any payments made under terms of this Agreement if Consultant falls under the "Contract-Employee" category as determined by County prior to execution of Agreement.

## **ARTICLE XXI**

**California Residency (Form 590):** If Consultant is a California resident, Consultant must file a State of California Form 590, certifying its California residency or, in the case of a corporation, certifying that it has a permanent place of business in California. The Consultant will be required to submit a Form 590 prior to execution of an Agreement or County shall withhold seven (7) percent of each payment made to the Consultant during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.00.

## **ARTICLE XXII**

**Nonresident Withholding:** If Consultant is not a California resident, Consultant shall provide documentation that the State of California has granted a withholding exemption or

authorized reduced withholding prior to execution of this Agreement or County shall withhold seven (7%) percent of each payment made to the Consultant during term of the Agreement as required by law. This requirement applies to any agreement/contract exceeding \$1,500.00. Consultant shall indemnify and hold the County harmless for any action taken by the California Franchise Tax Board.

#### **ARTICLE XXIII**

**Taxpayer Identification Number (Form W-9):** All independent Consultants or corporations providing services to the County must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

#### **ARTICLE XXIV**

**County Business License:** It is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Code Section 5.08.070.

#### **ARTICLE XXV**

**Administrator:** The County Officer or employee with responsibility for administering this Agreement is Gerri Silva, Director of the Environmental Management Department, or successor.

#### **ARTICLE XXVI**

**Authorized Signatures:** The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

#### **ARTICLE XXVII**

**Partial Invalidity:** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

#### **ARTICLE XXVIII**

**No Third-Party Beneficiaries:** The terms and conditions of this Agreement, expressed or implied, exist only for the benefit of the parties to this Agreement and their respective successors and assignments. This Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than Consultant and County. No other person or entity shall have any rights, interests, or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise.

**ARTICLE XXIX**

**Venue:** Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in the County of El Dorado, California, and shall be resolved in accordance with the laws of the State of California. Consultant waives any removal rights it might have under the Code of Civil Procedure Section 394.

**ARTICLE XXX**

**Confidentiality:** Consultant shall maintain the confidentiality and privileged nature of all records together with any knowledge therein acquired, in accordance with all applicable State and Federal laws and regulations, as they may now exist and may hereafter be amended or changed. Consultant, and all Consultant's staff, employees, and representatives, shall not disclose, directly or indirectly at any time, any said confidential information, other than to the County Environmental Management Department for the purpose of, and in the performance of the Agreement. This confidentiality agreement shall survive after the expiration or termination of this Agreement.

**ARTICLE XXXI**

**Entire Agreement:** This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

**Requesting Contract Administrator Concurrence:**

By: Gerri Silva  
Gerri Silva, MS, REHS  
Director  
Environmental Management Department

Dated: July 25, 2012

**Requesting Department Head Concurrence:**

By: Gerri Silva  
Gerri Silva, MS, REHS  
Director  
Environmental Management Department

Dated: July 25, 2012

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

-- COUNTY OF EL DORADO --

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
John R. Knight, Chair  
Board of Supervisors  
"County"

ATTEST:  
Terri Daly, Acting Clerk  
of the Board of Supervisors

By: \_\_\_\_\_  
Deputy Clerk

Dated: \_\_\_\_\_

-- CONSULTANT --

NewPoint Group, Inc.  
A California Corporation

By: James A. Gibson  
James A. Gibson  
Director  
"Consultant"

Dated: 7/20/12

By: Edward R. Kaempff  
Corporate Secretary

Dated: 7/23/2012