City of Benson
City Council Communication

Regular Meeting April 10, 2017

To: Mayor and Council Agenda Item # 4

From: Bradley J. Hamilton, P.E. Director of Public Works/City Engineer

Subject:

Discussion and possible action regarding an Intergovernmental Agreement with Cochise County for Solid Waste Disposal Services

Discussion:

Cochise County currently has an Intergovernmental Agreement for Municipal Solid Waste Service with the cities of Benson, Bisbee, Douglas, Sierra Vista, Tombstone and Willcox. It is now time to renew the agreement. The Term of the new agreement is 5 years with a 5-year renewal. The term of the agreement was at the request of the City of Bisbee.

Staff Recommendation:

Approval of Intergovernmental Agreement with Cochise County for Solid Waste Disposal Services

INTERGOVERNMENTAL AGREEMENT
FOR SOLID WASTE DISPOSAL SERVICES

This AGREEMENT is made and entered into on the date herein below written, by and between Cochise County, a political subdivision (hereinafter called "COUNTY"), and the Cities of Benson, Bisbee, Douglas, Sierra Vista, Tombstone, and Willcox, each a municipal corporation within Cochise county (hereinafter called "CITIES"), for the purpose of exercising their respective joint powers as allowed by A.R.S. §11-951 and done to renew and supersede the agreement reached on May 4, 1992 regarding a regional municipal Solid Waste Disposal System for the use and benefit of their citizens in accordance with state and federal laws.

WHEREAS, the COUNTY and the CITIES are both required by A.R.S. §49-741 to provide or contract for public facilities at such intervals and as conveniently as the governing body deems necessary for the safe and sanitary disposal of solid waste generated within its jurisdiction; and

WHEREAS, the Environmental Protection Agency (EPA) and Arizona Department of Environmental Quality (ADEQ) have both adopted landfill regulations designed to protect the environment and quality of groundwater from past solid waste disposal practices and from future solid waste disposal activities; and

WHEREAS, the CITIES and the COUNTY strongly support the purpose and intent of these regulations and desire to work together to assure that the environment is protected to the maximum extent feasible from past landfill practices to assure that our environment, and particularly the quality of our groundwater, is protected from future solid waste disposal activities; and

WHEREAS, the COUNTY and the CITIES believe that managing solid waste on a regional basis is the best way to successfully achieve their mutual goals and in the best interest of the citizens they each represent; and

WHEREAS, the COUNTY and the CITIES desire to solidify their mutual support to enjoy the economies of scale associated with regionalization and cooperative intergovernmental actions, and to implement the Cochise County Solid Waste Disposal

system through a standard Agreement offered to each CITY within the COUNTY that desires to participate; and

WHEREAS, it is the expressed intent of all CITIES and of the COUNTY to develop a system whereby no party benefits inequitably at the expense of another and all system costs are fairly apportioned to limit the financial burden on each participant,

NOW, THEREFORE, for and in consideration of the mutual covenants and assurances contained herein, the CITIES and the COUNTY agree as follows:

TERMS AND CONDITIONS

I. COCHISE COUNTY SOLID WASTE DISPOSAL SYSTEM.

1. The COUNTY has designated the Cochise County Solid Waste Department as the Department responsible for the operation and management of the Cochise County Solid Waste Disposal System, as described in this Agreement (hereinafter "THE SYSTEM"). This Department, or its successor, shall remain responsible for carrying out the operation and management functions required of the COUNTY by this Agreement.

2. The COUNTY shall establish an enterprise fund for the revenues of THE SYSTEM and for payment of the operation and maintenance costs.

3. THE SYSTEM shall be responsible for the development, operation, and maintenance of its landfill, either through COUNTY staff, or through the use of appropriate contracts with third parties.

4. THE COUNTY shall determine which solid waste reusable or recyclable material will be accepted. If the COUNTY'S costs exceed its revenue for recyclables, it will recoup its loss from the responsible city.

II. TRANSFER STATIONS

1. The COUNTY shall establish and maintain urban transfer stations for the collection and sorting of solid waste in or near Benson, Bisbee, Douglas, Sierra Vista, and Willcox, the cities which are participating parties to this or substantially similar Agreements. These transfer stations shall be available to the CITIES, its residents, and residents of the unincorporated areas of the COUNTY for depositing approved solid waste.

2. Each CITY shall provide a suitable site for the location of this transfer station, approximately five (5) acres in size, and subject to the approval of the COUNTY'S

designated agent, at no cost to the COUNTY.

3. Each CITY provided-site shall have adequate utility services, including water, electric and sewer, to the site boundary, provided by that CITY. The site shall be accessible by a suitable, all-weather roadway. Monthly utility charges from the operation of the transfer station shall be an operation expense of THE SYSTEM.

4. The Urban Transfer Stations shall be operated in a manner to accommodate the CITIES' needs for solid waste disposal. These Transfer Stations shall not be open on County holidays or for time periods beyond the regularly scheduled hours, unless the COUNTY and the CITIES have reached a mutually-acceptable agreement for this extra service. The CITIES shall be responsible for the payment of costs associated with providing any agreed-upon extra services at the Transfer Stations, including overtime and the proportional landfill operational costs that may be incurred.

The schedule for each site shall be determined by the COUNTY in conjunction with the nearest participating CITY. Changes in the hours of operations proposed by either party shall be approved by the Rate Review and Advisory Board. The Rate Review and Advisory Board shall establish guidelines for the operation of the respective transfer stations, based upon the reasonable levels of service to be provided to the users, and shall recommend such modifications in the operation, design, and equipment for these sites as may be appropriate. Subject to the availability of SYSTEM financial resources, the COUNTY will implement the recommended changes at the respective transfer stations.

5. The Urban Transfer Stations shall include such facilities for recycling, both by the Cities and by individual users, as can be reasonably provided.

6. To the extent permitted by law, the CITIES shall waive or compromise any fees, taxes, or other payments of any kind that may be imposed on the COUNTY in connection with the operation, including remodeling, of the Transfer Stations, in consideration for the services provided pursuant to this Agreement.

7. THE SYSTEM shall be responsible for the operation and maintenance of the Transfer stations, either through COUNTY staff or through the use of appropriate contracts with third parties.

III. TRANSPORTATION SYSTEM

1. The COUNTY shall provide or contract for such transportation services as may be necessary to transfer solid waste from the Transfer Stations to the appropriate landfill facility.

2. THE SYSTEM shall be responsible for the operation and maintenance of this transportation system, either through COUNTY staff or through the use of appropriate contracts with third parties.

IV. COMMITMENT OF SOLID WASTE

1. The CITIES agrees that all solid waste subject to their jurisdiction and control is committed to THE SYSTEM for the term of this Agreement.

2. A City shall not divert solid waste from a Transfer Station unless exceptional circumstances exist and the City has obtained advance approval from the COUNTY. If the COUNTY authorizes a City to divert solid waste from a Transfer Station and take it directly to the Regional Landfill, the COUNTY shall charge what it deems an appropriate direct-haul rate based on the actual costs and the impact to the SYSTEM.

V. RATE REVIEW AND ADVISORY BOARD

1. The CITIES and the COUNTY shall designate one representative to form a committee designated as the RATE REVIEW AND ADVISORY BOARD ("RRAB"). Each member of this RRAB shall have an equal vote on the decisions and recommendations of the Board.

2. The primary task of the Board shall be to review the data, records, and transactions of the Cochise County Solid Waste Disposal system and to recommend appropriate User Fees as necessary to maintain solvency of THE SYSTEM, including recouping the costs associated with the operation and maintenance of THE SYSTEM. The User Fees shall be computed on a cost-equalization basis.

3. The RRAB shall make its fee recommendations to the Board of Supervisors by no later than February 28 of each year.

4. The Board of Supervisors shall consider the recommended fee rate and the cost components designated by this Agreement in determining the appropriate fee. On or before its first meeting in April of each year, the Board of Supervisors shall either adopt the fee rate as recommended by the RATE REVIEW AND ADVISORY BOARD, or establish another rate that ensures the solvency of the system.

5. The paramount goal of the RRAB is to maintain the solvency of THE SYSTEM. In considering what rate to recommend, the RRAB shall also consider the manner in which THE SYSTEM is being operated, the reasonably available alternatives for recycling, and the possible means of improving THE SYSTEM operations, and shall make recommendations to the Board of Supervisors for operational changes, as may be

appropriate in order to maintain the solvency of THE SYSTEM. The Board of Supervisors shall consider such recommendations in its consideration of the appropriate tipping fee.

6. The COUNTY is not obligated to assume additional financial obligations as a result of this Agreement or to compensate for shortfalls to THE SYSTEM due to any approved rate. However, reasonable adaptations which are consistent with this Agreement and which can be funded from SYSTEM revenues while maintaining system solvency should be implemented.

VI. TERMS AND TERMINATION

1. **This Agreement shall remain in effect for a period of five (5) years from the effective date, and after which shall automatically renew for five years, for a maximum total of ten (10) years**. After the first five years, and unless a member provides written notice to the other parties at least one hundred eighty (180) days prior to the renewal date that it is not renewing for the subsequent five years, this IGA shall automatically renew respective to each party for five (5) years. Even if one party does not renew, this agreement shall automatically renew for all other parties who do not opt out of the automatic renewal.

2. The real property currently in use for benefit of THE SYSTEM shall remain dedicated to the purposes for which it is designated upon the effective date of this Agreement.

3. The CITIES shall continue to remain responsible for all required post-closure monitoring, maintenance, and legal compliance for the CITIES' previously-closed municipal landfill sites within each CITY'S jurisdiction that are not controlled by THE COUNTY.

4. Should this agreement be terminated for whatever reason, including by a party's substantial diversion of the dedicated waste stream, prior to the end of its designated term, the breaching party and the COUNTY shall negotiate an equitable adjustment in connection with this termination. This adjustment shall be based upon, but not limited to, the remaining financial obligations, including any damages or penalties arising from any breaches of contract that may result from any such termination, incurred in reliance on this Agreement.

5. In the event that the parties fail to reach a negotiated settlement on any matter within three (3) months of the termination of this Agreement, the amount and form of such adjustment shall be subject to arbitration.

6. From time to time it may be necessary or desirable for the SYSTEM, or the County on behalf of the SYSTEM, to make investments, incur debts or assume obligations, financial or otherwise, that extend beyond the term of this Agreement. In addition, it may be necessary or desirable to make investments and assume obligations based upon waste streams of the parties that will extend beyond the term of this Agreement. If a party who has previously approved and accepted the benefits of any such investments, debts, or obligations that may extend beyond the term of this Agreement elects not to renew this Agreement, it is appropriate that such party compensate the SYSTEM in an equitable amount in order to avoid an undue financial burden to other parties. In determining this equitable amount, the parties shall take into account (i) the expected life of the investment or obligation and the percentage of such life that remains after termination; (ii) in case of a debt or other financial obligation, the remaining number of years of the debt or financial obligation; (iii) in case of an investment that is based upon waste stream, the party's proportionate share of the waste stream; (iv) in all cases, the degree to which the investment, debt, or financial obligation was made or incurred for the direct benefit of the party that fails to renew the Agreement; (v) such other factors as may be necessary to assure an equitable compensation for the System and other parties. Said compensation shall be payable in full to the SYSTEM no later than thirty (30) days after the nonrenewing party ceases participation in this Agreement.

7. The CITIES shall be billed by the COUNTY on a monthly basis, and payments shall be made within thirty (30) days of receipt of an appropriate bill and itemization of use.

VII. ADDITIONAL TERMS

1. INDEMNIFICATION. To the extent allowed by law, the parties shall each indemnify, defend, and hold harmless the others, including each's officers, officials, agents, and employees (hereinafter referred to as "Indemnitees") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury (including death), personal injury, or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the acts or omissions of Indemnitor or any of its owners, officers, directors, agents, employees, or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of a party to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee(s) shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of an Indemnitee, be indemnified by the other parties from and against any and all claims. It is agreed that each party will be responsible for primary loss investigation, defense and judgment costs in its own claims and where this

indemnification is applicable. Each party agrees to waive all rights of subrogation against the other parties, including their officers, officials, agents, and employees for losses arising from any aspect of this agreement.

2. ARBITRATION. If any two or more parties are unable to mutually resolve disputes arising under this contract, all disputes arising under or relating to this Contract shall be settled by binding Arbitration. Any decision or award as a result of any such arbitration proceeding shall be in writing and shall provide an explanation for all conclusions of law and fact and shall include the assessment of costs, expenses, and reasonable attorneys' fees. Any such Arbitration shall be conducted by an experienced and knowledgeable Arbitrator(s) and shall include a written record of the Arbitration hearing.

If the Contractor and Cochise County can mutually agree upon an Arbitrator, that Arbitrator shall be selected. If not, the Contractor and Cochise County shall each select an Arbitrator and those two Arbitrators shall select a third Arbitrator (or the Contractor and Cochise County shall request a third Arbitrator from the Arizona Arbitration Association). All Arbitrations will be held in the State of Arizona and under the Arizona Rules of Arbitration.

3. NON-DISCRIMINATION. The parties shall comply with all applicable state and federal statutes and regulations governing Equal Employment Opportunity, Non-Discrimination, and Immigration.

4. CONFLICT OF INTEREST. This Agreement is subject to cancellation pursuant to the provisions of A.R.S. § 38-511 regarding Conflict of Interest.

5. NO BOYCOTT OF ISRAEL. In accordance with A.R.S. § 35-393.01, the parties certify that they are not currently engaged in, and for the duration of this Agreement agree not to engage in, a boycott of Israel, and will not adopt a procurement, investment, or other policy that has the effect of inducing or requiring a person or company to boycott Israel.

6. COMPLIANCE WITH IMMIGRATION LAWS. The parties hereby warrant that they will at all times during the term of this Agreement comply with all federal immigration laws applicable to the parties' employment of its employees, and with the requirements of A.R.S. § 23-214(A) (together the "State and Federal Immigration Laws"). The parties shall further ensure that each sub-consultant who performs any work for the party under this Agreement likewise complies with the State and Federal Immigration Laws.

7. INSPECTION AND AUDIT. The parties agree to keep all books, accounts, reports, files, and other records relating to this Agreement for five (5) years after completion of the contract; and, in addition, agrees that such books, accounts, reports, files, and other records shall be subject to audit pursuant to A.R.S. § 35-214.

8. PUBLIC RECORDS LAW. Notwithstanding any other provision of the agreement, the parties understand that all of the other parties are public entities and, as such, are each subject to Arizona's public records law, A.R.S. § 39-121 et. seq.

9. JURISDICTION AND APPLICABLE LAW. This Agreement shall be governed by the laws of the State of Arizona. Jurisdiction and venue for any action under this Agreement shall be in Cochise County, Arizona.

INTERGOVERNMENTAL AGREEMENT DETERMINATION

RE: INTERGOVERNMENTAL AGREEMENT FOR MUNICIPAL SOLID WASTE DISPOSAL SERVICES

The attached agreement, which is an agreement between public agencies, has been reviewed pursuant to A.R.S. 11-952 by the undersigned Deputy County Attorney who has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to Cochise County.

APPROVED AS TO FORM this _____ day of _____, 2017

BRIAN M. McINTYRE
Cochise County Attorney

By: _____
Lauri J. Owen,
Civil Deputy County Attorney

IN WITNESS WHEREOF the parties have duly executed this Agreement.

COCHISE COUNTY

By: _____
Ann English, Chair
Board of Supervisors

DATED: _____

ATTEST:

_____
Arlethe Rios,
Clerk of the Board

CITY OF BENSON

By: _____
(print name): _____
(print title): _____

DATED: _____

ATTEST:

_____
_____, City Clerk

CITY OF BISBEE

By: _____
(print name): _____
(print title): _____

DATED: _____

ATTEST:

_____
_____, City Clerk

CITY OF DOUGLAS

By: _____
(print name): _____
(print title): _____

DATED: _____

ATTEST:

_____
_____, City Clerk

CITY OF SIERRA VISTA

By: _____
(print name): _____
(print title): _____

DATED: _____

ATTEST:

_____
_____, City Clerk

CITY OF TOMBSTONE

By: _____
(print name): _____
(print title): _____

DATED: _____

ATTEST:

_____
_____, City Clerk

CITY OF WILLCOX

By: _____
(print name): _____
(print title): _____

DATED: _____

ATTEST:

_____
_____, City Clerk

RATE REVIEW & ADVISORY BOARD

Friday, February 10, 2017 – 9:00 AM
Cochise County – Board of Supervisors' Executive Conference Room
1415 Melody Lane, Bldg G, Bisbee, AZ

Meeting Minutes

Meeting Called to Order by Chuck Potucek (Chairman) at 9:02 AM.

Roll Call confirmed that the following were Present:

Ed Gilligan, County Administrator
Brad Hamilton, Benson, Public Works Director
Andy Haratyk, Bisbee, Public Works Director
James Russell, Douglas, City Manager
Lynn Kartchner, Douglas, City Engineer
Chuck Potucek, Sierra Vista, City Manager, RRAB Chairman
Alex Gradillas, Tombstone, Public Works Director
Ted Soltis, Willcox, City Manager (via telephone)
Karen Riggs, Community Development Administrator, Cochise County
Marty Haverty, Director, Solid Waste Dept., Cochise County
Nike Noack, Financial Services Manager, Cochise County
Ruben Miranda, Director, Fleet Management, Cochise County
Lauri Owen, Deputy County Attorney, Cochise County

Roll Call taken by Marty Haverty – those present constitute a quorum.

Reports

1. **Marty Haverty – Solid Waste Operations Financial Update:**
   a. The increase to $64.00 per ton tipping fee has us currently operating in the black after the first 7 months. We project to be in the black at the end of the year. Because of this we do not recommend an increase in tipping fees for next fiscal year.
   b. We are seeing a decrease in tonnage coming into the system and end-of-year projections indicate a decrease of 2,000 tons from last year's 68K tons.
   c. The Board of Supervisors will be voting on the expenditure of the 1.825 million at Tuesday's meeting for development of a new cell at the WRL.
   d. WRL development fund is funded from O&M and is transferred into Development Fund. Over last 5 years it has built up to 1.1 million. Adding another 400K this year will bring it to 1.5

million. Current low bid on cell development is 1.825 million. Another 400K next year budgeted to roll back into this development fund, that would put us right about zero when start putting trash into the new cell.

e. Karen Riggs and Ruben Miranda both warned that we are not funding replacement of Transfer Stations or recapitalization of equipment. So this is not fully funding Solid Waste. This will need to be addressed in future meetings

2. **Marty Haverty – Second Part – Segmented Costs and Direct Haul to Tucson:**
   a. Report presented our costs to get to $64.00 ton.
   b. [the contact wasn't identified during the meeting:] Talked to Carlos DeLaTorre, City of Tucson at Los Reales landfill to explore direct haul of our trash to City of Tucson; he submitted a formal proposal based on 66K tons of volume, for one year = $21.00 per ton & guaranteed 1.24 million dollars for one year. He sent a contract to be signed. Utilizing this option would up costs to members to $74 a ton.
   c. Members discussed various scenarios for cost savings. The matter needs revisited at a later RRAB meeting.
3. **Marty Haverty – IGA Renewal discussion and MOTION TO SIGN:**
   a. Members discussed the draft, then **voted to sign it with one amendment**: the contract must cover for five years, then a brief cancellation period opens, then if no notice given by a member, the IGA automatically renews for five more years.
   b. The group then discussed some cost cutting possibilities through decreasing the operating hours. Andy suggested the city's looking at their needs and helping figure out what day(s) they may be able to close. The IGA contains nothing that would prevent changes of days or hours of operation.
4. **Marty Haverty – Recycling Revenues vs. Costs Discussion :**
   a. The system transfers 2,400 tons of co-mingled recyclables a year to the MURF in Tucson at no charge to the members; we need to charge $42 per ton in order to cover costs to transfer and transport this material to Tucson.
   b. Marty added that about 1,900 tons of material comes from the City of Sierra Vista and the rest from his competitors who will be charged the same fee.
5. **Marty Haverty- Direct Haul by Cities Discussion:**
   a. The current fee for cities to direct haul to the WRL is $35 per ton.
   b. The decrease in volume coming into the system was discussed and City of Sierra Vista's competitors expanding their market share, while hurting not only the City but the entire system.
   c. In an effort to offer an option to counteract the above, a proposal was discussed to increase the direct haul fee to $46 per ton and to allow the City of Sierra Vista to by-pass their transfer station and haul to the WRL.
   d. In order to make this work and not increase fees for the other member cities the system would have to scale back operations and decrease costs at that location by $250,000 each year. No decision was made.
6. **Marty Haverty- Free Dump Day Proposed Process Changes Discussion**

a. A brief discussion was had on a proposed process moving from a “day” format to one that allows individual residents the opportunity to apply for a day each year that they can dispose of their personal waste for free.
b. Marty stated that this would be discussed in more detail at the next meeting and will be placed on the agenda as an action item as well.

Action Items

1. **Approval of Meeting Minutes for – November 17, 2016 & January 20, 2017:**
   Alex Gradillas: moves Brad Hamilton: seconds All: “aye” Unanimous
2. **Approval of IGA renewal terms to be 5 years, with an automatic additional 5 years:**
   Andy Haratyk: moves Lynn Kartchner: seconds All: “aye” Unanimous

Next Meeting: Friday, May 19th, 2017

Things to cover:

Finish the IGA
Budget Recommendations to the Board of Supervisors – (with no increase)
Continue discussion on recommendations for System cost savings.
Presentation of Free Dump Day changes.

Chuck Potucek: Adjourned at 10:44 AM – (no motions, no vote)