

CLARK COUNTY BOARD OF COMMISSIONERS AGENDA ITEM

Issue: Apex Landfill	Back-up:
Petitioner: M. J. Manning, Director of Public Works	Clerk Ref.#
Recommendation: That the Board of County Commissioners approve and authorize the Chairman to sign a solid waste disposal agreement among Clark County, Disposal Urban Maintenance Processing Company, Inc. (Dumpco) and Silver State Disposal, Inc. for guaranteed disposal of municipal solid waste in the Apex Regional Landfill.	

FISCAL IMPACT:

License fees to be paid to Clark County in the amount of 5 percent of the gross receipts, currently approximating \$80,000 per year.

BACKGROUND:

On August 31, 1993, the Board of County Commissioners approved a Memorandum of Understanding (MOU) in which the County, Silver State Disposal Service and Disposal Urban Maintenance Processing Company, Inc. (Dumpco) agreed to negotiate an agreement that will guarantee sufficient capacity and access within the Apex Regional Landfill for disposal of the solid waste generated within Clark County. Within the MOU, the parties also agreed to negotiate to establish relationships between Dumpco tipping fees and Silver State collection rates.


The attached agreement provides for:

- * Guaranteed capacity within the Apex Regional Landfill and services necessary to dispose of the solid waste generated within Clark County until September 30, 2020, the termination date of the Silver State collection agreement.
- * Payment to the County of a license fee of five percent of the gross monthly receipts for the disposal of solid waste, excluding hazardous waste, industrial waste and septic waste, to include any solid waste imported from out of State. It should be noted that the MOU contained language indicating a three percent licensing fee. County staff recommends that five percent be used because that is what we are currently receiving.

The agreement has been reviewed and approved as to form by the District Attorney's Office.

APPROVED/AUTHORIZED AS AMENDED

Respectfully submitted,


DONALD L. SHALMY
County Manager

Cleared for Agenda

10-5-93 TDS

Agenda Item #	105
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**AGREEMENT FOR DISPOSAL OF SOLID WASTE
AT THE APEX REGIONAL LANDFILL**

This Agreement is made and entered into on the Fifth day of October, 1993, by and between the County of Clark, a political subdivision of the State of Nevada, (hereinafter called "COUNTY") and Disposal Urban Maintenance Processing Co. Inc, a Nevada Corporation, (hereinafter called "DUMPCO") and Silver State Disposal Service, Inc., a Nevada Corporation, (hereinafter called "SILVER STATE DISPOSAL").

RECITALS

Whereas, Federal and State regulations mandate environmentally sound solid waste disposal; and

Whereas, the Environmental Protection Agency, (EPA) has initiated Subtitle D regulations, 40 CFR Part 258, which provide that landfills that stop receiving solid waste prior to October 9, may be closed using simplified closure criteria. Those landfills that remain open after this date must meet stringent operational requirements and future closures must meet more stringent requirements, and that future closure and post-closure costs (30 years of post-closure monitoring and care) must be provided for through an approved financial assurance mechanism. The Sunrise Landfill will be required to comply with full Subtitle D Regulations if it accepts any municipal solid waste after October 8, 1993; and

Whereas, the COUNTY approved a Memorandum of Understanding on

August 31, 1993 with SILVER STATE DISPOSAL and DUMPCO regarding closure of the existing Sunrise landfill and the opening and operation of the proposed Apex Regional Landfill; and

Whereas, COUNTY and DUMPCO entered into an agreement entitled "CONTRACT FOR MAINTENANCE AND OPERATION OF SANITARY FILL FACILITY OR FACILITIES dated February 5, 1975, which was previously modified by agreements dated February 5, 1980, August 18, 1981, May 7, 1985, January 21, 1986, February 2, 1988, and December 19, 1989, hereinafter collectively called "the Sunrise Landfill Contract"; and

Whereas, the Sunrise Landfill Contract was assigned to DUMPCO on May 7, 1985; and

Whereas, the Board of County Commissioners approved closure of the sanitary fill facility known as the Sunrise Landfill so that said landfill shall stop receiving solid waste prior to October 9, 1993; and

Whereas, the COUNTY desires to insure the long term continuing availability of solid waste disposal services for unincorporated Clark County; and

Whereas, DUMPCO is willing to establish, operate and maintain a regional solid waste landfill at the Apex Waste Management Center, for disposal of solid waste.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. GENERAL PROVISIONS

1.1 For and in consideration of the demands, terms, covenants, agreements and conditions herein contained, DUMPCO

hereby agrees to:

a. Dispose of all solid waste in conformity with applicable federal and state laws and regulations.

b. Make available at the Apex Regional Landfill, during such times as the landfill is open, for the residents of Clark County the opportunity to dispose of household hazardous waste materials as designated by DUMPCO.

1.2. DEFINITIONS:

a. "Apex Waste Management Center" means the total of all separate and discreet landfills located within the Apex property as defined in Section 1.B., below, to include all Class I, Class III, and hazardous waste landfills within the boundaries of the property.

b. "Apex Regional Landfill" means that discreet portion of the Apex Waste Management Center, as indicated on the attached map as Exhibit A, which is a Class I Municipal Solid Waste Landfill for disposal of non-hazardous municipal solid waste and is operated under regulations contained in 40 CFR Part 258, Clark County Health District regulations, and the Clark County Code in effect on the date of this agreement.

c. "Generated Waste" means the total quantity of solid waste, expressed in tons or cubic yards.

d. "Hazardous waste" means those solid wastes, under Section 3003 of RCRA and EPA implementing regulations, that either exhibit a hazard "characteristic" or have been specifically listed

as hazardous waste by EPA, but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by an Act of Congress.

e. "Industrial solid waste" means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under Subtitle C of RCRA.

f. "Solid waste" has the meaning ascribed to it in Clark County Code, Section 9.04.010(17).

g. "Tipping fees" means the unit prices for the disposal of solid waste which shall be paid to DUMPCO for the disposal of solid waste in the Apex Regional Landfill expressed in price per cubic yard and/or price per ton as established by Dumpco.

1.3. OWNERSHIP OF PROPERTY: DUMPCO represents and covenants that it is a principal owner of a site of approximately 2560 acres of land generally located on the east side of Interstate 15, north and south of the intersection of U.S. Highway 93 and Interstate 15, in Apex, County of Clark, Nevada. The general Legal Description is: Sections 18, 19 and a portion of Sections 7 and 20, Township 18 South, Range 64 East and portions of Sections 13 and 24, Township 18 South, Range 63 East (Exact legal description on file). Said property shall be generally known as the Apex Waste Management Center. A portion of the property was acquired by DUMPCO through SILVER STATE DISPOSAL with the acquiescence and assistance of the COUNTY for use as a regional solid waste, industrial waste and hazardous waste landfill sites.

1.4. USE OF PROPERTY: DUMPCO represents and covenants that

the Apex Waste Management Center will be used for permitted municipal solid waste, industrial waste, and hazardous waste landfills with accessory uses for which a use permit is granted by the COUNTY.

2. DURATION OF CONTRACT

2.1. This disposal Agreement beginning from the date of execution and in the terms contained herein, shall remain in effect until September 30, 2020, provided however that if the termination date of the Franchise Agreement for Collection and Disposal of Solid Waste entered into by the COUNTY and SILVER STATE DISPOSAL on April 20, 1993, should be extended beyond September 30, 2020, the duration of this Agreement shall be likewise extended.

3. CAPACITY GUARANTEES

3.1. DUMPCO guarantees that during the term of this Agreement, DUMPCO will maintain adequate landfill capacity at the Apex Regional Landfill and will accept and dispose of all solid waste as regulated and delineated in Chapter 9.04 of the Clark County Code and generated within the geographical boundaries of unincorporated Clark County. DUMPCO agrees that disposal of all solid waste at the Apex Regional Landfill shall be in accordance with Clark County Health District regulations, and other federal, state, and local laws.

3.2. Unless provided to the contrary herein, DUMPCO guarantees that during any extension of this Agreement, DUMPCO will maintain adequate landfill capacity at the designated Apex Regional Landfill to accept all solid waste generated within Clark County.

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4. LICENSE FEE

4.1. DUMPCO shall pay to COUNTY Director of Business License on a quarterly basis a license fee of four percent (4%) of the gross monthly revenue derived from the disposal of solid waste in the Apex Regional Landfill. Gross receipts mean cash collections on customer accounts less cash refunds. The gross monthly revenue upon which the license fee shall be computed shall not include revenue collected by DUMPCO from the SILVER STATE DISPOSAL under solid waste collection franchises with the COUNTY of the cities of Henderson, Las Vegas and North Las Vegas. For the purpose of this section, solid waste does not include hazardous waste, septic waste, industrial waste and recyclable.

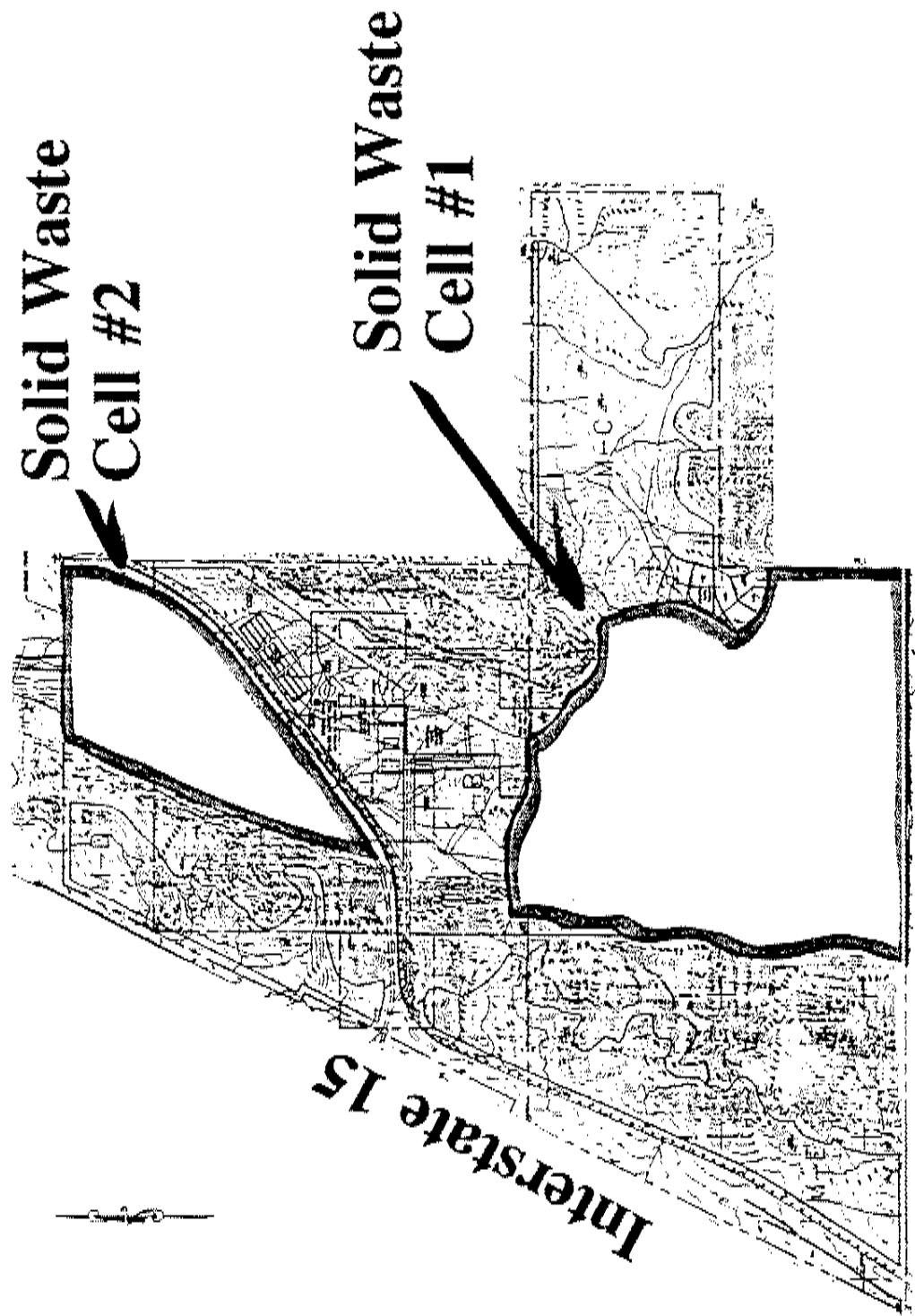
5. ACCOUNTING SYSTEM

5.1. DUMPCO shall establish and maintain an accounting system pursuant to generally accepted accounting procedures and practices consistently applied to reflect correctly and accurately the gross monthly receipts derived from the disposal of solid waste in the Apex Regional Landfill pursuant to Section 4, above.

6. AUDITED FINANCIAL STATEMENT

6.1. DUMPCO shall each year on the anniversary date of this contract submit an audited financial statement to the Director of Business License.

Apex Industrial/Municipal Waste Disposal Facility Site Plan



Only areas indicated in blue are part of the agreement

7. LICENSES AND PERMITS

7.1. DUMPCO shall, at its sole cost and expense, be responsible for obtaining and maintaining all Federal, State and local permits and approvals necessary to commence and continue operations of the Apex Regional Landfill.

8. RATES AND FEES.

8.1. COUNTY, SILVER STATE DISPOSAL and DUMPCO agree that DUMPCO shall have the sole right to set and collect tipping fees for disposal of solid waste in the Apex Regional Landfill, provided that in setting tipping fees for disposal of solid waste at the Apex Regional Landfill, DUMPCO and SILVER STATE DISPOSAL shall give due consideration to setting tipping fees, and the COUNTY shall give due consideration to approving collection rates and rate increases which shall afford the parties the opportunity to provide cost effective solid waste collection service rates and which further provide DUMPCO and SILVER STATE DISPOSAL the ability to recover the following:

a. Reasonable costs of operations and maintenance of the Apex Municipal Solid Waste Landfill and

b. Capital costs for the Apex Regional Landfill and a prorated share of the costs of other Apex Waste Management Center capital improvements directly related to the Apex Regional Landfill, and costs associated with closure and post-closure care for the Sunrise Landfill as detailed in the October 5, 1993 modification agreement for the Sunrise Landfill amortized over an eight (8) year period. The parties agree that these costs shall be

recoverable by DUMPCO regardless of the date of closure of the Sunrise Landfill; and

c. A reasonable profit.

8.2. It is agreed that SILVER STATE DISPOSAL'S residential customers who subscribe to single-family residential pickup service, under the current franchise agreement for such service shall not pay a fee to dispose of solid waste at the Apex Regional Landfill in accordance with Chapter 9.04.215 of the Clark County Code.

8.3. DUMPCO further agrees that there will be no charge to COUNTY for its disposal of solid waste collected in the normal and customary course of official COUNTY business that is not in competition with SILVER STATE DISPOSAL and is brought to the Apex Regional Landfill in official COUNTY service vehicles. For the purposes of this section COUNTY excludes the Clark County Sanitation District.

9. PROVISION AND MAINTENANCE OF EQUIPMENT

9.1. DUMPCO shall provide and maintain at all times such appropriate and adequate equipment and other resources required to fulfill this agreement.

9.2. Any and all costs entailed or required for proper maintenance and operation of the Apex Regional Landfill and equipment shall be the sole obligation of Dumpco, who shall be entitled to recover such reasonable costs pursuant to Section 8, above.

10. PERFORMANCE BOND

10.1. DUMPCO shall deliver to the COUNTY Director of Business License a performance bond in the principal sum of Two Hundred Fifty Thousand dollars (\$250,000.00) to guarantee the performance of its obligations under this agreement.

11. BUSINESS HOURS

11.1. It is agreed that DUMPCO shall operate the Apex Regional Landfill a minimum of eight (8) hours per day, seven (7) days per week, excluding, at DUMPCO'S discretion, legal holidays.

12. BREACH OF AGREEMENT

12.1. Should a breach of this Agreement result from an act of God, public enemy, or similar cause beyond DUMPCO'S control, and with a declaration of emergency consisting of a health hazard by the Board of County Commissioners and the Chief Health Officer of the County Health District, COUNTY shall have the right during such period to take over the disposal of solid waste and to take possession of land and equipment owned or leased by DUMPCO and used by it in the performance of this agreement. The COUNTY shall be reimbursed therefor by DUMPCO on a cost basis during the period of time that solid waste disposal services is performed by the COUNTY. However, such reimbursement shall not exceed One Hundred Twenty-Five percent (125%) of DUMPCO'S costs for a like period of time immediately preceding said breach. In the event COUNTY shall take over disposal of solid waste as in this paragraph provided, DUMPCO agrees to manage the administrative processes associated with waste disposal and shall cooperate fully with the COUNTY in facilitating

such disposal.

13. LIABILITY INSURANCE

13.1. No later than ten (10) calendar days after approval of this agreement by the COUNTY, DUMPCO shall furnish the COUNTY a policy or certificate of protective liability insurance in which the COUNTY shall be named as an additional insured with the Dumpco as follows:

Comprehensive General Liability Insurance with a minimum limit of \$ 1,000,000.00 for bodily injury and property damage.

14. INSPECTION AND RECORDS

14.1. COUNTY shall have the right to inspect the Apex Regional Landfill upon giving two (2) hours notice of intent.

14.2. COUNTY shall have access to records pertaining to COUNTY waste disposal at the designated Apex Regional Solid Waste Landfill. COUNTY agrees to keep all records confidential unless otherwise required by law.

15. DEFAULT, CURE AND REMEDY PROVISIONS

15.1. In the event the COUNTY determines that DUMPCO is in default under any of the provisions hereof, the COUNTY shall give DUMPCO written notice thereof, specifying the provisions hereof under which the default has been determined to exist, and give DUMPCO sixty (60) days within which to commence correction of any such default. In the event DUMPCO does not commence correction of any such default within said sixty days, as in this paragraph provided, then the COUNTY may terminate this Agreement upon giving of thirty (30) days written notice to DUMPCO.

16. INDEMNIFICATION AND HOLD HARMLESS

16.1. DUMPCO agrees to indemnify, defend and hold harmless the COUNTY, its officers, employees, and agents from and against any and all liability, claims, demands, actions or suits, of whatsoever character or kind, arising or resulting from, or in any way connected with, DUMPCO'S performance, its operations, its agents, employees or sub-contractors, or the failure of DUMPCO to comply with the provisions and requirements of all applicable permits, licenses, laws or regulations, unless such claims, damages, or loss are directly attributable to the negligence or omission of the COUNTY or its officers or employees.

17. ASSIGNMENT.

17.1. Should DUMPCO sell, transfer or assign its interest to the Apex Regional Landfill property as defined in Section 1.2.b. in whole or in part to any person, partnership, firm or corporation at any time during the term of this Agreement, the COUNTY shall be presented with a document by the purchaser, transferee or assignee providing therein that the purchaser, transferee or assignee assumes all the rights, duties and obligations of DUMPCO under this Agreement.

17.2. Any subsequent sale, transfer or assignment after an initial sale, transfer or assignment shall be made only in accordance with and subject to the terms and conditions of Section 17.1.

18. FORCE MAJEURE

18.1 The obligations of the parties under this Agreement

shall be suspended during the period of time performance is rendered impossible by a cause or causes beyond the reasonable control of the parties.

19. NOTICES TO BE SENT

19.1. All reporting and notices sent or required to be sent by either party to this Agreement to the other party shall be deemed to have been given when received by the party to whom directed by United States mail, personal service or hand delivery at the following addresses:

COUNTY: Clark County Public Works
6655 W. Sahara Avenue, Bldg. C-204
Las Vegas, NV 89102

AND

Clark County Business License
333 South Sixth Street
Las Vegas, NV 89101

Dumpco: Disposal Urban Maintenance Processing Company
770 East Sahara Avenue
Las Vegas, Nevada 89104

PARENT COMPANY: Silver State Disposal Service, Inc.
770 East Sahara Avenue
Las Vegas, Nevada 89104

20. INVALIDITY OF PART OF AGREEMENT

20.1. If any provision hereof shall, for any reason, be held to be invalid, such fact shall not be deemed to invalidate any other provision herein.

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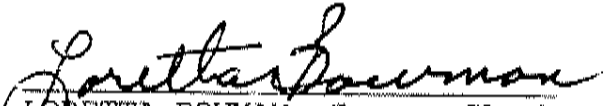
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

"COUNTY"

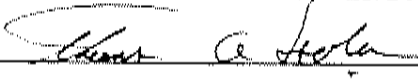
County of Clark

By 
Jay Bingham, Chairman
Board of County Commissioners

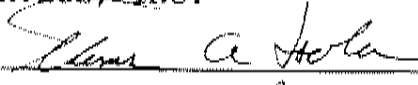
Attest:


LORETTA BOWMAN, County Clerk

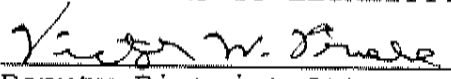
DISPOSAL URBAN MAINTENANCE
PROCESSING COMPANY, INC.

By 
Title: Vice President

SILVER STATE DISPOSAL
SERVICE, INC.

By 
Title: Vice President

APPROVED AS TO LEGALITY:


Deputy District Attorney