

Jungo releases draft host agreement



Written by Dee Holzel

Monday, October 25 2010 13:38

WINNEMUCCA — After many months of vague references to it, Jungo Land & Investments has released the draft host agreement for public scrutiny.

The contract had been kept confidential, at the request of the Humboldt County DA's Office, while representatives from Jungo and Humboldt County worked out the language that would eventually be presented to the Humboldt County Commissioners. It should be stressed the document is in no way in its final form.

Additionally, no negotiations with the Commissioners have taken place; in fact, the commissioners themselves have never seen the document. There was some concern if the document was turned over to the commissioners it would become a public document and open to public scrutiny before all the legal kinks were worked out between Jungo and the county.

The host agreement is what legal contracts are: Jungo Land & Investments owns land on Jungo Rd, on which they'd like to develop a landfill, the host county would get a host fee for the use of the land.

The host fee represents an interesting paragraph in the draft document.

Over the last couple of years there's been much talk about the host fee; that is, the amount Humboldt County would receive from having the landfill. The public was left with the impression the county would be offered a certain amount for every ton of trash that was deposited at the proposed landfill. However, the document released last week suggested the county would not be paid that way.

The host agreement indicated Jungo's suggestion they pay 5 percent of the monthly gross receipts to the county per quarter.

This might represent a better deal for the county. If profits are up for Jungo they'd be up for the county as well; however, if the company began to lose money – so would the county.

Had the county been offered a fixed amount per ton, that figure would have remained the same – even if Jungo's profits soared.

While the host agreement was still in draft form, a federal lawsuit was filed by Jungo against the Humboldt County Commission and the commissioners. During the discovery process, representatives for the company became concerned over the fact the commissioners had never seen the host agreement and apparently believed it did not exist.

At that point, Jungo released the document to the public and encouraged attorneys for the commissioners to present the host agreement to their clients.

Page 2: Letter from John Frankovich, attorney for Jungo Land & Investments, to the attorneys representing Humboldt County, in which he announces the company was going public with the document.

Page 3: Draft host agreement

To: Stephen Balkenbush and David B. Lockie

Re: Jungo Land & Investments v. Humboldt County

During discovery in the above-referenced case, it has become apparent that there is a great deal of misunderstanding and confusion among the Humboldt County commissioners related to the Host Agreement proposed by Jungo Land & Investments, Inc. ("Jungo") back in 2007. The Host agreement is intended to be an agreement between Jungo and Humboldt County for the payment of fees to the County for the disposal of waste at the proposed Jungo Landfill. Your clients have indicated that they have never seen a copy of the proposed draft of the Host Agreement and, indeed, seem to question whether Jungo intended to enter into such an agreement.

Jungo has always intended to pay host fees to the county and has never wavered from that commitment. In March 2007, Jungo initially submitted a proposed draft Host Agreement with its application for a conditional use permit ("CUP"). At the Planning Commission's hearing on Jungo's CUP application, the then assistant DA, Theresa Wriston, informed Jungo and the Planning Commission that the Host Agreement was not before the Planning Commission in reaching a decision on Jungo's CUP application. Instead, according to the Ms. Wriston, the Host Agreement should be presented to the Landfill Committee and ultimately to the Board of County Commissioners for final approval.

Thereafter, two years passed and Humboldt County did not commence any negotiations on the proposed Host Agreement. Then in March 2009, the DA's Office contacted Jungo to work on the contract language. For six months in 2009, Jungo and the DA's Office exchanged drafts of the proposed Host Agreement with proposed revisions to clarify language and address legal issues.

The actual host fees themselves, as set forth in the proposed agreement, were not negotiated with the DA's Office. It is my understanding that those negotiations will be conducted under the direction of the Landfill Committee or the Board of County Commissioners. To date, the County has not initiated any substantive discussions on the host fee terms proposed by Jungo in 2007.

At all times, Jungo has considered the proposed Host Agreement to be a public document that should be subject to public scrutiny. The reason the proposed Host Agreement has not been provided to your clients or otherwise made public before this time is because the DA's Office thought that the Agreement should remain confidential until it was ready for formal presentation to the Landfill Committee and the Humboldt County Commissioners. Jungo has complied with the DA's request for confidentiality.

It is now clear, however, that Jungo's respect for the DA's request has led to unnecessary and unwarranted misunderstandings about Jungo's willingness to negotiate a host agreement in good faith that would benefit Humboldt County. In fact, it appears that some of the commissioners have developed distrust of Jungo at least in part because the draft proposed Host Agreement has not been shared with them. This has been unfairly prejudicial to Jungo. As a result, Jungo believes that it is appropriate at this time to provide the Host Agreement to your clients and otherwise make it publicly available.

Enclosed as Exhibit 1 is a copy of the original proposed Host Agreement submitted by Jungo with its conditional use permit application in March 2007. I have also enclosed as Exhibit 2 a copy of the most recent draft of the proposed Host Agreement, which incorporates comments proposed by the DA's Office. Jungo submitted this to the DA's Office on Sept. 8, 2009. Please provide your clients with a copy of these documents. Jungo also believes that it is appropriate that these documents be publicly disclosed and available for review by the public. To that end, Jungo will make the enclosed drafts available to members of the public who request a copy.

Again, I would emphasize that the enclosed documents are a draft proposal that is subject to final negotiation and agreement. Jungo remains ready to negotiate and finalize the terms of this Host Agreement with the appropriate and authorized representatives of Humboldt County.

If you have any questions or any additional information regarding this matter, please feel free to contact me.

Very truly yours,

John Frankovich

HOST COMMUNITY AGREEMENT (2009)

This Host Community Agreement (as amended, supplemented or modified from time to time, this "Agreement") is made and entered into as of _____, 2009 by and between the County of Humboldt, a political subdivision of the State of Nevada ("County"), and Jungo Land and Investments, Inc., a Nevada corporation ("Disposal Site Operator").

RECITALS

WHEREAS, Disposal Site Operator is the owner of certain real property located at Range 33 East, Township 35 North, Section 7 and more particularly described on Exhibit A attached hereto (such real property, together with all improvements, fixtures, equipment, personal property and intangibles which are the subject of this Agreement, as the same may exist from time to time, "Jungo Landfill");

WHEREAS, Disposal Site Operator has sought authorization to construct and operate Jungo Landfill as a Class I Landfill;

WHEREAS, County wishes to grant Disposal Site Operator the right to build and operate Jungo Landfill for the final disposal of the Solid Waste, so long as Jungo Landfill is capable of receiving such waste, commencing on the Effective Date and continuing for the term of this Agreement, in exchange for Disposal Site Operator's payment of Host Fees, as set forth in Section 4.2 herein;

NOW, THEREFORE, County and Disposal Site Operator agree as follows:

Article I

EXCLUSIVITY

1.1 County grants to Disposal Site Operator the right to accept Solid Waste for disposal in the County. Said right includes the right to operate the Jungo Landfill for the disposal of Solid Waste.

Article II

DEFINITIONS; COUNTY AREA

2.1 Definitions. Whenever used in this Agreement, the following terms shall have the meanings ascribed below;

(a) "Acceptable waste" shall mean Solid Waste which can be disposed at Jungo Landfill, as provided in Section 1.1, under the terms and conditions of any permits, licenses or approvals obtained with respect to the operation of Jungo Landfill, other than waste material with Disposal Site Operator finds, in its sole discretion subject to all pertinent laws and regulations, to pose an unreasonable risk or danger to the operation or safety of Jungo Landfill or the environment.

(b) "Board" shall mean the Humboldt County Board of County Commissioners.

(c) "Disposal Site" shall mean any place at which solid waste is dumped, abandoned or accepted or disposed of by incineration, land filling, composting or any other method. The term includes, but is not limited to, municipal solid waste landfill, a material recovery facility, a transfer station, and any other facility at which conversion technology is used. Jungo Landfill is a Disposal Site pursuant to this Agreement.

(d) "Effective Date" shall be the date this Agreement is entered into, as set forth on page 1 herein.

(e) "Force Majeure" shall have the meaning ascribed to it in Section 6.2 (b).

(f) "Hazardous Material" shall mean any material or combination of materials which, because of its quantity, concentration or physical, chemical or infectious characteristics may either (i) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness or (ii) pose a substantial present or potential hazard to human health or environment when improperly treated, stored, transported, disposed of or otherwise managed. Hazardous Material also includes hazardous wastes as defined under NRS 459.430 or federal law or regulations promulgated pursuant to any such law, as such law or regulations may from time to time be amended.

(g) "Host Fee" shall have the meaning ascribed to it in Section 4.2.

(h) "Labor Action" shall have the meaning ascribed to it in Section 6.2(b)(iii).

(i) "Municipal Solid Waste Landfill" shall mean any landfill or landfill unit that receives municipal solid waste, solid waste, commercial waste, non-hazardous industrial waste, dried sewage sludge or construction/demolition debris.

(j) "Organic Material" shall mean those discarded materials that will decompose and/or putrefy and that County ordinance permits, directs and/or requires generators to separate from Solid Waste for collection in specifically designated containers for organic materials collection. Organic materials include yard trimmings less than six inches in diameter and five feet in length, and food scraps, such as, but not limited to, green trimmings, grass weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees, small wood pieces, other types of organic yard waste, vegetable waste, fruit waste, grain waste, dairy waste, meat waste, fish waste, paper contamination with food scraps, pieces of unpainted or untreated wood, and pieces of unpainted and untreated wall board.

(k) "Quarter" shall mean a fiscal quarter of Disposal Site Operator. As of the date hereof, Disposal Site Operator's fiscal quarters end on March 31, June 30, Sept. 30 and Dec. 31 of each calendar year.

(l) "Quarter End" shall have the meaning ascribed to it in Section 4.2.

(m) "Recyclables" shall mean any Solid Waste, whether source-separated or commingled, (i) which can be processed and returned to the economic mainstream in the form of raw material or products, as determined by the Nevada State Environmental Commission, or (ii) which in Disposal Site Operator's judgment can be reused, recycled, salvaged or sold, subject to pertinent laws and regulations. Without limited the generality of the foregoing "Recycles" includes newspaper, corrugated cardboard, aluminum, Yard Debris, office paper, glass, tin and steel cans, metal, motor oil, plastic, antifreeze and Organic Material.

(n) "Solid Waste" shall mean all putrescible and nonputrescible materials in solid or semisolid form that have been discarded or abandoned by their owner, including without limitation garbage, recyclables, household waste, rubbish, junk vehicles and parts, junk appliances, ashes or incinerator residue, street refuse, dead animals, construction and demolition waste and debris, commercial waste, industrial waste and refuse, but excluding agricultural waste, mining waste, hazardous material and source-separated soil, rock, stone, gravel, unused brick and block and concrete to be used as clean fill.

(o) "Termination Date" shall have the meaning ascribed to it Section 5.1.

(p) "Yard Debris" shall mean tree trimmings; grass cuttings; leaves; branches; dead plants, trees and bushes; and similar materials generated from plants, trees and bushes, whether generated on residential or commercial property.

2.2 County Area. All references herein to the physical area of County shall refer to the physical area encompassed within County limits at the time of execution of this Agreement, and any areas that may be annexed by County during the term of this Agreement.

Article III

LANDFILL OPERATION

3.1 Obligations of Disposal Site Operator.

(a) Disposal Site Operator shall at its expense be responsible for the day-to-day operation of Jungo Landfill, including providing and maintaining all facilities, personal property and equipment necessary to operate, develop and maintain Jungo Landfill pursuant to the Special Use Permit granted by County.

(b) Disposal Site Operator shall at its expense be responsible for employing all personnel necessary for, and providing all services incidental to, the business of operating, developing and maintaining Jungo Landfill that it builds and operates pursuant to this Agreement.

(c.) Disposal Site Operator shall use commercially reasonable efforts to obtain and maintain, at its expense, all permits, licenses and approvals necessary to operate, develop and maintain Jungo Landfill that it builds and operates in the manner contemplated by this Agreement.

3.2 Obligations of County

(a) County shall not directly or indirectly restrict, by code, ordinance, permit, license, contract, approval, tax, surcharge, or otherwise, Disposal Site operator from accepting Acceptable Waste for disposal at Jungo Landfill.

(b) County shall enact, maintain and/or amend such codes and ordinances as may be necessary for Disposal Site Operator to operate, maintain and develop Jungo Landfill in the manner contemplated by this Agreement.

(c.) County shall issue to Disposal Site Operator any and all permits, licenses and approvals issuable by it that are necessary for Disposal Site Operator to operate, maintain and develop Jungo Landfill in the manner contemplated by this Agreement, so long as Disposal Site Operator has otherwise satisfied the requirements for same.

(d) County shall cooperate with and support the activities of Disposal Site Operator in obtaining, maintaining and amending all permits, licenses and approvals required to operate, maintain and develop Jungo Landfill in the manner contemplated by this agreement, or reasonably requested by Disposal Site Operator in connection with this Agreement, so long as Disposal Site Operator has otherwise satisfied the requirements for same.

(e) County shall enforce and shall cooperate with Disposal Site Operator's reasonable efforts to protect the rights and privileges granted to Disposal Site Operator under this Agreement, and shall not take any action which shall impair the rights of Disposal Site Operator under this Agreement, so long as Disposal Site Operator has otherwise satisfied its obligations under this Agreement.

3.3 Compliance with Laws. Disposal Site operator shall maintain Jungo Landfill that it builds and operates in substantial order and repair outside and inside at its sole cost and expense and shall comply with all applicable orders, regulations, rules and requirements, now or hereafter in effect, of the federal, state, county, local or other governmental authorities having the power to enact, adopt, impose or require the same whether they be usual or unusual, ordinary or extraordinary or whether they or any of them relate to environmental requirements or otherwise. Disposal Site Operator shall have the right, at its own cost and expense, to contest or review by legal proceedings the validity or legality of any law, order, ordinance, rule, regulation, or direction, and during such contest Disposal Site Operator may refrain from complying therewith, *provided* that Disposal Site Operator has obtained an appropriate stay of enforcement or is not otherwise in violation of law as a result thereof.

3.4 Employees. Disposal Site Operator shall make a good faith effort to hire, from among the residents of County, all employees employed by Disposal Site Operator in County in connection with Disposal Site Operator's performance of this Agreement. An authorized representative of Disposal Site Operator shall be available during normal business hours for County to contact on matters relating to Disposal Site Operator's performance of this Agreement. Disposal Site Operator shall maintain written personnel policies governing behavior, alcohol and substance abuse, and hiring policies as an equal employment opportunity employer.

3.5 Inspection. Disposal Site Operator shall permit County or its authorized representative, at County's sole expense, to visit and inspect Jungo Landfill at any time during normal business hours upon reasonable notice, *provided* that such inspections do not unreasonably interfere with the orderly operation of Jungo Landfill.

3.6 Closure and Post-Closure Requirements. Disposal Site Operator shall comply with all closure and post-closure requirements for Jungo Landfill as required by Nevada law and as set forth in NAC 444.685-444.6859. Specifically, Disposal Site Operator shall provide to County appropriate financial assurances by any means allowed in NAC 444.68525 and shall name County as an additional beneficiary of said financial assurance mechanism.

Article IV

HOST AND TIPPING FEES

4.1 Tipping Fees. Disposal Site Operator shall have the exclusive right to establish, collect and receive (i) all tipping fees payable per ton of Acceptable Waste disposed at Jungo Landfill pursuant to Section 1.1 ("Tipping Fees") for waste generated within or outside County, (ii) additional charges for disposal of Acceptable Waste at any Disposal Site based on volume, weight or other characteristics of such waste and (iii) other amounts paid or payable with respect to waste disposal at or the operation of any Disposal Site.

4.2 Host Fee. Within thirty (30) days after the last day of each Quarter (each such day, a "Quarter End"), Disposal Site Operator shall pay to County a Host Fee of five percent (5%) of the gross monthly revenue derived from the disposal of Acceptable Waste generated outside of County that is accepted and disposed of at Jungo Landfill during such Quarter. The gross monthly revenue on which the Host Fee shall be computed shall not include the revenue generated from ancillary services associated with the procurement, shipment, and handling of out-of-state Acceptable Waste.

Article V

TERM & TERMINATION

5.1 Term; Termination. This agreement shall terminate on such date that Jungo Landfill has reached its fully permitted capacity, as determined by Disposal Site Operator, in its sole discretion, subject to all permit requirements (the "Termination Date"). Prior to the Termination Date, this Agreement may be terminated only:

- (a) by the written consent of County and Disposal Site Operator;
- (b) by and at the option of Disposal Site Operator, if:
 - (i) An event of Force Majeure or the effect thereof continues for thirty (30) consecutive days;
 - (ii) Any legal proceeding or government investigation shall be pending wherein an unfavorable judgment, order, decree, stipulation or injunction would prevent Disposal Site Operator from successfully engaging in the activities contemplated by this Agreement or otherwise make the performance by Disposal Site Operator of its obligations hereunder commercially unreasonable;
 - (iii) Any of County's representations or warranties were not materially true and accurate when made; or
 - (iv) County materially breaches its obligations under Section 3.2 (Obligations of County) and fails to cure such breach pursuant to Section 6.1.
- (c.) by and at the option of County if:
 - (i) Disposal Site Operator's gross negligence or willful misconduct results in a material breach of this Agreement and Disposal Site Operator fails to cure such breach pursuant to Section 6.1;
 - (ii) Disposal Site Operator materially breaches its obligations under Section 3.1 or 4.2 (Host Fee) and fails to cure such breach pursuant to section 6.1; or
 - (iii) Any of Disposal Site Operator's representations or warranties were not materially true and accurate when made.

5.2 Other Breaches. All other breaches of this Agreement that do not explicitly give rise to a right of termination pursuant to Section 6.1 may be enforced by judicial or administrative order or judgment, as the case may be, but shall not give rights to either party to terminate this agreement.

Article VI

BREACH & FORCE MAJEURE

6.1 Breach. Upon a material breach by a party of its obligations under this Agreement, such party shall (i) cure the breach within ninety (90) days of receipts of written notice from the non-breaching party or (ii) continuously demonstrate within such cure period that it is actively and continuously pursuing a course of action which can reasonably be expected to lead to a curing of the breach (in which case the ninety (90) day period shall be extended for so long as the breaching party is actively and continuously pursuing such a course); *provided, however*, that in the event of the failure of any party to this Agreement to pay the other party or parties any sum or due amount required to be paid when due hereunder, cure shall consist of payment which shall be made within fifteen (15) business days of written demand from the non-breaching party.

6.2 Force Majeure.

(a) Procedure. If Disposal Site Operator is rendered unable to perform any of its obligations under this Agreement, in whole or in part, by reason of an event of Force Majeure or the effect thereof, then the obligations of Disposal Site Operator shall be suspended for the duration of such event of Force Majeure and the effect thereof (but for no longer a period), and such failure to perform shall not be deemed a breach hereunder, and this Agreement shall not terminate and shall remain in effect for such duration (unless Disposal Site Operator exercises the option available to it under Section 5.1 (b) (i)). At any time that Disposal site Operator intends to rely upon an event of Force Majeure to suspend obligations as provided in this Section 6.2, Disposal

Site Operator shall notify County as soon as reasonably practical, describing in reasonable detail the circumstances of the event of Force Majeure. Notice shall be given when the effect of the event of Force Majeure has ceased.

(b) Definition. "Force Majeure" shall mean: (i) an act of God, epidemic, landslide, lightning, earthquake, fire, explosion, storm, flood or similar occurrence; (ii) an act of public enemy, war, insurrection, terrorism, riot, anarchy, civil disturbance or disobedience, sabotage or similar occurrence, or other interference by third parties; (iii) a strike, labor dispute, work slowdown, or similar industrial or labor action (collectively, a "Labor Action"); (iv) an order or judgment (including, without limitation, a temporary restraining order, temporary injunction, permanent injunction, cease and desist order or condemnation) or other act of any federal, state, county or local court, administrative agency or governmental office or body; (v) the denial, loss, suspension, expiration, termination or failure of renewal of any permit, license or other governmental approval; (vi) the adoption or change (including a change in interpretation or enforcement) of any federal, state, county or local law, rule, regulation or ordinance after the Effective Date; (vii) the institution of a legal or administrative action or similar proceeding by any person, entity or governmental agency or instrumentality which is reasonably likely to prevent or delay any aspect of the operation or development of Jungo Landfill; (viii) if Disposal Site Operator is delayed or barred by governmental or judicial action from collecting all or any part of the fees to be paid under this Agreement, as may be from time to time adjusted, and any other payments that may become due and owing; or (ix) any other act, event or condition affecting Disposal Site Operator or Jungo Landfill which is beyond the reasonable control of Disposal Site Operator or its agents and is not the result of the willful or negligent action or omission of Disposal Site Operator.

Article VII

REPRESENTATIONS & WARRANTS

7.1 Representations and Warranties of County. County represents and warrants to Disposal Site Operator as follows:

a) County is a county in the State of Nevada with full legal right, power and authority to enter into and to fully and timely perform its obligations under this Agreement.

(b) Board, on behalf of County, is duly authorized to execute and deliver this Agreement and this Agreement constitutes a legal, valid and binding obligation of County which is enforceable against County in accordance with its terms.

(c.) Neither the execution or the delivery by County of this Agreement nor the performance by County of its obligations in connection with the transactions contemplated hereby or the fulfillment by it of the terms and conditions hereof conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to it or materially conflicts with, violates or results in a breach of any term or condition of any order, judgment or decree or any agreement or instrument to which County is a party or by which it is bound, or constitutes a default hereunder.

(d) No action of County or referendum of voters which has not been obtained is required for the valid execution and delivery by County of this Agreement or the performance by County of its obligations hereunder, and no action of County or referendum of voters is pending or, to the County's knowledge, threatened that would materially conflict with the operation, development and maintenance Jungo Landfill.

(e) There is no action, suit or proceeding at law or in equity before or by any court or governmental authority pending or threatened against County or Jungo Landfill (including without limitation any condemnation or eminent domain actions) in which an unfavorable decision, ruling or finding would materially adversely affect the performance by County of its obligations hereunder or other transactions contemplated hereby or that in any way would materially adversely affect the validity and enforceability of this Agreement or the rights of Disposal Site Operator set forth herein.

7.2 Representations and Warranties of Disposal Site Operator. Disposal Site Operator represents and warrants to County as follows:

(a) Disposal Site Operator is a corporation duly incorporated, validly existing and authorized to do business under the laws of the State of Nevada with full legal right, power and authority to enter into and fully and timely perform its obligations under this agreement.

(b) Disposal Site Operator is duly authorized to execute and deliver this Agreement and this Agreement constitutes a legal, valid and binding obligation of Disposal Site Operator which is enforceable against Disposal Site Operator in accordance with its terms.

(c.) Neither the execution or delivery by Disposal Site Operator of this Agreement nor the performance by Disposal Site Operator of its obligations in connection with the transactions contemplated hereby or the fulfillment by it of the terms and conditions hereof conflicts with, violates or results in a breach of any law or governmental regulation applicable to it or materially conflicts with, violates or results in a breach of any term or condition of any order, judgment or decree or any agreement or instrument to which Disposal Site Operator is a party or by which it is bound, or constitutes a default thereunder.

(d) All corporate action has been taken which is required for the valid execution and delivery by Disposal Site Operator of this Agreement or the performance by Disposal Site Operator of its obligations hereunder.

(e) There is no action, suit or proceeding at law or in equity before or by any court or governmental authority pending or threatened against Disposal Site Operator in which an unfavorable decision, ruling or finding would materially and adversely affect the performance by Disposal Site Operator of its obligations hereunder or any other transaction contemplated hereby or that in any way would materially adversely affect the validity or enforceability of this Agreement.

7.3 Survival of Representations and Warranties: The representations and warranties of the parties contained in this Agreement shall survive the date hereof and shall expire upon termination of this Agreement. Neither County nor Disposal Site Operator shall have any liability whatsoever with respect to any such representations or warranties after the survival period for such representation and warranty expires.

Article VIII

MISCELLANEOUS

8.1 Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed under the laws of the State of Nevada.

8.2 Indemnification. Disposal Site Operator shall defend, indemnify and hold harmless County and its agents, servants and employees from and against any and all claims, damages or losses claimed by any person, firm or entity whatsoever arising out of or resulting from (i) the negligence or willful misconduct of Disposal Site Operator or its agents, servants or employees in performing services under this Agreement, or (ii) the failure of Disposal Site Operator and its agents, servants, or employees to comply with the provisions of this Agreement, unless such claims, damages or losses are attributable to the negligence, misconduct or omission of County or its agents, servants or employees.

8.3 Attorney's Fees. In any legal proceeding arising out of or related to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and out-of-pocket costs, in addition to any other relief to which such party may be entitled.

8.4 Entire Agreement. This Agreement, including all exhibits hereto and documents delivered herewith, constitutes the full and complete understanding and agreement of the parties with respect to the subject matter hereof. The exhibits hereto are integral parts of this Agreement.

8.5 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable, (i) the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby and (ii) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction;

8.6 No implied Waiver. No failure to exercise, delay in exercising or partial exercise of any right or remedy hereunder shall operate as a waiver of any provision of this agreement. No waiver of any provision of this Agreement shall operate as a waiver of any other provision (whether or not similar), nor shall it operate as a continuing waiver, unless so provided in writing by the waiving party.

8.7 Amendment; Waiver. Except as otherwise provided herein, this Agreement may be modified or amended, and any provision hereof waived, either generally or in a particular instance and either retroactively or prospectively, only by the written consent of the parties hereto.

8.8 Assignment. This Agreement may not be assigned by either party either voluntarily or by operation of law without the written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed, *provided*,

however, that no such consent shall be required for Disposal Site Operator to assign this Agreement in whole or in part to any entity controlling, controlled by, or under common control with Disposal Site Operator.

8.9 Successors and Assigns. Except as otherwise provided herein, the terms and conditions of this Agreement, and any consents or stipulations hereunder, shall inure to the benefit of and be binding upon the respective permitted successors and assigns of each party.

8.10 Document Disclosure. To comply with its obligations under this Agreement, Disposal Site Operator shall provide to County audited documentation that verifies the tonnage of Acceptable Waste received at Jungo Landfill. A certified statement of an officer of Disposal Site Operator shall satisfy this obligation. Disposal Site operator shall have no other disclosure requirements under this agreement.

8.11 Notices. All notices required or permitted hereunder shall be in writing and shall be deemed effectively given (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed electronic facsimile if sent during the normal business hours of the recipient, or if not, then on the next business day, (iii) five (5) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid or (iv) one (1) business day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All such notices shall be sent to the party to be notified at the address set forth below or at such other address as such party may designate by ten (10) business days advance written notice given in accordance with this section 8.11.

