

BE IT REMEMBERED THAT, The Board of Commissioners of the County of St. Joseph met in a claims session in the County City Building on August 9, 2018 at the hour of 10:00 a.m. (EST) at which time in the following members were present: Andrew Kostielney, Dr. Deborah Fleming D.M.D., and Dave Thomas were present.

**REPORTS AND REQUESTS FROM:**

Short discussion held on posting of meeting.

**COMMISSIONERS**

**A)**

**IN THE MATTER OF APPROVING  
THE ST JOSEPH COUNTY AGREEMENT  
FOR LIMITED LEAF COLLECTION &  
DISPOSAL SERVICES**

Mr. Woods. The following framework for the 2018 Agreement for Limited Leaf Collection & Disposal Services (the "Agreement") between St. Joseph County, Indiana (the "County") and St. Joe County Recycling, LLC ("SJCR") for the provision of limited leaf collection and disposal services to citizens of St. Joseph County is largely the result of past and continued efforts by the St. Joseph County Auditor, Michael Hamann, and St. Joseph County Council Member, Robert Kruszynski, who provided significant input into the Request for Proposals ("RFP") process for limited leaf collection and disposal services and spent significant time in discussion on this issue with SJCR, the Proposer awarded the contract pursuant to the RFP. The limited leaf collection and disposal program described in the Agreement (the "Program") consists of two passes (the "First Pass" and the <sup>1</sup>Second Pass"), which will occur prior to the end of 2018. The possibility was left open for a mutually agreed-upon Third Pass in the spring, should the County determine such to be necessary. The First Pass is tentatively given a start date of Wednesday, October 24, 2018, they can begin earlier if conditions are more ideal for that, it can be later but shall begin no later than the last full week of October. I think from previous meetings I have been in I think they have started the third Monday, that would be October 15<sup>th</sup>, prior draft at October 22<sup>nd</sup> as a start date so now we have a tentative start date. We have almost another extension of divisions or more ideal starting later. The Second Pass is to begin at the completion of the First Pass. So, after the first pass after all the townships have been picked up then the second pass will begin. I think in years past there has been some concern the leaves were collected in some of the less dense areas they need IP services provided in the denser areas then there would be a second pass down in the less densely populated leaf areas. That won't be the case it will be a complete pick up and then another complete pick up. For both Passes, collection is to begin in Madison Township and rotate clockwise through Union, Centre, Liberty, and the remaining Townships. So, our higher density population areas, Clay, Harris and Penn will be the last ones that are picked up during each pass. Hopefully maximizing the number of leaves collected. The only prepayments under the Agreement are for a one-time Acquisition and Refurbishment fee for SJCR to use to purchase, refurbish, repurpose and renew the fleet of equipment to be used for the Program, and one-third of the First Pass payment, \$150,000.00 which are for his staff and other administrative and employee expenses so the vendor will be prepared to undertake this work as set forth in the agreement. All other payments are to be made only after meeting certain completion goals. I think it is important in the second pass payment is in full of \$200,000.00, a \$100,000 is only payable after completion of Harris. So, there is significant work that will be done prior to earning that second to last mile stone of \$100,000.00. Then the final payment of \$100,000 will be due and owing after completion of Harris and Penn and a few other high-density areas. Snow Contingencies are allowed for in the Agreement; however, if a Snow Contingency does occur that results in areas not receiving their allocated Pass, collection will occur in those areas weather permitting. Additionally, the vendor will provide GPS monitoring and tracking devices that document the leaf collection services, which include a paper trail to be submitted to the County with invoices. Not like the fight over the last several years that's something that the vendor and Ms. Clark, the Engineer, they are familiar with these types of documents. It was not set forth in this document, but I just

want to highlight we also have the ability to inspect the fleet that's being used and the equipment that's being used to complete this service at the county level so if we have concerns about that we provide a notice to Greenworld. The County is responsible for public education and outreach (other than maintenance of the leaf collection website). The County is also responsible for maintaining and adequately staffing a call center to handle customer calls and complaints. SJCR is to resolve legitimate complaints resulting from its actions or omissions within 72 business hours. I believe the Commissioners have provided an individual being Ms. Nimitz who can be the point person, point of contact. With years past from what I know having a point person makes that process much more efficient. The vendor must maintain program reports of the collection services until the final payment has been received for the current program season. The County must maintain records of the vendors fuel usage and provide the vendor those records monthly by fuel key ID. I think that is a process Ms. Clark previously used, we pay for the fuel for this program and there's a true up mechanism. The County has the right upon 10 days' written notice to review SJCR's program reports. That in a nutshell is the return of the contract. We can talk about one thing that is not addressed is what happens if there is a default and under the terms of the contract in paragraph 35, if there is a default we can always withhold payment. Nobody can force them to make a payment. If there is a default, we always have the ability to withhold payment and now all, but the first payment is based upon achievement of a milestone. Secondly, we have the ability if we find that there are any type of damages, any type of claim for certain, any type of fraud or any other type of activity that we think is wrongful towards the county we have the ability to assert any claims that law or equity that we would possess against the vendor and in such a proceeding the losing party would be responsible to pay the prevailing parties attorney. So, there are mechanisms, the strongest being the ability to withhold payment and to bring suit.

Mr. Kostielney. A Couple of things regarding the program, Marie is going to be the point person so if there are any questions or comments or citizens have issues then she is the point of contact. She will work very closely with the St. Joseph County recycling to make sure the issues get resolved. We are also pursuing things that would not be limited in this contract other ways we could improve upon this service of the program. Like establishing drop sites at the different highway garages for residents in the event that they have a small number of leaves that they were unable to get picked up.

Mr. Thomas. Asks about the framework of this project.

Mr. Hamann. We worked hard Mr. Kruszynski and I in crafting in 2017 the program and to the extent that this program is based largely on that and the provisions in the contract come from that.

Mr. Thomas. I was going to ask what the last full week of October means. The normal business world that I operate in you would discuss things like this in negotiation and we would correct the contract with clear language like that. We can leave the contracts current language no later than the last week of October or it could be changed to no later than October 28<sup>th</sup>.

Mr. Woods. If you are more comfortable with that I am fine with that amendment. Short discussion held on the dates and the calendar in the contract.

Mr. Thomas. The second condition whereas SJC (St. Joseph County) has the authority to determine the manner of collection and disposal. I would say we have partial authority. We can't tell citizens what they can and can't do. The next one, the granting of this contract to a private corporation for the leaf collection and disposal services as contemplated here in is a valid function of SJC. I don't know if it is a valid function. I mean it's not a state required function. Next, where it is deemed to be in the best interest of SJC and the residents of SJC and later it says to ensure high quality services of services. That's open to personal opinion. The bottom line, in consideration of the covenants and agreements herein. So, that establishes that this is the full document. I will bring that up later. The terms, it expires on November 30<sup>th</sup> or when specified service passes are completed. Specified service pass is that a definition?

Mr. Woods. I have that the specified service passes include the first pass, the second pass, and any third pass, but the third pass is agreed upon by the parties. So, it is inclusive of the first and second pass. If we decide to have a third pass it would give the county flexibility.

Mr. Thomas. I would think it would be better to skip this whole issue of the third pass. It's taking this long just to get two passes. Then we are left with the issue of it expires on November 30<sup>th</sup>. If passes aren't complete I think there should be a definition that Public

Works or somebody does make sure everything is completed. Next under work scope, you mention changes in dates, you also talk about the townships. Before it was starting in Clay now it is starting in Madison and will rotate clockwise through Union, Centre and Liberty etc. I think it should say all the townships not just those four. I think it should be defined when Clay is in the rotation for those services to happen and payments go through. Talks about South Bend leaf pickups and weather/mechanical issues and added days for this type of problem should it arise. The second pickup starting right after the first pass, I think there should be a gap there. Next, we have the first pass cost. It is \$750,000.00. It still has the preparation deposit of \$250,000.00 on top of the \$195,000.00. That is a very significant portion of this contract being paid without any work being done. Next is the issue of Clay. One third of the payment is to be made after Clay is done but, we don't have a listing of when Clay is done as mentioned earlier. At the end of the second pass the service area program guidelines. I would just make sure that all the legal limits will be more simplified that there are no final payments until all the work is done to the customers satisfaction. The fuel, I would just make sure this is in St. Joseph County not outside of it. In reference to the mileage I think the number of vehicles should be clarified to make sure we are matching up trucks with mileage. Number three there 24/7, I would add unless and emergency is declared by the Board of Commissioners. Communicator position, dates, and reimbursement cost discussed. Program Field Co-Operation leader duties and meeting attendance discussed. Mr. Thomas continues to go through each line item for discussion, comments and clarification. Please refer to on line video for complete dialogue.

Mr. Woods. I would make that contingent upon Mr. Rose providing, by the end of business tomorrow, to the County Engineer the proper licensure showing that you can operate on a personal basis with the Department of Transportation, INDOT, and the Indiana Department of Revenue. Also contingent upon the modification of paragraph 6 recommended by Mr. Thomas. The typo is paragraph six, and you guys can decide on the day if it is to be the 28<sup>th</sup>.

Dr. Fleming moved to accept the above contract with the contingencies as outlined by Mr. Woods.

Motion seconded by Mr. Kostielney.

Motion adopted by a 2-1 vote.

## **B)**

### IN THE MATTER OF APPROVING THE ACCOUNTS PAYABLE DOCKETS

Dr. Fleming moved to accept the Accounts Payable Docket as read and outlined.

Motion seconded by Mr. Thomas.

Motion adopted by a 3-0 vote.

## OLD BUSINESS

Request to approve indemnity & consent to encroachment agreement for 50902 Canyon Ridge Drive.

Dr. Fleming moved to untable the above request.

Motion seconded by Mr. Thomas.

Motion adopted by a 3-0 vote.

This is for an on-site wastewater system to encroach within a drainage easement. It is at the request of the Health Department they are asking for you to release the easement, so they can get permits to have this work done. It also indemnifies the county from any maintenance responsibilities, liability, loss or damage, and hold the county harmless as a result of claims or demands from any act or injury to the property caused by the county.

## PUBLIC COMMENTS

There being no further business to come before the Board at this time, Mr. Kostielney asked for a motion to recess, Dr. Fleming so moved, seconded by Mr. Thomas. Meeting recessed by a 3-0 vote.

  
ST. JOSEPH COUNTY COMMISSIONERS