

Department of Public Works

Kim MacFarlane, P.E.
Director

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AGENDA TUOLUMNE COUNTY BOARD OF SUPERVISORS Solid Waste Committee May 11, 2022 at 1:00 p.m.

This is a Virtual/Remote Meeting Only

ZOOM MEETING

Meeting ID: 889 4537 5510

Passcode: 940156

ADMINISTRATION

Assistant to the
Department Head
Emma Hawks
209.694.2718

AIRPORTS

Airports Manager
Benedict Stuth
209.533.5685

BUSINESS

Business Manager
Janelle Kostlivy
209.533.5972

ENGINEERING

Supervising Engineer
Blossom Scott-Heim, P.E.
209.533.5904

FLEET SERVICES

Fleet Services Manager
Mike Young
209.536.1622

GEOGRAPHIC INFORMATION SYSTEMS

GIS Coordinator
Madeline Amlin
209.533.6592

ROAD OPERATIONS

Road Superintendent
Mike Cognetti
209.533.5609

SOLID WASTE

Solid Waste Director
Jim McHargue, REHS
209.533.5588

SURVEYING

County Surveyor
Warren Smith, L.S.
209.533.5626

1. INTRODUCTIONS

2. ASSEMBLY BILL 361

Consideration of Adopting Re-Authorizing Resolution 2022-03 Making Findings in Support of Re-Authorizing Remote Meetings Pursuant to AB361 (Modified Brown Act Procedures During a Declared Emergency).

3. PUBLIC FORUM

The public may speak on any item not on the printed agenda. No action may be taken by the Committee. The amount of time allocated for the public forum is limited to 15 minutes.

4. COMMITTEE BUSINESS

- A. Consideration of the Minutes of the meeting on April 13, 2022
- B. Updates/Reports
 - Clean CA Coupon Event at the Home and Garden Show

5. ACTION ITEMS

- Consideration of the Cal Sierra/Waste Management Inc. franchise agreements (collection and transfer station) and amendments for term extensions. This meeting will focus on the Collection Agreement and the Transfer Station Agreement will be considered at a later Solid Waste Committee meeting.
- Consideration of applications for at-large member of the general public to the Solid Waste Committee.

6. COMMITTEE MEMBER REPORTS

7. NEXT MEETING – Possible special meeting on 5/25 at 1:00 P.M.

8. ADJOURNMENT

The Board of Supervisors Solid Waste Committee serves as an advisory group to the Board of Supervisors by reviewing, commenting on and recommending new and/or modifications to existing policy related to the Solid Waste Collection, management and disposal systems within the County.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Department of Public Works at (209) 533-5601. Notifications 48 hours prior to the meeting will enable the County to make reasonable arrangements to ensure accessibility to this meeting



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MINUTES **UNAPPROVED**

Board of Supervisors Solid Waste Committee (BOSSWC) Wednesday, April 13, 2022 at 1:00p.m.

ADMINISTRATION

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PRESENT: Supervisor Ryan Campbell; Supervisor David Goldemberg
Jim Garaventa; Sonora City Council, Monique Holcomb;
At-Large Public Committee Member.

STAFF: Kim MacFarlane, Director of Public Works; Jim McHargue, Solid Waste
Director; Diane Green, Solid Waste Specialist; Monique Figueroa, Solid
Waste Administrative Technician; Pam Hughes, Administrative Assistant
Relief.

GUESTS: Vanessa Barberis, Waste Management.

CALL TO ORDER

Supervisor Ryan Campbell called the meeting of April 13, 2022 to order at 1:01 p.m.

Supervisor Campbell suggested we introduce ourselves first then address Assembly Bill
361 Consideration of Adopting Resolution 2021-02 Making Findings in Support of Allowing
Remote Meetings Pursuant to AB361 (Modified Brown Act Procedures During a Declared
Emergency).

Supervisor Campbell asked if there was any public comment. None noted.

It was moved by Councilman Garaventa and seconded by Supervisor Goldemberg.

Supervisor Campbell called for the vote: Ayes 4; Noes 0; abstain 0

Motion carried 4 – 0 – 0

PUBLIC FORUM

Supervisor Campbell asked if anyone had any public comments.

Jim McHargue, Solid Waste Director informed the Committee of the Clean California
Coupons that we would be distributing at the Sonora Home and Garden Show on
Saturday April 23, 2022 as part of the CalTrans Clean California initiative. The coupons
would allow any Tuolumne County resident to dispose up to 2 cubic yards of regular
household waste at the Cal Sierra/WM Transfer Station located at 19309 Industrial Dr. We
are very excited to offer this program to the residents of Tuolumne County as it allows us
to provide a convenient and safe way for everyone to dispose of their garbage anytime
during the month of May.

Supervisor Goldemberg agreed that this was an excellent idea and a way to avoid some
of the issues we had seen in the month of January. The previous CalTrans Clean-Up Day
event residents were turned away after waiting hours in a line that was up to a mile long.
Supervisor Goldemberg wanted to know other than the Home and Garden Show how
would Solid Waste be advertising the Clean California Coupons.

of the issues we had seen in the month of January. The previous CalTrans Clean-Up Day event residents were turned away after waiting hours in a line that was up to a mile long. Supervisor Goldemberg wanted to know other than the Home and Garden Show how would Solid Waste be advertising the Clean California Coupons.

Mr. McHargue explained that we would be utilizing social media, public service announcements, radio, and the local newspaper to get the word out to the public. Mr. McHargue also stated that we would be distributing coupons at the front counter of the Public Works department. CalTrans is also excited about this idea and we hope to continue this program depending on the response to the event and funding availability.

Supervisor Campbell asked how many coupons we would be giving out and Mr. McHargue answered 200.

Supervisor Goldemberg asked how we would keep residents from receiving more than one coupon per household. Mr. McHargue stated that each coupon would be assigned to a resident once they provide verification that they are in fact a resident of Tuolumne County. Those coupons are numbered, and physical addresses will need to be provided and logged.

Councilman Jim Garaventa expressed concern about residents using the same address. Mr. McHargue stated that Solid Waste will track and do the best they can to regulate those trying to use duplicate addresses.

Pam Hughes introduced herself as administrative relief for Public Works.

COMMITTEE BUSINESS

A. Consideration of the Minutes of the meeting of January 12, 2022.

It was moved by Councilman Garaventa and seconded by Committee Member Monique Holcomb to approve the Minutes of the January 12, 2022 meeting.

Supervisor Campbell called for a vote: Ayes 4; Noes 0; abstain 1

Motion carried 4 – 0 – 1

B. Updates/Staff Reports

Illegal Dumping

Mr. McHargue informed the Solid Waste Committee that there was a training on illegal dumping and enforcement that took place back on February 2, 2022, but that it was limited to District Attorney's and law enforcement only. He then stated that the 2nd Annual Statewide Conference on Illegal Dumping would be taking place next week on Tuesday the 19th, Wednesday the 20th, and Thursday the 21st of May. This conference is free and open to everyone. Education, Eradication and Enforcement will be the focus of the conference. Mr. McHargue stated he just learned about the conference but would send out the link for anyone who was interested in joining.

Solid Waste Agreements

Mr. McHargue gave an update on all six of the County's agreements. He reported that the Solid Waste department has completed the agreement extension with Moore Bros. Scavenger Co. for operations at the Groveland Transfer Station. We are now working on the two franchise agreements with Cal Sierra/ Waste Management, the transfer station and collection agreement. Very productive meetings have occurred between County staff and Cal Sierra/Waste Management. The hope is to complete the agreements and bring them back to the Solid Waste Committee next month in May then to the Board of Supervisors for approval. In addition, there are two remaining agreements pending, one with Burns Refuse Services for collection and one with Moore Bros. Scavenger Company for collection.

Clean CA Caltrans and SB 1383 Grants

We are anticipating receiving grant funding this year to help with the implementation of SB 1383 for both the County and the City of Sonora. The Clean California Caltrans Grant is a combined grant with Public Works. The Solid Waste grant consists of a "Don't Trash Tuolumne" education and outreach project in local schools. We have not yet received notice to proceed at this time but expect to hear soon.

Supervisor Campbell asked exactly how much the SB 1383 grant is for and how will it be used. Mr. McHargue explained that we applied for the maximum allowed to the County and the City of Sonora totaling approximately \$80,000. Our plan is to use these funds from CalRecycle's for the implementation of SB 1383 requirements including the edible food recovery program and working with the Tier 1 food generators. Funding will also be used for education and outreach to the commercial food generators. Even though we do have an exemption from organics collection, we still have a significant number of requirements that must be met.

ACTION ITEMS

- A. Cal Sierra/Waste Management weather-related truck information and service contingency plan.

Ms. Barberis wanted to let everyone know that Waste Management had a meeting with county staff regarding service during the difficult weather months. Ms. Barberis stated that they did in fact reach out to other operations directors and haulers to see how they handle service during the snowy months and the feedback they received is that customers are prepared for the service interruptions and that they expect these delays and rarely question the service. Other regions do not have the same challenges as we have here in Tuolumne County. In the Midwest the land is flat while we have winding narrow roads. Waste Management wanted to do their due diligence, and at the County's request they did investigate purchasing smaller trucks and this is what market research found. Pickup trucks that were equipped with a hopper in the back could only hold about 6 cubic yards of garbage at a time. To service the number of residents that are impacted by the weather Waste Management would need 7 of these pickup trucks plus an additional standard rear end truck to follow them around so they could dump their trucks

out in the field and not travel back and forth to the transfer station. Each truck would only be able to service about 12 homes at a time with a 6 cubic yard capacity before it becomes full. Waste Management shared in their meeting that they did not feel it was a viable option for the County nor would it solve the problem. There is still a safety issue and more trucks would be out on the roads further complicating the problem. The cost as well would be an issue, the price tag would be about 1.5 million dollars to purchase, maintain and store these new trucks. This would impact our residents bill by 6% which comes out to about \$3.00 per household and Waste Management does not feel that the residents would be happy knowing they are all paying a higher rate for a service that is affecting only a few. A serious consideration is the labor that it would take to operate 7 new trucks. Hiring new drivers who would have to be permanent employees because Waste Management's drivers are unionized. They would not be able to hire temps for the season. They would have to be permanent full-time staff. Based on this information, Waste Management feels it would be better to work on and update the current Weather Contingency Plan. Since Waste Management has hired a new district manager in 2019 they have already begun to see a lot of progress in their processes and what Waste Management would like to continue to do is move forward and set new procedures on how they will handle certain situations.

Mr. McHargue stated that discussions are currently happening and the new Cal Sierra/Waste Management agreement extension will address winter weather conditions.

Supervisor Goldemberg questioned if the current full-size trucks that Waste Management operates are all wheel drive. Ms. Barberis responded that they are, and they are also equipped with chains. Supervisor Goldemberg stated that he does not receive very many complaints regarding the service of Waste Management due to weather conditions because his district is not at higher elevation and not really impacted. The question that he gets the most is how propane trucks and fire trucks can operate in the same weather.

Kim MacFarlane, Director of Public Works chimed in to answer Supervisor Goldemberg's question. Propane trucks, fire trucks, and snow plows are all moving until they get to their destinations, where as a garbage truck that makes frequent stops and, on an incline, combined with heavy wet debris will cause the truck to slide and then creates a safety issue.

Everyone agreed this was important information to get out to the public. Although everyone may not be happy with the information, they will at least have a better understanding of how operations for Waste Management works.

Supervisor Goldemberg asked if the voucher program was being utilized for any missed pickups. Ms. Barberis stated that they did send a voucher to all customers who had reported an interruption to service due to weather. She also informed the Solid Waste Committee that Waste Management encourages all their customers to keep their information updated with an online account to receive the fastest information regarding service interruptions.

Ms. Barberis went on to say that in the past Waste Management has had a plan on how to service during the winter months and in the past few years they have had many changes all to improve communication and service. A 2019 customer service survey rated them as a 5 in customer service whereas in 2022 they were rated between an 8/9.

So, they have made the effort and will continue to do so.

- B. Consideration and direction on filling at-large member of the public to the Solid Waste Committee.

Mr. McHargue informed the committee that the process has changed a little since the last time we accepted applications for the at-large member of the public for the Solid Waste Committee. We now need to get a recommendation from the Solid Waste Committee and then submit a memo to the board clerk so we can get on the consent calendar for the next Board of Supervisors meeting. There is some clarification needed as to what the correct procedure is but for now the Solid Waste Committee will vote on a recommendation.

It was moved by Supervisor Goldemberg and seconded by Councilman Garaventa.

Supervisor Campbell called for the vote: Ayes 4; Noes 0; abstain 0

Motion carried 4 – 0 – 0

COMMITTEE MEMBER REPORTS

Councilman Garaventa mentioned that commercial accounts in downtown Sonora are still having an issue with their garbage and recycle receptacles being moved on service day resulting in no service for these accounts. The City of Sonora thought they had a plan but unfortunately, they ran into some issues and will continue to work on this issue.

Monique Holcomb inquired about a previous discussion we had regarding increased fines for dumping in waterways and commercial dumpers.

Mr. McHargue stated that the revision to the County's ordinance code is still in process but that we have requested an increase in fine levels.

Ms. Holcomb's main concern is that we increase fines for those who dump in our waterways which Supervisor Campbell stated that there are already state laws in place.

ADJOURNMENT

Supervisor Campbell asked if anyone had anything further comment.

Seeing none, Supervisor Campbell adjourned the meeting at 2:04 p.m.

Next meeting will be May 11, 2022

FINDINGS OF THE SOLID WASTE COMMITTEE/LOCAL TASK FORCE
RE-AUTHORIZING REMOTE TELECONFERENCE MEETINGS
FOR THE PERIOD MAY 11, 2022-JUNE 10, 2022
PURSUANT TO THE RALPH M. BROWN ACT.

WHEREAS, all meetings of SOLID WASTE COMMITTEE/LOCAL TASK FORCE and its legislative bodies are open and public, as required by the Ralph M. Brown Act (Cal. Gov. Code 54950 – 54963), so that any member of the public may attend, participate, and view the legislative bodies conduct their business; and

WHEREAS, the Brown Act, Government Code section 54953(e), makes provisions for remote teleconferencing participation in meetings by members of a legislative body, without compliance with the requirements of Government Code section 54953(b)(3), subject to the existence of certain conditions and requirements; and

WHEREAS, a required condition of Government Code section 54953(e) is that a state of emergency is declared by the Governor pursuant to Government Code section 8625, proclaiming the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions as described in Government Code section 8558(b); and

WHEREAS, a further required condition of Government Code section 54953(e) is that state or local officials have imposed or recommended measures to promote social distancing, or, the legislative body holds a meeting to determine or has determined by a majority vote that meeting in person would present imminent risks to the health and safety of attendees; and

WHEREAS, on March 4, 2020, Governor Newsom issued a Proclamation of a State of Emergency declaring a state of emergency exists in California due to the threat of COVID-19, pursuant to the California Emergency Services Act (Government Code section 8625); and,

WHEREAS, on June 11, 2021, Governor Newsom issued Executive Order N-07-21, which formally rescinded the Stay-at-Home Order (Executive Order N-33-20), as well as the framework for a

1 gradual, risk-based reopening of the economy (Executive Order N-60-20, issued on May 4, 2020) but did
2 not rescind the proclaimed state of emergency; and,

3 **WHEREAS**, on June 11, 2021, Governor Newsom also issued Executive Order N-08-21, which set
4 expiration dates for certain paragraphs of the State of Emergency Proclamation dated March 4, 2020 and
5 other Executive Orders but did not rescind the proclaimed state of emergency; and,

6 **WHEREAS**, as of the date of this Finding, neither the Governor nor the state Legislature have
7 exercised their respective powers pursuant to Government Code section 8629 to lift the state of emergency
8 either by proclamation or by concurrent Finding the state Legislature; and,

9 **WHEREAS**, the California Department of Industrial Relations has issued regulations related to
10 COVID-19 Prevention for employees and places of employment. Title 8 of the California Code of
11 Regulations, Section 3205(5)(D) specifically recommends physical (social) distancing as one of the
12 measures to decrease the spread of COVID-19 based on the fact that particles containing the virus can travel
13 more than six feet, especially indoors; and,

14 **WHEREAS**, on April 13, 2022, the SOLID WASTE COMMITTEE/LOCAL TASK FORCE
15 previously adopted Finding No. 2022-02, finding that the requisite conditions existed for the SOLID
16 WASTE COMMITTEE/LOCAL TASK FORCE to conduct remote teleconference meetings without
17 compliance with Government Code section 54953 (b)(3), as authorized by Section 54953(e); and,

18 **WHEREAS**, as a condition of extending the use of the teleconferencing provisions for another 30
19 days beyond the Finding adopted on May 11, 2022, pursuant to Government Code Section 54953(e), the
20 SOLID WASTE COMMITTEE/LOCAL TASK FORCE must reconsider the circumstances of the state of
21 emergency that exists and find that either the state of emergency continues to directly impact the ability of
22 the members to meet safely in person or state or local officials continue to impose or recommend measures
23 to promote social distancing; and,

24 **WHEREAS**, the SOLID WASTE COMMITTEE/LOCAL TASK FORCE has reconsidered the
25 circumstances of the state of emergency and finds that state or local officials continue to impose or
26 recommend measures to promote social distancing, based on the California Department of Industrial
27 Relations regulations related to COVID-19 Prevention, specifically, Title 8 of the California Code of
28 Regulations, Section 3205(5)(D), continuing to remain in effect; and,

1 **WHEREAS**, as a consequence, the SOLID WASTE COMMITTEE/LOCAL TASK FORCE does
2 hereby find that it may continue to conduct their meetings by teleconferencing without compliance with
3 Government Code section 54953 (b)(3), pursuant to Section 54953(e), and that such legislative bodies shall
4 comply with the requirements to provide the public with access to the meetings as prescribed by
5 Government Code section 54953(e)(2).

6 **NOW, THEREFORE, BE IT RESOLVED, FOUND AND ORDERED** by the SOLID WASTE
7 COMMITTEE/LOCAL TASK FORCE State of California, in regular session assembled on May 11, 2022
8 does hereby find as follows:

9 Section 1. Recitals. All of the above recitals are true and correct and are incorporated into this
10 Finding by this reference.

11 Section 2. Reconsideration of the State of Emergency. The SOLID WASTE
12 COMMITTEE/LOCAL TASK FORCE has reconsidered the circumstances of the state of emergency that
13 continues to exist and was proclaimed by the Governor through a State of Emergency Proclamation on
14 March 4, 2020.

15 Section 3. State or Local Officials Continue to Impose or Recommend Measures to Promote
16 Social Distancing. The SOLID WASTE COMMITTEE/LOCAL TASK FORCE hereby proclaims that
17 state officials continue to impose or recommend measures to promote social (physical) distancing based on
18 the continuance of California Department of Industrial Relations regulations related to COVID-19
19 Prevention through Title 8 of the California Code of Regulations, Section 3205(5)(D).

20 Section 4. Remote Teleconference Meetings. The SOLID WASTE COMMITTEE/LOCAL
21 TASK FORCE is hereby authorized and directed to take all actions necessary to carry out the intent and
22 purpose of this Finding including, conducting open and public meetings in accordance with Government
23 Code section 54953(e) and other applicable provisions of the Brown Act.

24 Section 5. Effective Date. This Finding shall take effect immediately upon its adoption and
25 shall be effective until the earlier of (i) May 10, 2022 or (ii) such time the SOLID WASTE
26 COMMITTEE/LOCAL TASK FORCE adopts a subsequent Finding in accordance with Government Code
27 section 54953(e)(3) to extend the time during which its legislative bodies may continue to teleconference
28 without compliance with Section 54953(b)(3).

ADOPTED this ____ day of _____, 2022 by the SOLID WASTE
COMMITTEE/LOCAL TASK FORCE, by the following vote:

YES:

NO:

ABSENT:

ABSTAIN:



Department of Public Works

Kim MacFarlane, P.E.
Director

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DATE: May 11, 2022

TO: Tuolumne County Board of Supervisor's Solid Waste Committee

FROM: Jim McHargue, REHS, Solid Waste Director

RE: Consideration of the Cal Sierra/Waste Management Inc. request for extension to their Franchise Agreements (Collection and Transfer Station)

REQUESTED ACTION

Consideration of the Cal Sierra/Waste Management Inc. request for extension to their Franchise Agreements (Collection and Transfer Station).

BACKGROUND INFORMATION

WASTE COLLECTION AGREEMENT

The current franchise collection agreement became effective on November 1, 2009 and has a term of 13 years, expiring on October 31, 2022. Included in the existing agreement is an extension for a period of ten (10) years upon mutual agreement by both the County and Cal Sierra/Waste Management Inc.

TRANSFER STATION AGREEMENT

The current franchise transfer station agreement became effective on October 13, 2009 and has a term of 13 years, expiring on September 30, 2022. Included in the existing agreement is an extension for a period of five (5) years upon mutual agreement by both the County and Cal Sierra/Waste Management Inc. (The Franchisee has indicated a desire to match the Transfer Station extension term to Collection term of 10 years.)

At the September 14, 2021, meeting of the Tuolumne County Board of Supervisors, staff was directed to begin negotiations with Cal Sierra/Waste Management Inc. on the ten-year extension to their franchise collection agreement. Over the last eight months, staff has met regularly with Cal Sierra/Waste Management Inc. on addressing service and other issues that have been identified by staff and the Board as priority considerations for a ten-year extension.

The WASTE COLLECTION AGREEMENT negotiations can be considered in three main categories: priority issues, significant changes, and other changes.

1. PRIORITY ISSUES:

- Collection of recycling materials with solid waste for landfill disposal.
In 2020, when the pandemic was progressively getting worse, Cal Sierra/Waste Management notified the County it needed to comingle recycling with waste for landfill disposal. This was due to personnel impacts related to COVID illness and quarantining. The County notified Cal Sierra/Waste Management to return to normal recycling handling and processing and they complied with the County's request and returned to regular service.

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- Winter weather interruptions to service.
Cal Sierra/Waste Management has provided the County with a plan to address the ongoing issues with service interruptions due to winter weather conditions resulting in heavy snow at lower elevations. When these conditions continue over an extended period of time the roads become icy and dangerous for large fully loaded garbage trucks on steep inclines.
- Customer service for Tuolumne County customers.
Due to concerns regarding Cal Sierra/Waste Management's customer service, County staff has requested an improved level of customer service for Tuolumne County residents. Some of the customer service issues concerns include: the inability to get a local customer service representative on the telephone, referral to an out-of-state call center, and inability to contact an in-person representative at the Sonora office. Cal Sierra/Waste Management has committed to addressing these issues and improving the overall level of customer service.

2. SIGNIFICANT CHANGES:

1. Provision of 1,000 tons waste disposal annually at the Sonora Transfer Station for County and County-affiliated programs.
2. Increase in County building and facility of waste services from \$82,000 annually to \$148,000 annually.
3. Customer credit for missed service will equal actual number of weeks of missed service with no cap on maximum number of weeks credited.
4. Franchisee will provide Education and Outreach in compliance with SB 1383, AB341, AB1826 and AB827 within County at a cost to franchisee of up to \$30,000 per year.
5. Cal Sierra/Waste Management Inc. representatives will appear before the Board of Supervisors within two weeks when requested by the County.

3. OTHER CHANGES:

- A. Organic Waste Collection- County and Franchisee will meet and cooperatively develop an organic waste collection program that meets the needs of the County.
- B. Mandatory Commercial Recycling- Franchisee will provide services that will meet the requirements outlined in AB341, Mandatory Commercial Recycling.
- C. Contamination, Overage, Overweight- Additional language added clarifying the customer notification period.
- D. Liability and Insurance- All insurance requirements have been updated to current County requirements as outlined by County Human Resources/Risk Management.
- E. CPI Indexed Rates- The CPI index used to adjust rates has been changed from CPI-U San Francisco, Oakland and San Jose to CUUR0000SEHG Water, Sewer and Trash Collection Services.
- F. Adjustment for Extraordinary Costs- Additional language added pertaining to landfill disposal costs, new or increased governmental fees, changes in law, and changes in collection services.
- G. Performance Review- Additional language pertaining to Franchisee confidentiality or trade secrets, however Franchisee must comply with the California Public Records Act.
- H. Liquidated Damages- Additional language pertaining to the assessment of liquidated damages by the County upon the Franchisee.
- I. Franchisee's Liability to Perform- Change in language from Act of God to Uncontrollable Circumstances.

The franchise agreement negotiations have been conducted in good faith by both parties with an emphasis on providing the residents of Tuolumne County with safe, reliable, and cost-conscious waste collection services.

Although there have been service-related issues in the past, Cal Sierra/Waste Management Inc. has come to the negotiations table with a willingness to improve the aspects of their business the County has identified as priority, and they have committed to a partnership that will best serve the residents of Tuolumne County.

FINANCIAL CONSIDERATION

The compensation structure, including fees charged to the customers, contained in the existing franchise collection agreement has been maintained.

RECOMMENDATION

Approve referral to the Board of Supervisors the extension of the Cal Sierra/Waste Management Inc. waste collection franchise agreement. The collection agreement will be sent to the Board of Supervisors with the transfer station franchise agreement once it has been considered at a later Solid Waste Committee meeting.

AMENDED AND RESTATED FRANCHISE AGREEMENT

This Amended and Restated Franchise Agreement ("Agreement"), entered into this ____ day of _____, 2022 ("Effective Date"), is by and between COUNTY OF TUOLUMNE, hereinafter called "County," and Cal Sierra Disposal, a Waste Management company, hereinafter called "Franchisee". This Agreement amends and restates the Amended and Restated Franchise Agreement dated November 1, 2009 ("Original Agreement"). This Agreement supersedes the Original Agreement in its entirety.

WHEREAS, the County wishes pursuant to Title 7 of the Tuolumne County Ordinance Code to enter into an exclusive franchise agreement with Franchisee to provide Solid Waste and Recyclables Collection Services for customers within Collection Areas 1 and 2 in the County of Tuolumne; and

WHEREAS, Franchisee wishes to enter into a franchise agreement with County for said services.

NOW THEREFORE, County and Franchisee hereby agree as follows:

I. Definitions.

- A. Definitions for terms and phrases not defined in this Agreement shall have the meanings given to them in Title 7 of Tuolumne County Ordinance Code.
- B. References to "Title," "Chapter" or "Section" are to the Tuolumne County Ordinance Code unless otherwise indicated.
- C. "Applicable Law" means any law, regulation, requirement, or order of any Federal, State or local agency, court or other domestic or foreign governmental body, or interpretation thereof by any court or administrative agency of competent jurisdiction, and requirements of all permits, licenses, and governmental approvals applicable to this Agreement.
- D. "Collection Services" means the process by which Solid Waste (such as Refuse, Recyclables or Organic Waste) is removed from a Commercial or Residential Premises, transported to a transfer, disposal or Processing facility, and subsequently disposed or Processed.
- E. "Commencement Date" means November 1, 2022.
- F. "Commercial Premises" means a Premises in the County that is not a Residential Premises.
- G. "Customer" means an owner or occupant of a Commercial or Residential Premises who has the legal right to initiate, cancel or make changes to Collection

Services.

H. “Dwelling Unit” means any individual living unit that includes a kitchen, and a room or suite of rooms, and is designed or occupied as separate living quarters for an individual or group of individuals. However, Dwelling Unit does not include a hotel or motel unit.

I. “Food Waste” means Solid Waste composed of animal, fruit or vegetable matter resulting from food preparation or consumption, as well as food-soiled compostable paper products.

J. “Green Waste” means any vegetative matter resulting from normal yard and landscaping maintenance that is not more than three (3) feet in its longest dimension or six (6) inches in diameter. Green Waste includes, but is not limited to, plant debris such as palm, yucca and cactus, grass clippings, leaves, prunings, weeds, branches, brush, undecorated Christmas trees, and other forms of vegetative waste.

K. “Multi-Family Complex” means any Premises with five (5) or more Dwelling Units, where such Dwelling Units receive centralized Refuse Collection Services (and not individualized Cart-based Refuse Collection Services).

L. “Multi-Family Dwelling Unit” means a Dwelling Unit in a Multi-Family Complex.

M. “Organic Waste” means Food Waste and Green Waste. Organic Waste does not include items defined herein as Unacceptable Waste.

N. “Premises” means any parcel of real property in the County where Solid Waste is generated or accumulated.

O. “Process” or “Processing” means an operation or series of operations, whether involving equipment, manual labor, or mechanical or biological processes, that sorts, enhances, upgrades, concentrates, decontaminates, packages or otherwise prepares Recyclables, Organic Waste, or other Solid Waste, and returns marketable elements thereof to the economic mainstream in the form of raw material for new, reused or reconstituted products. Processing begins at the time the Recyclables, Organic Waste, or Solid Waste is delivered to the Processing facility and ends when the finished Processed materials are sold or reused and the residue is properly disposed.

P. “Recyclables” means the materials described as such in Exhibit C.

Q. “Refuse” means Solid Waste that is set out for collection and disposal pursuant to this Agreement. Refuse does not include Recyclables set out for collection pursuant to Sections IV.B.2 or IV.C.2 of this Agreement, nor does it include Unacceptable Waste.

R. “Residential Premises” means a Single-Family Premises or Multi-Family

Complex.

S. “Single-Family Premises” means (i) any Premises with less than five (5) Dwelling Units, and (ii) any Premises with five (5) or more Dwelling Units where each Dwelling Unit receives individualized Cart-based Refuse Collection Services (and not centralized Refuse Collection Services).

T. “Solid Waste” means all putrescible and non-putrescible solid, semi-solid, and liquid wastes that are generated or coming to exist in the County, including discarded Recyclables and Organic Waste, but excluding Unacceptable Waste.

U. “Unacceptable Waste” means any waste tires, radioactive, volatile, corrosive, flammable, explosive, biomedical, infectious, bio-hazardous, regulated medical or hazardous waste, toxic substance or material, as defined by, characterized, or listed under applicable federal, state, or local laws or regulations, any materials containing information protected by federal, state or local privacy and security laws or regulations (unless tendered to Company pursuant to a separate agreement), or any material the acceptance or handling of which would cause a violation of any Applicable Law, damage to Franchisee’s equipment or facilities, or present a substantial endangerment to the health or safety of the public or Franchisee’s employees. Title to and liability for Unacceptable Waste shall remain with the generator at all times.

II. Grant of Franchise.

Franchisee shall have the sole and exclusive right and franchise, in accordance with the terms and conditions of this Agreement and Title 7, to provide Collection Services for Residential and Commercial Customers and Industrial Solid Waste within the County of Tuolumne for solid waste Collection Areas 1 and 2 as described in the map adopted by Resolution No. 136-94 of the Tuolumne County Board of Supervisors. County agrees not to let any contract to, or enter into any contract with any other person for the collection of Solid Waste required to be performed by Franchisee. County agrees not to engage other individuals or itself become involved in the activity of Collection Services or any other activity that would impair the exclusive right of the Franchisee.

III. Term of Franchise.

- A. The term of this Agreement shall commence on the Commencement Date and shall terminate October 31, 2032, unless sooner terminated as hereinafter provided.
- B. Upon mutual agreement at least eighteen months prior to the end of the term in paragraph A, this Agreement may be renewed for an additional term of ten (10) years.
- C. The franchise in this Agreement does not include those permits authorized by the Solid Waste Director under Section 7.12.060.

IV. Services of Franchisee.

- A. Franchisee undertakes and agrees, in accordance with the terms and conditions herein contained, to provide Refuse and Recyclables Collection Services for Residential and Commercial Customers and Industrial Solid Waste comprised of furnishing the necessary labor, vehicles, equipment, and facilities to provide such services. Franchisee has no obligation to collect Unacceptable Waste.

1. Organic Waste Collection. This Agreement presumes that County will be granted a waiver pursuant to Section 18984.12 of the California Code of Regulations as a "Rural Jurisdiction". If County desires or is required to implement Collection Services with respect to source-separated Organic Waste, Franchisee will propose a plan to collect Organic Waste; and upon mutual agreement the County will grant Franchisee the exclusive right to provide such services. The County and Franchisee will collaborate and agree upon an Organic Waste collection program, including Franchisee's compensation, before such Collection Services are implemented. In the event the County is required to comply with the provisions of AB 1826 and SB 1383 requiring the collection and recycling of organic waste from regulatory defined generators, Franchisee shall comply with all hauler-specific requirements set forth in AB 1826 and SB 1383, and shall also assist the County in complying with AB 1826 and SB 1383 by providing education and outreach regarding the importance of reducing landfilled organic waste, type of materials that are acceptable for the recycling of organic waste, and the availability of organic waste collection programs. In addition, Franchisee shall agree to collect organic waste from covered generators at rates as shall be mutually agreed to by Franchisee and the County and set forth in an amendment to this Agreement.

2. Franchisee is not permitted to collect materials from a Recyclables container in a Refuse collection vehicle or dispose of any Recyclables in a landfill. This practice may be allowed temporarily under the Act of God provision in Section X. of this agreement; and only after written notice had been provided by Franchisee and the County has approved such practice in writing.

B. Residential Services.

1. Refuse Collection. Franchisee shall each week collect and dispose all Refuse from Residential Customers within Collection Areas 1 and 2 that is placed at the roadside on public streets, alleyways or other locations approved by Franchisee.

a) Franchisee shall provide collection containers of 35-gallons to properly contain Refuse generated from eligible residential premises. For an additional charge, Franchisee shall provide collection containers of 64- or 96-gallon if requested by each Residential Customer.

2. Recyclables Collection. Franchisee shall every other week collect and remove Recyclables (as listed in Exhibit E) from Residential Customers who subscribe to Refuse Collection Services within Collection Areas 1 and 2, provided that such Recyclables are placed at the roadside on public streets, alleyways or other locations approved by Franchisee.

a) Franchisee shall provide one 96-gallon container to each Residential Customer, though Customers may request one 64-gallon Recyclables container instead of a 96-gallon container.

C. Commercial Services.

1. Franchisee will provide services that will meet the requirements of AB341, Mandatory Commercial Recycling, for those customer accounts that meet the threshold outlined in regulations for both commercial and multi-family accounts.

2. Refuse Collection. Franchisee shall at least once each week collect and dispose all Refuse from Commercial Customers within Collection Areas 1 and 2, that is placed at the roadside on public streets, alleyways or other locations approved by Franchisee.

a) Franchisee shall provide a sufficient number and size of collection containers to properly contain Refuse generated from eligible commercial premises; available container sizes are set forth in Exhibit A.

3. Recyclables Collection. Franchisee shall every other week collect and remove Recyclables (as listed in Exhibit E) from commercial Customers who subscribe to Refuse Collection Services within Collection Areas 1 and 2, provided that such Recyclables are placed at the roadside on public streets, alleyways or other locations approved by Franchisee.

a) Franchisee shall provide a sufficient number and size of collection containers to properly contain Recyclables generated from eligible commercial premises; available container sizes are set forth in Exhibit A.

D. Roll-Off Services. Customers may subscribe for Refuse and Recyclables Collection Services at the rates specified in Exhibit A.

E. Operations Plan. Franchisee shall annually submit to the County an updated operations plan, including, but not limited to, franchise operating plan contents as

described in Section 7.16.030. Changes to the operations plan shall be submitted to the Solid Waste Director for approval. Such approval shall not be unreasonably withheld.

- F. Recycling Public Awareness Program. County and Franchisee shall work jointly to develop and implement the Recycling Public Awareness Program described below:
1. Franchisee will distribute by mail or billing inserts new program announcements.
 2. Franchisee will distribute an introductory packet of information regarding the residential curbside recycling program with the distribution of the Recycling Container.
 3. County and Franchisee will cooperate in contacting local media to seek coverage of the recycling program to increase citizen awareness of the benefits of recycling.
 4. Franchisee will make presentations at public meetings and community events.
 5. County reserves the right to approve any and all public awareness materials prior to distribution.
 6. Franchisee will conduct all customer education and outreach necessary for the County's compliance with SB 1383, AB 341, AB 1826 and AB 827. County and Franchisee will work cooperatively on developing the specific education and outreach methods required to meet the mandatory requirements contained in SB 1383, AB 341, AB 1826 and AB 827. However, Franchisee's total annual expenditures for education and outreach shall not exceed \$30,000; otherwise, Franchisee's compensation shall be increased to cover all such additional costs.
- G. OMITTED.
- H. California Public Resources Code requires the County to prepare and implement a Source Reduction and Recycling Element ("SRRE") and a Household Hazardous Waste Element ("HHWE"). Franchisee shall be responsible for implementing provisions of these plans to the extent such plans impose duties upon Franchisee. The County Administrative Officer or his/her designee ("CAO"), Solid Waste Manager and Franchisee shall meet annually prior to October 1st to determine the responsibilities for the SRRE and HHWE and determine if any rate adjustments are necessary to fund these programs for the subsequent contract year after the anniversary date. The CAO, Solid Waste Manager and Franchisee must mutually agree on a program to be presented to the County. The Board of Supervisors is to receive, as a minimum, the following:

1. Proposed program description;
 2. Diversion expected;
 3. Cost of proposed program; and
 4. How proposed program integrates with existing programs.
- I. The Franchisee will not be responsible for providing services where there is unacceptable safety or risk factors. The CAO, Solid Waste Director and Franchisee shall establish standards for bridges and roads. If unsafe conditions persist, the Franchisee has the right to ask for a waiver from providing service. If a location is found to be unsafe and, the potential Customer wants service, the refuse is to be located at a site mutually agreed upon by Franchisee, CAO, Solid Waste Director and Customer or service can be denied without being a violation of this Agreement.
- J. Franchisee agrees to provide the following ancillary services, as contained herein:
1. Franchisee agrees to conduct two special clean-up campaigns per year as described in Exhibit C; provided that Franchisee may substitute a coupon program as provided in Exhibit D.
 2. County may deliver up to 1,000 tons of Solid Waste per year to the Cal Sierra Transfer Station. Franchisee will not charge County or its designee a fee for such material.
 3. Franchisee agrees to provide, free of charge, annual curbside Christmas tree (undecorated) pickup to all Residential Customers within Collection Areas 1 and 2, including transport to an appropriate facility. The pickup shall be scheduled so that all Residential Customers shall have at least one opportunity for free pickup with at least two weeks prior notice and all pickups shall occur by the third Saturday following January 1st. Trees shall be reduced by residents to sections no more than four feet in length.
 4. Franchisee agrees to use reasonable efforts in load checking during the collection of Solid Waste to screen out unacceptable wastes. In the event that unacceptable wastes are found, the container shall not be serviced and a notice of the correct disposal method for the waste shall be left for the Customer.
 5. Franchisee will provide Residential Customers one (1) transfer station voucher annually. Vouchers will be delivered to residents by email address on file, or by pickup at Franchisee's office at 14959 Camage Avenue, Sonora, CA 95370.
 6. Preparation for winter season:
[HOLD SPACE FOR AGREED UPON LANGUAGE]

7. Weather Delay Automatic Credit: Residential Customers that experience weather-related delays due to unsafe road conditions in the winter months are eligible for one (1) week credits equal to the number of weeks the service was impacted. Credits will automatically be applied to their next invoice.

8. Franchisee will appear in front of the Tuolumne County Board of Supervisors within two weeks of request to answer service-related questions or discuss any other issues requested by the Board of Supervisors.

9. Customer Service: Franchisee will provide an improved level of customer service by implementing the following beginning on November 1, 2022:

- A. Franchisee will answer all County customers telephone calls by means of local, in county, customer service staff or customer service staff at other locations, provided they have been trained on the requirements of this agreement.
- B. Franchisee will accommodate all reasonable requests from County customers with the goal of leaving all customers satisfied to the greatest extent possible.
- C. Franchisee will make the local customer service office open to County customers during normal office hours (currently 8:00 am – 4:00 pm, Monday – Friday except holidays), and will provide customer service directly person-to-person.

K. Contamination; Overage; Overweight.

1. Contamination. Franchisee is not obligated to collect containers which are contaminated. For purposes of this Agreement, a container is contaminated when, based on visual or digital inspection, a Recyclables container has more than 10% non-Recyclables (volume or weight) or any amount of Unacceptable Waste. If Franchisee elects to not collect a contaminated container, it shall notify the customer. If Franchisee elects to collect a contaminated container, it may charge the customer a Contamination Fee set forth in Exhibit A. However, during the first 90 days of this Agreement, Franchisee will not charge a Contamination Fee, but will instead provide written warnings of violations. Additionally, after the initial 90 day period, Franchisee will send written warnings regarding the first two instances of identified Contamination; thereafter, Contractor may charge a Contamination Fee for each instance of Contamination. Franchisee will provide photographic evidence of the contamination to customer upon their request. The Contamination Fee may be included on the customer's regular invoice or billed separately. Franchisee may dispose of the contents of a contaminated container it elects to collect. If there have been more than three instances of Contamination Fees in any 12-month period, and Franchisee has photographic evidence of each instance, Franchisee may (i) discontinue such service and remove the container, (ii) deliver additional or larger Solid Waste container(s), and (iii) charge the customer the applicable Rate for the additional or larger Solid Waste container(s) described in Exhibit A.

After one year, the customer may petition Franchisee to reinstate such service, in which case they must pay any activation and cart or bin redelivery fees set forth in Exhibit A.

2. Overage. Franchisee is not obligated to collect Overage, unless caused by Franchisee spillage of non-overloaded containers during collection. "Overage" is defined as (i) Solid Waste or Recyclables exceeding its container's intended capacity such that the lid is lifted by at least six (6) inches (or would be lifted by at least six (6) inches if there was a lid), or (ii) Solid Waste or Recyclables placed on top of or in the immediate vicinity of the container. If Franchisee elects to collect Overage, it may charge the customer the Overage Rate set forth in Exhibit A. However, during the first 90 days of this Agreement, Franchisee will not charge an Overage Fee, but will instead provide written warnings of violations. Additionally, after the initial 90 day period, Franchisee will send written warnings regarding the first two instances of identified Overage; thereafter, Contractor may charge an Overage Fee for each instance of Overage. Franchisee will provide photographic evidence of the Overage to customer upon their request. If there have been more than three instances of Overage Fees in any 12-month period for a particular service (i.e., Solid Waste or Recyclables), and Franchisee has photographic evidence of each instance, Franchisee may increase the customer's service level (i.e., larger container or more frequent service) to mitigate the Overage, and may increase the charges to such customer according to the increased service level.

3. Overweight Containers. Franchisee may refuse to collect any container which it reasonably believes to be overweight. A container shall be considered "overweight" if the total weight of the container and contents exceeds two times the volume capacity of said container (e.g., 192 pounds for a 96-gallon cart). Franchisee shall provide electronic notification to the customer regarding each instance of non-collection.

V. Obligations of Franchisee

- A. Franchisee shall comply with all federal, state, local statutes, ordinances and regulations, including Titles 7 and 8.
- B. Franchisee, prior to award of franchise, shall provide and maintain at its own expense at all times the following insurance with insurance companies licensed in the State of California and shall provide evidence of such insurance to the County as may be required by the Risk Manager of the County. The policies or certificates thereof shall provide that, thirty (30) days prior to cancellation in the policy, notices of same shall be given to the Risk Manager of the County, or delivered in person to Risk Manager. Coverage shall be at least as broad as:

- 1. Worker's Compensation: as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than

\$1,000,000 per accident for bodily injury or disease.

2. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

3. Automobile Liability: ISO Form Number CA 00 20 covering any auto (Code 1), or if Franchisee has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

If the Franchisee maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Franchisee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

The insurance policies are to contain, or be endorsed to contain, the following provisions:

- (a) Additional Insured Status. The County, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Franchisee including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Franchisee's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).
- (b) Primary Coverage. For any claims related to this contract, the Franchisee's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Franchisee's insurance and shall not contribute with it.
- (c) Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, except with thirty (30 days' notice to the County.
- (d) Waiver of Subrogation. Franchisee hereby grants to County a waiver of any right to subrogation which any insurer of said Franchisee may acquire against the County by virtue of the payment of any loss under such insurance. Franchisee agrees to obtain any endorsement that may be

necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

- (e) Self-Insured Retentions. Self-insured retentions must be declared to and approved by the County. The County may require the Franchisee to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or County.
- (f) Acceptability of Insurers. Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the County.
- (g) Verification of Coverage. Franchisee shall furnish the County with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to County before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Franchisee's obligation to provide them.
- (h) Special Risks or Circumstances. County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Failure to Comply: Upon failure to comply with any of these insurance requirements, this Agreement may be forthwith declared suspended or terminated. Failure to obtain and/or maintain any required insurance shall not relieve any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the indemnification obligations.

- C. Franchisee, shall, prior to this Agreement becoming effective, deliver to the Risk Manager a Faithful Performance Surety Bond in the amount of twenty thousand dollars (\$20,000.00) which shall be approved by the Risk Manager to secure the full and faithful performance of the terms, obligations and agreements on the part of Franchisee to be performed. Risk Manager shall retain the right to approve or disapprove of Franchisee's surety. The Faithful Performance Surety Bond shall not be subject to cancellation and shall be in full force and effect for at least one year, and shall be renewed, or a new bond furnished, subject to the same approval, not less than thirty (30) days prior to the expiration of the then existing bond on file with Risk Manager. Franchisee shall, at all times during the term of this Agreement, maintain a Faithful Performance Surety Bond, in accordance with the terms of this paragraph, in full force and effect.
- D. In the event of the termination or cancellation of the insurance policies required by this Agreement, or the failure of Franchisee to obtain the insurance policy or performance bond required by this Agreement, the franchise may be terminated

by County upon written notice to Franchisee. If insurance is terminated due to an unforeseeable event, not the fault of the Franchisee, the Franchisee will have sixty (60) days to have insurance policies replaced without breaching this Agreement.

- E. Franchisee shall hold harmless, defend and indemnify County and its officers, officials, employees and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with Franchisee's performance of work hereunder or its failure to comply with any of its obligations contained in the agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the County.

If such indemnification becomes necessary, the County Counsel for the County shall have the absolute right and discretion to approve or disapprove of any and all counsel employed to defend the County. This indemnification clause shall survive the termination or expiration of this Agreement.

- F. Franchisee shall not assign or transfer this Agreement or any interest therein directly or indirectly, by operation of law or otherwise, without the prior written consent of County. Any attempt to do so without that consent shall be null and void, and any assignee or transferee shall acquire no right or interest by reason of such attempted assignment, or transfer. County shall not unreasonably withhold consent.

VI. County Franchise Fee.

- A. In consideration of the exclusive franchise provided by this Agreement, Franchisee shall pay to County 0% of the gross revenue derived by Franchisee from Solid Waste and Recyclables Collection Services provided in Collection Areas 1 and 2. Franchisee agrees to allow County to increase or decrease this franchise fee to any amount at the sole discretion of County. County shall immediately adjust collection rates to fully cover such increase. Revenues derived from all other operations are excluded from calculating the franchise fee. Franchisee shall prepare and mail remittance each quarter not later than twenty (20) calendar days after the end of each quarter. The remittance will be accompanied by a report setting forth the basis and calculations used for computing the amount due. The figures used shall agree with the general books of account of Franchisee. Said books of account shall be made available to County upon demand for the purposes of audit, pursuant to Title 7.
- B. Franchisee shall reimburse County for County costs associated with any audit, review or required report as provided in Section 7.16.070.
- C. Franchisee agrees to provide all Solid Waste and Recyclables Collection Services, equipment, and containers needed by County facilities and properties at no charge to County not to exceed an allowance in the amount of \$148,000 annually based

on the Franchisee's fiscal year period. This allowance shall be increased by the same percentage as the percentage increase in any customer rate for collection services provided by Franchisee authorized by this Agreement or pursuant to Title 7. Containers shall be of the type and size type the Franchisee owns or controls and shall be distributed to County property, including any other County property or property currently or in the future owned, rented or occupied by the County requiring such service. The Facilities Manager and/or Solid Waste Director will provide the service level, frequency and location of the services needed. The Facilities Manager and/or Solid Waste Director may, from time to time, order changes in the services described in this paragraph.

VII. Franchisee Fees, Charges and Adjustments to Fees & Charges.

A. Upon the Effective Date of this Agreement, Franchisee's rates and services will be as described in Exhibit A, attached hereto and incorporated herein by this reference. Rates for additional services not specified in Exhibit A shall be as agreed between Franchisee and a customer with written notice to the Solid Waste Director; provided, however, that in the case of a dispute, the dispute shall be submitted to the Solid Waste Director for resolution. Applications for rate increases will be based as follows:

1. CPI Indexed Rates. The rates approved as part of this Agreement, and all rates established by the Board of Supervisors pursuant to Title 7 hereafter, shall be adjusted annually based on 100 percent of the percentage of change in the Consumer Price Index, series CUUR0000SEHG CPI-U Water and Sewer and Trash Collection Services, as published by the United States Department of Labor, Bureau of Labor Statistics ("CPI"). The CPI adjustment will be calculated using the change in the 12-month annual average of monthly CPI index values between the April to March period of the year immediately prior to the adjustment date, and the April to March period of the year before. Should the Bureau of Labor Statistics of the Department of Labor discontinue publication of the described index, or publish it less frequently, or alter it in any other manner, the parties shall mutually adopt a substitute index or procedure which reasonably reflects and monitors consumer prices. The first CPI adjustment will occur on November 1, 2023, and rates shall be adjusted in the same manner annually thereafter. Adjustments in accordance with the CPI shall be subject to the following qualifications:

a) Rates adjusted in accordance with the CPI shall not be greater than six percent (6%) nor less than zero percent (0%) in any one year regardless of the percentage changes in the CPI; and

b) In the event Franchise obtains a return on revenues that average more than ten percent (10%) per annum, using a 3-year rolling average, then the Franchise will not be entitled to make a cost of living adjustment for the immediately succeeding year, and continually thereafter so long as the 3-year rolling average of return on revenues exceeds (10%).

c) Franchisee shall be entitled to a fair return on revenues. Return on revenues is hereby defined as the ratio of net income to gross revenues. Net income is arrived at by deducting all expenses (including taxes) from gross revenues. In the event Franchisee obtains a return on revenues that averages more than ten percent (10%) per annum, using a three year rolling average, then Franchisee shall refund full amount above ten percent (10%) to Customers through a rate reduction for the following year.

2. Adjustment for Extraordinary Costs. The process for effecting any rate adjustment above what is set forth in subsection 1 above shall be made by application. Franchisee may apply to County for consideration of a special interim rate review as provided in Title 7. If, in any contract year, Franchisee incurs extraordinary expenses, over and above the annual CPI increase for reasons beyond Franchisee's control, Franchisee may request an adjustment in rates to compensate for the amount of such increased cost. Nothing herein shall obligate the County to grant such increase, but it shall negotiate in good faith and not withhold approval of such increase where Franchisee has provided reasonably requested documentation, as provided in this Section. If in any contract year Franchisee is subject to (i) a landfill disposal or processing increase, (ii) new or increased governmental fees, charges or other amounts, (iii) increased costs or reduced revenues due to a change in applicable law, (iv) a change in Collection Services (e.g., implementation of Organic Waste Collection Services), all of said increased costs or reduced revenue may be passed through by means of an Extraordinary Adjustment rate increase. In the event that Franchisee requests an Extraordinary Adjustment, the Extraordinary Adjustment shall be based on evidence or data presented by Franchisee that a singular and/or unexpected occurrence has occurred within the past 12 months that has effected and will continue to have a significant financial effect on Franchisee's revenues and/or expenses and that Franchisee's costs for the required franchise services have undergone and will continue to undergo a significant increase or decrease due to this occurrence. The Franchisee shall be responsible for both its and the County's reasonable associated costs to complete the Extraordinary Adjustment. If the increase is due to the imposition of a host fee, the County will review the fees to determine if the increase should be passed through. At County's expense, County may initiate an interim rate review at its option. Any rate review,

whether initiated by County or Franchisee, will follow the format specified for in Title 7. Franchisee shall provide written notice to Customers of proposed rate changes and annual rate pursuant to Title 7. Prior to providing said notice to Customers, Franchisee shall provide said notice to County for review and approval.

VIII. Performance Review

- A. Franchisee shall maintain complete and accurate financial records with respect to gross revenue, costs, expenses, receipts, inventory, and other such information required to assess Franchisee's financial position relating to residential, commercial and industrial Solid Waste and Recyclables Collection Services under County's jurisdiction. All such records shall be maintained in accordance with generally accepted accounting principles and Title 7. Such records which Franchisee considers confidential and/or trade secret shall be subject to a confidentiality agreement with the County; however Franchisee understands County must comply with the California Public Records Act and any other applicable law that may require disclosure.
- B. In addition to financial records, Franchisee shall maintain complete and accurate records for all aspects of Franchisee's compliance with this Agreement including, but not limited to, collection route maps, customer lists and payment records, disposal records by truck, local enforcement agency records of inspection, truck inspection records, SRRE and HHWE compliance records, Customer complaints, and other like materials.
- C. All records required to be kept by Franchisee shall be clearly identified and readily accessible. Franchisee shall provide free access to the representatives of County (according to Title 7) or their agent during all normal business hours to such books or records, and give the County the right to examine and audit same, and to make transcripts therefrom or copies as necessary. All records will be maintained for five years after the completion of the year which they were prepared.
- D. Franchisee shall prepare, mail and collect bills (or shall issue written receipts for cash payments) for Solid Waste and Recyclables Collection Services provided by Franchisee under this Agreement. Bills for services shall at a minimum be mailed to Customers quarterly in advance of the provision of services.
 - 1. Franchisee shall maintain copies of said billings and receipts in chronological order for a period of three (3) years after the date of service for inspection by County. Franchisee may, at its option, maintain those records in computer form, on microfiche, or in any other manner, provided that the records can be preserved and retrieved for inspection and verification in a timely manner.
- E. Franchisee agrees to indemnify County against all fines or penalties imposed by

the California Department of Resources, Recycling and Recovery (CalRecycle) or other regulatory agencies to the extent directly caused by Franchisee's failure to perform an obligation under this Agreement. Such indemnity shall be further limited to exclude all damages or claims to the extent that they are caused by, arise from or in connection with (i) any negligent actions or omissions or willful misconduct of the County, or its employees, agents, appointed and elected officials; or (ii) the failure of the County or its employees, agents, appointed and elected officials to comply with or enforce applicable solid waste and/or recycling statutes, ordinances, regulations, or other requirements, other than failures attributable to Franchisee's performance under this Agreement. The extent of the Franchisee's liability under this Section shall not exceed the amount of Franchisee's proportionate share of fault.

F. Franchisee shall be responsible for the prompt, courteous and reasonable resolution of all Customer complaints.

1. Franchisee shall record in a separate log all complaints, noting the name and address of complainant, date and time of complaint, nature of complaint and resolution. This complaint log will be retained by the Franchisee at the office and be available for inspection by the CAO and Solid Waste Director during regular business hours. The Franchisee will submit a copy of the complaint log annually to CAO and Solid Waste Director.

G. Franchisee shall, on an annual basis, file reports as required by law and provide reports to CAO and Solid Waste Director pursuant to local, state and federal laws. All such reports must contain information sufficient to report its progress to the State regarding the implementation of County's SRRE and HHWE pursuant to the California. Public Resources Code. In addition to any reports required by law, the Franchisee shall provide any reports that are needed by the CAO or Solid Waste Director in the execution of their duties to the County or needed for the enforcement of this Agreement.

IX. Liquidated Damages

A. County finds, and Franchisee agrees, that as of the time of the execution of this Agreement, it may be impractical to reasonably ascertain the extent of damages which will be incurred by County as a result of certain breaches by Franchisee of its obligations under this Agreement.

B. Accordingly, the Board may, in its discretion, assess liquidated damages not to exceed the sum of five hundred dollars (\$500) per day, for each calendar day that Collection Service are not provided by Franchisee in accordance with this Agreement. Any assessment of liquidated damages must be a reasonable approximation of actual harm to the County. County will not assess liquidated damages unless and until (i) it has provided written notice of the alleged performance failure to Franchisee; (ii) the County and Franchisee meet to discuss

the validity of alleged performance failures; and (iii) Franchisee thereafter (within 30 days) fails to correct such performance failures. In addition, the Board may order the assessment against the cash bond required by this Agreement, the termination of this Agreement, or both, pursuant to other sections of this Agreement.

- C. County finds, and Franchisee acknowledges and agrees that the above-described liquidated damages provisions represent a reasonable sum in light of all of the circumstances. Liquidated damages shall be applicable to each calendar day during which Franchisee has been found by the Board to be in default pursuant to this Article. Franchisee shall pay any liquidated damages assessed by the Board within ten (10) days after they are assessed. If they are not paid within the ten-day period, County may withdraw them from the security fund established by the performance bond required by this Agreement. Claims for liquidated damages must be made within 60 days of when County knew or should have known of the performance issue.

X. Termination of Franchise.

- A. In the event Franchisee should default in the performance of any material provisions of this Agreement, and the default is not cured within thirty (30) days after receipt of written notice of default from the County, then County may, at its option, hold a hearing to determine whether this Agreement should be terminated. In the event County decides to terminate this agreement, County shall serve ten (10) days' written notice of its intention to terminate upon Franchisee. In the event County exercises its right to terminate this Agreement, County may, at its option, either directly undertake performance of the services or arrange with other persons to perform the services. In either event, Franchisee shall be liable to County for any expense County incurs in performing the services.
- B. In the event County exercises its option under this Article to terminate this Agreement, and directly performs the services, County shall pay to Franchisee, from revenues received by County from Customers, any amounts due Franchisee for services performed as of the date of termination, which amount remain unpaid ninety (90) days from such date. If County arranges with other persons to perform the services, County shall ensure that such other persons pay Franchisee the amounts due under this paragraph and agrees to pay such amounts in the event the other persons do not. County may take possession of Franchisee's equipment necessary to perform the services required under this Agreement, and retain it until County can purchase or otherwise acquire equipment suitable for that purpose, but in no event longer than one hundred and twenty (120) days. County shall compensate Franchisee for the reasonable rental value of its equipment during the period County retains possession of it.
- C. County further reserves the right to terminate this Agreement or impose liquidated damages in the event of any of the following, unless such event is susceptible to

cure and has been cured promptly upon written notice to Franchisee by County:

1. If Franchisee becomes insolvent, unable or unwilling to pay its debts, or upon listing of an order for relief in favor of Franchisee in a bankruptcy proceeding.
2. If Franchise fails to abide by County's direction as provided in Article XII.
3. If Franchisee knowingly violates any orders or rulings of any regulatory body having jurisdiction over Franchisee relative to this Agreement, provided that Franchisee may contest any such orders or rulings by appropriate proceedings conducted in good faith, in which case no breach of this Agreement shall be deemed to have occurred until resolution of that proceeding.
4. If Franchisee ceases to provide Solid Waste and Recyclables Collection Services as required under this Agreement over all or a substantial portion of its service area for a period of seven (7) days or more, for any reason within the control of Franchisee. (For purposes of this section, a labor strike or similar organized work stoppage, acts of nature, or inaccessibility due to acts of nature which are not encountered in the normal course of business, will not be deemed to be within the control of Franchisee.)
5. If Franchisee willfully fails to make any payments or reports required under this Agreement and fails to cure such failure promptly after written notice.
6. If Franchisee, one of its officers or managers, is found guilty of a felony relating to Solid Waste and Recyclables Collection Services, or is found guilty of illegal dumping of solid or hazardous waste, and fails to implement corrective action promptly and to the County's reasonable satisfaction.
7. In the event that this Agreement is terminated by County upon the failure of Franchisee to secure and maintain the insurance policies and/or performance bond required under the terms of this Agreement, Franchisee shall be liable to County for any and all damages suffered by County arising out of failure to provide insurance under this Agreement.

- D. **Franchisee's Liability to Perform Due to Uncontrollable Circumstances.**
Franchisee's failure to perform under the terms of this Agreement by reason of a major disaster, epidemic, or other act of God or other event beyond Franchisee's reasonable control shall not constitute a breach of this Agreement for purposes of paragraph A above.

XI. Arbitration, Judicial Venue and Governing Law.

- A. Prior to any action by the County or Franchisee in taking any item of this Agreement to arbitration or court, the item shall be promptly reviewed by the

CAO. If the Franchisee or Board of Supervisors does not concur with the decision of the CAO, either party may proceed.

- B. Arbitration. Franchisee and County may agree that any dispute arising out of this agreement shall be decided by arbitration in accordance with California Code of Civil Procedure Section 1280, et seq. or like statute. If both parties agree to arbitration, the parties shall have the right of discovery under the California discovery statutes.
- C. Attorneys' Fees. The parties shall share the cost of any arbitration. In the event suit or action or arbitration is instituted as a result of a dispute under this Agreement, the prevailing party shall be awarded its attorneys' fees and costs, including, but not limited to, expert witness fees.
- D. Standing. Only the County and the Franchisee shall have standing to bring or become a party to arbitration claims or legal actions under this Agreement.

XII. Disposition of Solid Waste.

- A. All Acceptable Waste collected by Franchisee shall become the property of Franchisee upon placement by the Customer for collection, and shall be forthwith removed and conveyed to the Cal Sierra Material Recovery Facility/Transfer Station by Franchisee, subject to the provisions of this Agreement.
- B. Notwithstanding the provisions of Paragraph A, County has the right to direct that any Acceptable Waste collected by Franchisee shall be delivered to a County-authorized facility.
- C. In the event that modifications to Franchisee's operations are necessary to comply with the terms and conditions of this Article, and the modification thereof affect Franchisee's costs of doing business, Franchisee or County may initiate a rate adjustment pursuant to Article VII and Title 7.

XIII. Miscellaneous Provisions.

- A. The failure of either party at any time to require performance by the other party herein shall not affect the right of such party to enforce the same thereafter, nor shall the waiver by either party of any breach of any provision or as a waiver of the provision itself.
- B. All terms used in the singular or in the masculine gender shall apply to the plural or to the feminine or neuter gender as the context thereof requires.
- C. The Article headings used in this Agreement are intended solely for convenience and reference and shall not in any way or manner amplify, limit, modify, or otherwise be used in the interpretation of this Agreement.

- D. This Agreement may be amended at any time by mutual agreement of the parties, provided such amendment shall be operative and valid only if set forth in writing and signed by all of the parties.
- E. This Agreement constitutes the entire understanding with respect to the subject matter hereof and supersedes any and all prior understandings or agreements, whether written or oral. including without limitation the Original Agreement.
- F. This Agreement shall be binding on the parties hereto and on their respective successors and assigns.
- G. If any term, provision or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.
- H. Any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to either party hereto, by the other party to this Agreement shall be in writing and shall be deemed duly served when personally delivered to the party to whom they are directed, or in lieu or such personal service when deposited in the United States mail, first-class certified or registered mail, postage prepaid, addressed to County at 2 South Green Street, Sonora, California 95370, with a duplicate copy to the County Counsel, 2 South Green Street, Sonora, California 95370 or to Franchisee at P.O. Box 70, Standard California 95373, with a duplicate copy to Waste Management, Attn. Area Vice President, 100 Vassar Street, Reno, NV 89502.
- I. It shall be Franchisee's and County's responsibility to enforce this franchise pursuant to Section 7.04.040. Franchisee may enforce this Agreement civilly without the consent of the County. County may enforce criminally without the consent of Franchisee.

IN WITNESS WHEREOF, County has caused its name and seal to be hereunto subscribed and affixed by the Board clerk, duly authorized, and said Franchisee has caused its corporate name and seal to be hereunto subscribed and affixed by its President and Secretary.

[SIGNATURES ON FOLLOWING PAGE]

ADD SIGNATURES

ADD EXHIBITS

A – RATE SHEET

B – PUBLIC INFORMATION AND EDUCATION

C – CLEAN UP DAYS

D – CLEAN UP COUPON PROGRAM FOR TUOLUMNE COUNTY

E – RECYCLABLE MATERIALS SPECIFICATIONS



Tuolumne County Committee and Commission Application

Office of the Board of Supervisors

2 South Green Street, Sonora, CA 95370

Main Line: 209-533-5521

Vacancy Applying For: Board of Supervisors Solid Waste Committee (BOSSWC)

Name: Ester

Primary Phone Number:

Email:

Street Address:

Mailing Address same as Street Address? • Yes

How many years have you lived in Tuolumne County? 35

In which Supervisorial District do you reside? District 5

Find your assigned District by typing in your home address at this link: <https://arcg.is/0buK4z>

Occupation: Retired

Briefly describe the qualifications you possess that you feel would be an asset to the Committee/Commission for which you are applying: I have 30 years experience as an AT&T manager. In addition to my management skills, I am proficient in communications, public relations, and volunteer organization.

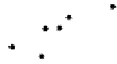
List the community organization(s) you have been involved with, describe your participation for each: Manager AT&T volunteers 7 years

I confirm that I have sufficient time to devote to this responsibility and plan to attend the required meetings if I am appointed to fill a vacancy. I understand that if I am appointed to a commission where a Disclosure of Assets Statement is required by State Law or Board Policy, I shall do so within ten (10) days of assuming office.

I hereby consent that this document is considered a public record and will be available to the public.

Signature

File(s) attached:



Date

10/10/2021

Applications not acted upon will expire after two years from the date submitted unless renewed by applicant.

Your application will be automatically sent to the Board Clerk in the Board of Supervisors Office upon your final submission.



Tuolumne County Committee and Commission Application

Office of the Board of Supervisors

2 South Green Street, Sonora, CA 95370

Main Line: 209-533-5521

Vacancy Applying For: Board of Supervisors Solid Waste Committee (BOSSWC)

Name: Matthew Stenger

Primary Phone Number:

Email:

Street Address:

Mailing Address same as Street Address? • Yes

How many years have you lived in Tuolumne County? 41

In which Supervisorial District do you reside? District 4

Find your assigned District by typing in your home address at this link: <https://arcg.is/0buK4z>

Name and Address of Present Employer (if applicable):

Occupation: Pilot

Briefly describe the qualifications you possess that you feel would be an asset to the Committee/Commission for which you are applying: A desire to see efficient, affordable, and reliable disposal options. Focusing on making proper waste disposal attractive to all members of the community and associated businesses. Also, making it unattractive for community members to improperly dispose of waste (illegally dump) or allow associated business to give community members no other viable option.

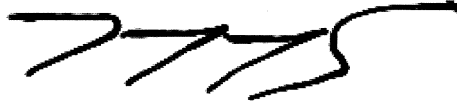
List the community organization(s) you have been involved with, describe your participation for each: None recently.

I confirm that I have sufficient time to devote to this responsibility and plan to attend the required meetings if I am appointed to fill a vacancy. I understand that if I am appointed to a commission where a Disclosure of Assets Statement is required by State Law or Board Policy, I shall do so within ten (10) days of assuming office.

I hereby consent that this document is considered a public record and will be available to the public.

Signature

File(s) attached:

A handwritten signature in black ink, appearing to be 'JMS' or similar, written over a horizontal line.

Date

10/10/2021

Applications not acted upon will expire after two years from the date submitted unless renewed by applicant.

Your application will be automatically sent to the Board Clerk in the Board of Supervisors Office upon your final submission.



Tuolumne County Committee and Commission Application

Office of the Board of Supervisors

2 South Green Street, Sonora, CA 95370

Main Line: 209-533-5521

Vacancy Applying For: Board of Supervisors Solid Waste Committee (BOSSWC)

Name: Susan Monte

Primary Phone Number:

Secondary Phone Number:

Email:

Street Address:

Mailing Address same as Street Address? • Yes

How many years have you lived in Tuolumne County? 4

In which Supervisorial District do you reside? District 3

Find your assigned District by typing in your home address at this link: <https://arcg.is/0buK4z>

Name and Address of Present Employer (if applicable):

Occupation: Accounting Assistant

Briefly describe the qualifications you possess that you feel would be an asset to the Committee/Commission for which you are applying: 17 years experience in Solid Waste industry including previous master solid waste operating licence in the state of Arkansas.

List the community organization(s) you have been involved with, describe your participation for each: 0

I confirm that I have sufficient time to devote to this responsibility and plan to attend the required meetings if I am appointed to fill a vacancy. I understand that if I am appointed to a commission where a Disclosure of Assets Statement is required by State Law or Board Policy, I shall do so within ten (10) days of assuming office.

I hereby consent that this document is considered a public record and will be available to the public.

Signature

File(s) attached:

A handwritten signature in black ink, appearing to read "Steve M. Smith", is written over the "File(s) attached:" label.

Date

10/10/2021

Applications not acted upon will expire after two years from the date submitted unless renewed by applicant.

Your application will be automatically sent to the Board Clerk in the Board of Supervisors Office upon your final submission.

Application Information

Vacancy Applied For *

Board of Supervisors Solid Waste Committee

Applying for Reappointment

Mailing Address *

City *

Sonora

Zip Code *

95370

Residential Phone *

none

Business Phone

Cell Phone

How long have you lived in Tuolumne County? (years)

65

How long have you lived in Tuolumne County? (months)

Which Supervisorial District do you reside? *

1

For Supervisorial Districts, refer [here](#).

Name of present employer

Self

Employer Address

Employer City

Employer State

Employer Zip Code

Occupation *

Building Contractor

Briefly describe the qualifications you possess which you feel would be an asset to the Commission/Committee/ Group for which you are applying. *

44 years in business.

List the community organization(s) and describe participation in which you have been involved. *

13 years on the Tuolumne County Planning Commission

I confirm that I have sufficient time to devote to this responsibility and plan to attend the required meetings if I am appointed to fill a vacancy. I understand that if I am appointed to a commission where a Disclosure of Assets Statement is required by State Law or Board Policy, I shall do so within ten (10) days of assuming office.

I hereby consent that this document is considered a public record and will be available to the public.

Signature *

John Latorre
Apr 21, 2022

Applications not acted upon will expire after two years from the date submitted unless renewed by applicant.