



Department of Public Works

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AGENDA TUOLUMNE COUNTY BOARD OF SUPERVISORS Solid Waste Committee June 8, 2022 at 1:00 p.m.

This is a Virtual/Remote Meeting Only

ZOOM MEETING

Meeting ID: 896 5039 9248

Passcode: 782319

ADMINISTRATION

Assistant to the
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209.694.2718

AIRPORTS

Airports Manager
Benedict Stuth
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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
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GEOGRAPHIC INFORMATION SYSTEMS

GIS Coordinator
Madeline Amlin
209.533.6592

ROAD OPERATIONS

Road Superintendent
Mike Cognetti
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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 May 11, 2022

5. ACTION ITEMS

- Consideration of the Cal Sierra/Waste Management Inc. franchise agreements (collection and transfer station) and amendments for term extensions.
- Treated Wood Waste discussion and possible action

6. COMMITTEE MEMBER REPORTS

7. NEXT MEETING – Possible special meeting on 6/29 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

Solid Waste Committee/Local Task Force

County of Tuolumne

**FINDINGS OF THE SOLID WASTE COMMITTEE/LOCAL TASK FORCE
RE-AUTHORIZING REMOTE TELECONFERENCE MEETINGS
FOR THE PERIOD JUNE 8, 2022-JULY 8, 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**, May 11, 2022, the SOLID WASTE COMMITTEE/LOCAL TASK FORCE
15 previously adopted Finding No. 2022-03, 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 June 8, 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) June 8, 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

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Director

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MINUTES **UNAPPROVED**

Board of Supervisors Solid Waste Committee (BOSSWC) Wednesday, May 12, 2022 at 1:00p.m.

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; Cody Nesper; County Council; Diane Green, Solid Waste Specialist; Amy Welch, Solid Waste Technician; Monique Figueroa, Solid Waste Administrative Technician.

GUESTS: Vanessa Barberis, Waste Management, John La Torre Jr. Melissa Eads, Sonora City Administrator

CALL TO ORDER

Supervisor Ryan Campbell called the meeting of May 11, 2022 to order at 1:06 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 at this time.

Amy Welch, Solid Waste Technician mentioned two upcoming public events. On Saturday May 21, 2022 there will be a Household Hazardous Waste drop off event at The Cal Sierra Recycling Center located at 14959 Camage Ave in Sonora, CA. Please call 1-800-811-2435 to schedule an appointment between 9:00 a.m. and 1:00 p.m. On Saturday June 4, 2022 there will be a Mattress and Tire Collection at Greater Valley Conservation Corps located at 14993 Camage Ave in Sonora, CA. No need to schedule an appointment, just stop by

between the hours of 8:00 a.m. and 12:00 p.m. You can drop off up to 8 mattresses and 9 car/passenger truck tires, no rims please.

COMMITTEE BUSINESS

A. Consideration of the Minutes of the meeting on April 13, 2022

Supervisor Campbell asked if anyone had any public comments.

It was moved by Supervisor Goldemberg and seconded by Councilman Garaventa to approve the Minutes of the April 13, 2022 meeting.

Supervisor Campbell called for a vote: Ayes 4; Noes 0; Abstain 0.

Motion carried 4 – 0 – 0

B. Updates/ Reports

- Clean CA Coupon Event at the Home and Garden Show

Mr. McHargue thanked both Amy Welch and Monique Figueroa for their hard work and dedication to making the Home and Garden Show a success. Our booth was the most popular and drew a crowd as early as 9:00 a.m. We had a tremendous turn out which showed that this type of program is beneficial for our County and we should consider hosting a Clean CA Coupon event at least every quarter. At this time, we have issued over 200 Coupons and within the first 10 days of the month 22 have been redeemed. Residents have the entire month of May to redeem these coupons which will allow residents to trickle into the Cal Sierra/ WM Transfer Station, for a manageable crowd. Mr. McHargue went on to state that we need to figure out how to target in and reach those individuals who have the need and want for a coupon. We may host pop up events in the future where we would announce our location and then give out coupons.

Both Supervisors Campbell and Goldemberg agreed that the Home and Garden Show was a huge success and that majority of the residents were excited at a chance to win a recycle bucket.

ACTION ITEMS

- Consideration of applications for at-large member of the general public to the Solid Waste Committee.

Mr. McHargue informed the Solid Waste Committee that we had to consider the previous applications that we submitted the last time we had openings. Of the three applications only one applicant was still interested in joining the Solid Waste Committee. That application combined with a new one for John La Torre Jr. would be up for consideration in today's meeting.

Supervisor Goldemberg wanted to express his approval for Mr. La Torre stating that he has known John for a couple of years now and that he is experienced, environmentally conscious and will prove to be of value on the Solid Waste Committee. He is very supportive in the appointment of this applicant.

Councilman Garaventa stated that he fully supports Mr. La Torre to be appointed to the Solid Waste Committee. He has had many years of experience working in Tuolumne County, he asks all the right questions and he is perfect for this position.

Mr. McHargue stated that both applicants are acceptable however we only have one applicant attending today's meeting. It is very important that whoever is selected will attend the meetings so that we have our quorum.

Ms. Holcomb agreed that numbers are a huge concern for her, and she would want to make sure that the applicant selected would be able to attend the meetings so that we always have our quorum.

John La Torre, Solid Waste Committee Member Applicant stated that he is not exactly aware of what the Solid Waste Committee does. He was asked to apply by his Supervisor and considers that an honor and his duty to do so. Mr. La Torre states that if he is appointed, he will contribute and work hard.

Supervisor Campbell mentioned that if you contribute, and you are engaged in the topics you are helping your community to thrive and that is what it takes to be on a committee.

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

- 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.

Mr. McHargue stated that today we would be focusing on just the collection agreement portion for Cal Sierra/Waste Management Inc. Mr. McHargue stated that the current franchise collection agreement became effective on November 1, 2009 and has a term of 13 years, expiring on September 30, 2022. Mr. McHargue then explained that on September 14, 2021 the Board of Supervisors staff directed to begin negotiations with Cal Sierra/Waste Management Inc. on the ten-year extension to their franchise collection agreement. Since negotiations began there have been three major issues of priority that both the County and Cal Sierra/Waste Management have been focusing on. Some of those issues include the collection of recycling material with solid waste for landfill disposal, winter weather interruptions to service, and customer service for Tuolumne County customers.

Vanessa Barberis, Cal Sierra/Waste Management stated that her company was focusing on customer service issues and a recent survey they conducted showed improvement from a rating of 5 to a rating of 8. Since hiring a new District Manager at the end of 2020 there have been significant changes and she assures us that Cal Sierra/Waste Management is committed to doing better and being better.

Ms. Barberis states that Cal Sierra/Waste Management will be requesting a 3.9% increase to cover the costs of the stipulation agreements.

Ms. Barberis asks if there are any questions.

Ms. Holcomb inquires about curbside collection for yard waste. Ms. Holcomb stated she feels very strongly in representing the people of her community and she sees a problem where the County is requiring resident to properly dispose of their yard waste debris but not providing a way for them to do so.

Mr. McHargue mentioned that we must look at the distinction between organics waste and yard waste. Tuolumne County currently has locations where yard waste debris can be brought for disposal.

Supervisor Campbell questioned Ms. Barberis as to where the 3.9% increase proposal came from.

Ms. Barberis explains that for Cal Sierra/Waste Management Inc. to comply with the new agreement they will need to cover their costs and agree to the 3.9% increase.

Supervisor Goldemberg expressed he was grateful for the changes that Cal Sierra/Waste Management Inc. had already made and the relationship that and willingness both the County and Cal Sierra/Waste Management Inc. both expressed but that he felt these changes would and should occur with no additional charge.

Ms. Holcomb asked if we were voting on this 3.9% increase today.

Mr. McHargue mentioned that he would like to seek approval from the committee today to push to the Board of Supervisors or refer back to negotiations with Cal Sierra/Waste Management.

Ms. Holcomb wanted to know if we had more time to discuss the 3.9% today and if we could see the numbers that Cal Sierra/Waste Management Inc. used to come up with that percentage.

At this time everyone agreed it would be helpful to see those numbers before voting.

Ms. Barberis stated that she did not have that information at this time but that this was a necessary step to go further with the stipulation agreement.

Mr. McHargue stated that the 3.9% was not mentioned in the previous meetings with Cal Sierra/Waste Management Inc.

The Solid Waste Committee currently is a little reserved due to the rate increase and possible subsequent rate increases.

Ms. Barberis says it is typical at the beginning of a contract and that Cal/Sierra/Waste Management is willing to continue negotiations and come to some agreement where they can meet in the middle.

Supervisor Campbell asked if anyone had any further public comments.

Diane Green, Solid Waste Specialist mentions that Cal/Sierra/Waste Management's increases will continue every year.

Supervisor Goldemberg mentions concerns of a CPI increase.

The Solid Waste Committee consensus to go back to negotiations for now.

COMMITTEE MEMBER REPORTS

Councilman Garaventa mentioned the issue with carts/bins being blocked for commercial accounts downtown Sonora on their service day. Currently the City Administrator is looking at new options and will keep us informed.

NEXT MEETING

There may be a special meeting on 5/25 at 1:00 pm. Mr. McHargue will keep us posted.

ADJOURNMENT

Supervisor Campbell asked if anyone had anything further to comment.

Seeing none, Supervisor Campbell adjourned the meeting at 2:46 p.m.

Next regular scheduled meeting will be June 8, 2022.



Department of Public Works

Kim MacFarlane, P.E.
Director

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DATE: June 8, 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, important 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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ADDED LANGUAGE: 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.

- 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.

ADDED LANGUAGE: Franchisee will make all reasonable efforts to provide waste collection service to its customers during inclement weather events as long as doing so will not pose an unnecessarily high risk to the health and safety of its employees, the public, or cause damage to public or private property. Prior to November 1st each year, Franchisee will meet with County staff to identify which customers may experience impacts to their waste collection services in the event of sustained snow falling at or below the 3500-foot elevation level so that targeted information can be quickly disseminated to the identified customers. Annually, Franchisee will prepare for the upcoming winter season (November 1st – April 30th) by implementing and adhering to the Winter Service Plan identified in Exhibit F of this Agreement.

- 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.

ADDED LANGUAGE: Franchisee will provide an improved level of customer service by implementing to 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 extend 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.

2. IMPORTANT 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

Franchisee has requested a rate adjustment of 3.9% in lieu of the 1/1/2023 annual rate adjustment, with no additional compensation. Except for the change in the CPI index discussed earlier, the compensation structure contained in the existing franchise collection agreement has been maintained for the term of the agreement beginning November 1, 2022.

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 Camague Avenue, Sonora, CA 95370.
 6. Preparation for winter season: Franchisee will make all reasonable efforts to provide waste collection service to its customers during inclement weather events as long as doing so will not pose an unnecessarily high risk to the health

and safety of its employees, the public, or cause damage to public or private property. Prior to November 1st each year, Franchisee will meet with County staff to identify which customers may experience impacts to their waste collection services in the event of sustained snow falling at or below the 3500-foot elevation level so that targeted information can be quickly disseminated to the identified customers. Annually, Franchisee will prepare for the upcoming winter season (November 1st – April 30th) by implementing and adhering to the Winter Service Plan identified in Exhibit X of this Agreement.

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 to 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 extend 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 January 1, 2024, 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 Franchisee 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

DRAFT



Winter Service Plan

Cal Sierra Disposal

Plan Year: 2022 - 2023

Determination of Safe Roads / Operations

- Safety of our staff and the community is our top priority. During periods of inclement weather, WM can only provide collection services where we have determined our collection vehicles can safely use a roadway.
- Private and public roadways covered with 3" or more of snow are required to be plowed to two car widths to be serviced, unless WM determines that they are otherwise safe.

Remedies for service interruptions

- When weather forecast predicts weather events, WM will send proactive communication to residents informing them that delays may occur. (Residents must have accounts registered and a chosen communication preference, phone, text or email.) Our proactive service alerts will inform customers of the following:
 - If your road is privately maintained, please have roadway plowed to two car widths for service to occur.
 - Place carts out for service on regular service day so that if we are able to access roadways, we can collect your waste and/or recycling.
 - If service does not occur by 5:00 p.m. on your service day, please remove carts from curbside and we will send updated instructions in the evening.
- Whenever possible, depending on road conditions and staffing, WM will recover missed collections on the following day.
- **NEW** In cases that we are unable to recover material before the following service day, residents will be provided a credit on their next invoice. Extra materials will not be collected on the following service day if a service credit is provided.

Resident Access to Communications

Winter Weather Hotline

- WM will update its Inclement Weather Hotline every morning by 6 a.m. when service is affected. Residents can call the number, 888-558-0616 at any time to get updates.
- WM will send out press releases during the first week of November, December, and January reminding residents about the Inclement Weather Hotline while also reminding them to register their accounts online for quicker notification of service delays.
- WM will post Inclement Weather Hotline phone number at the top of its website: CalSierra.wm.com.

Service Alerts

- Service alerts include outbound phone calls, text messages, and alerts added to our website. In order for customers to receive these communications, customers must visit wm.com to ensure their contact information is up to date and that they have set communication preferences.

- WM will offer a town hall meeting, in coordination with County staff, and advertise it as an in-person place to get assistance in registering their account and setting communication preferences.

Additional Remedies

Additional remedies may be offered by WM when conditions prevent service for longer than two weeks:

- If service is not recovered within 1 week, resident may choose:
 - Service credit for each missed week of collection
 - Or additional material collected on next service day
 - Or may request a voucher to self-haul to transfer station (email or pickup from office)
- WM will drive one of four rear load collection trucks to a designated area as close as possible to the affected area, for a designated period, and allow residents to bring trash to the truck for free disposal.

Key Contacts

Internal Waste Management Contacts to be Notified:

1. Vanessa Barberis, Public Sector Manager
2. Jim Garcia, District Manager, WM Waste Management
3. Chris Foley, WM Transfer Station Manager
4. Paul Rosynsky, Communications Specialist
5. Sean Aaron, Area Manager, Customer Experience
6. Shannon Castro, Centralized Dispatch Manager

Tuolumne County and City of Sonora Contacts:

(City and County staff will be asked to contact elected officials and other city/county staff)

1. Tuolumne County
 - a. Jim McHargue, Solid Waste Director: 209-937-8826
2. City of Sonora
 - Melissa, Interim City Administrator (209) 532-4541 office
 - Public Works Supervisor Mike Lagomarsino at 209- 532-2922 office, 209-743-2330 Cell