

Fifth Amendment to the Franchise Agreement between the County of El Dorado and Waste Connections of California, Inc.

This Fifth Amendment (Amendment) to the Franchise Agreement (Agreement) for the collection, transportation, processing, and disposal of Solid Waste and Recyclable Materials between the County of El Dorado (County), and Waste Connections of California, Inc., doing business as El Dorado Disposal Service, (Contractor), dated October 21, 2014, is entered upon execution.

This Fifth Amendment is made with respect to the following Recitals:

WHEREAS, Contractor and County entered into a Franchise Agreement (Agreement) dated October 21, 2014; and

WHEREAS, on August 18, 2015, the Agreement was amended (First Amendment) to consolidate the services provided by Amador Disposal Service under the Amador Disposal Service Franchise Agreement into the Contractor's Agreement; and

WHEREAS, on August 18, 2015, the Agreement was amended (Second Amendment) to assign and consolidate the services provided by Sierra Disposal Service under the Sierra Disposal Service Franchise Agreement into Contractor's Agreement; and

WHEREAS, Contractor's Agreement consists of three (3) distinct service areas: Area A (original service area), Area B (former Amador Disposal Service), and Area C (former Sierra Disposal Service); and

WHEREAS, on December 12, 2017, the Agreement was amended (Third Amendment) such that the Contractor provides bi-weekly green waste cart collection service in Area B, solely to the community known as Grizzly Flats from May through October each year; and

WHEREAS, on November 13, 2018, the Agreement was amended (Fourth Amendment) to provide for an automatic term extension for an additional period of twenty (20) years contingent upon Contractor's completion of a new state-of-the-art transfer station/Material Recovery Facility (MRF) by October 20, 2022; and also provided a mechanism for the Contractor to recover capital costs invested in the construction of the new state-of-the-art transfer station/MRF, subject to approval by the Board of Supervisors, in the event that estimated construction costs significantly exceed the Contractor's 2014 maximum cost estimate of twelve million dollars (\$12,000,000); and

WHEREAS, the use of non-compostable disposable bags, such as large plastic bags, for the containerization of green waste, such as yard clippings, leaves, tree trimmings, brush, and weeds, generated by residential and commercial customers and collected and/or received by the Contractor, are no longer accepted by available composting facilities, resulting in green waste material being landfilled and thereby negatively impacting the County's and State's landfill diversion goals; and

WHEREAS, multiple local jurisdictions have already banned the use of non-compostable disposable bags for the containerization of green waste to be composted or otherwise diverted from landfilling, including Amador County, Sacramento County, and the cities of Auburn, Elk Grove, Folsom, Galt, Grass Valley, Nevada City, Roseville, and West Sacramento; and

WHEREAS, the County finds that the use of non-compostable disposable bags should be eliminated from use for the purpose of disposing of green waste collected and/or received by the Contractor; and

WHEREAS, the Agreement currently stipulates that the Contractor will provide a spring and fall curbside green waste special pickup to all residential customers in Franchise Areas A, B and C, including green waste placed in non-compostable disposable bags, but does not limit the quantity of green waste material that may be set out nor the manner in which the special green waste pickups are scheduled; and

WHEREAS, the County finds that the Agreement language requires greater specificity such that green waste placed for pickup shall not be containerized in non-compostable disposable bags, the number of compostable bags shall be limited to thirty (30) 40-gallon bags per pickup, or a combination of no more than thirty (30) bags and/or bundles of green waste, and pickups shall be scheduled by the customers with the Contractor in advance of desired pickups; and

WHEREAS, the Agreement requires the Contractor to remit to the County a surcharge of two dollars and seventy cents (\$2.70) per ton for all tons of solid waste exported from the MRF and disposed of at an approved solid waste landfill; and

WHEREAS, the County finds that the current surcharge is not sufficient to support the County's long-term operation, maintenance and monitoring of the Union Mine landfill and compliance with state-mandated diversion programs pursuant to, but not limited to, Assembly Bill (AB) 939, AB 1826 and Senate Bill (SB) 1383; and

WHEREAS, the County further finds that the current surcharge is not sufficient to adequately incentivize the Contractor to recycle, recover, or otherwise divert solid waste from landfilling to the greatest extent practicable and should be increased.

NOW THEREFORE, the parties agree as follows:

1. Section 1, "Definitions" subsection S, "Compostable Material" is hereby amended in its entirety to read as follows:

S. Compostable Material and Compostable Green Waste Bags

(1) "Compostable Material" means plant material (leaves, grass clippings, branches, brush, flowers, pine needles, pine cones, non-treated wood waste, etc.), debris commonly thrown away in the course of maintaining yards and gardens, and biodegradable waste otherwise approved for the Yard Waste program by Contractor and the County. It may also include pre- or post-consumer Food Waste, if Contractor begins a Food Waste Collection program within the County.

(2) "Compostable Green Waste Bags" means bags used for the disposal of Green Waste, such as paper lawn and leaf bags or compostable plastic bags that meet ASTM Standard D6400, or other standard approved by the California Department of Resources Recycling and Recovery (CalRecycle), and hold a volume of no more than forty (40) gallons.

2. Section 4, “Franchise Fees/Other Compensation” subsection B, “Other Compensation” is hereby amended in its entirety to read as follows:

Contractor shall also Collect from its customers and pay to the County any surcharge set by the County to fund the County Solid Waste management activities, El Dorado County Solid Waste Management Plan implementation, AB 939 implementation programs, new regulatory requirements, and Landfill closure, post-closure, and remediation costs. This surcharge shall be treated for rate-setting purposes as a pass-through cost in the same manner as the Franchise Fee. Any change in such surcharge shall be reflected in a corresponding adjustment to Contractor’s rates. Such surcharge shall be due and payable quarterly within forty-five (45) days following the end of each quarter for gross revenues received during that quarter. If payment is not received within said forty-five (45) day period, interest shall accrue thereon at the rate of fifteen percent (15%) per annum or at the maximum interest rate permitted under California law, whichever is lesser. The County shall give Contractor a minimum of ninety (90) days’ notice of any changes in such surcharge. Any increase in such surcharge shall result in a corresponding rate adjustment to Contractor’s rates and/or be passed through to Contractor’s customers.

Contractor shall continue to remit to the County on a quarterly basis the surcharge of \$5.40 a ton on all tons of Solid Waste exported from the WERS Materials Recovery Facility (MRF) and Disposed of at an approved Solid Waste Landfill. This surcharge shall increase annually by two percent (2%) and shall be paid by Contractor to the County within forty-five (45) days after the end of each calendar quarter. This surcharge shall be used by the County to fund solid waste programs, including the operation, maintenance and monitoring of the Union Mine landfill. The County may increase this per ton fee, but only if such increase is compensated for by an increase in Contractor's rates hereunder.

Contractor shall receive, process, and where necessary, Dispose of Solid Waste and Recyclables Collected pursuant to the County's West Slope litter abatement program at the WERS MRF free of charge.

3. Section 6 L, “Bulky Waste / Bulky Item Pick-Up and Bulky Waste / Bulky Item Vouchers” subsection (2) is hereby amended in its entirety to read as follows:

Contractor shall provide one (1) curbside Bulky Waste / Bulky Item pick-up voucher, on an annual basis per customer (including each Multi-Family Unit) at no additional charge, which will be scheduled by Contractor in conjunction with other Bulky Waste / Bulky Item pick-ups. In addition, customer may use the Bulky Waste / Bulky Item voucher for curbside pickup of up to two and one half (2.5) cubic yards of Green Waste in approved Compostable Green Waste Bags or in bundles measuring no greater than three feet (3') x three feet (3') x eighteen inches (18”), or Electronic Waste / E-Waste in lieu of Bulky Waste /

Bulky Item.

4. Section 6 M, “Green Waste” is hereby amended in its entirety to read as follows:

Each year throughout the Term, in addition to regularly scheduled waste collection service and Bulky Waste pickup, Contractor shall provide to each Single Family Unit and Multi-Family Unit, two (2) vouchers for curbside collection of Green Waste pursuant to guidelines established by Contractor and approved by the County, for the disposal of Green Waste by Single Family Units and Multi-Family Units (each a “Green Waste Voucher Pickup”). The first voucher must be used between January 1 and June 30 and the second voucher must be used between July 1 and December 31 of each year. The dates for each Green Waste Voucher Pickup shall be made by appointment, with the resident contacting the Contractor to schedule a pickup date that is mutually acceptable to the resident and Contractor. For each Green Waste Voucher Pickup, each resident shall be limited to a maximum of any combination of thirty (30):

- 1) 40-gallon maximum capacity Compostable Green Waste Bags, and/or*
- 2) Bundles of Green Waste measuring no greater than three feet (3') x three feet (3') x eighteen inches (18"). Residents may not use plastic, non-compostable bags for excess Green Waste disposed of in connection with a Green Waste Voucher Pickup.*

Contractor will provide one (1) voucher, on an annual basis, per customer, at no additional charge, allowing the customer to Dispose up to two and one half (2.5)cubic yards of Green Waste at the WERS MRF. Green Waste placed in plastic non-compostable bags will be considered Solid Waste and the Contractor may charge the customer according to the then current Solid Waste rates as established by the Board of Supervisors.

5. Section 6 N, “Community Clean-Up Events” is hereby amended in its entirety to read as follows:

Throughout the Term, Contractor shall provide, in addition to regularly scheduled service, four (4) clean-up events each calendar year strategically located in the unincorporated areas of the County, pursuant to guidelines established by Contractor and approved by the County, for the disposal of Solid Waste and Recyclables by Single-Family Units and Multi-Family Unit customers only. The location, date, and time for each event shall be proposed by Contractor and approved by the County prior to each event. Prior to each event, Contractor shall provide notice of the location, date, and time of clean-up events to appropriate customers by postcard, call blast, on the monthly billing statement, or other method approved by the County.

Throughout the Term, Contractor shall provide one (1) Green Waste specific community event. Contractor shall provide necessary equipment and staff, and collect Green Waste from residential customers. The specific locations, dates,

and times shall be approved by the County prior to each event.

For Community Clean-Up Events described above, Contractor may charge non-customers for participation in the events according to the then current Solid Waste rates as established by the Board of Supervisors.

6. Section 6 W, “Containers” subsection (1)(a), is hereby amended in its entirety to read as follows:

(1)Purchase and Distribution of Cart(s), Bins, and Roll-Off Containers

(a) In Area A and Area B (Grizzly Flats only):

Contractor shall Collect Solid Waste from the three (3) different thirty-five (35) (for Solid Waste only), sixty-four (64), and ninety-six (96) gallon Contractor provided Cart(s), as requested by the customer and placed for Collection by the customer, not less than once per week. Contractor shall Collect Recyclables from the sixty-four (64) or ninety-six (96) gallon Contractor provided Cart(s), as requested by the customer and placed for Collection by the customer, not less than once every two (2) weeks. Contractor shall Collect Yard Waste from the ninety-six (96) gallon Contractor provided Cart(s), as requested by the customer and placed for Collection by the customer, not less than once every two (2) weeks (May through October only for Area B-Grizzly Flats). At the customer’s request, Contractor shall provide to each customer, and at no additional charge to such customer, one (1) additional Cart for the Collection of either Yard Waste (only ninety-six (96) gallon Carts available) or Recyclables (either sixty-four (64) or ninety-six (96) gallon Carts available).

Exceptions to Carts are only for Recyclables and Green Waste. Exceptions to the use of Contractor provided Carts will occur only under the following conditions. Only Customers serviced in Group Collection Areas may use:

(i) Contractor provided thirty-two (32) gallon “blue bags” for Recyclable Material. Contractor’s Customer Service Department and the customer shall determine an appropriate number of blue bags for each customer requesting to continue use of thirty-two (32) gallon “blue bags” and Contractor shall provide determined number of thirty-two (32) gallon “blue bags” when providing bi-weekly Recycle service.

(ii) Group Collection Area customers may use a maximum number of three (3) customer provided Compostable Green Waste Bags, to be serviced bi-weekly at time of provided Green Waste service.

(iii) Thirty-five (35) gallon Recycle Cart(s) and sixty-four (64) gallon Yard Waste Cart(s) will be provided on an exception basis for Group Collection

Area customers or where a customer needs a smaller option for safety related conditions.

(iv) When curbside service is available, the exemptions per this section for Recycling and/or Green Waste will be discontinued and the standard three (3) Cart program will be implemented.

- 7. Except as herein amended, all other terms and conditions of the Agreement shall remain in full force and effect.

COUNTY OF EL DORADO

Dated: _____

By:

Chair
Board of Supervisors
County of El Dorado

ATTEST:
Kim Dawson
Clerk of the Board of Supervisors

By _____

CONTRACTOR

By:

Dated: _____

Its: President

By:

Dated: _____

Its: Secretary