



RESOLUTION NO. 227-2014
OF THE BOARD OF SUPERVISORS OF THE COUNTY OF EL DORADO

**RESOLUTION AUTHORIZING A FIRST AMENDMENT TO THE
SOLID WASTE SERVICES AGREEMENT BETWEEN THE COUNTY
OF EL DORADO AND SOUTH TAHOE REFUSE CO., INC.**

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (AB 939), has declared that it is within the public interest to authorize and require local agencies to make adequate provision for solid waste handling within their jurisdictions; and

WHEREAS, pursuant to California Public Resources Code Section 40059(a)(1), the Board of Supervisors has determined that the public health, safety, and well-being require an exclusive franchise be awarded to a qualified solid waste enterprise (Contractor) for the collection and recovery of solid waste from certain residential, industrial, and commercial areas in the County of El Dorado (County); and

WHEREAS, County and Contractor are mindful of the provisions of the laws governing the safe collection, transport, recycling, and disposal of solid waste, including AB 939, the Resource Conservation and Recovery Act (RCRA), and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); and

WHEREAS, effective January 24, 1995, the County entered into a Collection Franchise Agreement (Agreement) with South Tahoe Refuse, Co., Inc. which, among other things, granted the exclusive right and obligation, subject to certain limitations, until December 31, 2004, to collect, transport, recycle, and dispose of municipal solid waste generated by residential, commercial, and industrial customers in a delineated franchise area in the eastern portion of the County and to operate the Material Recovery Facility; and Construction and Operation Agreement between the South Lake Tahoe Basin Waste Management Authority and South Tahoe Refuse Co., Inc. dated February 13, 1995; and

WHEREAS, on or about June 25, 2002 South Tahoe Refuse Co., Inc., dba American River Disposal Service and the County entered into a Franchise Agreement whereby South Tahoe Refuse Co., Inc., dba American River Disposal Service agreed to provide for the collection, transportation, processing and disposal of solid waste within a Franchise Area defined in Exhibit A to that Franchise Agreement; and

WHEREAS, the Franchise Agreement entered into between South Tahoe Refuse Co., Inc. dba American River Disposal Service and the County will terminate on December 31, 2014; and

WHEREAS, Contractor has requested that the services being provided by South Tahoe Refuse Co., Inc. dba American River Disposal Service under the Franchise Agreement between South Tahoe Refuse Co. Inc., doing business as "American River Disposal Service," (ARD Franchise Agreement) and the County be consolidated into Contractor's Agreement dated May 1, 2012; and

WHEREAS, the ARD Franchise Area will now be known as "Area B" of the Agreement and "Area A" shall consist of all other areas within the Agreement.

WHEREAS, Contractor has represented and warranted to County that it has substantial experience, responsibility, and qualifications to arrange with residents, commercial, industrial, institutional and other entities in the Franchise Area for the collection, processing, and safe transport to disposal facilities of municipal solid wastes, and the recycling of recyclable materials, the Board of Supervisors determines and finds that the public interest, health, safety, and well-being would be best served if Contractor were to make arrangements with residents and other entities to perform these services; and

WHEREAS, County has not, and by this Agreement does not, instruct Contractor on its collection methods, nor supervise the collection of Solid Waste; and

WHEREAS, On the Effective Date of this Amendment, the Franchise Agreement between the County and Contractor, doing business as "American River Disposal Service" (the ARD Franchise Agreement) shall terminate, except that Contractor's obligations to the County under the ARD Franchise Agreement that have not been fully performed as of the termination shall survive termination until they are fully performed. In addition, Contractor's obligations thereunder to defend and indemnify the County shall survive termination.

WHEREAS, the First Amendment to the Agreement cannot be transferred or assigned by South Tahoe Refuse, Co., Inc. without the prior written consent of the County; and

WHEREAS, the Board of Supervisors declares its intention of maintaining reasonable rates for collection, transportation, and disposal of Solid Waste within the area covered by this grant of Franchise.

NOW, THEREFORE, be it resolved, the Board of Supervisors of the County of El Dorado, effective December 2, 2014, approves the First Amendment to the Solid Waste Services Agreement between the County and South Tahoe Refuse Co., Inc. attached hereto and authorizes the chairman of the Board to execute the Agreement on behalf of the County.

PASSED AND ADOPTED by the Board of Supervisors of the County of El Dorado at a regular meeting of said Board, held the 2nd day of December, 2014, by the following vote of said Board:

Attest:
James S. Mitrison
Clerk of the Board of Supervisors

Ayes: Briggs, Veerkamp, Mikulaco, Frentzen, Santiago
Noes: none
Absent: none

By:


Deputy Clerk


Chair, Board of Supervisors
Norma Santiago

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**Amendment to the Solid Waste Services Agreement between the
County of El Dorado and South Tahoe Refuse Co., Inc.**

This Amendment (Amendment) to the Solid Waste Services Agreement (Agreement) for the collection, transportation, processing and disposal of Solid Waste and Recyclable Materials between the County of El Dorado (County), and South Tahoe Refuse Co., Inc. (Contractor), dated May 1, 2012, is entered into effective as of January 1, 2015 (Effective Date).

This Amendment is made with respect to the following Recitals:

WHEREAS, on or about June 25, 2002 South Tahoe Refuse Co., Inc., dba American River Disposal Service and the County entered into a Franchise Agreement whereby South Tahoe Refuse Co., Inc., dba American River Disposal Service agreed to provide for the collection, transportation, processing and disposal of solid waste within a Franchise Area defined in Exhibit A to that Franchise Agreement; and

WHEREAS, the Franchise Agreement entered into between South Tahoe Refuse Co., Inc. dba American River Disposal Service and the County will terminate on December 31, 2014; and

WHEREAS, Contractor has requested that the services being provided by South Tahoe Refuse Co., Inc. dba American River Disposal Service under the Franchise Agreement between South Tahoe Refuse Co. Inc., doing business as "American River Disposal Service," (ARD Franchise Agreement) and the County be consolidated into Contractor's Agreement dated May 1, 2012; and

WHEREAS, the consolidation and merger of the services provided under the ARD Franchise Agreement into Contractor's Agreement with the County would: (1) increase economies of scale for operations in the ARD Franchise Area and would provide economies of scale for the County's administration of franchise operations in the ARD Franchise Area; and (2) benefit customers in the ARD Franchise Area by providing them with access to Contractor's evolving services and programs, and any future expansion of Contractor's South Lake Tahoe facilities; and

WHEREAS, the ARD Franchise Area (described in Exhibit A attached hereto) would remain as a distinct service area under Contractor's Agreement and will not be subject to the mandatory collection requirements applicable in other areas of Contractor's franchise; and

WHEREAS, the ARD Franchise Area will now be known as "Area B" of the Agreement and "Area A" shall consist of all other areas within the Agreement.

NOW THEREFORE, the parties agree as follows:

1. Section 1- Definitions is hereby amended as follows:

The existing definition of "Gross Revenues" shall be re-lettered as definition "O" and a new definition "P" is added to the Agreement, to read as follows:

“Group Collection Area” means a single location where multiple residential customers place Solid Waste, Recyclable Material, and Green Waste items for Collection. Solid Waste, Recyclable Material, and Green Waste items must be in containers to be collected.

Additional definitions shall be added to the Agreement, to read as follows:

“Biomass Conversion Facility” means any facility, including any intermediate staging area, processing biomass waste into energy, fuel, and other products.

“Forest Biomass” means vegetation from trees, brush, and other plants grown in Forested Land.

“Forested Land” means areas in the County that require a Smoke Management Plan for agricultural and prescribed burning pursuant to the requirements of the California Air Resources Board and the County of El Dorado Air Quality Management District.

2. Section 3 C, “Exceptions to Exclusivity,” is hereby amended to add new subsections (5) and (6), to read as follows:

(5) Collection services are accepted by the State of California; any school district; or other state agency, or any other entity that is excluded by law from the obligation to subscribe to the Collection services set forth herein; and

(6) A person or entity handles, hauls, transports, hires or contracts with another person or entity to handle, haul, or transport, Forest Biomass generated in Forested Land for purposes of disposing same at an authorized Biomass Conversion Facility. This Agreement does not confer any exclusive rights to Contractor to handle, haul or transport Forest Biomass or operate a Biomass Conversion Facility and/or conduct biomass conversion operations.

3. Section 6 B, “Service on County and Non-County Roads,” is hereby amended in its entirety to read as follows:

B. Service on County and Non-County Roads. The Contractor shall be required to provide garbage service to all customers on County-maintained roads. Contractor shall further provide service on all non-County maintained private roads, provided that said roads are kept in a safe and good traveling condition. Contractor may provide smaller collection trucks to provide collection services on non-County maintained roads in instances where such roads are not reasonably usable by Contractor's regular collection vehicles. Contractor shall not provide Collection services to Group Collection Areas not governed by mandatory collection provisions. In the event any road is, in Contractor's reasonable judgment, unsafe or in such a state of disrepair that the road will be either hazardous or potentially cause injury to even the smaller sized vehicles of Contractor, Contractor shall not be required to provide service to customers on said road. In such event, this Franchise shall not include the customers located on the road or portion of the road that Contractor refuses to service, and the County may in its sole discretion franchise the provision of Solid Waste collection services to those customers to a

person or entity other than Contractor. In addition, Contractor may request that customers on non-County maintained roads sign a waiver and indemnification agreement prior to receiving service from Contractor, and Contractor may refuse to provide service to any such customers that fail to sign such waiver and indemnification, but Contractor shall provide service to those customers that do sign such a waiver and indemnification. The form of this indemnification and waiver shall be subject to the advance written approval of the County, which shall not be unreasonably withheld.

4. Section 9 is hereby amended to add a new subsection D, entitled “Future Facilities for Solid Waste Processing and Disposal Advanced Technologies,” to read as follows:

D. Future Facilities For Solid Waste Processing and Disposal Advanced Technologies. Contractor has the responsibility and discretion to utilize a properly permitted processing facility or landfill. However, in accordance with Article IV, Chapter 8.42, Title 8 of the County of El Dorado Ordinance Code the County reserves the future right to redirect the wastestream to another facility approved by the County to comply with long-term waste management needs and divert any waste from Landfill(s). Contractor, without constraint and as a free-market business decision in accepting this Agreement, agrees to use such facility or other location approved by the County for the purpose of transferring, hauling, transporting, diverting, or disposing Solid Waste and Recyclable Materials collected in the Franchise Area. Contractor agrees that the County’s right to redirect the wastestream in no way constitutes a restraint of trade or an impairment of contracts.

5. Section 19 is hereby amended to add a new subsection F, entitled “Future Legislation,” to read as follows:

F. Future Legislation. Contractor will comply with all reporting requirements of future federal, state, and local regulations. Contractor agrees to render all reasonable cooperation and assistance to the County in meeting the requirements of the County's source reduction and Recycling element and non-disposal facility element and future legislation and regulatory requirements.

6. Section 22 is hereby amended to add the new paragraphs to read as follows:

Notwithstanding the foregoing, for the former ARD Franchise Area (Exhibit A) only, Contractor’s rates shall be adjusted using a phased-in approach as follows: (1) effective as of January 1, 2015, Contractor’s prior rates for customers in the former ARD Franchise Area shall be increased four percent (4%); (2) effective as of January 1, 2016, Contractor’s rates for customers in the former ARD Franchise Area shall be increased an additional four percent (4%); and (3) effective as of January 1, 2017, Contractor’s rates for customers in the former ARD Franchise Area shall be increased an additional four percent (4%).

In conjunction with the Solid Waste Rate Setting Policies and Procedures Manual (Rate Manual), for consideration of rates effective January 1, 2018 and thereafter, the Contractor shall include ARD revenue and expenses as part of the overall STR operations and the ARD customers will receive the same percentage increase as the STR customers.

7. On the Effective Date of this Amendment, the Franchise Agreement between the County and Contractor, doing business as "American River Disposal Service" (the ARD Franchise Agreement) shall terminate, except that Contractor's obligations to the County under the ARD Franchise Agreement that have not been fully performed as of the termination shall survive termination until they are fully performed. In addition, Contractor's obligations thereunder to defend and indemnify the County shall survive termination.

8. Except as further provided in the future by the County Board of Supervisors, the ARD Franchise Area (Exhibit A) shall remain a non-mandatory collection area.

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

Dated: 12-2-14

COUNTY OF EL DORADO


By:



Chair **Norma Santiago**
Board of Supervisors
County of El Dorado

ATTEST:

James S. Mitrisin
Clerk of the Board of Supervisors

By  12-2-14

CONTRACTOR

By: Jeffery Tillman

Dated: December 3, 2014



Its: President

By: John D. Marchini

Dated: December 3, 2014



Its: Secretary

