



## Legislation Text

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**File #:** 22-1964, **Version:** 1

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Environmental Management Department recommending the Board adopt and authorize the Chair to sign Resolution **163-2022**, which approves and authorizes the Chair to sign the Sixth Amendment to the Solid Waste Services Franchise Agreement for Waste Connections of California, Inc., doing business as El Dorado Disposal Service, extending the deadline for completion of Franchisee's new state-of-the-art transfer station/MRF until October 20, 2024, maintaining the expiration of the Agreement eight years from the execution date of the Fourth Amendment, and incorporating requirements as adopted by Ordinance 5164 for SB 1383.

**FUNDING:** The County franchise fees of 5% fund this Agreement, and this will remain unchanged.

### **DISCUSSION / BACKGROUND**

On May 8, 2012, the Board considered whether the County should enter into the competitive bid process for the collection and disposal of municipal solid waste and recyclable materials generated by residential, commercial, and industrial customers within all Franchise Areas in the County, with the exception of South Lake Tahoe (the Board previously approved a new agreement with South Tahoe Refuse on May 1, 2012, File ID 12-0494), or enter into negotiations with the current Franchisees: Waste Connections of California, Inc., dba El Dorado Disposal, Sierra Disposal, Amador Disposal, American River Disposal, and Tahoe Truckee Sierra Disposal. The purpose of the negotiations was to generate new Solid Waste Service Agreements (Franchise Agreements) that incorporate new standardized solid waste rate setting policies and procedures and the El Dorado County Solid Waste Management Plan (SWMP). The Board provided direction to staff to engage in good faith negotiations with the existing Franchisees and return to the Board with proposed new Franchise Agreements for discussion and consideration (File ID12-0508).

On October 21, 2014, (File ID 14-1047) the Board approved an agreement between the Environmental Management Department (EMD) and Waste Connections of California, Inc., dba El Dorado Disposal (EDD), herein referred to as the Franchise Agreement (Agreement). As directed by the Board on May 8, 2012 (File ID 12-0508), EMD initiated negotiations with EDD. EMD drafted a new agreement incorporating a draft Solid Waste Rate Setting Policies and Procedures Manual and a multitude of short-term, intermediate, and long-term program and infrastructure strategies detailed in the County's SWMP. The new Agreement was carefully drafted to comply with state-mandated programs, aimed to achieve the County's seventy-five percent (75%) diversion goal (diversion of solid waste from landfills by reuse and recycling of materials) by the year 2020 set by the County's SWMP and subsequently by the State of California. In addition, the new rate-setting policies and procedures manual established in the Agreement benefited the residents and businesses of the County through rate stabilization while maintaining comparable rates within the County.

On August 18, 2015, the Agreement was amended twice. First (First Amendment) (File ID 15-0905) to consolidate the services provided by Amador Disposal Service under the Amador Disposal Service Franchise Agreement into Franchisee's Agreement; and second (Second Amendment) to assign and consolidate the services provided by Sierra Disposal Service under the Sierra Disposal Service Franchise Agreement into Franchisee's Agreement. Franchisee's Agreement now 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).

On December 12, 2017, the Agreement was amended, and the Board approved (File ID 14-1047) (Third Amendment) such that the Franchisee 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.

On November 13, 2018, the Agreement was amended (Fourth Amendment) and approved by the Board (File ID 18-1693) to provide for an automatic term extension for an additional period of twenty (20) years contingent upon the Franchisee'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 Franchisee to recover capital costs invested in the construction of the new state-of-the-art transfer station/MRF, subject to approval by the Board, in the event that estimated construction costs significantly exceed the Franchisee's 2014 maximum cost estimate of twelve million dollars (\$12,000,000).

On August 25, 2020, the Agreement was amended (Fifth Amendment), and approved by the Board (File ID 20-0918) to modify certain services provided by Franchisee and certain fees charged by Franchisee pursuant to the Agreement.

Due to unforeseen significant disruptions and delays caused by the COVID-19 pandemic, including, without limitation, due to engineering office closures, manufacturing plant shutdowns, and material availability, the completion of construction for the new state-of-the-art transfer station/MRF has been delayed and has prevented the Franchisee from completing the project by October 20, 2022.

The Fourth Amendment details that this project was to be completed by October 20, 2022, in order to comply with the terms of the Agreement and that the automatic extension of this Agreement for 20 additional years is contingent upon the completion date of October 20, 2022, being met. The Fourth Amendment allowed that the "County may exercise renewal options under Section 11. B if the County, in its sole discretion, determines that Franchisee had made diligent efforts to complete the Transfer Station I MRF by October 20, 2022, and the delay is a result of unforeseen circumstances outside the control of Franchisee." The delays were caused by a pandemic that was outside the control of the Franchisee and diligent efforts were made to comply with the agreed-upon deadline. The Franchisee has been in material compliance with the Agreement and Environmental Management Department requests that the County grant an extension as requested until October 20, 2024.

The secondary purpose of the proposed Sixth Amendment is to incorporate the requirements as adopted in County Ordinance 5164. On August 30, 2022, the Board approved the final passage of Ordinance 5164 (File ID 22-1188), as required for compliance with SB 1383. The El Dorado County Ordinance Code Title 8 was amended to add a new Chapter, 8.45, labeled County Organic Waste Disposal and Diversion, which established regulations and requirements for the reduction of organic waste within State landfills. The regulations adopted apply to El Dorado Disposal as the County's designated Franchisee for garbage collection and disposal.

Environmental Management Department requests that the Board approve the Sixth Amendment which encompasses a two-year extension to the timeframe for completion of the MRF, and incorporating the changes as required under County Ordinance 5164.

## **ALTERNATIVES**

The Board may elect not to approve the Sixth Amendment to extend the MRF completion date to October 20, 2024, therefore denying the Franchisee the automatic extension of the Agreement for an additional 20 years, which is set to expire on November 13, 2026, per Section 11A of the Fourth Agreement. Additionally, the County would be out of compliance with the State mandates established by SB 1383 and County Ordinance 5164.

## **PRIOR BOARD ACTION**

El Dorado Disposal Solid Waste Service Agreement:  
October 21, 2014, Item 32, Legistar 14-1047, New Agreement  
August 18, 2015, Item 12, Legistar 15-0905, First Amendment  
August 18, 2015, Item 13, Legistar 15-0632, Second Amendment  
December 12, 2017, Item 25, Legistar 14-1047, Third Amendment  
November 13, 2018, Item 21, Legistar 18-1693, Fourth Amendment  
August 25, 2020, Item 39, Legistar 20-0918, Fifth Amendment  
August 30, 2022, Legistar 22-1188, Final Passage of Ordinance 5164

## **OTHER DEPARTMENT / AGENCY INVOLVEMENT**

County Counsel

## **CAO RECOMMENDATION / COMMENTS**

Approve as recommended

## **FINANCIAL IMPACT**

There is no County funding associated with the construction of the MRF Upgrade Project. Additionally, El Dorado Disposal has committed to not passing the cost of this project along to ratepayers based on the original cost estimate.

## **CLERK OF THE BOARD FOLLOW UP ACTIONS**

- 1) Clerk of the Board will obtain the Chair's signature on one (1) original copy of the Sixth Amendment Resolution XXX-2022, and forward one (1) copy of the signed Resolution to Environmental Management for further processing.
- 2) Clerk of the Board will obtain the Chair's signature on the two (2) original copies of the Sixth Amendment to the El Dorado Disposal Service Solid Waste Services Agreement between the County and El Dorado Disposal Service, and forward one (1) original signed copy to Environmental Management for further processing.

## **STRATEGIC PLAN COMPONENT**

Infrastructure and Good Governance.

## **CONTACT**

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