



## Legislation Details (With Text)

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**Title:** Environmental Management Department recommending the Board adopt and authorize the Chair to sign Resolution 126-2020, which approves and authorizes the Chair to sign the Fifth Amendment to the Solid Waste Services Franchise Agreement for Waste Connections of California, Inc., doing business as El Dorado Disposal Service, requiring the use of compostable green waste bags, modifying language related to collection of green waste, community cleanup events, and increasing the surcharge remitted to the County on all tons of landfilled solid waste. (Cont. 8/4/2020, Item 39)

**FUNDING:** User and Franchise Fees.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. A - Approved Contract Routing Sheet-Fifth Amendment, 2. B - El Dorado Disposal Fifth Amendment Recommended-EDD Signed, 3. C - El Dorado Disposal Fifth Amendment-Option A, 4. D - El Dorado Disposal Fifth Amendment-Option B, 5. E - Resolution XXX-2020-Authorizing El Dorado Disposal Fifth Amendment, 6. F - 2014 Franchise Agreement (10-21-14), 7. G - Executed 1st Amendment (8-18-15), 8. H - Executed 2nd Amendment (8-18-15), 9. I - Executed 3rd Amendment (12-12-17), 10. J - Executed 4th Amendment (11-13-18), 11. K - Ordinance 4319 (2-8-94), 12. L - Resolution 144-96 (6/18/96), 13. M - Resolution 250-88 (7/26/88), 14. Public Comment BOS Rcvd 8-3-20, 15. Executed Resolution 126-2020, 16. Executed 5th Amendment

Date	Ver.	Action By	Action	Result
8/25/2020	2	Board of Supervisors	Approved	Pass
8/4/2020	1	Board of Supervisors	Continued	Pass

Environmental Management Department recommending the Board adopt and authorize the Chair to sign Resolution **126-2020**, which approves and authorizes the Chair to sign the Fifth Amendment to the Solid Waste Services Franchise Agreement for Waste Connections of California, Inc., doing business as El Dorado Disposal Service, requiring the use of compostable green waste bags, modifying language related to collection of green waste, community cleanup events, and increasing the surcharge remitted to the County on all tons of landfilled solid waste. (Cont. 8/4/2020, Item 39)

**FUNDING:** User and Franchise Fees.

### DISCUSSION / BACKGROUND

El Dorado Disposal Service (El Dorado Disposal) is requesting the Board of Supervisors (Board) consider multiple changes to the current Solid Waste Services Franchise Agreement (Franchise Agreement) related to the elimination of non-compostable plastic bags for disposal of green waste, community cleanup events, and curbside green waste special pickups. Environmental Management is requesting the Board consider increasing the current surcharge on all landfilled solid waste that is paid by El Dorado Disposal to the County to fund Environmental Management's solid waste programs, including the ongoing operation, maintenance and monitoring of the Union Mine Landfill.

### Green Waste

The Franchise Agreement (Attachment F) consists of three distinct service areas on the Western Slope of the County: Area A, the original service area; Area B, the former Amador Disposal service area in South County; and Area C, the former Sierra Disposal service area in North County. Curbside green waste cart collection service is currently provided in all of Area A and in the Grizzly Flats community of Area B on a seasonal basis. In Area A only, customers also receive two curbside pickups of green waste, one in the spring and one in the fall. Green waste must be properly bagged or bundled for pickup during these events.

The Franchise Agreement further requires El Dorado Disposal to hold on an annual basis four community cleanup events and one green waste only event. These events are to be held in franchise area locations throughout the unincorporated area of the County. Green waste may be brought to any of these events.

In addition, El Dorado Disposal provides customers with one voucher per year for free drop off of up to two-and-one-half cubic yards of green waste at the Material Recovery Facility (MRF), and one voucher annually for free curbside pickup which may be used for the pickup of a bulky waste item, electronic waste item, or two-and-one-half cubic yards of green waste.

For all the green waste services detailed above, customers may utilize large disposable plastic bags that are not compostable. Composting facilities will not accept green waste contaminated with non-compostable plastic, resulting in green waste being landfilled rather than diverted, thereby negatively impacting the County and State's goal of achieving 75% diversion of waste from landfilling by the year 2020.

Recognizing the detrimental impacts of utilizing non-compostable bags for green waste, multiple surrounding jurisdictions have banned the use of these bags for this purpose, including Amador County, Sacramento County, and the cities of Auburn, Elk Grove, Folsom, Galt, Grass Valley, Nevada City, Roseville, and West Sacramento.

Therefore, the proposed changes detailed in the Fifth Amendment (Amendment) to the Franchise Agreement (Attachment B), relevant to green waste bags, include:

- 1) Adding a definition of "Compostable Green Waste Bags;" and
- 2) Eliminating the use of plastic, non-compostable bags for green waste pickup, whether for curbside, community and green waste collection events, or drop off at the MRF, with or without a voucher.

The Amendment also includes changes to the aforementioned Area A spring and fall curbside green waste pickup events. The current Franchise Agreement language is vague and simply states, "In addition to the Bulky Waste pickup, Contractor will provide a spring and fall curbside Green Waste special pickup." These special pickups, or events, have evolved into "unlimited" pickup, which are currently scheduled by El Dorado Disposal on a normal green waste cart collection day, with customers notified in advance of the event.

The Amendment proposes to limit the amount of green waste that may be set out for these events to a combined total of thirty, 40-gallon or smaller, compostable green waste bags or green waste bundles. Additionally, the events will no longer be scheduled on a specific day. Customers will be provided two additional vouchers for curbside green waste special pickups; one that may be used anytime between January and June, and the other between July and December. Customers will then be able to contact El Dorado Disposal for scheduling their green waste special pickups. Switching to

vouchers for these special pickups will provide greater flexibility for customers and will result in more customers being able to take advantage of this service option.

The Amendment includes additional changes to community cleanup events. Historically, these free events have been open to customers and non-customers alike. As a result, El Dorado Disposal customers have been subsidizing the cost of these events for non-customers through the rate base.

Lastly, the Amendment proposes to limit the free community events to customers only; however, non-customers will still be able to participate for a fee according to the then current solid waste rate schedule approved by the Board.

#### Solid Waste Surcharge

Environmental Management's solid waste programs have historically been supported by three main funding sources: County Service Area 10 Solid Waste (CSA10) West Slope parcel assessments; franchise fees derived from solid waste franchise agreements with El Dorado Disposal, South Tahoe Refuse, and Tahoe Truckee Sierra Disposal; and a solid waste surcharge on all waste exported from the MRF that is buried in an approved landfill. In addition, Environmental Management receives up to \$100,000 annually from the County Department of Transportation for the removal and disposal of litter and debris from County maintained roadways and right-of-ways.

On July 26, 1988, the Board adopted Resolution 250-88, approving a solid waste parcel assessment in the amount of four dollars (\$4.00) per equivalent dwelling unit (EDU) in CSA10 to fund solid waste management services (Attachment M).

On February 8, 1994, after three years of development, the Board adopted Ordinance 4319, the El Dorado County Solid Waste Management Ordinance (Attachment K). The ordinance addressed a multitude of complex and important issues including solid waste flow control, franchising, mandatory collection areas, compliance with State-mandated waste diversion from landfiling, and the protection of public health and safety. The Board findings in Ordinance 4319 included:

*(F) El Dorado County has established a funding program for the solid and liquid waste management system which incorporates development fees, franchise fees, parcel assessments, tipping fees and rates for solid waste collection and processing services which are from time to time adjusted by the Board of Supervisors.*

On June 18, 1996, the Board adopted Resolution 144-96 which increased the CSA10 parcel assessment from \$4.00/EDU to \$17.00/EDU (Attachment L). Pursuant to this Resolution, funds collected were, "[t]o be used for the acquisition, operation and maintenance of county waste disposal sites and for financing waste collection, processing, reclamation and disposal services..." and to, "[i]mpose and collect fees sufficient to pay the costs of preparing, adopting, and implementing an integrated waste management plan..." prepared pursuant to Assembly Bill 939 (AB 939), the California Integrated Waste Management Act of 1989. The Resolution does not contain an annual inflation adjustment or other method for adjusting the approved parcel assessment to accommodate increased costs to provide services or meet subsequent State imposed solid waste and recycling mandates.

On January 31, 2012 (Legistar 12-0139, Item 11), the Board approved the County-wide Solid Waste Management Plan (Plan) and directed staff to implement the Plan. The Plan was developed to compliment the AB 939 mandated integrated waste management plan and provide a focused, comprehensive, strategic approach to solid waste management with the goal of achieving 75%

diversion of solid waste from landfilling by the year 2020. The Plan contains forty-two solid waste related strategies spread throughout three phases from years 2012 to 2040. The Board also approved an Action Plan, as part of this Plan, in order to focus the County's near-term and intermediate-term efforts on the most cost-effective strategies, as well as strategies that satisfy known regulatory requirements. Funding for Action Plan/Plan implementation was not provided by the Board in 2012 because Environmental Management was receiving adequate funding from franchise fees. Since the Board's approval of the Plan in 2012, Environmental Management has focused primarily on the Action Plan, but has not been able to make significant progress on the remaining strategies due to a lack of funding.

The Board approved new franchise agreements with South Tahoe Refuse, El Dorado Disposal, and Tahoe Truckee Sierra Disposal on May 1, 2012, October 21, 2014, and October 27, 2015, respectively. All three of the aforementioned franchise agreements include the same definition of franchise fees, which states:

*"Franchise Fee" means the fee or assessment imposed by the County on Contractor solely because of its status as party to this Agreement, and which inter alia, is intended to compensate the County for its expense in administering this Agreement, and to fund other waste management activities.*

Effective Fiscal Year (FY) 2015/2016, all franchise fees paid by the County's solid waste franchisees to Environmental Management were transferred to Department 15, General Fund, as the franchise fees are considered discretionary funds. Prior to this action, Environmental Management was receiving approximately 70% of the franchise fees with the remaining, approximately 30%, being transferred to Department 15. The FY 2014/2015 franchise fee revenue for Environmental Management was approximately \$710,000.

Since FY 2015-16, Environmental Management has been drawing down the CSA10 Solid Waste fund balance to fund solid waste programs. In addition, TRAKiT, the County's new land management information system has contributed to the CSA10 fund balance draw down by approximately \$660,255. Effective FY 2020/2021, the CSA10 fund balance is projected to be exhausted, although remaining fund balance will not be known until all actual expenditures have been reconciled for the current FY.

#### CSA10 Solid Waste Fiscal Year End Use of Fund Balance Summary:

Fiscal Year End	Fund Balance	Draw Down
2015-16	\$5,093,563	
2016-17	\$4,639,631	(\$453,933)
2017-18	\$2,459,121	(\$2,180,509)
2018-19	\$1,849,461	(\$609,661)
2019-20	\$1,030,726	(\$818,735)
2020-21	\$0.00	(\$1,030,726) Projected

Environmental Management solid waste related programs and expenditures include:

- Franchise Agreement administration and oversight, including monthly meetings with El Dorado Disposal, MRF inspections, complaint resolution, and monitoring of State-mandated diversion programs and compliance assistance;
- Local Enforcement Agency (LEA) contract (Placer County) funding to the Health and Human

Services Agency;

- Solid waste diversion programs and Plan implementation;
- Regulatory compliance with State mandates (eg., AB 939, AB 341, AB 1826, SB 1383) and reporting to the State;
- Private property solid waste complaint response;
- Litter Program and illegal dumping abatement;
- Illegal temporary sign complaint response;
- Solid Waste Management Ordinance administration;
- Construction and Demolition Debris Ordinance administration;
- Bear-Proof Garbage Can Requirements Ordinance administration;
- Acquisition, administration, and implementation of grants;
- El Dorado Solid Waste Advisory Committee and the South Lake Tahoe Basin Waste Management Authority staff support;
- Union Mine Landfill operations, maintenance and monitoring, including multiple professional services and construction contracts; and
- Meyers Landfill litigation, closure (OU-1) and groundwater issues (OU-2).

In regard to the Union Mine Landfill, the Central Valley Regional Water Quality Control Board (Water Board) requires the County to annually verify the County's financial ability to close the open portion of the landfill and maintain the landfill post-closure for a minimum of thirty years. The closure costs of the open portion of the landfill, estimated at 2.7 million dollars, are fully funded and held in a designated, interest bearing account. In addition, for FY 2021-22 the Water Board is also requiring that the County fully fund the closure of the landfill's Class II Surface Impoundment, which will require an additional contribution of \$173,236 to the closure fund. The thirty-year post-closure cost to maintain the landfill, estimated at 16.3 million dollars, is not currently funded. The County annually submits a "Pledge of Revenue" indicating the solid waste funding stream will be adequate to cover post-closure maintenance costs.

The Franchise Agreement currently sets the surcharge for all solid waste exported from the MRF and disposed of at an approved landfill at \$2.70 per ton. The County may increase this per ton fee, but only if such increase is compensated for by an increase in El Dorado Disposal's rates. This surcharge is remitted to the County and utilized by Environmental Management to help fund the department's solid waste programs and the ongoing operation, maintenance and monitoring of the Union Mine Landfill.

In order to restore funding to the solid waste program to meet State mandates, achieve diversion goals, maintain current levels of service and begin to accumulate a fund balance in order to accommodate rising costs of service, solid waste State-mandated program implementation such as Senate Bill 1383, and ensuring adequate funding for operating, maintaining, and monitoring the Union Mine Landfill, both currently and post-closure, Environmental Management is recommending the Board approve the Amendment to the Franchise Agreement increasing the current solid waste surcharge from \$2.70 per ton to \$10.80 per ton, which will result in a 2.46% increase to residential and commercial collection rates for all jurisdictions served by El Dorado Disposal, as well as MRF gate rates. In addition, the recommended Amendment also includes a 2% annual increase to the surcharge to help account for annual inflationary costs.

Environmental Management, in conjunction with the Chief Administrative Office, will evaluate the solid waste fund balance every five years. If the fund balance exceeds the projected revenue

required to adequately fund solid waste programs, meet State-mandated requirements, and the ongoing operation, maintenance and monitoring of the Union Mine Landfill, Environmental Management will return to the Board with a Franchise Agreement amendment decreasing the solid waste surcharge as appropriate.

## **ALTERNATIVES**

The Board may choose not to approve the recommended Amendment to the Franchise Agreement in its entirety. This will result in no changes to green waste requirements, resulting in a negative impact to the County's efforts to divert green waste from the landfill, thereby negatively impacting the County's efforts to achieve the 75% landfill diversion goal. In addition, maintaining the solid waste surcharge at the existing level will result in not having adequate funding to sustain current Environmental Management solid waste program staffing, services, and programs in FY 2021-22.

The Board may also choose from the following alternative Fifth Amendments to the Franchise Agreement, accepting all recommended changes regarding green waste but selecting an alternative increase to the solid waste surcharge:

Option A - Increase the solid waste surcharge from \$2.70 to \$5.40 per ton, resulting in a 0.82% increase to all residential, commercial, and MRF gate rates, and adopt and authorize the Chair to sign the corresponding Resolution; or

Option B - Increase the solid waste surcharge from \$2.70 to \$8.10 per ton, resulting in a 1.64% increase to all residential, commercial, and MRF gate rates, and adopt and authorize the Chair to sign the corresponding Resolution.

If Option A or B are selected, Environmental Management's solid waste program, including the Union Mine Landfill, will need General Fund support in FY 2021-22 and future years to maintain adequate levels of staffing to meet State-mandated solid waste programs and landfill requirements.

Should the Board choose Option A or B, the Clerk of the Board will assign a number to the appropriate Resolution for the Chair's signature.

## **PRIOR BOARD ACTION**

El Dorado Disposal Solid Waste Service Agreement:

October 21, 2014, Item 32, Legistar 14-1047, New Agreement (Attachment F)

August 18, 2015, Item 12, Legistar 15-0905, First Amendment (Attachment G)

August 18, 2015, Item 13, Legistar 15-0632, Second Amendment (Attachment H)

December 12, 2017, Item 25, Legistar 14-1047, Third Amendment (Attachment I)

November 13, 2018, Item 21, Legistar 18-1693, Fourth Amendment (Attachment J)

## **OTHER DEPARTMENT / AGENCY INVOLVEMENT**

County Counsel has approved the proposed Resolution and Amendment (Attachment A).

## **CAO RECOMMENDATION**

Approve as recommended.

## **FINANCIAL IMPACT**

If the Board approves the recommended Fifth Amendment to the Franchise Agreement with El Dorado Disposal that includes an increase to the current surcharge of \$2.70/ton to \$10.80/ton, then

funding for Environmental Management will increase by an estimated \$750,000 annually over the current surcharge revenue. Option A and B will increase annual revenue by approximately \$250,000 and \$500,000 respectively.

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

- 1) Clerk of the Board will obtain the Chair's signature on the one (1) original copy of the Fifth Amendment Resolution **XXX-2020**, 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 Fifth 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**

Healthy Communities and Good Governance.

#### **CONTACT**

Greg Stanton, REHS, Director  
Environmental Management Department