

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
ACTION AGENDA SUMMARY

DEPT: Environmental Resources

BOARD AGENDA # \*B-3

Urgent

Routine

AGENDA DATE March 26, 2013

CEO Concurs with Recommendation YES  NO

4/5 Vote Required YES  NO

(Information Attached)

SUBJECT:

Approval to Enter into an Agreement with the City of Newman for a Reduction in the Fink Road Landfill's Tipping Fee during Periods of Diversion from the Waste-to-Energy Facility

STAFF RECOMMENDATIONS:

1. Approve an agreement with the City of Newman to reduce the Fink Road Landfill tipping fee by \$3 per ton during periods of diversion from the Waste-to-Energy Facility.
2. Authorize the Chairman of the Board of Supervisors to sign the agreement with the City of Newman.

FISCAL IMPACT:

A reduction in the landfill tipping fee, from \$33 per ton to \$30 per ton, will occur only during periods of diversion from the Waste-to-Energy Facility. The \$3 per ton loss in revenue is anticipated to be off-set by the revenue the County would receive from waste tonnage that is currently being exported out-of-county. The economies of scale in Landfill operations are such that the average additional solid waste the Landfill would receive during periods of diversion would not increase overall operational costs.

BOARD ACTION AS FOLLOWS:

No. 2013-122

On motion of Supervisor Withrow, Seconded by Supervisor Monteith

and approved by the following vote,

Ayes: Supervisors: O'Brien, Withrow, Monteith, De Martini and Chairman Chiesa

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) \_\_\_\_\_ Denied

3) \_\_\_\_\_ Approved as amended

4) \_\_\_\_\_ Other:

MOTION:



ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No. C-03-A-1

## Approval to Enter into an Agreement with the City of Newman for a Reduction in the Landfill's Tipping Fee during Periods of Diversion from the Waste-to-Energy Facility

### **DISCUSSION:**

On April 24, 2012, the Board of Supervisors approved an ordinance establishing new and amending existing fees at the Fink Road Landfill (Landfill). The fee adjustments were needed to cover higher Landfill operational costs, and provide for future ash cell development as well as assist in the funding of the Geer Road Landfill post closure expenses.

Covanta Stanislaus Inc., operator of the Waste-to-Energy Facility (WTE), periodically requests waste diversion due to maintenance and operational issues. During these periods of diversion, waste is diverted to the Landfill. However, in 2009 when the Landfill tipping fees were raised by \$3 per ton, a decline in tonnage and revenue were observed. This decline in the amount of tonnage received was due in part to the troubled economy and to competitive pricing being offered to local haulers by the privately held Forward Landfill in San Joaquin County. To help counter this decline in revenue, the Department of Environmental Resources (DER), requested and received approval at the April 24, 2012, Board meeting to reduce the Landfill tipping fee by \$3 per ton during times of waste diversion at the WTE facility. The reduced fee offers an incentive to not export waste out-of-county that would have otherwise been destined for the WTE facility.

Following this approval, DER staff developed a draft Disposal Agreement and engaged in discussions with the local cities that are part of the County's Regional Solid Waste Planning Agency. The cities which are part of the Regional Agency include: Ceres, Hughson, Newman, Oakdale, Patterson, Riverbank, Turlock, and Waterford. The Disposal Agreement would include a commitment to deliver a guaranteed amount of waste to the WTE facility annually to receive the fee reduction at the Landfill during waste diversions. The specified amount of solid waste deliveries in each agreement will be based on the historical tonnage deliveries to the WTE facility by each jurisdiction.

Another factor involved in promoting Disposal Agreements with local jurisdictions is the new Service Agreement with Covanta Stanislaus Inc., for the operation of the WTE facility which became effective July 1, 2012. One of the terms of the new Service Agreement is the requirement to deliver specified minimum monthly tonnages to the WTE facility. Failure to meet the minimum deliveries would require the County and the City of Modesto to make up the lost revenue in a payment to Covanta Stanislaus Inc.

The Department has reached a Disposal Agreement with the City of Newman. The term of the Agreement is for five years which may be extended for two additional five year terms if mutually acceptable to the parties. On February 12, 2013, the Newman City Council authorized the City Manager to enter into a Disposal Agreement with Stanislaus County. The City of Newman has submitted their executed portion of the Disposal Agreement (Attachment A).

The cities of Hughson and Waterford declined to enter into a Disposal Agreement because their current contracts with their haulers do not allow them to specify the final destination of the waste. The cities of Oakdale, Patterson, Riverbank, and Turlock were not interested at this time, however, they requested that the issue be revisited when the franchise agreements with

**Approval to Enter into an Agreement with the City of Newman for a Reduction in the Landfill's Tipping Fee during Periods of Diversion from the Waste-to-Energy Facility**

their waste haulers come up for renewal or change. A follow-up meeting was requested by the City of Ceres and is currently being scheduled. We anticipate bringing forward future agreements for the Board's consideration in the upcoming months.

**POLICY ISSUES:**

Approval of this request supports the Board's priority of Effective Partnerships, A Well-Planned Infrastructure System, and the Efficient Delivery of Public Services by working together with local jurisdictions for the benefit of all residents of Stanislaus County.

**STAFFING IMPACTS:**

There are no staffing impacts associated with this item.

**CONTACT PERSON:**

Jami Aggers, Director of Environmental Resources      Telephone: 209-525-6770



**DEPARTMENT OF ENVIRONMENTAL RESOURCES**  
3800 Cornucopia Way, Suite C,  
Modesto, Ca 95358-9492  
Phone: (209) 525-6700  
Fax: (209) 525-6774

## DISPOSAL AGREEMENT

This DISPOSAL AGREEMENT (hereinafter referred to as "Agreement") is made and entered into by and between the County of Stanislaus, (hereinafter referred to as "County") and the City of Newman (hereinafter referred to as "City"), on March 26, 2013.

### RECITALS

WHEREAS, Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of title 1 of the Government Code authorizes two or more public agencies, by a joint powers agreement entered into respectively by them and authorized by their legislative or governing bodies, to exercise jointly any power or powers common to the contracting parties; and

WHEREAS, under California Integrated Waste Management Act of 1989 (the "Act"; Pub. Resources Code § 4000 et seq.), each of the parties is authorized to and responsible for solid waste disposal and planning within their respective jurisdictions, including implementation of programs for the diversion of solid waste from disposal facilities; and

WHEREAS, Article 3 (commencing with § 40970) of Chapter 1 of Part 2 of Division 30 of the Public Resources Code authorizes the County and the cities to form a regional agency to streamline and coordinate future solid waste management and planning and to comply with the Act;

WHEREAS, the County, together with the local incorporated Cities of Hughson, Newman, Oakdale, Patterson, Riverbank, Turlock and Waterford formed the Stanislaus County Regional Solid Waste Planning Agency (hereinafter referred to as "Regional Agency") on July 9, 2002, when the Formation Agreement was approved by the California Integrated Waste Management Board.

WHEREAS, the County desires to enter into Disposal Agreements with the Regional Agency cities for long-term solid waste planning purposes and to ensure that both the Fink Road Landfill (hereinafter referred to as "Landfill") and the Covanta Stanislaus, Inc., Waste to Energy (WTE) Facility (hereinafter referred to as "WTE Facility") are operated as economically as possible; and

WHEREAS, the City's Source Reduction and Recycling Element identifies waste disposal capacity which is located in the unincorporated area of the County as its method of meeting the state's 15-year minimum disposal capacity requirement. This disposal capacity includes both the WTE Facility and Landfill;

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

### AGREEMENT

#### 1. Scope of Agreement

1.1 County and City acknowledge that it is beneficial to use all available capacity at the WTE Facility by ensuring optimum deliveries of acceptable solid waste. The WTE Facility transforms such waste in an environmentally responsible manner and is an integral part of the solid waste disposal system of the County and its cities. Economies of scale in the operation of the Landfill is such that the

additional tonnage the Landfill would receive on average would not increase overall operational costs significantly.

1.2 County shall provide City, and City's Hauler on behalf of City, the right to deposit for disposal in a lawful manner, all acceptable solid waste and nonhazardous solid waste generated within the limits of City which is collected and offered for disposal by City and/or City's waste hauler, as such may now exist and as such limits may exist at any time during the term of this contract.

1.3 The City, in cooperation with its contracted refuse haulers (hereinafter referred to as "Hauler"), agrees to transport the greater of 75 % of its total municipal solid waste disposal tonnage, or \_\_\_\_\_ tons of municipal solid waste, per each fiscal year ending June 30 , to the WTE Facility and/or the Landfill in accordance with the City's Source Reduction and Recycling Element.

## 2. Consideration

2.1 In consideration for entering into this Agreement, the Regional Agency cities, through their Haulers, will receive a discounted tipping fee of \$30 per ton, at the Landfill, as set by the Stanislaus County Board of Supervisors (hereinafter referred to as the "Board"), only on the waste that is delivered for disposal during diversions at the WTE.

2.2 The Hauler shall pay the County the standard tipping fee of \$33 per ton, at the Landfill on municipal solid waste that is not diverted from the WTE.

2.3 The Board reserves the right to change the discount and the tipping fee from time to time as needed. The County shall give City notice 45 days prior to the hearing in which the Board is considering changing the tipping fee or discount.

2.4 Diversions at the WTE Facility. There will be periods of time when the WTE Facility, due to scheduled or unscheduled maintenance, permit limits, availability of the tipping floor, or similar reasons, may not be able to accept deliveries of "Acceptable Solid Waste." The County identifies these periods as "Diversions at the WTE Facility" and will provide the City's waste hauler notice of these circumstances. During these diversion periods, the County will offer a discounted Landfill tipping fee to the City's Hauler. The current Landfill discount on the standard tipping fee, as set by the Board on July 1, 2012, is \$3 per ton. The standard tipping fee without the discount is \$33 per ton. The tipping fee with the discount is currently \$30 per ton during diversions.

2.5 County and City acknowledge that the discounted Landfill tipping fee during diversions at the WTE Facility will not be offered without the execution of this Disposal Agreement and if the annual minimum amount of municipal solid waste tonnage is not delivered to the County's WTE Facility and/or the Landfill.

## 3. Payment Terms

3.1 County shall calculate the discount, if applicable, from the Hauler's disposal-based reports and issue a payment annually to the City within 90 to 120 days after the end of each fiscal year, if a discount is warranted.

3.2 County and City acknowledge that this contract is for the mutual benefit of the County and City. County and City agree that the discount agreed upon is to be paid directly to the City.

## 4. Term

4.1 The term of this Agreement shall be from January 1, 2013, and end December 31, 2018, unless sooner terminated as provided below or unless some other method or time of termination is listed herein.

4.2 Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party, at that party's option, may terminate this Agreement by giving written notification to the other party.

4.3 If the City is unable to transport to the County's WTE Facility and/or the Landfill the minimum tons of municipal solid waste identified in Section 1.3 of this Agreement, for two consecutive fiscal years, this Agreement shall be terminated immediately.

5. Contract Extension

5.1 This contract shall be extended for two (2), five (5) year term extensions with the same terms and conditions, unless a written notice of nonrenewal is served by either party 60 days prior to the end of initial term, and if applicable, 60 days prior to the end of each successive five (5)-year extensions. Specifically, if the notice of nonrenewal is served by either party then the Agreement shall terminate on December 31, 2018.

5.2 If a notice of nonrenewal is not served by either party then the Agreement shall automatically renew for an extended five (5) year term. Subsequently, if the notice of nonrenewal is served by either party 60 days prior to the end of extended five (5)-year term, then the Agreement shall terminate on December 31, 2023.

5.3 If a notice of nonrenewal is not served by either party by 60 days prior to the end of the first extended five (5)-year term, then the Agreement shall be extended for a second and final five (5) year term, and shall terminate on December 31, 2028.

6. Miscellaneous Provisions

6.1 Amendment. This agreement may be modified, amended, changed, added to or subtracted from by the mutual consent of the parties hereto if such amendment or change is in written form and executed by the City and by the County.

6.2 Notices. All notices permitted or required by this Agreement or by law to be served on or given to either party hereto by the other party, shall be in writing and shall be effective when personally delivered to the party to whom it is directed, or in lieu of personal service, when deposited in the United States mail addressed as follows, or any other address designated by the party:

**To: County of Stanislaus:**  
Department of Environmental Resources  
3800 Cornucopia Way, Suite C  
Modesto, CA 95358  
Attn: Susan M. Garcia, C.P.M

**To: City of Newman:**  
City Manager  
Attn: Michael Holland  
P.O. Box 787  
Newman, CA 95360

6.3 Disposal Site. The parties agree that for the waste the City commits to delivering to the County in this Agreement, the County will direct the City's waste hauler to either the WTE Facility or the Landfill.

6.4 Acceptable Solid Waste. Acceptable Solid Waste, deposited for disposal by City and/or City's waste hauler on behalf of City, is defined in the State and Federal regulations and the Amended and Restated Service Agreement for the Supply and Acceptance of Solid Waste Among the County of Stanislaus, the City of Modesto; and Covanta Stanislaus, Inc. A copy of the Amended and Restated Service Agreement for the Supply and Acceptance of Solid Waste is attached to this Agreement. The definition of Acceptable Solid Waste may be redefined from time to time according to new laws and County shall then have the option at its sole discretion to either amend the Amended and Restated Service Agreement for the Supply and Acceptance of Solid Waste according to the new laws or terminate this contract.

6.5 Nonhazardous Solid Waste. "Nonhazardous Solid Waste" means, for the purpose of this Agreement, waste which may be disposed of in a Class III sanitary landfill in accordance with local, State and Federal regulations.

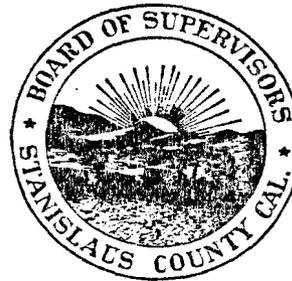
6.6 Collection and Transportation Within the City. City retains the right to regulate the collection and transportation of all solid waste originating within the boundaries of City.

IN WITNESS WHEREOF, the parties have executed this Agreement on March 26, 2013.

COUNTY OF STANISLAUS

By: Vito Chiesa  
Vito Chiesa  
Chair of the Board of Supervisors

"County"



ATTEST: Christine Ferraro Tallman  
Clerk of the Board of Supervisors or the  
County of Stanislaus, State of California

By: Christine Ferraro Tallman  
County Clerk

APPROVED AS TO CONTENT:  
Department of Environmental Resources

By: Jamii Aggers  
Jamii Aggers  
Director

APPROVED AS TO FORM:  
John P. Doering  
County Counsel

By: Alice Mimms  
Alice Mimms  
Deputy County Counsel

(City Signatures on the next page)

APPROVED AS TO FORM:

CITY OF Newman

By:   
City Attorney

By: 2/1003/00  
(Name/Title)  
City Manager  
(Department)

ATTEST:

By:   
City Clerk

"CITY"