

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

DEPT: Environmental Resources

BOARD AGENDA # *B-1

Urgent

Routine

AGENDA DATE July 21, 2015

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Enter into a Disposal Agreement Between the County and Bertolotti Transfer, Inc., for a Reduction in the Fink Road Landfill Tipping Fee for their Non-Franchised Solid Waste

STAFF RECOMMENDATIONS:

1. Approve the Disposal Agreement between the County and Bertolotti Transfer, Inc., for a reduction in the Fink Road Landfill tipping fee, retroactive to June 1, 2015, for their non-franchised solid waste.
2. Authorize the Director of Environmental Resources, or designee, to sign the Disposal Agreement with Bertolotti Transfer, Inc. reducing the Fink Road Landfill tipping fee.

FISCAL IMPACT:

A reduction in the landfill tipping fee, from \$33 per ton to \$26 per ton for Bertolotti Transfer, Inc., will mirror the first 3 years of the Regional Solid Waste Disposal Plan Memorandums of Understanding approved by the Board of Supervisors on May 12, 2015. The reduction in the tipping fee is anticipated to be off-set by the increase in waste received from tonnage that is currently being exported out-of-county.

BOARD ACTION AS FOLLOWS:

No. 2015-343

On motion of Supervisor Chiesa, Seconded by Supervisor O'Brien,
and approved by the following vote.

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

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.

Approval to Enter into a Disposal Agreement Between the County and Bertolotti Transfer, Inc., for a Reduction in the Fink Road Landfill Tipping Fee for their Non-Franchised Solid Waste

DISCUSSION:

In July 2009, the Fink Road Landfill (Landfill) tipping fees were raised by \$3 per ton to its current level of \$33 per ton. The fee adjustments were needed to cover higher Landfill operational costs, and to provide for future ash cell development as well as assist in the funding of the Geer Road Landfill post closure expenses. After the implementation of the increased fee, 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. In an attempt to counter the 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 back to \$30 per ton, for a 90 day trial period. Staff monitored deliveries to the Landfill during the trial period and determined the tipping fee reduction was not resulting in increased tonnage deliveries and was allowed to expire.

In 2013, County staff began working on a Regional Solid Waste Plan (Plan) to retain in-county waste and to guarantee adequate volumes of waste. The Plan included a waste disposal flow strategy to the waste-to-energy (WTE) facility and the Fink Road Landfill. The Contracting Communities (Stanislaus County and the City of Modesto) have a contractual obligation with Covanta, Inc., to provide 243,300 tons of waste annually to the WTE Facility. The new Plan was a regional approach to meet that contractual obligation, and to provide sufficient waste to the Fink Road Landfill to cover operations and maintenance costs. The Plan required a guaranteed percentage of each Regional Agency city's franchise waste annually, with 62% of that waste directed to the WTE facility and 38% to the Fink Road Landfill. The Plan also provides for Fink Road Landfill fixed assets and capital improvements such as cell development, heavy equipment, etc., Assembly Bill 939 program services, Household Hazardous Waste program services, and Geer Road Landfill clean-up costs. To assist in offsetting costs associated with the Plan, the Plan uses the County's share of rate stabilization funds of \$2.3 million over the 10-year agreement to reduce the WTE tipping fee.

The Plan also incentivizes the Regional Agency cities at the Fink Road Landfill because the increased volume of waste received allows the County to decrease the tipping fee, which makes the cost of disposal competitive with out-of-county disposal facilities. Staff learned from the 90 day fee reduction, that a substantial reduction needed to be made to the Landfill tipping fee in order to compete with the out-of-county disposal facilities. After meeting and conferring with the Franchise haulers, a competitive tipping fee was determined to be approximately \$26 per ton to produce the volume of tonnage needed. This tipping fee was incorporated into the recently approved 10 year Regional Solid Waste Disposal Plan MOUs and in the proposed Disposal MOU with the City of Modesto. These agreements, however, only cover solid waste under franchise agreements within the city's boundaries. In order to attain the required volume of solid waste needed to keep tipping fees competitive, non-franchise solid waste (NFSW) must also be included into a Regional Disposal Plan for the Fink Road Landfill. NFSW is waste delivered to transfer stations from the following sources; industrial haulers, businesses, and the general public. Following the approval of the Regional Plan by the Board, staff began negotiations with the three transfer station owners for their NFSW.

Approval to Enter into a Disposal Agreement Between the County and Bertolotti Transfer, Inc., for a Reduction in the Fink Road Landfill Tipping Fee for their Non-Franchised Solid Waste

The Non-Franchise Disposal Agreement (Attachment 1), with Bertolotti Transfer, Inc., is the first of three agreements to retain the NFSW produced within the County. In consideration for sending their NFSW to the Landfill, Bertolotti Transfer will receive a reduction in the tipping fee for a five year term. This Agreement in conjunction with the two other in-county transfer stations will move Fink Road Landfill back into financial sustainability. Staff is in negotiations with the remaining two local transfer stations and will bring back those agreements in separate staff reports.

POLICY ISSUES:

The recommended actions support the Board's priorities of Effective Partnerships, A Well-Planned Infrastructure System, and the Efficient Delivery of Public Services by working together with local businesses 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

ATTACHMENTS:

Disposal Agreement with Bertolotti Transfer, Inc., Pages 1-5

**SOLID WASTE DISPOSAL AGREEMENT BETWEEN STANISLAUS COUNTY AND
BERTOLOTTI TRANSFER INC.**

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 BERTOLOTTI TRANSFER STATION, INC., (hereinafter referred to as "Bertolotti Transfer").

RECITALS

Whereas, Bertolotti Transfer receives in-county solid waste not covered under the Franchise Agreements, known as Non-Franchised Solid Waste (NFSW); and

Whereas, the in-county NFSW delivered to Bertolotti Transfer is comprised of solid waste from the public (public hauls), solid waste from private haulers who are not represented under franchise agreements and industrial waste haulers; and

Whereas, Bertolotti Transfer oversees the disposal of NFSW at their transfer station; and

Whereas, the County owns and operates the Fink Road Landfill, a Class III landfill, and the County desires to enter into a contract to receive NFSW from Bertolotti Transfer under the terms and conditions set forth herein; and

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

AGREEMENT

1. Discounted Tipping Fee

1.1 County will charge Bertolotti Transfer and its contracted Haulers the discounted tipping fees shown in Schedule 1 of this Agreement for all non-hazardous NFSW generated within the County's boundaries ("Eligible Solid Waste") and delivered to the Fink Road Landfill. County may refuse to accept certain types of waste in accordance with, or to maintain compliance with, applicable laws and permits. The final determination as to whether waste is acceptable shall rest solely with County as it is responsible for the operations and permit compliance of the Landfill.

2. Billing

2.1 Bertolotti Transfer shall pay the all invoices within 30 days of the date shown on the invoice.

2.2 County will send Bertolotti Transfer a monthly invoice for all NFSW delivered to the Fink Road Landfill billed at the discount rate stated in Schedule 1.

2.3 Each quarter the County will determine the quantity of non-Eligible Solid Waste delivered to the Landfill and will send Bertolotti Transfer an invoice for the tipping fee amount owed.

2.4 In the event Bertolotti Transfer disputes the tonnage or fee represented in an invoice, Bertolotti Transfer must provide County with written notice disputing the fee or calculation within the 30 day period for payment. Bertolotti Transfer's failure to follow this administrative procedure shall constitute a waiver of any claim arising from the disputed invoice.

3. Term

3.1 The term of this Agreement shall begin June 1, 2015, and end June 30, 2020, unless sooner terminated as provided below or unless some other method or time of termination is listed herein. This Agreement shall be extended for an additional 5 year term upon the same terms and conditions set forth herein and the tipping fees in Schedule 1, unless a written notice of nonrenewal is delivered by either party 60 days prior to the end of initial term.

3.2 Bertolotti Transfer agrees to deliver annually not less than 35,000 tons of Eligible Solid Waste to Fink Road Landfill for disposal. If Bertolotti Transfer is unable to deliver this minimum amount for two consecutive fiscal years, the County at its option may terminate this agreement by delivering 30 days written notice.

3.3 Either party may terminate this Agreement by giving 60 days written notice to the other party.

4. Miscellaneous Provisions

4.1 Liability. No party or its respective officers or employees shall assume any liability for the acts, omissions, or negligence of the other party or its respective officers or employees.

4.2 Workers Compensation Insurance. Bertolotti Transfer shall maintain Workers' Compensation insurance as required by the State of California and shall provide the County with a waiver of subrogation endorsement in favor of the County, its officers, officials and employees for losses arising from the performance of or the omission to perform any term or condition of this Agreement.

4.3 Emergencies. In the event of an emergency as determined by County or to address safety or regulatory concerns, County may, upon giving reasonable notice, require disposal of waste at an alternate location to be determined by Bertolotti Transfer. Bertolotti Transfer will not be entitled to a refund or any associated costs, fees or damages arising from a temporary delay. County shall immediately attempt to remedy any incidents or situations which cause County to refuse to accept waste from Bertolotti Transfer.

4.4 Non-Discrimination. During the performance of this Agreement, Bertolotti Transfer and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any federal, state or local law, rule or regulation against any employee, applicant for employment or person receiving services under this Agreement because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition (including genetic characteristics), marital status, age, political affiliation, sex or sexual orientation. Bertolotti Transfer and its officers, employees, agents, representatives or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including without limitation the County's nondiscrimination policy; the Fair Employment and Housing Act (Government Code sections

12900 et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Regulations or the Code of Federal Regulations.

4.5 Non-Exclusive Agreement. Bertolotti Transfer acknowledges that County may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

4.6 Required Licenses, Certificates and Permits. Any licenses, certificates or permits required by the federal, state, county or municipal governments for Bertolotti Transfer to transport the waste described in this Agreement must be procured by Bertolotti Transfer and be valid at the time Bertolotti Transfer enters into this Agreement. Further, during the term of this Agreement, Bertolotti Transfer must maintain such licenses, certificates and permits in full force and effect. Licenses, certificates and permits may include but are not limited to driver's licenses and business licenses.

4.7 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 with the same formalities as this Agreement and attached to the original Agreement to maintain continuity.

4.8 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: Stephanie Musso

To: Bertolotti Transfer Inc.:
Steve Holloway
General Manager/Controller
P.O. Box 127
Ceres, CA 95307

4.9 Assignment. Neither party may assign their rights or duties under this Agreement without the written consent of the other party.

4.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

4.11 Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so, the parties hereto are formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on
July 23, 2015.

COUNTY OF STANISLAUS

By:


Jami Aggers, Director
Department of Environmental Resources

BERTOLOTTI TRANSFER INC.


By:


Steve Holloway
General Manager/Controller
Bertolotti Transfer Inc.

APPROVED AS TO FORM:

John P. Doering
County Counsel

By:


Thomas Boze
Assistant County Counsel

SCHEDULE 1 - DISPOSAL RATES (per ton):

<u>Fiscal Year</u>	<u>Fink Road Landfill</u>
2015/2016	\$26.00
2016/2017	\$26.00
2017/2018	\$26.00
2018/2019	\$27.00
2019/2020	\$27.00

SCHEDULE 1 – 5 YEAR EXTENSION (per ton)

2020/2021	\$27.00
2021/2022	\$28.00
2022/2023	\$28.00
2023/2024	\$29.00
2024/2025	\$29.00