



Staff Report August 13th, 2024

TO: Honorable Mayor and Town Council
FROM: Wes Heathcock, Town Manager
DATE: August 13, 2024
RE: Recology Franchise Agreement Amendment and Extension

Recommendation

Staff Recommends that Council:

1. Direct the Town Manager to execute an amendment and one (1) year extension to the existing Franchise Agreement with Auburn Placer Disposal Service
2. Allow the Staff and Auburn Placer Disposal Service to negotiate a new long-term Agreement.

Issue Statement

Auburn Placer Disposal Service has been providing garbage collection service to the Town of Loomis since 1978. In 2001, the Town Council approved a 13-year and 3-month franchise for the period of July 1, 2001 through September 30, 2014. The Agreement was amended in 2007 to include an additional 10-year term through September 30, 2024, and to add green waste collection services and a coupon program.

In 2016, California adopted Senate Bill 1383 which mandated local jurisdictions to implement a variety of new programs and services intended to divert organic waste materials away from landfill disposal. The primary objective of the law is to reduce the release of methane generated by decomposition of organic materials in landfills. Local government requirements in SB 1383 include residential and commercial organic waste collection and process, edible food recovery, public education and outreach, recordkeeping and reporting, and generator inspection and enforcement programs. Organic wastes targeted by SB 1383 for residential customers include yard clippings, food waste, and food soiled paper products like pizza boxes and coffee filters. The Town qualifies for a temporary low population waiver presently relieving the Town of many requirements mandated by this bill.

The Town and Contractor wish to amend the Agreement to comply with the Senate Bill 1383 Regulations effective January 1, 2022, and extend the term of the Agreement for one additional year through September 30, 2025. This one-year extension will provide the parties with sufficient time to negotiate a new long-term Agreement of 10 to 15 years.

Discussion

In November 2020, the California Department of Resources Recycling and Recovery (CalRecycle) finalized regulations under SB 1383, formalizing statewide requirements to reduce the amount of organic waste disposed in landfills. This far-reaching bill mandated many new requirements, which public agencies had to implement, document, and enforce. The Town's garbage collection provider implements components of the regulations. In addition to extending the term of the Agreement to allow sufficient time to negotiate a longer-term Agreement, this one-year extension will also incorporate key elements of SB 1383.

Additions and/or adjustments to the existing Agreement are outlined below.

- **Definitions:** Definitions were added for general administrative cleanliness and to incorporate language consistent with SB 1383.
- **Term length:** The term is amended to extend for one year, until September 30, 2025.
- **Equipment maintenance:** Language is added to require that all equipment be maintained in a condition compliant with applicable law.
- **Route Reviews:** SB 1383 requires Route Reviews be completed to assess for contamination. Jurisdictions are required to perform these Route Reviews, but the regulations allow this task to be delegated to their hauler through their Franchise Agreement. With this amendment, Auburn Placer Disposal Service will need to conduct Route Reviews annually for any location without a low population waiver.
- **Waiver verifications:** Under SB 1383, the Town may grant de minimis and/or physical space waivers to Commercial or Multi-Family Service Recipients. In this Amendment, upon Town Request, Auburn Placer Disposal Service would need to review and verify waiver applications.
- **Education and Outreach:** Starting January 1, 2025, Auburn Placer Disposal Service will need to provide education and outreach to its customers regarding organic waste prevention and separation, consistent with SB 1383 regulations.
- **Reporting:** The current Agreement only requires annual reporting. The Amendment increases the frequency to quarterly, and details new reporting requirements pertaining to the new Route Review and Education and Outreach elements of the Amendment. These are consistent with the recordkeeping requirements of SB 1383 regulations.
- **Annual Clean Up:** The current Agreement requires a once annual Clean Up event. The Amendment increases the frequency to twice annually and adds detail regarding the type of material to be collected, the manner in which the material will be collected (debris boxes) and the noticing requirement of the Contractor. This is consistent with current practice and added to memorialize services that are already being provided.

If approved by this Council, during the term of the one-year extension the parties will meet to negotiate a new longer-term Agreement, anticipated to be 10 to 15 years in length. As part of the longer-term Agreement, the parties intend to incorporate the following elements:

- Ongoing needs relative to SB 1383, especially considering the Town's low population waiver is set to expire in August 2027.
- State mandates regarding zero-emission waste collection fleets.

- Consider alternatives to current mixed waste processing and the facility the material is sent to for processing.

CEQA Requirements

Under CEQA Guidelines Section 15301 there are no CEQA implications associated with the extension of this Franchise Agreement.

Financial and/or Policy Implications

The approval of the proposed Amendment will allow the Town to be in continued compliance with SB 1383. During the term of the one-year extension a standard rate increase will likely take place. Collection fees for garbage service are paid directly to Recology by their customers. As a result, the proposed rate increase has no direct impact on the Town's General Fund.

Attachments

- A. Town of Loomis Resolution 24-XX
- B. Second Amendment to Agreement

On File with the Town Clerk:

- A. Recology Franchise Agreement – July 1, 2001
- B. First Amendment to Agreement – June 12, 2007

TOWN OF LOOMIS

RESOLUTION 24-___

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOOMIS APPROVING AN AMENDMENT AND ONE (1) YEAR EXTENSION TO THE EXISTING FRANCHISE AGREEMENT WITH AUBURN PLACER DISPOSAL SERVICE (RECOLOGY)

WHEREAS, the Town of Loomis has a long-standing contractual relationship with Auburn Placer Disposal Service (Recology) for waste hauling and street sweeping services which has benefited both organizations; and

WHEREAS, the Town of Loomis entered into a 10-year contract extension with Recology Auburn Placer Disposal Service (Recology) in 2007 that will expire September 2024; and

WHEREAS, it is in the Town of Loomis best interest to enter into a one-year contract extension with Recology Auburn Placer Disposal Service (Recology) to allow time to negotiate a long-term agreement; and

WHEREAS, staff has negotiated contract terms that meets the needs of the Town of Loomis during the one-year contract extension;

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Council of the Town of Loomis approves an amendment and one (1) year extension to the existing franchise agreement with Auburn Placer Disposal Service (Recology).

PASSED AND ADOPTED this 13th day of August, 2024 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Mayor

ATTEST:

APPROVED AS TO FORM:

Town Clerk

SECOND AMENDMENT TO AGREEMENT

This Second Amendment to the Agreement entitled "Refuse Franchise Agreement" (the "Agreement") is made and entered into August 13, 2024, by and between the Town of Loomis (Town) and Auburn Placer Disposal Service (Contractor). Town and Contractor shall be referred to herein individually as a "Party" and collectively the "Parties". There are no other parties to this Agreement.

WHEREAS, Town and Contractor have entered into that certain Agreement effective July 1, 2001 whereby Contractor began providing collection, transportation, recycling and disposal of garbage, rubbish, refuse and recyclable material; and

WHEREAS, the Town Council approved a 13-year and 3 month franchise for the period of July 1, 2001 through September 30, 2014; and

WHEREAS, Town and Contractor amended the Agreement on June 12, 2007, by First Amendment to include an additional 10 year term through September 30, 2024, and to add green waste collection services and a coupon program; and

WHEREAS, in September 2016 State Senate Bill 1383 (SB 1383) was signed into law establishing methane emissions reduction targets representing the next step in California's environmental protection strategy; and

WHEREAS, SB1383 sets forth organics and recycling compliance mandates and requires jurisdictions to adopt municipal ordinances which are designed to progressively achieve California's goal of 75% recycling, composting or source reduction of solid waste by 2025; and

WHEREAS, the Town and Contractor wish to amend the Agreement to comply with the Senate Bill 1383 Regulations effective January 1, 2022, and extend the term of the agreement for one additional year through September 30, 2025 to allow the parties time to negotiate a new long term agreement.

NOW, THEREFORE, in consideration of the promises and covenants set forth below, the Parties agree as follows:

1. Incorporation of Recitals

The recitals set forth above are incorporated herein by this reference and made a part of this Amendment. In the event of any inconsistencies between the recitals and section 1 through 14 of this Amendment, sections 1 through 14 will prevail.

2. Effect of Original Agreement

Except as otherwise provided herein, all provisions, defined terms, and obligations in the Franchise Agreement remain in full force and effect. The Parties agree that they continue to be bound by all terms of the Agreement except as modified by this Amendment. All capitalized terms used in Amendment, which are not otherwise defined in this Amendment, shall have the meanings given to such terms in the Agreement.

3. Effective Date

This Second Amendment shall become effective on September 30, 2024.

4. Definitions

The Agreement is hereby amended to add or replace, as applicable, the following definitions:

- a) "Agreement Administrator" means the Town Manager or such designee.
- b) "Applicable Law" means all laws, regulations, rules, orders, judgments, decrees, permits, approvals, or other requirement of any federal, state or local governmental agency or governmental entity.
- c) "Exempt Waste" means hazardous substance, hazardous waste, infectious waste, designated waste (as defined in California Water Code Section 13173), volatile, corrosive, medical waste, infectious, regulated radioactive waste, and toxic substances or material that Contractor's reasonably believe(s) would, as a result of or upon acceptance, transfer, processing, or disposal, be a violation of local, State, or Federal law, regulation, or ordinance, including: land use restrictions or conditions, waste that cannot be disposed of in Class III landfills or accepted at the facility by permit conditions, waste that in the City's, or Contractor's reasonable opinion would present a risk to human health or the environment, cause a nuisance or otherwise create or expose City, or Contractor, to potential liability. Excluded Waste does not include used motor oil and filters, household batteries, universal wastes, electronic waste, and/or latex paint when such materials are defined as allowable materials for collection through the City's collection programs and the generator or customer has properly placed the materials for collection pursuant to instructions provided by City or its Designee for collection services.
- d) "Hauler Route" means the designated weekly itinerary or sequence of stops scheduled to be performed by one collection vehicle providing regularly scheduled collection services for Solid Waste within the Service Area.
- e) "Organic Waste" means Solid Waste containing material originated from living organisms and their metabolic waste products, including food waste, green waste, wood waste, and food soiled paper waste.
- f) "Prohibited Container Contaminants" means (a) Any material other than Organic Waste placed in the Organic Waste container, (b) any material other than Recyclables placed in the recycling container (if any), and (c) Exempt Waste included in any Container.
- g) "Recyclables" means those materials that are separated from Solid Waste prior to disposal to be recycled consistent with the requirements of the Act of 1989 (sometimes referred to as AB 939).
- h) "Route Review" means a visual inspection of Containers along a Hauler Route for the purpose of identifying Prohibited Container Contaminants.
- i) "SB 1383" means State of California Senate Bill 1383 Short-lived Climate Pollutants: Organic Waste Reductions, approved September 19, 2016, and the regulations implementing the law, Title 14, Code of California Regulations (CCR), Chapter 12.
- j) "Service Area" means everywhere within the physical boundaries of the Town unless expressly excluded by the Town in writing.
- k) "Service Recipient" means The owner, occupant, or user of premises at which Solid Waste is generated and then collected by Contractor.
- l) "Source Separate" means the process of removing Recyclables and Organic Waste from Solid Waste at the place of generation, prior to Collection, and placing such materials into separate Containers designated for Recyclables and Organic Waste, or as otherwise defined in 14 CCR Section 17402.5(b)(4).

5. Term

The Agreement is hereby amended to replace Section 1 with the following in order to extend the term of the Agreement by one (1) year:

“Town does hereby give and grant to Contractor the exclusive right and franchise to collect, transport and dispose of or process as applicable garbage, rubbish, refuse, organic waste, and recyclable material in and for the Town for the period commencing July 1, 2001, and terminating September 30, 2025.”

6. Orderly Collections

Section 10 is hereby amended to read:

(a) **Equipment.** Contractor shall maintain all equipment operated by it within the Town in a clean, neat and attractive condition, compliant with applicable law, and in good repair. Contractor shall use every reasonable effort not to litter premises in the process of making collections nor to allow refuse to blow or fall from any vehicle used for collections. Collections shall be made without damage to public or private property.

(b) **Route Reviews.**

Implementation. Contractor shall conduct a Route Review for each Hauler Route of Source Separated Organic Waste and Recyclables (if any) at least once annually. For each Route Review of a Hauler Route, Contractor shall inspect a number of Containers equal to 2% of the number of Service Recipients on the Hauler Route (rounded down to the nearest whole number), or 25 Containers, whichever is less.

Inspections. Each inspection shall involve observing the contents of the Container using any method deemed appropriate by Contractor, but shall not require Contractor to disturb the contents or open any bags. Contractor may select the Containers to be inspected at random, or (if mutually agreed with Town) by any other method not prohibited under the SB 1383 Regulations. For the avoidance of doubt, Contractor shall not be required to annually inspect every Container on a Hauler Route.

Notices. If Contractor finds Prohibited Container Contaminants in a Container during a Route Review, Contractor shall notify the Service Recipient of the violation in writing. The written notice shall include information regarding the Service Recipient’s requirement to properly separate materials into the appropriate Containers. The notice may be left on the Service Recipient’s Container, gate, or door at the time the violation is discovered, and/or be mailed, e-mailed, electronically messaged or delivered personally to the Service Recipient. Contractor may dispose of the contents of any Container found to contain Prohibited Container Contaminants.

Waivers. Hauler Routes located in areas where the Town has received an approved low population waiver from CalRecycle are not subject to Route Reviews, and may be excluded from these requirements.

- (c) **Waiver Verification.** Town may grant de minimis and/or physical space waivers to Commercial or Multi-Family Service Recipients (not Single-Family Service Recipients) that exempt the Service Recipient from the requirement to subscribe for Organic Waste collection service at one or more of the Service Recipient's service addresses ("waivers"). If a Service Recipient has more than one service address, Town shall require the Service Recipient to submit a separate waiver application for each service address.

Upon Town request, Contractor shall review the Commercial or Multi-Family Service Recipient's waiver application, verify the accuracy of factual matters stated in the application that are readily verifiable from Contractor's computer systems (e.g. service levels), inspect the applicable service address to assess the matters specified below, and provide Town with documentation of the inspection. In lieu of visiting the service address, inspections may be conducted via video or using photographs.

In its inspections, Contractor shall only be required to assess the following matters, unless otherwise mutually agreed by Contractor and Town: (i) For physical space waiver applications, whether the Container storage area(s) at the service address are in Contractor's opinion sufficient to add an Organic Waste container (whichever one(s) the Service Recipient is seeking a physical space waiver for). "Container storage area" means a contiguous area designated by the Service Recipient for storage of Refuse and/or Organic Waste Containers. (ii) For de minimis waiver applications, the estimated weekly volume of Organic Waste generated by the Service Recipient and discarded in the Solid Waste Containers at the service address. The estimate shall be based on a single visual inspection of the contents of Container(s) at the service address. Each inspection shall involve observing the contents of the Container(s) (whether by lifting the lid, using a camera, or other method deemed appropriate by Contractor), but shall not require Contractor to disturb the contents or open any bags.

Town will be responsible for approving or denying the waiver applications following receipt of Contractor's documentation. When Town grants, denies, extends or terminates a waiver, Town shall within ten (10) Business Days provide the following information to the Service Recipient and Contractor in writing: (i) the specific Service Recipient and service address to which the waiver applies, (ii) whether the waiver was granted/denied or extended/terminated, and (iii) any changes to service level or Collection service requirements required or permitted to be made by the Service Recipient. At Contractor's request, Town shall provide Contractor an updated listing of waivers approved by Town, including each Service Recipient's names, mailing address, service address, date waiver was granted/denied/extended, and type of waiver. Following receipt of notification that a Service Recipient has been granted a waiver, Contractor shall remove all Containers associated with the waived service.

- (d) **Education & Outreach.** At least once annually, beginning January 1, 2025, Contractor shall provide the following to all its Organic Waste Service Recipients under this Agreement:
- a. Information on the Organic Waste Service Recipient's requirements to properly separate materials in appropriate containers.
 - b. Information on methods for: the prevention of Organic Waste generation, recycling Organic Waste on-site, sending Organic Waste to community composting, and any other local requirements regarding Organic Waste.

- c. Information regarding the methane reduction benefits of reducing the landfill disposal of Organic Waste, and the methods of Organic Waste recovery contemplated by this Agreement.
- d. Information regarding how to recover Organic Waste.
- e. Information related to the public health and safety and environmental impacts associated with the landfill disposal of Organic Waste.

The above information will be provided, at a minimum, through print and/or electronic media, and may also be provided through workshops, meetings and/or on-site visits.

7. Reporting

Section 21 is hereby amended to read:

- (a) **Quarterly Reporting Requirements.** Beginning July 1, 2024, Contractor shall provide the following information to Town in quarterly reports under this Agreement. The reporting format shall be agreed upon by both Parties.
 - a. Not less than once per quarter, Contractor shall report to the Town the quantity of waste landfilled and the quantity diverted from the landfill by Contractor through Organic Waste and Recycling programs.
 - b. For information provided by Contractor pursuant to Section 6(c) above:
 - i. Copies of all such information (including flyers, brochures, newsletters, invoice messaging, website and social media postings, mass emails, and other mass electronic messages).
 - ii. The date the information was disseminated or the direct contact made. For website and social media postings, this shall be the date posted.
 - iii. To whom the information was disseminated or the direct contact made. For mass distributions such as mailings or bill inserts, Contractor may provide the type and number of accounts receiving the information, rather than listing each recipient individually.
 - iv. Notwithstanding any other provision, Contractor shall not be required to track or provide copies of emails, texts, or other electronic communications with individual Service Recipients (e.g. if a CSR answers a Service Recipient's question).
 - c. For Route Reviews:
 - i. The date the review was conducted.
 - ii. The name and title of each person conducting the review.
 - iii. A description of each Hauler Route reviewed, including Contractor's route number.
 - iv. A list of the account names and addresses where Container inspections were performed.
 - v. The results of such review (i.e. the addresses where any Prohibited Container Contaminants were found).
 - vi. Copies of any educational materials issued pursuant to such reviews (other than notices of Prohibited Container Contaminants, which are covered below).
 - d. The following documentation relating to Prohibited Container Contaminants observed during Route Reviews:
 - i. Copies of the form of each notice issued by Contractor to Service Recipients for Prohibited Container Contaminants, as well as, for each such form, a list of the Service Recipients to which such notice was issued, the date of issuance, the Service Recipient's name and service address, and the reason for issuance (if the form is used for multiple reasons).

- ii. The number of times notices were issued to Service Recipients for Prohibited Container Contaminants.
 - iii. The number of Containers where the contents were disposed due to observation of Prohibited Container Contaminants.
 - e. A description of Contractor's process for determining the level of Container contamination under this Agreement.
 - f. The Contractor shall furnish the Town any additional reports as may reasonably be required, such reports to be prepared in a reasonable time following the reporting period.
- (b) **Annual Financial Reporting Requirements.** Contractor will report annually, within one hundred twenty (120) days after the close of its accounting year, as to its activities during the preceding year. The rate structure set forth in Exhibit "A" shall be reviewed annually for the purposes of increase or decrease in said structure, as may be warranted in the circumstances. Said report shall include a report specific to Town of Loomis Service Recipients.

8. Annual Clean Up

Section 23 is hereby amended to read:

Twice annually, once in the spring and once in the fall of each year, Contractor shall furnish at no cost to Town, and at no cost to Town residents, a clean-up garbage and rubbish service, whereby Contractor agrees to provide an opportunity for all residents of the Town for them to dump and dispose of all trash, refuse and rubbish in debris boxes provided by Contractor at a location to be mutually agreed upon between Town and Contractor. Proof of residency may be required by Contractor and/or Town as a precondition to dispose of material in the debris boxes. Contractor agrees to provide 30-day advance notice to Town residents as to the time and dates that said service shall be available, in the quarterly billing made to Contractor's customers in Town.

9. Integrated Agreement

The Agreement contains all of the agreements of the Parties and all previous understandings, negotiations, and agreements are integrated into the Agreement.

10. Severability

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Amendment are declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Amendment, which are hereby declared as severable and shall be interpreted to carry out the intent of the Parties herein.

11. Counterparts

This Amendment may be executed simultaneously and, in several counterparts, each of which shall be deemed an original, but which together shall be deemed one and the same instrument.

12. Authority

All Parties to this Amendment warrant and represent that they have the power and authority to enter into this Amendment and the names, titles, and capacities herein stated on behalf of any entities, persons, states, or firms represented or purported to be represented by such entities, persons, states, or firms and that all former requirements necessary or required by the state or federal law in order to enter into this Amendment have been fully complied with.

13. Document Preparation

This Amendment will not be construed against the Party preparing it, but will be construed as if prepared by all Parties.

14. Advice of Legal Counsel

Each Party acknowledges that it has reviewed this Amendment with its own legal counsel and based upon the advice of that counsel, freely entered into this Amendment.

15. Attorney's Fees and Costs

If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret provisions of this Amendment, the prevailing Party shall be entitled to reasonable attorney's fees and costs, which may be set by the court in the same action, or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

[Signature page follows]

IN WITNESS WHEREOF, this Amendment has been entered into by and between Town and Contractor as of the Effective Date.

CONTRACTOR

Auburn Placer Disposal Service

By: _____
Salvatore M. Coniglio, Chief Executive Officer

Date Signed: _____

TOWN OF LOOMIS

Town of Loomis, a California
municipal corporation

By: _____
Wes Heathcock, Town Manager

Date Signed: _____

Approved as to Form:

By: _____
Jeff Mitchell, Town Attorney

Dated: _____