



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: June 29, 2011 REPORT NO. 11-099
ATTENTION: Natural Resources and Culture Committee
SUBJECT: Non-Exclusive Solid Waste Collection Franchise Amendments
REFERENCE: Report to Natural Resources and Culture Committee No. 09-039

REQUESTED ACTION:

Adopt an ordinance authorizing execution of the Fourth Amendment to the Class I Non-Exclusive Franchise Agreements for Solid Waste Management Services and the Third Amendment to the Class II Non-Exclusive Franchise Agreements for Solid Waste Management Services, effective July 1, 2011 for existing Class I and II franchisees. The existing Class I and Class II franchisees are listed in Exhibit "A" attached hereto. The forms of the proposed amendments are attached hereto as Exhibits "B" and "C" respectively.

STAFF RECOMMENDATIONS:

Approve the ordinance authorizing execution of the proposed franchise amendments. The proposed amendments include (1) a one (1) year extension of the Class I and Class II Non-Exclusive Franchise Agreements for Solid Waste Management Services to retain a seven (7) year term for existing Class I and II franchisees effective July 1, 2011 through June 30, 2018; (2) adjustment to collection start times; and (3) clarification that franchise audits will be performed by the City Treasurer.

SUMMARY:

In accordance with San Diego City Charter Article VII, Section 103 (Franchises), the Council has power to grant to any person, firm or corporation, franchises, and all renewals, extensions and amendments thereof, for the use of any public property under the jurisdiction of the City. Such grants shall be made by ordinance adopted by a vote of two-thirds (2/3) of the members of the Council and only after recommendations by the Mayor. The proposed amendments address the one-year extension to the term of the franchises, adjusted collection start times, and audit provisions.

BACKGROUND

In October 1996, a Non-Exclusive Solid Waste Collection Franchise system was established to regulate the collection, transfer, transportation, recycling, processing, and disposal of solid waste originating in the City of San Diego by private solid waste collection firms. This system replaced a licensing system where haulers paid a license

fee of \$100 per company plus \$100 per collection vehicle. The 17 solid waste haulers licensed by the City, at the time the franchise system was established, were each granted a Non-Exclusive Solid Waste Collection Franchise. The franchise system's fees are based on the amount of solid waste collected in the City of San Diego, regardless of the final disposal site, rather than on the quantity of waste disposed of in the Miramar Landfill. This methodology reflects the value of the solid waste collection franchises. In September 2000, a two-tier Non-Exclusive Solid Waste Collection Franchise system was established to reflect the difference in market share served by the franchised haulers. Three franchisees, EDCO Disposal Corporation, Republic Services, Waste Management, and their affiliates, collect approximately 84% of the City's commercial waste and the remaining franchisees collect about 16%. Under the two-tier system, Class I franchises are for smaller companies that collect up to 75,000 tons of waste per year. Class II franchises are for companies that collect more than 75,000 tons of waste per year with no upper limit. Currently, there are 12 companies with franchise agreements for providing solid waste collection services (9 Class I Franchisees and 3 Class II Franchisees).

DISCUSSION

Term of Agreement

Since the passage of the People's Ordinance in April 1919, the City has provided or managed the collection, transportation, transfer, recycling and/or disposal of solid waste generated in the City of San Diego to protect and enhance the health, safety, and quality of life of San Diego's residents. The franchise system is one component of the City's overall solid waste management system. The franchise agreements currently provide for a seven-year term with options to extend for an additional year, on an annual basis, upon approval by Council. As stated in the franchise agreements, extensions are contingent upon, among other things, the Franchisee having satisfied all performance requirements of the Agreement and all amendments thereto including, but not limited to, having provided the City with all required documents and having brought all franchise fee accounts and other accounts with the City current. ESD proposes that all franchise agreements be extended by one year in accordance with the terms of the current franchise agreements as amended.

Collection Start Time Adjustment

On May 12, 2010 the City Council approved an ordinance to amend San Diego Municipal Code 59.5.0406 Refuse Vehicles and Parking Lot Sweepers, to permit refuse and recycling vehicles to operate in residential areas starting at 6:00 a.m. Currently, the franchise agreements, section 5.5 (b) Collection Standards, prohibit collection operations prior to 7:00 a.m. This amendment would align the franchisee's collection start time with City forces' start time of 6:30 a.m.

Audit Provision

This provision is being revised in this amendment to provide that audits under the franchises will be performed by the City Treasurer, in accordance with current roles and practices.

FISCAL CONSIDERATIONS

There are no fiscal impacts associated with this action.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

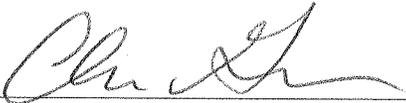
Ordinance to adopt last franchise amendments occurred in July 2010.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

ESD has met with the franchised haulers to discuss the proposal for one (1) year extension of the franchise agreements to be effective July 1, 2011 to retain a seven (7) year term, as well as collection start time adjustments. Proposed amendments to franchise agreements will be distributed to all Franchisees and applicable stakeholders.

KEY STAKEHOLDERS & PROJECTED IMPACTS:

The key stakeholders associated with this item include the City's Non-Exclusive Franchised Solid Waste Haulers, the San Diego County Disposal Association, and the City residents and businesses serviced by the franchised haulers.



Chris Gonaver
Environmental Services Director



Jay M. Goldstone
Chief Operating Officer

GONAVER/SM

Exhibit A: City of San Diego Non-Exclusive Solid Collection Waste Franchisees

Exhibit B: Fourth Amendment to Class I Non-Exclusive Franchise Agreement

Exhibit C: Third Amendment to Class II Non-Exclusive Franchise Agreement

CITY OF SAN DIEGO
NON-EXCLUSIVE SOLID WASTE COLLECTION FRANCHISEES

CLASS I FRANCHISEES

Allan Company
Daily Disposal Services, Inc.
Debris Box
Dependable Disposal & Recycling
Diamond Solid Waste Services LLC
Express Waste & Recycling
John Smith Earthworks, Inc.
Tayman Industries
Ware Disposal Co., Inc.

CLASS II FRANCHISEES

EDCO Disposal Corporation (4)

- EDCO Disposal Corporation
- EDCO Waste & Recycling Services, Inc
- Sani-Tainer, Inc.
- Webco Sanitation

Republic Services (Allied) (1)
Waste Management of San Diego (7)

- BDC Special Waste Services
- Coast Waste Management, Inc.
- Moor Refuse, Inc.
- Reliable Waste
- USA Waste of California, Inc.
- Waste Management of San Diego
- Emerald Waste & Recovery, Inc.

**CITY OF SAN DIEGO
ENVIRONMENTAL SERVICES DEPARTMENT**

**FOURTH AMENDMENT TO
CLASS I NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR SOLID WASTE MANAGEMENT SERVICES**

This FOURTH AMENDMENT TO THE CLASS I NON-EXCLUSIVE FRANCHISE AGREEMENT FOR SOLID WASTE MANAGEMENT SERVICES [Fourth Amendment] is entered into by and between the City of San Diego [City] and _____ [Franchisee] and is effective the 1st day of July 2011.

RECITALS

WHEREAS, on September 18, 2000, the City and Franchisee entered into the Class I Non-Exclusive Franchise Agreement For Solid Waste Management Services [Agreement], which is on file in the Office of the City Clerk as Document No. OO-18849; and

WHEREAS, the Agreement provided for an initial term through and including February 28, 2007 and provided for one-year extensions to the Agreement beginning two years after the effective date of the Agreement upon approval of the City Council by ordinance; and

WHEREAS, a First Amendment to the Agreement was executed pursuant to Ordinance No. OO-19180, duly adopted by the San Diego City Council on May 20, 2003; and

WHEREAS, among other things, the First Amendment modified the term of the Agreement to ten years beginning July 1, 2003 through and including June 30, 2013 and provided for five-year extensions to the Agreement beginning five years after the effective date of the Agreement and every five years thereafter, all subject to approval of the City Council by ordinance; and

WHEREAS, the City and the Franchisees renegotiated the term of the Agreement, as well as other terms and conditions therein, in order to accommodate the needs of the parties; and

WHEREAS, among other things, a Second Amendment modified the term of the Agreement to seven (7) years beginning July 1, 2009 through and including June 30, 2016 and provided for annual one (1) year extensions to the Agreement; and

WHEREAS, a subsequent amendment was entered into which, among other things, extended the term of the Agreement; and

WHEREAS, Franchisee is in compliance with the requirements of the Agreement as amended and the parties desire to further extend the term of the Agreement; and

WHEREAS, the execution and delivery of this Fourth Amendment to the Agreement by the Franchisee was duly authorized by Resolution of its Board of Directors on _____, 2011:

NOW THEREFORE, the City and the Franchisee, in consideration of the premises above stated and the terms, conditions, covenants, and agreements contained herein, do hereby agree to amend the Agreement as follows:

Section 3.2 – Effective Date of Agreement and Term of Franchise:

From: The effective date of this Agreement shall be July 1, 2010 [**Effective Date**]. The term of this Franchise granted to Franchisee shall be for seven (7) years beginning with the Effective Date of July 1, 2010, through June 30, 2017, inclusive. The term of this Agreement shall coincide with the term of the Franchise granted to Franchisee. Any separate agreements between Franchisee and its customers shall automatically terminate upon the termination of this Agreement

To: The effective date of this Agreement shall be July 1, 2011 [**Effective Date**]. The term of this Franchise granted to Franchisee shall be for seven (7) years beginning with the Effective Date of July 1, 2011, through June 30, 2018, inclusive. The term of this Agreement shall coincide with the term of the Franchise granted to Franchisee. Any separate agreements between Franchisee and its customers shall automatically terminate upon the termination of this Agreement.

Section 5.5 (B) – Collection Standards:

From: *Noise*. All solid waste collection operations shall be conducted as quietly as possible and shall conform to applicable Federal, State, County and City noise level regulations. Solid waste collection operations shall not be conducted in or adjacent to residential areas prior to 7:00 AM or after 7:00 PM.

To: *Noise*. All Solid Waste collection operations shall be conducted as quietly as possible and shall conform to applicable Federal, State, County and City noise level regulations. Solid Waste collection operations shall not be conducted in or adjacent to residential areas prior to 6:30 AM or after 7:00 PM. Solid waste collection operations may be conducted in commercial and industrial areas during hours permitted by the San Diego Municipal Code or in mixed use areas during times authorized in a variance granted by the City's Noise Administrator.

Section 7.2 Audit and Inspection by City:

From: At a mutually agreed upon time during normal business hours, but within five (5) working days of the initial request, Franchisee shall make available to the City for examination at reasonable locations within the City/County of San Diego only the Franchisee's data and records with respect to the matters covered by this Agreement. Franchisee will permit the City Auditor to audit, examine, and make excerpts or transcripts from such data and records, and make audits of all data relating to all matters covered by this Agreement. Franchisee shall maintain such data and records in an accessible location and condition for a period of not less than three years following the City's receipt of final payment under this Agreement unless the City agrees in writing to an earlier disposition.

In the event a City audit discloses that the Franchise Fee for the audited period(s) has been underpaid in excess of five percent (5%) of the total required fee, then Franchisee shall pay the City the cost of the audit. Failure to permit the City Auditor with access to the records required to conduct audits under this agreement are a breach subject to revocation of this franchise.

To: At a mutually agreed upon time during normal business hours, but within five (5) working days of the initial request, Franchisee shall make available to the City for examination at reasonable locations within the City/County of San Diego only the Franchisee's data and records with respect to the matters covered by this Agreement. Franchisee will permit the City Treasurer to audit, examine, and make excerpts or transcripts from such data and records, and make audits of all data relating to all matters covered by this Agreement. Franchisee shall maintain such data and records in an accessible location and condition for a period of not less than three years following the City's receipt of final payment under this Agreement unless the City agrees in writing to an earlier disposition.

In the event a City audit discloses that the Franchise Fee for the audited period(s) has been underpaid in excess of five percent (5%) of the total required fee, then Franchisee shall pay the City the cost of the audit. Failure to provide the City Treasurer with access to the records required to conduct audits under this Agreement are a breach of this Agreement subject to revocation of this Franchisee.

This Fourth Amendment to the Agreement shall affect only the terms and/or conditions referred to herein. All other terms and conditions of the Agreement as amended shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Fourth Amendment to be executed by their duly authorized officers or representatives.

CITY OF SAN DIEGO

FRANCHISEE

By: _____
Jay M. Goldstone
Chief Operating Officer
CITY OF SAN DIEGO

By: _____
Name: _____
Title: _____

Date: _____

Date: _____

I HEREBY APPROVE the form and legality of the foregoing Fourth Amendment to the Agreement this ___ day of ___ 2011.

JAN GOLDSMITH, City Attorney

By: _____
Grace C. Lowenberg
Deputy City Attorney

**CITY OF SAN DIEGO
ENVIRONMENTAL SERVICES DEPARTMENT**

**THIRD AMENDMENT TO
CLASS II NON-EXCLUSIVE FRANCHISE AGREEMENT
FOR SOLID WASTE MANAGEMENT SERVICES**

This THIRD AMENDMENT TO THE CLASS II NON-EXCLUSIVE FRANCHISE AGREEMENT FOR SOLID WASTE MANAGEMENT SERVICES [Third Amendment] is entered into by and between the City of San Diego [City] and _____ [Franchisee] and is effective the 1st day of July 2011.

RECITALS

WHEREAS, effective July 1, 2003, the City and Franchisee entered into the Class II Non-Exclusive Franchise Agreement For Solid Waste Management Services [Agreement], which is on file in the Office of the City Clerk as Document No. OO-19180; and

WHEREAS, the Agreement provided for a initial ten-year term, through and including June 30, 2013, and provided for five-year extensions to the Agreement beginning five years after the effective date of the Agreement and every five years thereafter all subject to approval of the City Council by ordinance; and

WHEREAS, the City and the Franchisees renegotiated the term of the Agreement, as well as other terms and conditions therein, in order to accommodate the needs of the parties; and

WHEREAS, among other things, a First Amendment modified the term of the Agreement to seven (7) years beginning July 1, 2009 through and including June 30, 2016 and provided for annual one (1) year extensions to the Agreement; and

WHEREAS, a subsequent amendment was entered into which, among other things, extended the term of the Agreement; and

WHEREAS, Franchisee is in compliance with the requirements of the Agreement as amended and the parties desire to further extend the term of the Agreement; and

WHEREAS, the execution and delivery of this Third Amendment to the Agreement by the Franchisee was duly authorized by Resolution of its Board of Directors on _____, 2011:

NOW THEREFORE, the City and the Franchisee, in consideration of the premises above stated and the terms, conditions, covenants, and agreements contained herein, do hereby agree to amend the Agreement as follows:

Section 3.2 – Effective Date of Agreement and Term of Franchise:

From: The effective date of this Agreement shall be July 1, 2010 [**Effective Date**]. The term of this Franchise granted to Franchisee shall be for seven (7) years beginning with the Effective Date of July 1, 2010, through June 30, 2017, inclusive. The term of this Agreement shall coincide with the term of the Franchise granted to Franchisee. Any separate agreements between Franchisee and its customers shall automatically terminate upon the termination of this Agreement.

To: The effective date of this Agreement shall be July 1, 2011 [**Effective Date**]. The term of this Franchise granted to Franchisee shall be for seven (7) years beginning with the Effective Date of July 1, 2011, through June 30, 2018, inclusive. The term of this Agreement shall coincide with the term of the Franchise granted to Franchisee. Any separate agreements between Franchisee and its customers shall automatically terminate upon the termination of this Agreement.

Section 5.5 (B) – Collection Standards:

From: *Noise*. All solid waste collection operations shall be conducted as quietly as possible and shall conform to applicable Federal, State, County and City noise level regulations. Solid Waste collection operations shall not be conducted in or adjacent to residential areas prior to 7:00 AM or after 7:00 PM. Solid waste collection operations may be conducted in commercial and industrial areas during hours permitted by the San Diego Municipal Code or in mixed use areas during times authorized in a variance granted by the City's Noise Administrator.

To: *Noise*. All Solid Waste collection operations shall be conducted as quietly as possible and shall conform to applicable Federal, State, County and City noise level regulations. Solid Waste collection operations shall not be conducted in or adjacent to residential areas prior to 6:30 AM or after 7:00 PM. Solid waste collection operations may be conducted in commercial and industrial areas during hours permitted by the San Diego Municipal Code or in mixed use areas during times authorized in a variance granted by the City's Noise Administrator.

Section 7.2 Audit and Inspection by City:

From: At a mutually agreed upon time during normal business hours, but within five (5) working days of the initial request, Franchisee shall make available to the City for examination at reasonable locations within the City/County of San Diego only the Franchisee's data and records with respect to the matters covered by this Agreement. Franchisee will permit the City Auditor to audit, examine, and make excerpts or transcripts from such data and records, and make audits of all data relating to all matters covered by this Agreement. Franchisee shall maintain such data and records in an accessible location and condition for a period of not less

than three years following the City's receipt of final payment under this Agreement unless the City agrees in writing to an earlier disposition. In the event a City audit discloses that the Franchise Fee for the audited period(s) has been underpaid in excess of five percent (5%) of the total required fee, then Franchisee shall pay the City the cost of the audit. Failure to permit the City Auditor with access to the records required to conduct audits under this agreement are a breach subject to revocation of this franchise.

To: At a mutually agreed upon time during normal business hours, but within five (5) working days of the initial request, Franchisee shall make available to the City for examination at reasonable locations within the City/County of San Diego only the Franchisee's data and records with respect to the matters covered by this Agreement. Franchisee will permit the City Treasurer to audit, examine, and make excerpts or transcripts from such data and records, and make audits of all data relating to all matters covered by this Agreement. Franchisee shall maintain such data and records in an accessible location and condition for a period of not less than three years following the City's receipt of final payment under this Agreement unless the City agrees in writing to an earlier disposition.

In the event a City audit discloses that the Franchise Fee for the audited period(s) has been underpaid in excess of five percent (5%) of the total required fee, then Franchisee shall pay the City the cost of the audit. Failure to provide the City Treasurer with access to the records required to conduct audits under this Agreement are a breach of this Agreement subject to revocation of this Franchise.

This Third Amendment to the Agreement shall affect only the terms and/or conditions referred to herein. All other terms and conditions of the Agreement as amended shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Third Amendment to be executed by their duly authorized officers or representatives.

CITY OF SAN DIEGO

FRANCHISEE

By: _____
Jay M. Goldstone
Chief Operating Officer
CITY OF SAN DIEGO

By: _____
Name: _____
Title: _____

Date: _____

Date: _____

I HEREBY APPROVE the form and legality of the foregoing Third Amendment to the Agreement this ___ day of ____ 2011.

JAN GOLDSMITH, City Attorney

By: _____
Grace C. Lowenberg
Deputy City Attorney