

CITY OF SAN DIEGO
ENVIRONMENTAL SERVICES DEPARTMENT
FOURTH AMENDMENT TO THE
AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND IMS RECYCLING SERVICES
AND ALLAN COMPANY FOR PROCESSING, TRANSPORTING AND MARKETING
COMMINGLED CURBSIDE RECYCLABLES

This Fourth Amendment to the Agreement Between the City of San Diego and IMS Recycling Services and Allan Company for Processing, Transporting, and Marketing Commingled Curbside Recyclables [FOURTH AMENDMENT] is entered into by and between the City of San Diego [CITY] and IMS Recycling Services, Inc., and Allan Company [collectively CONTRACTOR] and is to take effect July 1, 2012.

RECITALS

WHEREAS, the CITY is required by California state law to reduce the amount of solid waste disposed in landfills by 50% and to make a good faith effort to implement programs as described in CITY'S Source Reduction and Recycling Element; and

WHEREAS, the CITY'S Environmental Services Department (ESD) provides a comprehensive residential curbside recycling program to divert household RECYCLABLES from the CITY'S wastestream; and

WHEREAS, for fiscal year 2011, this program diverted 61,000 tons of material from the landfill saving the General Fund \$1.9 million in disposal costs, and bringing in over \$5.1 million in revenue to offset the cost of the collection of the RECYCLABLES; and

WHEREAS, the CITY'S curbside recycling program services over 245,000 households and currently collects NEWSPAPER, MIXED WASTEPAPER, CARDBOARD, GLASS CONTAINERS, ALUMINUM CONTAINERS, TIN and METAL CONTAINERS, and PLASTIC CONTAINERS, rigid plastic items, and cartons and drink boxes; and

WHEREAS, ESD requires a CONTRACTOR to process, transport and market the materials collected in the curbside recycling program; and

WHEREAS, on October 19, 1998 the CITY entered into the Agreement Between the City of San Diego and IMS Recycling Services and Allan Company for Processing, Transporting and Marketing Commingled Curbside Recyclables [AGREEMENT], which is on file in the Office of the City Clerk as Document No. RR-290886. A true and correct copy of the AGREEMENT is attached hereto as Exhibit "A"; and

WHEREAS, the original AGREEMENT had a five-year base term through December 13, 2003, with up to five one-year options to extend the AGREEMENT term, the first of which was exercised through December 13, 2004 (FIRST AMENDMENT attached hereto as Exhibit "B"); and

WHEREAS, the SECOND AMENDMENT (attached hereto as Exhibit "C") modified the AGREEMENT term and extended it to six (6) years, ending June 30, 2009, with up to two (2) two-year options to extend the AGREEMENT; and

WHEREAS the THIRD AMENDMENT (attached hereto as Exhibit "D") modified the AGREEMENT term by exercising both extension options, and extended the AGREEMENT through June 30, 2013; and

WHEREAS, in 2002 and 2007, a third-party consultant retained by the City found the AGREEMENT to be above average in comparison to other, similar curbside processing contracts in reference to the revenue received, secure market pricing, low risk-sharing, state of the art technology, location of the facilities and good working relationship with the CONTRACTOR; and

WHEREAS, in 2011, a third-party consultant retained by the City found the AGREEMENT to provide the most value, as measured by the net processing revenue per recycled ton, for the RECYCLABLES delivered in comparison to similar curbside processing contracts; and

WHEREAS, the CONTRACTOR'S professionalism, responsiveness, and marketing abilities have contributed to make the CITY'S curbside recycling program one of the premier programs in the nation; and

WHEREAS, the CITY and CONTRACTOR have negotiated certain amendments to sections of the AGREEMENT as reflected herein which result in even more favorable terms for the CITY and, at this time, the CITY desires to extend the term of the AGREEMENT by six years, making the term of this AGREEMENT seven years; and

NOW THEREFORE, the CITY and the CONTRACTOR do hereby agree to amend the following sections of the AGREEMENT to read as follows:

1. Section 1.0, subsection 1.1 Agreement Term
Beginning July 1, 2012, the term of this AGREEMENT will be seven (7) years, ending June 30, 2019.
2. Section 3.0, subsection 3.1 Compensation and Payment Schedule:

3.1.1 Flat Rate

CONTRACTOR will pay the CITY a flat rate of \$17.00 per ton for RECYCLABLES delivered to its SITE by, or on behalf of, the CITY for the period beginning July 1, 2011. The flat rate will increase to \$17.25 per ton on July 1, 2012. Beginning July 1, 2013, CONTRACTOR will pay the CITY a differential flat rate, where Allan Company will pay the CITY \$21.25 per ton delivered to its SITE and IMS will pay the CITY \$19.75 per ton delivered to its SITE. The flat rate for each SITE will increase by \$0.25 per ton as of July 1 of each subsequent year of the AGREEMENT and extension thereof.

CONTAMINATION and RESIDUE will not be included in calculating the tonnage subject to the flat rate.

3.1.2. Revenue Sharing

In addition to the flat rate, the CONTRACTOR will share with the CITY, on a 50%/50% basis, revenue generated from the sale of RECYCLABLES, delivered to CONTRACTOR'S SITES by, or on behalf of, the CITY, in excess of the REVENUE SHARING THRESHOLD for any given month during the term of the AGREEMENT and any extension thereof, calculated on a monthly basis. The REVENUE SHARING THRESHOLD for the year July 1, 2007 through June 30, 2008, shall be \$90 per ton. For the following year, July 1, 2008 through June 30, 2009, the REVENUE SHARING THRESHOLD shall be adjusted by multiplying \$90 per ton by the Consumer Price Index Change. For the year July 1, 2009 through June 30, 2010, the REVENUE SHARING THRESHOLD shall be \$95 per ton. For the years July 1, 2010 through June 30, 2019, the REVENUE SHARING THRESHOLD shall be adjusted each July 1 by multiplying the then current REVENUE SHARING THRESHOLD by the Consumer Price Index Change. However, the Consumer Price Index Change used to calculate the REVENUE SHARING THRESHOLD for any given year shall not exceed 1.06.

The Consumer Price Index shall mean the: "All Urban Consumers" Consumers Price Index for San Diego, CA (All Items; Not Seasonally Adjusted; 1982-84=100) [San Diego CPI]. Note: The San Diego CPI is published semi-annually, with the most-recently published index being the annual index, HALF1 index or HALF2 index.

The Consumer Price Index Change shall mean the difference between the San Diego CPI annual index published immediately prior to July 1 of the year for which the adjustment is being made [Current Index] and the San Diego CPI annual index published 12 months prior to the Current Index [Prior Index], all divided by the Prior Index, plus one (1.0). For example, assuming a 3.4% increase in the San Diego CPI from the Prior Index to the Current Index, the Consumer Price Index Change would be expressed as 1.034. For purposes of calculating the REVENUE SHARING THRESHOLD, the Consumer Price Index Change shall not exceed +6% or, stated otherwise, a value of 1.06.

As an example only, and using the assumptions below for purposes of illustration only, the REVENUE SHARING THRESHOLD for the year July 1, 2008 to June 30, 2009 would be calculated as follows:

Assumptions:

- a. REVENUE SHARING THRESHOLD for the year July 1, 2007 to June 30, 2008 = \$90/per ton.
- b. San Diego CPI annual index published immediately prior to July 1, 2008 = 246.3 (Current Index)
- c. San Diego CPI annual index published twelve months prior to Current Index = 238.2 (Prior Index)

Calculations:

1. Consumer Price Index Change = $((246.3 - 238.2)/238.2) + 1 = 1.034$.
2. REVENUE SHARING THRESHOLD applicable beginning July 1, 2008 = \$90/per ton x 1.034 = \$93.06/per ton*.

*Note: The calculated REVENUE SHARING THRESHOLD shall be rounded to the nearest cent.

If the San Diego CPI is no longer published, or is otherwise unavailable, then a new index or appropriate benchmark will be applied upon Council approval.

In addition to the flat rate, CONTRACTOR shall guarantee a minimum revenue sharing payment to CITY of \$6.00 per ton regardless of the AGGREGATE TON VALUE for that month. In the event the AGGREGATE TON VALUE is below the REVENUE SHARING THRESHOLD plus \$12 and at or above the REVENUE SHARING THRESHOLD for any given month during the term of the AGREEMENT or extension thereof, the CONTRACTOR will be entitled to a maximum per ton credit for that month equal to one-half the difference between the REVENUE SHARING THRESHOLD plus \$12 and the AGGREGATE TON VALUE for that month. The credit may be applied against amounts due the CITY, but only for those months for which the AGGREGATE TON VALUE exceeds the REVENUE SHARING THRESHOLD plus \$12 and only to the extent of the CITY'S share of that excess amount; provided that, if a credit exists in CONTRACTOR'S favor upon termination of the AGREEMENT, CONTRACTOR agrees not to seek payment from CITY for the credit amount and CITY will not be responsible to pay that credit amount.

3.1.3 Additional Compensation

In addition to the payments described in subsections 3.1.1 and 3.1.2 above, CONTRACTOR will make a one-time payment to the CITY in the amount of \$600,000, due and payable no later than 30 days after the date of final passage of the City Council resolution authorizing execution of the THIRD AMENDMENT. In addition, CONTRACTOR will make a one-time payment to the City in the amount of \$1,000,000, due and payable no later than 30 days after the date of final passage of the City Council resolution authorizing execution of this FOURTH AMENDMENT. In the event the CITY terminates the AGREEMENT pursuant to Subsection 6.4.2, as amended, prior to June 30, 2019, the CITY shall refund to CONTRACTOR a prorated portion of the \$1,000,000 CONTRACTOR paid to CITY under this Section 3.1.3, as amended, based upon the number of days between the effective date of such termination and June 30, 2019. Refund of such prorated portion, if applicable, is payable within 60 days after the effective date of such termination.

3.1.4 Payment

CONTRACTOR shall pay the CITY the per ton flat rate for RECYCLABLES and the CITY'S portion of the revenue sharing arrangement described in this subsection 3.1 by no later than the 15th day of each month for the RECYCLABLES delivered to

CONTRACTOR'S SITES by, or on behalf of, the CITY during the preceding month. A 10% late fee will be assessed against CONTRACTOR for each payment received by CITY after the 15th day of the month in which such payment is due.

On behalf of CONTRACTOR, Allan Company will deliver payments to CITY.

3. Section 5.0, subsection 5.3 Contamination Reduction Education Funding
The CONTRACTOR will provide the CITY with a total of \$25,000/year for each year of the AGREEMENT through 2013, and \$50,000/year for each year of the AGREEMENT beginning in 2014 and for each subsequent year of the AGREEMENT thereafter, and extension thereof, to be used in an activity at the City's discretion that addresses AB939 curbside recycling contamination reduction education efforts. CONTRACTORS shall remit payment to CITY, no later than January 15th of each year of the AGREEMENT. CONTRACTORS will work together to determine how much of the total each will contribute.

4. A new subsection "6.11 Equal Benefits" is added to Section 6.0 General Provisions of the AGREEMENT, to read as follows:

This AGREEMENT is subject to the City of San Diego's Equal Benefits Ordinance [EBO], Chapter 2, Article 2, Division 43 of the San Diego Municipal Code [SDMC].

In accordance with the EBO, CONTRACTORS must certify they will provide and maintain equal benefits as defined in SDMC §22.4302 for the duration of the AGREEMENT [SDMC §22.4304(f)]. Failure to maintain equal benefits is a material breach of the AGREEMENT [SDMC §22.4304(e)]. CONTRACTORS must notify employees of their equal benefits policy at the time of hire and during open enrollment periods and must post a copy of the following statement in an area frequented by employees:

During the performance of a contract with the City of San Diego, this employer will provide equal benefits to its employees with spouses and its employees with domestic partners.

CONTRACTORS also must give the City access to documents and records sufficient for the City to verify the CONTRACTORS are providing equal benefits and otherwise complying with EBO requirements.

The full text of the EBO and the Rules Implementing the Equal Benefits Ordinance are posted on the City's website at www.sandiego.gov/purchasing/ or can be requested from the Equal Benefits Program at (619) 533-3948.

THIS FOURTH AMENDMENT to the AGREEMENT shall affect only the terms and/or conditions referred to herein. All other terms and conditions shall remain in full force and effect.

IN WITNESS WHEREOF, the CITY and the CONTRACTORS each have caused their duly authorized representatives to execute this FOURTH AMENDMENT to the AGREEMENT.

Date: _____

IMS Recycling Services, Inc.

By: Michael W Howard
Name: Michael W Howard
Title: President

Date: _____

Allan Company

By: J.A. Young
Name: J.A. Young
Title: Chairman + Sec

Date: _____

City of San Diego,
A Municipal Corporation

By: _____
Name: _____
Title: _____

I HEREBY APPROVE the form and legality of the foregoing FOURTH AMENDMENT to the AGREEMENT this _____ day of _____, 2012.

Jan Goldsmith, CITY ATTORNEY

By: _____
Grace C. Lowenberg
Deputy City Attorney

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

CERTIFICATE NUMBER
(FOR COMPTROLLER'S USE ONLY)
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TO: CITY COUNCIL	FROM (ORIGINATING DEPARTMENT): Environmental Services	DATE: 05/04/2012
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SUBJECT: Fourth Amendment to Curbside Recyclable Materials Processing & Marketing Contract

PRIMARY CONTACT (NAME, PHONE): Meghan Cannis, x25009 MS1103-b	SECONDARY CONTACT (NAME, PHONE): Stephen Grealy, x31275 MS1103-a
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COMPLETE FOR ACCOUNTING PURPOSES

FUND					
DEPT / FUNCTIONAL AREA					
ORG / COST CENTER					
OBJECT / GENERAL LEDGER ACCT					
JOB / WBS OR INTERNAL ORDER					
C.I.P./CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

FUND					
DEPT / FUNCTIONAL AREA					
ORG / COST CENTER					
OBJECT / GENERAL LEDGER ACCT					
JOB / WBS OR INTERNAL ORDER					
C.I.P./CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

COST SUMMARY (IF APPLICABLE): Guaranteed Revenue Structure for proposed 4th Amendment
 FY13: \$1.4M
 FY14: \$1.6M (\$1.4M + \$189K (Increased per ton revenue for 4th Amendment))
 FY15: FY14 Revenue (\$1.6M) + \$15K (\$.25/ton annual increase under agreement))
 FY16-19: Previous Fiscal Year + \$15K (Ex. FY14 + \$15K = FY15 Revenue)

Additionally, Contractors to make a one time payment of \$1M and an annual payment of \$50K, a \$25K increase, for contamination reduction efforts.

See Fiscal Considerations for additional information.

ROUTING AND APPROVALS

CONTRIBUTORS/REVIEWERS:	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
Environmental Analysis	ORIG DEPT.	Gonaver, Chris	5/7/2012
Liaison Office	CFO		
	DEPUTY CHIEF		
	COO		

		CITY ATTORNEY		
		COUNCIL PRESIDENTS OFFICE		
PREPARATION OF:	<input checked="" type="checkbox"/> RESOLUTIONS	<input type="checkbox"/> ORDINANCE(S)	<input type="checkbox"/> AGREEMENT(S)	<input type="checkbox"/> DEED(S)
The Mayor or his designee is authorized to execute the Fourth Amendment to modify and extend the current agreement with IMS Recycling Services and Allan Company for processing, transporting, and marketing of materials collected in the City's curbside recycling program.				
STAFF RECOMMENDATIONS: Approve requested action				
SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION)				
COUNCIL DISTRICT(S):	all			
COMMUNITY AREA(S):	all			
ENVIRONMENTAL IMPACT:	This activity is exempt from CEQA pursuant to State CEQA guidelines section 15060(c)(3)			
CITY CLERK INSTRUCTIONS:	Please notify Meghan Cannis x25009 when the RESO has been processed and sent to P&C			

**COUNCIL ACTION
EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO**

DATE: 05/04/2012

ORIGINATING DEPARTMENT: Environmental Services

SUBJECT: Fourth Amendment to Curbside Recyclable Materials Processing & Marketing Contract

COUNCIL DISTRICT(S): all

CONTACT/PHONE NUMBER: Meghan Cannis/x25009 MS1103-b

DESCRIPTIVE SUMMARY OF ITEM:

Fourth Amendment to Curbside Recyclable Materials Processing & Marketing Contract. This proposed amendment will modify and extend the current agreement with IMS Recycling Services and Allan Company for curbside materials processing.

STAFF RECOMMENDATION:

Approve requested action

EXECUTIVE SUMMARY OF ITEM BACKGROUND:

The Environmental Services Department (ESD) currently offers single stream automated collection of curbside recyclables to 245,000 City residences on a bi-weekly schedule. On October 19, 1998, upon completion of a competitive Request for Proposal (RFP) process, the City Council approved an agreement with IMS Recycling Services and Allan Company (Contractors) for processing, transporting and marketing of the commingled curbside recyclables collected by City forces. In 2002, ESD retained the services of HF&H Consultants, LLC (HF&H) to provide a best-in-class benchmark of the City's agreement. Therefore, the First Amendment to the agreement was executed in October of 2002, extending the date for the City to exercise its first option to renew in order to allow HF&H to complete its benchmark. The consultant researched other jurisdictions in the Western United States to determine which were in a comparable contractual relationship and provided a comparison with the following five cities: Burbank, Glendale, Los Angeles, San Bernadino, and Phoenix, AZ. The comparison revealed that San Diego's Contractors out-performed all other cities' contractors; with the City receiving between 2.4% and 86.6% more revenue than these benchmark cities. The Second Amendment was executed in 2003 with a new six-year base term through June 30, 2009, and included two, two-year extension options to be exercised at the City's discretion.

In 2007, a follow-up study conducted by HF&H of those same cities revealed that San Diego's Contractors again out-performed these jurisdictions; with the City receiving between 37.9% and 130% more revenue than the benchmarked cities. This analysis confirmed ESD's confidence in the Contractors' performance to date. The Third Amendment was executed in 2008, when both extension options were exercised, resulting in a new six-year base term, which expires June 30, 2013.

In discussion with the Contractors regarding the agreement's current expiration date, they submitted an amendment proposal for the City's consideration that would provide additional revenue, if coupled with an additional six year extension to the term of the agreement. ESD had HF&H conduct another best-in-class benchmark of the City's current agreement. HF&H compared the City's agreement with eight other jurisdictions' contracts. In addition to the

original five cities, Fresno, Sunnyvale and Santa Monica were added. The results showed that the City currently receives between 18% and 170% more revenue than the benchmarked cities. The amendment is being recommended for the following reasons: ESD has a revenue structure which generates more revenue than other cities in similar circumstances, a low risk payment structure with guaranteed revenues to the City, the current optimal working relationship with the Contractors who are responsive to the City's needs, dual facilities in the north and south/central parts of the City which allow for more efficient routing of City trucks, local technology which allows for optimal equipment operation and minimization of down time, and experience and favorable pricing from a recognized material marketing recycler, Allan Company.

FISCAL CONSIDERATIONS:

Per Municipal Code Section 66.0135, revenues derived from the sale of recyclable commodities shall be paid into the Recycling Fund (700048). Starting July 1, 2013, the revised agreement would provide the City's Recycling Fund a guaranteed price of \$27.25 from Allan Company and \$25.75 from IMS Recycling Services for each ton of recyclable material delivered to the Contractors, and would increase the price by \$0.25 per ton for each contractor annually for the remainder of the agreement. At current annual tonnages, the new revenue structure would increase guaranteed annual revenue to the City from \$1.4 million under the current agreement, to \$1.6 million in the second year (FY2014) of the new agreement, and will then increase by approximately \$15,000 per year for the remainder of the agreement. This would result in a total increase in guaranteed revenue of \$1.1 million over the term of the proposed agreement. The agreement also provides the City with 50% of the revenues from the sales of recyclables in excess of the current revenue sharing threshold. The Contractors will continue to deposit \$25,000 for FY 2013, and starting in FY 2014, deposit \$50,000 annually (i.e. \$25,000 increase) into the Recycling Fund for contamination reduction efforts. In addition, the Contractors would provide a one-time payment of \$1,000,000 for consideration in return for a six-year extension to the agreement, resulting in a new seven-year base term, July 1, 2012 to June 30, 2019

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):

This agreement is subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Sections 22.2701 through 22.2708) and Non Discrimination in Contracting Ordinance (SAN DIEGO MUNICIPAL CODE SECTIONS 22.3501 THROUGH 22.3517).

PREVIOUS COUNCIL and/or COMMITTEE ACTION (describe any changes made to the item from what was presented at committee):

In January 1999, the City began converting the Curbside Recycling Program from a manual three bin collection to bi-weekly, commingled, single cart automated collection system (RR-290385). At that time, Environmental Services had entered into the agreement with the Contractors (RR-290886) and, by November 2001, curbside recycling was expanded Citywide. In July 2003, the agreement was modified to extend the term to six (6) years with two (2) two-year options (RR-298168). In February 2008, the agreement was modified to the existing terms (RR-303398). The proposed Fourth Amendment will be heard at NR&C on May 23, 2012.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:None

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

City of San Diego Residents receiving curbside recycling collection.

Gonaver, Chris
Originating Department

Deputy Chief/Chief Operating Officer

