

<b>REQUEST FOR COUNCIL ACTION</b> CITY OF SAN DIEGO	CERTIFICATE NUMBER (FOR COMPTROLLER'S USE ONLY) N/A
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TO: CITY COUNCIL	FROM (ORIGINATING DEPARTMENT): Environmental Services	DATE: 10/22/2014
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SUBJECT: Transfer of Non-Exclusive Solid Waste Collection Franchise

PRIMARY CONTACT (NAME, PHONE): Samuel Merrill,(858) 573-1253	SECONDARY CONTACT (NAME, PHONE): Rochelle Monroe, (858) 573-1298
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**COMPLETE FOR ACCOUNTING PURPOSES**

FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

COST SUMMARY (IF APPLICABLE):

**ROUTING AND APPROVALS**

CONTRIBUTORS/REVIEWERS:	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
Financial Management	ORIG DEPT.	Greenhalgh, Darren	10/24/2014
Liaison Office	CFO		
Environmental Analysis	DEPUTY CHIEF		
Equal Opportunity Contracting	COO		
Comptroller	CITY ATTORNEY		
	COUNCIL PRESIDENTS OFFICE		

PREPARATION OF:     RESOLUTIONS     ORDINANCE(S)     AGREEMENT(S)     DEED(S)

Approve the transfer of the Express Waste and Recycling, Inc., Non-Exclusive Franchise for Solid Waste Management Services and authorize execution of the Consent to Assignment of the Franchise Agreement.

STAFF RECOMMENDATIONS:  
Approve the 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 not a “project” and therefore is not subject to CEQA pursuant State CEQA guidelines section 15060(c)(3).
CITY CLERK INSTRUCTIONS:	This item is subject to Charter Section 103 - Granting of Franchise requirements (approval by Ordinance and 6 votes required). This Item is subject to Charter Section 99 requirements (10 day public noticing and 6 votes required).

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

DATE: 10/22/2014

ORIGINATING DEPARTMENT: Environmental Services

SUBJECT: Transfer of Non-Exclusive Solid Waste Collection Franchise

COUNCIL DISTRICT(S): All

CONTACT/PHONE NUMBER: Samuel Merrill/(858) 573-1253

**DESCRIPTIVE SUMMARY OF ITEM:**

Adopt an ordinance approving the transfer of the Express Waste and Recycling, Inc.(Express) Non-Exclusive Solid Waste Collection Franchise to EDCO Disposal Corporation

**STAFF RECOMMENDATION:**

Approve the requested action.

**EXECUTIVE SUMMARY OF ITEM BACKGROUND:** EDCO Disposal Corporation has requested City approval of the transfer of the Express solid waste collection franchise to EDCO. This action requests the City's consent to transfer the existing Express Franchise to EDCO.

**BACKGROUND**

On October 21, 1996, the City Council enacted Ordinance No. O-18353, which amended the San Diego Municipal Code to establish Non-Exclusive Solid Waste Collection Franchises for solid waste haulers. Under City Charter Section 103, franchises may be granted only by ordinance approved by a two thirds vote of the City Council. Charter Section 103, together with San Diego Municipal Code section 66.0120, prohibit the transfer, sale, lease, or assignment of a franchise without Council approval which shall not be unreasonably withheld. Charter section 103 further states that: "Absent Council approval, the franchise shall not be deemed to have been transferred to the new entity."

The City of San Diego currently has a non-exclusive solid waste collection franchise system that consists of 12 companies that own 21 franchise agreements. Each parent company and subsidiary providing collection services within the City of San Diego must have a separate and distinct franchise agreement. There is currently a two-tier system consisting of Class I haulers that collect up to 75,000 tons per year and Class II haulers that collect a minimum of 75,000 tons per year.

EDCO has requested City approval of the transfer of the Express Waste and Recycling, Inc. franchise. Express has reported that they intend to sell their franchise along with any pertinent assets to EDCO. EDCO has indicated they intend to purchase the Express franchise, along with their customer list(s), numbers and addresses. They also indicated that they intend to continue to operate Express as a subsidiary of EDCO and to continue providing the same service levels to Express' entire existing customer base with no change in pricing for the foreseeable future.

**DISCUSSION**

The current two-tier system was primarily designed with the intent of providing a reasonable number of waste collection service providers to the residents and businesses within the City of

San Diego. The current balance consists of 9 Class I and 3 Class II haulers. If Council approves the transfer of the Express franchise to EDCO, there would be one less Class I hauler. This would result in a total of 21 franchise agreements (same as before) with a breakdown of 8 (eight) Class I haulers (each with a franchise), Waste Management with 7 (seven) franchises, EDCO with 5 (five) franchises, and Allied with 1 (one). The City has maintained 21 franchise agreements; this structure inherently safeguards against potential monopolization of franchise agreements and ensures a good balance of competition between the haulers. Express controls approximately 2% of the total market share of collection services by private haulers, while EDCO currently controls 21%. Although this transfer would not result in an unreasonable shift in current market shares, the City needs to exercise caution in allowing a trend of market share shifts that would result in significant ownership of franchises and customer base. In order to maintain a viable non-exclusive franchise system and sustain a competitive environment, requests for transfers of these types shall be monitored on a case-by-case basis.

EDCO's proposal would result in a Class I franchise being transferred to a Class II franchisee. City of San Diego Municipal Code section 66.0120(c) states "...a Class I Franchise shall not be transferred to a Class II Franchisee without the proper approval of Council which shall not be unreasonably withheld and providing that such transfer does not unreasonably impact competition or further consolidate the market share of commercial waste collected by the Class II Franchisee."

In support of its request for transfer of the franchise, EDCO has provided documentation regarding the legal structure, control, and ownership of the company; the financial wherewithal of the combined company; key personnel, staffing, and records retention matters; and security for performance of franchise obligations. The City also has certificates of insurance providing current proof of all insurance as required per the current Franchise Agreement. Based on evaluation of the material on file and the historical performance of EDCO, staff recommends approval of the request to transfer the franchise and assignment of the franchise agreement to EDCO.

**FISCAL CONSIDERATIONS:** There are no anticipated expenses or significant revenue impacts related to this action. This action will authorize the transfer of a franchise from one company to another.

**EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):** This agreement is subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 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): None

**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:** This action is a transfer of an existing franchise and will not result in a decrease or increase of hauling services available to the businesses or residents of the City of San Diego.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

City of San Diego

EDCO Disposal Corporation

Express Waste and Recycling, Inc.

Greenhalgh, Darren

Originating Department

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Deputy Chief/Chief Operating Officer

**CITY OF SAN DIEGO**  
**Environmental Services Department**  
**NON-EXCLUSIVE SOLID WASTE COLLECTION FRANCHISE**  
**Surety Bond For Performance**

WHEREAS EDCO Disposal Corporation dba Express Waste & Recycling, Inc., hereafter called "Principal," has made application pursuant to San Diego Municipal Code section 66.0112 to the Director of the Environmental Services Department of the City of San Diego, hereafter called "Director," for a non-exclusive franchise to collect and subsequently transport, transfer, and dispose of solid waste, hereafter called "the Franchise";

NOW, THEREFORE, Principal and International Fidelity Insurance Company, a corporation organized and existing under and by virtue of the laws of the State of California and duly authorized to transact surety business in the State of California, hereafter called, "Surety," agree that they are held and firmly bound, jointly and severally, to the City of San Diego, municipal corporation, hereafter called "City," in the sum of **FORTY THOUSAND DOLLARS (\$40,000.00)**.

The conditions of this obligation are as follows: If the Principal faithfully performs and complies with its obligations under the grant of Franchise, the Franchise Agreement, and any waste delivery agreement, as they may be amended, and complies with the San Diego City Charter, San Diego Municipal Code and all other applicable laws, rules, and regulations, as they may be amended, and timely pays in full all Franchise fees, AB 939 fees, late fees, penalties, and fines, and indemnifies and holds the City of San Diego harmless from any damages or loss it suffers from the Principal's failure to faithfully so perform or comply, including for the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the Principal, plus a reasonable allowance for attorney's fees and costs, then this obligation shall be void; otherwise, this obligation shall remain in full force and effect.

IT IS FURTHER UNDERSTOOD AND AGREED THAT this bond is continuous in nature and shall remain in full force and effect unless canceled in accordance with the provisions contained herein and that coverage under this bond shall apply to any franchises issued by the Director while the bond remains in force.

IT IS FURTHER UNDERSTOOD AND AGREED THAT upon the Principal's nonperformance or noncompliance with the grant of Franchise, the Franchise Agreement, any waste delivery agreement, the San Diego City Charter, San Diego Municipal Code or other applicable laws, rules, and regulations, regardless of fault, the Director shall notify the Surety of the nonperformance or noncompliance by the Principal and the steps necessary to cure such nonperformance or noncompliance. Upon receipt of notification, the Surety shall be obligated to immediately comply with the performance requirements of this bond or pay the costs necessary to bring about compliance, not to exceed \$40,000.00 within 14 calendar days from the date of demand by the Director for such cure or payment.

IT IS FURTHER UNDERSTOOD AND AGREED THAT the Surety shall have the right to withdraw as Surety from this bond provided it gives the Principal and the Director, **a minimum ninety (90) days advance written notice by certified mail to that effect;** ninety days after the notice is received, the liability of the Surety shall thereafter terminate, except as to any liabilities or indebtedness already incurred or accrued. Notice shall be sent as follows:

Franchise Administrator  
Environmental Services Department/Resource Management Division  
9601 Ridgeway Court, Suite 210  
San Diego, CA 92123-1636

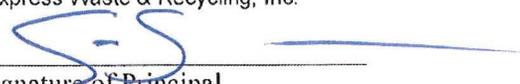
IT IS FURTHER UNDERSTOOD AND AGREED THAT the aggregate liability of the Surety shall not exceed the penal sum of this bond.

IN WITNESS WHEREOF, the Principal and the Surety have each executed this document and surety agreement by the signatures of their respective authorized representatives on this

2nd Day of October, 2014 (year)

(SEAL)

EDCO Disposal Corporation dba  
Express Waste & Recycling, Inc.

  
Signature of Principal

Steve South, President & CEO

Type or Print Name and Title

International Fidelity Insurance Company

Surety Name

  
Attorney - in - Fact  
Lawrence F. McMahon

2999 Oak Road, Suite 820, Walnut Creek, CA 94597  
Address of Surety

(SEAL)

( 925 ) 256-8760

Surety Telephone

( 925 ) 256-1080

Surety Fax

BOND NO. 602596

RENEWAL DATE 10 / 02 / 15  
MM DD YY

CONTINUOUS? X YES \_\_\_\_\_ NO

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

County of San Diego

On OCT 02 2014 before me, Janice R. Martin, Notary Public, Date Insert Name of Notary exactly as it appears on the official seal

personally appeared Lawrence F. McMahon Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature Janice R. Martin Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of the form to another document.

Description of Attached Document

Title or Type of Document:

Document Date: Number of Pages:

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer(s)

Signer's Name:

- Individual
Corporate Officer — Title(s):
Partner Limited General
Attorney in Fact
Trustee
Guardian or Conservator
Other:



Signer is Representing:

Signer's Name:

- Individual
Corporate Officer — Title(s):
Partner Limited General
Attorney in Fact
Trustee
Guardian or Conservator
Other:



Signer is Representing:

Tel (973) 624-7200

# POWER OF ATTORNEY

## INTERNATIONAL FIDELITY INSURANCE COMPANY ALLEGHENY CASUALTY COMPANY

ONE NEWARK CENTER, 20TH FLOOR NEWARK, NEW JERSEY 07102-5207

KNOW ALL MEN BY THESE PRESENTS: That INTERNATIONAL FIDELITY INSURANCE COMPANY, a corporation organized and existing under the laws of the State of New Jersey, and ALLEGHENY CASUALTY COMPANY a corporation organized and existing under the laws of the State of Pennsylvania, having their principal office in the City of Newark, New Jersey, do hereby constitute and appoint

JAMES D. CASTLE, LAWRENCE F. MCMAHON

San Diego, CA.

their true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise, and the execution of such instrument(s) in pursuance of these presents, shall be as binding upon the said INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY, as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by their regularly elected officers at their principal offices.

This Power of Attorney is executed, and may be revoked, pursuant to and by authority of the By-Laws of INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY and is granted under and by authority of the following resolution adopted by the Board of Directors of INTERNATIONAL FIDELITY INSURANCE COMPANY at a meeting duly held on the 20th day of July, 2010 and by the Board of Directors of ALLEGHENY CASUALTY COMPANY at a meeting duly held on the 15th day of August, 2000:

"RESOLVED, that (1) the President, Vice President, Executive Vice President or Secretary of the Corporation shall have the power to appoint, and to revoke the appointments of, Attorneys-in-Fact or agents with power and authority as defined or limited in their respective powers of attorney, and to execute on behalf of the Corporation and affix the Corporation's seal thereto, bonds, undertakings, recognizances, contracts of indemnity and other written obligations in the nature thereof or related thereto; and (2) any such Officers of the Corporation may appoint and revoke the appointments of joint-control custodians, agents for acceptance of process, and Attorneys-in-fact with authority to execute waivers and consents on behalf of the Corporation; and (3) the signature of any such Officer of the Corporation and the Corporation's seal may be affixed by facsimile to any power of attorney or certification given for the execution of any bond, undertaking, recognizance, contract of indemnity or other written obligation in the nature thereof or related thereto, such signature and seals when so used whether heretofore or hereafter, being hereby adopted by the Corporation as the original signature of such officer and the original seal of the Corporation, to be valid and binding upon the Corporation with the same force and effect as though manually affixed."

IN WITNESS WHEREOF, INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY have each executed and attested these presents on this 12th day of March, 2012.



STATE OF NEW JERSEY  
County of Essex

ROBERT W. MINSTER  
Executive Vice President/Chief Operating Officer  
(International Fidelity Insurance Company)  
and President (Allegheny Casualty Company)



On this 12th day of March 2012, before me came the individual who executed the preceding instrument, to me personally known, and, being by me duly sworn, said he is the therein described and authorized officer of INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY; that the seals affixed to said instrument are the Corporate Seals of said Companies; that the said Corporate Seals and his signature were duly affixed by order of the Boards of Directors of said Companies.

IN TESTIMONY WHEREOF, I have hereunto set my hand affixed my Official Seal, at the City of Newark, New Jersey the day and year first above written.



A NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Mar. 27, 2014

### CERTIFICATION

I, the undersigned officer of INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY do hereby certify that I have compared the foregoing copy of the Power of Attorney and affidavit, and the copy of the Sections of the By-Laws of said Companies as set forth in said Power of Attorney, with the originals on file in the home office of said companies, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not been revoked and is now in full force and effect.

IN TESTIMONY WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of

OCT 02 2014

MARIA BRANCO, Assistant Secretary



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED – STATE OR GOVERNMENTAL  
AGENCY OR SUBDIVISION OR POLITICAL  
SUBDIVISION – PERMITS OR AUTHORIZATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

**State Or Governmental Agency Or Subdivision Or Political Subdivision:**

the City of San Diego, its elected officials, officers, agents and employees

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

**Section II – Who Is An Insured** is amended to include as an insured any state or governmental agency or subdivision or political subdivision shown in the Schedule, subject to the following provisions:

1. This insurance applies only with respect to operations performed by you or on your behalf for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization.

2. This insurance does not apply to:

- a. "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or
- b. "Bodily injury" or "property damage" included within the "products-completed operations hazard".

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

### **Primary And Noncontributory Insurance**

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

(1) The additional insured is a Named Insured under such other insurance; and

(2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**DESIGNATED INSURED**

This endorsement modifies insurance provided under the following:

- BUSINESS AUTO COVERAGE FORM
- GARAGE COVERAGE FORM
- MOTOR CARRIER COVERAGE FORM
- TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" under the Who Is An Insured Provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement Effective: 10/15/2014	Countersigned By:          (Authorized Representative)
Named Insured: EDCO Disposal Corporation	

**SCHEDULE**

<b>Name of Person(s) or Organization(s):</b> As per the City of San Diego, its elected officials, officers agents and employees.
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(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to the endorsement.)

Each person or organization shown in the Schedule is an "insured" for Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured Provision contained in **Section II** of the Coverage Form.

**NON-CONTRIBUTORY ENDORSEMENT FOR ADDITIONAL INSURED**

Named Insured EDCO Disposal Corporation			Endorsement Number
Policy Symbol CAL	Policy Number H08788972	Policy Period 10/15/2014 TO 10/15/2015	Effective Date of Endorsement 10/15/2014
Issued By (Name of Insurance Company) ACE American Insurance Company			

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**BUSINESS AUTO COVERAGE FORM**

**TRUCKERS COVERAGE FORM**

Schedule

Organization

As per the City of San Diego, its elected officials, officers agents and employees.

CA 20 48

Additional Insured Endorsement

*(If no information is filled in, the schedule shall read: "All persons or entities added as additional insureds through an endorsement with the term "Additional Insured" in the title)*

For organizations that are listed in the Schedule above that are also an Additional Insured under an endorsement attached to this policy, the following is added to Section IV.B.5.:

If other insurance is available to an insured we cover under any of the endorsements listed or described above (the "Additional Insured") for a loss we cover under this policy, this insurance will apply to such loss on a primary basis and we will not seek contribution from the other insurance available to the Additional Insured.

\_\_\_\_\_  
Authorized Agent



WORKERS COMPENSATION  
AND  
EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 99 03 76 (00) - 001

POLICY NUMBER: TC2JUB419J185614

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS  
ENDORSEMENT - CALIFORNIA  
(BLANKET WAIVER)**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule.

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be 5.0 % of the California workers' compensation premium otherwise due on such remuneration.

Schedule

Person or Organization

Job Description

As required by written contract

DATE OF ISSUE: 9/19/14 ST ASSIGN:

CONSENT TO ASSIGNMENT OF CLASS I  
NON-EXCLUSIVE FRANCHISE AGREEMENT  
FOR SOLID WASTE MANAGEMENT SERVICES

This consent to the assignment of the *Class I Non-Exclusive Franchise Agreement between the City of San Diego and EDCO Disposal Corporation for Solid Waste Management Services* [Consent to Assignment] is entered into between the City of San Diego [City], EDCO Disposal Corporation [EDCO], and Express Waste & Recycling, Inc. [Express].

RECITALS

WHEREAS, by Ordinance No. O-19517, adopted on July 18, 2006, the City Council granted a non-exclusive franchise to Express to provide solid waste management services within the City [Franchise]; and

WHEREAS, on July 31, 2006, the City and Express entered into the *Class I Non-Exclusive Franchise Agreement between the City of San Diego and Express Waste & Recycling, Inc., for Solid Waste Management Services* [Agreement], which is on file in the Office of the City Clerk as Document No. OO-19517; and

WHEREAS, the Agreement has since been amended six times; and

WHEREAS, EDCO has applied to the City to transfer the Express Franchise and assign the Agreement, as amended, to EDCO, and Express has consented to such transfer and assignment, subject to approval by the City Council; and

WHEREAS, EDCO has informed the City that the new Franchisee shall be known as EDCO Disposal Corporation dba Express Waste & Recycling, Inc., and

WHEREAS, San Diego City Charter Section 103 requires the City's consent to the transfer of a franchise in the event of any change in the legal structure of the entity which holds the franchise, which change alters the ownership or control of the entity; and

WHEREAS, the City has evaluated the requested transfer of the Franchise and assignment of the Agreement, as amended, and has determined to consent thereto upon the terms and conditions contained herein;

NOW THEREFORE, the City, Express, and EDCO, for and in consideration of the mutual covenants and agreements hereinafter stated and the performance thereof, and for other valuable and adequate consideration, do promise and agree for and on behalf of themselves and their successors in interest as follows:

## TRANSFER

1. Consent to Transfer. The City hereby consents to the transfer of the Franchise and assignment of the Agreement, as amended, from Express to EDCO. All references in the Agreement, as amended, to Franchisee shall mean EDCO Disposal Corporation dba Express Waste & Recycling, Inc.
2. Assignment of Rights and Delegation of Duties. All rights, title, and interest in the Franchise and the Agreement, as amended, are hereby assigned to EDCO. All responsibilities, duties, and obligations under the Franchise and the Agreement, as amended, are hereby delegated to EDCO.
3. Acceptance of Rights and Duties. EDCO hereby accepts the transfer of the Franchise and assignment of the Agreement, as amended, and all rights, title, and interest therein. EDCO accepts, assumes and agrees to fully, faithfully, and timely perform all the terms, covenants, conditions, stipulations, responsibilities, obligations, and duties under the Franchise and the Agreement, as amended.
4. Franchise Application. Prior to or concurrently with the execution by EDCO and Express of this Consent to Assignment, EDCO shall submit to the City a franchise application in accordance with San Diego Municipal Code section 66.0112 for EDCO Disposal Corporation dba Express Waste & Recycling, Inc.
5. Insurance. Pursuant to section 8.2 of the Agreement, EDCO shall deliver to the City a new certificate of insurance showing proof of all insurance required under the Agreement, as amended. Such certificate of insurance and the endorsements required by the City shall be delivered to the City prior to or concurrently with the execution by EDCO of this Consent to Assignment.
6. Bonds. Pursuant to section 8.3 of the Agreement, as amended, EDCO shall deliver to the City a new Faithful Performance Bond meeting all the requirements of the Agreement, as amended. Such bond shall be delivered to the City prior to or concurrently with the execution by EDCO of this Consent to Assignment.
7. City Costs. EDCO agrees to reimburse the City for all reasonable costs and related expenses incurred by the City in reviewing, examining, analyzing, and processing the request for transfer of the Franchise and assignment of the Agreement. EDCO agrees to pay such costs within thirty (30) days after receiving an invoice from the City, after which time the amount owing and unpaid will accrue interest in accordance with San Diego Municipal Code section 22.1707(c).
8. Controlling Law. This Consent to Assignment will be governed by the laws of the State of California, and venue for all legal actions and proceedings related to this Consent to Assignment shall be in the County of San Diego, State of California.
9. No Waiver. All parties hereto agree and acknowledge that the City's consent to transfer of the Franchise and assignment of the Agreement, as amended, is not intended and shall not be construed as a waiver of any rights nor as a release of any party hereto or their respective officers, directors, employees, or agents from any claims, demands, damages, debts, costs,

losses, obligations, causes of action, or liabilities of any nature whatsoever, whether known or unknown.

10. Execution in Counterparts. This Consent to Assignment may be executed in multiple counterparts, each of which shall be deemed an original and all such counterparts together shall constitute one in the same instrument.

11. Effective Date. This Consent to Assignment shall become effective on the date executed by the last party to sign it.

IN WITNESS WHEREOF, this Consent to Assignment is executed by the City of San Diego, acting by and through the Mayor or his designee, pursuant to Ordinance No. O- \_\_\_\_\_ authorizing such execution, and by EDCO and Express each acting by and through their duly authorized officers, pursuant to duly approved resolutions of their respective Boards of Directors.

EDCO DISPOSAL CORPORATION

By: [Signature]  
Name: Steve Smith  
Title: President  
Date: 10/22/14

EXPRESS WASTE & RECYCLING, INC.

By: [Signature]  
Name: Armen Derderian  
Title: President  
Date: 10/22/14

CITY OF SAN DIEGO

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

I HEREBY APPROVE the form and legality of the foregoing Consent to Assignment this \_\_\_\_\_ day of \_\_\_\_\_, 201\_.

JAN I. GOLDSMITH, City Attorney

By \_\_\_\_\_  
Amanda L. Guy  
Deputy City Attorney



City of San Diego

**EQUAL OPPORTUNITY CONTRACTING (EOC)**

1200 Third Avenue • Suite 200 • San Diego, CA 92101

Phone: (619) 236-6000 • Fax: (619) 236-5904

**WORK FORCE REPORT**

The objective of the *Equal Employment Opportunity Outreach Program*, San Diego Municipal Code Sections 22.3501 through 22.3517, is to ensure that contractors doing business with the City, or receiving funds from the City, do not engage in unlawful discriminatory employment practices prohibited by State and Federal law. Such employment practices include, but are not limited to unlawful discrimination in the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. Contractors are required to provide a completed *Work Force Report (WFR)*.

**NO OTHER FORMS WILL BE ACCEPTED  
CONTRACTOR IDENTIFICATION**

Type of Contractor:     Construction     Vendor/Supplier     Financial Institution     Lessee/Lessor  
                                  Consultant     Grant Recipient     Insurance Company     Other

Name of Company: EDCO Disposal Corp

ADA/DBA: \_\_\_\_\_

Address (Corporate Headquarters, where applicable): 6670 Federal Blvd

City: Lemon Grove    County: San Diego    State: CA    Zip: 91945

Telephone Number: (619) 287-7555    Fax Number: (619) 287-4073

Name of Company CEO: Steve South

Address(es), phone and fax number(s) of company facilities located in San Diego County (if different from above):

Address: Same

City: \_\_\_\_\_    County: \_\_\_\_\_    State: \_\_\_\_\_    Zip: \_\_\_\_\_

Telephone Number: (    ) \_\_\_\_\_    Fax Number: (    ) \_\_\_\_\_

Type of Business: Trash, Green and Recycling Collection Services    Type of License: \_\_\_\_\_

The Company has appointed: Michael Fellows

As its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:

Address: 6670 Federal Blvd Lemon Grove, CA 91945

Telephone Number: (619) 287-7555    Fax Number: (619) 287-4073

- One San Diego County (or Most Local County) Work Force - Mandatory
- Branch Work Force \*
- Managing Office Work Force

*Check the box above that applies to this WFR.*

*\*Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county.*

I, the undersigned representative of EDCO Disposal Corp

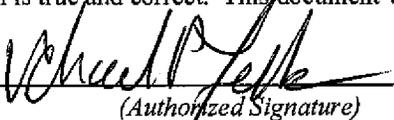
(Firm Name)

San Diego, CA hereby certify that information provided

(County)

(State)

herein is true and correct. This document was executed on this 29th day of October, 2014

  
(Authorized Signature)

Michael P. Fellows

(Print Authorized Signature Name)

**WORK FORCE REPORT – Page 2**

NAME OF FIRM: EDCO Disposal Corp DATE: 10-29-14

OFFICE(S) or BRANCH(ES): Lemon Grove COUNTY: San Diego

**INSTRUCTIONS:** For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- (1) Black, African-American
- (2) Hispanic, Latino, Mexican-American, Puerto Rican
- (3) Asian, Pacific Islander
- (4) American Indian, Eskimo
- (5) Filipino
- (6) White, Caucasian
- (7) Other ethnicity; not falling into other groups

ADMINISTRATION OCCUPATIONAL CATEGORY	(1) Black		(2) Hispanic		(3) Asian		(4) American Indian		(5) Filipino		(6) White		(7) Other Ethnicity	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
	Management & Financial	1		10								12	4	
Professional											1			
A&E, Science, Computer														
Technical														
Sales			1		1						1	2		
Administrative Support			4	6								12		
Services				1										
Crafts			32											
Operative Workers														
Transportation	7		154								4			
Laborers*	6		97	2	1						4			

\*Construction laborers and other field employees are not to be included on this page

Totals Each Column	14		298	9	2						22	18		
--------------------	----	--	-----	---	---	--	--	--	--	--	----	----	--	--

Grand Total All Employees 363

Indicate by Gender and Ethnicity the Number of Above Employees Who Are Disabled:

Disabled														
----------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Non-Profit Organizations Only:

Board of Directors														
Volunteers														
Artists														

NAME OF FIRM: EDCO Disposal Corp

DATE: 10-29-14

OFFICE(S) or BRANCH(ES): Lemon Grove

COUNTY: San Diego

**INSTRUCTIONS:** For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- (1) Black, African-American
- (2) Hispanic, Latino, Mexican-American, Puerto Rican
- (3) Asian, Pacific Islander
- (4) American Indian, Eskimo
- (5) Filipino
- (6) White, Caucasian
- (7) Other ethnicity; not falling into other groups

TRADE OCCUPATIONAL CATEGORY	(1) Black		(2) Hispanic		(3) Asian		(4) American Indian		(5) Filipino		(6) White		(7) Other Ethnicity	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
	Brick, Block or Stone Masons													
Carpenters														
Carpet, Floor & Tile Installers Finishers														
Cement Masons, Concrete Finishers														
Construction Laborers														
Drywall Installers, Ceiling Tile Inst														
Electricians														
Elevator Installers														
First-Line Supervisors/Managers														
Glaziers														
Helpers; Construction Trade														
Millwrights														
Misc. Const. Equipment Operators														
Painters, Const. & Maintenance														
Pipelayers, Plumbers, Pipe & Steam Fitters														
Plasterers & Stucco Masons														
Roofers														
Security Guards & Surveillance Officers														
Sheet Metal Workers														
Structural Metal Fabricators & Fitters														
Welding, Soldering & Brazing Workers														
Workers, Extractive Crafts, Miners														

Totals Each Column														
--------------------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Grand Total All Employees

0

Indicate By Gender and Ethnicity the Number of Above Employees Who Are Disabled:

Disabled														
----------	--	--	--	--	--	--	--	--	--	--	--	--	--	--



# CITY OF SAN DIEGO WORK FORCE REPORT

## HISTORY

The Work Force Report (WFR) is the document that allows the City of San Diego to analyze the work forces of all firms wishing to do business with the City. We are able to compare the firm's work force data to County Labor Force Availability (CLFA) data derived from the United States Census. CLFA data is a compilation of lists of occupations and includes the percentage of each ethnicity we track (Black, Hispanic, Asian, American Indian, Filipino) for each occupation. Currently, our CLFA data is taken from the 2000 Census. In order to compare one firm to another, it is important that the data we receive from the consultant firm is accurate and organized in the manner that allows for this fair comparison.

## WORK FORCE & BRANCH WORK FORCE REPORTS

When submitting a WFR, especially if the WFR is for a specific project or activity, we would like to have information about the firm's work force that is actually participating in the project or activity. That is, if the project is in San Diego and the work force is from San Diego, we want a San Diego County Work Force Report.<sup>1</sup> By the same token, if the project is in San Diego, but the work force is from another county, such as Orange or Riverside County, we want a Work Force Report from that county.<sup>2</sup> If participation in a San Diego project is by work forces from San Diego County and, for example, from Los Angeles County and from

Sacramento County, we ask for separate Work Force Reports representing your firm from each of the three counties.

## MANAGING OFFICE WORK FORCE

Equal Opportunity Contracting may occasionally ask for a Managing Office Work Force (MOWF) Report. This may occur in an instance where the firm involved is a large national or international firm but the San Diego or other local work force is very small. In this case, we may ask for both a local and a MOWF Report.<sup>1,3</sup> In another case, when work is done only by the Managing Office, only the MOWF Report may be necessary.<sup>3</sup>

## TYPES OF WORK FORCE REPORTS:

Please note, throughout the preceding text of this page, the superscript numbers one <sup>1</sup>, two <sup>2</sup> & three <sup>3</sup>. These numbers coincide with the types of work force report required in the example. See below:

- <sup>1</sup> One San Diego County (or Most Local County) Work Force – Mandatory in most cases
- <sup>2</sup> Branch Work Force \*
- <sup>3</sup> Managing Office Work Force

*\*Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county.*

## **Exhibit A: Work Force Report Job categories-Administration**

Refer to this table when completing your firm's Work Force Report form(s).

### **Management & Financial**

Advertising, Marketing, Promotions, Public Relations, and Sales Managers
Business Operations Specialists
Financial Specialists
Operations Specialties Managers
Other Management Occupations
Top Executives

### **Professional**

Art and Design Workers
Counselors, Social Workers, and Other Community and

Social Service Specialists
Entertainers and Performers, Sports and Related Workers
Health Diagnosing and Treating Practitioners
Lawyers, Judges, and Related Workers
Librarians, Curators, and Archivists
Life Scientists
Media and Communication Workers
Other Teachers and Instructors
Postsecondary Teachers
Primary, Secondary, and Special Education School Teachers
Religious Workers
Social Scientists and Related Workers

**Architecture & Engineering, Science, Computer**

Architects, Surveyors, and Cartographers
Computer Specialists
Engineers
Mathematical Science Occupations
Physical Scientists

**Technical**

Drafters, Engineering, and Mapping Technicians
Health Technologists and Technicians
Life, Physical, and Social Science Technicians
Media and Communication Equipment Workers

**Sales**

Other Sales and Related Workers
Retail Sales Workers
Sales Representatives, Services
Sales Representatives, Wholesale and Manufacturing
Supervisors, Sales Workers

**Administrative Support**

Financial Clerks
Information and Record Clerks
Legal Support Workers
Material Recording, Scheduling, Dispatching, and Distributing Workers
Other Education, Training, and Library Occupations
Other Office and Administrative Support Workers
Secretaries and Administrative Assistants
Supervisors, Office and Administrative Support Workers

**Services**

Building Cleaning and Pest Control Workers
Cooks and Food Preparation Workers
Entertainment Attendants and Related Workers
Fire Fighting and Prevention Workers
First-Line Supervisors/Managers, Protective Service Workers
Food and Beverage Serving Workers
Funeral Service Workers
Law Enforcement Workers
Nursing, Psychiatric, and Home Health Aides
Occupational and Physical Therapist Assistants and Aides
Other Food Preparation and Serving Related Workers
Other Healthcare Support Occupations
Other Personal Care and Service Workers
Other Protective Service Workers
Personal Appearance Workers
Supervisors, Food Preparation and Serving Workers
Supervisors, Personal Care and Service Workers
Transportation, Tourism, and Lodging Attendants

**Crafts**

Construction Trades Workers
Electrical and Electronic Equipment Mechanics, Installers, and Repairers
Extraction Workers
Material Moving Workers
Other Construction and Related Workers
Other Installation, Maintenance, and Repair Occupations
Plant and System Operators
Supervisors of Installation, Maintenance, and Repair Workers
Supervisors, Construction and Extraction Workers
Vehicle and Mobile Equipment Mechanics, Installers, and Repairers
Woodworkers

**Operative Workers**

Assemblers and Fabricators
Communications Equipment Operators
Food Processing Workers
Metal Workers and Plastic Workers
Motor Vehicle Operators
Other Production Occupations
Printing Workers
Supervisors, Production Workers
Textile, Apparel, and Furnishings Workers

**Transportation**

Air Transportation Workers
Other Transportation Workers
Rail Transportation Workers
Supervisors, Transportation and Material Moving Workers
Water Transportation Workers

**Laborers**

Agricultural Workers
Animal Care and Service Workers
Fishing and Hunting Workers
Forest, Conservation, and Logging Workers
Grounds Maintenance Workers
Helpers, Construction Trades
Supervisors, Building and Grounds Cleaning and Maintenance Workers
Supervisors, Farming, Fishing, and Forestry Workers

## Exhibit B: Work Force Report Job categories-Trade

### Brick, Block or Stone Masons

Brickmasons and Blockmasons
Stonemasons

### Carpenters

### Carpet, floor and Tile Installers and Finishers

Carpet Installers
Floor Layers, except Carpet, Wood and Hard Tiles
Floor Sanders and Finishers
Tile and Marble Setters

### Cement Masons, Concrete Finishers

Cement Masons and Concrete Finishers
Terrazzo Workers and Finishers

### Construction Laborers

### Drywall Installers, Ceiling Tile Inst

Drywall and Ceiling Tile Installers
Tapers

### Electricians

### Elevator Installers and Repairers

### First-Line Supervisors/Managers

First-line Supervisors/Managers of Construction Trades and Extraction Workers
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### Glaziers

### Helpers, Construction Trade

Brickmasons, Blockmasons, and Tile and Marble Setters
Carpenters
Electricians
Painters, Paperhangers, Plasterers and Stucco
Pipelayers, Plumbers, Pipefitters and Steamfitters
Roofers
All other Construction Trades

### Millwrights

Heating, Air Conditioning and Refrigeration Mechanics and Installers
Mechanical Door Repairers
Control and Valve Installers and Repairers
Other Installation, Maintenance and Repair Occupations

### Misc. Const. Equipment Operators

Paving, Surfacing and Tamping Equipment Operators
Pile-Driver Operators
Operating Engineers and Other Construction Equipment Operators

### Painters, Const. Maintenance

Painters, Construction and Maintenance
Paperhangers

### Pipelayers and Plumbers

Pipelayers
Plumbers, Pipefitters and Steamfitters

### Plasterers and Stucco Masons

### Roofers

### Security Guards & Surveillance Officers

### Sheet Metal Workers

### Structural Iron and Steel Workers

### Welding, Soldering and Brazing Workers

Welders, Cutter, Solderers and Brazers
Welding, Soldering and Brazing Machine Setter, Operators and Tenders

### Workers, Extractive Crafts, Miners

DOCKET SUPPORTING INFORMATION  
CITY OF SAN DIEGO

DATE:

**EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION**

November 5, 2014

SUBJECT: Transfer of Non-Exclusive Solid Waste Collection Franchise

**GENERAL CONTRACT INFORMATION**

Recommended Contractor: EDCO Disposal Corporation (Not Certified, M – Cauc).

Amount of this Action: N/A

Funding Source: N/A

Goal: N/A

**SUBCONTRACTOR PARTICIPATION**

There is no subcontractor participation associated with this action; however, subsequent actions must adhere to funding agency requirements.

**EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE**

Equal Opportunity: Required.

EDCO submitted a submitted a Work Force Report for their San Diego employees dated, October 29, 2014 indicating 363 employees in their Administrative Work Force.

The Administrative Workforce indicates under representation in the following categories:

Black in Administrative Support, Crafts, and Transportation  
Asian in Management & Financial, Administrative Support, Crafts, Transportation, and Laborers  
Filipino in Management & Financial, Administrative Support, Crafts, Transportation, and Laborers  
Female in Management & Financial, Crafts, Transportation, and Laborers

Based on the under representations in the workforce noted above, staff has an approved Equal Employment Opportunity (EEO) Plan on file as of November 5, 2014. Staff will continue to monitor the firm's efforts to implement their EEO plan.

This agreement is subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

**ADDITIONAL COMMENTS**

Adopt an ordinance approving the transfer of the Express Waste and Recycling, Inc. (Express) Non-Exclusive Solid Waste Collection Franchise to EDCO Disposal Corporation.

KM