



THE CITY OF SAN DIEGO  
**REPORT TO THE CITY COUNCIL**

DATE ISSUED: April 19, 2012 REPORT NO. 12-056  
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 Fifth Amendment to the Class I Non-Exclusive Franchise Agreements for Solid Waste Management Services and the Fourth Amendment to the Class II Non-Exclusive Franchise Agreements for Solid Waste Management Services, effective July 1, 2012 for existing Class I and II franchisees. This action is requested for the Class I and Class II franchisees 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 Class I and II franchisees listed in Exhibit A, effective July 1, 2012 through June 30, 2019; and (2) updated language regarding collection services on residential private roads.

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 add one-year to the term of the franchises and update language regarding collection services on residential private roads.

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. 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, and Waste Management (and their affiliates), collect approximately 88% of the commercial waste generated within the City, and the remaining franchisees collect about 12%. 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. Fees for Class I franchisees are lower than for Class II franchisees. 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. Staff proposes that franchise agreements be extended by one year in accordance with the terms of the current franchise agreements as amended for all franchisees listed in Exhibit A.

### Residential Private Road Service

The City terminated all Hold Harmless Agreements and discontinued City-provided refuse, recycling and yard waste collection services to residential units serviced from private streets effective July 1, 2011. The amendment deletes and updates language in the franchise agreement regarding the scope of the franchise to reflect this change.

## FISCAL CONSIDERATIONS

There are no fiscal impacts associated with this action.

## PREVIOUS COUNCIL and/or COMMITTEE ACTION:

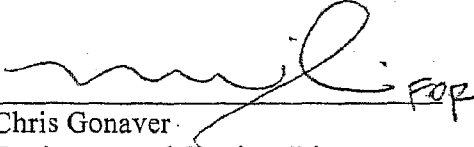
Ordinance to adopt last franchise amendments occurred in September 28, 2011.

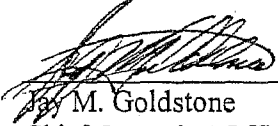
COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

ESD has informed the franchised haulers of the proposal for a one (1) year extension of the franchise agreements to be effective July 1, 2012 to retain a seven (7) year term, as well as revisions to language regarding collection services on residential private streets. 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: Fifth Amendment to Class I Non-Exclusive Franchise Agreement
- Exhibit C: Fourth Amendment to Class II Non-Exclusive Franchise Agreement

EXHIBIT A

CITY OF SAN DIEGO  
NON-EXCLUSIVE SOLID WASTE COLLECTION FRANCHISEES

CLASS I FRANCHISEES

Allan Company  
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**

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

This FIFTH AMENDMENT TO THE CLASS I NON-EXCLUSIVE FRANCHISE AGREEMENT FOR SOLID WASTE MANAGEMENT SERVICES [Fifth Amendment] is entered into by and between the City of San Diego [City] and \_\_\_\_\_ [Franchisee] and is effective the 1st day of July 2012.

**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 Fifth Amendment to the Agreement by the Franchisee was duly authorized by Resolution of its Board of Directors on \_\_\_\_\_, 2012:

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, 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.

To: The effective date of this Agreement shall be July 1, 2012 [Effective Date]. The term of this Franchise granted to Franchisee shall be for seven (7) years beginning with the Effective Date of July 1, 2012, through June 30, 2019, 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 3.5 – Limitations to Scope, subsection B:

From: Residential refuse collected on private streets for which there is a valid hold harmless agreement to provide such service, as described in Municipal Code section 66.0127.

To: *Reserved.*

Section 5.3 – Residential Private Road Service:

From: Franchisee may collect residential solid waste from residences which are located exclusively on private streets. The grant of authority to collect residential solid waste is limited by San Diego Municipal Code Section 66.0127 which requires the City to collect residential solid waste from residences located exclusively on private streets where a valid hold harmless agreement was in effect prior to November 7, 1986.

To: Franchisee may collect residential solid waste from residences which are located exclusively on private streets. The grant of authority to collect residential solid waste is regulated by San Diego Municipal Code Section 66.0127.

This Fifth 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 Fifth 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 Fifth Amendment to the Agreement this \_\_\_ day of \_\_\_ 2012.

JAN GOLDSMITH, City Attorney

By: \_\_\_\_\_  
Grace C. Lowenberg  
Deputy City Attorney

**CITY OF SAN DIEGO  
ENVIRONMENTAL SERVICES DEPARTMENT**

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

This FOURTH AMENDMENT TO THE CLASS II 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 2012.

**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 Fourth Amendment to the Agreement by the Franchisee was duly authorized by Resolution of its Board of Directors on \_\_\_\_\_, 2012;

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, 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.

To: The effective date of this Agreement shall be July 1, 2012 [Effective Date]. The term of this Franchise granted to Franchisee shall be for seven (7) years beginning with the Effective Date of July 1, 2012, through June 30, 2019, 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 3.5 – Limitations to Scope, subsection B:

From: Residential refuse collected on private streets for which there is a valid hold harmless agreement to provide such service, as described in Municipal Code section 66.0127.

To: *Reserved.*

Section 5.3 – Residential Private Road Service:

From: Franchisee may collect residential solid waste from residences which are located exclusively on private streets. The grant of authority to collect residential solid waste is limited by San Diego Municipal Code Section 66.0127 which requires the City to collect residential solid waste from residences located exclusively on private streets where a valid hold harmless agreement was in effect prior to November 7, 1986.

To: Franchisee may collect residential solid waste from residences which are located exclusively on private streets. The grant of authority to collect residential solid waste is regulated by San Diego Municipal Code Section 66.0127.

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 \_\_\_ 2012.

JAN GOLDSMITH, City Attorney

By: \_\_\_\_\_  
Grace C. Lowenberg  
Deputy City Attorney