

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: John Stufflebean

SUBJECT: SEE BELOW

DATE: 04-28-09

Approved

Date

4/28/09

COUNCIL DISTRICT: City-Wide

SUBJECT: ACTIONS RELATED TO THE ISSUANCE OF COMMERCIAL SOLID WASTE AND RECYCLABLES COLLECTION FRANCHISES

RECOMMENDATION

Conduct a public hearing on the applications of the following companies for Commercial Solid Waste and Recyclables Collection Franchises; approve the ordinances granting the franchises; and approve the Commercial Solid Waste and Recyclables Collection Franchise Agreements for a term from July 1, 2009 to June 30, 2012 with the option of three one-year extensions.

- A & A Recycling
- All Points Rolloff, Inc
- Allied Waste Services of North America, LLC dba Allied Waste of Santa Clara County
- Bernardini Enterprises, Inc dba JD Services
- Eagle Recycling, Inc.
- Eco Box Recycling Inc
- EMS, LLC
- Environmental Resources Recovery Inc. dba Valley Recycling
- GreenWaste Recovery Inc
- GreenWaste Recovery Inc. dba \$99 Debris Box Service
- Grifall Trucking Inc
- Haul-Away Today
- JHM Services Inc.
- Jonna Corp dba Premier Recycle
- LMH Enterprises Inc. dba Number "1" Disposal
- Los Altos Garbage Co. dba Stevens Creek Disposal and Recycling
- Mission Trail Waste Systems Inc. dba Recycle West
- Pacific Coast Recycling

- Panther Industries
- Qualified Trucking, Inc
- RD Mendes Enterprises, Inc. dba Accurate Cleaning Systems
- Recycling & Waste Services
- San José Conservation Corps & Charter School
- The Flea Market, Inc.
- Waste Connections of California Inc. dba GT Waste

OUTCOME

Council-approved Franchisees would be authorized to collect commercial solid waste and recyclables within the City of San José under the terms and conditions set forth in the Franchise Agreements between the City and the Franchisees and as established in the San José Municipal Code for a term beginning July 1, 2009 through June 30, 2012 with three optional one-year extensions.

BACKGROUND

The City of San José has had an open market for the collection of solid waste and recyclables from businesses, institutions, and other non-residential properties since 1994. Chapter 9.10 of the San José Municipal Code and the City Charter require that the City Council issue Commercial Solid Waste and Recyclables Collection Franchises after a public hearing and by adoption of an ordinance. Franchises granted under this open market system are non-exclusive and the franchisees compete with each other to collect solid waste and commingled recyclables from commercial properties and to provide temporary debris box services to residences and construction sites. Based on the market demand, haulers set prices in different market niches (e.g. small carts, frontload, or debris box services) giving waste generators the option to select the level of solid waste and recycling service that best meets their needs. Franchisees may conduct business throughout the city and are not limited to service districts. The franchise only authorizes the holder to perform collection services and does not constitute permission to operate a solid waste facility or a recycling center, which must be permitted separately.

The City generates revenue from the issuance of franchises in the form of franchise fees. The City provides no compensation to franchisees. The franchisees receive compensation directly from their customers. The City does not regulate service rates. The hauler and the customer contract directly for services costs and the rates are based on competition between haulers. Franchised haulers are also required to collect a Commercial Source Reduction and Recycling fee (AB 939 fee) from their San José customers and to remit this fee to the City. The AB 939 fee is assessed on the generator based on the customer's level of garbage service. As an incentive to encourage recycling, the City does not require haulers to pay franchise fees or the customer to pay AB 939 fees on recyclable materials.

On May 9, 2006, the City Council granted 24 franchises for a term beginning July 1, 2006 and ending June 30, 2009. All except three of the franchise applicants hold current Commercial Solid

Waste and Recyclables Collection Franchise Agreements. The three new applicants are RD Mendes Enterprises, Inc., Qualified Trucking, Inc, and Eagle Recycling, Inc. All applicants have a current San José business tax certificate and have submitted the required franchise application and application fee. Staff has reviewed each application and recommends awarding a franchise to each applicant. More information about each applicant may be found in Attachment A.

In a separate memorandum, the Administration recommends several changes to the San José Municipal Code and the franchise agreement to define "large events"; increase the penalty for submitting late monthly reports; and remove the annual exemption from franchise fees for the first twenty thousand (20,000) cubic yards of un-compacted solid waste.

ANALYSIS

The City is currently redesigning the commercial solid waste system. These changes, however, are not anticipated to go into effect until 2012. Staff recommends issuance of a three-year franchise and approval of franchise agreements to all applicants in order to have commercial services during the transition period, and reduce the administrative work associated with issuing annual extensions during the transition. In 2006, staff recommended two different franchise terms, but has determined that in balancing the advantages and disadvantages of having two types of franchises, a single term is the best option. Franchisees would be authorized to collect commercial solid waste and recyclables within the City of San José under the terms and conditions set forth in the Franchise Agreements and as established in San José Municipal Code Chapter 9.10.

The City fulfilled the State's five year noticing requirement pursuant to State of California Public Resources Code § 49520 when it notified all existing franchised commercial solid waste haulers in 2001 that the City may provide, or contract for, exclusive commercial solid waste collection services.

EVALUATION AND FOLLOW-UP

This action does not address any performance measures.

PUBLIC OUTREACH/INTEREST

Although the criteria below do not apply to this item, this memorandum will be posted on the City's website for the Council Agenda of May 12, 2009. In November of 2008, staff held an informational meeting for all of the current franchised haulers and anyone who might be interesting in obtaining a franchise in the future. At this meeting staff verbally reviewed each of the proposed changes for the new franchise agreements. In March of 2009, a letter was sent to each of the haulers highlighting the changes in the new agreements. On April 20, 2009, a public hearing notice identifying each applicant was submitted to the City Clerk's office in accordance with San Jose Municipal Code section 9.10.1650.

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

COORDINATION

This memorandum was coordinated with the City Attorney's Office, City Manager's Budget Office, and the Department of Planning, Building, Code Enforcement.

FISCAL/POLICY ALIGNMENT

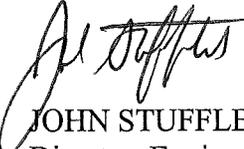
The new franchise will help the City achieve the Green Vision goal number 5 and has no impact on General Fund.

COST SUMMARY/IMPLICATIONS

Each applicant has paid the \$195 application fee as required by San José Municipal Code Section 9.10.1670.

CEQA

CEQA: Exemption; File No. PP08-228.


JOHN STUFFLEBEAN
Director, Environmental Services

Attachment A: (FY 07-08)

For questions please contact Jo Zientek, Deputy Director at (408) 535-8557.

Attachment A (FY '07 - '08)

	Years in Business in SJ	Business Location	Organization Type	Average Monthly Gross Revenue	Container Type			Material Type		
					Front Load	Roll Off	Other	All CSWT	Recyclables	Rubbish
A & A Recycling	7	San Jose, CA	Individual	\$32,848		X			X	
All Points Rolloff, Inc.	18	San Jose, CA	Corporation	\$16,125		X			X	
Allied Waste Services of North America, LLC dba Allied Waste of Santa Clara County	20	Milpitas, CA	Limited Liability Company	\$1,161,471	X				X	X
Bernardini Enterprises, Inc. dba JD Services	1	Redwood City, CA	Corporation	\$5,000		X			X	X
Eagle Recycling, Inc.	1	Hollister, CA	Corporation	\$0	X				X	X
Eco Box Recycling Inc.	3	Santa Clara, CA	Corporation	\$0		X			X	
EMS, LLC	9	San Jose, CA	Limited Liability Company	\$24,665.83		X			X	
Environmental Resources Recovery Inc. dba Valley Recycling	23	San Jose, CA	Corporation	\$66,275		X			X	
GreenWaste Recovery Inc.	18	San Jose, CA	Corporation	\$556,440	X				X	X
GreenWaste Recovery Inc. dba \$99 Debris Box Service	18	San Jose, CA	Corporation	\$92,648		X			X	X
Grifall Trucking Inc.	39	San Jose, CA	Corporation	\$0				X		X
Haul-Away Today	14	San Jose, CA	Individual	\$1,667		X			X	X
JHM Services Inc.	20	San Jose, CA	Corporation	\$0				X		X
Jonna Corp dba Premier Recycle	18	San Jose, CA	Corporation	\$120,883		X			X	X
LMH Enterprises Inc. dba Number "1" Disposal	23	Morgan Hill, CA	Corporation	\$13,143		X			X	X
Los Altos Garbage Co. dba Stevens Creek Disposal and Recycling	13	Santa Clara, CA	Corporation	\$1,884,761	X				X	X
Mission Trail Waste Systems Inc. dba Recycle West	23	Santa Clara, CA	Corporation	\$5,087	X				X	
Pacific Coast Recycling	13	Gilroy, CA	Corporation	\$7,923		X			X	
Panther Industries	21	Hayward, CA	Individual	\$19,311				X		X
Qualified Trucking Inc	6	San Jose, CA	Corporation	\$4,833		X			X	X
RD Mendes Enterprises, Inc. dba Accurate Cleaning Systems	0	Hollister, CA	Corporation	\$0		X			X	X
Recycling Waste Services	6	San Jose, CA	Corporation	\$0	X				X	
San Jose Conservation Corps & Charter School	22	San Jose, CA	Non-Profit	\$14,109				X		X
The Flea Market, Inc.	49	San Jose, CA	Corporation	\$0		X				X
Waste Connections of California Inc. dba GT Waste	11	San Jose, CA	Corporation	\$297,800	X				X	X

†Note: Commercial Solid Waste