



COUNCIL AGENDA: 08-18-09
ITEM: 7.2

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: John Stufflebean

SUBJECT: SEE BELOW

DATE: 07-27-09

Approved

Date 7/29/09

COUNCIL DISTRICT: City-Wide

**SUBJECT: COMMERCIAL SOLID WASTE AND RECYCLABLES COLLECTION
FRANCHISE AGREEMENT BETWEEN THE CITY OF SAN JOSE AND
FERMA CORPORATION**

RECOMMENDATION

Hold a public hearing on the application of Ferma Corporation for a Commercial Solid Waste and Recyclables Collection Franchise, approve the ordinances granting the franchise, and approve the Commercial Solid Waste and Recyclables Collection Franchise Agreement for a term from September 18, 2009 to June 30, 2012 with the option of three one-year extensions.

OUTCOME

With Council approval, the Franchisee 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 Agreement between the City and the Franchisee and as established in the San José Municipal Code, for a term beginning September 18, 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 authorize the City Council to issue a Commercial Solid Waste and Recyclables Collection Franchise 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. Franchisees may conduct business throughout the city and are not limited to

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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.

Ferma Corporation has submitted a Commercial Solid Waste and Recyclables Collection Franchise application and paid the required application fee.

ANALYSIS

The City is currently redesigning the commercial solid waste system. These changes, however, are not anticipated to go into effect until 2012. As a Franchisee under the current system, Ferma Corporation 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. Staff recommends a term beginning September 18, 2009 through June 30, 2012 with three optional one-year extensions.

Ferma Corporation is based in Mountain View, California. Ferma has been in business 46 years, primarily as a demolition contractor. They currently self-haul material from their own demolition projects. Ferma has applied for a franchise in order to haul construction and demolition materials (including wood, metal, cardboard, sheetrock, concrete, or any combination of these materials) generated by other contractors, and will operate five roll-off collection vehicles. The collected material will be taken to Ferma's processing facilities located in San Jose, Redwood City, and Sunol.

Staff has reviewed Ferma's franchise application and recommends awarding a franchise at this time.

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 August 18, 2009. On July 30, 2009, a public hearing

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notice identifying the 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 and 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

The 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.

/S/
JOHN STUFFLEBEAN
Director, Environmental Services

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