RESOLUTION NO. 75601

RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE SETTING COMMERCIAL SOLID WASTE COLLECTION FRANCHISE FEES

WHEREAS, effective January 1, 1995, pursuant to Section 9.10.1710 of the San José Municipal Code, each person engaging in the business of collecting, transporting, or disposing of commercial solid waste kept, accumulated or generated in the City of San José shall pay a franchise fee to the City in an amount as set forth in a resolution of the City Council; and

WHEREAS, by Resolution No. 65676, adopted December 13, 1994, the City Council set commercial solid waste collection franchise fees effective January 1, 1995; and

WHEREAS, by Resolution No. 66598, adopted May 7, 1996, the City Council set commercial solid waste collection franchise fees for solid waste handling services performed on or after July 1, 1996; and

WHEREAS, by Resolution No. 67832, adopted December 16, 1997, the City Council set commercial solid waste collection franchise fees for solid waste handling services performed on or after January 1, 1998; and

WHEREAS, by Resolution No. 68970, adopted June 22, 1999, the City Council set commercial solid waste collection franchise fees for solid waste handling services performed on or after August 1, 1999; and

WHEREAS, by Resolution No. 71243, adopted October 8, 2002, the City Council set commercial solid waste collection franchise fees for solid waste handling services performed on or after November 1, 2002; and

WHEREAS, by Resolution No. 71582, adopted May 27, 2003, the City Council set commercial solid waste collection franchise fees for solid waste handling services performed on or after July 1, 2003; and

WHEREAS, by Resolution No. 72163, adopted June 15, 2004, the City Council set commercial solid waste collection franchise fees for solid waste handling services performed on or after August 1, 2004; and

WHEREAS, by Resolution No. 72754, adopted June 21, 2005, the City Council set commercial solid waste collection franchise fees for solid waste handling services performed on or after August 1, 2005; and

WHEREAS, by Resolution No. 73256, adopted June 20, 2006, the City Council set commercial solid waste collection franchise fees for solid waste handling services performed on or after August 1, 2006; and

WHEREAS, by Resolution No. 74647, adopted October 28, 2008, the City Council set commercial solid waste collection franchise fees for solid waste handling services to a public schools that have entered into a Waste Reduction and Recycling Cooperation Agreement with the City at zero; and

WHEREAS, by Resolution 74907, adopted May 12, 2009, the City Council revised the commercial solid waste collection franchise fees for solid waste handling services performed on or after July 1, 2009 to remove the exemption for franchisees who do not perform front-loader service;

WHEREAS, the City Council desires to establish the commercial solid waste collection franchise fee for a franchise granted based on a geographic collection district;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Except as provided in Sections 4 and 6 of this Resolution, each person engaging in the business of collecting, transporting or disposing of commercial solid waste kept, accumulated or generated in the City of San José shall pay a franchise fee to the City calculated as follows:

1. Three Dollars and Sixty-Seven Cents ($3.67) per cubic yard, or fraction thereof, of uncompacted solid waste capacity per collection; plus

2. Eleven Dollars and One Cent ($11.01) per cubic yard, or fraction thereof, of compacted solid waste capacity per collection.

SECTION 2. The following definitions shall apply in the calculation of commercial solid waste collection franchise fees:

1. "Solid waste capacity" means the size (expressed in cubic yards) of the solid waste container from which the solid wastes are collected, regardless of the actual amount of solid wastes in the container. In the case where solid wastes are not placed in containers but are placed directly into the collection vehicle, "solid waste capacity" means the size (expressed in cubic yards) of the solid waste holding area of the collection vehicle.
2. "Compacted" capacity means the solid waste capacity in a compactor unit or separate compactor system receiving box where solid wastes are compacted by the solid waste generator prior to collection. Compacted does not include any compaction which occurs after the solid wastes are placed in the collection vehicle.
3. "Per collection" means each time solid waste collection service is provided for a particular container.
4. "Uncompacted" capacity means the solid waste capacity in a can, bag, bin, roll-off box, or other solid waste container where solid wastes are placed loose in the container and are not compacted prior to collection.

Example: If the solid waste container is a four-cubic yard bin with no compaction, the franchise fee is $14.68 (i.e., 4 x $3.67) for each time solid waste collection services are performed with respect to that container. If a four-yard bin is serviced eight times per month, the franchise fee payable for one month is $117.44 (i.e., 4 x $3.67 x 8).

SECTION 3. Except as provided in Sections 4 and 6 of this Resolution, the franchise fees specified in Section 1 of this Resolution shall be payable for all

commercial solid waste collection, transportation and/or disposal services performed on or after July 1, 2009.

SECTION 4. Franchise Fees Applicable to Solid Waste Handling Services at City Facilities.

A. The provisions of Sections 1 – 3 of this Resolution shall not apply to a franchisee who collects transports or disposes of solid waste kept, accumulated or generated at City of San José facilities located in the City pursuant to the Agreement for Solid Waste Collection Services at City Facilities (the "Agreement").

B. In lieu of the requirements for franchise fees set forth in Sections 1 – 3, the contractor described in paragraph A shall pay a franchise fee to the City for all solid waste collected pursuant to the Agreement as follows:

   1. For all solid waste that is weighed at the time of collection or at the time of delivery to the solid waste disposal facility, $61.17 per ton; and
   2. For all solid waste for which scales are not available to determine the weight of the solid waste collected, an amount per cubic yard equivalent to $61.17 per ton as determined by the Director of Environmental Services.

SECTION 5. The franchise fees shall be payable to the City in accordance with the requirements of Section 9.10.1710 of the San José Municipal Code.

SECTION 6. Each person engaged in the business of collecting, transporting or disposing of commercial solid waste from a public school district providing education in grades K-12 (or any grades within K-12) or an adult education institution supported by public funds, that has entered into a Waste Reduction and Recycling Cooperation Agreement with the City, shall pay a franchise fee to the City of zero ($0) for each cubic yard of solid waste collected from the school.

SECTION 7.

Notwithstanding Sections 1, 2, 3, and 4 of this Resolution, each person engaging in the business of collecting, transporting or disposing of commercial solid waste kept, accumulated or generated in the City of San José shall pay an annual franchise fee to the City in the amount of $5,000,000.00 for each franchise granted based on a geographic collection district. The franchise fee may be adjusted on or about June for each subsequent Fiscal Year to reflect an amount not to exceed the percentage increase in the annual Consumer Price Index, All Urban Consumers, U.S. City Average, Series ID CUUR0000SA0 (CPI) for the preceding two calendar years.

EXAMPLE: The CPI adjustment for the franchise fee for FY 2014-2015 could be in an amount not to exceed three percent (3%) based on the difference in the annual CPI for the preceding two calendar years, of 100 for 2012 and 103 for 2013.

If the change in the annual Consumer Price Index, All Urban Consumers, U.S. City Average, Series ID CUUR0000SA0 for the preceding two calendar years is a percentage decrease, the adjustment for that Fiscal Year shall be zero. If an index is discontinued, the successor index with which it is replaced will be used for subsequent calculations. If no successor index is identified by the Bureau of Labor Statistics, the index published by the Bureau which is most comparable will be used.

Nothing in this Resolution is intended to preclude the City Council from reducing the amount of the franchise fee payable by franchisees in the event that the City Council determines in its sole discretion that the circumstances warrant such decrease. Any decrease in the amount of the franchise fee would not limit the City Council from subsequently requiring the franchisee to resume paying the franchise fee amount before the reduction subject to the CPI adjustment process stated in this Section.

SECTION 8. This Resolution supersedes Resolution No. 74907.

ADOPTED this 19th day of October, 2010, by the following vote:

AYES: CHIRCO, CHU, HERRERA, KALRA, LICCARDO, NGUYEN, OLIVERIO, PYLE; REED.

NOES: NONE.

ABSENT: CAMPOS, CONSTANT.

DISQUALIFIED: NONE.

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk