

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY, CALIFORNIA
AND RECORD OF ACTION**

June 18, 2013

**FROM: GERRY NEWCOMBE, Director
Department of Public Works - Solid Waste Management**

SUBJECT: AMENDMENT NO. 2 TO THE SOLID WASTE HANDLING FRANCHISE AGREEMENTS

RECOMMENDATION(S)

Approve Amendment No. 2 authorizing a one-time 7-month extension from June 30, 2013 to January 31, 2014 in which a Notice of Non-Renewal can be issued to the following twenty-one (21) Solid Waste Handling Franchise Agreements for various County Franchise Areas (CFA) within the unincorporated portion of the County.

1. Burrtec Waste Industries for CFA 1 – San Antonio Heights, Mt. Baldy, portions of Lytle Creek. **(Agreement No. 09-600A-2)**
2. Burrtec Waste Industries for CFA 2 – sphere of the cities of Montclair and Upland. **(Agreement No. 09-601A-2)**
3. USA Waste of California for CFA 3 – sphere of the City of Chino. **(Agreement No. 09-602A-2)**
4. Burrtec Waste Industries for CFA 5 – sphere of the City of Fontana. **(Agreement No. 09-603A-2)**
5. Burrtec Waste Industries for CFA 6 – community of Bloomington. **(Agreement No. 09-604A-2)**
6. Cal Disposal Company for CFA 8 – Muscoy, South Cajon Pass, sphere of City of San Bernardino. **(Agreement No. 09-605A-2)**
7. Burrtec Waste Industries for CFA 9 – El Rancho Verde community (Rialto) **(Agreement No. 09-606A-2)**
8. Jack's Disposal Company for CFA 10 – Devore and the sphere of the City of San Bernardino. **(Agreement No. 09-607A-2)**
9. Burrtec Waste Industries for CFA 11 – sphere of the City of Loma Linda. **(Agreement No. 09-608A-2)**
10. Empire Disposal for CFA 12 – Mentone, Oake Glen, sphere of the City of Redlands, Mountain Home and Angeles Oaks. **(Agreement No. 09-609A-2)**
11. CR&R Waste Services for CFA 15 – Wrightwood community. **(Agreement No. 09-610A-2)**
12. Mountain Disposal Company for CFA 16 – Crestline, Running Springs, Lake Arrowhead, Green Valley Lake, and Blue Jay. **(Agreement No. 09-611A-2)**

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cc: SWMD- Rivera w/Agree; Newcombe
Contractor c/o SWMD w/Agree
ACR- Acct. Pay. Mgr. w/Agree
EBIX-BPO c/o Risk Mgmt.
CAO-Valdez
File - w/Agree
ss 6/26/13

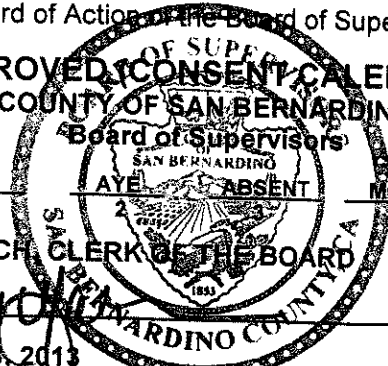
ITEM 70

Record of Action of the Board of Supervisors
APPROVED (CONSENT CALENDAR)
COUNTY OF SAN BERNARDINO
Board of Supervisors
SAN BERNARDINO
1851

MOTION	AYE	AYE	ABSENT	MOVE	SECOND
	1	2			5

LAURA H. WELCH, CLERK OF THE BOARD

BY 
DATED: June 18, 2013



AMENDMENT NO. 2 TO THE SOLID WASTE HANDLING FRANCHISE AGREEMENTS
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13. Big Bear Disposal for CFA 17 – Fawnskin, Baldwin Lake and Lake Williams. (**Agreement No. 09-612A-2**)
 14. Advance Disposal Company for CFA 18 – Spring Valley Lake, unincorporated area of Hesperia and Apple Valley. (**Agreement No. 09-613A-2**)
 15. Burrtec Waste Industries for CFA 19 – sphere of the City of Victorville, Town of Apple Valley and the City of Adelanto, Landers and Lucerne Valley. (**Agreement No. 09-614A-2**)
 16. CR&R for CFA 20 – Phelan, Pinon Hills, and the sphere of the City of Adelanto. (**Agreement No. 09-615A-2**)
 17. Benz Sanitation for CFA 21 – Trona, Windy Acres, Four Corners, and the Red Mountain. (**Agreement No. 09-616A-2**)
 18. Burrtec Waste Industries for CFA 22 – unincorporated area northwest of the City of Adelanto. (**Agreement No. 09-617A-2**)
 19. Burrtec Waste Industries for CFA 23 – sphere of the City of Barstow and Lenwood-Hinkley. (**Agreement No. 09-618A-2**)
 20. Burrtec Waste Industries for CFA 24 – Yermo, Daggett and Newberry Springs. (**Agreement No. 09-619A-2**)
 21. Burrtec Waste & Recycling for CFA 25 – Joshua Tree, sphere of the Town of Yucca Valley, and Morongo Valley. (**Agreement No. 09-620A-2**)
- (Presenter: Gerry Newcombe, Director, 387-7906)

BOARD OF SUPERVISORS COUNTY GOALS AND OBJECTIVES

Operate in a Fiscally-Responsible and Business-Like Manner.
Ensure Development of a Well-Planned, Balanced, and Sustainable County.

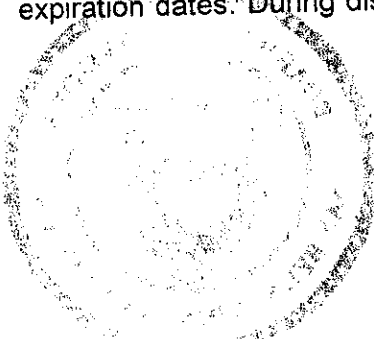
FINANCIAL IMPACT

Approval of these actions will not impact discretionary general funding (net county cost) as the Solid Waste Management Division (SWMD) of the Department of Public Works is not financed by the General Fund. Instead, the SWMD establishes fees that are charged to the public and other agencies for utilization of the County's Waste Disposal System. The recommended amendments are non-financial.

BACKGROUND INFORMATION

Approval of this item will authorize a one-time extension from June 30, 2013 to January 31, 2014 in which a Notice of Non-Renewal can be issued by the County to the franchise haulers. This change will allow the County and the franchised haulers the time needed to negotiate changes to the existing agreements that will benefit the County and its residents.

The Franchise Agreements were originally put into place and approved by the Board of Supervisors (Board) on May 19, 1998 (Item No. 57) to ensure that the unincorporated area communities within the County were afforded adequate solid waste handling services to be provided in a manner to protect the health and safety of the community, and to establish waste reduction and recycling programs in compliance with the Integrated Waste Management Act of 1989 (AB939). As originally approved, the Franchise Agreements had varying terms and expiration dates. During discussion of Item No. 19 on June 24, 2008, the Board directed SWMD



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to update the Franchise Agreements. Updated agreements were negotiated with the County's existing franchise haulers and were approved by the Board on June 16, 2009 (Item No. 92).

On November 6, 2012, (Item No. 96) the Franchise Agreements were amended to clarify the Cost of Living Adjustment methodology, allow that adjustments can be made in accordance with section 13.2 and updated the Exhibit "E" which sets the current rates for the franchise area.

The Franchise Agreements approved in 2009 have a rolling term of eight years which is automatically extended annually for one additional year. This rolling term is not changing with the proposed amendment. Therefore, on July 1, 2013, the term of the existing twenty-one (21) franchise agreements will automatically be extended for one additional year for a total term of eight years, i.e., with a new expiration date of June 30, 2021.

In addition, Section 4 of the Franchise Agreements provide that either party may terminate the automatic extension provision with properly given notice of non-renewal. Such notice of non-renewal must be given to the other party in writing and must occur between January 1 and June 30 in an odd numbered year. Staff is recommending extending this period from June 30, 2013 to January 31, 2014, to meet and discuss potential amendments to the franchise agreements that may obviate the need for the County to give a notice of non-renewal at this time.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Julie Surber, Deputy County Counsel, 387-5455) on May 28, 2013 and the County Administrative Office (Beatriz Valdez, Public Works Chief Financial Officer, 387-1852) on May 30, 2013.



County of San Bernardino
F A S

CONTRACT TRANSMITTAL

Amendment #2

FOR COUNTY USE ONLY

<input type="checkbox"/> New	FAS Vendor Code		SC	Dept. A	Contract Number 09-616A-2	
<input checked="" type="checkbox"/> Change				SWM		
<input type="checkbox"/> Cancel						
ePro Vendor Number				ePro Contract Number		
County Department DPW/Solid Waste Management			Dept. SWM	Orgn. SWM	Contractor's License No.	
County Department Contract Representative Arthur L. Rivera, Division Manager				Telephone (909)386-8703		Total Contract Amount
Contract Type <input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Encumbered <input type="checkbox"/> Unencumbered <input type="checkbox"/> Other:						
If not encumbered or revenue contract type, provide reason:						
Commodity Code		Contract Start Date 7/2/2009	Contract End Date 6/30/2021	Original Amount	Amendment Amount	
Fund EAA	Dept. SWM	Organization WDP	Appr.	Obj/Rev Source 8350	GRC/PROJ/JOB No. 98008350	Amount
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount
Project Name Solid Waste Handling Franchise Agreement			Estimated Payment Total by Fiscal Year			
Amendment No. 2			FY	Amount	I/D	
CFA 21						

CONTRACTOR Benz Sanitation, Inc.

Federal ID No. or Social Security No. On-File

Contractor's Representative Paul Benz

Address 1401 Goodrick Dr. PO Box 1750, Tehachapi, Ca. 93561

Phone (661) 822 - 5272

Nature of Contract: : Attached is Amendment No. 2 dated June 18, 2013 to AGREEMENT BETWEEN THE COUNTY OF SAN BERNARDINO AND BENZ SANITATION, INC. FOR THE COLLECTION AND TRANSPORTATION OF SOLID WASTE AND OTHER SERVICES dated June 16 2009.

THIS IS NOT A CONTRACT
THIS IS A COVER
TRANSMITTAL ONLY

(Attach this transmittal to all contracts not prepared on the "Standard Contract" form.)

Approved as to Legal Form (sign in blue ink) County Counsel Date <u>6/10/13</u>	Reviewed as to Contract Compliance Date <u>6/10/13</u>	Presented to BOS for Signature Department Head Date <u>6/10/13</u>
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Amendment No. 2
to AGREEMENT BETWEEN
THE COUNTY OF SAN BERNARDINO AND
BENZ SANITATION, INC.
FOR THE COLLECTION AND TRANSPORTATION OF SOLID WASTE
AND OTHER SERVICES dated June 16, 2009

WHEREAS, on June 16, 2009 (Item No. 92), the Board of Supervisors ("Board") approved County Contract No. 09-616 between the County of San Bernardino ("County") and BENZ SANITATION, INC. ("Grantee") to provide for the collection and transportation of solid waste and other services (the "Franchise Agreement");

WHEREAS, on November 6, 2012 (Item No. 96) the Board approved Amendment No. 1 to the Franchise Agreement which amended, Section 13.2 to clarify the methodology for the calculation of rates/Cost of Living Adjustment (COLA), allowed adjustments to be made in accordance with Section 13.2 when calculated in error, and updated the Exhibit "E" which sets the current rates for the franchise area,

WHEREAS, the County and Grantee desire to amend "Section 4, Term" of the Franchise Agreement.

NOW THEREFORE, the Franchise Agreement is amended as follows:

1. Section 4. Term is deleted in its entirety and replaced with the following:

SECTION 4. TERM

(a) The initial term of this Agreement shall commence on the later of (i) July 1, 2009 or (ii) the date on which amendments made to the County Code for consistency purposes become effective, and expiring on June 30, 2017. Thereafter, beginning on July 1, 2010, and on each July 1 anniversary date thereafter, the term of this Agreement will be extended automatically for one (1) additional year, so as to have a rolling term of eight (8) years. Should either party desire that said automatic renewal and extension provision be terminated, such party shall give the other written notice of nonrenewal between January 1 and June 30 in any odd-numbered year, but not before the year 2011; except that for any notice required to be given by June 30, 2013, such notice may instead be given no later than January 31, 2014. Any such notice, properly given, shall serve to terminate the automatic one year renewal and extension provision only, and this Agreement shall remain in effect for the balance of the term then outstanding. In the event that either party exercises its right to terminate the automatic renewal and extension provision under this paragraph, the parties may subsequently reinstate the automatic renewal and extension provision by mutual written agreement.

(b) Whether or not specifically mentioned or incorporated in this Agreement, exercise of the Franchise granted herein, and every provision of this Agreement, are subject to the terms, conditions and provisions of Division 6 of Title 4 of the County Code, as currently existing. With respect to each extended term of this Agreement, exercise of the Franchise granted herein, and every provision of the Agreement, are subject to the terms, conditions and provisions of Division 6 of Title 4 of the County Code, as currently existing or as hereinafter amended, so long as the amendment to the Division has been adopted by the Board prior to the date by which the Board is required to determine that this Franchise Agreement shall not be extended (as provided in Section 4), whether or not such amendment is effective prior to such date. Notwithstanding this section, Grantee acknowledges and agrees that Division 6 of Title 4 of the County Code will be amended after this Amendment No. 2 is approved by the Board to allow an extension of the time to give notice from June 30, 2013 to January 31, 2014 as described in amended Section 4(a) and Grantee agrees to be bound by the amended Division 6 of Title 4 of the County Code.

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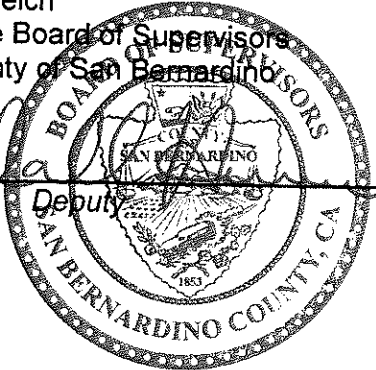
2. Except as amended herein and in Amendment No. 1, all other terms and conditions of the Franchise Agreement shall remain in effect.

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COUNTY OF SAN BERNARDINO

Janice Rutherford
Janice Rutherford, Chair, Board of Supervisors
Dated: JUN 18 2013

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

Laura H. Welch
Clerk of the Board of Supervisors
of the County of San Bernardino
Renee
Deputy


Benz Sanitation, Inc.

(Print or type name of corporation, company, contractor, etc.)

By James Wood
(Authorized signature - sign in blue ink)

Name Paul Benz James Wood
(Print or type name of person signing contract)

Title Special Projects & Records
(Print or Type)

Dated: June 7, 2013

Address 1401 Goodrick Dr. PO Box 1750
Tehachapi, Ca. 93561

