

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

November 19, 2013

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

**SUBJECT: AMENDMENT NO. 3 TO THE SOLID WASTE HANDLING FRANCHISE
AGREEMENTS**

RECOMMENDATION(S)

Approve Amendment No. 3 authorizing an extension of five months from January 31, 2014 to June 30, 2014 in which a Notice of Non-Renewal can be issued to the following 21 Solid Waste Handling Franchise Agreements for various County Franchise Areas within the unincorporated portion of the County.

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

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cc: SWMD-Rivera w/ agrees
Contractor c/o SWMD w/ agree
Auditor-Accts Pay Mgr w/ agrees
EBIX-BPO c/o Risk Mgmt
SWMD-Newcombe
CAO-Nelson
File - w/ agree
jll 12/11/13

ITEM 35

Record of Action of the Board of Supervisors
APPROVED (UNANIMOUS CONSENT CALENDAR)
COUNTY OF SAN BERNARDINO
Board of Supervisors
SAN BERNARDINO
MOTION _____ MOVE _____ AYE _____
1 2 5
LAURA H. WELCH, CLERK OF THE BOARD
BY *[Signature]*
DATED: November 19, 2013

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12. Mountain Disposal Company for County Franchise Area 16 – Crestline, Running Springs, Lake Arrowhead, Green Valley Lake, and Blue Jay. (**Agreement No. 09-611A-3**)
 13. Big Bear Disposal for County Franchise Area 17 – Fawnskin, Baldwin Lake and Lake Williams. (**Agreement No. 09-612A-3**)
 14. Advance Disposal Company for County Franchise Area 18 – Spring Valley Lake, unincorporated area of Hesperia and Apple Valley. (**Agreement No. 09-613A-3**)
 15. Burrtec Waste Industries for County Franchise Area 19 – sphere of the City of Victorville, Town of Apple Valley and the City of Adelanto, Landers and Lucerne Valley. (**Agreement No. 09-614A-3**)
 16. CR&R for County Franchise Area 20 – Phelan, Pinon Hills, and the sphere of the City of Adelanto. (**Agreement No. 09-615A-3**)
 17. Benz Sanitation for County Franchise Area 21 – Trona, Windy Acres, Four Corners, and the Red Mountain. (**Agreement No. 09-616A-3**)
 18. Burrtec Waste Industries for County Franchise Area 22 – unincorporated area northwest of the City of Adelanto. (**Agreement No. 09-617A-3**)
 19. Burrtec Waste Industries for County Franchise Area 23 – sphere of the City of Barstow and Lenwood-Hinkley. (**Agreement No. 09-618A-3**)
 20. Burrtec Waste Industries for County Franchise Area 24 – Yermo, Daggett and Newberry Springs. (**Agreement No. 09-619A-3**)
 21. Burrtec Waste & Recycling for County Franchise Area 25 – Joshua Tree, sphere of the Town of Yucca Valley, and Morongo Valley. (**Agreement No. 09-620A-3**)
- (Presenter: Gerry Newcombe, Director, 387-7906)

BOARD OF SUPERVISORS COUNTY GOALS AND OBJECTIVES
Operate in a Fiscally-Responsible and Business-Like Manner.

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost) as the Department of Public Works - Solid Waste Management Division (SWMD) 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 Waste Disposal System. The recommended amendments are non-financial.

BACKGROUND INFORMATION

The current franchise agreements with waste haulers in the unincorporated areas are eight year evergreen agreements that allow the County to give a Notice of Non-Renewal during a six month period every two years, the most recent notice period ending on June 30, 2013. Staff determined that changes to the franchise agreements were necessary to better serve County residents and obtained Board approval to extend the notice period to January 31, 2014, while those changes were discussed and negotiated with the haulers.

Approval of this item will authorize an extension from January 31, 2014 to June 30, 2014 in which a Notice of Non-Renewal can be issued by the County to the franchised solid waste haulers. County staff and the franchised waste haulers have been working diligently since July to prepare

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an amendment to address these various County concerns. While significant progress has been made, negotiations will not be finalized in time to properly notice and conduct the required public hearing before January 31, 2014. Staff expects to finalize negotiations in the next several weeks and will schedule the appropriate hearing and Board action as soon as possible once negotiations are complete.

In order to operate in a fiscally-responsible and business-like manner, modifications to the existing franchised hauler agreements are being sought that will result in rates which more accurately reflect the true cost of providing that service to the customer in today's dynamic waste collection and recycling marketplace and rapidly changing regulatory environment.

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).

On June 18, 2013, (Item No. 70) the Franchise Agreements were amended to extend the period of time during the current issuing cycle in which a Notice of Non-Renewal can be issued by seven (7) months, from June 30, 2013 to January 31, 2014, to allow time to negotiate additional amendments to the franchise agreements that will benefit the County and its residents.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Penny Alexander-Kelley, Principal Assistant County Counsel, 387-5455) on October 23, 2013, Finance (Cory Nelson, Administrative Analyst, 387-4378) on October 30, 2013, and County Finance and Administration (Mary Jane Olhasso, Assistant Executive Officer, 387-4599) on November 5, 2013.



County of San Bernardino

F A S

CONTRACT TRANSMITTAL

Amendment #3

FOR COUNTY USE ONLY

<input type="checkbox"/> New <input checked="" type="checkbox"/> Change <input type="checkbox"/> Cancel	FAS Vendor Code	SC	Dept. SWM	Contract Number 09-613A-3		
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, Deputy Director		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. 3				FY Amount I/D FY Amount I/D		
CFA 18						

CONTRACTOR Best Way Disposal Co. Inc/DBA: Advance Disposal Co.

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

Contractor's Representative Sheila R. Bath

Address 17105 Mesa Street, PO Box 400725, Hesperia, CA. 92345

Phone (760) 244 - 9773

Nature of Contract: : Attached is Amendment No. 3 dated November 19, 2013 to AGREEMENT BETWEEN THE COUNTY OF SAN BERNARDINO AND BEST WAY DISPOSAL CO. INC/DBA: ADVANCE DISPOSAL CO. 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

Penny Alexander-Kelley

Date

11-7-13

Reviewed as to Contract Compliance

David R. Doublet

Date

11/6/13

Presented to BOS for Signature

ALR Gerry Newcombe

Date

11/7/13

Amendment No. 3
to AGREEMENT BETWEEN
THE COUNTY OF SAN BERNARDINO AND
BEST WAY DISPOSAL CO. INC/DBA: ADVANCE DISPOSAL CO.
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. 09-613 between the County of San Bernardino ("County") and BEST WAY DISPOSAL CO. INC/DBA: ADVANCE DISPOSAL CO. ("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, on June 18, 2013 (Item No. 70) the Board approved Amendment No. 2 to the Franchise Agreement, which amended Section 4, to authorize the extension by seven (7) months of the period of time in which a Notice of Non-Renewal can be issued from June 30, 2013 to January 31, 2014,

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 June 30, 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. 3 is approved by the Board to allow an extension of the time to give notice from June 30, 2013 to June 30, 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.

2. Except as amended herein and in Amendment Nos. 1 and 2, all other terms and conditions of the Franchise Agreement shall remain in effect.

COUNTY OF SAN BERNARDINO

By Janice Ruthford
Janice Ruthford, Chair, Board of Supervisors

Dated: NOV 19 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

By Gennifer Sanchez
Deputy Clerk


Best Way Disposal Co. Inc/DBA:Advance Disposal Co.

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

By Sheila R. Bath
(Authorized signature - sign in blue ink)

Name Sheila R. Bath
(Print or type name of person signing contract)

Title President
(Print or Type)

Dated: November 4, 2013

Address 17105 Mesa Street, PO Box 400725
Hesperia, Ca. 92345

