

LAST MINUTE AGENDA INFORMATION

05/06/09 Regular Meeting

(Agenda Related Writings/Documents provided to a majority of the City Council after distribution of the Agenda Packet for the May 6, 2009 Regular meeting.)

ITEM NO. **DESCRIPTION**

6.1	<p>RESOLUTION NO. 2009-6749 – ADOPTING AMENDMENT NO. 3 TO THE INTEGRATED SOLID WASTE MANAGEMENT SERVICES AGREEMENT BETWEEN EDCO DISPOSAL CORPORATION AND CITY OF IMPERIAL BEACH.</p> <ul style="list-style-type: none">a. Revised Amendment No. 3 to Integrated Solid Waste Management Services Agreement with EDCO Disposal Corporation.b. Exhibit 5D to agreement.
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**AMENDMENT NO. 3 TO INTEGRATED SOLID WASTE MANAGEMENT
SERVICES AGREEMENT WITH
EDCO DISPOSAL CORPORATION**

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2009 MAY -5 A 7:59

This Amendment No. 3 is entered into by the City of Imperial Beach ("City") and EDCO Disposal Corporation ("EDCO") (collectively "Parties") and effective the _____ day of _____, 2009.

CITY MANAGER/PEOPLE'S CLERK
CITY CLERK OFFICES

RECITALS

A. The City entered into a franchise agreement with EDCO for integrated solid waste management services ("the Agreement") on August 4, 1999.

B. Amendment No. 1 to the Agreement effective the 20th day of November, 2002 modified the term of the Agreement as authorized in Resolution 2002-5713.

C. Amendment No. 2 to the Agreement effective the 26th day of March, 2008 modified the Rate Year of the Agreement as authorized in Resolution 2007-6544.

D. The Parties are executing this Amendment No. 3 to the Agreement in accordance with Resolution _____, which authorized a change in the Franchise Fee amount and adjustment.

NOW, THEREFORE, the Parties hereto mutually covenant and agree with each other as follows:

Section 1. Section 3.1.1, Franchise Fee Amount, of the Agreement is amended in its entirety to read as follows:

"In consideration of the exclusive Franchise provided in Section 2.1 of this Agreement, the Company shall pay to the City a Franchise Fee equal to 10% of the Company's Gross Receipts from its operations in the City. The annual Franchise Fee paid to the City shall not be less than the sum of a base amount of \$160,000 plus 10% of Gross Receipts for the Company's Rolloff Box service in the City. The base amount of \$160,000 and the Franchise fee, shall be adjusted as described in Section 3.1.4.

Notwithstanding the foregoing paragraph, the annual Franchise Fee paid to the City for Rate Year 10 (July 1, 2009 through June 30, 2010), shall be equal to 30% of the Company's Gross Receipts from its operations in the City, but in no event less than the sum of a base amount of \$160,000 plus 30% of Gross Receipts for the Company's Rolloff Box service in the City. The annual Franchise Fee paid to the City for Rate Year 11 (July 1, 2010 through June 30, 2011), shall be upto 36% of the Company's Gross Receipts from its operations in the City, but in no event less than the sum of a base amount of \$160,000 plus 30% of Gross Receipts for the Company's Rolloff Box service in the City. The

annual Franchise Fee paid to the City for Rate Year 12 (July 1, 2011 through June 30, 2012), and all subsequent years, shall be upto 42% of the Company's Gross Receipts from its operations in the City, but in no event less than the sum of a base amount of \$160,000 plus 30% of Gross Receipts for the Company's Rolloff Box service in the City."

Section 2. The first paragraph of Section 3.1.4, Adjustment to Franchise Fee, of the Agreement is amended in its entirety to read as follow:

"The base amount of \$160,000 described in Section 3.1.1, on which the minimum amount of Franchise Fees is determined, shall be adjusted annually each January 1st beginning January 1, 2002, based on the change in the Producer Price Index. The percentage change in the PPI that is applied to the Franchise Fee shall be equal to the percentage change in PPI that is used to adjust the Company's rates as described in Section 6.4. Notwithstanding the foregoing, beginning July 1, 2009, and all subsequent years, the base amount of \$160,000 described in Section 3.1.1, on which the minimum amount of Franchise Fees is determined, shall be adjusted annually each July 1st, based on the change in the Consumer Price Index (All Urban Consumers for the Los Angeles-Anaheim-Riverside Area) ('CPI'). The percentage change in the CPI that is applied to the Franchise Fee shall be equal to the percentage change in CPI that is used to adjust the Company's rates as described in Section 6.4"

Section 3. Adjustment of Franchise Fee.

Company and City agree that for any Rate Year that requires a Franchise Fee adjustment pursuant to Section 3.1.4, Section 6.4.2 shall require an Interim Step Six and Section 6.4.3 shall require an Interim Step Three for calculation of the maximum rates in accordance with the example calculation shown on Exhibit 5D, attached hereto.

Section 4. Section 6.4.1, General, of the Agreement is amended in its entirety to read as follows:

"Pursuant to Section 6.3, the Company may request an annual adjustment to the maximum rates according to the method described below and the formulas shown in Exhibits 5A, 5B, and 5C. Adjustment to the maximum rates is subject to review by the City and contingent upon the absence of majority protest, if applicable, by affected property owners at the public hearing held in accordance with Section 6.3. All future adjustments are to be effective January 1, except after January 1, 2008, all adjustments are to be effective July 1, and shall be based on the rates in Exhibit 4.

If the Company owns or operates the Disposal Site, or the Disposal Site is owned or operated by an Affiliate of the company, the adjustment to the disposal component of the rates shall be limited to the change in the following: (1) PPI prior June 30, 2009, or (2) the CPI beginning on July 1, 2010, and all subsequent

years. This limitation shall not apply to changes in tipping fees resulting from changes in fees, taxes, or surcharges levied by governmental or regulatory agencies.”

Section 5. Deferment of Annual Adjustment to Refuse Disposal Tipping Fee and Maximum Rates.

Company agrees that the maximum rates for the refuse disposal tipping fee, Single-family Dwelling units, Commercial and Industrial Property, and the maximum load charges, delivery charges, and overweight charges for rolloff customers shall not be adjusted as required in Section 6.4, Method of Adjustments, of the Agreement for Rate Year 10 (July 1, 2009 through June 30, 2010).

Section 6. Step Three of Section 6.4.2, Single Family Dwelling Unit and Commercial and Industrial Property Customers, of the Agreement is amended in its entirety to read as follows:

“Step Three

- 1) Calculate the percentage change in the Producer Price Index (PPI), and the percentage change in the refuse disposal tipping fee per ton. The change in PPI shall be for the twelve month period ending on the most recent June 30, except after January 1, 2008 the twelve month period will be ending on the most recent December 31. Beginning with Rate Year 11 (July 1, 2010 through June 30, 2011) and for all subsequent Rate Years, calculate the percentage change in the national Consumer Price Index (All Urban Consumers for the Los Angeles-Anaheim-Riverside Area) (“CPI”), and the percentage change in the refuse disposal tipping fee per ton. The change in CPI shall be for the twelve-month period ending on the most recent December 31.
- 2) The change in the refuse disposal tipping fee shall be based on the change between the most recent tipping fee on which rates are based and the new tipping fee; provided, however that the cumulative change in the tip fee over the term shall not exceed the change in the CPI. Notwithstanding the foregoing, the change in the refuse disposal tipping fee for Rate Year 11 (July 1, 2010 through June 30, 2011), and only for Rate Year 11, shall be based on the change for the most recent tip fee for Rate Year 10 plus the most recent tip fee for Rate Year 11.
- 3) This Company guarantee excludes any unforeseen government mandated fees or extraordinary cost elements over the life of this Agreement.”

Section 7. Step Four of Section 6.4.2, Single Family Dwelling Unit and Commercial and Industrial Property Customers, of the Agreement is amended in its entirety to read as follows:

“Step Four – Calculate the weighted percent change in maximum rates by:

- 1) Multiplying the refuse disposal component as a percent of rate revenue net of franchise fees by the percent change in the refuse disposal tipping fee;
- 2) Multiplying the service component as a percent of rate revenue net of franchise fees by the percent change in the CPI; and
- 3) Adding the results of 1) and 2) above to determine the weighted percent change in rates.”

Section 8. The last paragraph of Section 6.4.2, Single Family Dwelling Unit and Commercial and Industrial Property Customers, of the Agreement is amended in its entirety to read as follows:

“Step Five – Multiply one plus the weighted percent change in maximum rates by the then existing maximum rates to derive the newly adjusted maximum rates.

In the event that the current percentage change in the CPI is negative, the existing rates shall not be then adjusted downward as a result. Instead, the rate adjustment shall be held in abeyance until the CPI increases in the future to the extent that the cumulative change in the CPI since the last periodic rate adjustment is positive. At that time, the service component of the rates shall be adjusted based on the cumulative percentage change in the CPI since the last periodic rate adjustment.”

Section 9. Step One of Section 6.4.3, Rolloff, of the Agreement is amended in its entirety to read as follows:

“Step One -- Calculate the percent change in the PPI for the twelve month period for the most recent twelve months ending on the most recent June 30, except after January 1, 2008 the gross rate revenues will be based on the twelve month period ending the most recent December 31. Beginning with Rate Year 11 (July 1, 2010 through June 30, 2011) and for all subsequent Rate Years, calculate the percent change in the CPI for the twelve month period for the most recent twelve months ending on the most recent December 31.”

Section 10. Step Two of Section 6.4.3, Rolloff, of the Agreement is amended in its entirety to read as follows:

“Step Two – Multiply one plus the percent change in CPI by the then existing maximum rates to derive the newly adjusted rolloff rates.”

Section 11. The last paragraph of Section 6.4.3, Rolloff, of the Agreement is amended in its entirety to read as follows:

“In the event that the current percentage change in the CPI is negative, the existing rates shall not be then adjusted downward as a result. Instead, the rate adjustment shall be held in abeyance until the CPI increases in the future to the extent that the

cumulative change in the CPI since the last periodic rate adjustment is positive. At that time, the service component of the rates shall be adjusted based on the cumulative percentage change in the CPI since the last periodic rate adjustment.”

Section 12. Exhibit 5A, Example Rate Adjustment – Single Family Residential Rates, is amended, effective July 1, 2009, such that all references to “Producer Price Index” shall be deemed to refer to “Consumer Price Index (All Urban Consumers for the Los Angeles-Anaheim-Riverside Area),” and all references to “PPI” shall be deemed to refer to “CPI.”

Section 13. Exhibit 5B, Example Rate Adjustment – Commercial and MFR Bin Rates, is amended, effective July 1, 2009, such that all references to “Producer Price Index” shall be deemed to refer to “Consumer Price Index (All Urban Consumers for the Los Angeles-Anaheim-Riverside Area),” and all references to “PPI” shall be deemed to refer to “CPI.”

Section 14. Exhibit 5C, Example Rate Adjustment – Rolloff Rates, is amended, effective July 1, 2009, such that all references to “Producer Price Index” shall be deemed to refer to “Consumer Price Index (All Urban Consumers for the Los Angeles-Anaheim-Riverside Area),” and all references to “PPI” shall be deemed to refer to “CPI.”

Section 15. ENTIRE AGREEMENT.

This document sets forth the entire understanding of the Parties regarding Company Compensation and Rates and all prior negotiations and agreement are merged herein. This Amendment No. 3 affects only those sections of the Agreement referred to, and all other terms and conditions of the Agreement remain in full force and effect.

*****SIGNATURES ON FOLLOWING PAGE*****

CITY OF IMPERIAL BEACH

Gary Brown, City Manager

APPROVED AS TO FORM:

James P. Lough, City Attorney

EDCO DISPOSAL COPORATION

Edward Burr, Chairman

Sandra Burr, Vice Chair

EXHIBIT 5D

Single Family Residential Rates

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Step One: Deduct franchise fees from gross rate revenue

2009 MAY -5 A 7:59

Revenue Component (including Franchise Fees) PRIOR YEAR (2008)	Annual Amount	Percent of Gross Revenue Including Franchise Fees
Actual Gross Single Family Rate Revenue (no storm water)	\$ 1,178,097	100.0%
Actual Single Family Franchise Fees	\$ 117,810	10.0%
Actual Single Family Rate Revenue Net of Franchise Fees	\$ 1,060,287	90.0%

Step Two: Determine disposal expense and service revenue as a percent of actual rate revenue net of Franchise Fees

Revenue Component (net of Franchise Fees) PRIOR YEAR (2008)	Annual Amount	Percent of Gross Revenue Net of Franchise Fees
Actual Single Family Rate Revenue Net of Franchise Fees	\$ 1,060,287	100.0%
Less: Actual Single Family Refuse Disposal Expense	\$ 235,207	22.2%
Actual Single Family Service Revenue	\$ 825,080	77.8%

Step Three: Calculate percentage change in adjustment factors

Adjustment Factor	Old	New	Percent Change
Disposal Tipping Fee per Ton	\$ 45.63	\$ 45.63	0.00%
Producer Price Index	166.6	177.2	0.00%

Step Four: Calculate weighted percentage change in single family rates

Components of Actual Revenue	Component Weight	Percent Change	Weighted Rate Adjustment
Refuse Disposal	22.2%	0.00%	0.00%
Service	77.8%	0.00%	0.00%
Total	100.0%	N/A	0.00%

**Step Five: Apply weighted percentage change to single family rates
Includes .03 for Printing and Mailing cost**

Service	Current Rate no storm	Weighted Rate Adjustment	Adjusted Monthly Rate
35 gallon cart	\$ 17.59	0.00%	\$ 17.59
64 gallon cart	\$ 18.13	0.00%	\$ 18.13
90 gallon cart	\$ 18.75	0.00%	\$ 18.75
Additional 64 gallon refuse cart	\$ 4.43	0.00%	\$ 4.43
Additional 90 gallon refuse cart	\$ 4.73	0.00%	\$ 4.73

Step Six: Franchise Fee Adjustment

Service	Less Storm Water Fee	Add: Franchise Fee Incremental	Final Rate
35 gallon cart	\$ 5.03	\$ 5.03	\$ 22.62
64 gallon cart	\$ 5.19	\$ 5.19	\$ 23.32
90 gallon cart	\$ 5.36	\$ 5.36	\$ 24.11
Additional 64 gallon refuse cart	-	\$ 1.27	\$ 5.70
Additional 90 gallon refuse cart	-	\$ 1.35	\$ 6.08

Commercial and MFR Bin Rates

Step One: Deduct franchise fees from gross rate revenue

Revenue Component (including Franchise Fees) PRIOR YEAR (2008)	Annual Amount	Percent of Gross Revenue Including Franchise Fees
Actual Gross Commercial and MFR Rate Revenue	\$ 1,125,633	100.0%
Actual Commercial and MFR Franchise Fees	\$ 112,563	10.0%
Actual Commercial MFR Rate Revenue Net of Franchise Fees	\$ 1,013,070	90.0%

Step Two: Determine disposal expense and service revenue as a percent of actual rate revenue

b-1

5/6/09 Item 6.1
Last Minute Agenda Info

EXHIBIT 5D

Revenue Component (net of Franchise Fees) PRIOR YEAR (2008)	Annual Amount	Percent of Gross Revenue Net of Franchise Fees
Actual Commercial and MFR Rate Revenue Net of Franchise Fees	\$ 1,013,070	100.0%
Less: Actual Commercial and MFR Refuse Disposal Expense	\$ 301,182	29.7%
Actual Commercial and MFR Service Revenue	\$ 711,888	70.3%

Step Three: Calculate percentage change in adjustment factors

Adjustment Factor	Old	New	Percent Change
Disposal Tipping Fee per Ton	\$ 45.63	\$ 45.63	0.00%
Producer Price Index	166.59	177.15	0.00%

Step Four: Calculate weighted percentage change in commercial and MFR rates

Components of Actual Revenue	Component Weight	Percent Change	Weighted Rate Adjustment
Refuse Disposal	29.7%	0.00%	0.00%
Service	70.3%	0.00%	0.00%
Total	100.0%	N/A	0.00%

Step Five: Apply weighted percentage change to commercial and MFR rates (Includes .03 for mailing notices)

Service	Current Rate no storm	Weighted Rate Adjustment	Adjusted Monthly Rate
1 ea 3 yard bin once per week	\$ 100.28	0.00%	\$ 100.28
1 ea 3 yard bin twice per week	\$ 183.02	0.00%	\$ 183.02
1 ea 3 yard bin three times per week	\$ 265.75	0.00%	\$ 265.75
1 ea 3 yard bin four times per week	\$ 348.50	0.00%	\$ 348.50
1 ea 3 yard bin five times per week	\$ 431.24	0.00%	\$ 431.24
1 ea 3 yard bin six times per week	\$ 513.98	0.00%	\$ 513.98

Step Six: Franchise Fee Adjustment

Service	Less Storm Water Fee	Add: Franchise Fee Incremental	Final Rate
1 ea 3 yard bin once per week	\$ 28.68	\$ 28.68	\$ 128.96
1 ea 3 yard bin twice per week	\$ 52.34	\$ 52.34	\$ 235.36
1 ea 3 yard bin three times per week	\$ 76.00	\$ 76.00	\$ 341.75
1 ea 3 yard bin four times per week	\$ 99.67	\$ 99.67	\$ 448.17
1 ea 3 yard bin five times per week	\$ 123.33	\$ 123.33	\$ 554.57
1 ea 3 yard bin six times per week	\$ 147.00	\$ 147.00	\$ 660.98

Rolloff Rates

Step One: Calculate percentage change in Producer Price Index

Adjustment Factor	Old	New	Percent Change
Producer Price Index	166.59	177.15	0.00%

Step Two: Apply percentage change in Producer Price Index to rolloff rates

Service	Current Rate no storm	Rate Adjustment	Adjusted Rate
Standard rolloff charge per load	\$ 152.19	0.00%	\$ 152.19
Compactor charge per load	\$ 228.29	0.00%	\$ 228.29
Delivery or relocation charge	\$ 43.58	0.00%	\$ 43.58
Charge per ton for each ton over weight limit	\$ 50.77	0.00%	\$ 50.77

Step Three: Franchise Fee Adjustment

Service	Less Storm Water Fee	Add: Franchise Fee Incremental	Final Rate
Standard rolloff charge per load	\$ 43.53	\$ 43.53	\$ 195.72
Compactor charge per load	\$ 43.53	\$ 65.29	\$ 293.58
Delivery or relocation charge	\$ 12.46	\$ 12.46	\$ 56.04
Charge per ton for each ton over	\$ 14.52	\$ 14.52	\$ 65.29

b-2