

RESOLUTION NO. 2021-_____

RESOLUTION 2021-XXXX, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, CALIFORNIA APPROVING THE AMENDED AND RESTATED EXCLUSIVE FRANCHISE AGREEMENT FOR SOLID WASTE AND RECYCLABLE AND DISCARDED MATERIALS MANAGEMENT WITH EDCO WASTE AND RECYCLING SERVICES, INC.

WHEREAS, the Legislature of the State of California, by enactment of the California **Integrated Waste Management Act of 1989, (“AB 939” or the “Act”)** (codified at Public Resources Code §§ 4000 et seq.) established a solid waste management process which requires cities and other local jurisdictions to implement plans for source reduction, reuse and recycling for solid waste attributed to sources within their respective jurisdictions;

WHEREAS, the Act provides that aspects of solid waste handling of local concern include but are not limited to frequency of collection, means of collection and transportation, level of services, charges and fees, and nature, location and extent of providing solid waste services;

WHEREAS, the Act confers discretion on cities to provide for refuse services to its residents by the cities themselves or by the cities conferring the authority to do so on private profit-making entities; ;

WHEREAS, City is authorized, pursuant to San Marcos Municipal Code Section 8.68.250 and 8.68.270, to enter into agreements for the removal, transportation, processing and/or **disposal of refuse and recyclables within City’s jurisdictional boundaries with persons deemed best qualified to perform such service;**

WHEREAS, on April 10, 1990, City and Mashburn Sanitization Company entered into a contract for the exclusive right to collect, process and/or dispose of garbage, rubbish, other **refuse materials and recyclables within City (“Original Agreement”);**

WHEREAS, the Original Agreement had an initial term of five (5) years, with an option for City to extend in increments of one (1) year each, pursuant to Section 3.2 of the Original Agreement;

WHEREAS, in 1998, upon Contractor’s acquisition of a 100% ownership interest in Mashburn Waste & Recycling Services, and pursuant to San Marcos City Council Resolution No. 98-5064 and San Marcos Municipal Code Section 8.68.290, City assigned to Contractor the Original Agreement;

WHEREAS, pursuant to the San Marcos City Council’s authorization and Section 3.2 of the Original Agreement, the City has extended the Original Agreement with Contractor in successive one-year increments, up through and including the present;

WHEREAS, since the execution of the Original Agreement, the State of California has, through the enactment of AB 939 and subsequent related legislation including, but not limited to: the Jobs and Recycling Act of 2011 (AB 341), the Event and Venue Recycling Act of 2004 (AB 2176), SB 1016 (Chapter 343, Statutes of 2008 [Wiggins, SB 1016]), the Mandatory Commercial Organics Recycling Act of 2014 (AB 1826), and the Short-Lived Climate Pollutants Bill of 2016 (SB 1383), directed the responsible State agency, and all local agencies, to promote a reduction in Landfill Disposal and to maximize the use of feasible waste reduction, Re-use, Recycling and composting options in order to reduce the amount of material that must be Disposed;

WHEREAS, SB 1383 establishes regulatory requirements for jurisdictions, Generators, haulers, Solid Waste facilities, and other entities to support achievement of State-wide Organic Waste Disposal reduction targets;

WHEREAS, SB 1383 requires City to implement Collection programs, meet Processing facility requirements, conduct contamination monitoring, provide education, maintain records, submit reports, monitor compliance, conduct enforcement, and fulfill other requirements; and, City has chosen to delegate certain responsibilities to the Contractor, **acting as City's designee, through this Agreement;**

WHEREAS, the Parties desire to enter into this Agreement to amend and restate the terms and conditions of the Original Agreement to comply with SB 1383 Regulations and other applicable State law concerning the disposal of Solid Waste;

WHEREAS, the City Council of the City of San Marcos determines and finds pursuant to California Public Resources Code § 40059(a)(2) that the public interest, health, safety and well-being, including the minimization of adverse impacts on air quality and traffic from excessive numbers of collection vehicles; **the implementation of measures consistent with the City's Source Reduction and Recycling Component;** and in an effort to reduce the City's potential CERCLA liability, would be served if Contractor continues to have an exclusive Franchise for collection, recycling, diversion and disposal of Solid Waste from Service Units within City's jurisdictional boundaries; and

WHEREAS, upon mutual execution of this Agreement, the Parties agree that the Original Agreement shall have no further legal force or effect, other than the indemnity and hold harmless provisions in favor of City, which shall remain in full force and effect until the expiration of all possible limitations periods for any potential action or proceeding arising therefrom, and this Agreement shall contain the entire understanding between the Parties with respect to the subject matter hereof.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of San Marcos approves the award of an amended and restarted exclusive franchise agreement for solid waste and recyclable services and discarded materials management between the City of San Marcos and EDCO Waste & Recycling Services, Inc. effective January 1, 2022 and expiring

December 31, 2027, provided however, that commencing January 1, 2023 and every year thereafter, automatic one year extensions shall be applied to said Agreement so that the term of the Agreement shall remain between five years and six years.

PASSED, APPROVED, and ADOPTED by the City Council of the City of San Marcos, California, this 12th day of October, 2021, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

Rebecca D. Jones, Mayor
City of San Marcos

ATTEST:

PHILLIP SCOLLICK, CITY CLERK
City of San Marcos