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AGENDA REPORT

TO: HENRY L. GARDNER
INTERIM CITY ADMINISTRATOR

FROM: Brooke A. Levin

SUBJECT: Supplemental Award of
Zero Waste Franchise Agreements

DATE: August 11, 2014

City Administrator
Approval

Date

8/11/14

COUNCIL DISTRICT: City-Wide

REASON FOR SUPPLEMENTAL

This report supplements the July 28, 2014 Revised Agenda Report, providing clarification of services that will be provided through the franchise contracts with California Waste Solutions (CWS) authorized by the City Council. In some cases, these services vary from the requirements of the Zero Waste Services RFP, and from previous Council direction and policy. In addition, this report corrects errors in information and documents provided by staff at the July 30, 2014 Special City Council meeting.

OUTCOME

Approval of the second reading of the Ordinances would allow the City Administrator to execute and implement franchise contracts with California Waste Solutions. These franchise contracts would replace the existing service agreements with WMAC and California Waste Solutions, which expire on June 30, 2015.

BACKGROUND/LEGISLATIVE HISTORY

At a Special Meeting on July 30, 2014, the City Council held a public hearing and adopted three Ordinances (X, Y and Z) that granted franchises and authorized the City Administrator to execute contracts with California Waste Solutions, Inc. In addition, Council approved Rate Tables 3C, which corresponded to the selected ordinances.

ANALYSIS

The following information is provided to clarify the outcomes of Council adoption of the ordinances for Mixed Materials and Organics (MM&O), Residential Recycling (RR), and Disposal, and selection of Rate Tables 3C, which were attached to the Revised July 28, 2014 Agenda Report.

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Rate Summary

Table 1 shows the rates and rate impacts of the Council-selected rate option, for representative service levels in the single family, multi-family and commercial sectors.

Table 1. Monthly Rate and Impact

Service	Monthly Rate	Rate Impact
Single Family (32-gallon cart)	\$36.82	23.56%
Multi Family (20-unit building)	\$546.97	15.35%
Commercial (1 cu. yd. bin)	\$156.34	11.77%

ILWU Local 6 Wages and Benefits

Per Council Resolution No. 84898 C.M.S., the California Waste Solutions (CWS) will provide its workers wages and benefits comparable to the wages of recycling workers in Fremont, San Jose and San Francisco, and affordable family health care coverage. Based on information provided by CWS, the rates include the cost of providing a recycling sorter wage of \$20.97 per hour in 2019.

Civicorps Schools

Through adoption of Ordinance X, the City Council awards CWS the MM&O contract, which includes an exclusive franchise for the collection of organic materials in Oakland. CWS will develop plans with Civicorps to provide training of interns without any impact or displacement of permanent union jobs. Civicorps could collect commercial organics from Oakland business and deliver these materials to EBMUD for processing through a subcontract with CWS, or some other arrangement determined by CWS and Civicorps, subject to approval by the City Administrator per requirements of the MM&O contract. As of the date this report was published, staff does not have a plan or draft agreement for CWS to use the services that would be provided by Civicorps. CWS and Civicorps are expected to meet this week.

Illegal Dumping Abatement Services

Through the MM&O contract, CWS will provide up to four pickups of illegally dumped materials per day, as directed by the City. This is a requirement contained in the draft contract published with the RFP in 2012. As an alternative, CWS proposed to collect illegally dumped materials "on-sight," with funding provided if Council selects the option for direct tenant access to multi-family bulky pickup. CWS priced this bulky option at \$6.67 per multi-family household, and the additional illegal dumping services would be funded through any surplus resulting from underutilization of the multi-family bulky pickup service.

At the July 30, 2014 City Council meeting, when asked whether CWS had, like WMAC, proposed to provide 25 pickups per day of illegal dumping with the costs embedded in the base rate, based on incorrect information provided by staff, the City Administrator replied that CWS

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had proposed this same service. Mr. Joel Corona, representing CWS, subsequently testified that “CWS’s bulky item and illegal dumping clean up service is far superior to what WM has proposed,” and went on to describe “a balancing account which is included in the bulky item service . . . includes for all dollars not used for the bulky service program those dollars unused with will be commuted to illegal dumping cleaning program, for a program called On-Sight.” Mr. Corona further described, “That program provides for cleanup on-site, not when we get a phone call 3 weeks later and its goals is to prevent habitual dumping zones within Oakland, which we see all the time.” Nonetheless, when asked to clarify this service on August 4, 2104, CWS CFO Kristina Duong explained that the “On-Sight” service was only available under the optional multi-family bulky service for the additional cost of \$6.67 per unit. The information provided by Ms. Duong, though conflicting with Mr. Corona’s statement to City Council, was consistent with CWS’ proposal submitted on June 13, 2014.

Should Council wish to obtain the enhanced illegal dumping services, approval of Rate Tables 3E (Attachment A) for multifamily services, and a new first and second reading to adopt the rates would be required. The multifamily rate tables convert the proposed \$6.67 per multifamily household, into rates based on garbage service volume. The rate and rate impact for a 20-unit multifamily building are shown in Table 2.

Table 2. Multi Family Rate with Enhance Bulky and Illegal Dumping Services

Service		Current Monthly Rate	New Monthly Rate	Rate Impact
Multi Family (20-unit bldg.)	Proposed Rate including:			
	• Recycling Workers Wage & Benefits	\$474.20	\$546.97	15.35%
	• Lower rates in Year-1; RRI plus 1.5% in Years 2-5			
	Enhanced MFD Bulky Services		\$133.40	
	Total	\$474.20	\$680.37	43.48%

Diversion Plan

The Zero Waste Services RFP required MM&O proposers to submit a Diversion Plan that would commit the Contractor to a specific level of performance throughout the term of the contract. Though CWS’ Diversion Plan (Table 3) indicates a maximum diversion rate of only 52%, achieved in Year 9 and Year 10 of the contract, in his presentation on July 30, 2014, Mr. Corona stated that CWS “will assure 65% diversion.” Based on this assurance to the City Council, and upon receipt of a revised Diversion Plan from CWS, staff will amend the contract to reflect the 65% diversion rate commitment.

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Table 3. CWS Diversion Plan

Calendar Year	Minimum Diversion Rate
2016	31.50%
2017	33.00%
2018	34.50%
2019	36.00%
2020	47.50%
2021	49.00%
2022	50.00%
2023	51.00%
2024	52.00%
2025	52.00%

Mixed Material Processing

The RFP required that proposals include that, beginning day one of the contract, Mixed Materials collected from multi-family buildings be processed to recover organic and recyclable materials. CWS will not provide Mixed Material processing before their Gateway Facility opens, which is estimated to occur in 2020. The delayed start of Mixed Material processing is reflected by the suppressed diversion rates shown in Table 3, in calendar years 2016-2019.

Multi-Family Residential Services

Beginning July 1, 2015, multi-family buildings will be allowed to reduce minimum garbage service levels from 32 gallons per household, to 20 gallons per household. Billing will be based on the level of garbage service selected, at or above the minimum. The cost of recyclables and organics collection are embedded in the multifamily rates shown in Tables 3C in the July 28, 2014 revised Agenda Report.

The Alameda County Mandatory Recycling Ordinance (MRO) requires multi-family building owners to provide collection containers for source separated recyclables and organics, except where such materials are recovered through use of a High Diversion Mixed Waste Processing Facility. Because CWS will not be providing Mixed Material processing before the Gateway facility is open, to comply with MRO requirements, all multi-family building owners in Oakland either will need to opt-in for organics and recycling services, or request MRO waivers through the Alameda County Waste Management Authority, which enforces the MRO. As the City's "Hauler," CWS will have obligations to comply with the MRO as well, and such compliance is required by the MM&O and RR contracts.

Bulky pickup services will be available to multifamily buildings as described in the MM&O contract that was released with the RFP. These services mirror those provided to single-family households. Direct tenant access to multi-family bulky services was not part of the CWS base proposal, but would be available at an additional cost of \$6.67 per household, as shown in Table 2 of this report.

Should Council wish to obtain the enhanced multifamily bulky pickup services, approval of a Rate Tables 3E (Attachment A) table for multifamily services, and a new first and second reading to adopt the rates would be required. This action would delay contract approval to September, if a first reading of the revised ordinance occurs at the next Council meeting, on August 11, 2014, and the second reading at the following meeting on September 23, 2014.

Commercial Services

As in the multi-family sector, the MRO requires Oakland businesses to subscribe collection services for organics and recyclables (e.g. cardboard, office paper, bottles, and cans), allows for certain waivers, and imposes responsibilities on the franchisee as well. Ordinance X grants an exclusive franchise for collection of Mixed Materials and Organics, bringing to an end the commercial organics collection services provided on the open market to Oakland businesses. The cost of organics collection services are in addition to the garbage service rates. Ordinance Y grants a non-exclusive franchise for collection of commercial recyclables. The non-exclusive franchise will guarantee Oakland business access to recycling service through CWS, while commercial recycling collection by private service providers on the open market will continue.

Access to Disposal Facilities

The MM&O contract would require CWS to accept 15,000 tons per year of City-delivered materials at no charge to City. This is the same amount allowed in the current franchise agreement, for use of the Davis Street Transfer Station (DSTS). The City will deliver these materials to the CWS Interim Transfer Facility on Wake Avenue in Oakland and to the Gateway facility when it opens. Should these CWS disposal facilities not be available, CWS will need to make alternative arrangements to ensure that the City does not incur additional costs.

Currently, City operations typically make 3,600 truck trips per year to DSTS. While the cost impact to the City has not been fully assessed, City delivery of solid waste, organics, and recyclables to the Republic Services' Golden Bear Transfer Station in Richmond would have major cost impacts for fuel, vehicle maintenance, and staff time, should CWS not provide a local disposal option for City use.

CWS Contract Implementation & Staff Reporting to City Council

Staff met with CWS on August 4, 2014, to discuss orderly and timely implementation of the contracts. CWS is preparing project schedules that will include clearly defined milestones and deliverables with specific dates. Staff will keep the City Council apprised of progress on

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implementing these project plans through oral and written reports presented to the full City Council at least monthly.

Assurances

The City and CWS have not yet negotiated the provisions that must be incorporated into the franchise agreements to assure the City to the greatest extent possible that the transition occurs without substantial service disruptions. City staff intend to negotiate a number of such provisions. The provisions will be broken into those intended to best ensure that the startup activities prior to July 1, 2015 are being addressed in accordance with a practical schedule and those addressing any shortcomings in provision of full services after July 1, 2015. They include the following:

Provisions for prior to July 1, 2015

- a. The intent is to set up an interactive and cooperative process with CWS to best ensure that the full range of Services required in the Franchises will be available on July 1, 2015. A set of reasonable and necessary milestones for preparation activities will be generated. If milestones are not adhered to by CWS, the City's initial response will be to meet and confer to develop methodologies to address any delays. After the meet and confer, a cure period will be provided based on a plausible approach to get back on schedule. Liquidated damages for failure to meet specific timelines associated with the milestones will only be assessed if CWS fails to remedy within the cure period. Staff's intention is to use liquidated damages in a constructive rather than punitive way. Liquidated damages, if accrued during the pre-July 1, 2015, period, will not be assessed if Contract Services are adequately provided on schedule after July 1, 2015.
- b. A default and termination remedy only will be available if, in the unlikely event, there is a catastrophic failure of the Contractor to move forward with the required transition process, and it becomes apparent that basic Collection Services may not be available on July 1, 2015. The remedy is intended to ensure that the City has sufficient time to make alternative arrangements for contract modifications or alternative provision of Collection Services for the short term or otherwise. The ability of the City to secure alternate and reliable Collection Services on a short timeframe is extremely limited. This drastic remedy will guard against the remote possibility of a substantial failure of the Contractor to meet its obligation to take the necessary steps to provide service as of July 1, 2015.

Provisions for post July 1, 2015

- a. Current contract terms waive the imposition of liquidated damages for service performance failures for the first 90 days after July 1, 2015. This provision is typical for contracts of this type, however, the increased risk of contracting with a company with no MMO experience or facility warrants remedies. Although there is a necessity for some waiver of liquidated damages during an initial new contract transition period, there will need to be contractual incentives that encourage a successful transition without

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substantial service interruptions for the customers. It is proposed that a transition without substantial service interruptions will result in the Contractor receiving all scheduled Maximum Service Rate adjustments, while an unsuccessful transition with substantial service disruptions or failures to provide certain services would result in a reduction of the initial Maximum Service Rate RRI increases.

- b. Contract provisions will explicitly state that the Contractor's failure to complete facilities, obtain anticipated contracts or regulatory approvals in the timely manner anticipated by Contractor will not provide a basis for any extraordinary rate adjustment. Contractor will be required to absorb the additional costs associated with delivery to interim facilities, use of alternative facilities, or other anticipated costs associated with delays or inability to obtain equipment or use of anticipated vendors, even if due to circumstances beyond Contractor's direct control. The additional costs the contractor would have to absorb include any increased cost (time or money) for the City to dispose of materials at an alternate location to the proposed interim transfer station.

Correction of Clerical Errors

Ordinance Y has been amended (Attachment B) to correct two clerical errors in Section 2, shown in underline and strikeout, as follows:

Section 2. The Council does hereby find and declare that the above recitals are true and correct and that the award of a franchise for Residential and Commercial Recycling Collection Services to Franchisee is for a proper public purpose, is in the public interest, convenience, and welfare, and is for the common benefit of the inhabitants of the city. The City hereby grants ~~Waste Management of Alameda County~~ California Waste Solutions, Inc., contingent on its execution of a Residential Recycling Collection Services Contract and Non-Exclusive Commercial Recycling Collection Services Contract, an exclusive franchise for the provision of Recycling Collection Services, as identified in the Request for Proposals for Zero Waste Services, originally released on September 5, 2012. The term of the franchise from July 1, 2015 to June 30, ~~2025~~2030 with the potential extension through June 30, 2035 as specified in the Contract.

Ordinance Z has been amended (Attachment C) to correct a clerical error in the title. The correction is shown underlined, as follows:

An Ordinance Authorizing The City Administrator To Execute An Exclusive Contract For Landfill Disposal Services With California Waste Solutions, Inc.

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For questions regarding this report, please contact Susan Kattchee, Assistant Director, 510-238-6382.

Respectfully submitted,



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Director, Public Works Department

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Attachment A: Option 3E Rate Table
Revised Ordinance Y – to correct clerical error
Revised Ordinance Z – to correct clerical error

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