



DATE: March 9, 2020

TO: Council Sustainability Committee

FROM: Director of Public Works

SUBJECT Franchise Agreement: Discuss Possible Approaches to a New Solid Waste Franchise Agreement and Provide Direction to Staff

RECOMMENDATION

That the Council Sustainability Committee discusses two main options regarding the Franchise Agreement and provides direction to staff.

SUMMARY

The City holds a franchise agreement with Waste Management of Alameda County (WMAC) to provide solid waste, recycling, and organic materials, collection, and processing services. The current agreement commenced March 1, 2015 and is scheduled to expire March 1, 2022. The agreement includes the option to extend it for three 12-month periods, so if the City decided to extend the contract the maximum numbers of times, the agreement would expire March 1, 2025. This report presents two main options regarding the City's decision to either enter into exclusive negotiations with WMAC or prepare and release a request for proposals (RFP). This report provides a list of advantages and disadvantages associated with extending the current agreement or releasing an RFP, as well as suggested services and performance requirements that may be included in the next solid waste franchise agreement.

BACKGROUND

WMAC has been the City's solid waste and recycling services franchisee since at least the mid-1970s. WMAC provided the service under a different business name initially (Oakland Scavenger Company) and has in the past thirty years subcontracted with Tri-CED Community Recycling for residential recycling services.

The City has wide discretion with respect to awarding franchises. The Charter, Sec. 1503, allows for non-competitive negotiations with a single provider if Council determines that it is in the City's best interests. Consistent with the Charter, Municipal Code Sec. 11-1.12 authorizes the Council to exercise broad discretion in awarding franchises, including engaging in exclusive negotiations with an existing franchisee.

The 2015 franchise agreement included several new services for Hayward businesses and residents as well as elements intended to increase diversion from landfill. Regardless of whether conducting negotiations with the current service provider or receiving proposals from all interested service providers, the City can request that the new contract include new service and diversion elements.

DISCUSSION

The City has two main options regarding the franchise agreement. The first is to consider a negotiated agreement with WMAC, in order to continue the current franchise agreement beyond its initial, intermediate, or eventual expiration date. The second option is to prepare and issue a request for proposals (RFP), before or after any discussions with WMAC, and call for new proposals from any qualified and interested service provider, including WMAC. If the City pursues the first option and begins negotiating exclusively with WMAC, the City could still issue an RFP if negotiations are not successful so long as the decision to stop negotiations and issue an RFP is made in a timely manner. Regardless of whether conducting negotiations or requesting proposals, an overarching goal of any new agreement is to preserve and enhance the services that the community is currently receiving under the franchise agreement.

Enhancing Services for the Hayward Community and Complying with New Laws

Staff developed the following set of potential elements for consideration in a new franchise agreement. This list provides current and emerging issues, and predominant on this list are issues related to the upcoming implementation of Senate Bill 1383, Short-lived climate pollutants (SLCP)¹, of which the service provider will be a key partner. A top goal of SB 1383 is reducing statewide methane emissions through reduced landfilling of organic waste (yard trimmings, food scraps, paper, wood, and more). The regulations require that by 2022 jurisdictions provide organics recycling programs, create mandatory participation policies, increase edible food recovery efforts, and enforce organics recycling program participation by residents and businesses.

- SB 1383
 - Requires container color coding by stream type: Recycling (Blue), Organics (Green), Trash (Black or Grey). Generally, replacing the entire bin, rather than just the lid (as required by SB 1383 regulations), will be more effective for public education. Changing over the entire cart inventory can cost more than \$10 million, so scheduling and costs should be considered.
 - Requires edible food recovery - consider whether there should be a sub-contract to collect donated food/food recovery services.

¹ http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1383

- Requires procurement of compost, mulch, renewable gas and/or electricity from biomass conversion. Consider switching truck fuel to RNG and adjusting compost giveaways and City mulch allotments to help fulfill these requirements.
- Requires monitoring for contamination- Consider including cameras in organics bins, hiring auditors, and cameras in trucks.
- Contamination is an increasing concern in both the recycling and organics streams as it causes significant cost issues in post-collection processing, impacting rates. Consider allowing the hauler to assess financial penalties on generators for contamination.
- Schools – Schools can be covered by franchises but are not required. Asking customers to follow the same recycling rules at school and home would be an advantage for public education. Staff could explore including the Hayward Unified School District, California State University East Bay and Chabot College in the next franchise agreement.
- Public Litter Cans – Consider increasing the number of litter cans that can be serviced by the hauler.
- Low-to-Zero Emission Trucks – Consider requiring the service provider to implement the use of low-emission collection vehicles, should technology evolve to make implementation feasible during the life of the contract.
- Local Processing of and Marketing for Plastics and Paper – The new contract could incentivize the development and use of local processing facilities and markets for recyclables.
- Organics Diversion - The new contract could incentivize reaching new levels of organics diversion by sending Hayward organics to WMAC's organics material recovery facility.
- Illegal Dumping Collections - A new service included in the 2015 Franchise Agreement was that WMAC collect up to six occurrences of illegal dumping per week in Hayward. The new contract could consider increasing the number of occurrences of illegal dumping WMAC collects.
- Residential Recycling Collection – WMAC currently subcontracts with Tri-CED to collect most residential recycling. Tri-CED has been facing significant challenges. Council should consider conditions under which the new franchise agreement would continue to use Tri-CED for residential recycling services.

Negotiating an extension of current franchise vs. issuing new RFP

The advantages and disadvantages of conducting negotiations with the current service provider or going out to bid are listed below.

Enter into an initial period of negotiations with current franchisee:

Advantages include:

- A new franchise agreement with enhanced services to the community can be in place and commence more quickly.
- WMAC has historically provided the City with reasonable rates; staff expects rates to remain reasonable under any extension of the current franchise.
- WMAC has been providing reasonably good service and has been responsive to City needs when they are asked to respond; staff expects this to continue in the future.
- WMAC has served the City for decades and knows the City well; there is no learning curve.
- In the past 30 years, WMAC has been affected by only one employee action work stoppage; the company worked very hard to reduce the impact to Hayward residents and businesses.
- Consistent with the City priorities, WMAC has incorporated several green practices in its operation, including extracting bio-gas from its landfill to fuel a fleet of its collection trucks.
- WMAC has a regional transfer station, which is located only eight miles from downtown Hayward, and which has adequate capacity to meet its current needs and plans for substantial improvements in the future.
- WMAC owns and operates an in-County disposal site at Altamont Landfill with sufficient capacity for the next several decades. Incidentally, Measure D “waste disposal” funds are more easily assessed, collected, and remitted to the City since waste is disposed at an in-County landfill.

Disadvantages include:

- There is no objective way of knowing the rates that other service providers might propose for the same service levels.
- Given the opportunity, other service providers might be able to offer services, including customer service, that are more innovative, efficient, and effective than those provided by WMAC.

Prepare a RFP for a potential new franchisee:

Advantages include:

- Provides a level playing field for other service providers to submit proposals.
- City might get a lower-cost proposal through such a process.
- As a general rule, it is sometimes a good idea to contract with new service providers as a tool to discourage complacency and encourage innovation and competition.

Disadvantages include:

- Most items that are enumerated as “Advantages” under negotiating with WMAC.
- While there is sufficient time before the expiration of the initial terms, and there are three one-year extensions of the current contract, issuing a request for proposals and selecting a contractor can be a lengthy and labor-intensive process.
- There is a possibility the City may not obtain a lower-cost proposal compared with a negotiated extension of the current franchise.
- While it is not possible to predict what could happen in the future, a new service provider offering services at untested rates might not be able to keep its commitments and remain financially viable, resulting in unexpected rate hike requests, or the prospect of financial insolvency.

Residential recycling services:

Since inception of the residential recycling thirty years ago, the service has been provided by Tri-CED Community Recycling as a subcontractor to WMAC. In recent years due to reluctance of China and some other countries in accepting recyclables from the US, Tri-CED has experienced financial and operational challenges. For any new or extension of the existing

franchise and in consultation with Tri-CED, a decision would have to be made regarding contamination of the services by Tri-CED.

Timeline:

The estimated schedule for completing the negotiations is summarized as follows:

Negotiated Agreement Successful:

Request Council Authorization to Begin Negotiating with WMAC	September 2020
Begin Negotiating Period	October 1, 2020
End Negotiating Period and Report to Council	October 1, 2021
Complete New Franchise Agreement and Schedule Council Action	By June 2022

Negotiated Agreement Unsuccessful:

Request Council Authorization to Begin Negotiating with WMAC	September 2020
Begin Initial Negotiating Period	October 1, 2020
Conclude Initial Negotiating Period and Report to Council	June 1, 2021
Prepare RFP for Consultant Services for Assistance with Selecting the Franchisee	Winter 2021
Council Action for Entering into an Agreement with Selected Consultant	Winter 2021
Prepare RFP (with consultant's help) for Council issuance	Summer/Fall 2022
Receive Proposals	Winter 2022
Select a Franchisee and Negotiate a Contract	Spring 2023
Council Approval of New Franchise Agreement	Summer 2023
New Service Provider to Order Carts, Bins, Vehicles, etc.	Summer 2023
Receive equipment and distribute new collection carts	Summer 2024
Begin New Service	January 1, 2025

FISCAL/ECONOMIC IMPACTS

Maintaining reasonable solid waste and recycling service fees and improving service levels would have a positive impact on the community. Regardless of the path chosen, the negotiation of a new franchise agreement is likely to require significant staff time, however, such staff time will be absorbed by already budgeted positions. If rates are increased, Franchise Fees will also increase, which will benefit the City's General Fund, Recycling Fund, Stormwater Fund, and Street System Improvement Fund.

STRATEGIC ROADMAP

This agenda item does not directly relate to any of the six priorities outlined in the Council's Strategic Roadmap. It is possible that a new franchise agreement could support the following project in the *Support Quality of Life* Strategic Priority:

Project 7: Implement targeted illegal dumping prevention program

Project 7, Part 7a: Pilot programs and analysis
Project 7, Part 7b: Roll out permanent program

SUSTAINABILITY FEATURES

Solid waste management involves the safe and responsible management of discarded material from generation through processing to disposal. Reducing waste landfilled by maximizing the reuse, recycling, and composting of materials increases diversion, conserves natural resources, and plays an important role in making a community sustainable.

PUBLIC CONTACT

No public contact has been conducted.

NEXT STEPS

Upon direction from the Committee, City staff will draft a franchise agreement report for Council and prioritize potential elements of a new agreement.

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Recommended by: Alex Ameri, Director of Public Works

Approved by:



Kelly McAdoo, City Manager