



City of Sunnyvale

Agenda Item

18-0415

Agenda Date: 7/31/2018

REPORT TO COUNCIL

SUBJECT

Planning for Post-2021 Solid Waste & Recycling Collection Franchise (Study Issue ESD 18-02)

BACKGROUND

Solid waste and recycling collection services are provided to residents and businesses by a contractor, currently Bay Counties Waste Services (BCWS), through the grant of an exclusive franchise by the City Council, as allowed by Sunnyvale Municipal Code Chapter 8.16. In the context of solid waste and recycling, a franchise is the mechanism for granting the right to a company or individual to perform solid waste and recycling collection services for Sunnyvale residents and businesses. A franchise for solid waste and recycling services cannot exceed thirty years pursuant to Sunnyvale City Charter Section 1604. The term of the current solid waste collection franchise with BCWS began on July 1, 1991 and will expire on June 30, 2021, a period of thirty years.

Sunnyvale Municipal Code Chapter 8.16 sets forth terms and conditions for the provision of solid waste and recycling collection services in the City. While the solid waste and recycling collection franchise grants the right to BCWS to provide the services, it is the franchise agreement between the City and BCWS, or any future franchisee, that imposes the legal obligation to perform the services in a specific manner. The franchise agreement describes in detail the services to be provided and the quality standards for that work (e.g. allowable work hours and customer service requirements).

Given the public and environmental health significance of the work performed under this contract, it is important to plan for the continuation of these services in advance of the expiration of the current franchise.

Two other 2021-related Solid Waste Program projects related to the Sunnyvale Materials Recovery and Transfer Station (SMaRT Station®) are underway or planned.

Project 828260 (Replace SMaRT Station) is a multi-year project with funding extending through Fiscal Year 2022/23. Work is underway on the first phase, which focuses on the 2021 expiration of the current SMaRT Station Memorandum of Understanding among Mountain View, Palo Alto, and Sunnyvale. The current phase involves interjurisdictional partnership planning, facility assessment and conceptual design development. This is being done with consultant team assistance provided under a contract awarded to HDR Engineering, Inc. on October 17, 2017 (RTC No. 17-0866).

In future years, this Project ramps up into design, then construction of facility updates to support the future recycling and waste disposal needs of Sunnyvale and its future partners.

Project 821170 (SMaRT Station Operations Contract RFP) funds the development, issuance and evaluation of a Request for Proposals (RFP) process to operate the SMaRT Station after the current

contract expires on December 31, 2021. The next seven-year operating term would cover calendar years 2022-2028.

Currently, the same contractor, BCWS, holds the refuse collection franchise and the contract for operation of the SMaRT Station.

The collection franchise and SMaRT Station operation contracts differ as shown in Table 1 below.

Table 1.

	Collection Franchise	SMaRT Station Operation
Work Performed	Collecting various recyclables and discarded materials and delivering them to SMaRT Station	Processing, recycling, and disposing of recyclable materials, then transporting residues to landfill
Typical Term	Up to 30 years	Seven years
Compensation Structure	Actual allowable costs reviewed by City, with various components adjusted by one of four inflation indices	Fixed annual payment adjusted by change in consumer price index
Contractor Incentives	50% return on savings from efficiency proposals approved by City	Recycling revenue shared based on percentage of garbage diverted from disposal

There are some potential efficiency benefits from close coordination between the collection operator and SMaRT Station operator. For example, if the collection operator were to diligently identify and separately collect from commercial waste generators whose waste includes dry, recyclable materials, the SMaRT Station operator could see a more efficient recovery of recyclables from those trucks loads of waste and more clean, marketable, recyclable materials. Some of these efficiencies would benefit the operator itself, others might provide some benefit to the City of Sunnyvale and its ratepayers. It is important to keep in mind, however, that the SMaRT Station serves three cities, not just Sunnyvale, and that about half of the waste currently received comes from haulers serving the other two cities.

Council Study Issue ESD18-02, Planning for Post-2021 Solid Waste & Recycling Collection Franchise, was created at the request of Councilmembers Griffith and Melton, and ranked by the Council for study. The study issue paper identified three basic options:

1. Place a Charter amendment on a future ballot that would modify the current 30-year franchise term limit if approved by voters
2. Conduct a competitive process to select a vendor; then award a new franchise and new agreement without changing the Charter
3. Conduct a single source process, then award a new franchise and agreement to the incumbent without changing the Charter

With research and assistance from HF&H Consultants and the City Attorney, staff presented study issue findings on the three options to Council in a June 12, 2018 study session. Key findings included:

- Either Option 2 and Option 3 could be carried out without modifying the Charter. If Option 3 was selected, there is probably enough time between now and 2021 to initiate a sole source process and, if an outcome beneficial to the City was not apparent, switch to a competitive process for selection of the post-2021 franchisee.
- Staff proposed to return to Council in July 2018 with options for formal consideration, in the form of this report.

EXISTING POLICY

GOAL EM-12 SAFE and HEALTHY SOLID WASTE COLLECTION

Ensure that Municipal Solid Waste is collected in a safe and healthy manner.

ENVIRONMENTAL REVIEW

The actions being considered are exempt from environmental review pursuant to Section 15262 of the CEQA Guidelines (feasibility and planning studies for projects that have not been approved, adopted, or funded) and Section 15738(b)(5) (organizational and administrative activities). Adoption of a new franchise agreement will likely be subject to a Class 1 CEQA exemption for operation of existing facilities (CEQA Guidelines, Section 15301). However, the appropriate CEQA analysis will be included at the time that the City Council is asked to adopt a new agreement.

DISCUSSION

The City Attorney has opined that the current language of City Charter Section 1604 allows Council to direct that either a competitive or single-source process be used to select the post-2021 franchise service provider. A new or incumbent service provider may be awarded a new franchise subject to a new 30-year term limitation. Thus, there is no compelling reason to propose a ballot measure to amend this Charter provision.

After the June 12 City Council Study Session regarding “Planning for Post 2021 Solid Waste and Recycling Collection Franchise,” Councilmember Melton had asked staff to provide a copy of the Sunnyvale Charter language that imposes the 30-year time limit on franchises. Sunnyvale Charter Section 1604, entitled “Term of Franchise” imposes the 30-year limitation on the term of solid waste and recycling franchises (see Attachment 4). In part, it states, “Every franchise shall state the term for which it is granted, which, unless it be indeterminate as provided for herein, shall not exceed thirty years.”

Councilmember Melton also requested clarification as to what actions the City would need to take to start a new 30-year franchise. Pursuant to the provisions of Charter section 1604, the term for any solid waste and recycling franchise will always be a fixed term, which means that it ends on an agreed upon date. Absent an extension of a fixed term prior to the agreed upon date for expiration, then upon the expiration of the term it would be necessary to award a new franchise. The City’s ability to enter into a new franchise for a maximum of 30 years would be possible regardless of whether the new franchise is awarded to the existing franchisee or to a new franchisee.

There are advantages and disadvantages to using either a competitive process or a single-source process to select the post-2021 service provider, but either process can accomplish the goal of

maintaining recycling and refuse collection services beyond the end of the current franchise term.

Staff recommends that Council's selection of competitive vs. single-source be preceded and informed by an independent performance review of the incumbent service provider. A similar process was used in 2004 prior to Council in 2005 granting an extension of the franchise. The 2004 review suggested cost-saving efficiencies that included providing garbage carts to all customers and eliminating one residential garbage and one commercial garbage route. New customer service training requirements were added to the contract standards to improve the experience of customers contacting the company.

Building on the contract changes introduced in 2005 after the previous performance review, key areas for examination in an updated 2018 review could include:

- Management Systems
- Operations
- Customer Service
- Financial Practices
- Environmental Management
- Collection Quality
- Customer Satisfaction

See Attachment 2 for an outline of the performance topics proposed for review. It is anticipated that the cost of the performance review will be less than \$100,000 and can be awarded by the City Manager pursuant to Sunnyvale Municipal Code Section 2.08.040(c)(1).

If so directed by Council, staff proposes to contract for the independent performance review, with a goal of returning to Council with the findings in October 2018. At that time, Council will be asked to review the findings and select either a competitive or single-source procurement process.

Regardless of which approach is used, staff recommends that Council adopt communication guidelines that will govern interactions between potential service providers (including the incumbent) and Council. This approach has been found to promote communication clarity and minimize confusion in previous, similar procurement processes for the SMaRT Station operations contract, which has gone through a competitive process every seven years. Proposed communication guidelines are shown in Attachment 1.

FISCAL IMPACT

There is no fiscal impact from the actions recommended by staff. Funding is provided in the Solid Waste Program budget by Project 833830 (Procure Post-2021 Solid Waste Collection Franchise). That budget provides \$156,060 in funding for Fiscal Year 2018/19.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.

ALTERNATIVES

1. Find that the actions are exempt from CEQA pursuant to CEQA Guidelines Section 15262 and 15738(b)(5).
2. Adopt the communications guidelines shown as Attachment 1.
3. Direct staff to proceed with assessment of the performance of the current franchisee (Bay Counties Waste Services).
4. Direct staff to return to Council following the assessment for direction on whether to conduct a single source or a competitive process for an award of a new franchise and agreement.
5. Take other action as directed by the City Council.

STAFF RECOMMENDATION

Alternatives 1, 2, 3 and 4:

Alternative 1: Find that the actions are exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15262 and 15738(b)(5).

Alternative 2: Adopt the communications guidelines shown as Attachment 1 to the report.

Alternative 3: Direct staff to proceed with assessment of the performance of the current franchisee (Bay Counties Waste Services).

Alternative 4: Direct staff to provide the performance review results and ask Council for direction on whether to conduct a single source or a competitive process for an award of a new franchise and agreement.

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Reviewed by: Ramana Chinnakotla, Director of Environmental Services

Reviewed by: Teri Silva, Assistant City Manager

Approved by: Kent Steffens, City Manager

ATTACHMENTS

1. Solid Waste and Recycling Collection Franchise Process Communications Guidelines
2. Performance Assessment Scope of Work Outline
3. Study Issue Paper, ESD 18-02
4. Sunnyvale Charter, Article XVI Franchises, Section 1604