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### **REPORT TO COUNCIL**

#### **SUBJECT**

Award a Contract for the Operation of the Sunnyvale Materials Recovery and Transfer Station (SMaRT Station®) (F14-42) and Find that Project is Exempt from CEQA

#### **REPORT IN BRIEF**

On January 22, 2014, the City received three responses to its Request for Proposals (RFP F14-42) for the operation of the Sunnyvale Materials Recovery and Transfer Station (SMaRT Station). Proposals were received from Bay Counties Waste Services, Inc., Zero Waste of Sunnyvale, LLC and Recology, Inc.

Proposals were evaluated by a team that included staff from Sunnyvale Environmental Services, Finance, partner cities of Mountain View and Palo Alto, and financial advisors Hilton, Farnkopf, and Hobson LLP, with legal assistance provided by the outside counsel firm of Hanson Bridgett LLP. Based on the factors detailed below, staff recommends that Council award a contract to Bay Counties Waste Services for the operation of the SMaRT Station for a seven-year period, from January 2015 to December 2021, with an option to extend for up to three additional years. This seven to ten year contract provides an essential core City service, and is one of the largest contracts awarded by the City of Sunnyvale.

#### **BACKGROUND**

The Sunnyvale Materials Recovery and Transfer (SMaRT) Station began operations in October 1993. The SMaRT Station was built by the City of Sunnyvale, in partnership with the cities of Mountain View and Palo Alto, to serve five main purposes:

- Receive and recover, at the materials recovery facility (MRF), recyclable materials from garbage collected in the three cities.
- Transfer the un-recycled portion of the garbage to the Kirby Canyon Landfill for disposal.
- Receive, process, and ship to composting facilities the yard trimmings collected by the three cities.
- Receive, sort and prepare for market recyclables collected at curbside.
- Provide a recycling center where residents can sell or drop off a number of recyclable materials.

At the SMaRT Station, residents of the three cities may also:

- Dispose of “self-haul” refuse.
- Pick up free compost.
- Drop off certain products that may not be placed in the garbage such as batteries, used motor oil, fluorescent light bulbs, computers and televisions and consumer electronic devices at no cost.

- Tour the facility individually or in groups.

The costs of building and operating the SMaRT Station are shared among the three cities as specified by a Memorandum of Understanding (MOU). At current garbage delivery rates, Sunnyvale is responsible for about 50% of the SMaRT Station operating expenditures and receives about 50% of the revenues earned from recyclables removed from the garbage. FY 2012/13 operating costs for the SMaRT Station (including landfill disposal) for the three cities were \$23.7 million, offset by \$2.4 million in recycling revenues. That is, the total expenses for the three cities, net of revenues, is \$21.3 million. These net expenses are covered by solid waste fees. (No Sunnyvale General Fund revenues are used to support solid waste functions.)

The area served by the SMaRT Station has a residential population of 289,000 and delivered 244,791 tons of garbage and source-separated materials to SMaRT during Fiscal Year 2012/13. Of the garbage delivered to SMaRT, 17% was diverted from disposal by the materials recovery facility (MRF). Taking into account all flows of discarded materials to and from the SMaRT Station (including source separated yard trimmings, curbside recyclables from Sunnyvale and Mountain View, and recyclables dropped off by the public), the facility diversion rate was 36%.

Bay Counties Waste Services (BCWS) currently operates the SMaRT Station under a contract that expires December 31, 2014.

### **EXISTING POLICY**

General Plan Policy EM-15.2 - Reduce the amount of refuse being disposed, generate recycling revenues, and minimize truck travel to the disposal site through use of the Sunnyvale Materials Recovery and Transfer (SMaRT) Station.

On April 23, 2013 (RTC 13-085) Council directed staff to pursue actions to achieve the following through a Zero Waste Strategic Plan:

- 70 percent diversion by 2015
- 75 percent diversion by 2020
- 90 percent diversion by 2030

### **ENVIRONMENTAL REVIEW**

This project is exempt from review under the California Environmental Quality Act (CEQA) pursuant to 14 California Code of Regulations Section 15301 (operation, repair, maintenance, or minor alteration of structures, facilities, mechanical equipment or topographical features, involving negligible or no expansion of use beyond that existing at the time of the determination).

### **DISCUSSION**

On November 19, 2013 (RTC 13-277), Council approved the issuance of the SMaRT Station Operations Request for Proposals. Key provisions of the RFP are summarized below:

- Seven-year agreement with option to extend up to three additional years
- Contractor has three sources of revenue:
  1. Fixed annual payment for handling amounts of Municipal Solid Waste (MSW) and yard trimmings up to 280,000 tons per year, with a payment per ton for amounts above that ceiling

- (adjusted annually by the Consumer Price Index (CPI))
- 2. Diversion-based share of material sales revenues
- 3. Per cubic yard charge (CPI adjusted) for publicly hauled waste
- Requires that employee wages and benefits meet minimum standards established by the City in 2006 (plus CPI adjustments)
- Requires selected contractor to offer employment to eligible employees of current operator for available driver, sorter, mechanic, and operator positions

The RFP requested that proposers quote three annual payment amounts, one for each of the following operating scenarios:

1. City installs on-site processing equipment for 2"-minus fines, with a minimum recycling level of 17.5% (2"-minus fines are the small particles that, as part of the material sorting process, pass through 2-inch holes.)
2. No City-provided on-site MRF fines processing, minimum recycling level of 15%
3. Refuse transfer operations only with no materials recovery operation

The evaluation focused on:

- Verifying that the proposers have the financial wherewithal to perform the duties required under the contract.
- Verifying the reasonableness of and consistency of proposed staffing, costs, and revenues and requesting corrections of obvious errors.
- Confirming the presence of the necessary corporate authority to commit the company to the City's contract and other legal issues.
- Evaluating the companies and their proposals against the four non-cost evaluation criteria listed in the RFP which were experience, approach, diversion and acceptance of agreement.

The evaluation team scored the three proposals received by letter grades of A, B, C and F. Attachment 1 is an application of criteria sheet that illustrates the meaning of each letter grade as it applies to each criterion.

BCWS and Zero Waste indicated in their proposals that they took no exceptions to the terms of the agreement under the criterion Acceptance of Agreement. However, Recology listed more than 20 exceptions, most of which significantly shifted cost and/or risk from the contractor to the City. Recology was given an opportunity to drop some or all of its exceptions, but declined to do so and was subsequently dropped from further consideration. BCWS and Zero Waste were asked follow-up questions and interviewed on February 12, 2014.

Each evaluator separately scored the two remaining proposers on each criterion. Bay Counties was ranked higher on Experience, Approach, and Diversion. Both proposers received top scores for Acceptance of Agreement, as neither took any exceptions to the agreement.

Mean scores for each criterion are shown below.

<u>Criterion</u>	<u>Bay Counties Waste Services</u>	<u>Zero Waste</u>
Experience	A-	B

Approach	A	B
Diversion	A-	B+
Acceptance of Agreement	A	A

Following is the final pricing of the two proposals:

<u>Minimum Recover Level</u>	<u>Bay Counties Waste Services</u>	<u>Zero Waste</u>
15%	\$11,958,031	\$14,084,828
17.5%	\$12,006,823	\$14,151,762
Transfer Only	\$ 9,106,582	\$12,942,644
Efficiency Options	\$12,138,440	\$13,650,696

BCWS emerged as the top proposal while also offering the lowest price.

The RFP encouraged optional proposals which encouraged innovative approaches to capture efficiencies, increase cost-effectiveness and/or diversion without being overly capital intensive. BCWS included a number of options, some of which are relatively simple and are to be implemented at BCWS expense, while others are more complex projects with longer time lines and require that the cities invest in (for example) equipment installations or electrical system upgrades. Because these were not contemplated by the basic agreement distributed with the RFP, staff engaged in negotiations with BCWS over additional contract language that addressed the options. With assistance from outside counsel, each option has been incorporated into the contract language, defining the work involved, its cost and its implementation timeline. The final contract resulting from this process has been signed by an authorized representative of BCWS.

The Request for Proposals process used in this procurement allowed the City to consider all of the criteria discussed above in order to determine which proposal represents the best overall value. None of the important factors noted above would have been evaluated if the SMaRT Station procurement had been conducted as an Invitation for Bids (IFB), whereby contracts are awarded to the lowest responsive and responsible bidder.

### **FISCAL IMPACT**

Although the proposed cost of the recommended agreement is higher than the current cost, it is below the amount currently budgeted for FY 2014/15, which anticipated a higher increase. As a result, the recommended agreement will have a beneficial impact on future refuse collection rates. The fiscal impact of these proposals takes into account several factors, which are laid out in Attachment 2. First, the basic annual payment is considered. Then, the landfill costs under different diversion percentages have to be considered, as higher diversion results in savings at the landfill. Next the total revenues earned from recyclables are evaluated. Of note is that if the contractor achieves a higher diversion rate, they keep a larger share of the revenues and the cities keep a smaller share. Taking into account these factors, the net cost of each proposal to the three cities as a whole and Sunnyvale alone is shown at the bottom of Attachment 2.

Awarding the contract to Bay Counties Waste Services is projected to increase annual net operating costs to the three cities by \$154,832 compared to current costs. Awarding the contract to Zero Waste would increase annual operating costs by \$2,413,169.

As the source of about 50% of the solid waste delivered to the SMaRT Station, Sunnyvale would see

increased annual costs of about \$77,000 starting midway through FY 2014/15. Taken as a percentage of the currently budgeted solid waste rate revenue requirement, this item has a minimal effect on rates. Furthermore, staff took a conservative approach in estimating the cost for the SMaRT Station annual payment in the FY 2014/15 Recommended Budget, anticipating an increase larger than the cost of the BCWS proposal. The proposal is approximately \$295,000 less than planned, half of which is Sunnyvale's share. As the 2014/15 solid waste utility rates have already been adopted, changes resulting from the Council's action will be incorporated into the budget and projections of refuse collection rates for FY 2015/16 and beyond.

This is a complex contract, and the fiscal impact can vary depending on actual recycling diversion rates as well as market factors like prices for recyclables or the amount of recyclables that are in the waste. Bay Counties proposed an alternative that potentially provides the cities an additional \$296,000 in savings per year, approximately half of which would go to Sunnyvale. However the alternatives will take time to implement and therefore the savings will take several years to realize.

### **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.

This RTC was also made available to the proposers and to the cities of Mountain View and Palo Alto in advance of the City Council meeting.

### **ALTERNATIVES**

1. Find that this project is exempt from CEQA under 14 California Code of Regulations Section 15301.
2. Award the contract for operation of the SMaRT Station to Bay Counties Waste Services.
3. Other action as directed by Council.

### **RECOMMENDATION**

Alternatives 1 and 2: Find that this project is exempt from CEQA under 14 California Code of Regulations Section 15301 and award the contract for operation of the SMaRT Station to Bay Counties Waste Services.

Staff believes that the recommended proposer, Bay Counties Waste Services possesses the requisite skills and experience to operate and maintain the SMaRT Station in a manner that will well serve the City. Contracting with Bay Counties Waste Services has the added benefit of also providing the lowest net cost to the cities. Thus, staff is recommending that the Council award the contract to Bay Counties Waste Services.

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Reviewed by: John Stufflebean, Director, Environmental Services Department

Approved by: Robert A. Walker, Assistant City Manager

### **ATTACHMENTS**

1. Application of Criteria

2. Net Cost Calculations
3. Draft Contract