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REPORT TO COUNCIL

SUBJECT

Solid Waste & Recycling Collection Franchisee Performance Review Findings and Initiation of a Process for Selection of Post-2021 Franchisee

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.

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.

Council Study Issue ESD18-02 (Attachment 1), 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, LLC and the City Attorney, staff presented study issue findings on the three options to Council in a June 12, 2018 study session. Key findings were that both Option 2 and Option 3 could be carried out without modifying the Charter.

At the Study Session Council was advised that if Option 3 was selected, that there was enough time between the Study Session 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. The Council was also advised there was enough time to conduct a review of the incumbent franchisee's performance prior to a Council decision on selecting one of the options.

On July 31, 2018, Council considered the options and voted unanimously to:

1. Find that the actions are exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15262 and 15738(b)(5);
2. Adopt communications guidelines that will govern interactions between potential service providers (including the incumbent) and Council;
3. Direct staff to proceed with assessment of the performance of the current franchisee (Bay Counties Waste Services);
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.

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

After Council direction was received, HF&H Consultants, LLC, was awarded an \$85,915 contract to conduct the performance review of BCWS. Key areas for examination included:

- Management Practices
 - Generational Transition
 - Management and Supervisory Staffing
 - Financial Data Tracking and Reporting
- Collection Operations
 - Driver Hiring
 - Number and Type of Routes
 - Collection Quality
 - Collection Equipment Inventory
 - Disposition of Old Equipment
 - Maintenance and Safety
- Customer Service
 - Complaint Management Process
 - Customer Satisfaction
 - Work Order Management
 - Customer Service Training

The full performance review is found in the Bay Counties Waste Services Collection Performance Review (Attachment 2). Key findings and recommendations contained in the HF&H Consultants review are as follows.

Key Findings and Recommendations

The provision of solid waste services in Sunnyvale is atypical due to the degree in which City and BCWS staff share several key areas of responsibility. The City bills customers, remits billing revenues as compensation to BCWS, is active in developing and implementing collection programs, and reviews and approves major expenditures (such as adding routes). While individually, these City responsibilities may not be unusual, taken together they are atypical.

In general, City staff perceive BCWS to be a good partner. Most aspects of service have worked well and continue to do so. For example:

- Collection trucks are well maintained and clean, presenting a positive image in the community. Containers are maintained in good condition, with quick graffiti removal and repainting as needed.
- BCWS has a low rate of turnover, both among drivers and among management and supervisory staff. In general, staffing continuity is beneficial to the provision of quality service.
- BCWS is flexible in developing and implementing programs to meet City needs. Following early difficulties during implementation, FoodCycle is proving to be an effective food scraps program that is capturing large amounts of material with minimal contamination relative to similar programs in nearby communities.
- BCWS is a proactive, early adapter of new, beneficial technology. BCWS was one of the first collection contractors to convert its fleet to compressed natural gas (CNG) and is in the forefront of adding “smart” technology to collect data that can enhance service performance, efficiency, and safety.
- Customers benefit from access to local customer service staff, providing assistance specific to Sunnyvale services.
- BCWS has a strong safety record as measured by state workers’ compensation claims for both the collection and SMaRT Station operations.

There are some areas in which improvement is necessary. A key area is a need to ensure effective, ongoing communication between BCWS and City staff. The findings and recommendations in this section focus on the interaction of BCWS and City staff, drawing in part on more specific findings and recommendations discussed in the Review in the areas of Management Systems, Collection Operations, Customer Service and Regulatory Compliance.

Findings

1. BCWS has provided quality collection service for nearly 30 years.
2. Providing the high level of customer and billing services Sunnyvale residents and businesses have come to expect requires that BCWS and City staff work closely together in collecting, sharing and using data to address customer issues.
3. Maintaining this close working relationship is an ongoing challenge for both parties. At times, the City and BCWS have different perceptions regarding specific issues.

Performance Review Recommendations

1. In general, City and BCWS staff should meet no less than monthly. We also suggest City and BCWS management staff schedule a standing twice monthly or even weekly call to check on the status of issues, to anticipate problems and to air any concerns.
2. City and BCWS staff should discuss their respective obligations, responsibilities and constraints in order to gain a mutual appreciation for each party's role.
3. Both parties should gain a fuller understanding of key shared data systems and, to the degree possible, ensure consistency in how they are used. This may involve working with information technology staff to ensure software systems and data can be utilized to their full capability.

The City should continue to ensure sufficient contract oversight and direction, while avoiding creating any potential for a "co-employment" situation in which both BCWS and the City might have potential legal rights and duties with respect to the same employee.

Staff Conclusions and Process Recommendations

Staff finds that the HF&H Performance Review represents a fair and reasonable assessment of BCWS performance as the City's refuse collection franchisee. Taking all factors into account, staff is recommending that Council review and accept the performance review findings and direct that staff initiate selection of a post-2021 franchisee using a negotiated, single-source process with a timeline that allows for a subsequent open, competitive process if negotiations do not provide an outcome favorable to the City and ratepayers.

A single-source process could consist of a Request for Proposals (RFP) that is issued to BCWS only. Due to its ongoing oversight of the BCWS franchise agreement, the City already has detailed knowledge of the company's financial, physical and human resources. Thus, a single-source RFP could require less time and expense for the City to prepare, issue and evaluate. On this path, if BCWS were to fail to provide an acceptable proposal and/or subsequent negotiations did not reach a conclusion that Council felt met the City's needs, the City could then move to a competitive process. This decision would need to be made by mid-2019 to allow enough time to carry out a competitive process and transition to a new contractor by July 1, 2021, if the process selected a service provider other than BCWS.

In a competitive process, a RFP would be issued in a process open to any potential service provider that met experience and qualification standards detailed in the RFP. A substantial (e.g. \$100,000) bid bond or cash deposit is typically required as part of the proposal submittal to assure that proposers are serious and have access to financial resources. The RFP document itself would be brought to Council for review and approval prior to being issued.

FISCAL IMPACT

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 and \$233,466 the following year.

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 the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15262 and 15738(b)(5);
2. Accept the findings of the HF&H review of BCWS performance
3. Direct staff to initiate selection of a post-2021 franchisee using a negotiated, single-source process with a timeline that allows for a subsequent open, competitive process if negotiations do not provide an outcome favorable to the City and ratepayers.
4. Direct staff to initiate a competitive process and issue a Request for Proposals to qualified potential post-2021 franchisees.

STAFF RECOMMENDATION

Alternatives 1, 2 and 3: 1) Find that the actions are exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15262 and 15738(b)(5); 2) Accept the findings of the HF&H review of BCWS performance; and 3) Direct staff to initiate selection of a post-2021 franchisee using a negotiated, single-source process with a timeline that allows for a subsequent open, competitive process if negotiations do not provide an outcome favorable to the City and ratepayers.

There are advantages and disadvantages to using either a competitive or single-source process to selecting a post-2021 franchisee for solid waste collection services. The capital-intensive nature of the solid waste collection business requires relatively long contract terms to amortize the capital costs and thus minimize ratepayer costs. Based on past experience and customer surveys, collection customers typically value reliability and quality of service more than they value a low price. By the end of a multi-year contract, a low, initial cost arising from a competitive process typically rises with the passage of time.

The services provided by the franchisee touch the lives of each resident and business of Sunnyvale at least once a week. Given that fact, switching service providers is a complex and disruptive process, no matter how carefully it is done. Thus, the decision to go directly to a competitive procurement is best justified if the City and its customers are dissatisfied with the incumbent service provider. The independent performance review concluded that the current franchisee is reasonably well managed and delivers collection services that are relatively reliable and cost-effective. Given that, staff recommends initiating a negotiated, single-source process with BCWS with the intent to provide Council the option of approving a new exclusive franchise term and updated franchise agreement.

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Reviewed by: Teri Silva, Assistant City Manager

Approved by: Kent Steffens, City Manager

ATTACHMENT

1. Council Study Issue ESD 18-02 (RTC 18-0415)
2. Bay Counties Waste Services Collection Performance Review (HF&H Consultants, LLC, November 28, 2018)