

### REPORT TO COUNCIL

#### **SUBJECT**

Introduce an Ordinance Awarding an Exclusive Franchise to Bay Counties Waste Services, Inc. for Collection of Solid Waste, Recyclables, and Organic Materials; Authorize the Mayor to Execute a Franchise Agreement; and Find that these Actions are Exempt from CEQA Pursuant to CEQA Guidelines Section 15301 and 15308

#### **REPORT IN BRIEF**

Solid waste and recycling collection services are provided to residents and businesses by a Franchisee, currently Bay Counties Waste Services (BCWS, dba Specialty, Inc), through the grant of an exclusive franchise by the City Council. The terms of the current BCWS solid waste collection franchise and agreement will expire on June 30, 2021. Council previously directed staff to develop a "single-source" request for proposal (RFP) package for solid waste and recycling collection services for release to BCWS.

On February 4, 2020, Council reviewed the draft RFP package and approved release of the package to BCWS. The RFP package included Council-approved communication guidelines governing the single-source RFP process, the BCWS Performance Review presented to Council in December 2018, an RFP specifying the City's service requests, a new draft agreement for provision of service, and a set of cost forms for BCWS to submit with its proposal. The RFP asked BCWS to provide proposal pricing for term options of seven and ten years. The RTC (No. 20-0104) discussed the content of the RFP package, including changes to services necessary to comply with key pending regulatory requirements.

BCWS provided its proposal to the City on May 15, 2020. It proposed new or expanded organics recycling services that include:

- Startup of multi-family dwelling (MFD) organics collections
- Expansion of commercial organics collections
- Addition of used cooking oil to residential recycling collections
- Outreach and education programs focused on participation and quality control
- Long-term vehicle fueling infrastructure strategy to improve efficiency and provide for transition to electric vehicles

Staff and BCWS have discussed the proposal in detail and have agreed on a multi-year scope of work for collection services. Negotiations with BCWS have focused on a ten year term (Option A of Section 2.1 of the Franchise Agreement) and to creation of a lower-priced "15-year" term (Option B of Section 2.1 of the Franchise Agreement) that are both tied to reductions in profit relative to that currently earned by BCWS. For Option B, the last five years would be contingent on a City review in Year 6 of the contract and satisfactory performance by BCWS as determined by results of a

performance review. The Franchise Agreement provides that the City Manager or designee will determine if performance is satisfactory.

The scope of work has been incorporated into an updated franchise agreement. If approved by Council, the new agreement recommended by staff would provide services starting on July 1, 2021. With satisfactory contractor performance, the term would end June 30, 2036.

Staff is recommending that Council:

1. Introduce an ordinance awarding an exclusive franchise to Bay Counties Waste Services, Inc. for collection of solid waste, recyclables, and organic materials (Attachment 1);
2. Authorize the Mayor to execute the draft Franchise Agreement (Attachment 2) with "Option B" of Section 2.1 to provide for a term of fifteen years from July 1, 2021 to June 30, 2036, subject to a performance review in Year 6; and
3. Find that these actions are exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15301 and 15308.

## **BACKGROUND**

### **Solid Waste and Recycling Collection Contracting**

Solid waste and recycling collection services are provided to residents and businesses by a Franchisee, currently Bay Counties Waste Services (BCWS), through the grant of an exclusive franchise by the City Council, as allowed by Article XVI of the Sunnyvale City Charter and Sunnyvale Municipal Code Chapter 8.16. Specialty Solid Waste & Recycling, Inc. (Specialty) was awarded the collection franchise in 1990 for a term beginning July 1, 1991 and was acquired by BCWS during FY 1992/93. BCWS continues to use the Specialty name as a dba. 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.

On July 31, 2018, Council reviewed a Council-directed study of solid waste contracting options (RTC No. 18-0415) and voted to:

1. Adopt communications guidelines to govern interactions between potential service providers (including the incumbent) and Council;
2. Direct staff to assess the performance of the current franchisee (BCWS), to report the results, and to request Council direction on whether to conduct a single source or a competitive process for award of a new franchise and agreement.

### **Review of BCWS Performance**

HF&H Consultants, LLC (HF&H) conducted a performance review of BCWS (see Attachment 2). Staff and consultant presented the results of the performance review at the December 18, 2018 Council meeting (RTC No.18-0910). Key areas of review included:

- \* Management Practices
- \* Collection Operations
- \* Customer Service

Staff found that the performance review represented a fair and reasonable assessment of BCWS' performance and recommended 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. Council approved the staff recommendation and directed staff to return to Council for review and approval of the RFP document prior to it being issued.

### Developing the RFP Package

On April 23, 2019, Council approved a contract with HF&H Consultants to assist the City in conducting the RFP and negotiation process (RTC No. 19-0449), and work began in May. From July through mid-December 2019, staff and HF&H worked as a team to develop the draft RFP package. The team also included Joshua Nelson of law firm Best, Best, & Krieger, LLC (BBK). Mr. Nelson is an attorney who specializes in municipal waste collection services contracting. He updated the proposed franchise agreement compared to the current contract language by bringing in model language used in other jurisdiction agreements and to reflect changes to statute and case law.

The single-source procurement process provided the opportunity for City and HF&H staff to be in communication with BCWS during development of the draft RFP package. City and HF&H staff met with BCWS management and officers in July and October of 2019 to discuss the City's goals for the process, and key issues including SB 1383 requirements, multi-family bulky material collection, vehicle fueling, transition to an electric vehicle fleet, collection in the downtown area, and compensation.

City and HF&H staff also discussed the findings and recommendations of the performance review with the BCWS management team. BCWS provided information and initial informal proposals for several topics, which helped to define the content of the RFP. On February 4, 2020, Council approved the issuance (RTC No. 20-0104) of the RFP package to BCWS.

### BCWS Proposal

On May 15, 2020, BCWS provided its proposal to the City. Key elements of the proposal include:

- Organics Diversion:
  - Expansion of commercial food scraps collections
  - Startup of multi-family dwelling (MFD) food scraps collection
  - Startup of yard trimmings collection for commercial and MFD customers
  - Addition of cooking oil to single-family recycling collection
- Financial Provisions:
  - Cost schedules for terms of either 7 or 10 years
  - A \$100,000 SB 1383 contingency reserve fund in Year 1 and Year 2
  - Removal of depreciation expense from core services
  - No profit on interest expense
  - Freeze on executive compensation
  - Freeze on rent charges
  - Provision of a usable food recovery collection truck for use by a not-for-profit, purchased at company expense
  - Change in credit card vendor for cost savings
- Technological innovation (software and hardware) to address data tracking, sharing, reporting

- Subcontractors to provide:
  - Technical expertise in specialized fields (SCS Engineers)
  - Container exchange and labeling (Container Pros)
  - Downtown collection services (Trash Scouts)
  - Clean fuel infrastructure and supply (TruStar Energy)
- A vehicle fueling infrastructure strategy that will improve fueling efficiency and a commitment to pilot electric garbage collection vehicles when technology becomes available.
- One-time investment in edible food recovery infrastructure

### Proposal Review

Staff conducted initial review of the proposal with assistance from HF&H Consultants. BCWS was asked to clarify portions of the proposal in a process that included discussion of key topics, most notably the implementation of the organics recycling services required by new State of California regulations.

Those regulations implement the Short-Lived Climate Pollutant (SLCP) Reduction Strategy required by SB 1383, which was signed into law in 2016. The changes introduced by the SB 1383 regulations are largely supportive of achieving the City's own Zero Waste Policy goals, which calls for diverting 75% of generated solid waste by 2025, then 90% diversion by 2030 (reaching the 90% level will require technologies currently unavailable under state law). On May 19, 2020, Council participated in a workshop on SB 1383 and the requirements of the regulations that were then in the process of being developed. The regulations were later approved by the Office of Administrative Law in substantially the same form.

A study session on November 10, 2020, provided Council an update on the status of the BCWS proposal and staff negotiations with the company. The Mayor and some councilmembers requested one-on-one meetings with staff for detailed questions. Those meetings were conducted in December 2020 and January 2021.

### **EXISTING POLICY**

Article XVI of the City of Sunnyvale charter provides the City Council the authority to grant by ordinance a franchise to engage in a franchised privilege which includes the furnishing to the City or its inhabitants, garbage, waste or refuse removal services.

### **ENVIRONMENTAL REVIEW**

The proposed actions are categorically exempt from review under CEQA Guidelines Sections 15301 (Existing Facilities) and 15308 (Actions Taken by Regulatory Agencies for Protection of the Environment), on the ground that the collection of solid waste and recyclables is an existing operation that will continue after award of the new franchise. The substantive changes to the operation are designed to further the City's Zero Waste reduction goals and implement new state of California regulations. The collection of recyclables and solid waste is heavily regulated by local, state, and federal law, and these changes to the franchise agreement will protect and enhance the environment. Other changes to the agreement are fiscal and administrative in nature and have no

potential to cause environmental impacts.

## **DISCUSSION**

In the Franchise Agreement proposed for Council approval (Attachment 2), key services to be changed or added include those described in Background, above.

After discussion with BCWS and consideration of priorities and staffing, some portions of the May 15, 2020 proposal were modified. These include:

- Vehicle and container purchases to be phased in to better match anticipated service demand and to spread out capital costs.
- The \$100,000 SB 1383 contingency, if needed, to be addressed by the City's existing Solid Waste Fund operating reserve.
- Software and hardware purchases for technological innovation phased in over time to reduce Year 1 costs. These include implementation of RouteSmart Software to optimize truck routing and stops in Year 1 and a customer service software implementation in Year 4.
- Specialized downtown collection services, if warranted by demand, to be provided on a stand-alone, fee-based manner.
- Deferral of multi-family bulky item pickup pilot to Year 4.

Final contract negotiations resulted in BCWS agreeing to a decrease in operating ratio profit from the current 8.5% down to 8.0% for a 10-year contract term (Option A) and down to 7.75% for a 15-year term (Option B) contingent upon a satisfactory performance review by the City in Year 6 as determined by the City Manager or designee. Relative to the current rate of profit under the existing Franchise Agreement, the reduced rates of profit saves about \$140,000 per year for the 10-year term (Option A) and about \$210,000 per year for the 15-year term (Option B). The 15-year term (Option B) saves about \$70,000 per year in comparison to the 10-year term.

Aside from BWCS agreeing to a lower profit, a longer contract term can provide for lower annual costs related to capital items. Refuse collection requires investment in capital items, such as trucks, bins, debris boxes and carts, that have typical lives between seven and fifteen years. Extending the contract term to more closely resemble asset lives reduces annual costs when compared to a shorter term.

The net result of the changes to scope and contract term resulted in a Year 1 cost of \$25,360,069 and a projected Year 2 cost of \$27,131,770 for the 10-year term, and a Year 1 cost of \$25,298,253 and a projected Year 2 cost of \$27,065,587 for the 15-year term. The current year (FY 2020-21) contract cost is \$22,998,754. The Year 1 costs represent a 10.3% increase from current year costs for a 10-year term and a 10.0% increase from current costs for a 15-year term. The primary drivers behind the cost increase are the increased cost of providing base services and the cost to provide the new SB 1383 related services. Base services are increasing by approximately 7% due to the new labor contract related wage increases and four truck replacements. In approving the Franchise Agreement, the City is committing to a final cost for Year 1 only. The projected costs for Year 2 will be adjusted, as needed, based on factors that include the scale and implementation pace of the new services, and will be brought for approval by Council in 2022. Beginning in Year 3, the current administrative method of determining the next year's payment will be used, based on allowable costs for labor, fuel, etc. from Year 1, brought forward to Year 3 using specified inflation indices.

## **FISCAL IMPACT**

Cost to the City will be \$25,298,253 in FY 2021/22, which is Year 1 of the Franchise Agreement. Year 2 cost is currently projected to be \$27,065,587. The Year 2 amount will go through an administrative review and adjustment to account for variances from currently projected expenses, with approval by Council. Costs in future years will be based primarily on actual allowable service costs for a prior year, adjusted for inflation. Costs for Years 1-4 (Years 2-4 are projected costs) are displayed in Table 1 below.

Table 1.

### Option A

	FY 20-21 Approved Compensation	Year 1	Year 2	Year 3	Year 4
10-year term	\$22,998,754	\$25,360,069	\$27,131,770	\$28,996,189	\$31,021,434

### Option B

	FY 20-21 Approved Compensation	Year 1	Year 2	Year 3	Year 4
15-year term	\$ 22,998,754	\$25,298,253	\$27,065,587	\$28,925,690	\$30,946,086

The collection contract cost amounts to about 50% of the total rate revenue requirement for the Solid Waste Fund. When compared to the rate projection in the FY 2020/21 financial plan, the changes introduced by the proposed agreement will increase refuse collection rates by about 4% in FY 2021/22 in addition to the 1% increase previously anticipated, for a total of 5%. The total 20-year impact is approximately \$70.1 M. Rate impact projections throughout the 20-year financial plan for the Solid Waste Management Fund will be provided as part of the budget process and during the utility rates adjustment process in June 2021.

## **PUBLIC CONTACT**

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

## **ALTERNATIVES**

1. Introduce the Ordinance in Attachment 1 Awarding an Exclusive Franchise to Bay Counties Waste Services, Inc. for Collection of Solid Waste, Recyclables, and Organic Materials, Authorize the Mayor to execute the Draft Franchise Agreement in substantially the form in Attachment 2 including "Option B" of Section 2.1 to provide for a term of fifteen years from July 1, 2021, to June 30, 2036 subject to a performance review in Year 6 by the City Manager or designee; and Find that these Actions are Exempt from CEQA Pursuant to CEQA Guidelines Sections 15301 and 15308.
2. Introduce the Ordinance in Attachment 1 Awarding an Exclusive Franchise to Bay Counties Waste Services, Inc. for Collection of Solid Waste, Recyclables, and Organic Materials, but

amended to provide for a term of ten years from July 1, 2021, to June 30, 2031, and no performance review; Authorize the Mayor to execute the Draft Franchise Agreement in substantially the form in Attachment 2 including "Option A" of Section 2.1 to provide for a term of ten years from July 1, 2021, to June 30, 2031; and Find that these Actions are Exempt from CEQA Pursuant to CEQA Guidelines Sections 15301 and 15308.

3. Do not Introduce the Ordinance or Authorize the Mayor to Execute the Draft Franchise Agreement and provide alternative direction to staff regarding provision of refuse collection and recycling services.

### **STAFF RECOMMENDATION**

Alternative 1: Introduce the Ordinance in Attachment 1 Awarding an Exclusive Franchise to Bay Counties Waste Services, Inc. for Collection of Solid Waste, Recyclables, and Organic Materials, Authorize the Mayor to execute the Draft Franchise Agreement in substantially the form in Attachment 2 including "Option B" of Section 2.1 to provide for a term of fifteen years from July 1, 2021, to June 30, 2036 with a performance review in Year 6 by the City Manager or designee, and Find that these Actions are Exempt from CEQA Pursuant to CEQA Guidelines Sections 15301 and 15308.

The BCWS proposal and subsequent discussion and negotiations demonstrate that the company has the experience and aptitude to meet the City's solid waste and recycling collection service needs now and in the future. The company has a good understanding what is needed to comply with the demands of the SB 1383 organics recycling regulations and how to turn those plans into reality.

With the assistance of HF&H Consultants, staff has determined that the costs proposed by BCWS are reasonable and that the proposed staffing, number of vehicles and other resources committed by BCWS are sufficient to meet the service standards expectations of Sunnyvale residents and businesses and comply with the state's SB 1383 organics mandates, all at a reasonable cost to ratepayers.

The City has a long and valued relationship with BCWS. The longer 15-year term approach of Option B allows the City to ensure ongoing satisfactory performance while reducing impact to ratepayers. Staff is thus recommending that Council award the new franchise agreement to BCWS with a term beginning on July 1, 2021 and ending on June 30, 2036 (assuming satisfactory performance as determined by a Year Six performance review), including the provisions contained in Attachment 2, Draft Franchise Agreement Between City of Sunnyvale and Bay Counties Waste Services, Inc. for Recycling, Organics and Solid Waste Collection Services.

Prepared by: Mark Bowers, Solid Waste Manager

Reviewed by: Ramana Chinnakotla, Director, Environmental Services Department

Reviewed by: Teri Silva, Assistant City Manager

Approved by: Kent Steffens, City Manager

### **ATTACHMENTS**

1. Draft Ordinance
2. Draft Franchise Agreement Between City of Sunnyvale and Bay Counties Waste Services, Inc. for Recycling, Organics and Solid Waste Collection Services