



# City of Sunnyvale

## Agenda Item-No Attachments (PDF)

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### REPORT TO COUNCIL

#### **SUBJECT**

Award an Agreement for Operation of the Sunnyvale SMaRT® Station to Bay Counties Waste Services

#### **REPORT IN BRIEF**

The current operating agreement with Bay Counties Waste Services (BCWS) expires December 31, 2021. Staff recommends awarding a new single source agreement to BCWS in order to avoid changing operators during a planned major retrofit of the SMaRT Station which will be completed by the end of 2025. Staff recommends that the agreement year be aligned to the fiscal year and provide sufficient time to complete the Station retrofit and obtain operating data for the retrofitted equipment before issuing an RFP in 2026 for the next SMaRT Station operating agreement.

The terms of the new negotiated agreement include changes to how BCWS is compensated for union labor and the depreciation of new equipment. The recommended terms also allow BCWS to continue utilizing existing equipment (trucks, loaders, forklifts, etc.) that still has useful life. The recommended terms shift the cost of the recycling and composting of negative value recyclables and of SMaRT Station electricity from the Contractor to the City, require BCWS (instead of third-party contractors) to haul organics to compost facilities, create a “floor” and a “ceiling” for the recyclables revenues shared with BCWS, reduce compensation to reflect reduced inbound tonnage (loss of Palo Alto), and increase BCWS waste studies and reporting to meet SB 1383 requirements.

During negotiations, BCWS agreed to reduce their annual compensation by 3% at the beginning of the new agreement, to forgo reimbursement of approximately \$350,000 of increased transportation cost owed to them for 2021, and to provide \$538,640 worth of undepreciated equipment to the City for no additional compensation.

Due to the substantial increase in labor and organic processing costs, the overall SMaRT Station operational costs will increase by 6% in the first year and then by approximately 5% per year for the remainder of the 7.5-year term. The current financial plan in the adopted budget includes sufficient funding for this proposed contract, so there are no additional rate impacts than those already included in the financial plan

#### **BACKGROUND**

The SMaRT Station is a large volume materials recovery facility and transfer station serving the cities of Mountain View, Palo Alto, and Sunnyvale. Starting January 1, 2022, the City of Palo Alto will no longer be a partner in the SMaRT Station. The SMaRT Station is owned by the City of Sunnyvale and operated by a private company, Bay Counties Waste Services (BCWS). The City's current operating agreement with BCWS will expire on December 31, 2021.

The current agreement provides for a three-year extension at current terms and compensation rates. BCWS is not required to accept the extension. BCWS notified the City that they could not accept a three-year extension at current compensation rates due to significant increases in union labor costs dictated by their Collective Bargaining Agreements (CBAs). In addition, the City wished to renegotiate the terms (and associated compensation rates) of the agreement due to: 1) A major planned retrofit of the SMaRT station during 2021-2025; 2) The loss of the Palo Alto material; 3) The City's desire to pay directly for the composting/recycling of organic materials and other negative value recyclable commodities, so that BCWS would have no financial disincentive to recover those materials; and 4) new State regulations (SB 1383). Because of these proposed changes, the Office of the City Attorney recommended the two parties negotiate a new agreement rather than an extension of the current one.

#### Procurement Options

Staff pursued single source negotiations with BCWS for a new agreement as opposed to a Request for Proposals (RFP) process because Staff determined that it would not be advantageous or availing to the City or practical to change vendors during the planned retrofit of the SMaRT Station (2021-2025). Staff determined that BCWS's operational experience would be immensely beneficial to the design and implementation of the retrofit. The planned retrofit of the SMaRT Station is expected to include major modifications to the waste processing lines and this directly impacts operations and associated costs. The retrofit is also expected to impact diversion rates that in turn has a material impact on recycling and recycling revenues. BCWS has extensive experience operating the SMaRT Station and Operator's input into the retrofit is integral to the success of the retrofit project. Due to these reasons, conducting an RFP process before the retrofit is finished would not provide complete information on the future operations of the SMaRT Station and would result in uncompetitive or incomplete proposals. Therefore, an open competitive bidding process for the SMaRT Station operation was not considered practical or availing. Sunnyvale Municipal Code Section 2.08.070 (b) (3) allows for an exemption to the formal competitive bidding requirements for "situations where solicitation of bids or proposals would for any reason be impractical or unavailing or impossible."

#### Term Options

Staff considered four options for the term of the new operating agreement:

1. Three years at current compensation. This is not a viable option due to BCWS' increased labor costs.
2. Three years with increased compensation for union labor. A three-year term would not be sufficient to complete the retrofit. The retrofit is planned to be completed by the end of 2025. Procurement for a new SMaRT Station operations agreement requires two-to-three years to complete. That would mean starting the RFP process in 2022 before the retrofit is complete.
3. Five years with negotiated compensation and terms. A five-year term may also not be sufficient to complete the retrofit and have useful operational data for proposers during the next RFP process. The retrofit is planned to be completed by the end of 2025. Procurement for a new SMaRT Station operations agreement requires two-to-three years to complete. That would mean starting the RFP process in 2024 or 2025 before the City would have sufficient operational data on the performance of the new equipment to provide to potential proposers. The type and performance of the equipment has a material impact on the staffing levels and

operational costs. At least six months of operating the new equipment is needed to obtain such data, and a five-year agreement would not provide sufficient time should the retrofit be delayed and not be completed by the end of 2025.

4. Seven and one-half years with negotiated compensation and terms. A seven and one-half year term would provide sufficient time to complete the planned SMaRT Station retrofit and obtain operational data with the new equipment before issuing an RFP for the next operating agreement. All of the past SMaRT Station operating agreements, including the current BCWS agreement have had seven-year terms. Staff is recommending that the new operating agreement with BCWS have a term of seven years and six months, ending June 30, 2029. The additional six months will align the agreement year with the fiscal year to facilitate SMaRT Station accounting.

### Major Cost Drivers

#### *Sorter Wages*

The first major cost driver in the proposed agreement is sorter wages. The majority of BCWS' union employees are sorters who manually separate materials on the tipping floor and off of conveyor belts. BCWS currently employs 62 sorters, 14 equipment operators, 6 drivers, and 12 mechanics.

BCWS and Local Union Number 350, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Union) executed a new Collective Bargaining Agreement (CBA) effective October 7, 2020 to December 31, 2026.

The Union and BCWS negotiated in good faith to bring members to comparable wages for similar positions in the region. A wage and benefits comparison was made with similar CBAs from San Jose and South San Francisco operations. Based on the CBA, BCWS's combined sorter wages and benefits are estimated to increase 7% each year over the next five years (2022 to 2026). The reason for the 7% per year increases is that BCWS's sorter wages are currently less than the median sorter wages in the region.

BCSW has a good relationship with the Union, and they match sensible wage adjustments to show the cities of Sunnyvale and Mountain View and any other future partners that they negotiate for favorable wages, and they plan to do this in 2026 when these contracts expire. The proposed agreement contains language which states that the City is not required to compensate BCWS for union labor in excess of the average comparable wages for the region. This will provide BCWS additional incentive to negotiate favorable union wages for the sixth and seventh years of the proposed agreement. Other potential operators of the SMaRT Station would be subject to equivalent labor rates.

#### *Organics Processing Costs*

A second major cost driver affecting the proposed agreement is the cost of sending organic materials, yard trimmings and Materials Recovery Facility (MRF) organic Fines, to composting facilities. BCWS and the City share this cost in the current agreement, with BCWS paying approximately \$1 million per year and the City paying approximately \$1.7 million per year. In the proposed agreement, the City will pay for all of this cost directly to the composters. BCWS' cost for composting is being removed from their compensation under the proposed agreement. On May 25, 2021, the City Council approved agreements with Zanker Road Resource Management, Ltd. and

Sustainable Organic Solutions, LLC to process organics (RTC No. 21-0208). Starting in 2022, the City's cost to compost MRF Fines and Yard Trimmings is an estimated \$3.4 million per year. The increase in composting cost is a result of supply and demand, with SB 1383 increasing the demand for composting rapidly while the number of compost facilities is increasing more slowly.

#### Proposed Changes in the New Agreement

The proposed operating agreement (Attachment 1) contains the following notable changes from the current agreement. The changes primarily address reducing the financial impact of BCWS's new labor agreements, maximizing the life of BCWS's existing equipment, equitably sharing the risk and reward from fluctuating recyclables markets, incentivizing recycling, and complying with SB 1383 regulations.

##### 1. Compensation Adjustment for Union Labor

BCWS currently receives a lump sum annual compensation rate, the Basic Annual Payment (BAP), which is paid in twelve monthly installments. The BAP is adjusted for changes in the Consumer Price Index (CPI) each July 1. In the proposed new agreement, the union labor component of the BAP would be adjusted annually to reflect actual union labor rates (as negotiated in their existing collective bargaining agreements) and the number of employees in each classification. In BCWS's original proposal, they conservatively estimated total union labor cost over the term of the agreement and annualized it. That approach put the City at risk for compensating BCWS for more than their actual union labor cost, and "front-loaded" the cost which would have led to a large compensation increase in year one of the agreement. The recommended "pass through" approach ensures that BCWS is not over-compensated for union labor and spreads the cost impact to the City out gradually over the term of the agreement. BCWS would have to obtain prior City permission to increase or decrease the number of union employees. This labor component adjustment would occur each January 1 to align with the CBA's. The union labor rates for calendar years 2027, 2028, and 2029 (six months) are not known as BCWS' CBAs expire after 2026. The proposed agreement contains language which states that the City is not required to compensate BCWS for union labor in excess of the average comparable wages for the region. This will provide BCWS additional incentive to negotiate favorable union wages for the period after their current CBAs expire.

##### 2. Use of Existing Equipment

BCWS is required to provide equipment (e.g., transfer trucks, loaders, forklifts, etc.) to operate the SMaRT Station. In past agreements, the operator was required to provide all new equipment at the beginning of the agreement. However, since the City would be continuing with the same contractor, both parties would benefit from BCWS being allowed to utilize existing equipment that still has useful life.

BCWS' has agreed not to carry over any equipment depreciation expense from the current agreement and to reduce their BAP for the new agreement accordingly. This helps to minimize cost increases for the City. BCWS owns some existing equipment that will not be fully depreciated at the end of the current agreement: The food scrap processing equipment with \$372,061 remaining to be depreciated, and trailers with a total of \$166,579 remaining. BCWS has agreed not to carry over this depreciation into the new agreement, and they will not be compensated for it through the BAP. BCWS has offered to allow the City to purchase the food scrap processing equipment at no cost, and it will become City property on January 1, 2022. BCWS will utilize the trailers during the term of the new agreement and replace them at the end of their useful life.

### 3. Depreciation of New Equipment

Under the proposed agreement, BCWS would need to obtain City permission to purchase any new equipment during the term of the new agreement, and the City could not require BCWS to keep any equipment that was older than ten years. The City (or the next operator) would be required to purchase any of BCWS's equipment that was not fully depreciated at the end of the new agreement. The purchase price would be the undepreciated amount. The City would have the option to purchase any fully depreciated equipment at no cost at the end of the new agreement. BCWS may surplus any old equipment that is replaced during the term of the new agreement. This "stranded assets" purchase requirement was modeled on similar language from the City's collection franchise agreement with Specialty Solid Waste and Recycling. Staff estimates that the cost for the City (or the next operator) to purchase BCWS' undepreciated equipment at the end of the agreement would be \$3.3 million.

The annual depreciation of BCWS's existing equipment was not included in the BAP for the new agreement since most of the existing equipment has already been fully depreciated. BCWS would be allowed to add to the BAP the annual depreciation cost of any new equipment that BCWS purchases (with prior City approval) during the term of the new agreement. This annual adjustment to the BAP for depreciation of new equipment would occur every July 1. The estimated BAP provided in the table in the Fiscal Impact section of this report includes estimated depreciation of new equipment expected to be purchased during the term of the new agreement. BCWS proposed an equipment replacement schedule which was used to make this estimate. BCWS would depreciate equipment purchased during the term of the new agreement over ten years, with the City (or the next operator) purchasing the "stranded assets" for the undepreciated amount at the end of the agreement.

### 4. City to Pay for Electricity to Facilitate Solar Power Conversion

Currently BCWS pays for electricity utilized by the SMaRT Station. The City is planning to install solar panels on the SMaRT Station through a separate power purchase agreement, which will provide a renewable energy source at a lower cost. To capture this savings, the City will assume direct payment for electricity. The annual cost of electricity is removed from the BAP in the proposed agreement.

### 5. City to Pay to Recycle Negative Value Commodities

BCWS shares the revenue from the sale of recyclables with Sunnyvale and Mountain View. However, many of the materials currently being recycled at the SMaRT Station (e.g., organic materials such as yard trimmings) have a negative value (i.e., there is cost to recycle these materials). This creates a financial disincentive for BCWS to recycle these materials. In order to encourage more recycling, the City (instead of BCWS) will directly pay composters/recyclers to accept negative value commodities. The BAP is reduced to reflect that they no longer have to pay to recycle negative value commodities. On May 25, 2021, the City Council took the first step to facilitate this change by approving organics processing agreements with Zanker Road Resource Management, Ltd. and Sustainable Organic Solutions, LLC. The proposed agreement also commits the City to pay for other negative value recyclables such as soil and concrete.

### 6. BCWS Drivers to Transport Organic Materials

Currently BCWS hires third party trucking firms to deliver organics to compost facilities. The proposed agreement requires BCWS to transport these materials using their own union drivers in order to ensure reliable, timely delivery of the materials and avoid excess accumulation of organics at the SMaRT Station. Currently the City and BCWS share the cost of the third-party trucking. BCWS

is compensated for their portion of the third-party trucking cost through the BAP, and then reimbursed separately each month by the City for the remainder of the third-party trucking cost. In the future all of the organic materials transportation cost will be covered by the BAP, and the work will be performed by BCWS drivers as opposed to third-party trucking firms.

#### 7. Sharing Recyclables Market Risk

BCWS currently receives a share of the revenue from the sale of recyclable materials recovered at the SMaRT Station. Their share is determined on a sliding scale based upon how much material they recover from solid waste. For more than a year BCWS has received their maximum share, 75%, with the remaining 25% of the recyclables revenue being split between the cities of Sunnyvale and Mountain View. The BAP does not cover all of their costs, so they depend upon their recyclables revenue share to break even or make a profit. In recent years, due in large part to Chinese import restrictions (“National Sword”), recyclables markets have been volatile and recyclables revenues have been greatly reduced. However, commodity prices are starting to increase with demand as the world economy recovers from COVID. In order to ensure that recyclables market fluctuations don’t cause BCWS to become unprofitable (or to reap a windfall) the proposed agreement establishes a recyclables revenue “floor” of \$480,000 per month and a “ceiling” of \$530,000 per month. If actual monthly recycling revenue is less than \$480,000, BCWS’ share will be calculated as a percentage of \$480,000 (e.g., 75% of \$480,000). If actual monthly recycling revenue is greater than \$530,000, then BCWS’ share will be calculated as a percentage of \$530,000, with the partner cities receiving 100% of the amount in excess of \$530,000 in addition to our regular share (e.g., 25%) of the revenue up to \$530,000. The “floor” and “ceiling” levels would be increased by CPI every July 1.

The \$480,000 “floor” was calculated by taking the average recyclables revenue for the past fiscal year and decreasing it for estimated reduced tons (Due to Palo Alto no longer being a SMaRT Station Partner) in the coming year. The \$530,000 “ceiling” is the amount that the City negotiated above which the cities get all the recyclable revenues. From July thru September 2021, the average recyclables revenue per month was \$631,603. With the current agreement BCWS receives 75% of this and Sunnyvale and Mountain View share the other 25%. This means that Sunnyvale and Mountain View have been sharing \$157,901 each month on average, but assuming the current prices stay constant, under the proposed agreement we would share \$234,103 per month on average. Under a worst-case scenario in which recyclables revenues were zero and BCWS still met their maximum diversion numbers to obtain 75% of the revenue, the City would owe BCWS \$360,000 per month (75% of the \$480,000 “floor”) in addition to the BAP. For the estimated costs in the table in the Fiscal Impact section of this report, staff assumed that recyclables revenues would remain between the floor and the ceiling and therefore there would be no impact, positive or negative.

#### 8. Reduced Tonnage

Since Palo Alto will no longer be bringing any material to the SMaRT Station, and Mountain View will no longer bring mixed organics or construction debris, the tons to be processed and transferred will be reduced, which will decrease some variable costs for the Operator. These reductions are reflected in the new BAP.

#### 9. SB 1383 Requirements

A comprehensive new State law intended to decrease the amount of organic waste that is landfilled will require BCWS to perform periodic audits of materials and report the results, slightly increasing their costs.

Staff negotiated these changes with BCWS. The overall result is that the BAP will decrease by 3% from 2021 to 2022. However, including the impact of removing negative value commodities, and electricity costs (which will now be paid by the City directly), the total cost increase will be around 6%. Future year increases will be between 4%-5% annually during the term of the agreement to reflect union wages, equipment depreciation, and inflation.

### **EXISTING POLICY**

General Plan Policy EM-14.2: Maximize diversion of solid waste from disposal by use of demand management techniques, providing and promoting recycling programs and encouraging private sector recycling.

General Plan Policy EM-14.3: Meet or exceed all federal, state and local laws and regulations concerning solid waste diversion and implementation of recycling and source reduction programs.

Sunnyvale Municipal Code Section 2.08.070 allows for an exemption to the competitive bidding requirements for situations where solicitation of bids or proposals would for any reason be impractical or unavailing. Additionally, City Council approval is required for the procurement of goods and/or services exceeding \$250,000 in any one transaction.

### **ENVIRONMENTAL REVIEW**

Operation of the SMaRT Station would be performed consistent with the Final Environmental Impact Report "Sunnyvale Material Recovery and Transportation Station (SMART®)" dated September 14, 1990 and a subsequent addendum dated July 21, 1992 (SCH #89022812).

### **FISCAL IMPACT**

The table below estimates the increase in SMaRT Station operation expenses, in millions of dollars, affected by the proposed agreement with BCWS, over the recommended term.

#### **SMaRT Station Expenses Affected by the Recommendation**

Year	BCWS Payment (BAP)	Negative Value Commodities + Electricity	Total Cost	Increase
2021 (Current)	\$14.9 M	\$2.9 M	\$17.8 M	N/A
2022	\$14.4 M	\$4.5 M	\$18.9 M	6.1%
2023	\$15.3 M	\$4.6 M	\$19.9 M	5.3%
2024	\$16.0 M	\$4.8 M	\$20.8 M	4.5%
2025	\$17.0 M	\$4.9 M	\$21.9 M	5.5%
2026	\$18.1 M	\$5.1 M	\$23.2 M	5.4%
2027	\$18.8 M	\$5.2 M	\$24.0 M	3.8%
2028	\$19.6 M	\$5.4 M	\$25.0 M	4.0%

In the estimate above, all costs were assumed to increase 3% for inflation by year, except for the union labor and new equipment depreciation components of the BAP. The City will begin paying directly for electricity utilized by the SMaRT Station starting in 2022. The SMaRT Station solar project is scheduled to be completed in 2022, which will significantly decrease this expense. The potential cost reduction from the solar project is not included in the estimates above. In addition, the planned retrofit of the SMaRT Station may decrease some labor costs through automation and any potential labor savings has not been included in the estimates above.

The adopted FY 2021/22 budget and the 20-year financial plan anticipated the cost increases in the table above and the rate increases included in the financial plan already account for these cost increases.

The affected expenses are shared between the cities of Sunnyvale and Mountain View based upon the tons of each type of material that each city delivers to the SMaRT Station. For the \$18.9 M in 2022 affected expenses estimated above, Sunnyvale's share would be 62% (\$11.7 M) and Mountain View's share would be 38% (\$7.2 M).

### **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. Award a seven and one-half (7.5) year agreement for operation of the SMaRT Station, in substantially the same form as Attachment 1 to the report, to Bay Counties Waste Services, Inc. and authorize the City Manager to execute the Agreement for the Operation of the Sunnyvale Materials Recovery and Transfer Station between the City of Sunnyvale and Bay Counties Waste Services, Inc. when all necessary conditions have been met.
2. Award a five-year agreement for operation of the SMaRT Station, in substantially the same form as Attachment 1 to the report, to Bay Counties Waste Services, Inc. and authorize the City Manager to execute the Agreement for the Operation of the Sunnyvale Materials Recovery and Transfer Station between the City of Sunnyvale and Bay Counties Waste Services, Inc. when all necessary conditions have been met.
3. Award an agreement for operation of the SMaRT Station to Bay Counties Waste Services, Inc. with modifications to the terms of the operations agreement and authorize the City Manager to execute the modified Agreement for the Operation of the Sunnyvale Materials Recovery and Transfer Station between the City of Sunnyvale and Bay Counties Waste Services, Inc. when all necessary conditions have been met.

### **STAFF RECOMMENDATION**

Alternative 1: Award a seven and one-half (7.5) year agreement for operation of the SMaRT Station, in substantially the same form as Attachment 1 to the report, to Bay Counties Waste Services, Inc. and authorize the City Manager to execute the Agreement for the Operation of the Sunnyvale Materials Recovery and Transfer Station between the City of Sunnyvale and Bay Counties Waste Services, Inc. when all necessary conditions have been met.

Alternative 1 (7.5 years) is recommended because it will provide the City with sufficient time to

complete the planned retrofit of the SMaRT Station and obtain adequate data regarding the operation of the new equipment before issuing and RFP for the next agreement. Alternative 2 (5 years) is not recommended because it may not provide sufficient time.

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Reviewed by: Tim Kirby, Finance Director  
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### **ATTACHMENTS**

1. Agreement for the Operation of the Sunnyvale Materials Recovery and Transfer Station between the City of Sunnyvale and Bay Counties Waste Services, Inc.