



PUBLIC WORKS DEPARTMENT

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CITY COUNCIL STAFF REPORT

Meeting: April 21, 2020

Subject

Authorization to execute a Fourth Amendment to Franchise Agreement including provisions to pursue sole source negotiations for a new Franchise Agreement for solid waste collection services with Recology Cupertino; and, if negotiations are unsuccessful, an 18-month extension with a 5% increase on all rates effective February 1, 2021 and a 5% increase on all rates effective February 1, 2022 in order to allow time to identify another solid waste collector.

Recommended Action

1. Authorization of the City Manager to execute a Fourth Amendment to Franchise Agreement with Recology Cupertino for solid waste collection services (Attachment A) with provisions including:
 - 1) Pursue negotiation of a new 10-year agreement with Recology Cupertino; and
 - 2) If negotiations are unsuccessful or are not completed by the end of the current Franchise Agreement term on January 31, 2021, an eighteen (18) month extension to the Franchise Agreement with no changes in service with a 5% special maximum rate adjustment effective February 1, 2021 followed by a second 5% special maximum rate adjustment effective February 1, 2022; and
2. Adopt Franchise Negotiations Communications Protocol (Attachment B); and
3. Adopt Resolution No. 20-____, a resolution to negotiate a new Franchise Agreement and define a bridge term that includes a special maximum rate adjustment (Attachment C).

Discussion

The Franchise Agreement (Agreement) with Recology Cupertino (Recology) for solid waste collection services was authorized by Council on May 18, 2010 for the period of November 1, 2010 through October 31, 2015. There have been three amendments to the Agreement (Attachment D includes the Agreement and amendments one through three).

- The First Amendment was authorized on September 2, 2014 and extended the term of the Agreement to January 31, 2019. This amendment significantly expanded organics collection service in accordance with Assembly Bill 1826,

which required all businesses to recycle organics at various levels depending on the total amount of waste generated over a progressive period of time. The amendment also directed provision of free backyard composters to residents who attended a back-yard composting workshop and increased the number of environmental recycling days from two to four every year.

- The Second Amendment was authorized on December 19, 2017 and extended the term of the Agreement through January 31, 2021. The extended time allowed for efforts to improve residential diversion of organics, observe the outcomes of organics diversion programs in neighboring cities, and conduct a suite of waste characterizations to inform the negotiation of a new franchise agreement.
- The Third Amendment was authorized on February 4, 2020 and addressed two unforeseen events – the cessation of the residential, on-call, curbside household hazardous waste collection program effective January 1, 2019 and a special maximum rate adjustment (increase) to address increased processing costs for recyclable materials as a result of the China National Sword policies.

As demonstrated by Cupertino community surveys, Recology has provided a high level of customer service during the ten-year term of the current Agreement. In both the 2012 and 2017 surveys, satisfaction with garbage collection service was second only to satisfaction with the Cupertino Library when compared with a variety of other services. Most recently during the ongoing COVID-19 pandemic, Recology has continued to cover routes, adjust service levels for struggling businesses, and accommodate extra materials generated by residents sheltering at home.

If the Fourth Amendment is authorized and sole source negotiations with Recology proceed, it is expected that the negotiation process will be completed prior to the expiration of the Agreement on January 31, 2021. If a request for qualifications/proposal process to solicit other interested solid waste collectors is desired, negotiations and implementation of an agreement with a different solid waste collector is expected to take a minimum of 18 months depending on a variety of factors. These include:

- How services will be solicited (issuance of a request for qualifications/proposals to all interested solid waste collection companies)
- Changes in services (new or changed programs will require change out in collection equipment, bins or containers)
- Agreement on other required provisions (acceptance of indemnity and insurance requirements)

The current Agreement includes provisions to allow Recology to request consideration of a new franchise agreement if certain conditions are met. The applicable provisions of the Agreement are outlined below.

Option to Negotiate

Section 2.2 gives the City the option to negotiate a new 10-year agreement with Recology if the following four conditions are met: 1) Diversion; 2) Program development; 3) Limited cost adjustments; and, 4) Intent to negotiate.

1. Diversion

The following criteria was defined:

- To the maximum extent possible, achieve a 50% commercial and multi-family diversion rate by January 1, 2020
 - Condition met: The rate as of 1/1/2020 was 53%
- To the maximum extent possible, achieve a minimum 75% diversion rate for calendar year 2018 based on CalRecycle's diversion rate equivalent (DRE) for:
 - Residential (per capita by population)
 - The rate for 2018 was 64%.
 - Commercial (per capita by employment) sectors
 - The rate for 2018 was 80%
 - Residential and commercial combined:
 - Condition met: The rate for 2018 was 72%. This is acceptable due to the issues created by China's National Sword policies and the resulting loss of recycling markets.

2. Program Development

There is a requirement that Recology cooperatively and proactively work with the City to develop programs, that include but are not limited to, increasing diversion and reducing contamination. Condition met: Recology has met this requirement by cooperating with the City requests to accommodate pilot projects, waste characterizations, route adjustments, and responses to new diversion requirements. A representative sample of program development cooperation includes:

- Early collection route for tri-school area bike traffic safety
- Early implementation of organics service to commercial customers (including multi-family customers)
- Multi-family and single-family organics diversion participation audit and outreach pilot
- Waste characterization studies of all sectors

3. Limited Cost Adjustments

There are requirements for Recology to cooperatively and proactively work with the City to limit cost adjustment requests so that the cost of organics processing incorporates efficiencies identified through audit. Condition met: Section 12.2 includes the provision of a consumer price adjustment (CPI). CPI adjustments

have been occurring in November of each year. In addition to CPI adjustments, and as authorized in Section 12.3, Recology has requested and Council has authorized two special maximum rate adjustments (increases):

- July 5, 2016 – a 5.28% increase for non-residential/multi-family and compactor garbage/compostable materials customers due to increased processing cost of organics; and
- February 4, 2020 – a \$2.24 increase per month per single-family residential customer and a 3.93% rate increase for all other categories of Service Recipients to address the increased cost of processing recyclables.

The current rates charged to customers continue to be among the lowest rates in the region. The table below shows a comparison of current Cupertino rates with five nearby agencies.

CITY	32-gal cart	65-gal cart	95-gal cart
Campbell (19/20)	\$28.77	\$57.54	\$86.31
Cupertino (2020)	\$29.60	\$56.97	\$84.34
Mountain View (19/20)	\$34.95	\$69.90	\$104.85
Santa Clara (19/20)	\$36.59	\$51.10	\$65.61
Sunnyvale (19/20)	\$37.36	\$41.47	\$46.67
Palo Alto (19/20)	\$50.07	\$100.15	\$150.22
AVERAGE (with Cupertino)	\$36.22	\$62.86	\$89.67
AVERAGE (without Cupertino)	\$37.55	\$64.03	\$90.73

Residential: Sorted by 32-gallon rate; Commercial rate comparison is similar.

4. Intent to Negotiate

There is a requirement that Recology timely notify the City of its intent to exercise an option to renegotiate the Agreement in writing. Condition met: Per section 2.2.4, Recology submitted on January 29, 2020 a request to negotiate a new agreement (Attachment E). As specified in section 2.3, staff affirmed the intention to negotiate pending Council authorization on March 25, 2020 (Attachment F).

With the four Agreement conditions met by Recology, sole source negotiations for a new franchise agreement can proceed. These negotiations could have the following outcomes:

- Negotiations are successfully completed and the Council approves a new franchise agreement within the term of the current Agreement, or by January 31, 2021; or
- Negotiations are not successfully completed by January 31, 2021; or

- The City decides to terminate negotiations on or before January 31, 2021 and issue a request for proposal to seek a new solid waste collector.

As the outcome of the negotiations are not known, the proposed Fourth Amendment establishes a bridge term of 18 months to ensure continuation of trash, recycling, and organic materials hauling service in the event negotiations are not successful and to bridge the period until a new agreement is negotiated.

Recology has agreed to provide service during such a bridge term, if needed, but in order to continue to provide the current level of services through this bridge term, Recology has requested a special maximum rate adjustment to increase rates for all service recipients by 5% in addition to the regular CPI adjustments. The proposed increase would be effective February 1, 2021 of a bridge term. Recology has requested a second special maximum rate adjustment to increase rates another 5% in addition to the regular CPI adjustment effective February 1, 2022 if the bridge term is still in effect. The City's solid waste consultant (HF&H Consultants, LLC) has audited the proposed special maximum rate adjustment request by reviewing revenue and expense documentation provided by Recology. The audit considered costs for fuel, labor, and overhead expenses. The audit concluded the request is reasonable for the services provided to cover real costs during a bridge term, if any (Attachment G). The proposed maximum rate increases are not intended to produce additional Recology profit.

Next Steps

In preparation for a new solid waste collector agreement, an agreement with HF&H Consultants was authorized by Council on October 15, 2019. To date, HF&H has assisted the Environmental Division staff with an analysis of potential services and contract terms that will be considered for the potential new agreement.

During the evaluation of a proposed agreement, an emphasis will be placed on maintaining services that are valuable to customers, remaining sensitive to additional services that would increase rates, and being proactive about meeting the reporting and enforcement provisions of SB1383 (Short-Lived Climate Pollutants (SLCP): Organic Waste Methane Emissions Reductions) that will require increased diversion of organic materials beginning January 1, 2022.

In order to ensure transparency and fairness in the process of awarding a new franchise and to create an impartial climate during the franchise negotiations, a Franchise Negotiations Communications Protocol was written and Recology has agreed to adhere to it.

Community outreach to confirm what services are most valuable and what additional services may be desired will occur in the following ways:

- Community survey

- Minimum of three community meetings at a variety of locations and times to encourage participation
- Recology bill insert with information and invitation to offer feedback
- Comment form on the City website

Initial outreach took place with the Cupertino Chamber of Commerce on February 25 and March 6, 2020. Additionally, the Sustainability Commission heard a presentation on this issue on February 20, 2020 and future meeting dates with both groups will occur prior to making a recommendation to Council for a new franchise agreement.

Council will be updated during the process of developing the new franchise agreement. At least one study session will be scheduled to discuss options and terms for the new agreement. Additionally, an item will be placed on the Council agenda for a public hearing prior to January 31, 2021 for either of the follow scenarios:

- If negotiations with Recology are successful, a recommendation will be made to enter into a new franchise agreement with new terms and rates; or
- If negotiations with Recology are not successful, a recommendation will be made to end negotiations with Recology and to approve authorization to proceed with a request for qualification/proposal process.

Sustainability Impact

Effective waste disposal programs that are convenient, well utilized and properly funded are essential to diverting recyclable and compostable materials from the landfill in accordance with AB939, the California Integrated Waste Management Act that requires at least 50% diversion from landfill after 1/1/2020 and the City of Cupertino's Zero Waste Policy adopted December 19, 2017. Diversion goals are also reflected in the community solid waste measures in Cupertino's Climate Action Plan.

CEQA Exemption

This action is exempt from the requirements of the CEQA since it is not a project with the potential to cause a significant effect on the environment. This determination is pursuant to the provisions and requirements of the CEQA of 1970, together with related State CEQA Guidelines and Title 14 of the California Code of Regulations, Sections 15061(b)(3).

Fiscal Impact

If negotiations of a new franchise agreement with Recology are unsuccessful or are not completed by the end of the current Agreement term, the bridge term will begin, which includes a 5% special maximum rate increase on February 1, 2021 followed by a second 5% rate special maximum rate increase on February 1, 2022 per the Fourth Amendment. Section 12.1 of the Agreement requires Recology to remit fees as a percentage of rates back to the City to cover the direct costs of landfill disposal costs and other solid waste disposal fees. When rates increase, revenues to the City increase to cover these costs.

Prepared by: Ursula Syrova, Environmental Programs Manager

Reviewed by: Roger Lee, Director of Public Works

Approved for Submission by: Dianne Thompson, Assistant City Manager

Attachments:

A - Fourth Amendment to Franchise Agreement between City of Cupertino and Recology Cupertino

B – Franchise Negotiations Communications Protocol

C - Draft Resolution No. 20-_____

D - Current Franchise Agreement with first three amendments

E - Recology letter regarding intention to negotiate dated January 29, 2020

F – City of Cupertino letter to Recology regarding intention to negotiate dated March 25, 2020.

G – HF&H Summary of Findings dated April 14, 2020