

COUNCIL AGENDA: 09-12-06

ITEM: 7.2

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Scott P. Johnson
John Stufflebean

SUBJECT: SEE BELOW

DATE: September 7, 2006

Approved

Date

9/7/06

COUNCIL DISTRICT: City-Wide

SUBJECT: APPROVAL OF MEMORANDA OF UNDERSTANDING WITH CALIFORNIA WASTE SOLUTIONS FOR RECYCLING SERVICES AND GARDEN CITY SANITATION FOR SOLID WASTE SERVICES

RECOMMENDATION

1. Approval of a Memorandum of Understanding with California Waste Solutions, Inc. outlining the terms of an agreement for Recycling Services in Districts A and C for a six-year term from July 1, 2007 through June 30, 2013.
2. Approval of a Memorandum of Understanding with Garden City Sanitation, Inc. outlining the terms of an agreement for Solid Waste Services in Districts A and C for a six-year term from July 1, 2007 through June 30, 2013.
3. Direct the Administration to return to Council within 45 days for approval of final agreements with California Waste Solutions, Inc. and Garden City Sanitation, Inc.
4. Direct the Administration to report on the Recycle Plus transition at the Making Government Work Better Committee on November 16, 2006.

OUTCOME

Approval of the above recommendations will lead to the following outcome:

- Approval of the Memoranda of Understanding (MOUs) will allow California Waste Solutions, Inc. (CWS) to secure financing for the procurement of vehicles and equipment prior to execution of the final agreements and will allow CWS and Garden City Sanitation, Inc. (Garden City) to mobilize for service delivery beginning July 1, 2007.

EXECUTIVE SUMMARY

The MOUs with CWS and Garden City set forth the parties' intent to enter into agreements for Recycle Plus services. Approval of the MOUs will allow CWS to secure financing for the procurement of vehicles and equipment prior to final execution of the agreements, and will allow both companies to begin the work for transition.

The agreements will be substantially the same as the sample agreements that were included in the Recycle Plus RFP, except for the additions and revisions in this report. The RFP also required proposers to submit work plans for the services to be provided which will be attached as exhibits to the agreements. The final agreements will include any additions and clarifications to the original work plans submitted by the proposers.

BACKGROUND

The existing agreements with Norcal Waste Systems for the collection of solid waste and collection and processing of recyclable materials in Districts A and C will expire on June 30, 2007. A Request for Proposal (RFP) for procurement of these services was released on February 15, 2006 with proposals received on April 24, 2006. On August 22, 2006, staff presented recommendations for the award of the 2007 Recycle Plus contracts.

At the August 22 meeting, Council adopted a resolution authorizing the City Manager to negotiate MOUs and agreements with CWS for the collection and processing of recyclables and with Garden City for the collection of solid waste. Council further directed the Administration to look at the possibility of an eight-year term for CWS and Garden City to provide better rates for customers; to include increased programs for the disposal of bulky goods and appliances; to include provisions to minimize transition risks and to ensure the new service providers are ready on July 1, 2007; and to provide additional oversight to CWS' recyclables processing operations. Following Council direction, staff immediately began negotiations with both companies. The results of these negotiations are included in the Analysis section below.

ANALYSIS

The MOUs with CWS and Garden City set forth the parties' intent to enter into agreements for Recycle Plus services. Garden City has placed orders for collection vehicles with the manufacturer. Approval of the MOUs will allow CWS to secure financing for the procurement of vehicles and equipment prior to final execution of the agreements, and will allow both companies to begin the work for transition. The effective date of the agreements with CWS and Garden City will be October 1, 2006, with collection services to begin July 1, 2007.

The agreements will be substantially the same as the sample agreements that were included in the Recycle Plus RFP, except for the additions and revisions noted below. As part of the Recycle Plus RFP process, proposers were required to specify in writing any exceptions to the RFP and/or agreement. Garden City reported no exceptions. CWS noted one exception, requesting that the City require all facilities that process San Jose recyclables have a Solid Waste Facility Permit.

In addition to the sample agreements included in the Recycle Plus RFP, the RFP required proposers to submit work plans for the services to be provided. These work plans will be attached as exhibits to the agreements. The contractors must adhere to the terms and requirements outlined in the work plans, including revisions made during the negotiations. The final agreements will include any additions and clarifications to the original work plans submitted by the proposers.

Additions and Revisions to CWS's and Garden City's Agreements

All terms of the sample agreements included in the Recycle Plus RFP will remain, with the following changes and additions detailed in the MOUs with CWS and Garden City:

- 1) A mutual aid agreement between Garden City and CWS will be included as an exhibit to the agreements with both companies. The mutual aid agreement will stipulate that Garden City and CWS will provide relief drivers and vehicles from their other operations, should CWS or Garden City fall behind in their San Jose collections during the stabilization period immediately following the July 1, 2007 service start. The stabilization period is defined as the time period from the service start date until all services to all residents are performed on a timely basis, per the agreements.
- 2) To address Council's request to better facilitate future transitions between haulers, a provision will be added to both agreements that the City, at its sole option, can rent all or part of the contractor's collection fleet for a three-month period beginning July 1, 2013. The City will notify the contractors of its intention to use this option by June 1, 2013. The rental price and terms will be included with both agreements.
- 3) To minimize service disruptions to residents in the upcoming 2007 contractor changeover, the Administration has secured the services of R3 Consulting to monitor contractor

operations during the transition from Norcal to the new service providers. R3 will verify the completion of critical milestones in the contractors' transition plans and prepare periodic reports for City staff and City Council on transition progress and issues. In order to accurately ascertain and report on transition status, the contractors will cooperate with R3 and ensure that they have access to their staff, subcontractors, and suppliers.

- 4) The contractors will submit periodic transition status reports to Environmental Services (ESD). ESD will provide these reports to the City Manager and Council to communicate the status of transition. The contractors will provide these reports monthly from October 2006 through February 2007; biweekly March 2007 and April 2007; and weekly May 2007 through October 2007. Periodic reporting will continue throughout the stabilization period.
- 5) The Administration has agreed to work with CWS and Garden City to develop minor modifications to the contract provisions for assessing administrative charges during the first week of service immediately following the July 2, 2007 commencement of services. These contract modifications will include allowing an additional day for contractors to correct missed collections.

As mentioned above, work plans submitted by the proposers will be attached as exhibits to the agreements. The contractors will adhere to the terms and requirements outlined in the work plans, including revisions made during negotiations. In response to concerns raised by Council, final transition plans will include more detailed timelines and safeguards to ensure a smooth transition. The MOUs with CWS and Garden City include the following additions and revisions to the original transition work plans:

- 1) CWS and Garden City will provide an extensive transition timeline that identifies specific dates for receiving critical equipment and facility permits. The City must approve the proposed timeline. The contractors may request approval from the City to make changes to the timeline, provided that the request for changes is made at least 48 hours before the listed due date, the contractor submits a plan to mitigate the delays, and none of the changes extends the start-up date beyond July 1, 2007. Administrative charges may be assessed at the rate of \$5,000 per day for failure to meet the following critical milestones:
 - Written confirmation of vehicle order (body and chassis) from vehicle manufacturer/supplier
 - Written confirmation of processing equipment order from manufacturer/supplier
 - Written confirmation of cart order from manufacturer/supplier
 - Written confirmation of close of escrow or execution of facility lease for each site
 - Submission of land use permit applications which are deemed complete by the City's Department of Planning, Building and Code Enforcement
 - Submission of applications for building permits for facility improvements
 - Submission of permit applications to any regulatory agencies outside the City of San Jose, e.g. County of Santa Clara, Santa Clara Water District, RWQCB, etc.
 - Written confirmation of occupancy permit sign-off

- Written confirmation of start-date of developer/support resource for C-UBS application
- Written confirmation of installation date of all applicable hardware/software for C-UBS application
- Written confirmation of hire-date for displaced workers
- Submission of transition Public Education and Outreach Plan
- Submission of initial route plan
- Submission of contingency plan to remedy any delays in equipment delivery and/or facility readiness

The timeline shall also include, at a minimum, the following:

- *Equipment Acquisition and Readiness:* Critical equipment includes, but is not limited to: collection vehicles, roll-off containers, carts, data and phone systems, computer systems, storage tanks, processing equipment, and office furnishings. Vehicles and equipment have to be located at a City approved site and available for City inspection.
 - Dates indicating when all equipment and facilities will be ready for service. Contractors must specify how they plan to ensure equipment is ready by the specified date. Time needed to implement contingency plans should be included in the timeline.
 - Dates indicating when equipment will be received, including the type and quantity of equipment to be received.
 - Dates indicating when equipment will be ready to perform intended service, including the type and quantity.
 - *Facility Acquisition and Readiness:* Contractor must submit a preliminary list of all required permits necessary for bringing facility on-line with timeline. Contractor is responsible for updating its permit list with the City as facility development progresses. Contractor is responsible for notifying the City of any changes to the permit dates. Failure to notify the City within 48 hours of change may result in administrative charges.
 - Close of escrow dates of proposed facilities and when contractor will take possession.
 - Preliminary dates when required permits will be obtained and signed off.
- 2) The final agreements will include a provision allowing the City to, at its sole option and if there are delays in the transition timeline, contract with other service providers for all or part of the required services as outlined in the agreements with CWS and Garden City, until CWS or Garden City is able to perform. The City will make its decision to arrange emergency contracting services based on a predetermined set of criteria established by the City. The difference in costs for these emergency contracting services will be at the contractor's sole expense and will be deducted from the contractor's monthly invoice until full payment is achieved. In the event emergency contracting services are required, the contractor forfeits all claims to materials collected and any associated revenues. The provision for emergency contracting services is distinct from any other cure provisions in the agreements.
- 3) The final agreements will include a provision allowing the City to, at its sole option, take over operation of CWS' or Garden City's collection trucks in case of early termination or

contractor default. The City will be required to make the payments on this equipment during the time the City has possession of the equipment.

- 4) In accordance with the agreements, the Director of Environmental Services must approve all subcontractors. CWS and Garden City must provide a list of all subcontractors, consultants, and vendors involved in transition activities. The contractors are also required to submit corresponding executed agreements with each subcontractor, consultant or vendor. Garden City has not identified any subcontractors at this time. Pending final City approval, CWS will include the following subcontractors in its final agreement, subject to modification:
 - *Gershman, Brickner & Bratton, Inc. (GBB)* - Will assist CWS during the transition period as well as research alternative recycling and disposal activities.
 - *Kneal Resources System, Inc.* - Will partner with CWS to develop and direct implementation of the public education program, including the Public Education and Outreach Plan; provide additional related community outreach, as appropriate; and assist in activities related to the Reusable Advisory Group.
 - *Equipment Partners of Coast Counties Peterbilt, McNeilus, and OTTO Environmental Systems* - Will lend their expertise to provide new trucks, carts, and to provide training to mechanics, drivers and cart repair workers.
 - *Industrial Wiper* - Will team with CWS to enhance the San Jose textile collection program. This should be considered as a possible pilot, with details to be approved by City staff before implementation.
 - *WasteBid.com, Inc.* - The supplier and service provider for the FleetRoute™ Route Optimization Software. Residents' collection days will not change, but CWS will analyze the routing structure using WasteBid.com's FleetRoute™ route optimization software during the transition period in order to improve routing efficiency.
 - *PRx Communications Strategists* - Will provide strategic and logistical support to CWS for developing and implementing the Public Education and Outreach Plan and related collateral.
 - *Sweetser & Associates* – Will provide assistance with permitting and regulatory compliance issues related to development of the new facilities and modifications to the MRF.
 - *Paul Rottenberg Consultant* – Will provide support related to contract compliance, materials processing and marketing, equipment specifications, facility development and government relations.
- 5) The contractors' customer service/work order software must fully integrate with the City's Consolidated Utility Billing System (C-UBS). By December 1, 2006, the contractors must make available an application developer/supporter resource to the City to develop the C-UBS interface.

Additions and Revisions to CWS's Agreement

In addition to the revisions common to CWS's and Garden City's agreements noted above, the MOU details the following revisions to CWS's agreement:

- 1) City staff will assist CWS in getting its facilities permitted and operational by July 1, 2007. To this end, the City will procure a consultant to work with CWS to resolve and facilitate any permitting and siting issues related to establishing its new corporation yard.
- 2) The City will secure the professional services of a quality assurance and contract compliance third-party consultant to monitor CWS' recyclables processing operations. This consultant will have access to CWS' MRF and large item processing sites at any time that these facilities are operating. This consultant may inspect the operations without prior notice to CWS, and without limitation to the duration of the inspection. The consultant will also have the same access to the City-approved alternate processing facility. CWS will compensate the City for its share of the on-going monitoring costs, through a deduction of \$5,000 from CWS' monthly invoice, beginning July 1, 2007. This expense will be deducted throughout the term of the agreement. If the Director of ESD determines that this oversight is no longer needed, the Director will notify CWS in writing that its monthly deductions for this service will terminate.
- 3) In response to Council concerns regarding the occasional contamination of recyclables, CWS will work with City staff and Garden City to develop a procedure for responding when non-recyclable material is found in recycling carts. This procedure will include notifying and educating the resident at least twice before a non-collection notice is issued, unless otherwise specified in the procedure. The City will have final approval of the contamination procedure.

The MOU also details the following additions and clarifications to the CWS work plans:

1) Transition Plan

- a) CWS' "Transition Plan for Refuse and Recyclables Collection," and "Transition Plan for Recycling Processing" will be updated and approved by the City, and will be included in the Transition Plan. These required milestone dates must be adhered to, and the contractor may be subject to administrative charges if milestones are not met.
- b) In addition to the transition timeline requirements for both contractors detailed above, the CWS transition timeline will also include the following:
 - Facility Acquisition and Readiness: Contractor shall have the proposed MRF modifications as listed in the Processing Operations Plan completed and tested for operation no later than June 1, 2007. These modifications include:
 - Infeed conveyer system
 - Glass clean-up system
 - Optical sorting system for plastics

- Evaluate possibility of increased finishing capability (including parallel finishing lines and eddy current separator)
- Plastic bag recycling

2) *Diversion Plan*

- a) CWS must meet all requirements in the agreement for the processing and sale of recyclables in order to receive diversion credit for the material. In accordance with City policy to maximize the highest and best use of the recyclable materials, only those recyclable items approved by the City will receive diversion credit. Materials not approved in advance by the City Representative will be considered residue when calculating CWS' annual diversion rate. In an effort to increase diversion and encourage recycling, the City will work with CWS to approve additional recyclables, as appropriate.
- b) CWS must request approval from the City Representative for any changes to the format, sections, or categories of the monthly processing report.
- c) CWS shall not load materials from the tip floor into transport or storage containers without prior written authorization from the City Representative. Shipment of unauthorized unprocessed materials will result in the assessment of administrative charges as described in sections 17.04.q and 17.04.y of the agreement.
- d) CWS will use route auditors to train and assist drivers to provide notice to, and work with, residents who happen to place prohibited material in the waste streams. CWS' route auditors will assist with verification of acceptable materials and educating customers of hazardous and other prohibited wastes in the set-outs. CWS will amend their diversion plan to include the number of auditors to work per week or per route, the duration of employment, and a list of duties on the route.

3) *Public Education and Outreach Plan*

- a) Per Article 13 of the agreement, a Public Education and Outreach Plan (PEOP) is due annually on September 30th. CWS must include a budget for each component of the annual PEOP. All public education and outreach materials must be approved by the City Representative prior to distribution.
- b) The City will reserve the option to have CWS compensate the City for the design of the annual collection notice and magnet in lieu of CWS submitting a design for the notice and magnet. Additionally, the City may consider proposals for alternative outreach to the magnet and annual collection notice.
- c) As submitted in the CWS proposal, the annual outreach budget (not including transition outreach costs) will not be less than:

| | |
|------------------|-------------------------------|
| \$468,000 | FY 2007-08 |
| \$312,000 | FY 2008-09 |
| \$156,000 | FY 2009-10 |
| \$156,000 | FY 2010-11 |
| \$156,000 | FY 2011-12 |
| <u>\$156,000</u> | <u>FY 2012-13</u> |
| \$1,404,000 | Total during life of contract |

- d) CWS will submit documentation substantiating outreach expenses incurred with each monthly invoice so that the City can effectively monitor CWS' performance on the PEOP. This documentation is for reporting purposes only. CWS will not be compensated for outreach activities.
- e) An administrative charge may be assessed of \$500 per incident per work day for late submission of the annual outreach plan.
- f) All items included in the annual outreach plan will be completed by the due date in the plan. An administrative charge may be assessed of \$500 per item per month overdue.
- g) CWS will submit a Transition Outreach Plan by December 1, 2006, for approval by the City Representative. This plan will detail all public education and outreach activities to be implemented through December 31, 2007.

4) *Processing Operations Plan*

- a) Alternate Processing and/or Storage Facility – Any alternate processing and/or storage facility must be approved in advance by the City Representative. CWS may request approval of the alternate facility for a maximum of 30 calendar days. The City Representative has the authority to extend the duration of the use of the alternate facility at the City's sole discretion. The City Representative may also rescind the approval of the alternate facility if it is determined that CWS has failed to comply with either the terms of the agreement or the approved alternate facility plan, or if the alternate facility is not able to receive or process the materials.
- b) The City reserves the right to require the delivery of materials to an alternate processing facility in the event that CWS is unable to perform processing. Costs for these services will be at CWS' sole expense and will be deducted from its monthly invoice until payment in full is achieved. In this event, all revenues from the sale of the materials will belong to the alternate facility.
- c) CWS shall ensure that representatives of the City have complete access to the alternate MRF and its records of inbound and outbound materials during hours of operations.
- d) CWS agrees to process all incoming materials in a manner that meets the terms and intent of the agreement. CWS must notify the City Representative within two hours of any event that negatively impacts its ability to process materials and may cause an overflow of materials beyond the canopy line of the tip floor. CWS will submit, as part of its monthly report to the City, a log detailing processing and collection equipment maintenance records. CWS will provide, as part of its monthly report to the City, a log detailing equipment breakdown or failures and include at a minimum: date of breakdown, type of equipment, duration of breakdown, reason for breakdown, impacts, if any, to collection and/or processing operations, and mitigation measures taken.
- e) CWS is responsible for the disposal costs of all residue and rejected materials from its MRF. The City will allow CWS to dispose of this garbage under the terms of the City's contract with International Disposal Corporation (Newby Island Landfill). CWS would then pay for the disposal costs at the City's disposal rate for residential garbage.
- f) CWS must immediately notify the City Representative of any load or partial load rejected by CWS. CWS will include in its monthly report at a minimum the following

information on rejected loads: date, time, route number, estimated percent of load rejected, tons rejected, and final disposition.

Additions and Revisions to the Garden City Agreement

In addition to the revisions common to CWS's and Garden City's agreements noted above, the MOU details the following revisions to Garden City's agreement:

- 1) *Neighborhood Clean-Up Services* – Staff is exploring the option of Garden City providing neighborhood clean-up services. So far, there has been no agreement on this issue. Staff and Garden City will continue discussions.
- 2) *Waste Characterizations* – At no additional cost to the City, Garden City will perform a minimum of two (2) informal waste characterizations per agreement year. The waste assessments must be pre-approved by the City Representative and each assessment will cover approximately two routes (1,500 homes).
- 3) *Customer Service Office* – In response to Garden City's request to change the requirement that its Customer Service Center must be located within the City of San Jose, the agreement will be changed to only require the office to be located within the limits of the County of Santa Clara. Garden City must ensure that calls made to its facility from City residents, and calls transferred from the City Call Center, will not be toll-calls. Garden City proposes an annual savings, to be passed onto the rate payers, of \$36,000 per year.
- 4) *Contaminated Recyclables Procedure* - Garden City will work with City staff and CWS to develop a procedure for responding when non-recyclable material is found in recycling carts. Per the agreement, Garden City may be directed by the City Representative to collect contaminated recyclables as garbage for an additional fee.

The MOU also details the following additions and clarifications to the Garden City work plans:

- 1) *Transition Plan*
 - a) An updated "Master Implementation Schedule – Key Operations Tasks," approved by the City, will be included in the Transition Plan. These required milestone dates must be adhered to, and the contractor may be subject to administrative charges if milestones are not met.
- 2) *Public Education and Outreach Plan*
 - a) The City will reserve the option to have Garden City compensate the City for the design of the annual collection notice and magnet in lieu of Garden City submitting a design for the notice and magnet.

3) *Collection Operations Plan*

- a) To correct a mistake in the proposed plan, Staffing Requirements section will be revised to show that 6 Customer Service Representatives will be assigned for work on Districts A and C, combined.

4) *Collection Equipment Plan*

- a) To correct a mistake in the proposed plan, the guaranteed total maximum capacity of the truck bodies will be changed to 31 cubic yards.

Eight-Year Term

Staff will continue to negotiate with Garden City and CWS to include a provision in the final agreements that at any time prior to June 30, 2010, the parties may agree on mutually acceptable provisions for extending the term of the agreements for a period up to two years.

Transition Status Reports to Council

Staff will provide finalized transition plans for Garden City and CWS in an Informational Memorandum to Council by the end of September.

In addition, staff will report on the Recycle Plus transition to the Making Government Work Better Committee on November 16, 2006. Because of potential changes to Council committees beginning January 2007, the City Manager will recommend a method for informing Council on the status of the Recycled Plus transition after the November 16 Committee meeting.

PUBLIC OUTREACH

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This item meets criterion #1: Requires Council action on the use of public funds equal to \$1 million or greater. Solicitation for proposals was posted on Demand Star Procurement System, a free web based service that allows potential proposers to register and receive timely updates

regarding an RFP. Registered users were notified by email of the RFP's release any addenda available for download.

In addition, on January 3, 2006, the City directly notified the top 20 national solid waste firms and the top 10 California-based firms (as identified by Waste Age magazine in 2004) of the Recycle Plus RFP. Direct notifications were also mailed to all commercial haulers franchised in San José and all 134 firms and individuals who had expressed interest in the 2002 Recycle Plus RFP after nationwide advertising.

To address new direction provided by the City Council in January 2006, staff implemented a revised outreach strategy to make sure qualified proposers were aware that they could propose on separate smaller service categories. This new information was posted on the Demand Star website, and new ads were placed in the Mercury News, the San José Post Record, and the San José Business Journal. In addition, new direct mailings and emails were sent to the following audiences: top 100 solid waste companies identified by Waste Age magazine; all franchised haulers in San José; and all parties who had expressed interest in the 2002 RFP.

COORDINATION

This memorandum was coordinated with the City Attorney's Office and the City Auditor's Office.

FISCAL/POLICY ALIGNMENT

The recommendations contained in this memorandum are consistent with the General Budget Principals of the Mayor's 2006-2007 Revised Budget message, and the 2006-2007 Budget Balancing Strategy Principles of the City Manager's Budget Request and 2007-2011 Five Year Forecast and Revenue Projections, to focus on protecting our vital core city services for both the short- and long-term.

COST SUMMARY/IMPLICATIONS

There are no costs associated with these agreements in Fiscal Year 2006-07. Additional cost analysis related to the new agreements, including potential impact to Recycle Plus rates, will be presented as part of the FY 2007-08 budget process.

HONORABLE MAYOR AND CITY COUNCIL

09-07-06

Subject: MOUs for Solid Waste and Recycling Services

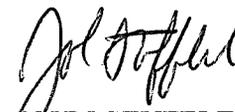
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CEQA

CEQA: ND (Negative Declaration), File No. PP06-119



SCOTT P. JOHNSON
Director, Finance



JOHN STUFFLEBEAN
Director, Environmental Services

For questions regarding the procurement process please contact Walter C. Rossmann, Chief Purchasing Officer, at 408/535-7051 and for questions regarding the Recycle Plus Program, please contact Jo Zientek, Acting Deputy Director, Integrated Waste Management Division, at 408/535-8557.