



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Scott P. Johnson  
John Stufflebean

**SUBJECT:** SEE BELOW

**DATE:** November 1, 2006

Approved

Date

11/07/06

**COUNCIL DISTRICT:** City-Wide

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

## RECOMMENDATION

1. Adopt a resolution authorizing the City Manager to execute an agreement with California Waste Solutions, Inc. for Single-Family Recycling Collection and Processing services in Service Districts A and C for a six-year term from July 1, 2007, through June 30, 2013.
2. Adopt a resolution authorizing the City Manager to execute an agreement with Garden City Sanitation, Inc. for Single-Family Garbage Collection services in Service Districts A and C for a six-year term from July 1, 2007, through June 30, 2013.
3. Adopt a resolution authorizing the City Manager to negotiate and execute a Letter of Understanding with Norcal Waste Systems of San Jose for the temporary provision of solid waste services for up to three months in the event Garden City Sanitation and/or California Waste Solutions are not ready to start service on July 1, 2007.

## OUTCOME

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

- Solid waste and recycling services to single-family dwellings (SFDs) in Service Districts A and C beginning July 1, 2007, through June 30, 2013.

## **BACKGROUND**

The existing agreement 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 Proposals (RFP) for procurement of these services was released on February 15, 2006, with five proposals received on April 24, 2006.

On August 22, 2006, staff presented recommendations for the award of the 2007 Recycle Plus contracts. At that meeting, Council adopted a resolution authorizing the City Manager to negotiate Memoranda of Understanding (MOUs) and agreements with California Waste Solutions (CWS) for the collection and processing of recyclables and with Garden City Sanitation (GCS) 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 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 MOUs with CWS and Garden City, approved by Council on September 12, 2006, set forth the parties' intent to enter into agreements for Recycle Plus services, and allowed the companies to secure financing for the procurement of vehicles and equipment prior to final execution of the agreements, so that both companies could begin the work for transition.

## **ANALYSIS**

The agreements are substantially the same as the sample agreements that were included in the Recycle Plus RFP, except for the additions and revisions included in the MOUs, as approved by Council on September 12, 2006. Transition plans and other work plans for the services to be provided are attached as exhibits to the agreements. The contractors must adhere to the terms and requirements outlined in the work plans.

Key provisions of the contracts include:

### **Relief from Administrative Charges During Transition**

The Administration has agreed to work with CWS and Garden City to develop minor modifications to the contract provisions for assessing administrative charges for a short timeframe immediately following the July 1, 2007 commencement of services. These contract modifications will include allowing an additional day for contractors to correct missed collections. This extra day will allow the contractors time to catch up on collections over the weekend, if needed, without incurring charges.

### Transition Timelines

CWS and Garden City have provided extensive transition timelines that identify specific dates for receiving critical equipment and facility permits. Both companies are currently on track in their efforts to meet critical milestones. Administrative charges may be assessed at the rate of \$5,000 per day for failure to meet these facility and equipment acquisition and readiness milestones.

### Contingency Plans

In the event that one or both of the new contractors are not ready to take over services on July 1, 2007, the following contingency plans have been put into place:

- 1) *Mutual Aid Agreement* - A mutual aid agreement between Garden City and CWS has been included as an exhibit to the agreements with each company. The mutual aid agreement stipulates that Garden City and CWS will provide relief drivers and vehicles from their other operations, should CWS or Garden City fall behind in San Jose collections during the first six months after the July 1, 2007 service start.
- 2) *Service Provider Contingency Plan* - The final agreements include a provision allowing the City, at its sole option and if there are delays in the transition timeline, to 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 has discussed contingency options with Norcal Waste Systems and it is recommended that the City will enter into an agreement with Norcal for the provision of transition services, if needed.
- 3) The final agreements include a provision allowing the City, at its sole option, to take over operation of CWS' or Garden City's collection trucks in case of early termination of the agreement or in case of contractor default. The City will be required to make any debt-service payments on this equipment during the time the City has possession of the equipment.

### CWS Quality Assurance and Contract Compliance Monitoring

The City will secure the professional services of a quality assurance and contract compliance third-party consultant to monitor CWS' recyclables processing operations. 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. By June 30, 2009, and annually thereafter, the Director of ESD will consider whether the oversight and/or charges for monitoring should be terminated. In making this determination, the Director shall consider the number and severity of reported violations of the processing requirements of the Agreement, and whether CWS met the diversion standards of the Agreement for the prior calendar year. The Director of ESD may reinstitute the monitoring and/or CWS' payment at any time the Director determines the monitoring is necessary.

### Modification and Review of Market Standards

A process for the regular evaluation of market standards is included in the CWS contract. On or before July 1, 2007, and periodically thereafter, as necessary, but not less often as semi-annually, the City will develop or revise information that may be used to update recyclables market standards. This information will be obtained from 'peer' material recovery facilities. In the event a majority of the selected peer facilities are processing a material to a standard that is lower than the equivalent Institute of Scrap Recycling Industries (ISRI) standard, the peer facility standards will be ranked and the median per facility standard may be used temporarily in place of the ISRI standard.

### Contaminated Recyclables Procedure

CWS will work with City staff and Garden City Sanitation to develop a procedure for responding when non-recyclable material is found in recycling carts. This procedure will include notifying and educating the resident about acceptable material or an upsizing of the garbage cart. Staff will be recommending to Council the adoption of a fee that may be charged to the resident if the contents of the cart have to be collected as garbage.

### Neighborhood Cleanup Services

Staff has explored budgetary pricing for Neighborhood Cleanup Services from four companies: Garden City Sanitation, California Waste Solutions, GreenWaste Recovery, and GreenTeam. Staff is evaluating service options, including a short-term agreement for this service with one of these Recycle Plus contractors. This short-term agreement will provide for Neighborhood Cleanup Services beginning July 1, 2007, upon the termination of Norcal's agreement, and will provide sufficient time for staff to complete a thorough competitive procurement process for a new service provider in Fiscal Year 2007-2008. Staff will report back to the City Council in January 2007, if a short-term agreement is needed.

### Eight-Year Term

Staff has explored the possibility of structuring an extension of the term of the agreements with CWS and Garden City for up to an additional 24 months. There are competitive process requirements that limit the City's flexibility on this issue, and there are economic considerations which impact the companies. The Agreements will include a provision for an extension up to two-years if mutually agreed-upon terms can be reached prior to July 2010.

## **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 and any addenda. All documents were 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.

A complete set of the Recycle Plus contract documents will be made available for public review the week of November 13, 2006 in the City Clerk's Office.

### **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 City 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.

**CEQA**

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

  
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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.