



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: John Stufflebean

SUBJECT: SEE BELOW

DATE: 06-02-09

Approved

Date

6/5/09

COUNCIL DISTRICT: City-Wide

SUBJECT: AMENDMENT TO THE AGREEMENT WITH INTERNATIONAL DISPOSAL CORPORATION OF CALIFORNIA, INC., FOR DISPOSAL OF MUNICIPAL SOLID WASTE AND RELATED SERVICES

RECOMMENDATION

1. Adopt a resolution authorizing the City Manager to negotiate and execute an amendment to the Agreement with International Disposal Corporation of California, Inc. to:
 - a. Provide for the disposal of grease, grit, and screening, and the beneficial reuse of biosolids from the Water Pollution Control Plant, at an estimated annual expenditure of \$1,614,520 for Fiscal Year 2009-2010.
 - b. Reflect changes to the residential and commercial solid waste management program including, but not limited to, enabling the exclusive commercial franchisees to use the City's disposal capacity at the Newby Island Landfill at the City's rate, clarifying the compensation for baled residential recycling residue, providing for the processing of certain waste generated from the performance of municipal services, and redefining the basis for reimbursement of regulatory costs.
2. Direction to staff to explore feasibility, options and terms and conditions for an agreement that would allow International Disposal Corporation of California, Inc., to deliver leachate from Newby Island Sanitary Landfill to the San José/Santa Clara Water Pollution Control Plant and for the delivery of recycled water from the Plant to Newby using existing pipelines.

OUTCOME

Approval of the recommendations would provide for continued disposal of grease, grit, and screenings, and beneficial reuse of biosolids from the San José/Santa Clara Water Pollution Control Plant (WPCP); update the Disposal Agreement to accommodate changes to Recycle Plus residential solid waste services and facilitate the redesign of the commercial solid waste service system; promote Green Vision and Zero Waste goals of 75% waste reduction by 2013, and zero waste by 2022; and allow staff to continue discussions with IDC for operational and administrative improvements for disposal of landfill leachate and delivery of recycled water.

EXECUTIVE SUMMARY

The City entered into a long-term disposal service agreement with International Disposal Corporation of California, Inc. (IDC) in 1985 for the disposal of municipal solid waste at the Newby Island Landfill (“Disposal Agreement”). In 1995, the Disposal Agreement was amended, in part, to extend the term to December 31, 2020. The City’s integrated waste management program has evolved and the Disposal Agreement must be amended to reflect changes to the Recycle Plus residential solid waste services and to implement proposed changes to the commercial solid waste service system.

The Disposal Agreement provides that the City must reimburse IDC for regulatory costs (i.e. costs which are incurred as a result of material changes to the laws or regulations). The regulatory cost is one factor in determining the total cost of disposal. The proposed amendments to the Disposal Agreement for disposal of residential and commercial solid waste are conditioned on payment of \$700,000 to IDC for the City’s pro-rata share of the regulatory costs arising from laws and regulations adopted; and material changes in the enforcement or interpretation of laws or regulations on or before December 31, 2008.

Under separate agreements, WPCP also contracts with IDC for disposal of grease, grit, and screening, and with Browning-Ferris Industries of California, Inc. (BFI) for beneficial reuse of biosolids. In order to provide for uninterrupted services, new contracts for these services to WPCP must be executed by September 1, 2009. The proposal is to amend the Disposal Agreement to include services to WPCP.

The proposed amendments to the Disposal Agreement would (1) resolve outstanding claims for reimbursement of regulatory costs; (2) redefine the basis for reimbursement of regulatory cost prospectively; (3) enable the exclusive commercial solid waste franchisees to use the City’s disposal capacity at the same rate offered to the City; (4) provide for recycling of certain waste from City operations; (5) make other amendments to conform with the administration and operation of the solid waste management program; and (6) continue grease and screening disposal and biosolids reuse services to WPCP. The Administration recommends amending the Disposal Agreement to advance Green Vision and Zero Waste goals, and ensure that fees and taxes from the disposal of waste remain in the City.

BACKGROUND

SERVICES TO WATER POLLUTION CONTROL PLANT

Reuse of Biosolids. WPCP has contracted with BFI for the removal, transportation, and beneficial reuse of biosolids since 1993. Biosolids are the solids remaining from the treatment of wastewater. The biosolids are soil-like, and BFI uses the biosolids as alternative daily cover at the Newby Island Sanitary Landfill (Newby Island) which is located immediately north of the WPCP. When the City issued a Request for Proposal for this service in 2003, only two proposals were submitted. BFI submitted the low bid of \$13.03 per ton while Synagro submitted a bid at \$37.43 per ton. Synagro's bid was much higher due to their proposal to truck the material to Merced County to use for agricultural purposes. The 2003 agreement with BFI has expired and a contract for this service must be in place by September 1, 2009, so hauling can begin at the end of the drying season. The process for removal of biosolids has changed in practice and BFI removes the biosolids directly from the solar beds as opposed to City staff placing the material in stockpiles for later removal by BFI. This practice mitigates odor complaints and saves the City staff time.

Disposal of grease, grit, and screenings. Since 1985, the Disposal Agreement included the disposal of grease, grit, and screenings; however, the wet material could not be disposed at Newby Island until modern liners were installed in the late 1990s. In the interim, the material was transported to sites outside Santa Clara County for disposal. On May 18, 2004, the City Council approved the execution of a one-year service order and four one-year options to renew with Allied Waste (BFI) to provide WPCP with 1) containers to store grease, grit, and screenings on-site, and 2) the hauling and disposal of these materials. A new contract for these services must be in place by September 1, 2009. The WPCP Master Plan process, which is expected to be completed in the next three years, will also consider use of the grease in WPCP anaerobic digesters to recover energy.

Proposal for Gas Pipeline. The City has an agreement with Gas Recovery Systems, Inc. (GRS) to provide landfill gas from Newby Island to WPCP. This arrangement provides WPCP with affordable gas to power the facility. GRS installed one main pipeline to deliver the gas and two additional pipelines to purge the main line when it was first filled with landfill gas. The additional pipelines have not been used since and IDC proposes to use the additional pipelines to pump leachate from Newby Island for treatment at WPCP. Leachate is wastewater from the bottom of the landfill which is currently transported to WPCP for treatment by truck.

SOLID WASTE DISPOSAL SERVICES

The City contracted for disposal capacity at Newby Island in 1986 with a term through 2016. The Disposal Agreement required the City to use or pay for 395,200 tons of disposal capacity at a price significantly below market rate. Starting in 1986, the City allowed Waste Management of Santa Clara County, the exclusive collector of residential and commercial solid waste, to use all of the disposal capacity. After Recycle Plus residential services began in 1993, Waste

management retained an allocation for disposal of commercial garbage until that exclusive service ended in 1994. The City amended the Disposal Agreement in 1995, in part, to extend the term through December 31, 2020 or conditionally until Newby Island stopped receiving waste; eliminate the "put or pay" requirement as consideration for directing the disposal of residential waste to the landfill; secure a corporate guaranty from BFI, IDC's then parent company; and resolve the disputed compensation for Fiscal Years 1991-1992 through 1994-1995. The City retained the right to dispose of commercial waste collected through exclusive contracts.

RECENT INTEGRATED WASTE MANAGEMENT PROGRAM CHANGES IMPACTING DISPOSAL AGREEMENT

Recycle Plus Multi-Family Recycling Service Expansion. Beginning July 1, 2008, the City required GreenTeam of San José (GreenTeam) and GreenWaste Recovery, Inc. (GreenWaste) to process all garbage from multi-family dwellings (MFDs). The garbage from MFDs is processed at the GreenWaste material recovery facility (MRF) in San José to remove additional recyclables such as cans, bottles and paper. The remaining material consists of largely food waste is composted at the Z-Best facility in southern Santa Clara County. For the January 2009 sample period, the expansion of recycling diverted 76% of the remaining MFD garbage, raising total MFD diversion to almost 80% including single-stream recycling. It is anticipated that this new process should reduce the disposal at Newby Island by approximately 55,000 tons a year.

Single-stream Recycling Residue Disposal. Recycle Plus contractors are responsible for arranging for the disposal of recycling residue. When the City switched to single-stream recycling in 2002, the amount of residue increased and California Waste Solutions (CWS) and GreenTeam decided to landfill outside of San José. While CWS and GreenTeam recognized some savings in disposal cost, this arrangement resulted in the City losing almost \$14 per ton in disposal fees and taxes and generated increased congestion and air emissions. Pursuant to the amendment to the Recycle Plus agreements, CWS and GreenTeam started sending their baled residue to Newby Island beginning July 1, 2008. IDC claims baled as opposed to loose residue increases the handling cost at the disposal site. Currently, CWS is paying more for disposal than the amount the City has reserved to reimburse for disposal cost and GreenTeam has not paid for any of the disposal cost. In the interim, a compensation differential of more than \$10,000 per month accumulates. The proposal to amend the Disposal Agreement would address the proper compensation for baled residue from the residential and commercial recycling stream.

ANALYSIS

Environmental Services Department staff from WPCP and Integrated Waste Management Divisions, with assistance from HFH Consulting, has been negotiating with IDC since January 2009 to resolve outstanding issues and evolving City disposal needs. The proposed amendments would benefit the City in several ways:

- Secure significantly lower rates than the Bay Area market for biosolids disposal while maintaining the operational advantages of delivering this material to Newby Island Landfill
- Maintain the existing competitive rates for grease, grit, and screenings disposal for the WPCP;
- Lower contractor payment to IDC over current rates for municipal solid waste disposal; and
- Increase the Citywide overall waste diversion and secure low rates to recycle certain waste generated from the performance of municipal services (i.e. City corporation yards).

The points of negotiation and how the proposed amendments would impact the services to WPCP and disposal of garbage are detailed below.

SERVICES TO THE WPCP

Beneficial Reuse of Biosolids. IDC agrees to haul and beneficially reuse biosolids from the WPCP for \$ 22.75 per ton for the period July 1, 2009 through June 30, 2014. The City would have the option to extend the term for one-year increments up to five years. If the City exercised these options, the rates would be subject to increase consistent with the CPI provisions of the Disposal Agreement.

The closest landfill that was able to accept biosolids as Alternate Daily Cover (ADC) and that was also willing to indicate a price that it could commit to if the service was open to competition, offered a lower disposal and reuse rate for biosolids delivered to them than IDC's proposed rate of \$22.75 per ton for hauling and reuse combined. However, the total cost to use that site, including hauling by a third party, would be more than \$5 per ton higher.

The proposed amendment would maintain all practices developed over the last five years, including direct loading of biosolids from the drying beds to IDC's trucks and use of the private road connecting WPCP to Newby Island to haul the material. Since Newby Island is immediately adjacent to the biosolids drying beds, the proposed use of the private roads would further reduce the distance to haul the material and mitigate the potential for odor complaints from residential and commercial neighbors.

Finally, the proposed amendment would limit WPCP's ability to direct fully dried biosolids to any location other than Newby Island during the initial five year period. After the first year, City has the right to direct biosolids to non-landfill applications (i.e., conversion technologies, land application) but not for landfill disposal or other landfill applications. If IDC can use all of the biosolids for each year, the City would reserve the ability to direct the following percentage of biosolids to other non-landfill facilities: 0% in 2009-2010; 10% of 2010-2011; 20% in 2011-2012; 20% in 2012-2013; and 20% in 2013-2014. However, if IDC cannot use all of the material for ADC, beneficial uses or other landfill application at Newby Island that counts as "diversion"

in the State's Disposal Reporting System, due to regulatory changes or revised permit conditions, for example, WPCP will be free to divert any such waste from Newby Island. Should the City exercise the option to extend the term, the proposal is to establish any limitations on delivery of specific quantities of biosolids at that time. WPCP will explore alternate uses for biosolids as part of the WPCP Master Plan process.

Grease, grit, and screenings. The proposed amendment to the Disposal Agreement would maintain the current rate of \$126.85 per load for providing and hauling containers of grease, grit, and screening from WPCP, while setting the tipping fee equal to that for residential and commercial garbage, which will change the current disposal cost of \$40.35 to \$42.19 in 2010-2011. For the same reasons discussed above, the Administration recommends that IDC be permitted to haul this material to Newby Island using the private road connecting the two properties. WPCP would reserve the ability to divert all the grease for its anaerobic digesters to another reuse facility.

PROPOSAL FOR GAS PIPELINE

The Administration seeks Council direction to continue negotiations with IDC and other parties regarding potential use of a gas pipeline to transport leachate from Newby Island for treatment at WPCP. The benefits of using the existing pipeline as opposed to trucking the materials include, but are not limited to, a lower cost to IDC with potential saving to disposal customers, and reduced fuel consumption and odor emissions. The negotiation may also include use of the second unused pipeline to transport recycled water from WPCP to operational areas of Newby Island. The current recycled water line is on McCarthy Boulevard, more than a half mile from Newby Island's active disposal, composting, and processing areas, while the existing lines between Newby Island and the WPCP stub out in those areas.

PROPOSED AMENDMENTS REGARDING DISPOSAL OF RESIDENTIAL AND COMMERCIAL SOLID WASTE

The proposed amendments to the Disposal Agreement for disposal of residential and commercial solid waste are conditioned on payment of \$700,000 to IDC for the City's pro-rata share of the regulatory costs arising from laws and regulations adopted; and material changes in the enforcement or interpretation of laws or regulations on or before December 31, 2008.

Regulatory Cost Reimbursement. The Administration proposes the following amendments to redefine and clarify the basis for reimbursement of regulatory costs:

- Regulatory cost claims would be limited to costs attributable to adoption of laws or regulations, or material changes in the enforcement or interpretation of laws or regulations affecting Newby Island on or after January 1, 2009. IDC shall not seek reimbursement for any regulatory cost arising from the adoption of laws or regulations on or before December 31, 2008, associated with the maintenance and development of the

landfill gas removal system; or affecting use of materials as alternative daily cover at Newby Island unless these changes are imposed by the San José Municipal Code.

- Beginning January 1, 2009, the formula to determine the City's pro-rata share of regulatory costs would not include certain materials and may not exceed 25% of IDC's total regulatory cost. The proposal is to exclude from the formula cover and inert construction material (i.e. clean soil, biosolids, concrete rubble, and asphalt), and material which is recycled and removed from Newby Island.
- Through 2012, the City would reimburse for any new regulatory cost after January 1, 2009 for the construction of cells designed for approximately 12 months of capacity. The reimbursement shall be amortized over a 12 month period and payment shall begin once construction is complete. After January 1, 2012, the standard for amortization and payment would be reevaluated based on the useful life of new cells and other capital costs.

Disposal Allocation for Commercial Solid Waste. The Administration proposes to offer the City's disposal capacity at Newby Island to the successful exclusive franchisees providing commercial solid waste services. The City would require the exclusive commercial franchisees to pay for the disposal capacity and reserves the right to have the new exclusive commercial contractors pay IDC directly for disposal of City commercial waste. If the City exercises this option, the City would contractually require the new commercial solid waste hauler(s) to make the payments to IDC and shall include provisions for facilitating payment disputes in the exclusive commercial agreements. The City anticipates that with a 75% diversion requirement for commercial waste, the City's current allocation of 320,000 tons would be more than adequate to accommodate the additional commercial processing residue and bypass waste. The amendment would increase the allocation to 395,200 tons, which would be sufficient to handle all of the exclusive commercial waste in case processing activities are not in place when the new commercial franchisees begin service. The City would reserve the ability to direct waste to diversion programs or facilities other than landfills and would not be obliged to pay for unused capacity.

Solid Waste Disposal Cost. By holding the current per ton payment to IDC and the annual reimbursement for Regulatory Costs flat for one year, the total price per ton for disposal in 2009-10 will be approximately \$43.16. The estimated disposal cost for Fiscal Year 2010-2011 would be reduced by 2.2% at \$42.19 per ton (i.e., \$21.89 and minimum \$20.30 for fees and taxes). This rate is subject to changes in the disposal fees and taxes. A new payment to offset the increased cost to handle baled residential recycling residue from CWS and GreenTeam pursuant to the Recycle Plus agreements would take effect immediately, and would also apply to other baled residues delivered in the future.

Beginning July 1, 2011, the Administration proposes to adjust the disposal cost to reflect the following:

- 1) The annual adjustment, which is based on changes in two price indices, would be modified so that the Consumer Price Index receives more weight than the Producer Price Index for diesel fuel (i.e. from 80% of the CPI change plus 20% of the diesel change, to 85% CPI and 15% diesel); and
- 2) The contractual adjustment to the combined index change would be modified from 0.68 to 0.80. The first change would reduce the volatility caused by the diesel index. The second would allow IDC to recover a larger share of annual cost increases and the City would benefit from a larger share of any cost decreases.

Disposal of City Waste. The City currently pays IDC only the applicable fees and taxes on waste generated or collected by the City in the performance of municipal services ("City Waste"), plus a share of Regulatory Costs. For City Wastes that are disposed, IDC absorbs the first \$2.00 per ton in State and County fees. The proposed amendment would require the City to reimburse IDC for any applicable fees and taxes. A new fee would be established of \$5.00 per ton for street sweepings or other materials readily used for cover or inert construction; and \$26.50 to process material from the City corporation yards or other waste suitable for processing at Newby Island's construction and demolition material line. The City would not commit to pay to divert the material from the City corporation yards until Fiscal Year 2010-2011.

In addition, the portion of the disposal capacity reserved for City Waste would be reduced from 80,000 tons per year to 60,000 tons per year excluding the amount processed and recycled at Newby Island. Finally, the amendment may include reasonable limitations on the amount of City Waste that can be delivered each day and/or restrictions on delivering during peak hours.

Additional Amendments

The Disposal Agreement currently requires IDC to purchase a performance bond. The Administration proposes to waive the performance bond requirement in lieu of a corporate guaranty from IDC's publicly traded parent company, Republic Services, Inc., and all of the intermediate corporate parents. This provision will be conditioned on IDC demonstrating to the City's satisfaction that the corporate guaranty is superior to the bond, based on the financial stability of the guarantors.

The Disposal Agreement would also be amended to eliminate IDC's obligation to contribute to the cost of waste characterization studies and to reflect the current operating hours and require City's written approval for any changes to the operating hours.

EVALUATION AND FOLLOW-UP

ESD proposes to return to Council for approval of an agreement regarding the potential use of the pipelines. Any such agreement with IDC will require coordination and consent by GRS and environmental reviews and necessary regulatory and Tributary Agency approvals prior to consideration by Council.

POLICY ALTERNATIVES

Alternative #1: Take no action on Disposal Agreement.

Pros: The City could potentially reduce residential garbage disposal costs in Fiscal Year 2009-2010 and future years by not implementing these recommendations and by successfully taking the Regulatory Cost dispute to arbitration.

Cons: The City 1) could have insufficient disposal capacity for commercial waste; 2) would lose the immediate opportunity to contract for long-term disposal of grease, grit, and screenings and for beneficial use of biosolids at a favorable rate that would directly benefit residents of San José and the Tributary Area, and must immediately prepare RFPs for these services; and 3) would lose the opportunity to increase City Waste diversion from corporation yards at a lower price than any other available diversion program. These decisions may also negatively impact City-wide diversion and Council's Green Vision goals of 75% waste diversion by 2013 and Zero Waste by 2022.

Reason for Not Recommending: While conducting negotiations, City staff and consultants investigated alternative costs for commercial waste disposal and for beneficial use of biosolids. No alternate facilities appear to offer costs lower than those negotiated except for some that are a significant distance from the WPCP or outside the City. Use of such sites would result in higher total costs due to the much higher costs of trucking and would increase the adverse environmental impacts associated with trucking. Use of sites outside the City would also result in substantial General Fund impacts due to loss of Disposal Facility Tax and Solid Waste Enforcement Fee revenues.

PUBLIC OUTREACH/INTEREST

- ✓ **Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 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)**
- Criteria 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 Criteria #1: Requires Council action on the use of public funds equal to \$1 million or greater.

COORDINATION

This memorandum has been coordinated with the Department of Planning Building, and Code Enforcement, the City Attorney’s Office, and the City Manager’s Budget Office. This report is scheduled to be considered at the Treatment Plant Advisory Committee meeting on June 11, 2009.

FISCAL/POLICY ALIGNMENT

The recommendations contained in this memorandum are consistent with the Mayor’s March 2009 Budget Message, the 2009–2010 Proposed Operating Budget, and Green Vision Goal # 5, to divert 100% of the waste from our landfill and convert waste to energy. These recommendations also support the Zero Waste goals and Urban Environmental Accords # 4 and # 6 to reduce solid waste disposal to the landfill and establish San José as a national environmental leader. Approval of these amendments aligns with the City’s Budget Balancing strategy principle to preserve core City services for both the short and long term.

COST IMPLICATIONS

Resource and Funding Strategy: The costs related to this amendment are already included in the 2009-2010 Proposed Operating Budget. The cost of residential waste disposal is recovered from Residential Recycle Plus service rates. Funds for the one-time payment are available from prior-year encumbrances retained as a reserve for the disputed Regulatory Cost claims. Some General Fund costs for City Waste disposal are proposed to be shifted to the Storm Sewer Fund (446) and the Sewer Service and Use Fund (541) in the 2009-2010 Proposed Operating Budget, to reflect the cost of disposing of wastes generated by the sewer maintenance programs in those funds.

2009-2010 Expenditures by Fund

	General Fund (001)	IWM Fund (423)	Storm Sewer Operating (446)	Treatment Plant Operating (513)	Sewer Service & Use (541)
Expenditures					
<i>Included in 2009-2010 Proposed Budget</i>					
Residential waste disposal		\$7,650,000			
City Waste disposal	\$287,040		\$42,840		\$143,520
City Waste diversion			\$5,000		
Biosolids				\$1,324,000	
Grease, Grit, and Screenings				\$147,000	
<i>Included in Prior Year Appropriations</i>					
IDC Regulatory Costs	\$87,500	\$612,500			
Expenditures Total	\$374,540	\$8,262,500	\$47,840	\$1,471,000	\$143,520

BUDGET REFERENCE

One-time Payment of \$700,000 from Prior Year Encumbrances:

Fund #	Appn #	AC #	Total Encumbrance as of May 29, 2009	Amt. for Contract*
001	2059	03410 41	\$87,500	\$87,500
423	2059	03410 34	\$612,500	\$612,500
Total				\$700,000

*The allocation of these costs between the General Fund and the Integrated Waste Management Fund (423) represents the proportional share of waste delivered under this agreement from City facility operations and the residential Recycle Plus program, respectively.

On-Going Disposal Agreement Budget for 2009-2010*

Fund #	Appn#	Appn. Name	Total Appn	Amt. for Contract	Proposed Budget Page	Last Budget Action (Date, Ord. No.)*
001	2059	IDC Disposal Agreement	\$287,040	\$287,040	001 / IX-17	-
423	2059	IDC Disposal Agreement	\$7,650,000	\$7,650,000	423 / XI-50	-
446	New/TBD	TBD	\$47,840	\$47,840	446 / XI-86	-
513	0762	ESD NP / Equipment	\$34,507,625	\$1,471,000	513 / XI-78	-
541	New/TBD	TBD	\$143,520	\$143,520	541 / XI-83	-
Total				\$9,599,400		

*The 2009-2010 Operating Budget is scheduled to be adopted by Council on June 23, 2009.

CEQA

Hauling and disposal of grease, grit, and screenings: Exempt (PP09-044)
 Hauling and beneficial use of biosolids: Exempt (PP08-038)
 Newby Island Sanitary Landfill, 1997 Revised Solid Waste Facility Permit (43-AN-0003):
 Negative Declaration (H95-03-022; SCH #1997106314)


 JOHN STUFFLEBEAN
 Director, Environmental Services

For questions, please contact Jo Zientek, Deputy Director, Environmental Services Department, at (408) 535-8557.