



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: John Stufflebean
Joseph Horwedel

SUBJECT: SEE BELOW

DATE: May 31, 2011

Approved

Date

6/3/11

COUNCIL DISTRICT: Citywide

**SUBJECT: COMMERCIAL SOLID WASTE AND RECYCLABLE MATERIAL
COLLECTION FRANCHISE AGREEMENT BETWEEN THE CITY OF
SAN JOSÉ AND ALLIED WASTE SERVICES OF SANTA CLARA
COUNTY**

RECOMMENDATION

It is recommended that Council

1. Read and consider the California Environmental Quality Act Initial Study and Negative Declaration for Commercial Collection System Redesign (Planning File No. PP10-157) and adopt by Resolution.
2. Hold a public hearing on the application of Allied Waste Services of Santa Clara County for Commercial Solid Waste and Recyclable Material Collection Franchises for the North and South Service Districts, approval of an ordinance granting the franchises, and approval of a Commercial Solid Waste and Recyclable Material Collection Franchises Agreement with Allied Waste Services of Santa Clara County for a term from September 13, 2011 through June 30, 2027.
3. Direct staff to return to Council in 2011-2012 with proposed ordinances or resolutions for adoption needed to implement the new commercial solid waste system, including establishing maximum customer service rates.

OUTCOME

The proposed commercial solid waste collection and organics processing services will provide the most comprehensive and innovative commercial solid waste and recycling system in the United States and will further San José's Green Vision goals of economic growth, environmental sustainability, and enhanced quality of life for its community. Benefits of the new system include more options for customer waste recycling and collection, reasonable and equitable service rates, a new "green" fleet of approximately 50 compressed natural gas solid waste collection trucks to replace the existing aging fleet, stable franchise fee revenue for the General Fund, increased waste diversion, progress toward renewable energy goals, and the creation of additional green recycling jobs in San José.

EXECUTIVE SUMMARY

As directed by Council on April 5, 2011, Staff has negotiated with Allied Waste Services (Allied) to include effective performance standards and liquidated damages in the proposed commercial collection franchise agreement, with specific focus on those related to outreach, education, customer service, and waste diversion. The transition from the current nonexclusive system must be started as early as possible in order to be completed on-schedule, allowing Allied sufficient time to make significant capital investment with trucks, equipment, and complete the retrofit of their existing recyclables processing facility and outreach to existing business customers about the new service. The franchise agreement includes transition plans that will facilitate the capital projects which need to be completed before service start, as well as extensive customer outreach and education. City staff will be monitoring these processes carefully.

A California Environmental Quality Act (CEQA) Initial Study has been completed and the Resolution for adoption of the Initial Study / Negative Declaration is included as an attachment to this memorandum.

BACKGROUND

Private haulers are required to obtain a Commercial Solid Waste and Recyclable Material Collection Franchise that allows them to provide solid waste and commingled recyclable material collection services to San Jose businesses.

Allied's response to the City's procurement for commercial solid waste collection franchisee is deemed to be the application for a franchise. On April 5, 2011, staff presented recommendations for the award for commercial solid waste collection. Council accepted the Report on Request for Proposals and adopted a resolution authorizing the City Manger to negotiate agreements with Allied for commercial solid waste and recyclable material collection services. Council directed Staff to return to City Council in June 2011 with a proposed franchise agreement that addressed:

- Effective performance measures
- Liquidated damages pertaining to failure to meet outlined performance measures
- Rate stabilization and rate increase mitigations

ANALYSIS

Chapter 9.10 of the San Jose Municipal Code and the City Charter requires the City Council to grant Commercial Solid Waste and Recyclable Material Collection Franchises through an ordinance. Approval of the proposed ordinance will grant a new Commercial Solid Waste and Recyclable Material Collection Franchise to Allied for a term beginning September 13, 2011 through June 30, 2027.

The proposed collection franchise agreement is substantially the same as the sample agreement that was included in the Commercial Franchise Request for Proposals (RFP), except for the additions and revisions noted below which address additional Council direction and reflect specifics of Allied's proposal. As directed by Council, Staff has negotiated with Allied to include effective performance standards and liquidated damages in the Agreement, with specific focus on those related to outreach, education, customer service, and waste diversion. This section provides a summary of the CEQA review related to this project, an analysis of key outreach and transition activities to be performed by the service provider, an examination of the effectiveness of the liquidated damages, specifically those related to Waste Diversion, and an overview of the Cost Controls and Rates in the Collection Franchise Agreement.

CEQA Review

The Initial Study / Negative Declaration for Commercial Collection System Redesign (Planning File No. PP10-157) analyzes the potential environmental impacts from a system using one solid waste collection Franchisee and one organics processing Contractor as opposed to the current franchising arrangement with more than 20 franchised haulers with overlapping routes. The analysis in the Initial Study solely focuses on the proposed collection system and does not include the receiving facilities and their associated processes. The receiving facilities have the necessary approvals, permits, and CEQA clearance required to receive or process the materials anticipated to be collected via the proposed Commercial Collection System Redesign or will need to have completed such processes prior to approval of being a receiving facility for the proposed Commercial Collection System Redesign project.

The resource areas within which the proposed project may result in some impacts or changes were identified as air quality, greenhouse gas emissions, land use, noise, transportation, and utilities and service systems. The Initial Study analysis determined there will be no significant impacts from the implementation of the new commercial collection system on those or other resource areas. The Resolution for adoption of the Initial Study / Negative Declaration is included as an attachment to this memorandum.

The Initial Study and Negative Declaration may be accessed online:

- Initial Study: http://www.sanjoseca.gov/planning/eir/Nd2/2011/PP10-157_commercial_redesign/PP10-157_IS.pdf
- Negative Declaration: http://www.sanjoseca.gov/planning/eir/Nd2/2011/PP10-157_commercial_redesign/PP10-157_ND.pdf

Outreach and Transition

Education and outreach are essential to the successful transition to the new commercial solid waste system and the achievement of the City's waste diversion goals. City and Allied preparation and transition activities are governed by the Transition and Implementation Work Plan, which includes detailed outreach and education programs for the one-year transition period. Ongoing outreach and technical assistance during the 15-year term of the franchise is governed by the Outreach and Technical Assistance Work Plan. All work plans, including those governing Customer Service, Collection, and Processing, are included as exhibits to the agreement and are enforceable with liquidated damages (\$1,000 for the first incident and \$2,500 for each subsequent incident). The work plans represent Allied's comprehensive response to RFP criteria that Staff developed by researching the solid waste agreements of other cities, coordinating with stakeholders, and consulting with waste industry professionals.

Collection Franchisee Transition and Implementation Work Plan

The Transition and Implementation Work Plan in the collection franchise agreement will facilitate the transition to the new commercial solid waste system. The transition from the current nonexclusive system must be started as early as possible in order to be completed efficiently, on-schedule, on-budget, and with minimum inconvenience to customers, other franchised haulers, and City staff. The work plan provides a detailed description of required outreach and technical assistance activities and a timeline for equipment purchases and infrastructure improvements. Failure to meet transition timeline milestones as specified in the Transition and Implementation Work Plan will result in liquidated damages of \$5,000 per milestone per day.

There are large capital projects which need to be completed before service start and City staff will be monitoring these processes carefully. Allied will provide monthly progress reports during transition and implementation on the following and other activities:

- CNG Fueling Station
- Customer Database Development and Management
- Routing / Mapping
- Driver hiring and Training
- Public Education and Outreach
- Communication Plan
- Truck Procurement
- Newby Island Resource Recovery Park Processing Upgrades
- Building and Site Modifications

Concurrent with the equipment and facility projects, Allied will complete extensive customer outreach to ensure that all businesses have been informed about the new system and have subscribed to an appropriate level of service. Key outreach and education activities include:

- Coordination with City Staff to determine top 3-5 customer messages, define goals for technical assistance, design program services, develop web-based systems, and observe and provide feedback on customer communications.
- Coordination with the City approved organics processor to identify acceptable and unacceptable feedstock materials so that effective outreach and training materials may be developed.
- Develop sales strategies targeting small, medium, and large businesses.
- Research and develop a communications plan at least nine months before service implementation.
- Conduct direct outreach at least three months before service implementation.

Collection Franchisee Outreach and Technical Assistance Work Plan

Once the new commercial system is launched on July 1, 2012 and throughout the term of the Agreement, the Outreach and Technical Assistance work plan will govern the Franchisee's outreach to commercial customers. Allied has agreed to cooperate with the City in the event of a customer complaint or an audit to provide necessary records to determine if Allied is complying with the terms of the franchise agreement. Some of the key activities in the Outreach and Technical Assistance work plan include:

- Customer Service Research (July 2012 – July 2013): Allied will conduct phone surveys of randomly selected customers and six focus groups (two in each language: English, Spanish, Vietnamese) to identify customer needs and assess their satisfaction through the first year of the new system.
- Direct Outreach Services (July 2012 – October 2012): Allied will distribute newsletters, postcards, and bill inserts outlining key messages and service and rate change information and provide a recycling toolkit (to include indoor container decals, posters, and other signage for business recycling). Customer materials will be offered in English, Spanish, and Vietnamese.
- Ongoing Advertising Campaign (Term of Agreement): Allied will use TV, cable, radio, print, online media, and billing services to reach customers and communicate key messages throughout the term of the agreement.
- Provisions to develop an Annual Plan by Allied and the City to address customers or areas not meeting diversion goals, new legislation, or specific interests of the City.

Waste Diversion

The system-wide diversion rate will be achieved through combined requirements on the part of the collection Franchisee and the organics processor. Allied must achieve performance standards for all aspects of the service, many of which directly contribute to waste diversion goals. In addition to the program data and diversion information that Allied must regularly report to the City, the utilization of City environmental inspectors will be critical to ensuring compliance and accountability.

The agreement and work plans represent a comprehensive, holistic approach to waste diversion that includes thorough outreach and education, innovative collection methods, and cutting-edge material sorting technologies. The work plans include provisions for how Allied must:

- collect and process materials,
- meet minimum diversion standards for equipment through-put and material recovery efficiency,
- maintain the high quality of the processed material for marketability,
- market each type of recovered material under current and anticipated markets, and
- ensure availability and capacity of contingency facilities.

As discussed at the April 5, 2011 Council meeting the liquidated damages for failure to meet the minimum annual diversion standards were considered insufficient and Staff was directed to review the amount. Following a thorough review of other recent solid waste agreements and discussions with Allied, Staff has ensured that the liquidated damages presented in the agreement are sufficient.

The liquidated damages that were detailed in the RFP, including those for waste diversion, were developed subsequent to research of waste agreements in other jurisdictions and Staff's previous experience managing large solid waste contracts for residential services. The waste diversion goal is also supported by the activities in the work plans and the performance measures. Cumulative liquidated damages apply not only for failure to meet the minimum annual waste diversion standards but also for failure to comply with the provisions of any of the work plans included with the agreement. As such, the charge for failure to meet minimum annual diversion requirements is not the only penalty for lack of performance nor the only charge an underperforming service provider would likely be required to pay.

Franchise Enforcement

The redesigned commercial solid waste system is dependent on businesses within the City subscribing to solid waste collection services with Allied, as specified in the recommended agreement. Compliance with relevant sections of the Municipal Code and the provisions of this agreement will require two environmental inspectors dedicated to franchise compliance in the field, which includes collection and organics processing. This enforcement function will help ensure that the cost of the new system will be distributed appropriately among all customers required to participate, mitigating risk of rate increases resulting from Allied not meeting their annual minimum revenue requirement defined in the agreement. Two environmental inspectors would also enforce the Code requirement that no providers may conduct commercial solid waste and recyclable material collection in the City without a franchise from the City. Staff will evaluate whether this work can be absorbed by existing staff, or whether additional Environmental Inspectors will be needed, as part of the 2012-2013 budget process. Should additional support be necessary, a proposal will be submitted for City Council consideration as part of the 2012-2013 Proposed Operating Budget.

Cost Controls and Rates

Maximum customer rates for the services provided by Allied will be established by Council before the July 2012 service start date. The City and Allied have developed a rate structure that best achieves their total revenue requirement while encouraging customers to choose cost effective services that help achieve waste diversion and operational goals. Although some businesses will see different effects on their monthly garbage bill in the new system, rates for the majority of businesses should be similar to current rates and cost competitive with rates charged elsewhere in the Bay Area.

Assuring Equitable Rates

Although projections show that most rates should not change dramatically, some individual rates for specific service levels may see a considerable increase. As proposed in the RFP, the Collection Agreement has been modified to include a rate balancing process, whereby Allied will work with City Staff within six months following initial service to make adjustments to those service levels that see the greatest rate increase while ensuring that any new rate maximums reflect an appropriate cost for that specific service level. Through review of customer account information, Allied will identify rate categories most impacted and propose rates for those services. Allied will provide this information to the City to support a request to modify the maximum service rate schedule. Any revised rate schedule will be brought back to the City Council for final approval before implementation.

Rate Increase Limitations

The maximum customer rates may be adjusted annually during the fifteen-year term of the agreement through a Council approval process. The agreement includes a prescribed methodology for annual rate adjustment, with detailed instructions and limitations. Allied will be limited to only those adjustments allowed per the agreement and cannot charge customers more than the maximum rates established by Council. In the third year of the agreement (and twice thereafter), a "true-up" will occur where necessary. True-up adjustments are made to ensure that Allied is able to charge a service rate that will adequately compensate them for changes in operating or capital expenses, as defined in the Agreement. The true-up adjustments are limited to those impacts that Allied could not have reasonably foreseen and to certain elements that are not under their control, such as the number of possible customer accounts. Allied has agreed to a cap in the total annual increase to maximum service rates in any given year which may not exceed six percent (6%).

EVALUATION AND FOLLOW-UP

Staff will return with recommended revisions to the Municipal Code to reflect the redesigned commercial solid waste system and a Maximum Rate Schedule for Council approval in 2012. Staff will provide regular updates to Council during the one-year transition period to the new system.

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)**

Staff conducted an extensive stakeholder engagement process starting in January 2008. These efforts included in-person interviews, presentations, media outreach, and an on-line survey. The outreach was conducted in partnership with the Office of Economic Development, the Department of Planning, Building and Code Enforcement, the San José Redevelopment Agency, existing commercial haulers, individual businesses, and business associations. Staff engaged business districts and associations, chambers of commerce, business and non-profit leadership groups, and others during the process.

On-going efforts to inform the business community of the commercial system redesign have included updates mailed to the 20,000 commercial businesses in the City's business tax database, on-going meetings with current commercial haulers, a presentation at the Chamber of Commerce, and contacts with each of the neighborhood business districts, Silicon Valley Leadership Group, and Sustainable Silicon Valley.

The policy decision to redesign the commercial solid waste system and issue an RFP was a Public Outreach Criteria 3-level decision that Council made on March 24, 2009. The recommendation in this memorandum implements the policy decision made in 2009.

COORDINATION

This memorandum was coordinated with the City Attorney's Office, the Office of Economic Development, and the City Manager's Budget Office.

COST SUMMARY/IMPLICATIONS

The on-going cost of two new environmental inspector positions that may be needed to ensure compliance for the new franchised system beginning in 2012-2013 would be approximately \$215,000 and would be completely offset by the AB939 fees paid by the Commercial

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Franchisee. Due to the restrictions of this funding source, these inspectors must be dedicated to enforcement of this franchise agreement. It is anticipated that the City will need up to \$150,000 in consultant support services for the transition which will be funded from ESD's Non-Personal/Equipment appropriation, as presented in the Proposed 2011-2012 Operating Budget in the Integrated Waste Management Fund, subject to City Council approval of that document.

CEQA

CEQA: Negative Declaration, File No. PP10-157. (Environmental Services)

/s/

JOHN STUFFLEBEAN
Director, Environmental Services

/s/

JOSEPH HORWEDEL, Director
Planning, Building and Code Enforcement

Attachment

For questions regarding the Commercial Solid Waste Program, please contact Jo Zientek, Deputy Director, Integrated Waste Management Division, at 408/535-8557 and for questions regarding CEQA review, please contact John Davidson, Senior Planner, Planning Division, at 408/535-7895.

Attachment

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSE
ADOPTING THE COMMERCIAL COLLECTION REDESIGN NEGATIVE
DECLARATION, FOR WHICH AN INITIAL STUDY WAS PREPARED,
ALL IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL
QUALITY ACT**

WHEREAS, prior to the adoption of this Resolution, the Planning Director of the City of San José prepared an Initial Study and approved for circulation a Negative Declaration for the Commercial Collection Redesign Project under Planning File No. PP10-157 (the "Initial Study/ Negative Declaration"), all in accordance with the requirements of the California Environmental Quality Act of 1970, together with state and local guidelines implementing said Act, all as amended to date (collectively, "CEQA"); and

WHEREAS, the City-initiated Commercial Collection Redesign project ("Project") analyzed under the Initial Study/ Negative Declaration consisted of the potential environmental impacts from a system using one solid waste collection franchisee and one organics processing contractor, as opposed to the current franchising arrangement with more than 20 franchised haulers with overlapping routes; and

WHEREAS, the Initial Study/ Negative Declaration concluded that implementation of the Project would result in a no new significant effects on the environment; and

WHEREAS, the City of San José is the lead agency on the Project, and the City Council is the decision-making body for the proposed approval to construct the Project; and

WHEREAS, the City Council has reviewed and considered the Initial Study/ Negative Declaration and intends to take actions on the Project in compliance with CEQA; and

WHEREAS, the Initial Study/ Negative Declaration for the Project are, by this reference, incorporated into this Resolution as if fully set forth herein.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSE AS FOLLOWS:

THAT THE CITY COUNCIL does hereby make the following findings: (1) it has independently reviewed and analyzed the Initial Study/ Negative Declaration and other information in the record and has considered the information contained therein, prior to acting upon or approving the Project; (2) the Initial Study/ Negative Declaration prepared for the Project has been completed in compliance with CEQA; and (3) the Initial Study/ Negative Declaration represents the independent judgment and analysis of the City as lead agency for the Project. The City Council designates the Director of Planning at the Director's Office at 200 East Santa Clara Street, 3rd Floor Tower, San José, California 95113, as the custodian of documents and records of proceedings on which this decision is based.

