



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: John Stufflebean

SUBJECT: SEE BELOW

DATE: 06-02-11

Approved

Date

6/7/11

COUNCIL DISTRICT: Citywide

**SUBJECT: COMMERCIAL ORGANIC WASTE PROCESSING SERVICES
AGREEMENT BETWEEN THE CITY OF SAN JOSÉ AND ZERO WASTE
ENERGY DEVELOPMENT COMPANY**

RECOMMENDATION

Adopt a resolution authorizing the City Manager to negotiate and execute a Commercial Organic Waste Processing Services Agreement with Zero Waste Energy Development Company, LLC, in substantial compliance with the terms specified in the draft Agreement, for a term from July 1, 2011 through June 30, 2027 with an initial service mobilization period from July 1, 2011 through June 30, 2012, and services to begin July 1, 2012 at a first year annual cost not to exceed \$6,000,000, subject to appropriation of funds.

OUTCOME

The proposed organics processing services will facilitate the City providing one of 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 organics processing system include more options for customer waste recycling, increased waste diversion, progress toward renewable energy goals, and the creation of green recycling jobs in San José.

BACKGROUND

On April 5, 2011, staff presented recommendations for the award for commercial solid waste collection and organics processing services. Council accepted the Report on Request for

Proposals and adopted a resolution authorizing the City Manager to negotiate agreements with Allied Waste Industries (Allied) for commercial solid waste and recyclable material collection services and Zero Waste Energy Development Company (ZWED) for commercial organic waste processing services. Council directed Staff to return to City Council in June 2011 with a proposed organics processing agreement that addressed:

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

ANALYSIS

ZWED will provide the organics processing services for waste delivered by the Collection Franchisee from San Jose businesses. ZWED will accept four major categories of organics under this agreement, differentiated by the quantity of non-organic material contamination: Stream One contains up to 5% contamination; Stream Two contains from 5%-10% contamination; Stream Three contains from 10%-20% contamination; and Stream Four contains more than 20% contamination. Due to the nature of this highly innovative anaerobic digestion process it is imperative that ZWED receives only very clean true organic material. In order to ensure that ZWED materials are delivered in one of these three streams, the Collection Franchisee will need to pre-process materials at their recyclable materials recycling facility first. The Collection Franchisee's process will include a manual and mechanical sort of any wet or organic materials to remove any recyclables, solid waste and especially glass. Some organic waste may be delivered directly to ZWED from the Franchisee collection trucks if not contaminated, such as waste solely from a landscaping debris container.

It is estimated that up to 80,000 tons will be delivered to ZWED through the City's commercial system with the majority of those tons coming in as Streams Two and Three. ZWED has committed to processing the first 60,000 tons of material in their anaerobic digestion facility to be located in North San Jose on San Jose/Santa Clara Water Pollution Control Plant Property and the remaining tons will be processed through traditional composting at the ZBEST composting facility in Gilroy. ZWED will dispose of non-recyclable contamination at the Newby Island Landfill.

ZWED will be invoicing the City on a monthly basis for processing of organics. The dollar amount is based on the number of tons delivered per stream, with the least expensive per ton rate being the stream with the least contamination. In turn, The Collection Franchisee will be remitting monthly to the City the funds to compensate ZWED for agreement services which are collected from Franchisee customers.

The proposed organics processing Agreement is substantially the same as the sample agreement that was included in the Organics Processing Request for Proposal (RFP), except for the additions and revisions noted below. These additions and revisions address additional Council direction and reflect specifics based on details finalized from both the Collection and Processing

proposals. As directed by Council, Staff has worked with ZWED during the negotiations to include effective performance standards and liquidated damages in the Agreement, with specific focus on waste diversion. This section provides analysis of key transition activities to be performed by ZWED, a summary of ongoing outreach support activities, and an examination of the effectiveness of the liquidated damages, specifically those related to waste diversion.

Transition and Outreach

City and ZWED preparation and transition activities are governed by the Transition and Implementation Work Plan. The work plan provides a detailed description of required transition activities and a timeline for equipment purchases and infrastructure improvements, which has been updated to reflect the current schedule. ZWED's Transition and Implementation Plan addresses the following activities:

- Facilities and Processing Capacity Assurances
- Organic Materials Marketing
- Coordination with the Collection Franchisee
- Coordination and Collaboration with City Staff
- Identifying and Overcoming Challenges

The Transition and Implementation Work Plan, and all required work plans included in the Agreement, represent ZWED'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. 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.

Ongoing Outreach and Education Support

Although ZWED is responsible for the processing of organics and will not have direct customer communication, coordinated efforts by ZWED and the Collection Franchisee will play an important role in maximizing organics diversion and limiting prohibited items such as glass, from overwhelming the organics recycling stream and affecting the marketability of ZWED's compost and other post-processing products. ZWED will support the Collection Franchisee's organics outreach efforts with waste material characterizations, audits, and program data that can help the Collection Franchisee determine how well customers are following the organics collection program parameters. In addition, ZWED and the Collection Franchisee will be in daily communication as loads are delivered and characterized by contamination level, allowing them to more precisely target the customers and routes needing direct outreach.

Waste Diversion

The system-wide diversion rate will be achieved through combined requirements on the part of the Collection Franchisee and ZWED. Both service providers must achieve several performance standards that directly contribute to waste diversion goals. In addition to program data and diversion information that the service providers must regularly report to the City, the utilization of City environmental inspectors will be critical to ensuring compliance and accountability.

The Organics Processing Agreement includes diversion provisions for how ZWED must:

- Process the three delivered organic material streams which include different contamination levels
- Meet minimum standards for facility capacity and material recovery efficiency/ diversion
- Maintain the quality of the processed material
- Market each type of recovered material under current and anticipated markets
- Ensure availability of contingency organics processing capacity

Compensation and Adjustments

Compensation for organics processing under this Agreement will be calculated on a per ton rate and invoiced to the City by ZWED on monthly basis. The compensation rates will be adjusted using Consumer Price Indices (CPI) published by the Federal Bureau of Labor Statistics during the first year of the Agreement to bring the 2010 proposed ZWED rates to 2012 dollars; rates will be adjusted annually thereafter using the same indices. The Agreement specifies that the City will apply liquidated damages to ZWED compensation for failure to meet the minimum annual waste diversion standards and for failure to comply with the performance measures included in the Agreement.

EVALUATION AND FOLLOW-UP

Staff will provide regular updates to Council during the one-year transition period prior to start of new service in summer 2012.

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.

The policy decision to redesign the commercial solid waste system and issue RFP'S for commercial waste collection and organics waste processing 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

Beginning in July 2012, the Commercial Solid Waste Collection Franchisee would bill the commercial, industrial, and institutional customers for commercial solid waste collection and processing services. From this revenue, the Franchisee would remit to the City approximately \$6,000,000 for 2012-2013 Organics Processing costs. The City will be able to adjust the Collection Franchise rates in future years to cover any increase in ZWED compensation.

The City shall arrange for sufficient landfill disposal capacity for the disposal of residue from the processing of organic streams. These disposal costs are included in the \$6,000,000 to be remitted to the City by the Franchisee.

CEQA

Mitigated Negative Declaration for Special Use Permit for a 270,000 ton per year dry fermentation anaerobic digestion facility to process the organic portion of solid waste (Planning File No. SP09-057)

/s/

JOHN STUFFLEBEAN
Director, Environmental Services

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