



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kerrie Romanow

SUBJECT: SEE BELOW

DATE: April 23, 2012

Approved

Date

5/3/12

SUBJECT: ACTIONS RELATED TO THE ISSUANCE OF COMMERCIAL SOLID WASTE AND RECYCLABLES COLLECTION FRANCHISE AGREEMENTS FOR THE NON-EXCLUSIVE COLLECTION AND TRANSPORT OF RESIDENTIAL CLEAN-OUT MATERIAL AND CONSTRUCTION AND DEMOLITION DEBRIS

RECOMMENDATION

Conduct a public hearing on the applications of the following companies for Commercial Solid Waste and Recyclables Collection Franchises for the non-exclusive collection and transport of Residential Clean-Out Material and Construction and Demolition Debris; approve the ordinances granting the franchises; and approve the Commercial Solid Waste and Recyclables Collection Franchise Agreements for the non-exclusive collection and transport of Residential Clean-Out Material and Construction and Demolition Debris for a term from July 1, 2012 to June 30, 2014 with the option of three one-year extensions.

- a. All Points Roll Off, Inc.
- b. Environmental Resource Recovery, Inc. dba Valley Recycling
- c. Ferma Corporation
- d. GreenWaste Recovery Inc.
- e. GreenWaste Recovery Inc. dba \$99.00 Debris Box Service
- f. Guadalupe Rubbish Disposal Company Inc. dba Guadalupe Recycling and Disposal Facility
- g. Haul-Away Today
- h. Lam Hauling dba 7 Days Box
- i. Mission Trail Waste Systems dba Recycle West
- j. Jonna Corporation dba Premier Recycle Company
- k. R & D Mendes Enterprises, Inc. dba Accurate Cleaning Systems
- l. Recology South Bay
- m. Republic Services, Inc.
- n. Revolution Resource Recovery
- o. San José Conservation Corps and Charter School dba San José Conservation Corps
- p. Universal Recycling Solutions, Inc.

q. Waste Connections, Inc. dba GreenTeam of San José

OUTCOME

Council approval of these franchises would authorize the collection and transport of residential clean-out material and construction and demolition (C&D) debris within the City of San José under the terms and conditions set forth in the franchise agreements and as established in the San José Municipal Code for a term beginning July 1, 2012 through June 30, 2014, with the option of three, one-year extensions.

BACKGROUND

Chapter 9.10 of the San José Municipal Code and the City Charter require that the City Council issue commercial solid waste and recyclables collections franchises after a public hearing and by adoption of an ordinance. Granting these franchises will be a continuation of the open market for the collection of these materials from businesses, institutions, and other non-residential properties since 1994. Currently, the City has 21 franchised haulers authorized to collect commercial solid waste and recyclables through June 30, 2012. However, due to the transition to a single hauler for the collection of solid waste and most recyclable materials for all San José businesses effective July 1, 2012, staff has drafted new franchise agreements to authorize haulers interested in collecting two material types exempted from the exclusive agreement granted to Republic Services (formerly called Allied Waste Services) on June 21, 2011.

Similar to the exclusive agreement with Republic Services, the recommended non-exclusive franchisees will receive compensation directly from their customers as the City will not provide compensation to franchisees. Unlike the exclusive agreement with Republic Services, the City will not be involved in regulating the customer service rates for residential clean-out material or C&D debris services. Each hauler will set their prices based on market demand. Franchisees will compete with each other to provide temporary collection services to residences and construction sites. Additionally, franchisees will be allowed to conduct business throughout the City and will not be limited to geographic service districts.

The proposed non-exclusive franchise agreements will only authorize and regulate the collection of two material types—residential clean-out material and C&D debris. These material types were excluded from the exclusive agreement to ensure haulers specializing in C&D debris collection that were not awarded the agreement could continue competing to provide services for that material type. The non-exclusive franchise agreements define C&D debris as:

1. Recyclable and non-recyclable waste building materials, packaging, and rubble resulting solely from construction, remodeling, and demolition operations on pavements, houses, commercial buildings, and other structures authorized by a permit issued under Chapter 24.02 of the San José Municipal Code, and collected pursuant to a temporary service agreement of no longer than one year; and/or
2. Rock, concrete, asphalt and dirt.

Residential clean-out material is defined as material resulting from clean-outs at residential premises and collected in a roll-off or front-load container rented for a period of one week or less. For example, a person clearing their backyard or emptying out their garage could contract with one of the aforementioned haulers for residential clean-out material collection services.

The franchise agreements for the non-exclusive collection and transport of residential clean-out material and C&D debris will enable the City to continue collecting valuable data. C&D debris comprises nearly a third of the City's waste stream, a waste stream the City may eventually consider targeting as it strives to achieve its goal to divert 100 % of waste from landfills. C&D debris is a material category that is capable of achieving high diversion. Franchisees will be required to submit reports on a monthly basis which will include information such as the amount (tons and volumes) of material collected and where the collected material was delivered to.

The City does not anticipate receiving significant revenue from the recommended franchise agreements. Historically, the City has not collected franchise fees and Source Reduction and Recycling Fees (AB 939 Fees) on recyclable material to encourage recycling by making landfilling more expensive. Since residential clean-out material and C&D debris are generally considered recyclable material, staff recommends continuing this practice by setting the franchise fee and AB 939 fees at zero. However, if a load is landfilled, or contains either type of material with contamination in excess of 20%, the collected material will be deemed to be commercial solid waste subject to the franchise fees and AB 939 fees for solid waste. Franchise and AB 939 fees would be assessed if staff determined the load was landfilled, or the contamination rate exceeded 20%. Franchise and AB 939 fees are currently set at \$3.67 per cubic yard of uncompacted solid waste and \$0.89 per cubic yard of uncompacted solid waste, respectively.

Liquidated damages have been incorporated into the new franchise agreements. For example, the agreements include parameters on how to maintain collection equipment and properly transport collected material to assist the City's compliance efforts for its National Pollutant Discharge Elimination System permits. Failure to clean up spills or pick up blown material may result in an assessment of liquidated damages. Furthermore, the City may assess liquidated damages on franchisees for delivering the material to a facility which is not permitted to accept such material.

ANALYSIS

All franchise applicants, except Universal Recycling Solutions, Inc. and Guadalupe Recycling and Disposal Facility (GRDF), currently have a Commercial Solid Waste and Recyclables Collection Franchise. GRDF previously had a franchise agreement. All applicants have submitted the required franchise application and, with the exception of Universal Recycling Solutions, Inc., currently have a valid San José business tax certificate. Universal Recycling Solutions, Inc. has submitted an application to obtain a San José business license and is expected to obtain its tax certificate prior to commencing any collection and transport. While most

material collected pursuant to these franchise agreements will be collected in bins or roll-off boxes, GRDF plans to also offer customers Bagster® collection service for C&D debris. Bagster is a registered trademark product and service of Waste Management. More information about each applicant may be found in an attachment to this report.

Staff has reviewed each application and recommends issuing a two-year Commercial Solid Waste and Recyclables Collection Franchises with the options for three one-year extensions for the non-exclusive collection and transport of residential clean-out material and C&D debris to each applicant. Council's approval would authorize the franchisees to collect residential clean-out material and C&D debris under the terms and conditions set for in the franchise agreements and as established in the San José Municipal Code.

EVALUATION AND FOLLOW-UP

No subsequent Council action on this issue is necessary. Staff will monitor the impact of this action and communicate any issues to Council.

PUBLIC OUTREACH/INTEREST

- 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)**

Although the criteria above do not apply to this recommendation, this memorandum will be posted on the City's website for the Council Agenda of May 15, 2012. On April 20, 2012, a public notice identifying each applicant was submitted to the City Clerk's Office in accordance with the San José Municipal Code section 9.10.1650.

COORDINATION

This memorandum was coordinated with the Office of the City Attorney, the City Manager's Budget Office, and the Department of Planning, Building & Code Enforcement.

COST SUMMARY/IMPLICATIONS

Each applicant has paid the application fee as required by the San José Municipal Code section 9.10.1670. Additionally, the staffing costs associated with the administration of the franchise agreements will be paid by AB 939 fees in the Integrated Waste Management Fund as described in the memorandum currently scheduled for Council's consideration on May 15, 2012.

CEQA

Exemption; File No. PP08-228.

/s/
KERRIE ROMANOW
Acting Director, Environmental Services

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

Attachment: Non-Exclusive Franchise Applicants

Attachment: Commercial Solid Waste and Recyclables Collection Franchise Applicants

Company Name	doing business as (dba)	Local Business Location	Organization Type	Years in Business	Number of Vehicles	Container Types		
						Roll-Off Boxes	Bins	Other
All Points Roll Off, Inc.		San José, CA	Corporation	20	3	Yes	No	No
Environmental Resources Recovery, Inc.	Valley Recycling	San José, CA	Corporation	33	3	Yes	No	No
Ferma Corporation		Mountain View, CA	Corporation	49	13	Yes	No	No
GreenWaste Recovery Inc.		San José, CA	Corporation	20	11	Yes	Yes	Carts/Cans, Compactor Boxes
GreenWaste Recovery Inc.	\$99.00 Debris Box Service	San José, CA	Corporation	20	11	Yes	Yes	No
Guadalupe Rubbish Disposal Company Inc.	Guadalupe Recycling Disposal Facility	San José, CA	Corporation	83	2	Yes	Yes	Bagster®
Haul Away Today		San José, CA	Individual	17	2	Yes	No	No
Lam Hauling	7 Days Box	San José, CA	Corporation	4	4	Yes	No	No
Mission Trail Waste Systems	Recycle West	Santa Clara, CA	Corporation	20+	1	Yes	No	No
Jonna Corporation	Premier Recycle Company	San José, CA	Corporation	20	14	Yes	No	No
R & D Mendes Enterprises, Inc.	Accurate Cleaning Systems	Hollister, CA	Corporation	17	1	Yes	No	No
Recology South Bay		Santa Clara, CA	Corporation	40+	3	Yes	No	No
Republic Services, Inc.		Milpitas, CA	Corporation	60	94	Yes	Yes	Carts/Cans, Compactor Boxes
Revolution Resource Recovery		San José, CA	Corporation	20	4	Yes	No	Front-loader
San José Conservation Corps and Charter School	San José Conservation Corps	San José, CA	Non-Profit	24	13	No	Yes	Carts/Cans, Front-loader
Universal Recycling Solutions, Inc.		San Ramon, CA	Corporation	2	1	Yes	No	No
Waste Connections, Inc.	Green Team of San José	San José, CA	Corporation	19	4	Yes	No	No