



DATE: March 3, 2010
TO: Honorable Mayor and City Councilmembers
FROM: Public Works Department
SUBJECT: **THREE-YEAR EXTENSION TO THE SOLID WASTE FRANCHISE AGREEMENT WITH WASTE MANAGEMENT OF NORTH COUNTY**

SYNOPSIS

Staff and the Integrated Waste Commission recommend that the City Council approve Amendment 5 to the Solid Waste Franchise Agreement with Waste Management of North County, extending the term of the agreement from July 1, 2012, to July 1, 2015, in exchange for enhancements including: 1) a \$1 million per year franchise fee payable to the City each year of the extension, to be adjusted annually for CPI increases, 2) amending the next benchmark process to set to the lowest rate in the County, effective July 1, 2013, and 3) upgrading the current crate recycling system to a toter/wheeled cart that accepts comingled/single stream recyclables; approve the transfer of all franchise fees to the General Fund to offset future budget cuts; approve the allocation of a small percentage of those funds to AB939 programs; and authorize the City manager to execute the agreement.

BACKGROUND

In October 2009, Waste Management of North County (WMNC) submitted an offer requesting that the City extend its current hauling agreement with WMNC in exchange for service enhancements and an increased franchise fee. After discussion and negotiation with staff a revised offer was submitted on January 15, 2010. The amended offer from WMNC is to extend their existing contract to 2015 in exchange for the following enhancements, with the primary points being:

1. A \$1,000,000 per year franchise fee payable to the City for each year of the remaining 2-year term of the current contract and for each year of the three-year extension.
2. The guaranteed \$1,000,000 annual franchise fee will be adjusted annually for CPI increases and will inherently increase this fee provided to the City as a result of this adjustment.
3. The next Benchmark Process will be amended to set Oceanside's rate for comparable services to the LOWEST rate in the county.
4. Upgrade the current crate recycling system to a toter/wheeled cart that accepts comingled/single stream recyclables at no cost to the City.
5. The contract will expire on July 1, 2015, with no possibility for extensions.

ANALYSIS

The amendment to the City's Solid Waste Contract:

1. The \$1,000,000 franchise fee will be paid to the City in monthly installments starting with the first full month after approval. Over the term of the contract, this amounts to over \$5.3 million to the City. Starting in July 2011, this payment will be adjusted per the annual CPI, inherently resulting in an increase to the fee as a result of the adjustment. While the City Council will ultimately decide where the franchise fee goes, staff's recommendation is that it go to offset Citywide budget cuts and/or reductions. Staff is also in support of the Integrated Waste Commission's recommendation to allocate a small percentage (approximately 5 per cent) to the City's Solid Waste fund to assist with AB939 programming and to subsidize dwindling state and grant resources.

With the amended contract, the Benchmark Process will be effective July 1, 2013, ensuring that Oceanside residents and businesses receive the lowest overall rates (current contract requires that Waste Management's level of compensation reflect the 3rd lowest) for **comparable services** in San Diego County until contract end. The benefit of continuing the benchmarking process is that it allows for a fair and accurate rate comparison by first identifying the base rate (phase 1) and then adjusting that base rate for other City services (phase 2). For Oceanside our Phase 2 service adjustments include unlimited bulky item collection, green waste and recycling containers, a Household Hazardous Waste Center, and other miscellaneous services. These unique services are then factored into our rate for comparison purposes.

2. An upgrade to a single 96-gallon toter for recycling per single-family residence to replace the current crate system is a service that the IWC and residents have been requesting for years. This new collection and recycling method will eliminate the existing 2-crate system as well as the need to separate recyclables, allowing residents to put all of their recyclables (i.e., paper, newspapers, plastics #1-7, metals, cans, aluminum, etc.) into one container. This method will simplify and encourage residential recycling, reduce scavenging, divert materials from landfills and help us meet state mandates. Waste Management agrees to provide each residential customer one recycling toter at no charge, by June 30, 2010.
3. A key issue for the community and the IWC has been the issue of "pay as you throw" or "payt". The City's current system charges residents the same amount regardless of the amount of trash generated. A "payt" program provides a direct economic incentive for residents to reduce the amount of trash they generate. Households are charged for waste collection based on the amount of thrash they throw away. As a result, residents are motivated not only to boost the amount that they recycle, but also to think about generating less waste in the first place.

Should the City Council accept the 3-year extension, staff recommends that the City and Waste Management develop a program to assess a "payt" option by January 2012.

4. The amended contract with Waste Management for collection services will expire on July 1, 2015, with no possibility of extension and eliminates the current automatic

extension and “evergreen” clause. As such, a new contract must be in place at least 6 months prior to allow a smooth transition of services. This extension will allow staff ample time to complete a new Solid Waste Franchise Agreement and have it in place when the extension expires in 2015. Staff is currently in the process of creating a proposal for a new hauling agreement by first hiring a consultant who will work alongside staff, the Integrated Waste Commission, and the community to draft an agreement that meets the immediate and long-term needs of the community. The proposal process is intended to be an open and competitive process that would allow all potential haulers the opportunity to participate in the process. Staff anticipates that this process may take to late 2012 or early 2013.

Another component in this process has the consultant analyzing the need and costs associated with siting, permitting and developing a solid waste and recycling/materials recovery facility. This issue has been a central focus of the Integrated Waste Commission and is becoming more of a regional issue as cities and counties work to analyze their existing and future disposal stream and hauling and disposal options. This study will recommend the best course of action for the City’s waste stream be it a local or a regional site. Adding to the importance of this study is the eventual closure of the materials reclamation site at El Corazon (Moody’s). This reclamation site currently accounts for much of Oceanside’s positive diversion numbers and accounts for \$169,000 in annual revenues. Potential alternatives need to be identified well in advance of a Moody’s closure as a new site, local or regional, may take up to five years to bring on-line.

The City’s existing agreement with Waste Management allows the City Council to terminate the agreement on July 1, 2010, to be effective July 1, 2012. Given the time needed to create and implement a new agreement, and the current schedule prepared by the IWC, the City will not be able to have a new one in place prior to July 2012.

FISCAL IMPACT

The three-year extension to the existing solid waste contract would provide ample time for the City to develop, solicit and negotiate a new contract through an open and competitive proposal process. The three-year extension would also provide an additional \$1 million per year franchise fee to the City that would not be limited to solid waste funding constraints. The franchise fee, similar to the franchise fees collected from other utilities, could be used to offset General Fund programs, including public safety.

Since the franchise fees would start with the approval of the extension and be valid for a total five-year period, the City could consider the additional \$1 million per year as an ongoing revenue source and use it for operating budget considerations.

The proposed \$1 million franchise fee and recycling enhancement that are a part of the proposed contract amendment are a clear benefit to the City and a better financial arrangement than the City currently derives for the existing contract. Until the City completes an open and competitive proposal process for a new solid waste contract, there is no way of determining if this is the “best” deal for the City.

CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

COMMITTEE OR COMMISSION REPORT

At its January 26, 2010, meeting, the Integrated Waste Commission (IWC) recommended that Council approve this amendment and allow the extension to July 1, 2015, in support of a recommendation to allocate the franchise fees to the General Fund to offset future budget shortfalls. The Commission also recommends that the City Council allocate a small percentage of the franchise fees to the Solid Waste Fund in order to support AB939 requirements such as education and outreach about recycling and waste reduction.

RECOMMENDATIONS

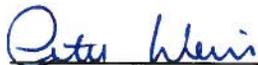
Staff and the Integrated Waste Commission recommend that the City Council approve Amendment 5 to the Solid Waste Franchise Agreement with Waste Management of North County, extending the term of the agreement from July 1, 2012, to July 1, 2015, in exchange for enhancements including: 1) a \$1 million per year franchise fee payable to the City each year of the extension, to be adjusted annually for CPI increases, 2) amending the next benchmark process to set to the lowest rate in the County, effective July 1, 2013, and 3) upgrading the current crate recycling system to a toter/wheeled cart that accepts comingled/single stream recyclables; approve the transfer of all franchise fees to the General Fund to offset future budget cuts; approve the allocation of a small percentage of those funds to AB939 programs; and authorize the City manager to execute the agreement.

PREPARED BY:



Joseph Arranaga
Deputy Director, Public Works

SUBMITTED BY:



Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Don Hadley, Deputy City Manager

Teri Ferro, Financial Services Director



AMENDMENT 5 TO FRANCHISE AGREEMENT

for

SOLID WASTE, RECYCLABLES AND GREEN WASTE SERVICES

This Fifth Amendment to Franchise Agreement for Solid Waste, Recyclables and Green Waste Services ("Amendment 5") is made and entered into on this ___ day of _____, 2010 by and between the City of Oceanside (hereinafter "City"), a municipal corporation of the state of California, and Waste Management of California, Inc., a California corporation (hereinafter "Contractor").

WITNESSETH:

The City and Contractor entered into a Franchise Agreement for Solid Waste, Recyclables and Green Waste Services with an Effective Date of July 1, 2000 ("Existing Agreement"). The City and Contractor have amended the Existing Agreement by amendments dated January 9, 2002 ("Amendment 1"), July 2, 2003 (Amendment 2"), May 18, 2005 ("Amendment 3") and February 24, 2010 ("Amendment 4").

The parties desire to provide for a change in service requirements, a fixed term, and other mutually agreeable revisions to the Existing Agreement.

In accordance with California Public Resources Code Section 40059(a)(2), the City has determined that the public health, safety, and welfare require that an exclusive franchise be awarded to a qualified solid waste enterprise for the collection, transportation, recycling, processing, and disposal of solid waste, and for other related services, to meet the goals and objectives of AB 939.

It is the intent of the parties hereto to provide for the exclusive right of collection of all solid waste from residential, industrial and commercial premises within the City, in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is acknowledged, the parties agree as follows:

1. Sections 3.1A, B, and C of the Existing Agreement shall be deleted in their entirety and replaced with the following:

"A. Base Term

The Franchise Services granted in this Agreement shall continue in force for a period of fifteen (15) years ("Base Term") from July 1, 2000 ("Effective Date") to June 30, 2015.

B. [Reserved]

C. [Reserved]"

2. The third sentence of Section 4.2.B of the Existing Agreement shall be deleted in its entirety and replaced with the following:

"Contractor shall provide, at no charge, appropriate Recycling receptacles to each new customer, and in addition, no later than June 30, 2010, shall provide each Single-Unit Residential Customer a 96-gallon Cart for collection of commingled Recyclables as a replacement for the current Recycling receptacles."

3. New Section 7.8 is to be added, as follows:

"7.8 FRANCHISE FEE

Contractor shall pay a franchise fee to City in the amount of \$83,333.00 per month, beginning with the first full calendar month following the Effective Date of Amendment 5 and ending on the expiration of the Term. Beginning on July 1, 2011 and each July 1 thereafter during the Term, the amount of the franchise fee payments will be adjusted by the CPI, in accordance with Section 8.2. Payment shall be made by the 15th day after the end of the calendar month for which payment is due. Payment shall be made to an account or fund specified by the City. The obligation to make payment of any amounts due and owing in accordance with the above shall survive the termination or expiration of this Agreement. The franchise fee payment shall be included in the adjustment to determine net contractor compensation under Section 8.3A3 for purposes of any future benchmarking adjustment performed in accordance with Section 8.3A."

4. Section 8.3A6 of the Existing Agreement shall be deleted in its entirety and replaced with the following:

"6. **Adjust Contractor Rates.** The City shall adjust the Contractor's then effective Service Fees, as provided in this Article 8, by the percentage necessary to match the hypothetical revenues for the lowest city for Residential Service and the third lowest city for Commercial Service, as determined in Step 5."

5. Section 8.3B of the Existing Agreement shall be deleted in its entirety and replaced with the following:

"B. Periodic Benchmark Adjustment of Residential and Commercial Service Fees

The then effective Residential and Commercial Service Fees as then contained in Exhibit E periodically shall be adjusted through the application of the Benchmarking process defined in Section 8.3A and in Exhibit G, in lieu of the annual CPI adjustment provided for in Section 8.2A. The Benchmarking process shall be conducted as follows:

1. During the Base Term, this process shall apply to Contract Year six (6), effective July 1, 2005 and Contract Year ten (10), effective July 1, 2009, and Contract Year fourteen (14), effective July 1, 2013.
2. The Benchmarking Process shall be conducted such that the comparison of rates between City and the cities, to the degree possible, reflects the Solid Waste Collection rates in place for each jurisdiction as of the April 1 immediately prior to the July 1 for which the adjusted Service Fees are to become effective.
3. Once adjusted, the new Service Fees replace those previously contained in Exhibit E."
6. Except as provided in this First Amendment, the terms and conditions of the Existing Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, this Agreement is effective as of the latest date set forth below.

CITY OF OCEANSIDE

By: _____

Title: _____

Date: _____

ATTEST:

Michelle Caldwell 2/24/10

APPROVED AS TO FORM:

Michelle Caldwell 2/24/10

APPROVED AS TO FORM
 OCEANSIDE CITY ATTORNEY
Barbara L. Hamilton
 BARBARA L. HAMILTON
 Assistant City Attorney



WASTE MANAGEMENT OF CALIFORNIA, INC.

By: *[Signature]*

Title: *Vice President*

Date: *2/24/10*