



## Agenda Report

19-1387

Agenda Date: 5/21/2019

### REPORT TO COUNCIL

#### **SUBJECT**

Public Hearing to Approve Non-Exclusive Franchise Agreements for Hauling of Industrial Refuse and Recyclables with 12 Applicants

#### **BACKGROUND**

The City currently has ten non-exclusive franchise (NEF) agreements with refuse haulers. These agreements authorize the ten NEF refuse haulers to charge for collection services at properties zoned for "Industrial" use. These NEF haulers set their own rates, perform billing services, and enter into separate agreements with industrial customers to provide specified services. All ten NEF agreements expire on June 30, 2019.

The NEF haulers pay the City quarterly franchise fees based on a percentage of gross billings. The current NEF agreement fee structure was tiered to incentivize the diversion of materials from landfills, whereby NEF haulers pay a smaller percentage of gross billings on customer accounts whose materials are recycled. The table below shows the NEF fee schedule in the current agreements.

<b>NEF Franchise Fee Schedule for July 1, 2016 - June 30, 2019</b>	
Disposal Categories	Franchise Fees
Landfilled refuse (including non-source separated mixed debris containers) not taken to a material recovery facility (MRF) with a recovery rate of at least 30%	18% of gross billings
Refuse taken to a an individual or series of MRF's, composting, or anaerobic digestion processes that recovers $\geq 30\%$ , but $< 60\%$ of incoming materials	12% of gross billings
Refuse taken to a an individual or series of MRF's, composting, or anaerobic digestion processes that recovers between 60% and 95% of incoming materials	8% of gross billings
Source separated recyclables and organics taken to a MRF for processing that recovers $\geq 95\%$ of incoming materials	3% of gross billings

#### **Regulatory Compliance**

In September 2016, Governor Brown signed Senate Bill 1383 (SB 1383) establishing methane emissions reduction targets in a statewide effort to reduce emissions of short-lived climate pollutants (SLCP) in various sectors of California's economy. SB 1383 establishes specific targets to achieve a

fifty percent reduction in disposal of organic waste from the 2014 level by 2020, and a seventy-five percent reduction by 2025. The regulations will require jurisdictions to implement organic waste collection services by January 1, 2022 and give the California Department of Resources Recycling and Recovery the authority to levy penalties up to \$10,000 per day for non-compliance.

Under the City's current NEF agreements, customers of NEF haulers receiving four cubic yards of garbage service per week are required to subscribe for commercial recycling service in order to comply with requirements set forth in Assembly Bill 341 and Section 8.25.275 of the Santa Clara City Code (SCCC). They are also required to subscribe for organics recycling service to comply with the requirements set forth in Assembly Bill 1826 and Section 8.25.276 of the SCCC.

### Audit Results

The City entered a contract with R3 Consulting Group, Inc. to audit the NEF haulers' quarterly franchise fee payments and to confirm compliance with the mandatory commercial and organics recycling requirements set forth in the NEF agreements. R3's audit determined that no active NEF haulers accurately paid franchise fees to the City during the first fiscal year of the current NEF agreement terms due to a variety of factors, including: miscalculation of gross billings, incorrect facility diversion rates, and using incorrect forms. The audit found that collectively, NEF haulers had underpaid franchise fees by almost \$103,000 in FY 2016/17 and \$160,000 in FY 2017/18. The underpaid NEF franchise fees were paid back to the City following the completion of the audit.

The audit identified that the tiered franchise fee schedule was not adequately incentivizing commercial and organics recycling services. Only 4 percent of customers of NEF haulers with at least four cubic yards of garbage service per week were subscribing to both commercial and organics recycling services. It was still less expensive to dispose of materials in the landfill than to have a separate container for recyclables, despite the lower franchise fee percentages for billings on accounts that were taken to a MRF. Staff does not believe that the City can achieve and maintain compliance with the applicable mandatory commercial and organics recycling regulations under the current tiered NEF franchise fee schedule.

### DISCUSSION

Based on R3's audit findings, staff revised the structure of the NEF agreement template to ensure compliance with mandatory commercial and organics recycling, and to minimize the likelihood of NEF haulers underpaying the City for franchise fees.

In an effort to ensure commercial and organics recycling, staff will provide NEF haulers with two options for compliance: 1) NEF haulers providing weekly garbage service must offer bundled services, which also includes recycling for all customers and organics collection for all customers generating four (4) or more cubic yards of solid waste per week; or 2) NEF haulers must deliver loads of garbage to a MRF for mixed waste processing to recover commercial recyclables and organics. The City will be in a better position to achieve and maintain compliance with mandatory commercial and organics recycling requirements if the NEF haulers implement the services as required. R3 is under contract to perform subsequent audits to ensure that NEF haulers provide commercial and organics recycling services to their respective customers and to verify that NEF haulers pay the correct franchise fees to the City.

To minimize the likelihood that NEF haulers underpay the City, the updated NEF agreements require

a 12 percent flat franchise fee of gross billings for all materials collected. The flat fee will be applied to garbage, mixed waste, construction & demolition debris, commercial recyclables, as well as the collection, disposal and recycling of organic materials. This will not only streamline franchise fee payments, but will simplify the audit process. R3 analyzed the current material volumes and service rates to develop the updated flat 12 percent rate, which R3 projects will result in a similar level of revenue as the current tiered system.

Staff conducted pre-application meetings with NEF haulers on January 22 and January 31, 2019 to discuss the changes to the next iteration of the NEF agreements. On February 12, 2019 the City solicited applications for new NEF agreements to haul industrial refuse and recyclables in accordance with Section 8.25.190 of the SCCC. 12 companies submitted complete applications to be considered for the term of July 1, 2019 through December 31, 2021. The applicants include:

1. Eco Box Recycling
2. Ferma Greenbox, Inc.
3. GreenTeam of San Jose
4. GW Debris Services, LLC
5. Jonna Corporation, Inc., dba Premier Recycle Company
6. Lam Hauling, Inc., dba 7 Days Box
7. Mission Trail Waste Systems, Inc.
8. RD Mendes Enterprises, Inc., dba Accurate Cleaning Systems
9. Recology South Bay
10. Republic Services Inc.
11. Toca Debris Box
12. Waste Management, dba Guadalupe Rubbish Disposal Company, Inc.

The SCCC Chapter 8.25 specifies the process for granting refuse contracts. Section 8.25.220 states that the Council may notice and provide a public hearing to review an application for a refuse contract. Section 8.25.050 permits the Council to grant a refuse contract following the consideration of an application at a public hearing. At the close of the public hearing, the Council can approve the resolution and authorize the City Manager to execute agreements (see attachments) with the 12 applicants.

### **ENVIRONMENTAL REVIEW**

The action being considered does not constitute a “project” within the meaning of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15378(a) as it has not potential for resulting in either a direct physical change in the environment, or as a reasonably foreseeable indirect physical change in the environment.

### **FISCAL IMPACT**

The non-exclusive franchise hauler system enables industrial customers to obtain competitive pricing and a level of service that best meets their needs. The NEF haulers will pay the City an estimated in \$1,800,000 in franchise fees in FY 2019/20. Applying the new flat 12 percent franchise fee will maintain a similar level of revenue projections as the current tiered system.

### **COORDINATION**

This report has been coordinated with the City Attorney's Office and Finance Department.

**PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov) <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

**ALTERNATIVES**

1. Adopt a Resolution to Grant Non-Exclusive Franchise Agreements for Hauling of Industrial Refuse and Recyclables;
2. Do not adopt a Resolution to Grant Non-Exclusive Franchise Agreements for Hauling of Industrial Refuse and Recyclables;
3. Approve and authorize the City Manager to execute Non-Exclusive Franchise Agreements for Hauling of Industrial Refuse and Recyclables with 12 applicants;
4. Approve and authorize the City Manager to execute Non-Exclusive Franchise Agreements for Hauling of Industrial Refuse and Recyclables with some of the applicants, but not all; and
5. Approve none of the Non-Exclusive Franchise Agreements for Hauling of Industrial Refuse and Recyclables and direct staff to follow up with existing NEF haulers to explore extending the current expiration dates, and keep the tiered NEF franchise fee schedule intact.

**RECOMMENDATION**

1. Adopt a Resolution to Grant Non-Exclusive Franchise Agreements for Hauling of Industrial Refuse and Recyclables; and
3. Approve and authorize the City Manager to execute Non-Exclusive Franchise Agreements for Hauling of Industrial Refuse and Recyclables with 12 applicants.

Reviewed by: Craig Mobeck, Director of Public Works

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Resolution
2. Agreement with Guadalupe Rubbish Disposal Co, Inc. dba Guadalupe Recycling and Disposal
3. Agreement with Eco Box Recycling, Inc.
4. Agreement with Ferma Greenbox, Inc.
5. Agreement with Waste Connections of California Inc. dba GreenTeam of San Jose
6. Agreement with GW Debris Services
7. Agreement with Jonna Corporation, Inc. dba Premier Recycle Company
8. Agreement with Lam Hauling Inc. dba 7 Days Box
9. Agreement with Mission Trail Waste Systems, Inc.
10. Agreement with Recology South Bay
11. Agreement with Allied Waste Services of North America LLC, dba Republic Services of Santa Clara County
12. Agreement with Toca Debris Box
13. Agreement with Guadalupe Rubbish Disposal Co, Inc. dba Guadalupe Recycling and Disposal