



AGENCY: City Council
MEETING DATE: February 8, 2021
DEPARTMENT: City Manager
PRESENTED BY: Tabatha Miller
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AGENDA ITEM SUMMARY

TITLE:

Receive Report and Consider Adoption of City Council Resolution Approving Amendment 7 Extending the Term of the Franchise Agreement with Waste Management and Authorizing City Manager to Execute Same

ISSUE:

The City of Fort Bragg's Franchise Agreement with USA Waste of California, Inc., dba Empire Waste Management (WM) expires on June 30, 2021. City and County staff jointly met with WM for initial discussions on negotiating new agreements on September 23, 2020, both jurisdictions thought that working together would be beneficial. Both the City and County wanted a short term (12 to 18 months) extension of the current Franchise Agreement so that the longer term goal of building a coastal transfer station could be incorporated into a Request for Proposals (RFP) for solid waste collections by both jurisdictions. At that time, WM indicated that they would not enter into a short-term extension of the Franchise Agreements and the minimum term they would consider was five years. One of the challenges since September has been engaging WM staff in discussions regarding terms of a new Agreement.

Part of the challenge is that it has been in WM's best interest to delay negotiations as long as possible in order to prevent another provider from having sufficient time to establish a local facility, purchase the trucks and other equipment necessary to establish an operation on the coast, and hire staff. Six months is considered the time typically needed to make such a transition. On January 31st, five months remained before the WM Agreement expires.

As the Council knows, the County Board of Supervisors made the decision to bid their franchise on December 8, 2020. The County's Request for Proposals was issued on January 26, 2021. The submission deadline is March 12, 2021 and presentation of solid waste vendors to the Board of Supervisors is projected to be March 23, 2021, with award of the new Agreement on April 20, 2021.

No action was considered at the special meeting scheduled on January 27, 2021, for the City Council to consider transitioning the solid waste franchise to C&S Waste Solutions, Inc. (C&S) as of July 1, 2021. However, the City Council heard from members of the public on the agenda item. A representative from WM, Brad Cea, offered the City Council a one-year franchise agreement extension without any rate increases during that time period. WM provided the City with a signed Amendment No. 7 (Attachment 2), which extends the City's current Franchise Agreement with WM until June 30, 2022 and waives a June 1, 2021 cost of living adjustment. Please note that the proposed Amendment does not waive the pass-through rate adjustments that are typically applied as of January 1, 2022 for changes in disposal costs.

AGENDA ITEM NO. 8B

ANALYSIS:

Franchise Agreements

The current Solid Waste Franchise Agreement, was executed on January 8, 2007 and originally contained a termination date of June 30, 2014. In August of 2011, the Agreement was extended to June 30, 2021.

[California Public Resources Code Section 40059](#) provides the City with the authority to determine all aspects of solid waste handling as it is of local concern, including the frequency of and means of collection, transportation, level of services, charges and fees and extent of providing such services. Section 40059 also allows cities to determine how services are procured, it allows cities to obtain services by using partially exclusive or wholly exclusive franchises, contracts, licenses or permits with or without competitive bidding. This code section also provides the City with the authority to establish its own terms for procuring solid waste services by resolution or ordinance.

[Fort Bragg Municipal Code Chapter 6.08 – Refuse and Recyclable Collections, Section 6.08.020](#) provides that no one can engage in refuse and recycling collection in the City except under contract with the City. That contract can be exclusive or nonexclusive and the City may regulate all aspects of collection. The chapter also provides regulation on how solid waste is prepared, contained, stored and collected within City limits.

WM Extension

Extending the current Solid Waste Franchise Agreement with WM will provide the City sufficient time to issue a Request for Proposal then evaluate potential solid waste providers, award a Franchise Agreement and, if applicable, transition services to a new provider. An additional consideration is whether to include an option for potential providers to propose solutions to the larger regional issue of upgrading and transferring operations of a transfer station to a central coastal location.

The additional 12 months will also provide an opportunity for the City to monitor the [Mendocino County’s RFP for residential and commercial garbage, recyclable material and organic waste collection for Franchise Area No. 2](#). Franchise Area 2 includes the Coastal Rate Zone, which is the unincorporated area from south of Westport to just south of Albion, excluding the City of Fort Bragg and inland approximately 15 miles; and the Inland Rate Zone which includes unincorporated areas in the Ukiah Valley from Potter Valley to the south Mendocino county line (see Attachment 3). The Area 2 Franchise with WM also expires on June 30, 2021. Approximate customer accounts currently served by WM in Mendocino County are provided in the table below:

Customer Type	Mendocino County Coastal Zone	Mendocino County Inland Zone	City of Fort Bragg	Total
Residential	3,760	4,444	1,845	10,049
Commercial	138	761	394	1,293

C&S, Solid Waste of Willits, Inc. and WM have all indicated that they are interested in providing solid waste services to the City of Fort Bragg and Mendocino Franchise Area 2. There may also be other providers, who are unknown to the City at this time, but potentially would submit a response to a City RFP.

An issue that has already raised concern and interest in the greater coastal community is the location of a solid waste transfer station operated by a provider other than WM. WM operates a direct-haul transfer facility and California Redemption Value (CRV) Center at 219 Pudding Creek Road within Fort Bragg City limits. This facility currently serves both City and County Coastal customers. Extending the City's Franchise with WM provides additional time for the City to work through alternative siting locations of a direct-haul transfer facility.

If the Council provides direction tonight or at a future meeting for the City to follow the path of issuing an RFP for solid waste services, an ideal time table would allow the City to take into account the outcome of the County's Franchise Area 2 RFP process, including any changes in current service providers. Issuing an RFP in May would allow the City Council to possibly award a new franchise agreement in July or August 2021 that would be effective July 1, 2022. This provides more than the 6-month time frame typically considered the minimum amount of time to transition providers.

Environmental Analysis

Approving the 12-month extension of the WM Franchise Agreement meets the definition of a "Project" under the California Environmental Quality Act (CEQA) as it is reasonably foreseeable that the action could result in an indirect physical change in the environment and is an activity supported in whole or in part by a public agency contract. However, it can be seen with certainty that the extending the current terms of the solid waste franchise for another 12 months would not have a significant impact on the environment and is therefore exempt from CEQA pursuant to the "common sense" exemption [14 CCR 15061(b)(3)].

The project involves approving a contract with WM that would extend an exclusive solid waste franchise for service within the City limits for an additional 12 months under the same terms that are currently in place. Solid waste would continue to be collected from existing source locations throughout the City and in the same manner. There are no new services offered or proposed changes to operations under the extension.

CEQA defines "Significant effect on the environment" as a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora fauna, ambient noise, and objects of history or aesthetic significance. It can be seen with certainty that there is no possibility that the activities in question would result in any significant environmental impacts, therefore executing Amendment No. 7 to the Franchise Agreement between the City of Fort Bragg and USA Waste of California, Inc., DBA Empire Waste Management is exempt from CEQA under the "sense" exemption Section 15061(b)(3).

RECOMMENDED ACTION:

Staff recommends that the City Council adopt the Resolution to approve Amendment No. 7 to the Franchise Agreement with USA Waste of California, Inc., DBA Empire Waste

Management and authorizing the City Manager to sign. Further, staff recommends that the City Council provide direction to staff to draft a Request for Proposal (RFP) for Solid Waste Collection within the City of Fort Bragg, for future City Council consideration.

ALTERNATIVE ACTION(S):

1. Do not approve the resolution and direct staff to continue negotiations with C&S Group Holdings, Inc. for an Assumption and Amendment of Franchise Agreement of the Fort Bragg Solid Waste Franchise Agreement.
2. Do not approve the resolution and direct staff to continue negotiations with USA Waste of California Inc. for a longer term extension of the Franchise Agreement.
3. Do not approve the resolution and direct staff to seek negotiations with Solid Waste of Willits, Inc. for an Assumption and Amendment of Franchise Agreement of the Fort Bragg Solid Waste Franchise Agreement.
4. Provide alternative direction.

FISCAL IMPACT:

There is no fiscal impact to the City or solid waste customers, the contract terms are identical to the current agreement, except that the cost of living adjustment effective June 1, 2021 would be waived by WM.

GREENHOUSE GAS EMISSIONS IMPACT:

As there are no new services to be provided or change in operations under the extension of the current Franchise Agreement, thus no additional GHG should be generated.

CONSISTENCY:

Securing a contract with a provider is consistent with Chapter 6.08: Refuse and Recyclable Collection – of the Fort Bragg Municipal Code.

IMPLEMENTATION/TIMEFRAMES:

If approved, Amendment #7 would be effective upon signature by both the City of Fort Bragg and USA Waste of California.

ATTACHMENTS:

1. Resolution
2. Amendment No. 7 to Franchise Agreement
3. Mendocino County – Franchise Area 2 Map

NOTIFICATION:

1. Kayla Rodriguez, Public Sector Manager, Waste Management
2. Steve Shamblin, District Manager 1, Empire Waste Management
3. Notify Me, Solid Waste Franchise