



# ***Agenda Report***

## ***Fullerton City Council***

**MEETING DATE:** NOVEMBER 20, 2018

**TO:** CITY COUNCIL / SUCCESSOR AGENCY

**SUBMITTED BY:** KENNETH A. DOMER, CITY MANAGER

**PREPARED BY:** RAMONA CASTAÑEDA, REVENUE MANAGER

**SUBJECT:** PROPOSED REVISED SECOND AMENDMENT TO AGREEMENT FOR SOLID WASTE HANDLING SERVICES BETWEEN THE CITY OF FULLERTON AND M-G DISPOSAL SERVICES FOR ORGANIC WASTE RECYCLING MANDATES

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### **SUMMARY**

Consideration of a revised Second Amendment to the Agreement for Solid Waste Handling Services between the City of Fullerton and M-G Disposal to implement State mandated Organic Recycling and corresponding fee increase for commercial service.

### **RECOMMENDATION**

Recommendation by the Administrative Services Department:

1. Adopt Resolution No. 2018-XX.

RESOLUTION NO. 2018-XX - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FULLERTON, CALIFORNIA, APPROVING THE SECOND AMENDMENT TO THE FRANCHISE AGREEMENT FOR SOLID WASTE HANDLING SERVICES WITH M.G. DISPOSAL SERVICE, LLC

2. Authorize the City Manager to solicit bids and execute an agreement for a third-party auditing firm to perform a discretionary audit per Section 28 of the Agreement for Solid Waste Handling Services, to include additional services to determine if M-G Disposal has assigned, sub-contracted, or otherwise transferred its obligations per Section 16.
3. Direct Staff to schedule and take necessary action, per Section 17 of the current agreement, to hold a hearing to review contractor's solid waste collection efforts, source reduction, processing and other diversion services and overall performance.

## PRIORITY POLICY STATEMENT

This item matches the following Priority Policy Statements:

- City Assets and Infrastructure.

## FISCAL IMPACT

Expenditures for hiring an auditing firm will be paid out of the Sanitation Fund and full costs will be included when the item is brought back to City Council for award of contract. Commercial rates to implement State-mandated organics waste recycling will increase by 3.21% as of January 1, 2019.

## DISCUSSION

An earlier version of the proposed Second Amendment was presented to the City Council on August 7, 2018 for discussion purposes and to provide staff direction. Subsequently, the Second Amendment was presented for the City Council's consideration on August 21, 2018 and based on discussion that occurred, the item was agendaized for closed session on September 18, 2018 to review potential legal issues. Based on direction received, and after continued discussions with MG Disposal staff, the Second Amendment was brought back for consideration by the City Council on October 16, 2018 and included four major deal points to include:

- A. Approval of an Assumption and Assignment Agreement between MG Disposal and Republic Services, Inc., and payment of a transfer fee of \$200,000 and reimbursement payment of \$50,000 per Section 16.4(A) of the Agreement.
- B. Implementation of Assembly Bill 1826 Organic Waste recycling mandates. The implementation of the State-mandated organic recycling program will increase commercial rates, in two phases, with a 1.6% adjustment on November 1, 2018 and a second 1.61% adjustment on January 1, 2019 for this new program.
- C. Changes to Waste Handling Services and/or Rates. These changes update and clarify waste handling services and rates that are currently charged, but not within the agreement.
- D. Discretionary Adjustment to Maximum Rate due to Changes in World Market Recycling. This is a 2.5% increase due to the changing recycling market which is requiring additional expenses to meet stricter recycling requirements and to maintain diversions standards in compliance with State law, effective March 1, 2019.

After discussion by the City Council, a motion to adopt "A" and "B" of the deal points as part of the amendment was approved 4-1 (Whitaker) with the caveat that M-G Disposal had to sign the agreement as of October 31, 2018 or the approval was void. M-G Disposal chose to not sign the agreement and the City Council approval was thus voided. At this time, in order to implement the State mandated organic waste recycling program, Staff is recommending approval of the Second Amendment with only the organic waste recycling program.

## Background

On March 1, 2009, the Agreement between City of Fullerton (City) and M-G Disposal Services, LLC (MG Disposal) for solid waste handling services became effective (Agreement). Subsequently, on February 5, 2013 the First Amendment to Agreement for Solid Waste Handling Services between City of Fullerton and M-G Disposal Services, LLC became effective. The Agreement will expire on June 30, 2027.

As a result of new State organic recycling mandates which are currently in effect, this second amendment is required to address the collection and recycling of organic waste. The following is a summary of the proposed amendment.

#### Organic Waste Collection Amendment

In 2014 Governor Brown signed AB 1826 into law, which requires businesses to recycle organic waste (food waste, landscape and pruning waste and nonhazardous wood waste). The law phased in mandatory recycling requirements of commercial organic waste beginning with the largest generators of organic waste from eight cubic yards or more per week to those generating four cubic yards of commercial solid waste or more per week. The mandatory recycling phasing is as follows:

- **Tier I customers** - those generating eight cubic yards of **organic** waste per week were required to recycle beginning April 1, 2016
- **Tier II customers** - those generating four cubic yards of **organic** waste per week were required to recycle beginning January 1, 2017.
- **Tier III customers** - those generating four cubic yards or more of **solid waste** (all garbage) per week are required to recycle beginning January 1, 2019.
- **Tier IV customers** – those generating two cubic yards of **solid waste** if organics disposal has not been reduced by 50% since 2014.

The City of Fullerton, together with MG Disposal, have been working to develop solutions for an organic waste recycling service that specifically collects and recycles organic waste. If approved, the service will begin in January, 2019.

The new service will be a subscription based food scrap recycling program designed to help commercial generators comply with the new law. Participation in the program requires the cleanest, purest organic materials. Source separated bins and carts will be available in 1.5 cubic yard bins or 64-gallon cart with a collection schedule of one to three times per week. If the State requires Tier IV service, then MG Disposal will offer 35-gallon carts for customers with low generation of organic waste. The organic waste will initially be processed at Waste Management's CORE facility in Orange.

In order to ensure securing a fair rate for the new service, the city hired HF&H Consultants, LLC (HF&H) to assist in negotiations with MG Disposal. HF&H is an industry leader established in 1989 specializing in solutions for local governments in two practice areas – recycling and solid waste services and water services. The firm has assisted the City on several occasions in the past and is very familiar with the City's solid waste agreement. HF&H completed a franchise fee and AB 939 fee audits in 2011 and 2013 that were very beneficial when negotiating the first amendment to the Agreement in 2013.

In late 2016 MG Disposal / Republic Services submitted proposals for the new organic waste collection service to the cities of Fullerton, Garden Grove, Placentia and Yorba Linda to comply with AB 1826. All four cities retained HF&H under separate contracts to assist with the negotiations and evaluate the proposal for accuracy and reasonableness. HF&H coordinated several city group meetings as well as individual ones resulting in a significantly lower rate than the one originally proposed. In Fullerton, the proposed rates for the commercial organic waste collection service is a 3.21% increase to the commercial rates. The increase will be effective as of January 1, 2019 for this new program.

Also, included in the proposed fee is a rate adjustment rebalancing mechanism to be applied July 1, 2022 or earlier depending on organic waste tonnage thresholds being achieved earlier. Since the negotiated organic waste collection rate increase was based on MG Disposal's estimated cost for providing a commercial organics recycling program, the City requested a rate adjustment rebalancing mechanism to evaluate the true costs of the organics recycling program and ensure that the organic waste collection rate is accurate and fair for eligible businesses and multi-family units. Effective July 1, 2022 (or earlier if tonnage thresholds are met), the organic waste collection rate increase will be adjusted based on the Rate Adjustment Rebalancing Formula to reflect the actual level of participation in the program. The initial 3.21% sector-wide increase will be updated based on the following factors: organics tonnage collected; collection hours; number of containers and public outreach hours.

#### Additional Direction to Staff

Staff is requesting additional direction from the City Council so that previous deal terms can be better understood and brought back to Council with additional information in which to consider and provide direction.

Section 16 of the agreement prohibits assignment, subletting, and transfer of the obligations of the contractor without prior approval of the City Council. It is proposed that a third party external auditing firm be contracted to audit M-G Disposal to determine if M-G Disposal has assigned without City Council consent, per Section 16 (and broadly interpreted by Section 16.2) to Republic Services, its obligations.

This current revised second amendment is not proposing any changes to waste handling services and/or rates, except those directly related to the organic waste recycling program. With regard to the current market changes in recycling and the 2.5% proposed increase, per Section 17 of the current agreement (titled, Review of Services and Performance), it is proposed that the City hold a hearing to review M-G Disposal's Solid Waste Collection efforts, source reduction, processing and other diversion services and overall performance. Per the agreement, the purpose of the Solid Waste Services and Performance Review Hearing is to: "Provide for a discussion and review of technological, economic, and regulatory changes in Collection, source reduction, recycling, processing and disposal to achieve a continuing, advanced Solid Waste Collection, source reduction and recycling and disposal system; and to ensure services are being provided by Contractor with adequate quality, effectiveness and economy and in full compliance with the terms of this Agreement." This review is proposed to be held in March or April of 2019.

Summary

In summary, the current Agreement will expire on June 30, 2027. The proposed Second Amendment is not proposing an extension to the term. It is proposing the new mandated organic waste recycling service only at this time.

Attachments:

- Attachment 1 – Power Point
- Attachment 2 - Draft Resolution
- Attachment 3 – Second Amendment to Agreement