



CITY OF COSTA MESA

Agenda Report

77 Fair Drive
Costa Mesa, CA 92626

File #: 24-296

Meeting Date: 9/3/2024

TITLE:

AMENDMENT NO. 1 TO NON-EXCLUSIVE FRANCHISE AGREEMENT(S) FOR DISCARDED MATERIALS MANAGEMENT FOR MULTI-FAMILY AND COMMERCIAL GENERATORS AND FOR PROVIDING TEMPORARY SOLID WASTE HANDLING SERVICES

DEPARTMENT: PUBLIC WORKS DEPARTMENT/GENERAL SERVICES
DIVISION

PRESENTED BY: RAJA SETHURAMAN, PUBLIC WORKS DIRECTOR

CONTACT INFORMATION: PATRICK BAUER, DEPUTY PUBLIC WORKS DIRECTOR, (714) 754-5029

RECOMMENDATION:

Staff recommends the City Council:

1. Approve the language of Amendment No. 1 to the Non-Exclusive Franchise Agreements for Discarded Materials Management for Multi-Family and Commercial Generators and for providing Temporary Solid Waste Handling Services allowing customers increased flexibility to opt out of hauler service agreements.
2. Authorize the Public Works Director to execute Amendment No. 1 to the Non-Exclusive Franchise Agreements with each of the seven waste haulers, in substantial form as set forth in Attachment No. 2.

BACKGROUND:

On October 5, 2021, the City Council approved the non-exclusive Solid Waste Hauler Franchise Agreement to ensure compliance with new State mandates such as Senate Bill 1383 (Attachment 1).

The City elected to retain a non-exclusive hauling franchise to continue offering competition for services to multi-family residents and businesses receiving commercial solid waste service (Residential service, including smaller multi-family residences, is provided under a separate Costa Mesa Sanitary District exclusive franchise). While there have historically been relatively few issues regarding hauler-contract enforcement issues, staff have recently encountered multiple complaints regarding hauler contracts and their use to circumvent competitive pricing for new and mandatory programs under Senate Bill 1383.

Senate Bill 1383 (SB 1383) Lara, Chapter 395, Statutes of 2016 is a state-wide effort to reduce emissions of short-lived climate pollutants (SLCP). SB 1383 directed local governments to incorporate its significant regulations and requirements into their code of ordinances prior to January

2022. Among these adopted regulations is the City's requirement to enforce mandatory recycling and organic waste recycling programs to all generators, and to enforce mandatory programs through penalties for non-compliance. Failure to enforce SB 1383 in this manner opens the City to State enforcement action and penalties of up to \$10,000 per day.

ANALYSIS:

FRANCHISE AGREEMENTS

Currently, seven (7) haulers offer solid waste program services to commercial accounts and multifamily dwellings consisting of 5 units or more under the City's Non-Exclusive Franchise Hauler system. The City does not play a role in negotiations and allows these seven haulers to negotiate service rates and agreement terms directly with account holders. The Franchise Agreement requires haulers to provide the following services regardless of rates or contract terms:

- Collection and processing of materials through SB 1383 compliant programs.
- Contamination monitoring of routes annually.
- Annual education and outreach to all customers covering all SB 1383 programs.
- Extensive record keeping and reporting to assist City compliance requirements.

In May of 2023, staff conducted a meeting with Costa Mesa Franchise Waste Haulers (CR&R Inc., Haul Away Rubbish, Ware Disposal, Roberts Waste & Recycling, Universal Waste Systems, Waste Management, and Rainbow Disposal Co., Inc.) to discuss a variety of hauler contracting terms that had recently resulted in complaints to the City. Many of these complaints involved the high pricing of mandatory services required by SB 1383 and the hauler's unwillingness to allow these customers to seek competitive pricing for new programs from other franchise haulers. In most instances, agreement terms featured automatic renewals for multiple-year periods, with limited time windows to initiate a cancellation process. Agreement terms also conferred rights to provide new programs required by law. Customers wishing to end their contracts are often faced with contract provisions that require payment for the remaining term of their agreements, plus liquidated damage provisions.

In order to address these issues, the City is proposing an Amendment to our non-exclusive franchise agreement that adds the following provisions:

1. All non-exclusive franchised hauler contracts shall be required to allow contract cancellations no later than six (6) months after a customer provides a hauler notice of their intent to cancel. Cancellation "windows of time," or any other contract provision which impinges upon a customer's ability to reasonably terminate their relationship with a hauler beyond six (6) months after stating their intention to terminate, is not allowed. Haulers may require customers to complete a simple cancellation form to officially terminate their relationship with them, provided they are not unreasonably difficult to fill out, that access to the form is provided immediately upon request, and that the form allows the initial contact date to be the start of the six (6) month cancellation period.

2. Customers that have been with the same hauler for 24 consecutive months or longer shall be allowed to cancel with three (3) months' notice.
3. Liquidated damage provisions are not allowed in any contract used for customers within the City's franchise. Customers who fail to honor the full three or six-month cancellation period can only be charged for the remaining months of service within their established cancellation period. Partial months remaining shall be pro-rated by dividing the monthly charge by the remaining days of service.

All haulers were amenable to the general framework of this Amendment, though some would prefer a longer contract term be guaranteed. All franchise haulers have also demonstrated a strong willingness to work with the City, provided a level playing field is maintained.

The City Attorney's Office was involved throughout this process to ensure the new agreement meets the State's requirements and effectively formalizes hauler responsibilities. This Amendment will allow for reasonable movement of hauler customers to other waste haulers when pricing and service issues prompt such action. Therefore, staff requests City Council approval of the amendment to the Franchise Hauler Agreement.

ALTERNATIVES:

The City Council may decline to authorize the proposed Amendment. However, without the proposed Amendment, residents and business owners will be forced to adhere to existing terms of the agreements, with few options to conveniently exit their agreements.

FISCAL REVIEW:

There is no fiscal impact to the City for the approval of the recommended action.

LEGAL REVIEW:

The City Attorney's Office has reviewed this agenda report, the proposed Amendment (Attachment 2) and approves them both as to form.

CITY COUNCIL GOALS AND PRIORITIES:

This item works toward achieving the following City Council Goal:

- Maintain and Enhance the City's Infrastructure, Facilities, Equipment, and Technology

CONCLUSION:

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