



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Kerrie Romanow

**SUBJECT:** SEE BELOW

**DATE:** November 22, 2021

Approved

Date

12/2/2021

**SUBJECT: ACTIONS RELATED TO THE ISSUANCE OF A NON-EXCLUSIVE FRANCHISE AGREEMENT FOR THE COLLECTION, TRANSPORT, AND DELIVERY OF RESIDENTIAL CLEAN-OUT MATERIAL AND CONSTRUCTION AND DEMOLITION DEBRIS**

## RECOMMENDATION

- (a) Conduct a public hearing on the application of Hanson & Fitch, Inc. dba Hayward Transfer Station for a Non-Exclusive Franchise associated with non-exclusive collection, transport, and delivery of residential clean-out material and construction and demolition debris.
- (b) Approve an ordinance granting a franchise to this company.
- (c) Approve the Non-Exclusive Franchise Agreement with Hanson & Fitch, Inc. dba Hayward Transfer Station for the collection, transport, and delivery of residential clean-out material and construction and demolition debris, effective on the date of the ordinance granting the franchise, through June 30, 2022, with an option for the City to extend the agreement for an additional one-year term through, June 30, 2023.

## OUTCOME

Approval of the recommendation would result in the granting of a non-exclusive franchise to Hanson & Fitch, Inc. dba Hayward Transfer Station and authorize their collection and transport of residential clean-out material and construction and demolition (C&D) debris within the City under the terms and conditions set forth in the franchise agreement and as established in the San José Municipal Code. The agreement would begin with the effective date of the ordinance granting the franchise, through June 30, 2022.

## **BACKGROUND**

Construction and Demolition material represents San José's largest waste stream (approximately 30%) and although the City has one of the most comprehensive networks of City-certified C&D recycling facilities, a large portion of this material historically ended up in the landfill.

The non-exclusive franchise agreements allow for the collection of material resulting from the cleaning out of residential premises and collected in roll-off or front load containers rented for a period of one week or less. For example, a person clearing their backyard or emptying out their garage could contract one of the approved non-exclusive haulers for residential clean-out material collection services.

Haulers also transport and deliver C&D material from San José's building permit holders. Under the City of San José Construction and Demolition Diversion Program, building permit holders must meet the City C&D diversion compliance requirements to receive a refund of their deposit (50% or more diversion from landfill) or meet the State of California, Green Building Code (Title 24, Part 11) mandatory 75% diversion. Permit holders must demonstrate that the material was hauled to a City-certified facility.

## **ANALYSIS**

San José Municipal Code section 9.10.1650 requires that a public hearing be held before Council adopts an ordinance issuing solid waste and recyclables collection franchises. The City Charter, under Section 602, also requires that the Council adopts an ordinance for any franchise granted. Hanson & Fitch, Inc. dba Hayward Transfer Station has completed the required application, has a valid San José business tax license, and meets the insurance requirements set by the City.

This proposed non-exclusive franchise agreement will only authorize and regulate the collection of residential clean-out material and C&D debris. These material types are not exclusive to the contractors under agreement that service residential and commercial customers citywide. While roll-off service is available to commercial customers and junk pickup service is available to residential customers, these services are not intended to be used for residential clean-out or C&D debris. The C&D debris that can be collected pursuant to the non-exclusive franchise include:

1. Recyclable and non-recyclable waste building materials, packaging, and rubble resulting solely from construction, remodeling, and demolition operations on pavements, houses, commercial buildings, and other structures authorized by a permit issued under Chapter 24.02 of the San Jose Municipal Code, and collected pursuant to a temporary service agreement of no longer than one year; or
2. Rock, concrete, asphalt, and dirt.

The agreement would only authorize the applicant to engage in the business of collecting, transporting, and delivering residential clean-out material and C&D debris from San José customers to an approved processing facility and to use the public streets and rights of way for such purpose. It does not grant the applicant the authority to collect commercial solid waste or to operate a landfill, recycling center, or other solid waste disposal facility.

Approved non-exclusive haulers are required to inform their customers if their material will be hauled to a non-certified facility. This is applicable to those customers who have a City building permit. This is to mitigate the permit holder's non-compliance with the requirements of the City of San José Construction and Demolition Diversion Program.

Historically, the City has collected Franchise Fees and Source Reduction and Recycling Fees (AB 939 Fees) on material that is landfilled but contains exempted recyclable material to encourage recycling. Since residential clean-out material and C&D debris are generally considered recyclable materials, the Franchise Fee and AB 939 Fees have been set to zero. However, if the load is landfilled or disposed, the collected material will be deemed to be commercial solid waste subject to Franchise Fees and AB 939 Fees for solid waste.

## **CONCLUSION**

Granting the non-exclusive franchise would allow Hanson & Fitch, Inc. dba Hayward Transfer Station to lawfully conduct business under a City of San José Non-Exclusive contract. The availability of such services benefits the San José community and supports the City's efforts to transport C&D material to City certified facilities which have the means to recycle and recover C&D material. The non-exclusive franchise agreement does not contribute to significant revenue for the City.

## **EVALUATION AND FOLLOW-UP**

No subsequent Council action on this issue is necessary.

## **CLIMATE SMART SAN JOSE**

The recommendation in this memo aligns with one or more Climate Smart San José energy, water, or mobility goals.

### **PUBLIC OUTREACH**

This memorandum will be posted on the City's website for the Council Agenda of December 14, 2021. A public notice identifying the applicant was submitted to the City Clerk's Office in accordance with San Jose Municipal Code section 9.10.1650.

### **COORDINATION**

This memorandum has been coordinated with the City Attorney's Office and the City Manager's Budget Office.

### **COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action.

### **COST SUMMARY/IMPLICATIONS**

Staff does not anticipate receiving significant revenue from the recommended non-exclusive franchise agreement. The Franchise Fee is currently set at \$3.67 per cubic yard of uncompacted solid waste, and \$11.01 per cubic yard of compacted solid waste. AB 939 Fees are currently set at \$2.67 per compacted cubic yard of solid waste, and \$0.89 per un-compacted cubic yard of solid waste. Revenue from these fees cannot be predicted and is generally unintended, making this revenue stream volatile. Only a modest amount of revenue (less than \$50,000) is budgeted from all non-exclusive agreements per fiscal year.

The applicant has paid the application fee of \$750.00 as required by San Jose Municipal Code section 9.10.1670.

### **CEQA**

Categorically Exempt, CEQA Guidelines Section 15308, Actions by Regulatory Agencies for Protection of the Environment, File No. ER 21-287.

/s/  
KERRIE ROMANOW  
Director, Environmental Services

For questions, please contact Valerie Osmond, Deputy Director, Integrated Waste Management, Environmental Services, at (408) 535-8557.