

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kerrie Romanow

SUBJECT: SEE BELOW

DATE: January 3, 2023

Approved



Date

1/9/23

SUBJECT: ACTIONS RELATED TO THE ISSUANCE OF A NON-EXCLUSIVE FRANCHISE AGREEMENT TO REDWOOD SERVICES, INC. RELATED TO CLEAN-OUT MATERIAL AND CONSTRUCTION AND DEMOLITION DEBRIS

RECOMMENDATION

- (a) Conduct a public hearing on the application of Redwood Services, Inc., dba Redwood Debris Box Service (Redwood Services) for a Non-Exclusive Franchise for the non-exclusive collection, transport, and delivery of residential clean-out material and construction and demolition debris.
- (b) Approve an ordinance granting the franchise.
- (c) Approve the Non-Exclusive Franchise Agreement with Redwood Services for the collection, transport, and delivery of residential clean-out material and construction and demolition debris, for a term beginning March 3, 2023, through June 30, 2023.

OUTCOME

City Council approval of this non-exclusive franchise would result in Redwood Services receiving a non-exclusive franchise, authorizing it to collect and transport residential clean-out material and construction and demolition (C&D) debris within the City of San José under the terms and conditions set forth in the franchise agreement and as established in the San José Municipal Code for a term beginning March 3, 2023, through June 30, 2023.

BACKGROUND

C&D material represents San José's largest waste stream (approximately 30%) and despite the fact the City has one of the most comprehensive networks of City-certified C&D recycling facilities, a large portion of this material historically has been landfilled.

The non-exclusive franchise agreements allow for the collection of residential premises' cleaning out material 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 contracts with one of the approved non-exclusive haulers for residential clean-out material collection services. The hauler provides the bin to the property and, after the person fills it, removes the bin, and delivers to a facility for proper disposal.

These haulers also transport and deliver C&D material from San José's building permit holders, who receive City permits to build or demolish a building. Under the City of San José's C&D Diversion Deposit Program, relevant building permit holders fall into two categories and must meet one of the two C&D diversion compliance requirements:

- demonstrate diversion from landfill of 50% or higher to qualify for a deposit refund
- demonstrate diversion from landfill of 75% or higher to be compliant with the State of California, Green Building Standards Code – Part 1, Title 24, California Code of Regulations for new constructions and tenant improvements

Both requirements necessitate permit holders demonstrate that the material was hauled to a City-certified facility. Customer rates are set by haulers.

Currently there are twenty-eight (28) non-exclusive haulers authorized by the City. The full list can be found on the City's website: <https://www.sanjoseca.gov/your-government/departments-offices/environmental-services/recycling-garbage/construction-demolition-debris/authorized-construction-demolition-haulers>.

Redwood Services submitted a complete application as required by San José Municipal Code section 9.10.1640. City Council approval will permit Redwood Services to operate under the existing franchise agreement terms until the end of fiscal year 2022-23, which aligns with the end dates of other existing non-exclusive haulers' agreements. Staff is working on amended agreement terms starting July 1, 2023, including revised fee structures.

ANALYSIS

San José Municipal Code section 9.10.1650 requires that City Council conduct a public hearing before adopting an ordinance issuing solid waste and recyclables collection franchises. The hauler has completed the required application, has a valid San José business tax license, and meets the insurance requirements set forth by the City. The City Charter, under Section 602, also requires that City Council adopt an ordinance for each franchise granted.

The proposed non-exclusive franchise agreement authorizes and regulates the collection of residential clean-out material and C&D debris only. These material types are not exclusive to the contractors under agreement who service residential and commercial customers citywide. There are other services available to commercial and residential customers for debris removal. For example, roll-off service is available to commercial customers and junk pickup service is

available to residential customers. However, 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 José 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 purposes. 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.

Historically, the City has collected Franchise Fees and Source Reduction and Recycling Fees (“Assembly Bill (AB) 939 Fees”) on material that is landfilled, but has exempted recyclable material to encourage recycling. Since residential clean-out material and C&D debris are generally considered recyclable materials, the Franchise Fees and AB 939 Fees have been set to zero. However, if a franchisee reports that a load contains contamination in excess of 20 percent, or 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.

In Fiscal Year 2022-23, staff revised the fee structure for this program. Instead of charging fees on loads containing contamination collected by haulers, fees will now be charged based on the number of loads collected (\$13.00 per debris box per load). This new approach produces a more equitable reporting structure and provides a significant increase in steady revenue. In the revised Fiscal Year 2023-24 agreements, staff intends to stipulate that all loads are taken to certified C&D facilities to ensure maximum diversion from the landfill.

CONCLUSION

Granting the non-exclusive franchise would allow Redwood Services 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. This non-exclusive franchise agreement will not contribute to significant revenue for the City.

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EVALUATION AND FOLLOW-UP

After City Council adopts the franchise ordinance, no additional action is necessary.

CLIMATE SMART SAN JOSE

The recommendation in this memorandum 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 Council Agenda website for the January 24, 2023 Council meeting. A public notice identifying the applicant was submitted to the City Clerk's Office in accordance with San José 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 collected under this agreement is \$3.67 per cubic yard of uncompacted solid waste, and \$11.01 per cubic yard of compacted solid waste. An AB 939 Fee change was approved in the Fiscal Year 2022-23 Adopted Fees and Charges document and will be implemented after the conclusion of this and other non-exclusive franchise haulers' existing contracts. To stay consistent with these other haulers' existing agreements the AB 939 Fees collected are 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 the non-exclusive agreements per fiscal year.

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The applicant has paid the application fee of \$858.00 as required by San José Municipal Code section 9.10.1670.

CEQA

Categorically Exempt, CEQA Guidelines Section 15308, Actions by Regulatory Agencies for Protection of the Environment, File No. ER21-060.

/s/

KERRIE ROMANOW

Director, Environmental Services

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