



COUNCIL AGENDA: 6/18/19

FILE: 19-500

ITEM: 7.1

# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Kerrie Romanow

**SUBJECT:** SEE BELOW

**DATE:** May 28, 2019

Approved

*D. DSYL*

Date

*6/5/19*

**SUBJECT: ACTIONS RELATED TO CURRENT AND FUTURE RECYCLE PLUS  
RESIDENTIAL SOLID WASTE AGREEMENTS**

## RECOMMENDATION

- a) Approve the Second Amendment to the Agreement between the City of San José and California Waste Solutions for Recycle Plus Services to make program changes and to establish performance standards that:
  1. If fully satisfied, will require the City to enter into a new agreement with California Waste Solutions through June 30, 2036 for Recycle Plus Services for single-family recyclables collection & processing in Service Districts A & C
  2. If not fully satisfied, would cause staff to not extend CWS' contract through 2036, and staff would initiate a Request for Proposals process to award a contract for single-family recyclables collection & processing in Service Districts A & C, with substantially the same framework as future services in Service District B;
- b) Approve the Second Amendment to the Agreement between the City of San José and GreenWaste Recovery for Recycle Plus Services to implement the Modified Living Wage effective July 1, 2019, in accordance with Council's direction on January 15, 2019; and
- c) Adopt a resolution authorizing the City Manager to:
  1. Negotiate and execute an agreement through June 30, 2036 with California Waste Solutions, in accordance with the term sheets presented to Council, for single-family dwelling recycling collection and processing in Districts A and C if California Waste Solutions fully satisfies the performance standards as specified in the Second Amendment. If CWS does not fully satisfy the performance standards as specified in the Second Amendment by June 30, 2020, the City Manager is authorized to:
    - a. Initiate a Request for Proposals to award a contract through June 30, 2036 for single-family recyclables collection & processing in Service

- Districts A & C, with substantially the same framework as future services in Service District B, and
- b. Exercise the Option Term in the Second Amendment to extend the CWS contract to December 31, 2021, if necessary.
  2. Negotiate and execute an agreement through June 30, 2036 with Garden City Sanitation, Inc, in accordance with the term sheets presented to Council, for single-family dwelling garbage collection in Districts A and C;
  3. Negotiate and execute an agreement through June 30, 2036 with GreenTeam of San Jose, in accordance with the term sheets presented to Council, for collection of garbage and collection and processing of recyclables for multi-family dwellings citywide, single-family dwellings in District B, and City Facilities; and
  4. Negotiate and execute an agreement through June 30, 2036 with GreenWaste Recovery, in accordance with the term sheets presented to Council, for citywide residential yard trimmings and street sweeping collection and processing, and backend processing of municipal solid waste.

## **OUTCOME**


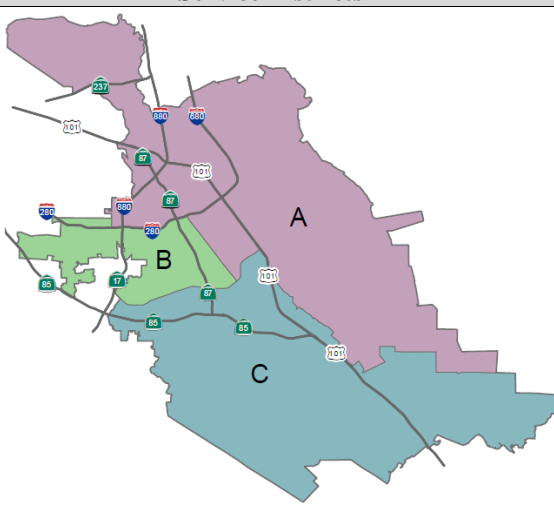



Approval of this recommendation would amend the current agreement with California Waste Solutions (CWS) to, among other things, set near-term performance targets for CWS, effective July 1, 2019, that define a pathway for CWS to earn a new agreement with the same term end-date of June 30, 2036 that was approved by Council for the future agreements of the other Recycle Plus contractors (Second Amendment to CWS Agreement attached). These performance targets are related to customer satisfaction, service delivery, and recycling processing. Should CWS not fully satisfy the specified performance targets, staff would initiate an Request for Proposals (RFP) process to award a contract for single-family recyclables collection & processing in Service Districts A & C through June 30, 2036, with substantially the same framework as future services in Service District B.

Approval of this recommendation would also amend the current agreement with GreenWaste Recovery (GreenWaste) to implement the Modified Living Wage Requirement approved by Council on January 15, 2019, effective July 1, 2019 (Second Amendment to GreenWaste Agreement attached).

Finally, approval of this recommendation would authorize the City Manager to negotiate and execute future solid waste agreements through June 30, 2036, in accordance with the attached term sheets with Garden City Sanitation (Garden City), GreenTeam of San Jose (GreenTeam), GreenWaste, and CWS (if CWS fully satisfies the performance standards in the Second Amendment). The term sheets for Garden City, GreenTeam, and GreenWaste were presented to Council on January 15, 2019 and the CWS term sheet was finalized on February 8, 2019, following additional negotiations, as directed by Council.

## **BACKGROUND**

The Environmental Services Department (ESD) provides recycling and garbage services to all households in San José (more than 320,000 residential households from both single-family and multi-family dwellings) through four contracted service providers: CWS, Garden City, GreenTeam, and GreenWaste, with the following distribution of services:

Contractor	Services	Service Districts
	<ul style="list-style-type: none"> <li>Single-family recycling</li> </ul> <div> <div>District A</div> <div>District C</div> </div>	 <div> <div>Single-family Households</div> <div> A: 97,000  B: 50,000  C: 67,000 </div> <div>Multi-family Households</div> <div>Citywide: 108,000</div> </div>
	<ul style="list-style-type: none"> <li>Single-family garbage</li> </ul> <div> <div>District A</div> <div>District C</div> </div>	
	<ul style="list-style-type: none"> <li>Single-family garbage &amp; recycling</li> <li>Citywide Multi-family &amp; City Facilities garbage &amp; recycling</li> </ul> <div>District B</div>	
	<ul style="list-style-type: none"> <li>Citywide yard trimmings</li> <li>Citywide garbage processing</li> <li>Citywide street sweeping</li> </ul>	

On January 15, 2019, Council approved the Modified Living Wage Requirement ([Item 7.3 “Actions Related to Implementing Living Wage Requirements for Recycle Plus Residential Garbage and Recycling Contracts”](#)) for Recycle Plus residential solid waste agreements. The MLW was developed to address the difficulty in implementing the City’s Living Wage Policy in facilities that process commingled waste collected within and outside of San José. With MLW, all Facility Workers in applicable classifications, who are already not receiving prevailing wage or working under a collective bargaining agreement, will be compensated, at minimum, the San José MLW.

City Council also directed staff to develop agreements, in accordance with the Recycle Plus term sheets brought forward on January 15, 2019, with Garden City, GreenTeam, and GreenWaste ([Item 7.1 “Actions Related to Negotiations of Recycle Plus Residential Solid Waste Agreements”](#)).

In addition, City Council directed staff to continue negotiating with CWS for an additional 30 days to attempt to reach a resolution that would enable CWS to provide Recycle Plus service to customers at a price that may equal, but not exceed, GreenTeam's negotiated price of \$13.15 per household at baseline levels of contamination, with performance targets for service delivery, diversion, and customer satisfaction at same standard to which GreenTeam will be held ([Memorandum from Vice Mayor Jones](#), related to [Item 7.1 "Actions Related to Negotiations of Recycle Plus Residential Solid Waste Agreements"](#)).

## **ANALYSIS**

### **Successful Negotiations with CWS and Upcoming Performance Period**

To pursue Council's direction to continue negotiations with CWS, staff met with CWS five times between January 23 and February 8, 2019. During these meetings, CWS and staff successfully worked together to come to terms on pricing, contractual targets, and parameters for a performance period that will allow the City to determine if it will enter a future agreement with CWS, through 2036, after the current agreement ends in 2021. Deputy City Manager Kip Harkness and CWS CEO David Duong signed a term sheet representing these terms, in accordance with Council's direction. These terms were then incorporated into the proposed Second Amendment to the CWS Agreement and include:

1. Near-Term Performance Period – Clear timeline and parameters for standards for CWS during the performance period, July 1, 2019 through June 30, 2020. CWS' performance during this period will allow the City to determine if it will enter a new agreement with CWS through June 30, 2036 or initiate an RFP process for CWS' service area after the current agreement ends in 2021. In the event the City will need to issue an RFP, the Second Amendment will add an option for a 6-month term extension to the current agreement with CWS to allow additional time for the City to completely transition to new contractor.
2. Equivalent Price Points – Through June 30, 2021, CWS would be eligible to receive incentive payments that would increase the base payment to GreenTeam's baseline price point of \$13.15 per household, should CWS meet minimum performance standards. In the potential future agreement, CWS' baseline price point would equate to GreenTeam's of \$13.15 per household; and
3. Consistent Contractual Targets – Targets for service delivery, diversion, and customer satisfaction are the same for GreenTeam and CWS.

For the City to enter an agreement with CWS to 2036, CWS must meet all the following targets:

<b>12-month Performance Period, July 1, 2019 – June 30, 2020</b>	
<b>Customer Satisfaction</b>	75% customer satisfaction, determined by third-party quarterly survey (annual average)
<b>Service Delivery</b>	Liquidated damages cannot exceed \$30,000 (\$7,500 per quarter) related to service performance standards
<b>Material Recovery Standard</b>	Less than 20% targeted material in recycling processing residuals, determined by third-party quarterly survey (annual average)

Should CWS fully satisfy the above targets during the performance period and through the end of the current agreement, CWS would be eligible for incentive payments amounting up to the difference between \$13.15 (adjusted by annual inflationary increases) and CWS' then current rate. The incentive criteria are similar to the 12-month performance period targets described above.

If CWS does not meet all the performance period targets, the City would initiate an RFP process to fulfill CWS' services. Should an RFP be necessary, the City would have the option to extend CWS' current agreement by 6 months, to December 31, 2021, to allow sufficient time to conduct a procurement and transition services to the selected provider. In this scenario, CWS could submit a proposal in response to the RFP.

During earlier negotiations for a future agreement, CWS had requested a 60 percent increase in compensation (from a weighted average of \$9.47 per household to \$15.10 per household). However, in subsequent negotiations, CWS agreed to a lesser increase in compensation of 39 percent (\$13.15 per household in both districts), matching GreenTeam's baseline price for non-program materials collected. Like the other Recycle Plus contractors, this new compensation level would be effective in future agreements beginning July 1, 2021. To determine the percentage of non-program material and the corresponding compensation level for recycling services, CWS and staff agreed that the first study to determine the percentage of non-program materials in the recycling stream would be conducted in October 2020 for rates effective July 2021.

### **Modified Living Wage Implementation**

Approval of the Second Amendment to the GreenWaste Agreement will implement the City's Living Wage Policy (Council Policy 3-3) through a Modified Living Wage (MLW) requirement, with an effective date of July 1, 2019. This amendment implements MLW as soon as possible, instead of upon execution of the future Recycle Plus agreements. For the future Recycle Plus agreements currently under development, MLW will be incorporated through an updated Wage Policy Exhibit.

### **Future Residential Solid Waste Agreements to 2036**

To pursue Council's direction to develop future residential solid waste agreements in accordance with the Recycle Plus term sheets, staff from the City Attorney's Office and ESD have been

working together to incorporate the items from the term sheets, approved by Council on January 15, 2019, into draft agreements, using the current Recycle Plus agreements as a foundation. However, priority was given to the Second Amendment with CWS to be sure that the amendment was drafted and negotiated before the start of the performance period on July 1, 2019. Similarly, priority was given to implementing the MLW, so that it, too, could be implemented by July 1, 2019.

Staff plans to collaborate with all Recycle Plus contractors in developing contractual language for the future agreements through 2036. Staff has already solicited feedback from Recycle Plus contractors on updating their respective workplans (Garden City, GreenTeam, GreenWaste) and reviewing draft language related to new contractual elements such as the updated recycling standard and recycling markets safety net (CWS and GreenTeam).

### **EVALUATION AND FOLLOW-UP**

Should CWS fully satisfy their performance targets, staff will negotiate and execute a new agreement with CWS, with a term through June 30, 2036, with substantially the same terms and conditions as are provided for in the single-family recycling services agreement for other areas of the City. Should CWS not fully satisfy their performance targets, staff will issue an RFP for single-family recycling services in Service Districts A & C, with term of July 1, 2021 to June 30, 2036 and the same framework as future services in Service District B, and return to Council with recommendations to award the contract.

Staff will finalize new agreements with Garden City, GreenTeam, and GreenWaste, for residential solid waste services, with terms through June 30, 2036, in accordance with term sheets approved by Council on January 15, 2019. Should CWS fully satisfy the performance standards in the Second Amendment, staff will finalize a new agreement with a term through June 30, 2036, in accordance with the attached term sheet, negotiated per the direction of Council.

### **PUBLIC OUTREACH**

This memorandum will be posted on the City's Council Agenda website for the June 18, 2019, City Council Meeting.

### **COORDINATION**

This memorandum has been coordinated with the City Attorney's Office, the City Manager's Office, the City Manager's Budget Office, the Public Works Department, and the Department of Transportation.

### **COMMISSION RECOMMENDATION/INPUT**

There is no commission recommendation/input associated with this action.

### **COST SUMMARY/IMPLICATIONS**

The costs for implementation of MLW are estimated to be approximately \$3 million annually, effective July 1, 2019 through June 30, 2036 (not including annual contractual inflationary increases) effecting the Integrated Waste management Fund (423), in both Single Family Dwelling Processing 3318 appropriation (approximately \$2 million annually) and Multi-Family Recycle Plus 0764 appropriation (approximately \$1 million annually) and a 15 percent increase for contractual costs related City Facilities solid waste processing services, which includes an effect to the General Fund (001) in the Non-Personal 0762 appropriation of approximately \$40,000 annually. This cost implication was included with the item “Adoption of a Resolution to Increase Recycle Plus Rates Effective July 1, 2019 For Single Family and Multi-Family Residential Solid Waste Services” on Council’s June 11, 2019 agenda.

CWS is eligible to receive annual incentive payments of approximately \$8 million in 2019-2020 and 2020-2021, related to its performance targets over the next two years. These costs are included in the base adjustment to the Single-Family Recycle Plus 0763 appropriation included in the 2019-2020 Proposed Operating Budget.

Approval of staff’s recommendation to proceed with the four new Recycle Plus agreements would increase contractual costs in Integrated Waste Management Fund (423) by approximately \$12 million annually, distributed amongst Single Family Recycle Plus (approximately \$9 million annually), Single Family Dwelling Processing (approximately \$40,000 reduction annually), Multi-Family Recycle Plus (approximately \$500,000 annually), and Yard Trimming Collection / Processing (approximately \$2.5 million annually) appropriations, would increase contractual costs in Storm Sewer Operating Fund (446) by approximately \$375,000 annually in the Street Sweeping 0766 appropriation to maintain the existing service level and up to \$500,000 if enhanced sweeping options are exercised and approved through the budget process ~~would increase contractual costs in Storm Sewer Operating Fund (446) by approximately \$500,000 annually in the Street Sweeping 0766 appropriation~~, and would increase contractual costs by 12 percent for City Facilities solid waste processing services, which includes an effect to the General Fund in the Non-Personal appropriation of approximately \$30,000 annually, all beginning in 2021-2022, as compared to current costs (not including annual contractual inflationary increases).

Staff will evaluate Recycle Plus customer rate changes for 2020-2021 through 2022-2023 and, if needed, will initiate a Recycle Plus Proposition 218 public rate increase notification process in early 2020.

**CEQA**

Determination of Consistency with the Envision San José 2040 General Plan Final Program Environmental Impact Report (EIR) (Resolution No. 76041), Envision San José 2040 General Plan Supplemental EIR (Resolution No. 77617), and Addenda thereto. Project does not involve new significant impacts beyond those analyzed in the above EIRs. File No. PP19-037.

/s/  
KERRIE ROMANOW  
Director, Environmental Services Department

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

**Attachments:**

- A. Second Amendment to California Waste Solutions Agreement
- B. Second Amendment to GreenWaste Recovery Agreement
- C. Term Sheet for Recycle Plus Future Contract: Garden City
- D. Term Sheet for Recycle Plus Future Contract: GreenTeam
- E. Term Sheet for Recycle Plus Future Contract: GreenWaste
- F. Term Sheet for Recycle Plus Future Contract: CWS