

STAFF REPORT

DATE: February 20, 2018

TO: City Council

FROM: Robert A. Clarke, Public Works Director
Stan Gryczko, Assistant Public Works Director
Richard Tsai, Environmental Resources Manager

SUBJECT: Davis Waste Removal Franchise Agreement, Right of First Refusal; Franchise Transfer

Recommendation

1. Adopt Resolution (Attachment 1), waiving the City's right of first refusal to purchase all or some of Davis Waste Removal, Inc. (DWR) assets currently proposed to be sold to Recology, Inc. pursuant to section 19 of the 2015 Solid Waste Franchise Agreement with DWR. The waiver is conditioned upon negotiated terms to be incorporated into the franchise transfer assignment and franchise agreement amendment with Recology, Inc.
2. Take public input on the proposed assignment and transfer of the franchise to Recology and provide further direction to staff.

Council Goals

The action of waiving the right to purchase all, or some, of DWR assets does not directly address a specific City Council goal but is consistent with the Council Goals to Pursue Environmental Sustainability and to Ensure Fiscal Resilience.

Fiscal Impact

There is no fiscal impact at this time. However, within the first 2 years of the agreement transfer, City would conduct a feasibility study to determine whether or not to site and construct a City owned materials recovery facility (MRF) or to require Recology to relocate the current MRF at 2727 2nd Street in Davis to a privately owned site. The cost to conduct such a study is estimated at around \$80,000, which includes environmental analysis.

Background and Analysis

In February 2015, City of Davis and DWR entered into an agreement granting DWR exclusive rights to haul waste (solid waste franchise) in Davis until the year 2027. The agreement allows DWR to sell the franchise but allows the City the right of first refusal to purchase all, or any portion of DWR's business operations, facilities and/or equipment.

On September 8, 2017, City received a formal request from DWR requesting that the City waive its right of first refusal so DWR can proceed with selling its solid waste franchise and property to Recology, Inc.

During the first review of DWR's initial request, the City hired a consultant and property appraiser through the City Attorney's office to review the franchise and associated property. City received

public comments requesting that City Council direct staff to consider purchase of the property associated with the sale of DWR. Staff met with the executive management of Recology, Inc. to assess their ability to take over DWR's franchise and effectiveness of providing un-interrupted service to the customers of Davis; however in November 2017, it was determined that DWR's initial request for City to waive the right of first refusal was incomplete for the City to take action on.

On January 22, 2018, DWR submitted a revised offer letter to request that City consider waiving its right of first refusal and work with DWR & Recology towards a transfer plan. The letter included terms as follows:

- Recology will encourage all current DWR employees to apply for employment with Recology, and it is Recology's intent to offer employment to the current DWR employees who pass Recology's customary hiring process.
- Recology will establish an "Artist in Residence Program"
- City of Davis may determine where organic materials are to be delivered for processing, provided that any additional costs associated with such determination will be recovered in the rates
- Recology will provide two free paper shredding events per year
- Recology and the City of Davis will work together for two years following the closing of the Transaction to determine whether to relocate the Facility from 2727 2nd Street
- If Recology relocates the Facility at City's request, Recology will be made "Whole" regarding the cost to relocate
- If Recology relocates, Recology will provide a "Sharps" program at a mutually agreed upon location within the city limits
- The City has under Section 9.g.ii. and Exhibit H. the right to request a detailed rate review. Recology will have the same right
- Recology will pay an additional \$160,000 in franchise fee to the City annually

Recology, Inc. is headquartered in San Francisco and has been in the solid waste business since 1920. It serves over 127 communities in Washington, Oregon, and California including Vacaville, Yuba/Sutter Counties, Yuba City, and San Francisco. They also own and operate transfer stations, materials recovery facilities, organics processing facilities, and landfills. Recology has a proven track record by working with SF Environment, City and County of San Francisco's environmental department, to provide effective environmental outreach programs. It is staff's opinion that Recology shares a common philosophy of sustainable practices in the field of solid waste and would be a consistent provider of services for the City.

In addition to the waiver of the right of first refusal, the Council can take public comment regarding the proposed assignment and transfer of the franchise to Recology; the formal transfer is under review by staff and the City Attorney's office and will come back for formal Council consideration and action, likely at the March 13, 2018 meeting.

Staff anticipates working with the Utility Rate Advisory and Natural Resources Commissions to both review a Request For Proposal (RFP) for consultant services of MRF relocation and participate in the discussions related to MRF relocation. The two years following the closing of the franchise agreement transfer allows for the MRF relocation discussion to be done through a public process.

Attachments:

1. Resolution
2. January 30, 2018 letter from DWR to Michael Webb

RESOLUTION NO. _____, SERIES 2018

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF DAVIS
WAIVING THE CITY'S RIGHT OF FIRST REFUSAL TO PURCHASE
DAVIS WASTE REMOVAL COMPANY, INC. BUSINESS AND/OR PROPERTY FOR
ONE TIME ONLY RELATED TO THE PROPOSED TRANSFER TO RECOLOGY**

WHEREAS, Davis Waste Removal Company, Inc. (DWR) has been providing solid waste services to the Davis community since 1976; and

WHEREAS, , section 19 of the 2015 Franchise Agreement between the City and DWR grants the City the first right of refusal and requires DWR to make an offer to the City before it may sell its business and/or property to a third party; and

WHEREAS, DWR wishes to sell their business and property at 2727 2nd Street to Recology Inc. (Recology); and

WHEREAS, as a necessary prerequisite to the sale of DWR to Recology, the City of Davis must determine whether to waive and release its right of first refusal; and

WHEREAS, the City has conducted due diligence to evaluate whether to exercise its right of first refusal and engaged in discussions with Recology whether the City will waive its right of first refusal in this instance; and

WHEREAS, City Council has determined that it is in the best interests of the City to waive its right of first refusal in this instance

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Davis, that:

1. The City does hereby waive, and release its right of first refusal to purchase the Davis Waste Removal Inc. company and/or DWR's property at 2727 2nd Street. This waiver shall be in effect for 90 days from the approval date of this Resolution, unless extended by the City Council by resolution..;

2. The City Manager of the City of Davis be, and is hereby, authorized to execute any documents necessary to carry out the terms and conditions of this resolution.

3, The City Council will consider the transfer of the franchise from DWR to Recology, including the additional terms set forth in the letter dated January 30, 2018 from DWR to the City, at a future council meeting currently scheduled for March 13, 2018, and shall make a determination of this transfer under the requirements set forth in the Franchise Agreement.

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PASSED AND ADOPTED by the City Council of the City of Davis this twentieth day of February, 2018, by the following vote:

AYES:

NOES:

ABSENT:

Robb Davis
Mayor

ATTEST:

Zoe Mirabile, CMC
City Clerk

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January 30, 2018

Mr. Michael Webb
City Manager
City of Davis
23 Russell Boulevard
Davis, CA 95616

Good day Mr. Webb:

This revised letter of request to transfer the assets of DWR to Recology, Davis incorporates changes requested by City staff. Our original letter dated January 22, 2018 is still the formal request.

We have spent considerable time working with both Recology and the City of Davis after the City's analysis that our first request to transfer the assets of DWR to Recology was incomplete. We believe that based on negotiations with both parties, we have reached a workable transfer plan. We formally request permission from the City of Davis to transfer the assets of Davis Waste Removal Co., Inc. to Recology Davis, a wholly owned subsidiary of Recology Inc under Section 16.h. of the Contract between the City of Davis and DWR.

Pursuant to Section 19.a., we acknowledge the City's Right of First Refusal. We ask that the City waive that right.

Pursuant to Section 19.b., please consider this letter as the "Availability Notice" to the City of Davis.

Pursuant to Section 19.c., the "Supplement" is available for City review upon request at our offices, however I remind you that per the contract, the documents may not be copied or removed from DWR.

Items that are important to the City of Davis, Recology and DWR are:

- Recology will encourage all current DWR employees to apply for employment with Recology, and it is Recology's intent to offer employment to the current DWR employees who pass Recology's customary hiring process.
- Recology will establish an "Artist in Residence Program"
- City of Davis may determine where organic materials are to be delivered for processing, provided that any additional costs associated with such determination will be recovered in the rates
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- Recology and the City of Davis will work together for two years following the closing of the Transaction to determine whether to relocate the Facility from 2727 2nd Street
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- If Recology relocates, Recology will provide a "Sharps" program at a mutually agreed upon location within the city limits.

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- The City has under Section 9.g.ii. and Exhibit H. the right to request a detailed rate review. Recology will have the same right.
- Recology will pay an additional \$160,000 in franchise fee to the City annually.

Please feel free to contact us with any questions that you may have.

Sincerely,



Paul Hart



Paul Geisler

Cc: Michael J Sangiacomo, President and CEO, Recology Inc.

Bob Clark

Richard Tsai