

CITY COUNCIL COMMITTEE

Special Meeting

INFRASTRUCTURE & FRANCHISE

Laura Hoffmeister, Chair
Dan Helix, Committee Member

5:30 p.m., 4:00 p.m., January 27, 2012

Garden Conference Room
1950 Parkside Drive, Concord

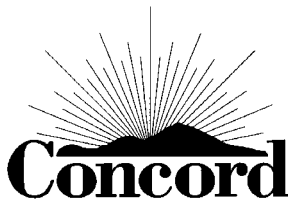
- A G E N D A -

ROLL CALL

PUBLIC COMMENT PERIOD

1. **DISCUSSION** – of Concord Disposal Service’s term change request.
2. **ADJOURNMENT**

Distribution: City Council
Dan Keen, City Manager
Valerie Barone, Assistant City Manager
Mark Coon, Acting City Attorney
Mark Boehme, Outside Consultant
Joan Ryan, Housing Manager
John Montagh, Redevelopment and Housing Manager
Victoria Walker, Director of Community & Economic Development
Press

**REPORT TO I&F Council Committee****TO THE HONORABLE COMMITTEE MEMBERS:**

DATE: January 27, 2012

SUBJECT: DEVELOPMENT OF A COMMITTEE RECOMMENDATION TO THE CITY COUNCIL FOR THEIR FEBRUARY 7TH CONSIDERATION OF CONCORD DISPOSAL SERVICES PROPOSED TERM CHANGE TO THEIR EXISTING FRANCHISE AGREEMENT WITH THE CITY OF CONCORD

Report in Brief

On December 13th, the Council considered conceptual deal points amending the term and conditions of Concord Disposal Services' (CDS) franchise agreement for trash and recycling services in the City of Concord. At that meeting, the Council provided direction to staff on the proposed deal points and set February 7th as a public hearing to consider the franchise amendment. Subsequent to the meeting, CDS submitted proposed revisions and requested that the Council Infrastructure & Franchise Committee (I&F) meet and consider their proposed changes. The I&F Committee (Helix and Hoffmeister) are meeting on January 27th to consider the new request from CDS.

Background

The City entered into its current franchise agreement with Concord Disposal Services (CDS) on July 14, 1980 to provide solid waste disposal services for the City of Concord. Since then the City and CDS have amended the agreement ten times, most recently on December 14, 2009.

The City has received two requests for amendments to its current franchise agreement from CDS. The first, a request presented to the I&F Committee on November 10, 2011 and to the Council on December 13, 2011, is a proposal to change the term of the CDS franchise agreement. The term of the current agreement with CDS extends to June 2021 and contains one 5-year option that if executed would extend the agreement until June 2026.

The second CDS request is not addressed in this report; it is for a base rate adjustment. The second request is going through the review steps required in the City's *Rate Setting Process and Methodology Manual for Residential Solid Waste Fees* and will go before the I&F Committee and the City Council as a separate item at some point in the future, likely during the first quarter of 2012.

The term extension previously considered by the I&F Committee and the Council was to create a 15-year term contract that automatically renewed annually. More detail about the original request is contained in Attachment 3 the December 13, 2011 Council Staff Report and Attachment 4 the minutes from the meeting. In the previous request, CDS had proposed providing annually a community benefit payment of \$20,000, upon the date of each automatic annual 15-year renewal of the term of the franchise agreement.

Discussion

Subsequent to the Council meeting, CDS submitted an e-mail making modifications to their original request (Attachment 3). Specifically, they are proposing two changes from what the Council discussed at their December 13th meeting. Each is described below and is followed by staff's comments:

- 1) CDS proposes to increase their annual community benefit payment from \$20,000 to \$50,000. In their e-mail they reiterated that this payment would not be chargeable within the rate structure, rather it would come out of the company's profits.

Staff's Comments: Staff recommends that the I&F Committee support the acceptance of this larger amount since it does not get transferred to the rate payers.

- 2) CDS proposes that the language in the proposed 11th amendment that terminates the automatic 15-year renewal and replaces it with a 5-year term contract if CDS sells or transfers their core business or any of their subsidiary businesses be eliminated. CDS believes that the existing franchise agreement's existing language in Section (i) of the 1980 Extension Agreement, which requires Council consent of any new agreement holder, is adequate protection for the City.

Staff's Comments: This language was put in place in response to a concern expressed by the Committee at the November 10, 2011 meeting. The Committee asked for protections in case a company that lacked CDS's long mutual history with the City took over all or part of the recycling and trash hauling services. Staff is neutral on whether this language is in or out of the proposed 11th amendment. The existing agreement does already give the Council the ability to approve or reject subsequent company owners.

Fiscal Impact

The proposal before the Committee would increase the annual Community Benefit Payment from \$20,000 to \$50,000. This money would have no constraints on how the City could spend it.

Recommendation for Action

Provide feedback on the proposed changes to the 11th amendment of the CDS franchise agreement.

Attachments

- 1) Draft 11th Amendment to the CDS Franchise Agreement
- 2) CDS E-mail
- 3) December 13, 2011 Council Agenda Report
- 4) December 13, 2011 Council Meeting Minutes

ELEVENTH AMENDMENT TO FRANCHISE AGREEMENT

1 **WHEREAS**, on July 14, 1980, the CITY and CONCORD DISPOSAL SERVICE entered into
2 an Agreement entitled "Agreement to Extend Franchise" (the "Agreement") which provides for
3 CONCORD DISPOSAL SERVICE to collect and dispose of refuse in the CITY and provide recycling
4 services subject to the terms and conditions set forth therein; and
5

6 **WHEREAS**, the Agreement has been amended ten times since July 14, 1980; and

7 **WHEREAS**, the current term of the Agreement terminates on June 25, 2021 with one (1) five
8 (5) year option to extend the term to June 25, 2026; and

9 **WHEREAS**, CONCORD DISPOSAL SERVICE is requesting that the City amend the
10 Agreement to adopt a new 15 year term that would renew automatically each year in order to create
11 more financial flexibility for the company as it adjusts to new, unfunded state mandates that will
12 require significant capital investment by the company; and

13 **WHEREAS**, the CITY is satisfied with the services of CONCORD DISPOSAL SERVICE;
14 and

15 **WHEREAS**, the CITY and CONCORD DISPOSAL SERVICE desire to enter into an
16 Agreement entitled, "Eleventh Amendment to Franchise Agreement" subject to the terms and
17 conditions contained herein.

18 **NOW, THEREFORE**, in consideration of the mutual promises, covenants, and agreements
19 set forth herein, the parties agree to the following terms, conditions, and amendments to the
20 Agreement:

21 1. **Modification of Term. Termination.** The term of this Agreement is extended and
22 will terminate in fifteen (15) years on February 7, 2027. The term of this Agreement, as amended,
23 shall upon termination of each (12) twelve month period, automatically extend for an additional
24 twelve (12) month period, so that, upon each anniversary date of this Agreement, the term shall
25 always be fifteen (15) years.

26 Either party may terminate this automatic renewal provision by giving at least one hundred
27 twenty days (120) notice in writing to the other of such termination. Thereafter, the automatic
28 renewal provision shall terminate and this Agreement, as amended, shall terminate upon the expiration

1 of the remaining term of this Agreement

2 **2. Additional Grounds for Termination of the Automatic Renewal Provision.** The
3 automatic renewal provision shall terminate without requiring notice to either party upon the
4 occurrence of the following event:

5 a. If a controlling interest in CONCORD DISPOSAL SERVICE, or any of its
6 affiliates (SEG Trucking; Mt. Diablo Paperstock, dba Mt. Diablo Recycling; and Contra Costa
7 Waste Service) are sold, transferred or assigned. Upon such occurrence of the event, the term
8 of the Agreement shall be five years from the date of sale, transfer or assignment of the
9 controlling interest of CONCORD DISPOSAL SERVICE or any of its affiliates.

10 b. Section (i) of the 1980 Extension Agreement remains in place which requires
11 City Council consent to sell, transfer or assign this Agreement to another service provider.

12 **3. Customer Service Enhancements.** CONCORD DISPOSAL SERVICE shall provide
13 the following residential customer service enhancements in addition to other customer service
14 enhancements required by the Agreement:

15 a. Participate in citizen satisfaction surveys or perform independent rate payer
16 satisfaction surveys if requested to do so by the City Manager or the City Council.

17 b. CDS must be present and participate fully at public hearings that the City
18 Council may call, at its sole discretion, on trash and recycling service levels.

19 c. Problem solve and address performance problems identified by the City in a
20 timely manner.

21 **4. Enhancement or Modification of Services.** The City may request changes to services
22 or service enhancements by notifying CONCORD DISPOSAL SERVICE as follows:

23 a. The City may direct CONCORD DISPOSAL SERVICE to perform additional
24 services, establish new educational programs and/or eliminate activities or in any other way
25 modify their activities to meet State or community needs.

26 b. To meet such requests by the City, CONCORD DISPOSAL SERVICE may
27 request a rate change modification consistent with the rate setting manual if the service
28 modifications have cost implications.

Deleted: //1

Barone, Valerie

Subject: FW: Franchise Proposal

From: Clark Colvis [<mailto:Clark.Colvis@garaventaent.com>]

Sent: Wednesday, January 25, 2012 8:35 AM

To: Barone, Valerie

Cc: Joe Garaventa; Mike Bonnifield; Alan Mitchell

Subject: Franchise Proposal

Valerie,

To follow up with the ongoing discussions, Concord Disposal proposes the following;

1. Community Benefit; Concord Disposal will contribute to the City of Concord \$50,000 annually every July 1 to be used at the City's discretion for Community Benefit. The payment will be out of profits (below the line and non-allowable for rate purposes) and not subject to any indexing or increases.
2. Assignability; We believe the current contract language protects the City from any sale or assignment of the Contract or portion thereof without prior City approval.

If you have any additional question, please give us a call or email.

Thanks.

Clark.

**REPORT TO THE CONCORD CITY COUNCIL**

TO HONORABLE COUNCIL MEMBERS:

DATE: December 13, 2011

SUBJECT: CONSIDERATION OF PROPOSED CONCEPTUAL DEAL POINTS AMENDING THE TERM AND CONDITIONS OF THE CONCORD DISPOSAL SERVICES FRANCHISE AGREEMENT AND SETTING A PUBLIC HEARING FOR TUESDAY, JANUARY 24, 2012 AT 6:30 P.M. IN THE COUNCIL CHAMBER

Report in Brief

The City of Concord provides waste and recycling services through a franchise agreement with Concord Disposal Services (CDS), a local, family-owned business. Mr. Joseph Garaventa, the Chief Executive Officer of Concord Disposal Services, is requesting that the City amend the current franchise agreement to adopt a new 15 year term that would renew automatically each year. The new term would replace the agreement's current term which expires in June 2021, but has one 5-year option that would extend the agreement to 2026. CDS is requesting this term change in order to create more financial flexibility for the company as it adjusts to all of the new, unfunded, state mandates that will require significant capital investment by CDS. The Infrastructure and Franchise Committee (Helix and Hoffmeister) considered this request on November 10th and support the term extension and annual renewal provision. As part of their discussion the Committee defined areas to be addressed in the franchise amendment language and requested that staff bring draft deal points before the entire Council on December 13, 2011 and a draft agreement before Council for consideration and action on January 24, 2012.

Staff is requesting that the Council review the draft deal points and provide feedback to City staff and that it set January 24, 2012 for the public hearing to consider an eleventh amendment to the CDS franchise agreement.

Background

The City entered into its current franchise agreement with Concord Disposal Services (CDS) on July 14, 1980 to provide solid waste disposal services for the City of Concord. Since then the City and CDS have amended the agreement ten times, most recently on December 14, 2009. The ten amendments have addressed a number of topics including establishing new base rates for residential users, extensions to the agreement term, and expansion of the services provided under the agreement.

The City has recently received two additional requests for amendments to its current franchise agreement from CDS. The first is the request presented in this staff report: a request for a term change to the agreement.

The term of the current franchise agreement with CDS extends to June 2021 and contains one 5-year option that if executed would extend the agreement until June 2026.

The second request is not addressed in this report; it is for a base rate adjustment. The second request is going through the review steps required in the City's *Rate Setting Process and Methodology Manual for Residential Solid Waste Fees* and will go before the Infrastructure and Franchise Committee and the City Council as a separate item at some point in the future, likely during the first quarter of 2012.

Term Change Request: On July 13, 2011, Mr. Joseph Garaventa, the Chief Executive Officer of CDS, submitted a letter to the City (Attachment 1) requesting that the City amend the current franchise agreement to adopt a new 15 year term that would renew automatically each year. The City or the franchise holder could terminate the automatic renewal with advance written notice and the agreement would then terminate on the expiration of the remaining term, which would be between 14 and 15 years. This type of an annually renewing contract is sometimes referred to as an "evergreen" agreement. On November 9, 2011, Mr. Mike Bonnifield, Counsel to CDS, submitted an additional letter further articulating the company's reasons for requesting a term extension (Attachment 2).

In the letters, Mr. Garaventa and Mr. Bonnifield point out that CDS is a family-owned, local business that has provided superior waste and recycling services to the City over the years. CDS is requesting a change to the agreement term because the waste disposal and recycling industry is entering into very uncertain times with many new unfunded state mandates in the process of being imposed—such as mandatory commercial recycling programs, an increase in the mandatory amount of waste diversion to 75%, requirements to retrofit or replace waste and recycling collection vehicles to run on compressed natural gas, etc. In order to meet the investment requirements of all of these new mandates, CDS states that it will need financial flexibility. Specifically, Mr. Garaventa says on page 2 of his letter (Attachment 1):

In order to maintain and meet the continuing financial requirements, bond and institutional borrowing will be required. The most important issue that financial institutions review when analyzing a disposal company loan package is the term of the contract. The remaining term must be sufficient to guarantee that the business will have sufficient time to pay off the borrowed funds.

By amending the Franchise Agreement to include a term clause that automatically renews each year the City will be providing CDS with the financial flexibility to meet and address the future disposal and recycling needs of the City.

Further, in Mr. Bonnifield's letter he points out that CDS, as a family-owned business, has fewer financing options available to them than larger waste disposal companies. Consequently, an annually renewing contract makes CDS a more attractive investment to financial intuitions, giving them access to less expensive capital. Less expensive capital allows CDS to minimize and stabilize their customer rates.

The Infrastructure and Franchise Committee of the Council, which consists of Mayor Hoffmeister and Councilmember Helix, considered CDS' request for a term change at their November 10, 2011 meeting (Attachments 3 & 4). The Committee supports the request with the condition that certain topics of concern to the City be addressed within the new agreement. Each of these topics is discussed in more detail in the "Discussion" section below.

Discussion

Topics the Committee wanted addressed in the term extension amendment are listed below in bold. Followed by a short discussion and a presentation of the proposed deal terms to address the topic:

1. What happens if CDS is sold?

The Committee acknowledged that the City and CDS have a long and successful record as partners on waste and recycling on behalf of Concord businesses and residents. Additionally, CDS indicated to the Committee that they have no intention of selling their core or any subsidiary business. However, with an evergreen provision, it is foreseeable that at some point in the future the family could have cause or a desire to sell their business(es). In order to protect the City should such a change occur, the Committee asked City and CDS staff to work together to draft appropriate deal points to protect the City's interests.

Proposed deal terms to address this question:

- a. The evergreen provision would terminate and the agreement would become a five-year term agreement if CDS, or any of its affiliates (SEG Trucking; Mt. Diablo Paperstock, dba Mt. Diablo Recycling; and Contra Costa Waste Service) are sold, and
- b. Section (i) of the 1980 Extension Agreement would remain in place which requires Council consent for any new agreement holder.

2. How does the City assure continued high levels of service?

The Committee requested that City and CDS staff work together to provide deal points that will assure on-going high levels of service from CDS under the franchise agreement.

Proposed deal terms to address this question:

- a. Require CDS to participate in citizen satisfaction surveys or to perform independent rate payer satisfaction surveys if requested to do so by the City Manager or the City Council;
- b. Establish the ability of the City, at its sole discretion, to call and hold public hearings on trash and recycling service levels at which CDS must be present and participate fully; and
- c. Require CDS to problem solve and address performance problems identified by the City in a timely manner.

3. How does the City assure continuation of a competitive rate structure for users of the service?

Currently the City's agreement with CDS requires that residential rates be set through the use of a strict rate setting methodology, as defined in City's *Rate Setting Process and Methodology Manual for Residential Solid Waste Fees*. The Council does not provide oversight to commercial and multi-family rates. The proposed agreement term change does not alter the current methodology or process for City review of rates. No change to the City's current oversight of rates is proposed.

4. How does the City assure continuation of a competitive franchise fee payment to the city?

Currently the City evaluates the appropriateness of its franchise fee whenever a new base residential rate is set. In the Tenth Amendment which adjusted residential rates, the City transitioned from a fixed franchise fee to a payment based on a percentage of gross revenues. For the period beginning July 1, 2011 and ending on June 30, 2012, the franchise fee is 7.07% of gross revenues, with fees for the two subsequent years increasing to 8.24% and 9.41% of gross revenue. There is no provision for franchise fee increases after June 30, 2014 so this would need to be negotiated in the future if desired. No change is proposed as part of this term change amendment.

5. How does the City enhance or modify services over time?

Historically, the City has requested changes to services either due to new state requirements or at the time of a requested rate change. To provide more clarification around this issue within the franchise agreement, additional language is proposed.

Proposed deal terms to address this question:

- a. Grant the City the ability to direct CDS to perform additional services, establish new educational programs and/or eliminate activities or modify their activities to meet State or community needs; and
- b. Acknowledge the ability for CDS to request a rate change modification consistent with the rate setting manual if the service modifications have cost implications.

6. What public benefits would the City or rate payers receive in exchange for modifying the term of the contract?

CDS has indicated that the most significant benefit the City and rate payers will receive through the modification of the franchise term is a more cost effective franchisee because the term change will make CDS a more attractive investment to outside funding sources. This is anticipated to translate into less expensive loans for the company. CDS anticipates the need to continue to make significant capital investments that it will fund through loans, in order to meet all of the recent and expected new state mandates. Additionally, CDS has offered a more direct financial benefit.

CDS Proposal:

CDS is proposing to pay \$20,000 annually in acknowledgement of the impacts their vehicles have to City roadways at each annual renewal of the 15 year contract term. CDS has indicated that this payment would not be incorporated into the charges to rate payers, but rather would come from the company's bottom line. The City would agree to use this annual payment for street and roadway maintenance, repair, and replacement.

Alternatives

Council can decline to consider the term change request or can add or modify the proposed deal points.

Fiscal Impact

Changing the term of the contract has no fiscal impact. Payment of \$20,000 each year upon contract renewal will have an annual positive impact on the City's general fund of \$20,000; the money would only be available for roadway maintenance, repair, and replacement activities.

Public Contact

Posting of the Agenda. The report was sent to CDS.

Recommendation for Action

Staff recommends that the Council consider Concord Disposal Services request for a term change and the proposed deal terms and provide direction. Additionally, staff recommends that the Council set this item for a public hearing on Tuesday, January 24, 2012, at 6:30 pm in the Council Chambers to consider the proposed franchise agreement amendment.



Daniel E. Keen
City Manager
Dan.Keen@ci.concord.ca.us

Prepared by: Valerie J. Barone
Assistant City Manager
Valerie.Barone@ci.concord.ca.us

Reviewed by: Mark Boehme
Contract Senior City Attorney
Mark.Boehme@ci.concord.ca.us

Exhibits:

1. July 13, 2011 letter from Joseph Garaventa, Chief Executive Officer
2. November 9, 2011 letter from R.M. Bonnifield, Corporate Counsel
3. November 10, 2011 Infrastructure & Franchise Committee Annotated Agenda
4. November 20, 2011 Infrastructure & Franchise Committee Staff Report w/attachment



Concord Disposal Service

4080 MALLARD DRIVE • P.O. BOX 5397
CONCORD, CALIFORNIA 94520
(925) 682-9113

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July 13, 2011

**Daniel E. Keen
City Manager
City of Concord
1950 Parkside Drive
Concord, California 94519**

Re: Solid Waste Franchise Extension

Dear Mr. Keen,

For the reasons outlined below, Concord Disposal Service, Inc. ("CDS") requests that the City of Concord ("City") amend our current Franchise Agreement to modify the term by adopting a new term that automatically renews itself each year.

CDS is a locally owned solid waste disposal and recycling business that has provided superior waste service to the City over the years. As a Concord family business, CDS has taken an active role in supporting the local community, the City and its various citizen and sports groups. CDS has consistently been at the top of the City's yearly surveys measuring customer satisfaction for services provided.

Over the years, when new rules and regulations have been passed by the State of California, CDS has always successfully responded by implementing new programs that either meet or exceed the new rules. As an example, in order to meet the recycling mandate of AB939, CDS adopted a three (3) container system to separate at the source residential solid waste, green waste and single stream recyclables. CDS also responded to the new requirements by assisting its related company Mt. Diablo Recycling in designing, financing and constructing a multi-million dollar state of the art recycling facility. Mt. Diablo Recycling ("MDR") was built using the most modern and innovative components and equipment and is the most sophisticated recycling operation in Northern California. Recently, MDR has begun reprocessing other Cities residual single stream recycling which is the remaining waste after the single stream recyclables have been processed. Currently, MDR is recycling approximately ninety four percent (94%) of what other recycling companies and cities are classifying as garbage to be taken to landfills.

The waste disposal and recycling industry is entering into very uncertain times with new unfunded mandates a virtual certainty. Commercial recycling will soon be mandatory. The state has

recently passed new Green Building Standards that require at least fifty percent (50%) of construction waste to be recycled. Most industry and legislative analysts agree that the state will soon pass legislation requiring a substantial increase in the amount of waste diverted from landfills. Presently, AB341 would require a seventy five percent (75%) recycling standard for all waste generated.

In order to maintain and meet new and future disposal and recycling policies, CDS will require financial flexibility to update equipment, replace vehicles and design and construct new sophisticated recycling processes. As an example, the next replacement vehicles will likely be more environmentally sensitive and run by way of compressed natural gas ("CNG") which will require construction of a new CNG station.

In order to meet the continuing financial requirements, bond and institutional borrowing will be required. The most important issue that financial institutions review when analyzing a disposal company loan package is the term of the contract. The remaining term must be sufficient to guarantee that the business will have sufficient time to pay off the borrowed funds.

By amending the Franchise Agreement to include a term clause that automatically renews each year the City will be providing CDS with the financial flexibility to meet and address the future disposal and recycling needs of the City. CDS suggests that the term be amended to read as follows:

"The Term of this Agreement is extended and will terminate in fifteen (15) years on June 25, 2026. The Term of this Agreement, as amended, shall upon termination of each twelve (12) month period, automatically extend for an additional twelve (12) months, so that, upon each anniversary date of this Agreement, the Term shall always be fifteen (15) years. Either party may terminate this automatic renewal by giving at least a hundred and twenty (120) days prior written notice to the other of such termination, and thereafter, the automatic renewal shall terminate and this Agreement, as amended, shall terminate on the expiration of the remaining Term of the Agreement."

For the reasons set forth above, CDS believes the requested amendment will allow CDS to effectively respond to and meet all of the future disposal and recycling requirements of the City.

If you have and questions, need additional information or would like to meet and discuss this matter, please contact me at your convenience.

Very truly yours,
Concord Disposal Service, Inc.



By Joseph Garaventa
Chief Executive Officer



Concord Disposal Service

4080 MALLARD DRIVE • P.O. BOX 5397
CONCORD, CALIFORNIA 94520
(925) 682-9113

November 9, 2011

Daniel E. Keen
City Manager
City of Concord
1950 Parkside Drive
Concord, California 94519

Re: Solid Waste Franchise Extension

Dear Mr. Keen;

On July 7, 2011, Concord Disposal Service, Inc. ("CDS") requested by letter that the City of Concord ("City") amend the current existing Franchise Agreement by adopting a new term that provides for an annual renewing term. Although I believe the recent letter sets forth the rationale for the request, I thought it might be beneficial for me to explain in more detail the major reason for the request for an annual renewable provision.

Length of Franchise Agreements

Franchise agreements in California vary from jurisdiction to jurisdiction. But the principle behind them does not, and that is that the agreements need to be long enough to allow a franchisee to construct and improve facilities; to continually purchase new and ever more expensive equipment; to respond to fast changing regulatory requirements; and to continue to innovate as new and more efficient technologies become available. What does the length of the agreement have to do with that? It is quite simple:

- Disposal companies are capital intensive and must borrow money.
- That borrowed money must be paid back.
- Banks want to be sure the company is in business at least for the term of the debt.

The "exclusive franchise" model is predominant in California and therefore, since it provides the only basis on which service providers receive revenues which can be used for debt service, the term of that franchise necessarily becomes the limit for debt maturities. In other words, if you only have a ten year franchise, everything must be amortized over ten years. What's wrong with that? Because it does not serve either the companies or the ratepayers. Why? For the same reason you would not get a five year mortgage on your house or perhaps more on point, why public agencies like cities and sanitary districts don't finance vital infrastructure projects which are to be used for long periods over just a few years.

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If people couldn't amortize home mortgages and public agencies couldn't finance streets, sewers over thirty years and yes, solid waste companies couldn't amortize debt over 20 years, then no one could afford homes, municipal infrastructure or solid waste service. (Think of it this way-half the term, double the debt service in the rate).

The other problem with short agreements (and by short I mean 10 years minimum which is about the shortest around), or indeed any fixed term agreement is that it artificially promotes large capital expenditures only at the beginning of the agreement because the whole term is needed to amortize the capital costs. What does that do? It can lead to higher costs because a service provider needs to guess at its needs for a long period and will obviously guess high to eliminate the risk of unexpected future capital costs. This will lead to higher rates. It also makes it difficult to impossible to reach two of the goals of franchise agreements cited above. First, it makes it more difficult for a company to respond to new regulatory requirements. To use a recent example, companies with fixed term contracts have been unable or extremely reluctant to purchase new CARB compliant vehicles until granted a contract extension, new contract, or large rate increase, while companies with annually renewable contracts have had more time to pay back additional borrowings and many have helped the industry achieve the required 2007 standards on a faster timetable than that required by CARB. For companies like CDS's affiliate with extensive MRF and transfer facilities, the problem would be even more serious. Without the annual renewable provision, within a few years it would become difficult to justify or pay for additional improvements to long lived facilities because you wouldn't have enough time to pay for them without significant rate impact or impact on the company's financial health.

Second, it discourages innovation and the ability to meet new challenges or purchase new more advanced equipment, especially important in our increasingly technology driven industry (a 10 year period is a "lifetime" technology-wise). There is no company of the size of CDS which has a record of innovation and success in all aspects of recycling and refuse .An annual renewable provision will help CDS continue to meet the financial requirements which allow for innovations and superior service. CDS was performing many recycling activities before there were mandates, and there are many more examples with new unfunded mandates by the State.

Effect of Failure to Grant Request

If the City fails to grant the annual renewable term to CDS which has served the City for years, it will get the attention of the company's banks and it won't be positive attention. It would be especially hard to explain given the quality of service and the fact that some of the innovations CDS has implemented over many years are truly industry-leading in nature and that the company is going to need money for innovations to come.

So, who cares if the bank loses a bit of confidence? You do and ultimately so should your ratepayers. In order to understand that, the City needs to understand how banks perceive this industry and the franchise system used in California and most of the West Coast. First, as we've discussed, disposal companies are very capital intensive. That results in greater borrowing needs than similarly sized companies in other industries. But, at the same time, revenues of solid waste and recycling companies are strictly regulated so you cannot just raise prices when necessary. In other words, these companies are more like small utility companies than more "normal" commercial enterprises that make up the bulk of any bank's lending portfolio. The Company's bank and the few banks that understand this "utility model" (lower but more consistent long term revenues) allow you to borrow more as a percentage of income and cash flow than they do other service or commercial enterprises. There is only one reason the banks allow this higher "leverage" – the long term franchise agreements.

The fact that CDS has assured revenues at least at some level for a longer period makes CDS more likely to be able to pay debt service as compared to other types of companies in the eyes of the bank. If the annual renewable feature is not adopted despite CDS's history of excellent service, the whole model could be brought into question.

Protection of the Ratepayers

I know that some believe that the only way to be sure any municipality has competitive rates is to put the contract out to bid. That is a common, but hugely inaccurate view. First, it is relatively easy to do a "peer review" of comparative rates in other communities since all is public record. But, in your case, there is a formal process initially overseen by an independent third party consulting firm to assure that any rate request made is both fair and reasonable.

Your consultants certainly are one of the toughest on private service providers of any of the similar municipal consulting firms that have arisen. The historical rate structure of the City is easily defensible since these rates have been reviewed by a firm which makes it as difficult as possible for CDS to raise rates at all.

Summary

We are still in the midst of the worst economic situation since the 1930's and CDS has had its financials impacted negatively as waste volume and revenues are down and yet many costs are much higher than they were a few years ago (everyone can see what has happened to fuel costs just in the last couple of years for example). But despite these changes, CDS continues to provide excellent service and has maintained its record in increased recycling, reduction in greenhouse gas emissions and community relations. I do hope that the City adopts an annual renewable term for its Franchise Agreement with CDS so that CDS is better able to provide superior service to the Concord Community and its rate payers.

Please let me know if you have any questions on this matter.

Very truly yours
Concord Disposal Service, Inc.



By: R.M. Bonnifield
Corporate Counsel

cc Valerie Barone, Assistant City Manager
Craig Labadie, City Attorney
Joan Ryan, Senior Planner

CITY COUNCIL COMMITTEE

INFRASTRUCTURE & FRANCHISE

Dan Helix, Chair

Laura Hoffmeister, Committee Member

5:30 p.m., Thursday, November 10, 2011

**City Council Chamber
1950 Parkside Drive, Concord**

- ANNOTATED AGENDA -

ROLL CALL: All present

STAFF PRESENT: Dan Keen, City Manager; Valerie Barone, Assistant City Manager; Mark Coon, Senior Assistant City Attorney; Mark Boehme, Contract City Assistant City Attorney; Guy Swanger, Chief of Police; Cheryl Owens, Police Business Manager

MEMBERS OF THE PUBLIC WHO ADDRESSED THE COMMITTEE: Ron Mullins, Attorney for Tow Operators and Owners; Clark Clovis, Alan Mitchell and Mike Bonnefield, representing Concord Disposal Services

PUBLIC COMMENT PERIOD: None

1. **CONSIDERATION** – Rotational Tow Operator Proposed Franchise Fee, report by Cheryl Owens, Police Business Manager, Police Department.

ACTION: Staff presented a recommendation for establishing a Tow Franchise Fee. The fee was set at an amount to recover City costs involved in the tow. Ron Mullins, the attorney representing the tow owners and operators, voiced his concern and made a recommendation to study a potential software system to track all tows before establishing a fee. Committee Chair Helix was in favor of a fee but wanted staff to study the tracking of the tows through a software program. Committee member Hoffmeister was also in support of a fee but wanted to know whether the total franchise fee or fee per tow was more equitable.

Staff will return in January after meeting with various companies that provide accounting support for tow operations. In addition, staff will also re-visit the total fee costs.

2. **CONSIDERATION** – Proposed Amendment to Concord Disposal Service (CDS) Franchise,

report by Valerie Barone, Assistant City Manager, and Joan Ryan, Housing Manager

ACTION: The Committee acknowledged that CDS has provided trash hauling services for the City since the 1940's, and that it has been the Garaventa family the entire time. Assistant City Manager, Valerie Barone, presented the staff report.

Committee Chair Helix indicated he was in favor of the term extension but wanted to make sure that rates in Concord remained reasonable when compared to our neighboring jurisdictions.

Committee member Hoffmeister indicated that she too was supportive of the term extension but wanted to make sure that the City was protected if CDS sold their core businesses or any of their affiliated businesses in the future. Additionally, she wanted to make sure that the agreement continued to allow the City to require enhanced and or changes to CDS services over time, and last she wanted CDS to explore if there was an appropriate benefit enhancement they could offer as part of their term change request.

The Committee as a whole requested staff to forward the term change request to the full Council noting the Committee's support of the amendment and to negotiate draft deal points with CDS and bring them before the whole Council in December for feedback and guidance. Staff noted that the deal points could be reviewed by the full Council on December 13th and that the amendment language could likely go before the full Council on January 24, 2012.

3. **ADJOURNMENT** at 8:00 p.m.



Distribution: City Council
Dan Keen, City Manager
Valerie Barone, Assistant City Manager
Craig Labadie, City Attorney
Guy Swanger, Chief of Police
Cheryl Owens, Police Business Manager
Joan Ryan, Housing Manager
Press



**REPORT TO INFRASTRUCTURE AND FRANCHISE COUNCIL
COMMITTEE**

TO HONORABLE COUNCIL COMMITTEE MEMBERS:

DATE: November 10, 2011

**SUBJECT: CONSIDERATION OF A REQUEST FROM CONCORD DISPOSAL SERVICES TO
MODIFY THE TERM OF THEIR SOLID WASTE FRANCHISE AGREEMENT
WITH THE CITY**

Report in Brief

The City of Concord provides waste and recycling services through a franchise agreement with Concord Disposal Services (CDS), a local, family-owned business. Mr. Joseph Garaventa, the Chief Executive Officer of Concord Disposal Services, is requesting that the City amend the current franchise agreement to adopt a new 15 year term that would renew automatically each year. The new term would replace the agreement's current term which expires in June 2021, but has one 5-year option that would extend the agreement to 2026. CDS is requesting this term change in order to create more financial flexibility for the company as it adjusts to all of the new, unfunded, state mandates that will require significant investment by the Company.

Staff is requesting that the Committee review this request and provide feedback to staff.

Background

The City entered into a franchise agreement with Concord Disposal Services (CDS) on July 14, 1980 to provide solid waste disposal services for the City of Concord. Since then the City and CDS have amended the agreement ten times, most recently on December 14, 2009. The ten amendments have addressed a number of topics including establishing new base rates for residential users, extensions to the agreement term, and expansion of the services provided under the agreement.

The City has recently received two additional requests for amendments to its current franchise agreement from CDS. The first is the request presented in this staff report: a request for a term change to the agreement. The term of the current franchise agreement with CDS extends to June 2021 and contains one 5-year option that if executed would extend the agreement until June 2026.

The second request is not addressed in this report; it is for a base rate adjustment. The second request is going through the review steps required in the City's *Rate Setting Process and Methodology Manual for Residential Solid Waste Fees* and will come to the Infrastructure and Franchise Committee and the City Council as a separate item at some point in the future, likely at some point during the first quarter of 2012.

Discussion

On July 13, 2011, Mr. Joseph Garaventa, the Chief Executive Officer of CDS, submitted a letter to the City (Attachment 1) requesting that the City amend the current franchise agreement to adopt a new 15 year term that would renew automatically each year. The City or the franchise holder could terminate the automatic renewal with advance written notice and the agreement would then terminate on the expiration of the remaining term, which would be between 14 and 15 years. This type of an annually renewing contract is sometimes referred to as an “evergreen” agreement.

In the letter, Mr. Garaventa points out that CDS is a family-owned, local business that has provided superior waste and recycling services to the City over the years. He recommends the change to the agreement term because the waste disposal and recycling industry is entering into very uncertain times with many new unfunded state mandates in the process of being imposed—such as mandatory commercial recycling programs, an increase in the mandatory amount of waste diversion to 75%, requirements to retrofit or replace waste and recycling collection vehicles to run on compressed natural gas, etc. In order to meet the investment requirements of all of these new mandates, CDS states that it will need financial flexibility. Specifically, Mr. Garaventa says on page 2 of his letter:

In order to maintain and meet the continuing financial requirements, bond and institutional borrowing will be required. The most important issue that financial institutions review when analyzing a disposal company loan package is the term of the contract. The remaining term must be sufficient to guarantee that the business will have sufficient time to pay off the borrowed funds.

By amending the Franchise Agreement to include a term clause that automatically renews each year the City will be providing CDS with the financial flexibility to meet and address the future disposal and recycling needs of the City.

Further CDS staff has mentioned that as a family-owned business they have fewer financing options available to them than larger waste disposal companies. Consequently, an annually renewing contract makes CDS a more attractive investment to financial intuitions, giving them access to less expensive capital. Less expensive capital allows CDS to minimize and stabilize their customer rates. CDS intends to have representatives at the Infrastructure & Franchise Committee meeting to further explain their need for financial flexibility and to answer any questions.

In 2010, the City of San Jose analyzed an automatic annual renewal feature with respect to a solid waste franchise agreement they were considering. San Jose staff identified some areas of concern about such a provision, including concern that an annually renewing contract could limit opportunities for the City to respond to changes in the market place, might inhibit the City’s negotiation strength in the future, might make it more difficult for the City to address performance issues, might limit opportunities for the City to enhance services over time, and might leave the City powerless to respond to a change of ownership of the company. Further, San Jose staff pointed out that other techniques are available to provide term stability, such as extending the existing agreement term or providing additional extension options to the agreement.

Staff is requesting direction from the Committee on the term change request. If the Committee is supportive of exploring the term change request, staff further requests the Committee identify any topics or areas of concern they want staff to explore with CDS. Such topics could include the following:

1. What happens if CDS is sold?
2. How does the City assure continued high levels of service?
3. How does the City assure continuation of a competitive rate structure for users of the service?
4. How does the City assure continuation of a competitive franchise fee payment to the city?
5. How does the City enhance or modify services overtime?
6. What public benefits would the City or rate payers receive in exchange for modifying the term of the contract?

Fiscal Impact

Staff is unaware of any fiscal impact created by changing the term of the contract.

Public Contact

Posting of the Council Committee Agenda, was provided and the report was sent by mail to CDS.

Recommendation for Action

Staff recommends that the Infrastructure and Franchise Council Committee consider Concord Disposal Services request for a term change and provide direction to staff.


Valerie J. Barone

Prepared by: Valerie J. Barone
Assistant City Manager

Attachment: July 13, 2011 letter from CDS



Concord Disposal Service

4080 MALLARD DRIVE • P.O. BOX 5397
CONCORD, CALIFORNIA 94520
(925) 682-9113

JUL 14 2011
CITY MGR'S. OFFICE

July 13, 2011

Daniel E. Keen
City Manager
City of Concord
1950 Parkside Drive
Concord, California 94519

Re: Solid Waste Franchise Extension

Dear Mr. Keen,

For the reasons outlined below, Concord Disposal Service, Inc. ("CDS") requests that the City of Concord ("City") amend our current Franchise Agreement to modify the term by adopting a new term that automatically renews itself each year.

CDS is a locally owned solid waste disposal and recycling business that has provided superior waste service to the City over the years. As a Concord family business, CDS has taken an active role in supporting the local community, the City and its various citizen and sports groups. CDS has consistently been at the top of the City's yearly surveys measuring customer satisfaction for services provided.

Over the years, when new rules and regulations have been passed by the State of California, CDS has always successfully responded by implementing new programs that either meet or exceed the new rules. As an example, in order to meet the recycling mandate of AB939, CDS adopted a three (3) container system to separate at the source residential solid waste, green waste and single stream recyclables. CDS also responded to the new requirements by assisting its related company Mt. Diablo Recycling in designing, financing and constructing a multi-million dollar state of the art recycling facility. Mt. Diablo Recycling ("MDR") was built using the most modern and innovative components and equipment and is the most sophisticated recycling operation in Northern California. Recently, MDR has begun reprocessing other Cities residual single stream recycling which is the remaining waste after the single stream recyclables have been processed. Currently, MDR is recycling approximately ninety four percent (94%) of what other recycling companies and cities are classifying as garbage to be taken to landfills.

The waste disposal and recycling industry is entering into very uncertain times with new unfunded mandates a virtual certainty. Commercial recycling will soon be mandatory. The state has

recently passed new Green Building Standards that require at least fifty percent (50%) of construction waste to be recycled. Most industry and legislative analysts agree that the state will soon pass legislation requiring a substantial increase in the amount of waste diverted from landfills. Presently, AB341 would require a seventy five percent (75%) recycling standard for all waste generated.

In order to maintain and meet new and future disposal and recycling policies, CDS will require financial flexibility to update equipment, replace vehicles and design and construct new sophisticated recycling processes. As an example, the next replacement vehicles will likely be more environmentally sensitive and run by way of compressed natural gas ("CNG") which will require construction of a new CNG station.

In order to meet the continuing financial requirements, bond and institutional borrowing will be required. The most important issue that financial institutions review when analyzing a disposal company loan package is the term of the contract. The remaining term must be sufficient to guarantee that the business will have sufficient time to pay off the borrowed funds.

By amending the Franchise Agreement to include a term clause that automatically renews each year the City will be providing CDS with the financial flexibility to meet and address the future disposal and recycling needs of the City. CDS suggests that the term be amended to read as follows:

"The Term of this Agreement is extended and will terminate in fifteen (15) years on June 25, 2026. The Term of this Agreement, as amended, shall upon termination of each twelve (12) month period, automatically extend for an additional twelve (12) months, so that, upon each anniversary date of this Agreement, the Term shall always be fifteen (15) years. Either party may terminate this automatic renewal by giving at least a hundred and twenty (120) days prior written notice to the other of such termination, and thereafter, the automatic renewal shall terminate and this Agreement, as amended, shall terminate on the expiration of the remaining Term of the Agreement."

For the reasons set forth above, CDS believes the requested amendment will allow CDS to effectively respond to and meet all of the future disposal and recycling requirements of the City.

If you have any questions, need additional information or would like to meet and discuss this matter, please contact me at your convenience.

Very truly yours,
Concord Disposal Service, Inc.



By Joseph Garaventa
Chief Executive Officer

SPECIAL JOINT STUDY SESSION WITH
THE CONCORD CITY COUNCIL AND THE
CONCORD PLANNING COMMISSION;
AND A REGULAR JOINT MEETING OF
THE CONCORD CITY COUNCIL AND
REDEVELOPMENT AGENCY
CITY COUNCIL CHAMBER
1950 PARKSIDE DRIVE
CONCORD, CALIFORNIA
TUESDAY, DECEMBER 13, 2011

The Concord City Council met in a joint study session with the Concord Planning Commission in the Council Chamber located at 1950 Parkside Drive at 5:35 p.m. on Tuesday, December 13, 2011 with Mayor Leone presiding. Minutes follow in abbreviated form per Resolution 3361 and Council Minutes of September 26, 1966.

ROLL CALL

COUNCILMEMBERS PRESENT: Tim Grayson, Dan Helix, Laura Hoffmeister, Bill Shinn, Ron Leone

CONCORD PLANNING COMMISSIONERS PRESENT: Robert Hoag, Tim McGallian, Ernesto Avila

CONCORD PLANNING COMMISSIONERS ABSENT: John Mercurio, Gene Sylls

STAFF PRESENT: Daniel E. Keen, City Manager; Craig Labadie, City Attorney; Valerie Barone, Assistant City Manager; Mary Rae Lehman, City Clerk; Tambri Heyden, Interim Planning Manager; Cathy Munneke, Principal Planner; Mark Boehme, Contract Attorney to the Planning Commission; Carol Johnson, Planning Manager

PUBLIC COMMENT PERIOD

Edi Birsan, Concord, shared information regarding an oil leak on the Concord Naval Weapons Station property near Kirker Pass Road and advised that it had been contained and properly handled.

STUDY SESSION – PROGRESS REPORT ON DEVELOPMENT CODE PROJECT

Tambri Heyden, Interim Planning Manager, made a presentation, referencing her memorandum dated December 13, 2011, and stating that the revised work program for the Development Code update had been approved by Council on November 1, 2011. She advised that additional meetings had been held with the Planning Commission to seek input on key issues needed to complete the Development Code. She continued by sharing the areas of discussion for the evening's joint study session including 1) thresholds for requiring nonconforming properties to upgrade to current standards and the proposed standards; 2) elimination of the Planned District zoning for future projects; and 3) rezoning of existing, non-residential Planned Districts. She concluded her introductory comments by advising that the current Code is extremely out-dated, unclear, and difficult for staff and customers to interpret.

ADOPTION OF RESOLUTION NO. 11-81 – Right-of-Way Contracts

Motion was made by Hoffmeister and seconded by Shinn to adopt Resolution No. 11-81, entitled "APPROVING RIGHT-OF-WAY CONTRACTS WITH BAY AREA INVESTORS, L.P.; ROY F. QUERIO AND BARBARA J. QUERIO, AS TRUSTEES OF THE QUERIO TRUST; AND CBC PROPERTIES I, L.P., AND CBC PROPERTIES II, L.P. FOR THE CONVEYANCE OF EASEMENTS TO THE CITY OF CONCORD" as required for Project No. 1761, (Commerce Avenue Roadway Extension and Bridge). Motion passed by unanimous vote of the Council.

AGREEMENT WITH FRANCISCO AND ASSOCIATES – Engineering Services

Motion was made by Hoffmeister and seconded by Shinn to approve a Master Professional Services Agreement with Francisco & Associates in the amount of \$100,000 to provide engineering services; and to authorize the City Manager to execute the agreement. Motion passed by unanimous vote of the Council.

AGREEMENT WITH MARTY O'S CONCESSION AND CATERING

Motion was made by Hoffmeister and seconded by Shinn to approve an agreement with Marty O's Concession and Catering to provide food/beverage concession services at Willow Pass Park and Concord Community Pool; and to authorize the City Manager to execute the agreement. Motion passed by unanimous vote of the Council.

SETTING FOR PUBLIC HEARING – Concord Disposal Services Deal Points

Assistant City Manager Valerie Barone presented a report, referring to her memorandum dated December 13, 2011, asking the City Council to consider proposed conceptual deal points amending the terms and conditions of the Concord Disposal Services Franchise Agreement and to set a public hearing for Tuesday, February 2, 2012 at 6:30 p.m. in the Council Chamber. She stated that Joseph Garaventa, Chief Executive Officer of Concord Disposal Services, is requesting a new 15-year term that would renew automatically each year, and advised that the current agreement has terms which expire in June 2021 which has one 5-year option which would extend the agreement to 2026. Ms. Barone shared that the Subcommittee on Infrastructure and Franchise consisting of Councilmembers Helix and Hoffmeister had reviewed the request and supported the term extension and annual renewal provision with topics of concern to the City to be addressed within the new agreement. She defined those areas as: (1) defining the City's position if the family-owned business is sold, (2) assurance of on-going high levels of service, (3) continuation of competitive rate structure, (4) continuation of competitive franchise fee payments to the City, (5) additional language in the agreement which will enhance or modify services due to the impacts of new state requirements or at the time of a requested rate change, and (6) definition of public benefits. She concluded her comments by advising that the firm would pay \$20,000 annually which could be used to offset expenses incurred by the City for road repairs, or other desired use.

Following questions and comments by the Councilmembers, Mayor Leone acknowledged Mike Bonnifield, Counsel for Concord Disposal Services and Clark Colvis, Chief Financial Officer, who offered clarifications to Council inquiries. Councilmember Hoffmeister expressed concern over the equity of the proposal compared to other communities. Vice Mayor Shinn shared his concern over the annual \$20,000 contribution suggesting that it didn't provide the City any flexibility for increase if the economic conditions might allow for it.

Mayor Leone opened and closed the public comment period without receiving any comments.

Motion was made by Helix and seconded by Grayson to set a public hearing for Tuesday, February 7, 2012 in the City Council Chamber located at 1950 Parkside Drive. Motion passed by the following vote of the Council:

AYES: Helix, Grayson, Leone NOES: Hoffmeister, Shinn ABSTAIN: None

RATIFICATION AND APPROVAL OF THREE CHANGE ORDERS – Chevron Energy Solutions, Citywide Energy Services Company Energy Efficiency Contract

Notice of the Public Hearing was published in the Contra Costa Times and posted in the City's posting cabinet on November 29, 2011.

City Engineer Dana Gemmell presented a report, referring to her memorandum dated December 13, 2011, sharing the circumstances requiring ratification and approval of three change orders to the Citywide Energy Services Company Energy Efficiency Contract. She advised that the Council Subcommittee on Infrastructure and Franchise had reviewed the change order requests and support staff's recommendation for approval. She confirmed that the public hearing was a requirement of the contract and summarized the change orders as follows:

- #1 June 14, 2011 upgrade of the HVAC at Concord Police Department to support the dispatch center (\$219,099);
- #2) September 27, 2011 work consisting of: (a) installation of energy efficient lighting at Ygnacio Valley Park (\$74,053), (b) installation of exterior energy efficient lighting at the Civic Center (\$37,128), (c) upgrade of HVAC system at the Civic Center (\$68,600), (d) upgrade of management system air ducts and inoperable air sensors at Concord Police Department (\$95,645), and (e) replacement of Concord Community Pool water heaters and filtration system as required by the Contra Costa County Health Department (\$172,950); and
- #3) Installation of pull boxes and wire at various City parks as required due to vandalism (\$474,664) and asbestos abatement and repair to City building required to install approved HVAC upgrade (up to \$115,992).

Ms. Gemmell concluded her presentation by advising that related budget transfers totaling \$425,856 for various projects was also recommended along with authorization for the City Manager to execute associated agreements.

Following comments by the Councilmembers and confirmation that the City would pursue insurance settlement for the vandalism at City parks, Mayor Leone opened and closed the public hearing without receiving any requests to comment.

Motion was made by Helix and seconded by Shinn to approve three change orders to the Citywide Energy Services Company Energy Efficiency Contract and to authorize the City Manager to execute associated agreements. Motion passed by unanimous vote.

