



## MEMORANDUM

**TO: CITY COUNCIL**

**FROM: DEBBIE MALICOAT, DIRECTOR OF ADMINISTRATIVE SERVICES**

**SUBJECT: CONSIDERATION OF SECOND AMENDMENT TO AMENDED AND RESTATED SOLID WASTE COLLECTION FRANCHISE AGREEMENT WITH SOUTH COUNTY SANITARY SERVICE, INC.**

**DATE: JULY 26, 2016**

### **RECOMMENDATION:**

It is recommended the City Council approve the Second Amendment to the City's Franchise Agreement for solid waste collection.

### **IMPACT ON FINANCIAL AND PERSONNEL RESOURCES:**

There is no significant impact on financial or personnel resources related to the proposed action. There will be minor staff time involved in processing the amendment.

### **BACKGROUND:**

The City has had a Franchise Agreement (Agreement) with South County Sanitary Service (SCSS), a subsidiary of Waste Connections, for collection, diversion and disposal of solid waste since 1997. The Agreement was most recently amended on March 22, 2016, to include tipping fee increases approved by the County Board of Supervisors in 2014 for landfill improvements, from the calculation of whether the SCSS rate increases are greater than the cumulative cost of living increase. Rate increases that exceed the cumulative increase in the consumer price index trigger an optional termination provision that may be exercised by the City.

At this time, SCSS has requested a change to the current franchise agreement which would extend the contract by 20 years, beginning with the first day of operation of a new Kompogas organics processing facility.

### **ANALYSIS OF ISSUES:**

#### **Background of Organic/Green Waste Developments**

- In late 2010, the green waste composting facility at Cold Canyon Landfill was closed. Green waste collected by SCSS has been used as either alternative daily cover at the landfill or transported to Engle and Gray in Santa Maria for composting.

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- In 2014, Assembly Bill (AB) 1826 and AB 1594 were enacted. AB 1826 established a mandatory organics management program which will require businesses to recycle all organics including food waste. This requirement phases in, with the first deadline being April 2016 for businesses that generate eight cubic yards or more per week of organics. AB 1594 eliminates the diversion credit for using green waste as alternative daily cover.
- Cal Recycle and the State Water Resources Control Board are developing new, more stringent compost regulations.
- The Intergovernmental Panel on Climate Change now estimates that the greenhouse gas potential of methane is 34 times greater than that of carbon dioxide.
- On April 29, 2015, Governor Brown set the goal of reducing greenhouse gas to 40% below 1990 levels by 2030.
- On May 7, 2015, the Air Resources Board issued a concept paper to set an initial goal of diverting 75% of organics from landfills by 2020 and diverting 90% of organics from landfills by 2025.

#### **Solution to Organic/Green Waste Regulations and Goals: Organics Diversion Program**

In early spring 2015, Integrated Waste Management Authority (IWMA) staff presented a progress report to its Board on the management of organics in San Luis Obispo County and identified three potential providers that could manage both green and food waste: Engle and Gray, Mid-State Solid Waste, and Hitachi Zosen Inova (HZI). Recognizing the need for a comprehensive long-term organics management plan, Waste Connections issued a Request for Proposals and requested the three potential providers submit proposals structured to reflect the tonnages and needs of the entire service area, from San Simeon to Nipomo. Engle and Gray and HZI submitted responsive proposals.

Waste Connections selected HZI to provide a Kompogas Anaerobic Digestion Plant<sup>1</sup> that would produce renewable energy. The anaerobic digestion plant would be designed, built, and operated by HZI/Kompogas, under contract to Waste Connections. The HZI group owns Kompogas and is a recognized leader in energy from waste, delivering complete turnkey plants and system solutions for energy recovery from waste. The first Kompogas anaerobic digestion plant was built in 1991 in Switzerland

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<sup>1</sup> Anaerobic digestion is different than composting in that the process of decomposition occurs in an oxygen-free environment. Unlike composting, this process produces energy in the form of biogas and minimizes the need for water. In addition, all activities are inside a building, thus minimizing odors, storm water runoff, and litter.

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and is still in operation. Currently, there are 75 plants operating throughout the world; however there are none in the United States.

**Two-Phase Implementation of Organics Diversion Program**

At the May 13, 2015 IWMA Board meeting, Waste Connections presented their plan for the long-term management of all organic waste with Kompogas, that included an interim and permanent phase. The plan would incorporate Waste Connection's entire service area from San Simeon to Nipomo and cover a 20-year period beginning with the operation of a long-term collection and processing facility of all organic waste.

Interim Phase:

On March 22, 2016, the City Council adopted Resolution No. 4714 approving SCSS rate increases effective for 2016, 2017, and 2018. These rate increases include the interim phase of collecting residential and commercial green waste and transferring all of the green waste to Engle and Gray.

Permanent Phase:

The permanent phase is planned to begin in about mid-2017, beginning with the construction of a \$12 million organics processing facility at Waste Connections' existing yard on Old Santa Fe Road in San Luis Obispo. This industrial site is located where the garbage trucks start and end each day and has an existing building that will be used for the organics receiving area. To implement the permanent phase of the organics management program, Waste Connections will enter into a long-term agreement with HZI, where HZI would design, finance, build, own, and operate a Kompogas plant for a fixed fee, subject only to cost of living increases and adjustments for the sale price of electricity and/or compost/compost tea. In return, Waste Connections will guarantee to deliver organics from its entire San Luis Obispo County service area for a 20-year period. This guarantee is necessary for HZI to obtain the financing to build the \$12 million plant. This project would meet state regulations and has the best chance to contain costs over this period relative to other sites and technologies.

**Franchise Agreement 20-Year Extension**

The existing franchise agreement would need to be extended to cover the 20-year operating period of the Kompogas plant. The franchise extension is conditioned on the Kompogas plant being built. Similarly, commitments are needed from all the other cities in Waste Connections' service area. To date, the City of San Luis Obispo, Nipomo, Avila Beach, Morro Bay, Grover Beach and Pismo Beach have extended their franchise agreements. The Oceano Community Services District will be considering contract extensions shortly. If the plant is not built, the franchise agreement would remain valid until 2023, and the Interim Phase of transporting organic waste to Santa Maria for processing would continue past mid-2017 until a new long-term solution could be developed and implemented. As mentioned, the agreement would only be extended if the facility goes into production.

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**ALTERNATIVES:**

The following alternatives are provided for City Council consideration:

1. Approve the proposed amendment;
2. Do not approve the proposed amendment; or
3. Provide direction to staff.

**ADVANTAGES:**

Approval of the Second Amendment will provide SCSS and Waste Management assurance that the City's organics waste stream will be available for processing through the Kompogas facility for a 20 year term, which increases the financial feasibility of the project.

**DISADVANTAGES:**

The costs for processing organic waste will be passed on to the solid waste collection customers. This is true regardless of which alternative is used to process the organic waste.

**ENVIRONMENTAL REVIEW:**

No environmental review is required for this item.

**PUBLIC NOTIFICATION AND COMMENTS:**

The Agenda was posted in front of City Hall on Thursday, July 20, 2016. The Agenda and report were posted on the City's website on Friday, July 21, 2016.

**SECOND AMENDMENT TO  
AMENDED AND RESTATED  
SOLID WASTE COLLECTION FRANCHISE AGREEMENT**

THIS SECOND AMENDMENT TO AMENDED AND RESTATED SOLID WASTE COLLECTION FRANCHISE AGREEMENT (this “**Amendment**”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2016, in the State of California, and shall modify that certain Amended and Restated Solid Waste Collection Franchise Agreement, dated June 10, 2008 (the “**Agreement**”), by and between the CITY OF ARROYO GRANDE, a political subdivision of the State of California (“**City**”) and SOUTH COUNTY SANITARY SERVICE, INC., a California corporation (“**Contractor**”). City and Contractor may be collectively referred to herein as the “**Parties**” and individually as a “Party”, unless specifically identified otherwise.

**RECITALS**

WHEREAS, on September 28, 2014, the Governor of California approved AB 1826 which requires each jurisdiction, on and after January 1, 2016, to implement an organic waste recycling program to divert organic waste from certain businesses;

WHEREAS, in order to implement AB 1826’s requirements, Contractor has proposed to enter into a long term agreement with Hitachi Zosen Inova to construct and operate a Kompogas facility at Contractor’s property located at 4388 Old Santa Fe Road, San Luis Obispo, to compost food and green waste generated by City;

WHEREAS, in order to finance such facility, Contractor requires a twenty year commitment from City to divert all food and green waste to Contractor;

WHEREAS, City’s City Council finds that an exclusive franchise granted to a private company for the collection and processing of residential solid waste (including food and green waste) is the most effective and efficient way to collect and divert residential food and green waste within City;

WHEREAS, City’s City Council further finds that the construction of a food and green waste processing facility is in the best interests of City, will help promote the health, safety and welfare of the community and the environment and otherwise furthers the goals and objectives of AB 1826; and

WHEREAS, the Parties now wish to amend the Agreement to extend the Term of the Agreement conditioned upon Contractor’s meeting the criteria set forth herein.

**AGREEMENT**

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES AGREE TO AMEND THE AGREEMENT, AS FOLLOWS:

**1. Amendment to Article 1 (Definitions).** Article 1 of the Agreement is hereby amended to replace or add, as applicable, the following definition:

“(i) **“Facility”** means any plant or site utilized by Contractor (or a subcontractor of Contractor) for the purposes of performing the duties to fulfill this Agreement, including, without limitation, processing the City’s Green Waste and Food Waste. For purposes of Section 3.5, “Facility” means a Kompogas facility (or other similar technology) capable of processing the City’s Green Waste and Food Waste.”

“(ii) **“Facility Operation Date”** means the date on which, following its start-up, testing and commissioning, the Facility processes commercial quantities of Food Waste and Green Waste.”

“(iii) **“Food Waste”** means a waste material of plant or animal origin that results from the preparation or processing of food for animal or human consumption and that is separated from the municipal solid waste stream. Food waste includes, but is not limited to, food waste from food facilities as defined in Health and Safety Code section 113789 (such as restaurants), food processing establishments as defined in Health and Safety Code section 111955, grocery stores, institutional cafeterias (such as prisons, schools and hospitals), and residential food scrap collection. Food Waste does not include any material that is required to be handled only pursuant to the California Food and Agricultural Code and regulations adopted pursuant thereto.”

“(iv) **“Green Waste”** means tree trimmings, grass cuttings, dead plants, leaves, branches, dead trees and scrap wood (not more than six (6) inches in diameter) and similar materials generated at the premises.”

2. **New Section 3.5.** Article 3 of the Agreement is hereby amended to add the following new Section 3.5:

**“3.5 Additional Technology Extension.**

**A.** Subject to the conditions set forth in Section 3.5.B below, the Term of this Agreement shall be extended such that the Term of this Agreement shall expire at midnight on the twentieth (20<sup>th</sup>) annual anniversary of the Facility Operation Date, subject to further extension as provided in Section 3.3 (Option to Extend).

**B.** Contractor and City acknowledge that the foregoing twenty (20)-year Term extension is expressly contingent upon:

(i) By no later than January 1, 2018, Contractor executing a definitive long-term agreement with Hitachi Zosen Inova U.S.A. LLC (or other company approved by the City of San Luis Obispo) for the development, construction and operation of a Kompogas Facility (or other similar technology) capable of processing the City’s Green Waste and Food Waste; and

(ii) By no later than January 1, 2020, completion of a Kompogas Facility (or other similar technology) capable of processing the City’s Green Waste and Food Waste; provided, however, that in the event such Facility

has not been completed by January 1, 2020, due to reasons beyond the reasonable control of, and not due to the fault or negligence of Contractor, such completion date shall be extended by the number of days reasonably required to complete the Facility, but only to the extent that Contractor uses (and continues to use) due diligence to pursue completion of the Facility.

C. In the event Contractor does not enter into such definitive agreement and/or the Facility is not constructed and operational within the time frames set forth in Section 3.5.B, Contractor and City agree that the Term of this Agreement shall be until June 10, 2023, subject to further extension as provided in Section 3.3 (Option to Extend).”

3. **Counterparts.** This Amendment may be executed in one or more facsimile or original counterparts, each of which shall be deemed an original and both of which together shall constitute one and the same instrument.
4. **Ratification.** All terms and provisions of the Agreement not amended hereby, either expressly or by necessary implication, shall remain in full force and effect. From and after the date of this Amendment, all references to the term “Agreement” in this Amendment and in the original Agreement shall include the terms contained in this Amendment.
5. **Conflicting Provisions.** In the event of any conflict between the original terms of the Agreement and this Amendment, the terms of this Amendment shall prevail.
6. **Authorization.** Each Party executing this Amendment represents and warrants that it is duly authorized to cause this Amendment to be executed and delivered.

*[Remainder of Page Intentionally Left Blank;  
Signature Page Follows.]*

IN WITNESS WHEREOF, City and Contractor have executed this First Amendment to Amended and Restated Solid Waste Collection Franchise Agreement on the day and year first hereinabove set forth.

**CITY:**

CITY OF ARROYO GRANDE

**CONTRACTOR:**

SOUTH COUNTY SANITARY SERVICE,  
INC.

By: \_\_\_\_\_  
Name: Jim Hill  
Title: Mayor

By: \_\_\_\_\_  
Name:  
Title:

Attest:

By: \_\_\_\_\_  
Name: Kelly Wetmore  
Title: City Clerk

Approved as to Content:

By: \_\_\_\_\_  
Name: Geoff English  
Title: Acting City Manager

Approved as to Form:

By: \_\_\_\_\_  
Name: Heather K. Whitham  
Title: City Attorney