



Date: November 11, 2021
To: Board of Directors
From: Rick Benson, Interim General Manager
Subject: Amendment to Bay View Refuse Agreement

Recommendation:

Approve the proposed amendment to the Franchise Agreement with Bay View Refuse and Recycling Services and authorize the Board president to sign.

Rationale for Recommendation:

The proposed amendment will allow for the Kensington community to comply with SB 1383 which requires all of California to divert organic waste away from landfills.

Background:

In September 2016 the California legislature approved and the Governor signed Senate Bill 1383. The purpose of this bill is to reduce the amount of greenhouse gases produced by the California waste stream by diverting most organic materials away from California landfills. All California communities are required to comply with this legislation.

On September 9, 2021 your Board authorized the General Manager to enter into negotiations with Bay View Refuse in order to amend the current franchise agreement and include provisions to bring the Kensington community in compliance with the law.

Discussion and Analysis:

In order to extend the life span of landfills a large number of California communities, including Kensington, had already begun the process of addressing organic waste years earlier by diverting most yard waste. Therefore, compliance with the initial phases of the legislation did not require changes from current practices. The next phase of implementation, however, will require that most kitchen organics now be diverted.

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In order to comply with the legislation some changes will need to be implemented. Given the nature of kitchen waste, the frequency of organic material collection will need to be increased. As a result of the new law, a bin system, similar to that used in most other California communities, will also need to be implemented.

The major features of the proposed amendment are as follows:

- All organics will now be processed in compliance with SB 1383.
- Residential customers within Kensington will be provided with three trash bins. A bin for organics, a bin for recyclables and a bin for other trash.
- Bay View Refuse will still collect additional green waste from Kensington residents if they exceed the capacity of the bin.
- Bay View Refuse will still provide 'back door' service where requested.
- Organics will now be collected weekly.
- A household hazardous waste program will be phased in through August, 2022.
- The term of the agreement will be extended by three years to August 31, 2026.
- Either the District or the hauler can request a rate audit after August 31, 2024.
- Upon implementation, rates will increase by 10% from current levels. Note: per the terms of the current agreement, a rate increase of 3.7% would have been automatically enacted on January 1, 2022.

Fiscal Impact:

There will be an increase in the rates paid for trash collection by all property owners in Kensington, including the District, in order to comply with this state-mandated greenhouse gas legislation.

**AMENDMENT TO FRANCHISE AGREEMENT FOR SOLID WASTE,
RECYCLABLE MATERIALS, AND ORGANIC MATERIALS COLLECTION
SERVICES BETWEEN THE KENSINGTON POLICE PROTECTION AND
COMMUNITY SERVICE DISTRICT AND BAY VIEW REFUSE AND
RECYCLING SERVICES, INC.**

WHEREAS , The Kensington Police Protection Community Services District (“District”) has the responsibility and authority to provide solid waste handling services to District residents; and

WHEREAS, On October 23, 2014, the Kensington Police Protection Community Services District (“District”) and Bay View Refuse and Recycling Services, Inc. (“Contractor”) entered into a franchise agreement (“Agreement”) for solid waste, recyclable materials and organic materials collection services; and

WHEREAS, On December 19, 2016, the State of California enacted SB 1383 establishing regulatory requirements for jurisdictions, Generators, haulers, Solid Waste facilities, and other entities to support achievement of State-wide Organic Waste Disposal reduction targets; and

WHEREAS, SB 1383, among other things, added Chapter 13.1 to Part 3 of Division 30 of the Public Resources Code. This Chapter includes Section 42652.5, which requires the California Department of Resources Recycling and Recovery (“Department”) to adopt regulations to achieve the State’s organic waste reduction goals, including regulations applicable to local government’s solid waste collection; and

WHEREAS, On November 13, 2020, the Department adopted regulations that include 14 California Code of Regulations Section 18981.2. This section requires, among other things, that a city, county, a city and county, or a special district that provides solid waste collection services (“Jurisdictions”) implement collection programs, meet processing facility requirements, conduct contamination monitoring, provide education, maintain records, submit reports, monitor compliance, conduct enforcement, and fulfill other requirements; and

WHEREAS, By the Agreement, District has delegated some of its solid waste collection responsibilities to the Contractor, acting as the District’s designee; and

WHEREAS, District and Contractor desire to amend the Agreement to comply with SB 1383 and to extend the term of said Agreement.

NOW, THEREFORE, the Parties do hereby agree to amend the Agreement as follows:

(A) Expanded Solid Waste, Recyclable Materials, and Compostable Organics Collection Services. Effective February 1, 2022, Sections 6.3 A. and 6.3 B of the underlying Franchise Agreement are void and inoperative, and Section 4.1 of the underlying Franchise Agreement is amended as follows:

(1) Customer shall no longer provide the containers for Solid Waste as specified in Section 4.1 A.

(a) Contractor shall provide each customer a GRAY cart for Solid Waste Collection.

(b) Cart size shall match the customer's selected collection quantity rate (20 gallons, 30 gallons, or 45 gallons).

(2) Customer shall no longer provide the containers for Single Stream Recyclable Materials as specified in Section 4.1 B.

(a) Contractor shall provide each customer with a BLUE, 65-gallon cart for Single Stream Recyclable Materials.

(b) Customer shall be provided with a 32-gallon cart in lieu of the 65-gallon cart if requested.

(3) The Provisions of Section 4.1 C. are expanded to include collection of all Organic Materials (Green Waste mixed with Food Scraps or Food Waste) with the following additional changes:

(a) Contractor shall provide to each Customer a GREEN 65-gallon cart for Compostable Organics.

(b) Contractor shall provide to each Customer a 32-gallon in lieu of the 65-gallon cart if requested).

(c) Collection frequency shall be once per week.

(d) Unlimited quantity collection of Green Waste as stated in Section 4.1 C. remains in effect.

(i) If customer has more Green Waste than will fit in the GREEN cart, Contractor shall collect the additional Green Waste only if the additional Green Waste is uncontaminated with Food Scraps or Food Waste, and bundled, tied, or placed in customer-provided boxes or containers, and not placed in plastic bags, as provided in Section 4.1 C.

(ii) Contractor shall provide a second GREEN cart upon request.

(B) Extension of Franchise Agreement Expiration Date

Section 3.1 of the underlying Franchise Agreement is amended to extend the Franchise Agreement expiration date to August 31, 2026.

(C) Article 9.2B Is amended to read as follows:

Maximum rates as of February 1, 2022 through December 31, 2022

Residential Service

- 1-32 gallon gray bin
Once a week service \$55.60
- 2-32 gallon gray bins
Once a week service \$111.10
- 3-32 gallon gray bins
Once a week service \$166.65

- 1-20 gallon gray bin (mini)
Once a week service \$51.60
 - 1-45 gallon gray bin
Once a week service \$118.65
- Commercial Service**
- 1 cubic yard-wet \$61.15
 - 1 cubic yard-dry \$59.20
 - 1-32 gallon can
Once a week service \$57.60

Blue and green pick up is included for all above levels of service.

(D) Article 9.2D is added as follows:

Rate Review

(1) At any time, but no sooner than August 31, 2024, upon either Contractor or District request, Contractor the District shall jointly engage a qualified consultant, mutually agreed upon, to conduct a comprehensive rate review.

(2) The rate review shall determine whether collection service fees are to be adjusted up or down based on the company’s operating margin as reflected on the Company’s financial statement for the year ending December 31st prior to the date of review.

(3) The determination whether an adjustment shall be made and the amount of the adjustment, if made, shall be no greater than the average operating margin of Contractor for the three Fiscal Years prior to the review or 10%, whichever is less.

(4) Upon adjustment, if any, of Bay View’s fees, annual fee increases shall be determined according to the criteria specified in Step 3 of Exhibit B of the underlying Franchise Agreement.

E. Section 10.1 D. Is amended to also include compliance with SB 1383.

F. Except as amended herein, all terms and conditions set forth in the Agreement shall remain in full force and effect.