

TOWN OF WINDSOR AGENDA REPORT

Joint Windsor Town Council, Windsor Redevelopment Successor Agency and Windsor Water District Meeting Date: April 17, 2024

To: Mayor and Town Council
From: Kristina Owens, Government Operations Manager
Subject: Amendment No. 8 to the Collection Services Agreement with Sonoma County Resource Recovery, LLC

Recommendation to Council:

Adopt a resolution approving Amendment No. 8 to the Collection Service Agreement with Sonoma County Resource Recovery, LLC, for the annual adjustment to maximum compensation and rates.

Strategic Plan Element:

The recommended action supports the goals of Infrastructure and Livability. Goal Statement: Through a lens of sustainability and innovation, invest in the Town's infrastructure and public facilities to meet the needs of future generations. Goal Statement: Preserve community character by maximizing the use of existing amenities and creating future opportunities that enhance quality of life for all.

Background:

On August 6, 2017, the Council formally awarded a 10-year exclusive franchise to Sonoma County Resource Recovery, LLC. ("SCRR") for Residential and Commercial Garbage, Recyclable Materials, and Organic Waste Collection Services ("Agreement") commencing October 1, 2017, through September 30, 2027.

The Agreement provides for annual adjustments of the maximum compensation and rates that SCRR may charge for collection services. The annual adjustment is a pass-through consisting of the following elements: Collection Element, Disposal Element, Recyclable Material Processing / Sales Element, Organic Waste Processing Element (food waste and green/food waste), and Franchise Fee Element by using the Refuse Rate Index (RRI) adjustment calculation outlined in the Agreement, known as the annual RRI application. The RRI application is due to the Town on or before February 1 of the corresponding year. The submittal date was changed in Amendment No. 4 to coincide with the new rate effective date of April 1 from October 1.

The Disposal Element and Organic Waste Processing Element are based on Contractor Service Fees (Service Fees) by the Master Operations Agreement (MOA) dated April 23, 2013. The MOA is between the County of Sonoma (County) and Republic Services (Republic), the operator of the Sonoma County Landfill. The MOA is directly related to the Waste Delivery Agreement, an executed agreement between the Town and Republic, whereby the Town agreed to deliver its Committed City Waste, as defined, to County Facilities. The service rates for the Disposal Element and Organic Waste Processing Element are approved separately by two voting bodies, the County of Sonoma Board of Supervisors and Zero Waste Sonoma respectively.

The Agreement with SCRR includes a franchise fee, which recovers the Town's costs of providing solid waste-related services, including the management and administration of the Agreement, as well as

charges for the reasonable value of the use of Town property for the provision of solid waste services and the impacts of solid waste collection vehicles on Town streets and rights-of-way. R3 Consulting Group, Inc. (R3), the Town's solid waste consultant, completed a Franchise Fee Study analyzing the Town's Franchise Fee and determined that the fee is justified to cover the Town's cost of providing solid waste services, reasonable charges for the use of Town property for solid waste services, and the costs of addressing the impacts of solid waste collection vehicles providing solid waste services.

Discussion:

The Amendment marks the eighth since the execution of the Agreement. Past amendments addressed new services, clarification of contract language, implementation of new state regulations, known as SB 1383, and the annual rate pass-throughs. Below will show the corresponding Amendments and the approval dates.

- Amendment No. 1, March 21, 2018
- Amendment No. 2, August 1, 2018
- Amendment No. 3, August 21, 2019
- Amendment No. 4, June 17, 2020
- Amendment No. 5, June 2, 2021
- Amendment No. 6, May 18, 2022
- Amendment No. 7, May 17, 2023

The Agreement allows for an annual rate adjustment, a pass-through of costs for the collection of services that include but are not limited to; fuel costs, changes in market, disposal tipping fees, organic waste tipping fees, cost of operations, and/or services provided.

On March 6, 2024, SCRR submitted the RRI Application with the updated Service Fees based on the five (5) elements listed above resulting in the costs to provide collection service and in turn resulting in the customer monthly service charge. The Town's consultant R3 Consulting Group, Inc. (R3) reviewed the RRI Application with the following findings and concluded the rate adjustments included in Amendment No. 8, Exhibit 1-Service Recipient Rates of the Agreement, account for the following:

- Collection Element increase of 4.69%.
- Disposal Element increase of 6.08% (i.e., the disposal fee increased from \$155.47 per ton to \$164.92 per ton for solid waste disposal per the Sonoma County Landfill System tip fee increase).
- Recyclable Material Processing / Sales Element increase of 1.29% (i.e., the total percentage of tonnage delivered to each approved Recyclable Materials Processing Facility increased from \$93.93 per ton to \$95.14 per ton).
- Organic Waste Processing Element increase of 8.65% (i.e., the processing fee increased from \$106.84 per ton to \$116.08 per ton for processing organic waste per the Sonoma County Landfill System).
- The Franchise Fee Element is equal to 10% of each customer rate.
- AB939 Program/Agreement Management Fee increased by 5.02%.

In comparison to Amendment No. 7, this year's annual rate pass-through results in the following changes:

- Average SFD Residential curbside and on-premises monthly rate increase of 5.24% (\$1.53 – \$8.20/month).
- Average SFD Residential senior monthly rate increase of 5.35% (\$1.38 – \$3.15/mo.).
- Average MFD Residential monthly cart rate increase of 4.7% (\$3.98 - \$22.63/mo.).

- Average MFD Residential monthly bin rate increase of 4.94% (\$19.59 - \$183.28/mo.).
- Average Commercial monthly cart rate increase of 5.18% (\$4.74 - \$60.70/mo.).
- Average Commercial monthly bin rate increase of 5.28% (\$13.37 - \$183.28/mo.).
- Collection costs for MFD and Commercial Roll-off rates increased by 4.69%.
- SFD Additional Service rates increased by 4.69%.

Exhibit A will display the results of SCRR's 2024/2025 RRI application comparing current and proposed rates based on service size and frequency for a limited number of services for Single-Family Homes, Multi-Family, and Commercial service accounts.

Exhibit B will provide a rate comparison for Sonoma County jurisdictions based on Residential service recipient rates.

R3's analysis of the Franchise Fee confirmed the amount of the fee in light of the recent decision by the California State Supreme Court in *Zolly v. Town of Oakland*, which ruled that franchise fees may be subject to Article XIII C of the California Constitution ("Proposition 26"). Under Proposition 26, all charges imposed by public agencies must fit within one of its enumerated exceptions, or they will be considered taxes, which require voter approval. In the context of solid waste, fees generally fit within one of Proposition 26's exceptions if they are charges for (1) Town services that do not exceed the Town's costs to provide the services; (2) the use of public property; or (3) a special benefit or privilege granted directly to the payor.

The Franchise Fee Study concluded that the Town's Franchise Fee in the Agreement with SCRR does not exceed the Town's cost of providing solid waste-related services, including the reasonable charges that the Town could impose for the use of Town property for solid waste services and the impacts of solid waste collection vehicles on the Town's streets and roads. These results can be found in Attachment 6 (Franchise Fee Study).

Furthermore, on June 17, 2020, the Council approved amended language to Article 4, Section 4.04.8.1.1, of the Agreement which states should SCRR experience delays in submitting the RRI application it is at the Town's discretion to approve SCRR to retroactively bill service recipients beyond sixty (60) days. Approval of the attached Resolution for Amendment No. 8 reflects the proposed modifications listed above, the rate sheets for all service recipients, and the approval of SCRR to retroactively bill effective April 1, 2024.

Fiscal Impact:

Adoption of the attached resolution regarding maximum compensation and rates will increase rates for the collection of garbage, recyclable materials, and organic waste collection services effective April 1, 2024. If authorized, the maximum rates would be authorized for all customer types and service options and satisfy the Town's contractual obligations regarding compensation to SCRR in the Franchise Agreement. The Franchise Fee will be used to cover all the Town's costs for solid waste-related services. Attachment - Amendment No. 8 to the Resolution contains the complete maximum rates effective April 1, 2024, to March 30, 2025.

Environmental Review:

Approval of the proposed Amendment does not change the level or area of service. None of the changes brought about would exceed any applicable threshold of significance. As there is no possibility of a significant effect on the environment, such adoption is exempt from California Environmental Quality Act (CEQA) review pursuant to CEQA Guidelines Section 15061(b)(3).

Attachment(s):

1. Exhibit A and Exhibit B
2. Resolution and Amendment No. 8
3. SCRR letter dated January 26, 2024
4. Republic Services Letter dated February 26, 2024
5. R3 Consulting Group Inc Letter dated March 14, 2024
6. Windsor Franchise Fee Study

Prepared by:

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Recommended by:

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