



County of Monterey

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Board Report

File #: 20-464, **Version:** 1

Receive a report on solid waste contract negotiations with USA Waste of California dba Carmel Marina Corp., a subsidiary of Waste Management, Inc. for unincorporated Monterey County.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

Receive a report on solid waste contract negotiations with USA Waste of California dba Carmel Marina Corp., a subsidiary of Waste Management, Inc. for unincorporated Monterey County.

SUMMARY:

The Environmental Health Bureau has been in negotiations with USA Waste of California dba Carmel Marina Corp., to extend the term of the agreement and to address a mechanism to recover outstanding debt owed to the Contactor.

DISCUSSION:

On February 2, 2010, the Board of Supervisors awarded the Unified Franchise Agreement (UFA) for the collection of solid waste and recycling to USA Waste of California, Inc., dba Carmel Marina Corporation (hereafter, "Contractor" or "Carmel Marina Corporation") for an initial ten (10) year term. Said UFA provides for a five (5) year extension if certain criteria are met. Said UFA is under consideration to negotiate an extension of five (5) years with the ability of the Contractor to recover certain costs associated with debt and operational costs. The Contractor has provided excellent customer service to residential and commercial customers within the unincorporated area of Monterey County and has provided extra/expedited services during emergencies, such as the Soberanes Fire. Considering the Contactor's performance as noted above, a five (5) year extension would allow this service to continue for unincorporated Monterey County.

The County received a response from Carmel Marina Corporation on May 20, 2020 in response to the County's March 3, 2020 letter. The County and USA Waste of California continue to have negotiations to come to agreeable terms and conditions.

Carmel Marina Corporation is asking for a nine percent (9%) increase in rates retroactive to July 1, 2020 to cover costs associated with operations under current COVID-19/Coronavirus conditions. In addition, they are asking for recyclable processing costs, bad debt, and third-party financial review costs to be pass through costs in the annual rate adjustment. This proposed Refuse Rate Adjustment (RRI) structure would be incorporated into the annual rate adjustment effective January 1, 2021 with subsequent adjustments effective on January 1 annually thereafter.

Per Monterey County Code Section 10.41.030, the Board of Supervisors sets the rates for the collection of solid waste and recyclables. The Environmental Health Bureau ("EHB" or "County") requires that all proposed rate adjustments be vetted by EHB staff and/or in consultation with EHB's consultant before rate adjustments are brought to the Board. EHB would also propose that any delinquent debt owed to Carmel Marina Corporation be first processed through Carmel Marina Corporation's Dunning process (CONTRACTOR shall undertake collection of the bill [including penalties and expenses of collection] for a period of one (1) year from the invoice date. CONTRACTOR shall make reasonable efforts to obtain payment through issuance of late

payment notices, telephone request for payment, establishment of payment plans, and assistance from collection agencies which shall make at least two (2) attempts at collection).

Pursuant to the County's Request for Proposals (RFP) # 10177 and the terms of the exclusive Unified Franchise Agreement (UFA), Article 13 provides for billing and collection as follows:

13.01 Generally. CONTRACTOR shall: (i) bill Customers for Collection Services; (ii) collect payment for those services; (iii) maintain billing and payment records; (iv) provide for the collection of delinquent payments and bad debts; and (v) remit franchise and diversion program and contract administration fees to COUNTY monthly in accordance with this Article.

13.02 Invoices. SFD Collection Services and MFD Cart Collection Services shall be invoiced quarterly in advance of services provided or as otherwise scheduled by CONTRACTOR and approved by the COUNTY. MFD Bin Collection Services and Commercial Collection Services shall be billed monthly in advance of services provided or as otherwise scheduled by CONTRACTOR and approved by the COUNTY. Roll-Off Collection Services shall be billed in arrears of the provision of service although a deposit may be required in advance. Invoices shall be in format approved by COUNTY and shall not separately identify, list or itemize the Contractor service fee component, franchise fee component, the diversion programs and administration fee, or such other components as may be added by COUNTY during the term of this Agreement.

13.03 Delinquent Service Accounts. CONTRACTOR may consider a Customer account to be delinquent sixty (60) days from the date of an invoice for SFD Collection Services or MFD Cart Collection Services, and thirty (30) days from the date of an invoice for MFD Bin Collection Services, Commercial Collection Services or Roll-Off Collection Services. CONTRACTOR may charge a delinquent Customer a late fee which is the greater of \$5.00 dollars, or 1.5% per month (not compounded). CONTRACTOR may take such action as is legally available to collect or cause collection of such past due amounts.

13.03.1 In its monthly reports, CONTRACTOR will provide Contract Administrator with a list of those Customers whose accounts have become delinquent in the current month and a status update on those Customers whose accounts were listed as delinquent in the prior months report. In no event, shall CONTRACTOR cease provision of Solid Waste or Recyclables Collection Services to any SFD Customer due to non-payment. However, CONTRACTOR may reduce SFD Customers whose accounts have become delinquent to the default service level. CONTRACTOR may request authorization from COUNTY to reduce or stop service for MFD or Commercial Customers whose accounts have become delinquent.

13.04 Minimum Account Collection Procedures. If there is no payment of the bill after sixty (60) days or more from the original invoice date, CONTRACTOR shall undertake collection of the bill (including penalties and expenses of collection) for a period of one (1) year from the invoice date. CONTRACTOR shall make reasonable efforts to obtain payment through issuance of late payment notices, telephone request for payment, establishment of payment plans, and assistance from collection agencies (who shall make at least two (2) attempts at collection). CONTRACTOR shall ensure that a copy of all correspondence and notifications related to the collection of delinquent accounts or the reduction or cancellation of Collection Services is maintained and available for review by the Contract Administrator during the term of this Agreement. This requirement includes correspondence or

notifications generated by CONTRACTOR or CONTRACTOR'S agents including collection agencies assisting CONTRACTOR in the collection of delinquent accounts.

13.05 Court Collection Actions. If CONTRACTOR'S or CONTRACTOR'S agent's collection efforts, as set forth above in Section fail, CONTRACTOR shall pursue court collection actions through the State of California, Superior Court of the County of Monterey, or the Small Claims Court, as applicable, within the timeframe for the applicable statute of limitations pursuant to State law and pursuant to any local Rules of Court as applicable. CONTRACTOR understands and agrees that court collection actions are the sole responsibility of CONTRACTOR. CONTRACTOR further understands and agrees that it is the sole responsibility of CONTRACTOR to timely initiate court collection actions within the applicable statute of limitations. Upon completion of any court collections actions, entry of judgment in favor of CONTRACTOR, and preparation, processing and recordation of an Abstract of Judgment in favor of CONTRACTOR, CONTRACTOR shall forward a copy of the recorded Abstract of Judgment to the Contract Administrator. The parties understand and agree that there is no contractual relationship between COUNTY and CONTRACTOR'S Customers. The parties further understand and agree that the County Code does not provide for any process which would authorize COUNTY to place CONTRACTOR'S Customers delinquent accounts on the County Tax Roll. Therefore, CONTRACTOR'S sole remedy to pursue collection of delinquent accounts is through CONTRACTOR'S or CONTRACTOR'S agent's collection efforts and/or through court collections actions initiated by CONTRACTOR or by CONTRACTOR'S collection agent.

It is anticipated Carmel Marina Corporation will supply the County with supporting documentation for the County to review the request for a nine percent (9%) increase (retro-active to July 1, 2020) on or about Friday, May 29, 2020. A retroactive element is standard for rate increases to capture past adjustments in fees outside of Carmel Marina Corporation's control (i.e., solid waste "tipping fees" which are set by the Salinas Valley Solid Waste Authority and the Monterey Regional Solid Waste District which operates the Marina Landfill here).

This work supports the Monterey County Health Department 2018-2022 strategic plan initiatives: 1. Empower the community to improve health through programs, policies, and activities. It also supports one of the ten essential public health services, specifically: 6. Enforce laws and regulations that protect health and ensure safety.

OTHER AGENCY INVOLVEMENT:

The Contractor has provided its proposal to the County.

FINANCING:

There is no General Fund Contribution resulting from this Board action. Waste Management, Inc. will continue to remit franchise fees, calculated at ten percent (10%) of collected revenue, to the General Fund under the current terms of the Unified Franchise Agreement.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

Check the related Board of Supervisors Strategic Initiatives:

☐ Economic Development:

- Through collaboration, strengthen economic development to ensure a diversified and healthy economy.

☐ Administration:

- Promote an organization that practices efficient and effective resource management and is recognized

for responsiveness, strong customer orientation, accountability and transparency.

☒ Health & Human Services:

- Improve health and quality of life through County supported policies, programs, and services; promoting access to equitable opportunities for healthy choices and healthy environments in collaboration with communities.

☐ Infrastructure:

- Plan and develop a sustainable, physical infrastructure that improves the quality of life for County residents and supports economic development results.

☐ Public Safety:

- Create a safe environment for people to achieve their potential, leading businesses and communities to thrive and grow by reducing violent crimes as well as crimes in general.

Prepared by: Rob Durham, MA III, 755-8979

Approved by:

Date: _____

Elsa Jimenez, Director of Health, 755-4526

Attachments:

Letter dated May 20, 2020 from Carmel Marina Corporation to County.

Letter dated March 3, 2020 from County to Carmel Marina Corporation.