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Staff Report for a Resolution Authorizing the City Manager to Execute the 12<sup>th</sup> Amendment to the Franchise Agreement Between the City of San Leandro and Alameda County Industries, Inc.

**SUMMARY AND RECOMMENDATIONS**

Staff recommends that the City Council, in accordance with Section 13.6 of the Franchise Agreement between the City of San Leandro and Alameda County Industries, Inc. (ACI), authorize the City Manager to execute the 12<sup>th</sup> Amendment to the Franchise Agreement, subject to approval as to form by the City Attorney.

**BACKGROUND**

On January 20, 2015 the City Council approved Resolution 2015-010, the 11<sup>th</sup> Amendment to the Franchise Agreement between the City and ACI. The amendment clarified unresolved issues related to the City’s Living Wage Ordinance and ensured that effective December 1, 2014, ACI would provide all workers at its Material Recovery Facility (MRF) with wages and benefits that comply with the Living Wage Ordinance. The 11<sup>th</sup> Amendment to the franchise agreement also provided for a \$1,109,706.74 advance from the City to ACI to be repaid in forty equal installments of \$31,441.00 and cost recovered with an associated 2.14% rate increase effective July 1, 2015.

The 10<sup>th</sup> Amendment to the franchise agreement provides for an annual rate adjustment using a Refuse Rate Index (RRI) rather than a Consumer Price Index for determining prior year cost increases. The adjustment of rates as determined by the RRI is 2.05%, effective July 1, 2015.

In anticipation of future labor costs at the MRF, ACI submitted a request for special rate review on October 1, 2014. At that time, workers at the MRF notified ACI of their intent to collectively bargain. A collective bargaining agreement would provide increased wages for MRF workers as well as medical

benefits, retirement benefits, paid leave, and higher workers' compensation. The agreement increases MRF employees' wages and benefits beyond the requirements of the City's Living Wage Ordinance.

ACI's analysis provides that the incremental increased cost of the wages and benefits at the MRF during the first year of the contract will be \$2.73 million. ACI requested the three largest users of the MRF (Alameda, Livermore, and San Leandro) to consider additional rate increases to manage the costs. Without the additional revenues, ACI has indicated that it will not meet bank covenants and may be forced to close the MRF as early as July 1, 2015. See **Attachment A - ACI Memo** for additional information about ACI's financial condition.

**Analysis**

ACI requests a special rate adjustment of 4.3% to manage the financial impact of labor costs at the MRF. Prior to the Living Wage issue, ACI contracted with a third-party staffing agency that hired and employed the sorters and other workers at the MRF. ACI agreed to hire the employees and pay the City mandated living wage effective December 1, 2014. Shortly thereafter, MRF workers voted to join the International Longshore and Warehouse Union (ILWU), Local 6 and began negotiating a collective bargaining agreement with ACI.

ACI employs approximately 60 sorters in two shifts, processing curbside recyclable material from Alameda, Livermore, San Leandro, and Mission Trails. While ACI and the ILWU continue to negotiate a collective bargaining agreement, they have tentatively agreed on the sorters gaining full benefits (i.e. health and welfare, pension, vacation, sick, etc.) and the following hourly rate schedule for future years:

**Table 1: Hourly Rate and Benefit Schedule**

	<u>Agency</u>	<u>Current</u>	<u>2015/2016</u>	<u>2016/2017</u>	<u>2017/2018</u>	<u>2018/2019</u>	<u>2019/2020</u>
Hourly Rate	\$9.00	\$14.57	\$15.68	\$16.86	\$18.12	\$19.48	\$20.94
Total Cost	\$13.91	\$17.83	\$25.60	\$27.88	\$30.71	\$33.57	\$36.72
Increase	-	\$3.92	\$7.77	\$2.28	\$2.83	\$2.86	\$3.15

Additional information about hourly wages and benefits for MRF workers for the next five years is in the attached Letter of Understanding (LOU) between the International Longshore and Warehouse Union, Local 6 and ACI (**Attachment C**). As proposed in the LOU, the special rate adjustment accounts for the change in cost from the previous staffing agency rates to the City's living wage rates and from the City's living wage rates to the proposed union rates for 2015-16. ACI and Local 6 have negotiated in good faith to delay benefits and smooth cost increases over the next five year period to reduce immediate rate impacts. ACI has indicated that future rate impacts associated with MRF worker unionization should be less than one percent (1%) per year for most years. The additional costs would not be included in the annual rate adjustment calculation, but added to the annual rate adjustment proposal.

**Special Rate Request**

ACI requests a 4.3% rate increase pursuant to Section 6.4 of the Franchise Agreement, Special Rate Review. The increase will be included in the total rate increase proposal of 8.49% effective August 1, 2015. The total rate increase also includes a 2.05% annual rate adjustment and a 2.14% increase related to the loan repayment, specified in the 11<sup>th</sup> Amendment to the Franchise Agreement. The rate increase will not take effect until August 1, 2015 to provide for the required 60-day notice to

customers.

ACI requested similar rate increases, based on an allocation of tons processed at the MRF, from the cities of Alameda and Livermore. These rate increase requests are dependent upon all three cities' willingness to accept ACI's request and continued use of the MRF facility. If one or more of the cities does not participate, the cost structure and associated rate request could change substantially for the other participating cities.

The impact of the total rate request on residential and commercial rates is as follows:

**Table 2: Monthly Solid Waste Rates**

<u>Customer</u>	<u>Service Level</u>	<u>7/1/13</u>	<u>2/1/15</u>	<u>8.49% Increase</u>	<u>\$ Change</u>
Residential	20-gallon rate	\$20.24	\$21.06	\$22.85	\$1.79
Residential	32-gallon rate	\$25.22	\$26.23	\$28.46	\$2.23
Multifamily	1cy 1x per week	\$93.97	\$97.94	\$106.26	\$8.32
Commercial	1cy 1x per week	\$110.58	\$115.01	\$124.77	\$9.76
Commercial	3cy 1x per week	\$334.30	\$347.71	\$377.23	\$29.52

The City hired HF&H Consultants, LLC to provide a comprehensive and independent analysis of the special rate request proposal. HF&H confirms that the calculations provided by ACI are mathematically accurate and that the increases reflect the costs described in the LOU. The results of the analysis are presented in **Attachment B - HF&H Report**. HF&H provided similar analyses for the cities of Alameda and Livermore.

**Rate Comparison**

HF&H has provided a comparison of rates that can be used as a general guideline to evaluate San Leandro rates as they relate to other cities in Alameda County (**Attachment D - Rate Survey**). Although rates may vary for several reasons such as the residential versus commercial customer mix, services offered, processing/disposal costs, and geographic service area, San Leandro rates are about average for the county when the proposed rate increase is applied. Residential rates for a 30-35 gallon container range from \$18.10/month (Emeryville) to \$51.88/month (Piedmont), while ACI's proposed rate is \$28.46/ month. Commercial rates for a 1-yard bin serviced one time per week range from \$86.95/month (Fremont) to \$261.83/month (Castro Valley Sanitary District), while ACI's proposed rate is \$124.77/month.

**Future Rate Impacts**

The LOU between the International Longshore and Warehouse Union, Local 6 and Alameda County Industries, LLC (**Attachment C**) identifies salary and benefit costs for MRF workers for the next five years. The increased costs will have an impact on future rates coinciding with the annual rate adjustment process. As previously mentioned, ACI projects that future rate impacts associated with MRF worker unionization should be less than one percent (1%) per year for most years.

While the City has endeavored to keep rates as low as possible while periodically adding beneficial new services to customers, future rate impacts are highly dependent on ACI's overall financial health, the stability of markets for processed recyclable materials, and costs associated with county and state mandates for mandatory recycling and additional waste diversion. The special rate request is intended to assist ACI to come into compliance with bank covenants and to ensure the overall viability of the company for the term of the contract (**See Attachment A - ACI Memo**). If the special rate increase is not approved, then the viability of the company is at risk. If ACI cannot continue as

the City's waste hauler, the City will have to implement alternative measures, such as engaging in an emergency contract or putting the franchise out to bid; it is highly likely that any measure would cause significant cost increases.

### **Considerations**

Staff concurs with the recommendations presented in the HF&H report (**Attachment B**), including additional analysis to understand the impact of MRF costs on future rate adjustments. Per the recommendations, the City should:

- Develop the methodology of how the labor adjustment for FY15-16 will be adjusted in future years;
- Review the final terms of the ILWU collective bargaining agreement on the projections provided by ACI for FY15-16 and determine the financial impact, if any, to the City;
- Request ACI to provide a schedule showing the annual cost of operating the MRF in order to determine operational efficiency;
- Monitor ACI's financial ratios, especially for FY15-16, to see if the rate adjustments from the various agencies caused improvements as expected;
- Review the commodity revenues obtained by ACI annually to verify they continue to offset the processing costs for Mission Trails or any other new sources of tonnages processed at the MRF;
- Address the current provisions for the sharing of commodity revenues to eliminate the debt covenant element as prescribed in the 10<sup>th</sup> Amendment; and
- Review the rate adjustment established in the 11<sup>th</sup> Amendment to determine if the revenue generated is in line with the amount required according to the loan amortization schedule.

### **Previous Actions**

On January 20, 2015 by Resolution No. 2015-010, the City Council approved 11th Amendment to Alameda County Industries (ACI), Inc.'s Franchise Agreement

### **Applicable General Plan Policies**

- Action 27.01-A: Source Reduction and Recycling Programs
- Action 27.01-C: Commercial and Multi-Family Residential Programs
- Action 27.01-D: Food Waste Recycling

### **ATTACHMENTS**

#### **Attachments to Staff Report**

- Attachment A - Memo from Alameda County Industries
- Attachment B - HF&H Consultants, LLC Report
- Attachment C - Letter of Understanding between ACI and the ILWU, Local 6
- Attachment D - Alameda County Rate Survey

#### **Attachment to Resolution**

- 12<sup>th</sup> Amendment to the Franchise Agreement for Solid Waste, Recyclables and Green Waste Services between the City of San Leandro and Alameda County Industries, Inc.

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