



Agenda Report

Date: July 14, 2015
To: Jeffrey W. Collier, City Manager/WUA Executive Director
From: David A. Pelsler, Director of Public Works
Subject: Solid Waste Collection On-Call Service Agreement

RECOMMENDATION

It is recommended the City Council:

1. Approve an agreement substantially in the form attached between the City and Republic Services (Republic) for on-call solid waste collection service for an amount not to exceed \$30,000; and
2. Authorize the City Manager to execute the agreement.

It is recommended the Utility Authority Board of Directors concur with the above-recommended City Council actions.

BACKGROUND

At the May 12, 2015 City Council meeting, Council directed staff to move forward with issuing a Request for Proposals to secure a new solid waste collection service provider under exclusive franchise.

DISCUSSION

Since the Council publicly started the procurement process, the solid waste collection division has experienced increased sick leave usage. To prevent a disruption in solid collection service, staff recommends approving an agreement with Republic (formerly Consolidated Disposal Service, Inc. (CDS)).

In the City's service area for solid waste collection (zone 3), there are three cans per customer for garbage, mixed recyclables, and green waste. The City collects the garbage and the other two cans are serviced by CDS/Republic under contract. The most logical and convenient way to handle on-call services for the garbage can is for CDS/Republic to do it since their drivers and supervisors already know the routes and are servicing City customers on the same day. Therefore staff recommends entering into a sole source agreement with Republic for on-call solid waste collection service if the City experiences staff shortages (Attachment A).

FISCAL IMPACT

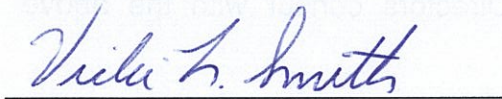
Sufficient funds exist in account number 430-30-352-851-619000 – Solid Waste Collection, Other Professional Services to fund the on-call solid waste collection service Agreement with Republic.

Submitted by:



David A. Pelser
Director of Public Works

Prepared by:



Vicki L. Smith
Public Works Manager

Attachment: A – Agreement

AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of ____ 2015 by and between the CITY OF WHITTIER, a municipal corporation located in the County of Los Angeles, State of California, hereinafter referred to as "CITY" and Consolidated Disposal Service, LLC, doing business as Republic Services with principal offices at 12949 Telegraph Road, Santa Fe Springs, California, 90670 hereinafter referred to as "CONTRACTOR."

WITNESSETH:

WHEREAS, the CITY heretofore has determined that the public interest, convenience, and necessity requires an agreement be executed with a qualified contractor for the arrangement of collection and disposal of refuse from a certain area of the City, hereafter described and designated as Solid Waste Zone No. 3 for residential refuse on an on call, as needed basis; and

WHEREAS, the CITY has the right and authority pursuant to the California Constitution Article XI, section 7, and Public Resources Code section 45009(a) to procure refuse collection and disposal services as provided herein; and

WHEREAS, CONTRACTOR has heretofore performed such collection, disposal, and recycling services for green waste and co-mingled curbside recycling for the CITY in the said Solid Waste Zones No. 1 and No. 3, and has demonstrated its abilities and qualifications to perform such services; and

WHEREAS, the CITY may experience staff shortages in the Solid Waste Collection Division which may cause disruption in refuse collection service in Zone No. 3 and pose a threat to public health and safety; and

WHEREAS, CONTRACTOR has agreed to perform such services upon the terms and conditions hereinafter set forth; and

WHEREAS, the CITY has heretofore determined that the execution of this Agreement is required by the public interest, convenience, and necessity.

NOW, THEREFORE, in consideration of the mutual covenants, benefits, and premises hereinabove stated, the parties hereto agree as follows:

1. SERVICES. CONTRACTOR agrees to provide on-call automated service for the collection and disposal (hereafter "services") of garbage, refuse and rubbish (hereafter "refuse") generated by the owners and/or occupants of certain residential real properties located in Solid Waste Zone No. 3 for residential refuse, hereafter defined, in the time, manner and to the extent set forth in this Agreement, and in compliance with all applicable laws, including, but not limited to, the Whittier Municipal Code,

as such applicable laws now exist, or as they may be amended during the term of this Agreement.

2. NOTIFICATION. The CITY Solid Waste Supervisor will give CONTRACTOR Operations Manager as much prior notification as possible when on-call services are needed, but notification is likely to be as short as 6:00 a.m. the day on-call services are needed.
3. PAYMENT. CITY will pay CONTRACTOR \$1,144.00 per residential automated route per day for which CONTRACTOR provides on call services not to exceed the authorized amount of \$30,000. Such payment shall include full compensation for mobilization of equipment and staff, collection of refuse in automated trucks, transportation and dumping of loads at an approved landfill, permits, overhead expenses, profit, and no additional compensation shall be allowed therefor.
4. DISPOSAL OF REFUSE. CONTRACTOR shall dispose of refuse collected pursuant to this Agreement at Savage Canyon Landfill in Whittier or another permitted Class III landfill. Contractor shall dispose of refuse at Savage Canyon Landfill when said landfill is open and able to receive such refuse. When Savage Canyon Landfill is not open, or has already reached its daily permitted capacity, or is otherwise unable to receive refuse collected pursuant to this Agreement, then CONTRACTOR shall dispose of refuse at another permitted Class III landfill approved in advance by CITY.
5. DISPOSAL FEES. CITY will reimburse CONTRACTOR for landfill tip fees paid for disposal of refuse pursuant to paragraph 4 of this Agreement.
6. EQUIPMENT. CONTRACTOR owned motor vehicles permitted by Los Angeles County for the collection and hauling of solid waste shall be used to provide on-call solid waste refuse collection service during the term of this Agreement. CONTRACTOR shall maintain all motor vehicles utilized in providing the Services in good condition.
7. INDEPENDENT CONTRACTOR. CONTRACTOR is independent CONTRACTOR and not an employee of CITY, and all personnel to be utilized by CONTRACTOR in performance of this Agreement shall be employees of CONTRACTOR and not employees of the CITY. CONTRACTOR shall pay all salaries and wages, employer's social security taxes, unemployment insurance and similar taxes relating to employees and shall be responsible for all applicable withholding taxes.
8. INSURANCE. The CONTRACTOR shall not commence work under this contract until he/she has obtained all insurance required hereunder from companies acceptable to CITY. The CONTRACTOR shall take out and

maintain at all times during the life of this contract the following policies of insurance:

9. Workers' Compensation Insurance. Before beginning work, the CONTRACTOR shall furnish to the Engineer a certificate of insurance as proof that he/she has taken out full compensation insurance for all persons whom he/she may employ directly or through SUBCONTRACTOR in carrying out the work specified herein, in accordance with the laws of the State of California. Such insurance shall have statutory limits and employer's liability insurance's with limits of not less than \$1,000,000 and shall be maintained in full force and effect during the period covered by this contract.

In accordance with the provisions of Section 3700 of the California Labor Code, every CONTRACTOR shall secure the payment of compensation to his/her employees. CONTRACTOR, prior to commencing work, shall sign and file with the City a certification as follows:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of work of this contract."

10. Liability Insurance: The CONTRACTOR shall maintain insurance at least according to the following:
 1. Workers' Compensation insurance with statutory limits and employer's liability insurance with limits of not less than \$1,000,000.
 2. Commercial General Liability with a combined single limit of not less than \$1,000,000 per occurrence, and general aggregate of not less than \$2,000,000. Such insurance shall:
 - a. Name the City of Whittier as additional insured;
 - b. Be primary for all purposes;
 - c. Contain standard cross liability provisions.
 3. Automobile liability insurance with limits not less than \$1,000,000 per occurrence, and with a general aggregate of not less than \$2,000,000.

Such insurance shall be issued by a company or companies, authorized to transact business in the State of California. Such

insurance shall include coverage for owned, hired, and non-owned automobiles.

Such insurance shall be issued by a company or companies authorized to transact business in the State of California.

The CONTRACTOR shall:

1. Furnish a properly-executed certificate of insurance, which certificate shall clearly evidence all coverage required above and provide that such insurance shall not be terminated nor expire except on thirty (30) days prior written notice to the CITY;
2. Maintain such insurance during the entire duration of this agreement.
3. Replace such certificate for policies expiring prior to termination of this agreement.
4. Shall save, keep, and hold harmless the City of Whittier, its employees, officers, volunteers and agents from all damages, costs or expenses in law or equity that may at any time arise or be set up because of damages to property, or of personal injury, received by reason of or in the course of performing work, which may be occasioned by any willful or negligent act or omission by the CONTRACTOR, any of the CONTRACTOR's employees, officers, agents and volunteers.
 - a. The policy of insurance provided for shall contain an endorsement which:
 - (1) Waives all right of subrogation against all persons and entities specified in Paragraph 4 hereof to be listed as additional insured in the policy of insurance provided for by reason of any claim arising out of or connected with the operations of CONTRACTOR or any SUBCONTRACTOR in performing the work provided for herein;
 - (2) Provides it shall not be canceled without thirty (30) days written notice thereof given to CITY by electronic mail.
 - b. The CONTRACTOR shall at the time of the execution of the contract present a certificate of the insurance company, showing the issuance of such insurance, and the additional insureds and other provisions required herein.

11. INDEMNIFICATION AND HOLD HARMLESS. CONTRACTOR shall defend, indemnify, hold free and harmless the CITY, its elected officials, its officers and employees, from and against any and all damages to property or injuries to or death of any person or persons, and shall defend, indemnify, save and hold harmless the City of Whittier, elected officials, its officers and employees from any and all claims, demands, suits, actions or proceedings of any kind or nature, including, but not by way of limitation, all civil claims, claims which arise under the Comprehensive Environmental Response Compensation Liability Act of 1980, as amended (CERCLA), or any other federal, state, or local law, workers' compensation claims, and all other claims resulting from or arising out of the negligent or intentional acts, errors or omissions of CONTRACTOR, its employees and /or authorized SUBCONTRACTORS, in the performance of this Agreement.
12. ATTORNEY'S FEES. Should there be any litigation commenced to enforce any of the provisions of this Agreement, the prevailing party in such litigation shall be entitled to receive an award of reasonable attorney's fees and costs in such amount as may be set in the discretion of the trial court.
13. NOTICES. Notices pursuant to this Agreement shall be given by personal service or by United States Postal Service or its lawful successor, postage prepaid, addressed as follows:

TO CITY: City of Whittier
 13230 Penn Street
 Whittier, CA 90602
 Attn: Secretary-Treasurer

TO CONTRACTOR: Republic Services
 Attn: Area President
 12949 Telegraph Road
 Santa Fe Springs, CA 90670

Notices shall be deemed to have been given hereunder as of the date of personal service, or two (2) days following the date of deposit of the same, with postage prepaid, in the custody of the United States Postal Service.

14. EFFECTIVE DATE OF AGREEMENT. The effective date of this Agreement shall be July __, 2015.

15. TERM. The term of this Agreement shall commence on the Effective Date and end June 30, 2016 or when a new city-wide waste hauling franchise is awarded, whichever occurs last, unless extended by mutual agreement.
16. PRICE ADJUSTMENTS: The prices in this Agreement will remain fixed over the Term of this agreement.
17. TERMINATION. CITY may terminate Agreement for just cause and shall give CONTRACTOR at least 30 days' prior written notice provided, however, that CITY shall first give CONTRACTOR written notice of any deficiency in performance and an opportunity to cure the deficiency within a reasonable period of time to be established by mutual agreement of the Parties. The foregoing notwithstanding, either Party may terminate this Agreement without cause, for its convenience, on 30 days' prior written notice to the other Party.
18. ASSIGNABILITY. This Agreement may not be sold, transferred or assigned by either party, or by operation of law, to any other person or persons or business entity, without the other party's written permission. Any such sale, transfer or assignment, or attempted sale, transfer or assignment without written permission, may be deemed by the other party to constitute a voluntary termination of this Agreement and this Agreement shall thereafter be deemed terminated and void.
19. VALIDITY. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any of the other provisions of this Agreement.
20. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
21. ENTIRE AGREEMENT. This Agreement, supersedes any and all other agreements whether oral or written, between the parties hereto with respect to the subject matter hereof and contains all of the covenants and agreements between the parties with respect to said matter, and each party to this agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that any other agreement or modification of this Agreement shall be effective only if executed in writing and signed by both CONTRACTOR and CITY.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed with all the formalities required by law on the respective dates set forth opposite their signatures.

CITY OF WHITTIER:

By _____
JEFFREY W. COLLIER, City Manager Date

ATTEST:

By _____
KATHRYN A. MARSHALL, City Clerk-Treasurer Date

APPROVED AS TO FORM:

By _____
RICHARD D. JONES, Legal Counsel Date

CONTRACTOR

By _____
Date

Title _____

APPROVED AS TO FORM:

By _____
SCOTT W. GORDON Date
Counsel for CONTRACTOR