

INTER-OFFICE CORRESPONDENCE

MEMORANDUM NO. 2023-007

TO: Mayor Greg Ross
Members of the City Commission

CC: Ryan Eggleston, City Manager
Tim Fleming, Interim Public Works Director
Tedra Allen, City Clerk

FROM: Jacob G. Horowitz, City Attorney *JGH*

DATE: July 17, 2023

RE: City of Cooper City (“City”) / Waste Management Contract

As a follow-up to the discussions related to the City’s solid waste contract at the June 27 and July 11 City Commission meetings, the City Attorney’s Office has prepared a brief analysis of the City’s current agreement with Waste Management (“WM”). The intent of this memorandum is to provide a chronology of the City’s relationship with WM, and to offer some additional context as the City work to finalize its competitive solicitation package for solid waste collection services.

As part of our analysis, the City Attorney’s Office examined the City’s original Collection Services Contract with WM, dated January 23, 2001 (the “Original Agreement”), along with all amendments thereto as well as the City Commission’s action related to each item. Our office did not re-listen to each commission meeting where the Original Agreement and subsequent amendments were discussed, and it is possible that the public discussions and staff recommendations at the time of each approval provide some additional context to this issue. The City Attorney’s Office is prepared to revisit the prior commission discussions and examine this matter further, upon request.

CHRONOLOGY OF WM CONTRACT

January 23, 2001 - The City Commission adopted Ordinance No. 01-1-2 (the “Ordinance”), thereby granting an exclusive right, privilege and franchise to WM to operate the only garbage, trash and recycling collection system in the City¹. The Ordinance further approved the Original Agreement, providing for a five (5) year term, commencing on March 1, 2001. Section 1.02 of the Original Agreement provided for up to two (2) additional three (3) year renewal terms, at the option of the City.

¹ Section 5.17 of the City Charter requires the adoption of an ordinance by the City Commission to grant a franchise to an individual, company, firm or corporation to exercise public functions in the City and to construct and operate any and all public utilities in the City.

June 13, 2006 – The City Commission adopted Resolution No. 06-06-4, thereby approving the First Amendment to the Original Agreement. This resolution indicates that the City, prior to the February 28, 2006 expiration of the Original Agreement, issued Request for Proposals No. 2006-01, seeking to solicit proposals for a new sanitation franchise hauler. On April 26, 2006, the City Commission rejected the two (2) proposals received in response to the RFP and directed staff to negotiate the renewal of the Original Agreement with WM. The First Amendment to the Agreement extended the initial term of the Original Agreement through June 1, 2009; however, it did not appear to implement the first renewal term. The First Amendment continues to reference two (2) additional three-year renewal options, upon mutual consent of the parties.

December 9, 2008 – The City and WM entered into the Second Amendment to the Original Agreement, thereby extending the initial term through June 1, 2012. The Second Amendment makes no reference to a renewal term or provides any change to the Original Agreement in the context of the two (2) additional three-year renewal options. To the contrary, these renewal terms expressly remain in full force and effect. Additionally, this Second Amendment was executed by the then-City Manager. At the regular commission meeting on December 9, 2008, the City Commission directed the manager to negotiate a renewal with WM; however, the Clerk’s Office was unable to locate any subsequent commission action formally approving the Second Amendment.

September 26, 2011 – The City Commission adopted Resolution No. 11-9-2, thereby approving the Third Amendment to the Original Agreement. This Third Amendment extended the initial term of the Original Agreement for an additional three (3) years, through June 1, 2015. Again this Third Amendment made no reference to a renewal term or change to the two (2) additional three-year renewal options set forth in the Original Agreement.

March 27, 2012 – The City Commission approved WM’s request to conduct an “Organics Pilot Recycling Program;” and the parties entered into a Fourth Amendment to the Original Agreement, thereby formally establishing the City’s role in participating in the program. The Fourth Amendment makes no reference to the contract term.

April 22, 2014 – The City Commission adopted Resolution No. 14-4-5. This resolution approved the Fifth Amendment to the Original Agreement, which had been executed by the Parties on or about October 31, 2013. The Fifth Amendment extended the term of the Original Agreement through June 1, 2018. The Fifth Amendment further revised the renewal term of the Original Agreement and provided that the parties may renew or further extend the contract for such terms and under such conditions as are mutually agreeable.

April 10, 2018 – The City Commission adopted Resolution No. 18-4-3, thereby approving the Sixth Amendment to the Original Agreement. The Sixth Amendment provided for a five-year extension of the initial term through September 30, 2023.

Please note that several of the aforementioned amendments also included certain operational changes to the City's relationship with WM. This memorandum is limited solely to an examination of the Original Agreement's initial term, along with any contract renewals.

NEXT STEPS AND CONCLUSION

Based on the foregoing chronology, it appears that the City last issued a competitive solicitation for solid waste services in 2006, at which time the City rejected all proposals and extended its 2001 Original Agreement with WM pursuant to the First Amendment. While the Original Agreement provided for a five (5) year term with two (2) three-year renewal options, the City continued to extend the initial term pursuant to the various amendments referenced herein. Since the Original Agreement contemplated a maximum term of eleven (11) years (the initial term plus two renewals) and the City's relationship with WM has extended for approximately twenty-two (22) years, the City Attorney's Office recommends that the City proceed with its forthcoming competitive solicitation process and pursue a new contract for solid waste collection services.

Notwithstanding this recommendation, it is also understood that it may be a challenge to finalize the solid waste procurement process, review proposals from prospective vendors, and award a new collection services contract prior to the September 30, 2023 expiration of the current WM agreement. Further, in the event that a hauler other than WM is selected at the conclusion of the procurement process, it may take additional time to implement a new contract and ensure a seamless transition to a successor hauler.

In light of these timing concerns and in order to ensure that there is no disruption of services in the City, a limited extension to the current WM contract may be unavoidable. To the extent that an extension is needed, we would recommend that such an extension be limited solely to the reasonable time necessary to complete the procurement process and secure a new contract for solid waste collection services.

Please contact our office if there is any additional information that we can provide.