

MEMORANDUM

TO: City Council
FROM: Eric Hagen
DATE: January 7, 2026
RE: Assignment of Faherty Contract

This memo is being provided to provide legal analysis and guidance on Faherty's request for the City to consent to the assignment of the City's contract with Faherty for garbage and recycling services to BFI Waste Services ("BFI").

The City's contract with Faherty is effective until December 31, 2026. That contract contains a clause that requires the City's consent for Faherty to assign its interest/rights in the contract to another entity. Faherty would like to sell some of its assets, including its rights/interests in its contract with the City to BFI. Such a sale is considered an assignment requiring the City's consent.

If the City consents to the assignment, BFI will take over the contract from Faherty and will be subject to the same terms and conditions that are applicable to Faherty, including providing the services for the same rates and subject to the same requirements through the remainder of the contract term. The City would still retain the same protections under the Faherty contract, so if BFI's performance is inadequate and constitutes a breach of contract, the City will be able to take the same actions against BFI that it could against Faherty. This includes the ability to pursue BFI for damages due to breach of contract and to terminate the contract if BFI fails to perform its material obligations under the contract and does not cure such breach within 60 days of receiving a written notice of default.¹ Potential damages due to a breach of contract would include the increased cost to the City to obtain replacement services.

I will note, the City is not required to consent to the assignment. If the City denies consent, then Faherty is still responsible for its obligations and liabilities under the contract. If Faherty is unable to provide the services as required by the contract due to the sale of its assets to BFI,

¹ The Faherty contract is not clear on whether the City would have to provide the 60-day notice/opportunity to cure before the City would be able to pursue a claim for damages related to a breach of contract. This is something that would need to be reviewed further if the City were to pursue a claim for breach of contract.

then the City would be able to pursue Faherty for breach of contract and related damages as noted above. That being said, Council should not take this decision lightly.

While refusing to consent to assignment is certainly legal, Council will want to consider the practical impact such a decision will have. Due to Faherty's sale, my understanding is that they will no longer be able to provide services to the City, so if the City denies the assignment the City will likely need to scramble to find a replacement service and may need to turn to litigation against Faherty to recover any damages suffered due to Faherty's breach of contract. While I am not sure how long it would take to obtain alternative services, it likely will take at least a few weeks for the City to solicit proposals/quotes, enter into a new contract, and for the new services to start.² Council should be mindful of the real possibility of public backlash if the City is unable to provide garbage and recycling services for an extended period of time.

Given the practical issues, it is my opinion that the City should approve the assignment. It is likely better to ensure continuity of services with BFI, even if they are an unknown entity, rather than deal with a lack of garbage and recycling service for an extended period of time.

² Note, this does not include the possibility of having to wait out the 60-day notice/opportunity to cure period if that is required to pursue a breach of contract claim.