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MEMORANDUM

TO: City Council Members

FROM: Ronnie Fussell
Council President

DATE: March 10, 2008

RE: 2008-538

Please find the Council Auditor's comments and recommendations on the above referenced ordinance. I would like to thank the Council Auditors office, Environmental Services, General Counsel and the Mayor's office for the many hours that were contributed to this work product.

The tentative hearing schedule of the Committee of the Whole is as follows:

April 9, 2009 at 2:00pm
Presentation by bill sponsor/Mayor's Office
Comments from Interested Parties/Q&A
Public Comments

April 23, 2009 at 4:00pm
Follow up Q&A
Comments for Interested Parties
Public Comments

*Please note that a vote will be taken by the Committee of the Whole at the April 23rd meeting.

If there are any subject matter experts that you would like to speak at one of the meetings, please invite them or contact my assistant, Mina Hosseini to request their attendance.

RWF/mh



MEMORANDUM

Date: March 10, 2009 (Updated April 9, 2009)

To: City Council Members

From: Kirk A. Sherman, Council Auditor

Subject: Ordinance 2008-538, Proposed Landfill Operations Contract

My staff has completed its review of the November 17, 2008 draft of the proposed landfill contract. In addition to reading the proposed ordinance and contract, my staff has met extensively with members of the Administration, has talked to employees of the Florida Department of Environmental Protection, employees of other counties, and employees of companies that operate landfills, has met with the engineer used by Waste Management for closure and post-closure expense calculations, and has estimated the costs associated with the existing and proposed contracts and the costs associated with the City operating the landfill. The estimated costs are based on receiving 42 million tons of waste beginning October 1, 2008.

Existing Contract	Proposed Contract	City Run Landfill	Competitive Bid *
Estimated Expenses if Existing Landfill Contract Continued for Life of Site	Estimated Expenses of Landfill Operating Under Proposed Contract	Estimated Expenses of Existing Contract for 7 years, with the City taking over and operating the landfill thereafter.	Estimated Expenses of Existing Contract for 7 years, with a new landfill operator taking over based on a competitive bid.
Cost in Years 1-7 ** \$163,865,339	Cost in Years 1-7 ** \$92,723,461	Cost in Years 1-7 ** \$164,513,822	Cost in Years 1-7 ** Unknown
Cost in Years 8-33 \$898,931,149	Cost in Years 8-33 \$703,322,415	Cost in Years 8-33 \$540,850,914	Cost in Years 8-33 Unknown
Total Cost *** \$1,062,796,488	Total Cost *** \$796,045,876	Total Cost *** \$705,364,736	Total Cost *** Unknown
Net Present Value of Cost @ 4.75% \$471,748,475	Net Present Value of Cost @ 4.75% \$337,288,032	Net Present Value of Cost @ 4.75% \$338,514,087	Net Present Value of Cost @ 4.75% Unknown

* Other environmental services companies have expressed interest in bidding on the future operation of the landfill.

** Years 1-7 are broken out separately because the City is under contract to let Waste Management operate the landfill until the current landfill cell is full, which is estimated to take another 7 years.

*** **Does not include the construction cost of expanding the landfill for which the City is responsible under any scenario.**

As seen in the schedule above, the proposed contract could save the City an estimated \$266,750,612 over the existing contract when compared as though the contracts would run for the life of the site. This equates to a net present value savings of \$134,460,443. I am not opining on the term of the existing contract, we simply ran the calculations for comparative purposes.

The schedule also shows that a City run landfill could save the City an estimated \$90,681,140 compared to the proposed contract. However, when considering the net present value or time value of money, the proposed contract could save the City \$1,226,055 compared to a City run landfill. This is because the City would incur significant costs in the early years for disposal of ash and for closure of the existing landfill cell and would not start saving money until the existing contract ends in seven years. It should also be noted that the City's Risk Manager recommends the purchase of various environmental pollution and liability insurance policies, the costs of which are not yet known and could be more than the estimated costs included in our spreadsheet calculations. If this turns out to be the case, it would obviously increase the calculated cost for the City to run the landfill.

I want to emphasize that all the numbers in the schedule above are estimates calculated from complicated spreadsheets which are based on numerous assumptions. Changes in any of the assumptions would change the cost numbers shown above. I have attached two documents which I hope will assist you in your deliberations over the proposed contract. The first is a list of auditor comments and recommendations with regard to operation of the landfill and the proposed contract. The second is a list of the benefits to the City and the benefits to Waste Management of the proposed contract.

Please contact me if I can answer questions or be of further assistance.

Cc: Alan Mosley, Chief Administrative Officer
Ebenezer Gujjarlapudi, Director of Environmental Resource Management
Chris Pearson, Chief of Solid Waste Division

Attachments:

- Auditor Comments & Recommended Changes to the Proposed Contract
- Benefits to City and Waste Management of Proposed Contract over Existing Contract

Council Auditor's Office
Review of Proposed Landfill Operations Contract (Ordinance 2008-538)
Auditor Comments & Recommended Changes to the Proposed Contract

The City has three options available with regard to the future operation of its Trail Ridge landfill.

1. **The City could pursue the in-house operation of Trail Ridge landfill.** The City has operated its own landfills in the past and it could do so again, either as an enterprise fund or as an authority. It must be noted that any savings associated with a City run landfill would not begin until after expiration of the current contract with Waste Management, which could last another seven years.
2. **The City could bid the landfill operation contract as required by the Municipal Code and as intended by Florida Statute 287.001 which states, "Legislative intent.--The Legislature recognizes that fair and open competition is a basic tenet of public procurement; that such competition reduces the appearance and opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically; and that documentation of the acts taken and effective monitoring mechanisms are important means of curbing any improprieties and establishing public confidence in the process by which commodities and contractual services are procured."** Bidding the contract would allow the City to draft the contract terms that it actually wants, rather than accepting a contract with the terms it was able to negotiate.
3. **The City can move forward with the proposed Waste Management contract. If the City moves forward with the proposed contract, we strongly recommend the following changes to the November 17, 2008 draft:**
 - A. **Lower the payment to Waste Management for Regular Tons from \$10.21 to \$9.95 per ton.**
We believe the City did not get an equitable rate cut in return for its concession to provide fuel for landfill operations. The City proposed rate reduction per ton is based on Waste Management's cost of fuel, but did not take into account Waste Management's rate of return. The proposed rate should be further reduced by Waste Management's rate of return since Waste Management will no longer make these expenditures or bear the risk of price increases.
 - B. **Cap the annual CPI adjustment of the per ton payment to Waste Management at 3.55%.**
The contract changes the per ton fee by 70% of the CPI each year. The highest rate in the past 20 years for the index used in the proposed contract was 5.1%. Seventy percent of 5.1 is 3.55. Therefore, we recommend a cap of 3.55% on the annual CPI increase. This is a fair and logical amount which protects the City in the event of a wild variation in inflation that would cause the City to pay increased rates for every year thereafter. The City has a similar cap in its garbage hauling contracts.
 - C. **Require a periodic rate review.** The City reviews the contract garbage haulers' audited financials every three years and is able to adjust rates if it appears that haulers are making an unreasonably high rate of return. We recommend that a provision be included in the contract which would allow the City to periodically examine Waste Management's audited financial records (perhaps every 5 or 10 years) and adjust the rates if Waste Management's rate of return is excessive.
 - D. **Implement the contract retroactively by making the effective date of the contract October 1, 2008.**

Council Auditor's Office
Review of Proposed Landfill Operations Contract (Ordinance 2008-538)
Auditor Comments & Recommended Changes to the Proposed Contract

- E. Delete the Purchase Option which would allow Waste Management to buy the landfill and the new borrow pit site from the City in the event that the City terminates the contract without cause.** The purchase option invalidates the termination for convenience clause because if the City terminates early to take advantage of a less expensive operator, Waste Management can force the City to sell them the landfill. The purchase option assures Waste Management of keeping the City as a customer for the duration of the contract. In addition, it puts the City at risk of losing the landfill site, which could be the last site in the county where a Class 1 landfill could receive a permit to operate.

- F. Increase Pollution Liability insurance requirements to \$20,000,000 per incident and \$20,000,000 aggregate limit as it was in the early drafts of the proposed contract.**

- G. Require that Waste Management pay to the City a pro rata share of closure and post closure costs for any open and operational cell(s) taken over by the City or a third party on behalf of the City. (Paragraph 7.5.1.5) We believe this is the intent of the language, but the language is confusing and needs to be clarified.**

- H. Require the attachment of Schedule 1 (Example of Section 5.2 CPI Adjustment) so that it can be reviewed before the City Council vote.**

- I. In Section 3.3, insert the word "Contractor" in line 7 to clarify that the City or JEA may charge the "Contractor" its normal processing rates at the time for leachate.**

Council Auditor's Office
Review of Proposed Landfill Operations Contract (Ordinance 2008-538)
Benefits to City and Waste Management of Proposed Contract Over Existing Contract

Benefits to City of Proposed Contract over Existing Contract

1. The City receives an immediate reduction in the rate it pays Waste Management from a blended rate of \$14.06 per ton to a blended rate of \$11.38 per ton. Based on the FY 08/09 budgeted tons of 909,970, this saves the City \$2,033,720 annually consisting of a base rate reduction and elimination of most of the existing contract extras, plus up to \$405,000 in non-bulk tire savings (see benefit # 3).
2. Waste Management agrees to pay for closure and post-closure of the landfill. Currently, the City is responsible for closure and post-closure. This will save the City an estimated \$168,405,931 based on the most recent cost estimates for closure and post closure expense, although the City owns the Trail Ridge property and ultimate liability will remain with the City.
3. Waste Management will accept the first 30,000 non-bulk tires each year for free, a potential annual savings of up to \$405,000 per year to the City since the City currently pays Waste Management \$13.50 (adjusted annually for CPI) for each tire received.
4. Waste Management agrees not to seek reimbursement from the City for a disputed \$1.1 million of capital improvements to the landfill gas field project it argues is owed under the existing contract.
5. Waste Management agrees to accept ash for daily and intermediate cover, as approved by the State. Currently, the City pays \$23.22 (plus annual CPI increase) per ton for disposal of ash. This will save the City \$36,273,822 based on an estimate of 1.5 million tons of ash to be landfilled over five years.
6. Waste Management has agreed to make up at its expense any shortfall in dirt for final landfill cover, should the City-owned 200 acre borrow pit on the ICI site not contain sufficient dirt.
7. The proposed contract establishes a maximum airspace usage of 1,481 cubic yards per 1,000 tons of solid waste. The existing contract has no limit on airspace usage. A limit on airspace usage maximizes landfill life and has the potential to reduce closure costs on a per ton basis.
8. The proposed contract allows the City 15 days to pay prior month invoices, whereas the existing contract requires payment in 7 days.

Benefits to Waste Management of Proposed Contract over Existing Contract

1. The City agrees to provide up to 275,581 gallons of diesel fuel per year (adjusted based on annual tonnage) to the contractor for operating equipment at the landfill.
2. The City has agreed to pay the September 2007 Waste Management residential hauler invoice for \$692,550 which it has been holding in dispute.
3. The City has agreed to pay outstanding extraordinary fuel charges related to Waste Management's residential hauler contract, not to exceed \$383,671.
4. The City agrees not to seek payment for commercial garbage commingled with residential garbage by Waste Management when Waste Management was a contract garbage hauler for the City. Although the hauler contract allows for penalties up to \$1,167,000 and Municipal Code Section 382.602 allows for additional penalties of \$5,850,000, there is no guarantee that the City would be awarded these penalties by a court.****
5. The City agrees not to pursue payment for noise violation fines levied against Waste Management, related to Waste Management's commercial hauling operations. Although the municipal code would allow penalties up to \$540,500, there is no guarantee that the City would be awarded these penalties by a court.****

Updated April 9, 2009

Council Auditor's Office
Review of Proposed Landfill Operations Contract (Ordinance 2008-538)
Benefits to City and Waste Management of Proposed Contract Over Existing Contract

6. Within 24 months after the effective date of the contract, the City agrees to enter into an agreement with Waste Management for the establishment of a Solid Waste and/or Recyclable Materials Processing operation at the landfill to recover materials that may be beneficially used.
7. The City is unequivocally giving Waste Management an operating contract for the "life of site" of the landfill.

***Note: In 2003, the City and Refuse Services Inc., a Waste Management subsidiary, entered into a settlement agreement resolving the City's allegation that Refuse Services breached its contractual obligations under the Residential Waste Contract by disposing outside of Duval County certain commercial waste collected within Duval County, and Refuse Services denied the allegation. Refuse Services, at its expense, agreed to deliver to Trail Ridge Landfill 93,750 tons of additional solid waste which the City calculated would provide net revenue of \$1,483,125.