



City of San Leandro

Meeting Date: January 20, 2015

Staff Report

File Number: 15-010

Agenda Section: CONSENT CALENDAR

Agenda Number: 8.E.

TO: City Council

FROM: Chris Zapata
City Manager

BY: City Attorney and
Rich Pio Roda
City Attorney

FINANCE REVIEW: David Baum
Finance Director

TITLE: Staff Report for a Resolution Approving 11th Amendment to ACI, Inc.'s
Franchise Agreement

SUMMARY

Staff recommends that the City Council, in accordance with Section 13.6 of the franchise agreement between ACI, Inc. and the City of San Leandro, authorize the City Manager to execute the 11th Amendment to the franchise agreement, subject to approval as to form by the City Attorney.

BACKGROUND

Pursuant to ACI, Inc.'s plans to refurbish ACI's Materials Recovery Facility (the "MRF") to expand operations to take in more solid waste, recyclable, and green waste tonnage, the imminent execution of a collective bargaining agreement with ACI's employees who work at the MRF, payment of the City's Living Wage Ordinance, and a formal request in accordance with the franchise agreement from ACI for special rate review, the City Manager conducted a review of the City's franchise agreement with ACI, and recommends that the City Council find that it is in the best interest of the City to approve an amendment to the franchise agreement between the City and ACI, Inc., and to authorize the City Manager to execute such an agreement, subject to approval as to form by the City Attorney.

This recommendation is in line with the following City Council goals:

- Place San Leandro on a firm foundation for long-term fiscal sustainability; and
- Provide quality public safety service and grow our partnership with the community to keep San Leandro safe.

Providing efficient and cost-effective waste management services ensures customer rates

remain stable and comply with the law. Providing waste management and recycling services is a key component of public safety by promoting community health and welfare. Waste management and recycling services allow the City to comply with its public health mandates and standards so that the community is not detrimentally affected by trash, vectors, and disease.

DISCUSSION

The City Council should find that the 11th Amendment to the franchise agreement is in the City's best interest because:

- It furthers the City Council's goal to place the City on a firm foundation for fiscal sustainability. As the City negotiates the terms of ACI, Inc.'s request for special rate review that would lead to amendments to the City's franchise agreement with ACI, it is necessary for the parties to examine and understand what rate increases, if any, may occur from such negotiations. Thus, operations and costs could be planned that would minimize effects on ACI's San Leandro customers, their refuse rates, and levels of service. This would also ensure rate parity between the customers of ACI and Oro Loma Sanitary District's franchise with Waste Management, which affects approximately 35% of the City. To that end, the City Manager recommends that the City Council formally ratify the 4.01% rate increase (effective February 1, 2015) permitted by the franchise agreement in Section 6.3(C). ACI delayed the implementation of this contractually permitted rate increase, which was supposed to take effect July 1, 2014, while ACI was analyzing and negotiating the terms of a settlement agreement to pay back wages to MRF employees related to the City's Living Wage Ordinance. The City Manager also recommends that the City Council approve an advance to ACI of \$1,109,706.74, which would be repaid by ACI together with simple interest at 2.5% per annum in forty equal installments of \$31,441.00. This advance is in lieu of any immediate rate increases not contemplated in the current version of the franchise agreement pursuant to ACI's special rate review. Although a 2.14% rate increase effective July 1, 2015 is contemplated and identified in the settlement agreement, the parties intend to negotiate in good faith any and all requested and already permitted rate adjustments pursuant to the special rate review, which could include rate adjustments as soon as July 1, 2015.

- The City seeks to ensure public health and safety are protected through negotiating updates to ACI's franchise agreement that induce ACI to continue investing into newer and better processing equipment so that the MRF operates at optimal levels. ACI's stated goal is to process more solid waste tonnage at the MRF than it does currently.

Financial Impact

The City's advance of \$1,109,706.74 from General Fund reserves will earn interest at a rate greater than the Local Agency Investment Fund (LAIF) rate.

ATTACHMENTS

Attachment to Staff Report

- Loan Amortization Schedule

Attachment to Resolution

- 11th Amendment

PREPARED BY: Chris Zapata, City Manager and Richard D. Pio Roda, City Attorney

Loan Amortization Schedule

Enter values	
Loan amount	\$ 1,109,706.74
Annual interest rate	2.50 %
Loan period in years	10
Number of payments per year	4
Start date of loan	7/1/2015
Optional extra payments	

Loan summary	
Scheduled payment	\$ 31,441.00
Scheduled number of payments	40
Actual number of payments	40
Total early payments	\$ -
Total interest	\$ 147,933.35

Lender name:

Pmt. No.	Payment Date	Beginning Balance	Scheduled Payment	Extra Payment	Total Payment	Principal	Interest	Ending Balance	Cumulative Interest
1	10/1/2015	\$ 1,109,706.74	\$ 31,441.00	\$ -	\$ 31,441.00	\$ 24,505.34	\$ 6,935.67	\$ 1,085,201.40	\$ 6,935.67
2	1/1/2016	\$ 1,085,201.40	\$ 31,441.00	\$ -	\$ 31,441.00	\$ 24,658.49	\$ 6,782.51	\$ 1,060,542.91	\$ 13,718.18
3	4/1/2016	\$ 1,060,542.91	\$ 31,441.00	\$ -	\$ 31,441.00	\$ 24,812.61	\$ 6,628.39	\$ 1,035,730.30	\$ 20,346.57
4	7/1/2016	\$ 1,035,730.30	\$ 31,441.00	\$ -	\$ 31,441.00	\$ 24,967.69	\$ 6,473.31	\$ 1,010,762.61	\$ 26,819.88
5	10/1/2016	\$ 1,010,762.61	\$ 31,441.00	\$ -	\$ 31,441.00	\$ 25,123.74	\$ 6,317.27	\$ 985,638.88	\$ 33,137.15
6	1/1/2017	\$ 985,638.88	\$ 31,441.00	\$ -	\$ 31,441.00	\$ 25,280.76	\$ 6,160.24	\$ 960,358.12	\$ 39,297.39
7	4/1/2017	\$ 960,358.12	\$ 31,441.00	\$ -	\$ 31,441.00	\$ 25,438.76	\$ 6,002.24	\$ 934,919.35	\$ 45,299.63
8	7/1/2017	\$ 934,919.35	\$ 31,441.00	\$ -	\$ 31,441.00	\$ 25,597.76	\$ 5,843.25	\$ 909,321.60	\$ 51,142.88
9	10/1/2017	\$ 909,321.60	\$ 31,441.00	\$ -	\$ 31,441.00	\$ 25,757.74	\$ 5,683.26	\$ 883,563.85	\$ 56,826.14
10	1/1/2018	\$ 883,563.85	\$ 31,441.00	\$ -	\$ 31,441.00	\$ 25,918.73	\$ 5,522.27	\$ 857,645.13	\$ 62,348.41
11	4/1/2018	\$ 857,645.13	\$ 31,441.00	\$ -	\$ 31,441.00	\$ 26,080.72	\$ 5,360.28	\$ 831,564.41	\$ 67,708.69
12	7/1/2018	\$ 831,564.41	\$ 31,441.00	\$ -	\$ 31,441.00	\$ 26,243.72	\$ 5,197.28	\$ 805,320.68	\$ 72,905.97
13	10/1/2018	\$ 805,320.68	\$ 31,441.00	\$ -	\$ 31,441.00	\$ 26,407.75	\$ 5,033.25	\$ 778,912.93	\$ 77,939.22
14	1/1/2019	\$ 778,912.93	\$ 31,441.00	\$ -	\$ 31,441.00	\$ 26,572.80	\$ 4,868.21	\$ 752,340.14	\$ 82,807.43
15	4/1/2019	\$ 752,340.14	\$ 31,441.00	\$ -	\$ 31,441.00	\$ 26,738.88	\$ 4,702.13	\$ 725,601.26	\$ 87,509.56
16	7/1/2019	\$ 725,601.26	\$ 31,441.00	\$ -	\$ 31,441.00	\$ 26,905.99	\$ 4,535.01	\$ 698,695.27	\$ 92,044.56
17	10/1/2019	\$ 698,695.27	\$ 31,441.00	\$ -	\$ 31,441.00	\$ 27,074.16	\$ 4,366.85	\$ 671,621.11	\$ 96,411.41
18	1/1/2020	\$ 671,621.11	\$ 31,441.00	\$ -	\$ 31,441.00	\$ 27,243.37	\$ 4,197.63	\$ 644,377.74	\$ 100,609.04
19	4/1/2020	\$ 644,377.74	\$ 31,441.00	\$ -	\$ 31,441.00	\$ 27,413.64	\$ 4,027.36	\$ 616,964.10	\$ 104,636.40
20	7/1/2020	\$ 616,964.10	\$ 31,441.00	\$ -	\$ 31,441.00	\$ 27,584.98	\$ 3,856.03	\$ 589,379.12	\$ 108,492.43
21	10/1/2020	\$ 589,379.12	\$ 31,441.00	\$ -	\$ 31,441.00	\$ 27,757.38	\$ 3,683.62	\$ 561,621.74	\$ 112,176.05
22	1/1/2021	\$ 561,621.74	\$ 31,441.00	\$ -	\$ 31,441.00	\$ 27,930.87	\$ 3,510.14	\$ 533,690.87	\$ 115,686.18
23	4/1/2021	\$ 533,690.87	\$ 31,441.00	\$ -	\$ 31,441.00	\$ 28,105.43	\$ 3,335.57	\$ 505,585.44	\$ 119,021.75
24	7/1/2021	\$ 505,585.44	\$ 31,441.00	\$ -	\$ 31,441.00	\$ 28,281.09	\$ 3,159.91	\$ 477,304.34	\$ 122,181.66
25	10/1/2021	\$ 477,304.34	\$ 31,441.00	\$ -	\$ 31,441.00	\$ 28,457.85	\$ 2,983.15	\$ 448,846.49	\$ 125,164.81
26	1/1/2022	\$ 448,846.49	\$ 31,441.00	\$ -	\$ 31,441.00	\$ 28,635.71	\$ 2,805.29	\$ 420,210.78	\$ 127,970.10
27	4/1/2022	\$ 420,210.78	\$ 31,441.00	\$ -	\$ 31,441.00	\$ 28,814.68	\$ 2,626.32	\$ 391,396.10	\$ 130,596.42
28	7/1/2022	\$ 391,396.10	\$ 31,441.00	\$ -	\$ 31,441.00	\$ 28,994.78	\$ 2,446.23	\$ 362,401.32	\$ 133,042.65
29	10/1/2022	\$ 362,401.32	\$ 31,441.00	\$ -	\$ 31,441.00	\$ 29,175.99	\$ 2,265.01	\$ 333,225.33	\$ 135,307.65
30	1/1/2023	\$ 333,225.33	\$ 31,441.00	\$ -	\$ 31,441.00	\$ 29,358.34	\$ 2,082.66	\$ 303,866.98	\$ 137,390.31
31	4/1/2023	\$ 303,866.98	\$ 31,441.00	\$ -	\$ 31,441.00	\$ 29,541.83	\$ 1,899.17	\$ 274,325.15	\$ 139,289.48
32	7/1/2023	\$ 274,325.15	\$ 31,441.00	\$ -	\$ 31,441.00	\$ 29,726.47	\$ 1,714.53	\$ 244,598.68	\$ 141,004.01
33	10/1/2023	\$ 244,598.68	\$ 31,441.00	\$ -	\$ 31,441.00	\$ 29,912.26	\$ 1,528.74	\$ 214,686.42	\$ 142,532.76
34	1/1/2024	\$ 214,686.42	\$ 31,441.00	\$ -	\$ 31,441.00	\$ 30,099.21	\$ 1,341.79	\$ 184,587.20	\$ 143,874.55
35	4/1/2024	\$ 184,587.20	\$ 31,441.00	\$ -	\$ 31,441.00	\$ 30,287.33	\$ 1,153.67	\$ 154,299.87	\$ 145,028.22
36	7/1/2024	\$ 154,299.87	\$ 31,441.00	\$ -	\$ 31,441.00	\$ 30,476.63	\$ 964.37	\$ 123,823.24	\$ 145,992.59
37	10/1/2024	\$ 123,823.24	\$ 31,441.00	\$ -	\$ 31,441.00	\$ 30,667.11	\$ 773.90	\$ 93,156.14	\$ 146,766.48
38	1/1/2025	\$ 93,156.14	\$ 31,441.00	\$ -	\$ 31,441.00	\$ 30,858.78	\$ 582.23	\$ 62,297.36	\$ 147,348.71

Pmt. No.	Payment Date	Beginning Balance	Scheduled Payment	Extra Payment	Total Payment	Principal	Interest	Ending Balance	Cumulative Interest
39	4/1/2025	\$ 62,297.36	\$ 31,441.00	\$ -	\$ 31,441.00	\$ 31,051.64	\$ 389.36	\$ 31,245.72	\$ 147,738.07
40	7/1/2025	\$ 31,245.72	\$ 31,441.00	\$ -	\$ 31,245.72	\$ 31,050.43	\$ 195.29	\$ -	\$ 147,933.35



City of San Leandro

Meeting Date: January 20, 2015

Resolution - Council

File Number: 15-011 **Agenda Section:** CONSENT CALENDAR

Agenda Number:

TO: City Council

FROM: Chris Zapata
City Manager

BY: Rich Pio Roda
City Attorney

FINANCE REVIEW: David Baum
Finance Director

TITLE: RESOLUTION Approving 11th Amendment to Alameda County Industries (ACI), Inc.'s Franchise Agreement to Ratify a 4.01% Refuse Collection Rate Increase Effective February 1, 2015 and to Approve an Advance of \$1,109,706.74 to ACI from General Fund Reserves with Simple Interest at 2.5% per Annum to Be Repaid in 40 Quarterly Installments Each in the Amount of \$31,441.00 with a Final Payment Due July 1, 2025

WHEREAS, an 11th Amendment to the Franchise Agreement between the City of San Leandro and Alameda County Industries (ACI), Inc., a copy of which is attached, has been presented to this City Council; and

WHEREAS, the City Council is familiar with the contents thereof; and

WHEREAS, the City Manager recommends approval of said agreement.

NOW, THEREFORE, the City Council of the City of San Leandro does RESOLVE as follows:

That said 11th Amendment is hereby approved and execution by the City Manager is hereby authorized.

ELEVENTH AMENDMENT TO FRANCHISE AGREEMENT

This Eleventh Amendment to Franchise Agreement (the "Amendment") is entered into this ____ day of January, 2015 by and between the City of San Leandro (the "City") and Alameda County Industries, Inc. ("ACI"), with reference to the following:

A. The City and ACI are parties to that certain Franchise Agreement for Solid Waste, Recyclables, and Green Waste Services dated February 1, 2000, as amended by the First through Tenth Amendments thereto (collectively, the "Agreement").

B. The City and ACI have unresolved issues pertaining to the application of Title 1, Article 6 of Chapter 6 of the San Leandro Municipal Code (the "Living Wage Ordinance") to the workers at the materials recovery facility (the "MRF") owned and operated by ACI's affiliate, Alameda County Industries, LLC ("ACI LLC"), refurbishment of the MRF, and organization of the MRF workers under a collective bargaining agreement.

C. The City and ACI wish to resolve such issues and to enter into this Amendment to provide for certain rate setting matters on the terms herein.

NOW, THEREFORE, in and for the mutual covenants herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and ACI hereby agree as follows:

1. ACI's implementation of a 4.01% increase on all rates, effective February 1, 2015, is hereby ratified.

2. On February 1, 2015, the City will advance to ACI the amount of \$1,109,706.74 (the "Advance") by wire transfer in accordance with ACI's written instructions. ACI will repay the Advance to the City, together with simple interest at the rate of 2.5% per annum, in forty (40) equal installments of \$31,441.00 each on the first day of January, April, July and October every year, commencing October 1, 2015. The City will execute and deliver an agreement with ACI's bank subordinating the City's right to repayment of the Advance to ACI's repayment of its indebtedness to such bank on commercially reasonable terms.

3. Irrespective of any other rate adjustments authorized under the Agreement (such as the RRI adjustment) or hereafter approved by the City (such as pursuant to a special rate review), ACI is authorized to increase all rates, effective July 1, 2015, by 2.14% in order to fund all repayments of principal and interest pursuant to Section 2 above, so that such repayments will not reduce ACI's compensation under the Agreement. The City hereby acknowledges the need for further rate increases effective July 1, 2015 to address the refurbishment of the MRF and the organization of the MRF workers under a collective bargaining agreement, which rate increases will be the subject of a request by ACI for a special rate review pursuant to Section 6.4 of the Agreement.

4. ACI LLC will provide all workers at the MRF with wages and benefits that comply with the Living Wage Ordinance, commencing December 1, 2014.

5. Effective upon the City's payment of the Advance to ACI (the "Effective Date"), ACI, on behalf of itself and its affiliates, shareholders, officers, directors, agents, employees, attorneys, successors and assigns ("ACI Releasers"), hereby fully and forever releases and discharges the City, and its affiliates, officers, insurers, council members, agents, employees, attorneys, successors and assigns ("City Releasees"), from any and all claims, demands, agreements, damages, debts, expenses, causes of action, attorneys' fees and liabilities, of whatever kind or nature, in law, equity or otherwise, whether now known

or unknown, vested or contingent, suspected or unsuspected, which have existed or may have existed or which do exist prior to or as of the Effective Date, which relate to or arise from, in whole or in part, the Living Wage Ordinance, including, without limitation, that certain lawsuit entitled Maria Granados Flores, et al. v. Alameda County Industries, Inc., Case No. 3:14-cv-03011-JD, and the settlement thereof.

The ACI Releasers expressly waive the benefits of California Civil Code Section 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

In the event any action, suit, claim or demand is made, brought or asserted by any person, firm or entity against City Releasees by reason of, arising from, or in connection with any of the matters released in this Section 5, ACI agrees to defend against the same at its sole cost and expense, and to indemnify City Releasees, and to hold them harmless from and against any and all damages, judgments, liabilities, obligations, costs or expenses, including, but not limited to, reasonable attorney's fees and court costs, suffered by them by reason of such action, suit, claim or demand.

ACI represents and warrants that it has not assigned or transferred any rights or claims covered by the release contained in this Section 5.

This Section 5 reflects a settlement and compromise, and is not an admission of liability or fault by either party.

6. Each party acknowledges that in executing this Amendment, it has not relied on any inducements, promises, or representations made by the other party and/or the other party's representatives.

7. This Amendment is the product of negotiation and preparation by and between each party hereto and its attorneys. Therefore, the parties acknowledge and agree that this Amendment shall not be deemed to have been prepared or drafted by one party or the other, and that it shall be construed accordingly.

8. Each party acknowledges and warrants that its execution of this Amendment is free and voluntary and with the intent to be legally bound.

9. Except as set forth in this Amendment, the Agreement shall remain in full force and effect. In the event of any inconsistency between the terms of the Amendment and the terms of the Agreement, the terms of this Amendment shall prevail.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Amendment effective as of the year and date specified in the first paragraph hereof.

CITY OF SAN LEANDRO

ALAMEDA COUNTY INDUSTRIES, INC.

City Manager

Attest:

City Clerk

By: _____

Title: _____

By: _____

Title _____

2386047.1