

AGENDA
MCFARLAND CITY COUNCIL
MCFARLAND SUCCESSOR AGENCY
MCFARLAND PUBLIC FINANCE AUTHORITY
MCFARLAND IMPROVEMENT AUTHORITY
MCFARLAND PARKING AUTHORITY

SPECIAL MEETING
CITY COUNCIL CHAMBERS
103 W. SHERWOOD AVE, MCFARLAND, CA

August 25, 2023
3:00 PM

In Person Meeting

How to submit public comments:

The meetings of the City Council and all municipal entities, commissions, and boards (“the City”) are open to the public. At regularly scheduled meetings, members of the public may address the city on any item listed on the agenda, or on any non-listed matter over which the city has jurisdiction. At special or emergency meetings, members of the public may only address the city on items listed on the agenda. There is a time limitation of two minutes per person. For any item that is not on the agenda and within the jurisdiction or interest of the city, please come to the podium at this time. The Brown Act does not permit any action or discussion on items not listed on the agenda. If you wish to speak regarding a scheduled agenda item, please come to the podium when the item number and subject matter are announced, and the mayor opens Public Comment on the item. When recognized, please begin by providing your name and address for the record (optional). Anyone wishing to submit written information at the meeting needs to furnish ten (10) copies to the City Clerk in advance to allow for distribution to City Council, staff, and the media. Willful disruption of the meeting shall not be permitted. If the Mayor finds that there is in fact willful disruption of any City Council Meeting, he/she may order the disrupting parties out of the room and subsequently conduct the City’s business without them present.

Americans with Disabilities Act:

In compliance with the ADA, if you need special assistance to participate in a city meeting or other services offered by the City, please contact the City Clerk’s office, at (661) 792-3091 ext. 2135. Notification of at least 48 hours prior to the meeting, or time when services are needed, will assist the city staff in assuring those reasonable arrangements can be made to provide accessibility to the meeting or services.

CALL TO ORDER: Mayor Saul Ayon

ROLL CALL:

Mayor, Saul Ayon
Vice Mayor, Ricardo Cano
Council Member/Board Member, Amador Ayon
Council Member/ Board Member, Anita Gonzalez
Council Member/Board Member, Maria T. Pérez

INVOCATION

PLEDGE OF ALLEGIANCE

INTERPRETATION: If you need an interpretation of your communications to the City Council into English, please contact the City Clerk Department at 661-792-3091 ext. 2135 at least 48 hours prior to the meeting.

CLOSED SESSION

1. Conference with Legal Counsel – Anticipated Litigation - Significant exposure to litigation pursuant to Government Code §54956.9(b): One Case

PUBLIC COMMENT: At regularly scheduled meetings, members of the public may address the city on any item listed on the agenda, or on any non-listed matter over which the city has jurisdiction. Council/Board Members may respond briefly to statements made or questions posed. They may ask a question for clarification; may refer the item to staff for further study or for placement on a future agenda. Speakers are limited to two minutes for each person. Please state your name and address for the record prior to making a presentation. Fifteen minutes total will be allowed for any one subject.

ADMINISTRATIVE AGENDA

2. Report, Discuss, and Approve Resolution No. 2023-0103 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MCFARLAND CONDITIONALLY APPROVING THE TRANSFER OF THE FRANCHISE AGREEMENT FOR RESIDENTIAL AND COMMERCIAL SOLID WASTE SERVICES FROM R&F DISPOSAL TO USA WASTE OF CALIFORNIA, INC.

ADJOURNMENT

This is to certify this agenda was posted at McFarland City Hall on August 24, 2023.

Francisca Alvarado
Francisca Alvarado, City Clerk

Kenny Williams, City Manager

Next Meeting: Regular City Council September 14, 2023.

The City of McFarland does not discriminate based on disability and complies with the provisions of the Americans with Disabilities Act (ADA). If you need special assistance to participate in this meeting, please contact the City Clerk's Office at (661) 792-3091 at least 48 hours prior to the meeting to make reasonable arrangements to ensure accessibility to this meeting.

All agenda item and/or supporting documentation is available for public review on the city website at www.mcfarlandcity.org and the office of the City Clerk of the City of McFarland, at 401 W. Kern Ave. McFarland, CA 93250 during regular business hours of 8:00 am –5:00 pm Monday through Friday, following the posting of the agenda. Any supporting documentation related to an agenda item for an open session of any regular meeting that is distributed after the agenda is posted and prior to the meeting will also be available for review at the same location and available at the meeting.

**CITY OF MCFARLAND
STAFF REPORT**

TO: Honorable Mayor and City Council Members

FROM: Kenny Williams, City Manager

DATE: August 24, 2023

SUBJECT: Report, Discuss, and possibly Approve Resolution Number No. 2023-0103 conditionally consenting to the transfer of the Franchise Agreement for Residential and Commercial Solid waste Services from R&F Disposal to USA Waste of California, Inc.

SUMMARY:

On January 16, 2020 the city of McFarland and R&F Disposal entered into a Franchise Agreement for Residential and Commercial Waste (WM) services for the city of McFarland.

Recently the city received a letter from R&F Disposal indicating they had reached an agreement to sell certain assets to USA Waste of California (WM), whereas WM would acquire the Franchise Agreement to provide solid waste service to the city of McFarland. The letter indicated the agreement would commence at the end of August of 2023.

In consultation with the city attorney, the city determined there were multiple items required by R&F Disposal before the transfer could occur. The city provided a list of the required information to R&F Disposal and on August 16, 2023 the city received all necessary information back from the R&F Disposal.

In further examination of the agreement the City determined that the following sections of the Agreement, as explained briefly below, concerning the services provided by R&F Disposal needed to be addressed before consent could be fully given:

1. Bin Rentals at City Facilities (Section 3.5.1 of the Agreement): *“At no cost to City, Company shall furnish sufficient containers, as determined by City, for regularly-scheduled Collection services at all City Facilities.”*

- R&F has charged the City for bin rentals at various locations, including City Hall, Police Department, Sewer Plant, Animal Shelter, Blanco Park and the Community Center, contrary to the agreement.

2. Payment Based on Monthly Bills (Section 5.8 of the Agreement): *“City shall remit to Company the Adjusted Monthly Payment monthly, on or before the fifth day of each month. For purposes of this Section, the following definitions apply:*

‘Monthly Payment’ shall mean all monthly Gross Receipts received by the City within 35 days of the date the City's Water Department bills the Customers for Solid Waste

Handling Services, plus any late payments received from Customers for prior Billings that were not yet included in a Monthly Payment.”

‘Adjusted Monthly Payment’ shall mean the Monthly Payment less City's Franchise Fees (Section 5.6), any liquidated damages that have been assessed per Section 8.2, and any other deductions authorized by this Agreement.”

- The City’s payments to R&F have been based on monthly bills and not gross receipts.

3. Franchise Fee Assessment (Sections 5.9.1 and 5.9.2 of the Agreement): *“5.9.1 Company shall pay to City a Franchise Fee of ten percent (10%) of Gross Receipts for Recyclable Materials and Organic Waste services, and five percent (5%) of Gross Receipts for all other Solid Waste handling services.”*

- The City has only been credited with the 5% franchise fee solid waste handling services. The City has not been credited with the 10% required on Recyclable Materials and Organic Waste Services. R&F has also failed to remit fees on gross receipts received directly.

4. Failure to Provide Reports Required Pursuant to Section 6.3.1, 6.3.2, and 6.3.3 of the Agreement: *“8.2.2(4) Any report shall be considered late until such time as a correct and complete report is received by City. For each calendar day a report is late, the daily liquidated damage amount shall be: a) Monthly Reports: \$75.00 per day b) Annual Reports: \$150.00 per day.”*

- R&F has failed to provide required monthly and annual reports, resulting in significant liquidated damages according to Section 8.2 of the agreement.

RECOMMENDATION:

Staff recommends council Report, Discuss, and possibly Approve Resolution number 2023-0103 CONDITIONALLY APPROVING THE TRANSFER OF THE FRANCHISE AGREEMENT FOR RESIDENTIAL AND COMMERCIAL SOLID WASTE SERVICES FROM R&F DISPOSAL TO USA WASTE OF CALIFORNIA, INC.

FISCAL IMPACT:

There will be a \$35,000 administrative fee provided to the city for the transfer of the Franchise Agreement

ATTACHMENT:

- I. Resolution No.2023-0103

RESOLUTION NO. 2023-0103

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MCFARLAND
CONDITIONALLY APPROVING THE TRANSFER OF THE FRANCHISE
AGREEMENT FOR RESIDENTIAL AND COMMERCIAL SOLID WASTE SERVICES
FROM R&F DISPOSAL TO USA WASTE OF CALIFORNIA, INC.**

WHEREAS, On January 16, 2020, the City Council of the City of McFarland approved a Franchise Agreement (“Agreement”) between the City and R&F Disposal; and

WHEREAS, R&F Disposal desires to transfer the Franchise Agreement to USA Waste of California Inc. per a sales agreement; and

WHEREAS, The City Council recognizes the Franchise Agreement allows for such sale and transfer; and

WHEREAS, The City Council recognizes there were multiple items required by R&F Disposal before the transfer could occur; and

WHEREAS The City Council recognizes that city staff and the city attorney believe the information received from R&F was acceptable to allow for the transfer of the Franchise Agreement from R&F to USA Waste of California Inc.; and

WHEREAS, Notwithstanding that the information received is likely sufficient to consent to the requested transfer, while conducting its due diligence prior to consenting to the requested transfer, the City determined that the following sections of the Agreement, as explained briefly below, concerning the services provided by R&F Disposal needed to be addressed before consent could be fully given:

1. **Bin Rentals at City Facilities (Section 3.5.1 of the Agreement):** “At no cost to City, Company shall furnish sufficient containers, as determined by City, for regularly-scheduled Collection services at all City Facilities.”

- R&F has charged the City for bin rentals at various locations, including City Hall, Police Department, Sewer Plant, Animal Shelter, Blanco Park and the Community Center, contrary to the agreement.

2. **Payment Based on Monthly Bills (Section 5.8 of the Agreement):** “City shall remit to Company the Adjusted Monthly Payment monthly, on or before the fifth day of each month. For purposes of this Section, the following definitions apply:

‘Monthly Payment’ shall mean all monthly Gross Receipts received by the City within 35 days of the date the City’s Water Department bills the Customers for Solid Waste Handling Services, plus any late payments received from Customers for prior Billings that were not yet included in a Monthly Payment.”

‘Adjusted Monthly Payment’ shall mean the Monthly Payment less City’s Franchise Fees (Section 5.6), any liquidated damages that have been assessed per Section 8.2, and any other deductions authorized by this Agreement.”

- The City’s payments to R&F have been based on monthly bills and not gross receipts.

3. **Franchise Fee Assessment (Sections 5.9.1 and 5.9.2 of the Agreement):** “5.9.1 Company shall pay to City a Franchise Fee of ten percent (10%) of Gross Receipts for Recyclable Materials and Organic Waste services, and five percent (5%) of Gross Receipts for all other Solid Waste handling services.”

“5.9.2(2). The Franchise Fee derived from all Gross Receipts received by Company that are not first collected by City pursuant to paragraphs 1 and 2 of Section 5.4.1 shall be payable by Company to City, on a monthly basis, no later than the 15th day of the month following receipt of the Gross Receipts. Should the 15th day fall on a Saturday, Sunday,

or holiday, payment shall be due on the next Business Day. Each such payment shall be accompanied by an accounting form, in a format acceptable to the City Manager that sets forth Company's Gross Receipts from Company Billings for the preceding calendar month. The accounting form shall be signed by an officer of Company, and shall include the following statement: 'I hereby certify under penalty of perjury that the above information is correct and the fee calculations are true to the best of my knowledge.' Fees not received by City by the date due shall be subject to a late fee of \$500.00 and liquidated damages in an amount equal to two percent of the total amount due if fees are one through ten days late; and ten percent of the total amount due if fees are more than ten days late, except to the extent that such lateness is due to extenuating circumstances."

- The City has only been credited with the 5% franchise fee solid waste handling services. The City has not been credited with the 10% required on Recyclable Materials and Organic Waste Services. R&F has also failed to remit fees on gross receipts received directly.

4. Failure to Provide Reports Required Pursuant to Section 6.3.1, 6.3.2, and 6.3.3 of the Agreement: *"8.2.2(4) Any report shall be considered late until such time as a correct and complete report is received by City. For each calendar day a report is late, the daily liquidated damage amount shall be: a) Monthly Reports: \$75.00 per day b) Annual Reports: \$150.00 per day."*

- R&F has failed to provide required monthly and annual reports, resulting in significant liquidated damages according to Section 8.2 of the agreement.

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of McFarland that it hereby finds and determines as follows:

1. The foregoing recitals are true and correct and incorporated herein as if set forth in full.
2. The City of McFarland acknowledges that the approval of the transfer of the Franchise Agreement provides Disposal services in the same terms and conditions agreed to in the original agreement; and
3. The City of McFarland ("City") consents to the transfer of the Franchise Agreement **conditioned** upon the City and R&F Disposal agreeing in a writing approved by Council to a resolution of the issues outlined in paragraph 6, (1)-(4) of the Recitals; and
4. The City Manager is hereby authorized and directed to proceed with negotiations concerning the above referenced issues and directed to provide council with recommended resolutions so a non-conditioned consent to the transfer may be approved, and.
5. The City Clerk shall certify to the passage and adoption of this resolution.
6. This resolution is effective immediately.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of McFarland on the 25TH day of August, 2023 by the following vote:

	Aye	Nae	Abstain	Absent
Saul Ayon				
Ricardo Cano				
Anita Gonzalez				
Amador Ayon				
Maria T. Perez				

ATTEST:

Francisca Alvarado, City Clerk

CITY OF MCFARLAND:

Saul Ayon, Mayor

I, _____, City Clerk of the City of McFarland, California, DO HEREBY CERTIFY that the foregoing resolution is a true and accurate copy of the Resolution passed and adopted by the City Council of the City of McFarland on the date and by the vote indicated herein.